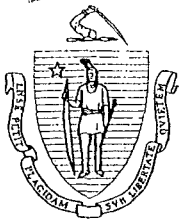


NOV 12 2004



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

March 4, 2004

Daniel J. Rogers, Housing Development Planner
City of Newton
Department of Planning and Development
Housing and Community Development Division
492 Waltham Street
West Newton, MA 02465

Re: Your request for G.L. c.184, §32 approval; Pelham House

Dear Mr. Rogers:

With regard to the above property, this agency has reviewed the following documents that you submitted to us:

1. "Declaration of Affordable Housing Covenants" made and declared by Gail Flackett, Eric Parker and Fredric Clanagan, Trustees of Pelham Realty Trust, recorded with the Middlesex South Registry of Deeds as Instrument No. 2074 of September 19, 2003.
2. Letter of Daniel J. Rogers, Housing Development Planner, dated 2/20/04.
3. "Proposed Plans, Pelham House Newton Cooperative Living," dated 7/16/03.
4. City of Newton "Consolidated Strategy and Plan – FY 2001-2005: Housing Strategies."

We have reviewed the above information under the standards contained in G.L. c.184, §32. Please be aware that we have not reviewed the documents to ascertain their legal effectiveness nor for any other purpose.

The affordable housing restriction contained in the above documents is hereby approved, and the Certificate of Approval required by G.L. c.184, §32, para.4 is enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Wallis Gumble".

Jane Wallis Gumble
Director

Certificate of Approval
Affordable Housing Restriction
G.L. c. 184, §32

The undersigned Director of the Massachusetts Department of Housing and Community Development hereby certifies that the Deed Rider made and declared by the Pelham Realty Trust, and recorded with the Middlesex South Registry of Deeds as Instrument No. 2078 of September 19, 2003 or filed with the _____ Registry District of the Land Court as Document No. _____, noted on Certificate of Title No. _____, with respect to land in the City / Town of Newton described in deed to Pelham Realty Trust recorded with the Middlesex South Registry of Deeds as Instrument No. 2074 of September 19, 2003, or Book _____, Page _____, or filed with the _____ Registry District of the Land Court as Document No. _____ noted on Certificate of Title No. _____, is hereby declared to be in the public interest and is approved pursuant to the provisions of Massachusetts General Laws chapter 184, section 32.

Date: March 5, 2004

COMMONWEALTH OF MASSACHUSETTS

By: _____

Director, Department of Housing
and Community Development

Commonwealth of Massachusetts

Suffolk, ss.

Date: March 5, 2004

Then personally appeared before me the above named Jane Wallis Gumble, Director of the Department of Housing and Community Development, and acknowledged the foregoing to be her free act and deed.

Notary Public

My commission expires:

REBECCA E. FRAWLEY
Notary Public
My Commission Expires
December 15, 2006

DECLARATION OF AFFORDABLE HOUSING COVENANTS

Gail Flackett, Eric Parker and Fredric Clanagan, Trustees of Pelham Realty Trust, a nominee realty trust established under Declaration of Trust dated as of September 15, 2003 and recorded with the Middlesex South Registry of Deeds immediately prior hereto, having an address of 1171 Washington Street, West Newton, Massachusetts 02465, and owner in fee simple of property known as 45 Pelham Street in Newton, Massachusetts, acting by and through its Trustees as aforesaid pursuant to a Trustees' Certificate recorded herewith (the "Owner") hereby covenants and agrees for itself, its successors, heirs and assigns, that the parcel described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property") shall be subject to the following restrictions for the benefit of the Newton Community Development Authority, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "NCDA"), its successors and permitted assigns.

The consideration for this Declaration of Affordable Housing Covenants (hereinafter "Covenant") is a loan to Community Living Network, Inc. ("CLN") in the amount of Five Hundred Thousand Fifty Dollars (\$550,000), from the Newton Community Development Authority, which is evidenced by a promissory note and secured by a mortgage of the Property dated September 19, 2003 recorded **herewith**. CLN is the sole beneficiary of the Owner.

The terms of this Covenant authorized by Massachusetts General Laws, Chapter 184, §§31-33 and otherwise by law, are as follows:

- Purpose.** The purpose of this Covenant is to ensure that the Property will be retained as affordable housing for occupancy by low and moderate-income households as defined by the U.S. Department of Housing & Urban Development's (HUD) Community Development Block Grant (CDBG) Program. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184.
- Covenants.** The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements, and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the NCDA, and its successors and assigns.
- Term.** For the maximum duration permitted by law with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and in the event such approval is not given, for a period of thirty (30) years from the date of this Covenant and for such further time thereafter (up to 99 years) as this Covenant may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30), the property shall be maintained as affordable housing as defined in paragraph 1 above.
- Completion Date.** The date on which all required Certificates of Occupancy for the rental units on the Property are issued and the Owner has provided written notification to the NCDA and the NCDA has verified that all units are fully occupied, as provided in the Loan Agreement of even date between the NCDA and the Owner. If the units receive Certificates of

Occupancy and/or are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit that is occupied last.

