

COMMUNITY PRESERVATION FUNDING AGREEMENT  
BETWEEN COMMUNITY LIVING NETWORK, INC. and THE CITY OF NEWTON  
TO SUPPORT AFFORDABLE HOUSING AT PELHAM HOUSE

This AGREEMENT made as of *March 5*, 2004 by and between Community Living Network, Incorporated (formerly know as Cooperative Living of Newton, Inc.), a not-for-profit corporation having a usual place of business located at 1171 Washington Street, Newton, MA 02465 (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 in the name of Gail Flackett, Eric Parker and Fredric Clanagan, Trustees of Pelham Realty Trust, purchased the property at 45 Pelham Street, Newton (hereinafter "the Property"), on which the building will be renovated for affordable rental housing units for elderly persons who are 55 years of age or older and whose annual household income is at or below 50% of area median income, to be called Pelham House;

WHEREAS, the Grantee has applied for and received approval from the Community Preservation Committee and Board of Alderman for a deferred forgivable loan amount of \$211,936.00 for the creation and support of the affordable housing units at Pelham House;

WHEREAS, the Grantee has received loans from Auburndale Cooperative Bank and the Newton Community Development Authority;

WHEREAS, the Grantee has executed 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 will which will permanently require that the Property be used as affordable housing for occupancy by elders who are 55 years of age or older and whose annual household income is at or less than 80% of area median income; and

WHEREAS, the Grantee will also execute a Note and a Mortgage securing the Community Preservation loan;

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 two hundred eleven thousand nine hundred and thirty six dollars (\$211,936.00). The Grantee agrees to use such funding for construction costs for renovation of Pelham House.
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 elders who are 55 years of age or older and whose annual household income is at or below 80% 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. **Release of Grant Funds for Construction.**

(a) **Request for Payment.** Following completion of any portion of the work the Grantee shall prepare and submit requests for payment to the City. The Grantee understands and agrees that it may not request payment from the City for any costs covered by or charged to any other funding source. The City will not advance funds to the Grantee under any circumstances.

The request for payment should be addressed to:

Stephen D. Gartrell  
Department of Planning and Development  
City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

(b) **Payments.** After inspection of the work and approval of a request for payment by the City, a periodic progress payment will be made in an amount equal to eighty percent of that portion of the compensation amount attributable to the portion completed. In any event, upon satisfactory completion of the entire work, payment in full shall be made within thirty (30) days of completion, subject to final inspection and approval of the work by the City. In the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

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 to purchase the Property from Grantee for one (\$1.00) dollar, in full satisfaction of Grantee's repayment obligations hereunder.

7. **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.

8. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, 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.

9. **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.
10. **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.
11. **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.
12. **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.
13. **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 Schedule C attached hereto.
14. **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.
15. **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 Grantcc: Executive Director  
Community Living Network, Incorporated  
1171 Washington Street  
Newton, MA 02465

\*\*\*\* 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: Community Living Network, Incorporated

By: *Paige Flackett*  
Its: President

CITY OF NEWTON  
By: *[Signature]*  
Director of Planning & Development

I certify funds are available within Acct. 21C114D-5797 in the amount of \$211,936.00 for this Agreement.

By: *[Signature]*  
Comptroller of Accounts

Approved as to legal form and character

By: *Colleen L. Farrell*  
Assistant City Solicitor

CONTRACT APPROVED

By: *[Signature]*  
Mayor

3/18/04  
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:

Community Living Network, Inc; and that  
*(Print name of corporation)*

2. Gail Hackett is the duly elected  
*(Print name of officer who signs the contract)*

President of said corporation; and that  
*(Print title of officer who signs the contract)*

3. on March 2, 2004 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

Gail Hackett, President 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: Fredric Clanagan  
*(signature of Clerk/Secretary)*

NAME: Fredric Clanagan  
*(printed or typed name of Clerk/Secretary)*

DATE: March 10, 2004  
*(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

Name	Titles
Gail Flackett	President
Eric Packer	Treasurer
Fredric Clanagan	Clerk

List of Board of Directors/Trustees

Names	Names
Kevin Dutt	
Greg Frazier	
Deb Gowins	
Harriet Mermes	
Adele Hoffman	
Philip Michaelson	
Virginia Robinson	
June Shoemaker	
Emily Shumsky	
Alice Stevens	
Courtney Smyton	

ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.\*

Marcie Sadem Exec. Director

\*\*Signature of Individual  
or Corporate Contractor (Mandatory)

\*\*\* Contractor's Social Security Number  
(Voluntary) or Federal Identification Number

By: Frederic Flanagan E  
Corporate Officer  
(Mandatory, if applicable)

Date: 3/2/04

\* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

\*\* Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

\*\*\* Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.

