

COMMUNITY PRESERVATION FUNDING AGREEMENT
BETWEEN NONANTUM VILLAGE PLACE, INC. and THE CITY OF NEWTON
TO SUPPORT
AFFORDABLE HOUSING AT NONANTUM VILLAGE PLACE

This AGREEMENT made as of March 30, 2004 by and between Nonantum Village Place, Inc., a non-profit organization having a usual place of business located c/o CASCAP, Inc., 678 Massachusetts Avenue, Cambridge, MA 02139 (hereinafter "Grantee") and the City of Newton, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director of Planning and Development or his designated staff, but without personal liability to him, (hereinafter the "City"), collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the Grantee purchased a portion of the property formerly known as St. Jean's at 241 Watertown Street, Newton (hereinafter "the Property"), on which will be constructed affordable rental housing units for qualifying elderly households, at least one member of which is 62 years of age or older and whose annual household income is at or below 50% of area median income, to be called Nonantum Village Place;

WHEREAS, the Grantee has applied for and received approval from the Community Preservation Committee and Board of Aldermen for a deferred loan in the amount of \$850,000.00 for the creation and support of the affordable housing units at Nonantum Village Place;

WHEREAS, the Grantee will apply the funding to close the gap between Grantee's financing sources and the funding to be provided from the United States Department of Housing and Urban Development ("HUD");

WHEREAS, the Grantee has agreed to execute an affordable housing restriction (hereinafter the "Covenant") which will meet the requirements of G.L. c. 184, §§ 32, be approved by the Department of Housing and Community Development ("DHCD") and which will permanently require that the Property be used as affordable housing for occupancy by qualifying elderly households, at least one member of which is 62 years of age or older, and whose annual household income is at or less than 50% of area median income; and

WHEREAS, the Grantee will also execute a Note and a Mortgage securing such Note;

NOW THEREFORE, the parties do mutually agree to the following General Provisions:

****GENERAL PROVISIONS****

1. **Subject matter.** This Agreement sets forth the terms and conditions where the Grantee shall receive funding from the City in the amount of eight hundred fifty thousand (\$850,000.00). The Grantee agrees to use such funding to close the gap between monies received from HUD and Grantee's other funding sources. Such funding shall be subject to the terms of a certain Rider to City of Newton Community Preservation Act Loan Documents attached hereto and made a part hereof.

2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to receipt of funds:
 - (a) The Covenant has been approved by the DHCD and such approval has been recorded in the Registry of Deeds. If DHCD does not approve the Covenant, Grantee agrees to execute a form of affordable housing restriction acceptable to DHCD, Grantor, and Grantee which shall satisfy the requirements of G.L. c. 184, §32 and shall be a perpetual restriction preserving the Property's affordable housing rental units for qualifying elderly households, one member of which is 62 years of age or older and whose annual household income is at or below 50% of area median income;
 - (b) The Grantee agrees to execute a Note evidencing the indebtedness and a Mortgage securing the obligations under this Agreement and the Note.
3. **Use of Grant Funds and Reporting.** Within thirty (30) days of the later to occur of: (i) execution of this Agreement, the Note, and the Mortgage; and (ii) receipt of the certificate of approval of DHCD of the Covenant, the City shall deliver a check in the amount of \$850,000.00 payable to the Grantee.
4. **Insurance Requirements.** The Grantee shall provide the City with a Certificate of Insurance in the amount of \$1,000,000 or greater covering General Liability including Bodily Injury, Property Damage, and Personal Injury. The City shall be named as an additional insured on this certificate.
5. **Permanent Reporting Requirements.** On July 1 of every year, Grantee shall submit a report to the City as to the use and occupancy of the Property and the income level of the tenants.
6. **Recapture of Funds.** If the Grantee fails to comply with the requirements of this Agreement, the funds shall revert back to the City, and the Grantee shall be liable to repay the entire amount of the funding to the City. The City may take such steps as necessary, including legal action, to recapture such funds. In the alternative, at the sole option of the City, the City may elect to exercise its right pursuant to the Note executed herewith, and subject to the conditions contained in said Note, to purchase the Property from Grantee for one (\$1.00) dollar, in full satisfaction of Grantee's repayment obligations hereunder.
7. **Return of Unused Portion of Funds.** Any portion of the funds not used for gap funding as provided herein shall be returned by the Grantee to the City within fifteen (15) months of the date of this Agreement.
8. **Record Keeping.** The Grantee agrees to keep such records as are kept in the normal course of business and as may be required by the City. The City shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.
9. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, after the lapse of any applicable notice and/or cure period, as described in this Agreement or in any of the other loan documents referenced herein, including refusal to comply with the Covenant, the City shall have the right, in its sole discretion, to terminate this Agreement upon written notice to the Grantee. Upon such termination, the City shall be free to pursue any rights or remedies available at law or in equity, as well as any rights or remedies provided within

the Note, Mortgage, or this Agreement, including without limitation, recapture of funds under paragraph 6.

10. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable laws, ordinances, or codes of state and/or local governments, in the construction, operation, and maintenance of the Property.
11. **Monitoring.** The City shall periodically evaluate the performance of the Grantee and may make a determination as to whether the Grantee has conformed with this Agreement and has a continuing capacity to carry out the funded activities in the manner required pursuant to this Agreement. At any time during normal business hours and as often as the City may deem necessary, Grantee shall make available all such records and documents as requested by said parties for audit and/or monitoring. The City may examine and make copies of such records and may audit all contracts, procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and all documents relating to all matters covered by this Agreement.
12. **Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in Paragraph 5, shall be binding on the Grantee's successors and assigns. The Grantee shall promptly provide notice of any change in ownership of the Property to the City.
13. **Conflict of Interest; Bonus and Benefit Prohibited.**
 - (a) No member, officer, or employee of the City or its designees or agents, no member of the governing body of the City of Newton or the Commonwealth of Massachusetts, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the subject funding programs during his or her tenure or for one year thereafter, shall have any interest or benefit, direct or indirect, in any contract or subcontract, or in the proceeds thereof, in connection with this Agreement, including work to be performed.
 - (b) Grantee shall not pay bonus, commission, or fee for the purpose of obtaining the City's approval of or concurrence to complete the work financed in whole or in part by this Agreement.
14. **Free from Encumbrances.** It is agreed and represented that the Property is free from any attachments, tax liens, mechanic liens or any other encumbrances, except as shown on Attachment C attached hereto, with the relative priorities as set forth in a certain Intercreditor and Subordination Agreement by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development, the Massachusetts Housing Finance Agency, the Community Economic Development Assistance Corporation, and the City of Newton.
15. **Indemnification.** The Grantee shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys' fees and interest arising out of or resulting directly from the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damage costs, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property which (2) is caused in whole or in part by any act or omission of the Grantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

16. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.


To the City: Associate Director for Housing and Community Development
Planning and Development Department
City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

To Grantee: Executive Director
c/o CASCAP, Inc.
678 Massachusetts Avenue
Cambridge, MA 02139

**** SIGNATORIES ****

IN WITNESS WHEREOF the parties hereto have executed this Agreement in three sets to be effective when executed by His Honor the Mayor in the City of Newton.


GRANTEE: Nonantum Village Place, Inc.

By: 
Its: Authorized Rep.


CITY OF NEWTON:

By: 
AZP 15 Director of Planning & Development

I certify funds are available within Acct. 21C114A5796 in the amount of \$850,000.00 for this Agreement.

By: 
Comptroller of Accounts

Approved as to legal form and character

By: 
Assistant City Solicitor

CONTRACT APPROVED

By: 
Mayor

3/30/04
Date

**Attachment A
Certificate of Authority
(Non-Profit Corporation)
and
List of Officers and Directors**

1. I hereby certify that I am the Clerk/Secretary of:

Nonantum Village Place, Inc.; and that
(Print name of corporation)

2. Michael Haran is the duly elected
(Print name of officer who signs the contract)

Authorized Rep. of said corporation; and that
(Print title of officer who signs the contract)

3. on 11/18/03 at a duly authorized meeting of the Board of Directors
*(insert date of meeting) **

of said corporation, at which all the Directors were present or waived notice, it was voted that

Michael Haran, Auth. Rep. of this
(Print name and title of officer who signs the contract, as in number 2 above)

corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that

4. The above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

ATTEST: Claudia DePass
(signature of Clerk/Secretary)

NAME: Claudia DePass
(printed or typed name of Clerk/Secretary)

DATE: 3/24/04
*(insert date Certificate signed by Clerk/Secretary)***

* This date must be on or before the date of the contract and the date the corporate officer signs.

** This date must be on or after the date that the corporate officer signs the contract.

**Certificate of Authority
and
List of Officers and Directors**

List of Officers of the Board of Directors/Trustees

Names	Titles
Thomas Sadler	President
Patricia Giuliano	Treasurer
Cynthia Stark	Clerk

List of Board of Directors/Trustees

Names	Names
Thomas Sadler	
Patricia Giuliano	
Cynthia Stark	
Michael Haran	
Jeska Brooks	
Timothy O'Leary	
Theater McKee	

**Attachment B
State Tax Attestation**

Pursuant to Massachusetts General Laws Chapter 62C Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Massachusetts tax returns and paid all Massachusetts taxes required under law. *



Signature

Nowantun Village Place, Inc.

Name of Contractor (Agency)

Federal Identification Number
or Social Security Number

03/24/04

Date

***Legislation enacted by the Commonwealth of Massachusetts, effective July 1, 1983,
requires that the above Attestation be signed by all contractors doing business with
municipalities.**

ATTACHMENT C

PERMITTED ENCUMBRANCES

1. Mortgage And Security Agreement, Regulatory Agreement, Use Agreement and UCC Financing Statements given to the U.S. Department of Housing and Urban Development (“HUD”) to secure a capital advance of \$3,167,100.00.
2. Mortgage, Security Agreement and Conditional Assignment of Leases and Rents, Affordable Housing Restriction and UCC Financing Statements given to the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development pursuant to The Affordable Housing Trust Fund Statute, M.G.L. c. 121D to secure a loan of \$600,000.00.
3. Mortgage, Security Agreement and Assignment of Leases and Rents, Affordable Housing Restriction, UCC Financing Statements given to Community Economic Development Assistance Corporation to secure a loan of \$500,000.00.
4. Easements of record and described on Schedule D attached hereto.
5. Decision of the Newton Board of Appeals and Affordable Housing Restriction given to the City of Newton, both of record with the Middlesex South Registry of Deeds.