5. **Owner's Warranties and Representations.** During the term of this Covenant as defined in paragraph 3 beginning from the Completion Date as defined in paragraph 4 above. (hereinafter "affordability period") the Owner shall comply with the following requirements:

A. The Owner shall provide ten units of rental housing at the Property which shall be rented at affordable rents as defined by the Federal Department of Housing and Urban Development. The **CDBG-assisted** units will comply with the following income and affordable rent requirements:

- (i) Units must be occupied by households with incomes that do not exceed 80% of the area median income for the Boston Metropolitan Statistical Area, adjusted for family size. The actual income limits are determined by HUD and published annually in the Federal Register;
- (ii) Rents, including utilities, may not exceed 30% of the income of the renting household, except as may be permitted or required by a subsidy program with which the Owner or tenant participates, such as the Section 8 program.
- (iii) A tenant whose income met the income limits at the time of initial occupancy, but whose income eventually exceeds 80% of the area median income, may remain in the unit, provided that the rent is adjusted so that the "over-income" tenant is paying not less than 30% of their adjusted monthly gross income for rent and utilities. As soon as the "over-income" tenant vacates the Property, the Owner must re-rent the unit to an income-eligible household.

B. The Owner represents, warrants and covenants that the determination of whether a resident meets the income requirements set forth herein shall be made by Owner at the time of the leasing of the units and thereafter at least annually on the basis of the current income of such resident. The Owner shall maintain as part of its records, copies of all leases governing the rental of the units as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s) of the units. Within 60 days after the end of each calendar year of occupancy of the units, the Owner shall provide to the NCDA annual reports consisting of certifications regarding the annual and monthly gross and adjusted income of each resident occupying the units. With respect to a resident that moved to a unit in the prior year, the annual report shall also include certification regarding the annual and monthly gross and adjusted incomes of any such residents at the time of their initial occupancy of the unit. The annual reports shall be in a form approved by the NCDA and shall contain such supporting documentation as the NCDA shall reasonably require. For residents who have Section 8 certificates, the NCDA may rely on the housing assistance payment contract from the applicable housing authority in lieu of a certification by the Owner. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to NCDA such additional reports as

the NCDA may deem necessary to ensure compliance with the requirements of this Covenant and of the CDBG Program.

C. Prior to initial occupancy of the units and annually thereafter, the Owner shall submit to NCDA a proposed schedule of monthly rent and monthly allowances for utilities and services for the units. Such schedule shall be subject to the approval of NCDA for compliance with the requirements of applicable HUD regulations. After approval of a schedule of rent and allowances by NCDA, rents shall not be increased without either (a) a specific request by Owner for a rent increase or (b) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days prior written notice by Owner to the affected tenant(s).

D. The Owner shall not demolish any part of the Property or substantially subtract from any real or personal property of the Property except in conjunction with renovation or rehabilitation of the Property or construction of a new project on the Property, in either case subject to the prior written consent of the NCDA, which consent shall not be unreasonably withheld. The Owner shall not permit the use of any residential unit for any purpose other than housing.

E. The Owner represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Owner (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and the Owner represents, warrants and agrees that the Property shall thereafter continue to operate in accordance with the terms of this Covenant.

F. Any use of the Property or activity thereon which is inconsistent with the purpose of this Covenant is expressly prohibited. The Owner shall carry out each activity provided for in this Covenant in compliance with all applicable federal laws and regulations described in 24 CFR 570, Community Development Block Grant Program, as amended.

6. **Condition of Property.** By its acceptance of this Covenant, NCDA does not undertake any liability or obligation relating to the condition of the Property.

7. **Instruments to Enforce Covenant.** The NCDA is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant; and the Owner on behalf of itself and its successors and assigns appoints the NCDA its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the NCDA intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

8. **Covenants to be Referenced in Deed.** These restrictive covenants shall be contained or referenced in any deed of conveyance of the subject Property or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

9. **Foreclosure.** At least 60 days prior to the foreclosure auction sale by a lender or other transfer in lieu of foreclosure, the lender shall notify the NCDA of its intent to so foreclose and shall allow the NCDA the option/opportunity to assume the mortgage. In the event of such assumption of the mortgage, the Owner shall not further pledge or hypothecate said Property and the Owner's recapture of any equity it may have shall be deferred until such time as the Property is sold. If the option is exercised, the NCDA may direct the sale of the Property at any time during the period of affordability and shall undertake to sell the property within a reasonable period of time after the expiration of the affordability period. In the event of such a sale, the monies received shall be applied first to any and all encumbrances outstanding with respect to the property in order of priority, next to the costs of sale, then to repay the NCDA and/or the City of Newton for any amounts expended on the assumption of the mortgage. Any sums remaining after the above payments shall then be paid to the person or entity which was Owner of record prior to assumption of the mortgage, in full satisfaction of its equity interest in the Property.