9/15/93

**ACORD. INSURANCE BINDER**

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER

Professional Risk Management  
1171 Washington St  
West Newton, MA 02165  
(617) 464-4679

COMPANY

Seneca Ins Co

BINDER NO.

000146

DATE

09/19/03

EXPIRES

TIME

12:01

AM

PM

DATE EXPIRATION

09/19/04

TIME

X 12:01 AM

NOON

CODE

010-0000

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY NO:

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (including location)

INSURED

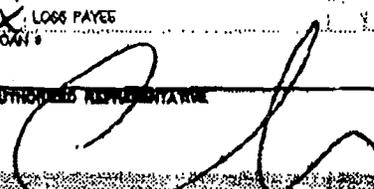
Felham Realty Trust  
Community Living Network, Inc  
1171 Washington Street  
West Newton, MA 02465

Property Located at: 45 Pelham St Newton, MA

TYPE OF INSURANCE	COVERAGE FORM	AMOUNT	DEDUCTIBLE	CONCUR.
PROPERTY CAUSES OF LOSS BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPEC. <input type="checkbox"/>	Building (RCV)	950,000	2,500	100
GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROT. <input type="checkbox"/>				
	RETRO DATE FOR CLAIMS MADE:			
GENERAL AGGREGATE		\$	2,000,000	
PRODUCTS - COMP/OP AGG.		\$		
PERSONAL & ADV. INJURY		\$		
EACH OCCURRENCE		\$	1,000,000	
FIRE DAMAGE (Any one fire)		\$		
MED. EXPENSE (Any one person)		\$		
COMBINED SINGLE LIMIT		\$		
BODILY INJURY (Per person)		\$		
BODILY INJURY (Per accident)		\$		
PROPERTY DAMAGE		\$		
MEDICAL PAYMENTS		\$		
PERSONAL INJURY PROT.		\$		
UNINSURED MOTORIST		\$		
AUTO PHYSICAL DAMAGE DEDUCTIBLE	ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES <input type="checkbox"/>			
COLLISION:		ACTUAL CASH VALUE		
OTHER THAN COL.		STATED AMOUNT	\$	
OTHER		OTHER	\$	
EXCESS LIABILITY		EACH OCCURRENCE	\$	
UMBRELLA FORM		AGGREGATE	\$	
OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	SELF-INSURED RETENTION	\$	
WORKERS COMPENSATION AND EMPLOYERS LIABILITY		STATUTORY LIMITS		
		EACH ACCIDENT	\$	
		DISEASE-POLICY LIMIT	\$	
		DISEASE-EACH EMPLOYEE	\$	

SPECIAL CONDITIONS/OTHER COVERAGE  
Full Replacement Value; 2nd Mortgagee;  
Annual Premium of \$10,755 paid in full

Newton Community Development Author  
ity ISAOA-ATIMA; Newton City Hall  
1000 Commonwealth Ave  
Newton MA

MORTGAGEE  
 LOSS PAYEE  
LOAN #  
 ADDITIONAL INSURED  
AUTHORIZED REPRESENTATIVE  


Date: March 5, 2004  
Place: **Newton, Massachusetts**

## 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 two hundred and eleven thousand nine hundred and thirty six dollars (\$211,936.00) 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

Borrower shall have no obligation to pay the principal, interest, or any other outstanding charges due hereunder for the term of this Note; provided that:

- (1) Borrower maintains 10 units of the property at 45 Pelham Street ("Property") as low-income elderly housing for elders 55 years of age and over with incomes at or below 80% of area median income;
- (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;
- (3) Borrower complies with the terms of the Funding Agreement between Borrower and the Authority, of even date; and
- (4) Borrower complies with the terms of the Declaration of Affordable Housing Covenants, dated September 19, 2003, and recorded with Middlesex South District Registry of Deeds in Book 40950, Page 471.

### 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.

### Security

This Promissory Note is secured by a Mortgage on real property located at 45 Peham Street, Newton which Mortgage shall be recorded at the Middlesex South District 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

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.

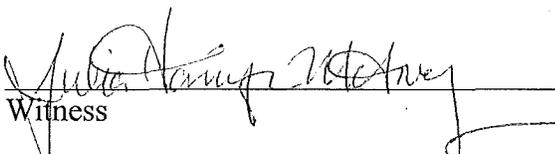
Waiver

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.

Community Living Network, Incorporated

  
\_\_\_\_\_  
By: Gail Flackett  
Its: President

  
\_\_\_\_\_  
Witness