0003/0008/3096

SCHEDULE D
Description of Property

Parcel B shown on a Subdivision Plan prepared by Design Consultants, Inc. dated October 17, 2001 and entitled "Plan of Land 243 Watertown Street, Newton, Massachusetts prepared for CASCAP, Inc." recorded on December 21, 2001 as Plan No. 1260 with the Middlesex South Registry of Deeds and described as follows:

Beginning at a point on the east line of land of the City of Newton, said point bearing
NO2°-00'-50"E and 260.71 feet from the north line of Watertown Street;
Thence, running NO2°-00'-50"E along the City of Newton 168.13 feet to a point;
Thence, running S66°-55'-20"E along the City of Newton 48.72 feet to a point at the Southwest corner of KF II Nominee Trust;
Thence, running S86°-00'-36"E 36.15 feet to a point;
Thence, running N70°-32'-27"E 106.18 feet to a point, the last two (2) courses being along said KF II Nominee Trust;
Thence, running SO1°-47'-45"W along Newton Community Development Authority 202.99 feet to a point at the Northeast corner of Parcel A as shown on the aforesaid plan;
Thence, running N87°-59'10"W 81.65 feet to a point;
Thence, running NO2°-00'50"E 16.55 feet to a point;
Thence, running N87°-59'-10"W 64.84 feet to a point;
Thence, SO2°-00'-50"W 1.80 feet to a point;
Thence, running N87°-59'10"W 34.69 feet to the point of beginning, the last five (5) courses being along said Parcel A.

Parcel B contains 30,500 square feet, more or less according to said Plan, being the same premises conveyed by deed of the Roman Catholic Archbishop of Boston, a corporation sole, recorded with said Registry in Book 35076, Page 378.

The foregoing premises are conveyed with the benefit of and are subject to certain access, utility and drain easements, all as recited in the following instruments: (a) easement agreement entitled "Mutual Easements for 237-253 Watertown Street, Newton, Massachusetts" recorded in Book 34395, Page 222, which easements are more particularly described and portrayed on the foregoing plan, as affected by a Certificate of Receipt recorded in Book 40924, Page 99; (b) as Easement Agreement entitled "Limited Utility Easement" dated September 10, 2003, and recorded in Book 40843, Page 446, which easements are more particularly described and portrayed on a plan recorded therewith as Plan No. 937 of 2003; and (c) provisions of an Easement Agreement dated September 16, 2003 and recorded in Book 40924, Page 95, which easements are more particularly described and portrayed on the foregoing subdivision plan.

**RIDER TO CITY OF NEWTON COMMUNITY PRESERVATION ACT ("CPA")
LOAN DOCUMENTS including Funding Agreement, Promissory Note,
Mortgage and Affordable Housing Restriction
(To Satisfy HUD Secondary Financing Requirements)
RE: NONANTUM VILLAGE PLACE, INC., ("Borrower")
Property: 241 Watertown Street, Newton, MA**

This Loan Document is subject and subordinate to the lien of the Mortgage and Security Agreement (the "First Mortgage") granted by Nonantum Village Place, Inc. to the United States Department of Housing and Urban Development ("HUD") ("First Mortgagee") dated February 4, 2004 and recorded with the Middlesex County Registry of Deeds in Book 41966, Page 240. So long as the foregoing mortgage given to HUD remains unpaid and outstanding, the holder of the attached Loan Document, together with all assignees and/or successive holders of this Loan Document, agree that:

- a. No interest or principal advanced pursuant to or due in accordance with the CPA Note and evidenced or secured by this Loan Document shall be due or payable, except upon approval by HUD in advance;
- b. The Note and First Mortgage held by HUD may be amended, extended, increased, renewed and/or refinanced without any consent from the holder of this Loan Document; the only obligation of HUD shall be to use reasonable efforts to give the holder of this attached Loan Document written notice of such amendment, extension, increase, renewal or refinancing, as the case may be;
- c. The CPA Mortgage may not be declared in default and no foreclosure of the CPA Mortgage may be commenced without the prior written approval of HUD;
- d. No requirements of the attached Loan Document(s) (or any other Loan Document regarding this CPA Loan) will be permitted to interfere with or conflict with HUD's requirements concerning the development or operation of the Property or conflict with the operation of the Property on terms at least as favorable to existing and future tenants as required under Section 202 of the U.S. Housing Act of 1959, as amended;
- e. If HUD approves a transfer of the Property, approval will not be withheld by the holder of this Loan Document so long as the proposed transferee is a nonprofit corporation exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986; and
- f. In the event any first mortgage loan made by HUD to Borrower (and secured by the Property) remains outstanding at the Maturity Date of the CPA Loan, the Maturity Date shall be extended to a date which is thirty (30) days after the date upon which the aforementioned HUD loan has been repaid in full or forgiven and discharged.

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS AGREEMENT made as of the ___ day of March, 2004, by and among **THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by the MASSACHUSETTS HOUSING FINANCE AGENCY, as administrator for the Affordable Housing Trust Fund** with a mailing address at One Beacon Street, Boston, Massachusetts 02108 (the "AHTF Lender"); **COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE CORPORATION**, a body politic and corporate, duly organized and existing in accordance with Chapter 40H of the Massachusetts General Laws ("CEDAC"), for itself and as agent of the Department of Housing and Community Development of the Commonwealth of Massachusetts ("DHCD"), having an address of 18 Tremont Street, Suite 1020, Boston, Massachusetts 02108; **THE CITY OF NEWTON, acting by and through its Director of Planning and Development**, having an address of City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts 02459 (the "City"); and **NONANTUM VILLAGE PLACE, INC.**, a Massachusetts non-profit corporation, duly organized and validly existing in accordance with Chapter 180 of the General Laws, having an address of c/o CASCAP Realty, Inc., 678 Massachusetts Avenue, Cambridge, MA 02139 (the "Borrower").