In the event the NCDA chooses not to exercise its option to assume the mortgage referenced above, then the affordability restriction created hereunder shall terminate upon foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives the NCDA not less than 60 days prior written notice of the mortgagee's intention to foreclose upon the Property or to accept an instrument in lieu of foreclosure. Thereafter, if at any time following foreclosure or other transfer in lieu of foreclosure but still during the term of affordability, as defined in paragraph 5, the Owner of Record prior to foreclosure, any subsidiary thereof, or any newly formed entity that includes the former Owner or those with whom s/he or it has had family or business ties obtains ownership interest in the Property, the affordability period shall be revived in accordance with its original term.

10. **Notices.** All notices required under this Covenant shall be deemed to have been received if mailed, postage prepaid to the following:

For the NCDA:

Sole Member
Newton Community Development Authority
City Hall, 1000 Commonwealth Avenue
Newton, MA 02459

With a copy to:

City Solicitor
City of Newton Law Department
City Hall, 1000 Commonwealth Avenue
Newton, MA 02459

For Owner:

Pelham Realty Trust
C/o Marcie Laden, Executive Director
CLN, Inc.

11. **Enforcement.**

A. The rights hereby granted shall include the right of NCDA to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the NCDA will have no adequate remedy at law), and such restoration shall be in addition to, and not in limitation of, any other rights and remedies available to the NCDA. The Owner covenants and agrees to reimburse NCDA all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.

B. Without limitation on any other rights or remedies of the NCDA, its successors and assigns, the NCDA shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Covenant, which shall be the preferred remedy;
- (ii) voiding of any rental arrangement that violates this Covenant;
- (iii) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant;
- (iv) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.
- (v) The Owner hereby grants to the NCDA and its duly authorized representatives the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant and to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Covenant. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Property.

12. **Certificate.** Any party may rely on a certificate signed by the Owner and the NCDA as to any facts relative to this Covenant.

13. **Governing Law.** This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

IN WITNESS WHEREOF the said **Trustees of Pelham Realty Trust** have signed, acknowledged and delivered this instrument to be signed as a sealed instrument this 19th day of September, 2003.

Pelham Realty Trust

By: *Eric Packer*
Eric Packer, Trustee as aforesaid and not individually

By: *Fredric Clanagan*
Fredric Clanagan, Trustee as aforesaid and not individually
X X

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

September 19, 2003

Then personally appeared the above named Eric Packer and Fredric Clanagan, Trustees as aforesaid of Pelham Realty Trust and acknowledged the foregoing instrument to be their free act and deed before me.

Catherine A. Lester Salchert My Commission Expires: _____

Notary Public

Catherine A. Lester Salchert

June 6, 2006

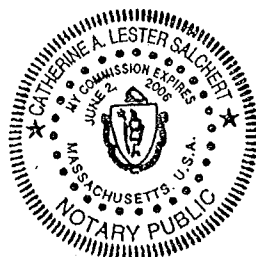


EXHIBIT A
PROPERTY DESCRIPTION

that certain parcel of land and the buildings thereon now known and numbered as 45 Pelham Street, Newton, Middlesex County, Massachusetts, (the "Property") together with all right, title and interest, if any, of the Mortgagor of, in and to any streets and roads abutting the above-described premises to the center lines thereof described as:

The land in Newton with the building thereon in that part thereof called Newton Centre, bounded and described as follows:

Commencing at the

- NORTHEASTERLY: corner of the granted premises by land now or formerly of Alpheus Trowbridge and running
- WESTERLY: on the southerly line of Pleasant Street, eighty-two and 1/4 (82 1/4) feet; thence
- SOUTHERLY: 6-1/2° West by land now or formerly of D.N. Ware, one hundred sixty-four (164) feet to the northerly line of Pelham Street; thence running
- EASTERLY: on Pelham Street, eighty and 1/2 (80 1/2) feet to land now or formerly of Alpheus Trowbridge; thence running
- NORTHERLY: 7° East by said land now or formerly of Alpheus Trowbridge, one hundred sixty-eight (168) feet to the point of beginning.

Containing 13,508 square feet of land, more or less.