RECITALS

WHEREAS, the Borrower is the owner of certain premises known as 241 Watertown Street, Newton, Massachusetts, as more particularly described in the below-referenced Mortgages and in Exhibit A attached hereto (the "**PROPERTY**"), at which Property the Borrower intends to construct thirty-five units of housing including thirty-four (34) one-bedroom units for occupancy by elderly income restricted individuals and one (1) unit for occupancy by the Property manager (the "**PROJECT**"); and

WHEREAS, the City has agreed to loan Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000.00) to the Borrower (the "City CPA Loan"); and

WHEREAS, the City CPA Loan is evidenced and secured by the following documents, each of even or contemporaneous date herewith and granted or given to the City by the Borrower: a Promissory Note, a Mortgage, a Community Preservation Funding Agreement, a Declaration of Restrictive Covenants dated March 18, 2002, recorded with the Middlesex South Registry of Deeds in Book 35076, Page 387 (the "City Restriction"), and such other instruments as may be required by City (all such instruments being hereinafter collectively referred to as the "**City Loan Documents**"); and

WHEREAS, CEDAC has agreed to loan Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "**CEDAC Loan**") to the Borrower under the Housing Innovations Fund, for financing required for the Project; and

WHEREAS, the CEDAC Loan is evidenced and secured by the following documents, each of even or contemporaneous date herewith and granted or given to CEDAC by the

Borrower: Promissory Note, a Mortgage, Security Agreement and Assignment of Leases and Rents, a Development Loan Agreement, a Collateral Assignment of Contracts, Licenses, Permits, Warranties, Agreements and Approvals, and such other instruments as may be required by CEDAC (all such instruments being hereinafter collectively referred to as the "**CEDAC Loan Documents**"); and

WHEREAS, the AHTF Lender has agreed to loan Six Hundred Thousand and 00/100 Dollars (\$600,000.00) to the Borrower for the Project under the Affordable Housing Trust Fund Statute (the "**AHTF Loan**"); and

WHEREAS, the AHTF Loan is evidenced and secured by the following documents, each of even or contemporaneous date herewith and granted or given to the AHTF Lender by the Borrower: Promissory Note, Loan Agreement, Mortgage, Security Agreement, Conditional Assignment of Leases and Rents, and such other instruments as may be required by the AHTF Lender (all such instruments being hereinafter collectively referred to as the "**AHTF Loan Documents**"); and

WHEREAS, the Borrower has agreed to enter into an Affordable Housing Restriction of even date herewith, to be recorded with the Registry, for the joint and several benefit of the AHTF Lender, CEDAC and DHCD (the "**Joint Affordable Housing Restriction**") (collectively, the City Restriction and the Joint Affordable Housing Restriction, the "**Restrictions**"); and

WHEREAS, CEDAC, the AHTF Lender, and the City (referred to collectively as the "**Lenders**" and each individually as a "**Lender**") wish to establish the relative priorities of their respective notes, mortgages, assignments of rents and other loan documents (as set forth above) with respect to the Property (collectively, the "**Lenders' Documents**") and their relative security interests with respect to the personal property and fixtures owned by the Borrower and used in connection with the Property and the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby mutually covenant and agree as follows:

1. Lenders' Priority. The relative priority of the Lenders with respect to:
 - a. payment and performance of the Borrower under the Lenders' Documents,
 - b. the assets of the Borrower mortgaged, pledged or assigned to the Lenders or in which the Lenders hold a security interest pursuant to the Lenders' Documents (collectively, the "**Collateral**") notwithstanding the order in which the various mortgages and security interests granted by the Borrower to the Lenders have been or are hereafter recorded and/or perfected,

- c. the proceeds of the liquidation of any Collateral of the Borrower conducted by a Lender subject to the provisions of this Agreement,
- d. all right, title, claim in and to the proceeds of all policies of insurance covering the Collateral and to all awards and other compensation made for any taking of the Collateral, and
- e. the liens established by the Lenders' Documents, is as follows:

First – the Joint Affordable Housing Restriction and the City Restriction (shared equally);

Second – the City Lender and the AHTF Lender (shared equally, as more fully described in Section 2 below); and

Third – CEDAC.

2. Pari Passu Loans.

A. The City and the AHTF Lender (the “**Pari Passu Lenders**”) agree that, notwithstanding the order of recording of the mortgages and all related Lenders' Documents granted by the Borrower to each of the Pari Passu Lenders, such mortgages shall be deemed to be of equal priority, to the same extent as if the City CPA Loan Documents and the AHTF Loan Documents were secured by a single mortgage granted jointly and severally to all of the Pari Passu Lenders.

B. Provided that no Event of Default (continuing beyond any applicable notice or grace periods) is outstanding under any of the City CPA Loan Documents or the AHTF Loan Documents all payments received by any of the Pari Passu Lenders in accordance with the terms of its Loan Documents may be accepted and applied in accordance with the Note or other Loan Document pursuant to which such payments were made. All payments received by any Pari Passu Lender after an Event of Default (whether by the exercise of remedies or otherwise) or as a result of a voluntary prepayment, eminent domain award or casualty proceeds (not applied to restoration of the Property and continuation of the Project in compliance with the City Restriction and the Joint Affordable Housing Restriction), or other payment not made in the ordinary course of business, shall be held in trust for the benefit of all of the Pari Passu Lenders and shall be disbursed to them on a pro rata basis, determined in accordance with the ratio of the total amount of principal and accrued interest then owed to each of them to the total aggregate amount of principal and accrued interest then owed to all of them.

C. The Pari Passu Lenders will each make reasonable efforts to consult with the other Pari Passu Lenders as to matters affecting their rights as lien holders. Each Pari Passu Lender will execute, deliver and record such additional instruments as may be necessary or desirable from time to time in order to effectuate the provisions of this Section 2.

3. Defined Terms. For purposes of this Agreement, the term “**Senior Lender**” or “**Senior Lenders**” shall mean a Lender(s) who is senior in priority relative to another Lender in accordance with paragraph 1 hereof; the term “**Junior Lender**” or “**Junior Lenders**” shall mean

a Lender(s) who is junior in priority relative to another Lender in accordance with paragraph 1 hereof, and the term “**Pari Passu Lender**” shall mean a lender who is equal in priority relative to another lender in accordance with paragraph 1 hereof.

4. Advances. A Junior Lender is hereby and shall remain subordinate to all increases made or incurred with respect to principal, interest and other charges payable to a Senior Lender and secured by such Senior Lender’s mortgage, but only to the extent that such increases are made in order to preserve the Collateral or the priority of such Senior Lender’s mortgage or security interest, or as a result of the collection of any indebtedness secured by the Senior Lender’s mortgage, including reasonable attorneys’ fees, or as otherwise permitted by Section 7 below.

5. Default and Foreclosure. So long as any indebtedness to more than one Lender remains outstanding, each Lender shall provide to all other Lenders written notice of any default under its respective note or mortgage prior to taking any action with respect thereto. No Lender shall take possession of the Property (except in the event of an emergency), conduct a foreclosure sale or accept any assignment or transfer in place of foreclosure unless there has been a default under that Lender’s note or mortgage and then not without first providing the other Lender(s) with at least sixty (60) days’ written notice of such Lender’s intent to commence such action, during which period the Lenders (together with the Borrower) shall use good faith efforts to attempt to structure a workout or other arrangement to avoid such taking possession, foreclosure, sale or transfer, to the reasonable satisfaction of the foreclosing Lender and consistent with the affordability restrictions set forth in the Restrictions. The inadvertent failure to send such copies of notices shall not affect the validity of any notice given to the Borrower or otherwise affect such foreclosure proceeding or the validity of this Agreement, except as provided in Section 6 below with respect to affordability restrictions.

In connection with the conduct of a foreclosure by any Junior Lender pursuant to this paragraph 5, the Senior Lender(s) agree to execute and deliver to the Junior Lender at the time of any such foreclosure, such discharges, releases, termination statements and other instruments sufficient to terminate the mortgage and security interest in favor of such Senior Lender evidenced by the Lender’s Documents. Such termination documents shall be delivered by the Senior Lenders to the foreclosing Lender within a time frame sufficient to enable the Junior Lender to conduct a foreclosure sale or convey title to the Collateral free and clear of the mortgage, security interest and the rights evidenced by the Lender’s Documents. Following the foreclosure sale, the Junior Lender shall distribute the proceeds of the sale in accordance with this Agreement accompanied by a written statement of the results of such foreclosure sale and an accounting of the distribution of the proceeds thereof.

No provision hereof shall be construed to limit the right of any of the Pari Passu Lenders or the Junior Lender to take action against the Borrower to enforce the Restrictions or to enforce any other material requirement of the legislation establishing the loan program under which the loan of such Lender was made or the regulations relating to such loan program promulgated thereunder (such as, but not limited to, injunctive relief), provided that such action shall not include acting as mortgagee in possession, accepting a deed in lieu of foreclosure, or commencing foreclosure proceedings, or in any other way affecting the priority of payments due

to the Senior Lender or the collateral granted to the Senior Lender as security, except in accordance with the provisions of this Agreement.

6. Affordable Housing Restriction. Each Lender agrees that, notwithstanding the order of recording of its Mortgage with respect to the Restrictions, each Lender will comply with the provisions set forth in Section 17 of the Joint Affordable Housing Restriction and Section 14(b) of the City Restriction in connection with any foreclosure, conveyance of the Property in lieu of foreclosure or similar action, and the Restrictions will not be extinguished by such foreclosure or other action if the Premises are acquired by a Related Party as defined in the Joint Affordable Housing Restriction, and any excess proceeds of such foreclosure or transfer in lieu thereof shall be distributed to the City, CEDAC and the AHTF Lender in accordance with Section 17 of the Joint Affordable Housing Restriction. Each of the Lenders agrees that, notwithstanding any provision to the contrary in the Loan Documents granted to it, the Restrictions shall be permitted encumbrances or permitted exceptions under its respective Loan Documents.

7. Loan Increases. The Junior Lenders agree that in the event that (i) the Borrower is in default under any of the notes senior in priority to such Junior Lenders and the Senior Lender elects to convert unpaid and unaccrued interest under the Senior Lender's note to additional principal due thereunder; or (ii) the Senior Lender has determined that it is necessary to advance additional funds to ~~make complete the Project, to make~~ reasonably necessary emergency repairs or to prevent the occurrence of serious physical harm to the Collateral; or (iii) the Senior Lender has incurred reasonable out of pocket expenses to protect its interest in the Collateral, and as a result, the Senior Lender increases the amount of its loan, the Junior Lender will execute whatever additional documents as may be necessary as reasonably required by the Senior Lender to be assured that the Junior Lender's note and mortgage and the Borrower's obligations thereunder are subordinate to the Senior Lender's note and mortgage as they may be increased and/or amended for purposes set forth hereunder.

8. Subordination of Payments. The Junior Lenders agree that, except upon the maturity date of each Junior Lender's loan, no payments, prepayments or other distributions will be paid or be payable under the terms of the Junior Lender's note or mortgage from the income of the Borrower unless at the time of such payment, prepayment or distribution, the income generated by the Borrower (as determined based upon its most recent audited or certified financial statements) is sufficient to pay in a timely manner, all operating expenses absolutely necessary to properly operate the Property, reserves for replacements, and all amounts due and payable to the Senior Lender, except if and to the extent expressly required under the Junior Lender's note with respect to any excess of gross cash receipts for the Project over its gross cash expenditures, in accordance with the legislation and regulations applicable to such loan. In the event of a monetary default under a Senior Lender's note or mortgage as determined by the Senior Lender and as set forth in writing to each Junior Lender, no payments will be accepted under the Junior Lender's note or mortgage without the prior written consent of the Senior Lender(s) until such monetary default has been cured. In the event any Junior Lender receives any payment or other distribution of any kind from the Borrower or from any other source whatsoever in respect to the Lender's note or mortgage, other than as permitted above, such payment or other distribution shall be received in trust for the Senior Lender(s), and promptly

turned over to the appropriate party.

9. Loan Amendments. No Junior or Pari Passu Lender shall amend or modify its respective note or mortgage in any material manner that adversely affects the Senior and Pari Passu Lenders without the prior written consent of all Senior and Pari Passu Lenders, which consents shall not be unreasonably withheld or delayed. No Senior Lender shall amend or modify its respective note or mortgage in any material manner that adversely affects the Junior Lenders' interests without the prior written consent of all Junior Lenders, which consents shall not be unreasonably withheld or delayed.

10. Notice. Except for any notice required under applicable law to be given in another manner, all notices to be given pursuant to this Agreement shall be sufficient if mailed postage prepaid, registered mail, return receipt requested or by a recognized overnight delivery service for which evidence of delivery is provided to the addresses of the parties set forth in the first paragraph of this Agreement, or to such other address as a party may direct by notice given as herein provided. Any time period provided in the giving of any notice hereunder shall commence within one (1) business day following deposit to the mail or to the delivery service.

11. Termination of Agreement. The relative priorities of each Lender, as set forth herein, and the rights of each Lender, as provided hereunder, are applicable and available to that Lender only until the repayment of the obligations of the Borrower to that Lender which are subject to this Agreement and the expiration of the provisions of the Restrictions granted for the benefit of such Lender. Upon the repayment in full of such obligations and expiration of such Restrictions, that Lender shall no longer be a party hereunder, and the various relative priorities included above shall be deemed amended by the deletion of that (former) lender herefrom, except that in the event that such (former) Lender is required, pursuant to Section 547 of the Bankruptcy Reform Act of 1978 or a successor provision, to repay any amount paid to that (former) Lender by the Borrower in satisfaction of such liabilities, then such Lender shall be deemed a party hereto entitled to all benefits hereunder to the extent that the proceeds of the Collateral are thereafter distributed pursuant hereto.

12. Construction Disbursements. Each Lender may advance the proceeds of its Loan in accordance with the applicable provisions of its Loan Documents and its customary requisition procedures. Notwithstanding the foregoing, the Lenders shall cooperate in making disbursements to Borrower by using the AIA requisition forms or other common requisition forms reasonably acceptable to the Lenders and by sharing all information derived from construction progress inspections.

13. Miscellaneous. This Agreement shall be governed by the laws of The Commonwealth of Massachusetts and shall enure to the benefit of, and be binding upon, the undersigned and their respective successors and assigns. Notwithstanding the Borrower's acknowledgment hereof, nothing contained herein is intended to or shall impair the obligations of the Borrower to each of the Lenders or to make the Borrower a third party beneficiary hereof, and no violation of any of the provisions hereof by any Lender shall constitute a defense for, or confer any other rights upon, the Borrower. Except as otherwise provided herein, the right of the Lenders to enforce the provisions of this Agreement shall not at any time be prejudiced or

impaired: (i) by any act or failure to act on the part of the parties including without limitation any forbearance, waiver, consent, compromise, amendment, extension or renewal with respect to Borrower's obligations to a Lender or any taking or release of or failure to protect or preserve any property of the Borrower or (ii) by non-compliance by the Borrower with the terms of this Agreement. By the execution or performance hereof, no relationship of partnership, joint venture, participation or other joint enterprise shall be deemed to be now or hereafter created as between the Lenders or any of them. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

EXECUTED as a sealed instrument under Massachusetts law as of the date first above written.

COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE CORPORATION

By: _____
Name:
Title:
Hereunto Duly authorized

CITY OF NEWTON

By: _____
Name: Michael Kruse
Title: Director of Planning
and Development

By: _____
Name: David B. Cohen
Title: Mayor
Hereunto Duly Authorized

Approved as to legal form:

Assistant City Solicitor

THE COMMONWEALTH OF MASSACHUSETTS acting by and through the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT under the AFFORDABLE HOUSING TRUST FUND STATUTE, M.G.L. c. 121D

By: MASSACHUSETTS HOUSING FINANCE AGENCY, as Administrator

By: _____
Name: Laurie R. Wallach
Title: General Counsel
Hereunto Duly Authorized

Acknowledged by:

NONANTUM VILLAGE PLACE, INC.

By: _____
Name:
Title:
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____, Michael Kruse, Director of Department of Planning and Development, acting for the City of Newton, proved to me through satisfactory evidence of identification, which was/were [type of evidence:]

_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Notary Public
Name (Print):
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____, David B. Cohen, Mayor, acting for the City of Newton, proved to me through satisfactory evidence of identification, which was/were [type of evidence:]

_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Notary Public
Name (Print):
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared Laurie R. Wallach, General Counsel of Massachusetts Housing Finance Agency, as the duly-authorized signatory for the Massachusetts Housing Finance Agency, as Administrator for the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, proved to me through satisfactory evidence of identification, which was/were [type of evidence:]

_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Notary Public
Name (Print):
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

f _____, 2004, before me, the undersigned notary public, personally appeared _____, the _____ of Community Economic Development Assistance Corporation, proved to me through satisfactory evidence of identification, which was/were [type of evidence:]

_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Notary Public
Name (Print):
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

f _____, 2004, before me, the undersigned notary public, personally appeared _____, the _____ of Nonantum Village Place, Inc., proved to me through satisfactory evidence of identification, which was/were [type of evidence:]

_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Notary Public
Name (Print):
My commission expires:

EXHIBIT A
(Property Description)

1931\0010\136690.2

Document comparison done by DeltaView on Thursday, February 26, 2004 11:38:41

Input:	
Document 1	iManageDeskSite://kbsqlnt/IMAN/136690/1
Document 2	iManageDeskSite://kbsqlnt/IMAN/136690/2
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	10
Deletions	2
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	12

Mar '09

MORTGAGE

MORTGAGOR: Nonantum Village Place, Inc. ("Owner")

MORTGAGEE: City of Newton ("City")

THE OBLIGATIONS: (1) To maintain a minimum of 34 units of affordable rental housing for qualified elderly households, at least one member of which is 62 years of age or older and which have annual household incomes at or below 50% of area median income at the Property; (2) to continue to own and operate the Property, or if the Property is to be transferred, to obtain the City's written approval of such transferee prior to the transfer of the Property; and (3) to satisfy all the obligations set forth in the Funding Agreement and Note, both of even date.

THE MORTGAGED PREMISES: (also, the "Property") 241 Watertown Street, Newton, more specifically described as follows:

Parcel B shown on a Subdivision Plan prepared by Design Consultants, Inc., dated October 17, 2001 and entitled "Plan of Land 243 Watertown Street, Newton, Massachusetts prepared for CASCAP, Inc." recorded with the Middlesex South Registry of Deeds ("Registry") at Book ___, Page ___ and described as follows:

Beginning at a point on the east line of land of the city of Newton, said point bearing N02°-00'-50"E and 260.71 feet from the north line of Watertown Street;

Thence, running N02°-00'-50"E along the City of Newton 168.13 feet to a point;

Thence, running S66°-55'-20"E along the city of Newton 48.72 feet to a point at the Southwest corner of KF II Nominee Trust;

Thence, running S86°-00'-36"E 36.15 feet to a point;

Thence, running N70°-32'-27"E 106.18 feet to a point, the last two (2) courses being along said KF II Nominee Trust;

Thence, running S01°-47'-45"W along Newton Community Development Authority 202.99 feet to a point at the Northeast corner of Parcel A as shown on the aforesaid plan;

Thence, running N87°-59'-10"W 81.65 feet to a point;

Thence, running N02°-00'-50"E 16.55 feet to a point;

Thence, running N87°-59'-10"W 64.84 feet to a point;

Thence, running S02°-00'-50"W 1.80 feet to a point;

Thence, running N87°-59'-10"W 34.69 feet to the point of beginning, the last five (5) courses being along said Parcel A.

Parcel B contains 30,500 square feet, more or less, and is conveyed with the benefit of and is subject to certain access, utility and drain easements, all as recited in an easement agreement entitled "Mutual Easements for 237-253 Watertown Street, Newton, Massachusetts" recorded with the Registry at Book ___, Page ___, which easements are

more particularly described and portrayed on the foregoing plan recorded with the Registry at Book ____, Page ____.

In consideration of the monies advanced by the City to Owner as evidenced by the Note, for benefits to the Owner under the Funding Agreement, and for other valuable consideration paid, the receipt and sufficiency of which is acknowledged, the Owner hereby grants the Mortgaged Premises to the Mortgagee WITH MORTGAGE COVENANTS to secure the Obligations herein, subject to the terms of the Rider to City of Newton Community Preservation Act Loan Documents attached hereto and made a part hereof.

The Owner hereby covenants and agrees that the CONDITION of this Mortgage is that the Owner, and Owner's successors and assigns now or hereafter owning all or any part of the Mortgaged Premises faithfully perform and observe the Obligations.

For any breach of such CONDITION, the City shall have the STATUTORY POWER OF SALE.

EXECUTED as a sealed instrument under Massachusetts law this _____ day of _____ 2004.

Nonantum Village Place, Inc.

By:
Its:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____, _____, acting for Nonantum Village Place, Inc., proved to me through satisfactory evidence of identification, which was/were [type of evidence:]

, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Notary Public

Name (Print):
My commission expires:

Date: March __, 2004
Place: Newton, Massachusetts
Term: Eighty (80) Years

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (called the "Borrower"), promises to pay to the order of the City of Newton (called the "City"), the sum of eight hundred fifty thousand dollars (\$850,000.00) and to pay simple interest on the unpaid principal amount of this Note (as hereinafter defined) at the rate of zero (0%) percent per annum until paid in full.

Deferral and Cancellation

Subject to the Rider to City of Newton Community Preservation Act Loan Documents attached hereto and made a part hereof, Borrower shall have no obligation to pay the principal, interest, or any other outstanding charges due hereunder for the longer of (1) the term of this Note; or (2) the outstanding term of Borrower's indebtedness to the United States Department of Housing and Urban Development ("HUD"); provided that:

- (1) Borrower maintains 34 units of the 35-unit property at 241 Watertown Street ("Property") as low-income elderly housing for qualifying elderly households, at least one member of which is 62 years of age and over, with incomes at or below 50% of area median income; and
- (2) Borrower gives the Authority a written notice of the continued use of the Property for such low-income elderly housing on or before July 1 of each year.

So long as the Borrower has satisfied the terms of this Note, this Note shall be forgiven and this instrument cancelled at the expiration of the Term.

City's Right to Purchase

Notwithstanding the foregoing, if, however, the Property ceases to be used as low-income elderly housing as specified above at any time during the term of this Note, then the City shall have the right, but not the obligation, to purchase the Property for one (\$1.00) dollar in consideration of the cancellation of the entire unpaid balance of this Note. Borrower agrees to deliver to the City a good and sufficient quitclaim deed for the Property within thirty (30) days of receipt of written notice of the City's intention to exercise this right of purchase. If the City does not exercise its right to purchase, then the entire unpaid balance of this Note hereon shall become due and payable, in lawful money of the United States, at the office of the Director of Planning and Development, 1000 Commonwealth Avenue, Newton, Massachusetts or at such other place as shall be designated by the City.

The City may only exercise such right if, at the time of the conveyance, (i) the City agrees in writing to be bound by and perform all of the terms and conditions of all loan documents with respect to the Property, including without limitation the Affordable Housing Restriction by and among the Borrower, the Community Economic Development Assistance Corporation, and the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, dated on or about the date hereof and (ii) there shall be no default by the Borrower or event or condition which with the giving of notice or passage of time or both would constitute a default under any loan documents with respect to the Property, unless the City so

outstanding with respect to the Property at least fifteen (15) days prior written notice of such proposed transfer.

Security

This Promissory Note is secured by a Mortgage on real property located at 241 Watertown Street, Newton which Mortgage shall be recorded at the Middlesex South Registry of Deeds.

Events of Acceleration

In addition to a change in use, the City's right to purchase the Property as set forth above and/or acceleration of this Note shall be triggered if any of the following events occur:

1. A transfer or change in ownership of the Property, without the City's prior written approval; or
2. Failure of Borrower to pay any tax or assessment when due or failure to comply with the requirement of every applicable statute, law, ordinance, regulation or order whether in effect on the date of this Note or hereafter enacted or made by any Federal, State, municipal, or other public body affecting the use or occupation of the Property.
3. Failure of Borrower to make payment on any loan or comply with any provision of a senior loan which is secured by the Property.

Attorney's Fees/Costs

If suit is instituted by the City to recover on this Note, the Borrower agrees to pay all costs of such collection, including reasonable attorneys' fee and court costs.

Notices

Borrower shall promptly notify City of the occurrence of any of the following: a fire or other casualty damage to the Property; receipt of notice of violation from any governmental authority relating to the use, structure or occupancy of the Property; receipt of notice of eminent domain proceedings or condemnation of the Property; any change in the use of the Property; commencement of any litigation affecting the Property, except for termination of tenancies and other litigation where amounts in dispute do not exceed \$25,000; any proposed transfer or change in the ownership of the Property; or receipt of notice of default on any prior lien.

City shall provide written notice to Borrower of any default hereunder and thereafter the Borrower shall have 60 days in which to cure such alleged default before the City shall become entitled to pursue any remedies hereunder. Such 60 day period may be extended upon evidence of Borrower's good faith efforts to take steps to cure such alleged default during such 60 day period.

Waiver

Notice of presentment, demand for payment, protest and notice of demand for payment and protest are hereby waived.

IN WITNESS WHEREOF, this Promissory Note has been duly executed by the undersigned.

Nonantum Village Place, Inc.

By: _____

Witness _____

Date: March __, 2004
Place: Newton, Massachusetts
Term: Eighty (80) Years

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (called the "Borrower"), promises to pay to the order of the City of Newton (called the "City"), the sum of eight hundred fifty thousand dollars (\$850,000.00) and to pay simple interest on the unpaid principal amount of this Note (as hereinafter defined) at the rate of zero (0%) percent per annum until paid in full.

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- (1) Borrower maintains 34 units of the 35-unit property at 241 Watertown Street ("Property") as low-income elderly housing for qualifying elderly households, at least one member of which is 62 years of age and over, with incomes at or below 50% of area median income; and
- (2) Borrower gives the Authority a written notice of the continued use of the Property for such low-income elderly housing on or before July 1 of each year.

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The City may only exercise such right if, at the time of the conveyance, (i) the City agrees in writing to be bound by and perform all of the terms and conditions of all loan documents with respect to the Property, including without limitation the Affordable Housing Restriction by and among the Borrower, the Community Economic Development Assistance Corporation, and the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, dated on or about the date hereof and (ii) there shall be no default by the Borrower or event or condition which with the giving of notice or passage of time or both would constitute a default under any loan documents with respect to the Property, unless the City so

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2. Failure of Borrower to pay any tax or assessment when due or failure to comply with the requirement of every applicable statute, law, ordinance, regulation or order whether in effect on the date of this Note or hereafter enacted or made by any Federal, State, municipal, or other public body affecting the use or occupation of the Property.
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Waiver

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IN WITNESS WHEREOF, this Promissory Note has been duly executed by the undersigned.

Nonantum Village Place, Inc.

By: _____

Witness _____