

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

This AGREEMENT made as of February 10, 2005, 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 and Gail Flackett, Eric Packer and Frederic Clanagan, Trustees of Pelham Realty Trust, a nominee trust established under Declaration of Trust dated September 15, 2003 and recorded with Middlesex South Registry of Deeds, Book 40950, Page 439 (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 Frederic Clanagan, Trustees of Pelham Realty Trust, purchased the property at 45 Pelham Street, Newton (hereinafter "the Property" or "Pelham House"), on which the building will be renovated for affordable rental housing units for a maximum occupancy of 12 individuals who are 55 years of age or older, with 10 units limited to individuals who have annual household incomes at or below 50% of area median income and 2 units limited to individuals who have annual household incomes at or below 60% of area median income;

WHEREAS, the Grantee in the name of Community Living Network, Incorporated has applied for and received approval from the Community Preservation Committee and Board of Alderman for a deferred forgivable loan amount of \$100,000.00 for the creation and support of the affordable housing units at Pelham House;

WHEREAS, Community Living Network, Incorporated, which entity has applied for the loan, is the sole beneficiary of Pelham Realty Trust, which entity is the owner of the property, hence, both entities are entering into this Agreement, and referred to as the Grantee;

WHEREAS, the Grantee is receiving additional funding from Citizens Bank of Massachusetts, and the Commonwealth of Massachusetts, and has received funding from Village Bank and Newton Community Development Authority;

WHEREAS, the Grantee in the name of Pelham Realty Trust has executed an affordable housing restriction (hereinafter the "Covenant") which meets the requirements of G.L. c. 184, §§ 32, has been approved by the Department of Housing and Community Development ("DHCD") and recorded with the Middlesex South District Registry of Deeds, Book 40950, Page 471 and which permanently requires 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 50% 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 one hundred thousand dollars (\$100,000.00). 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 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
Planning and Development Department
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 January 1, April 1, July 1 and October 1 of every year, Grantee shall submit a quarterly status 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.

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 Grantee: 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: Gail Flackett
Its: president

Pelham Realty Trust

By: Gail Flackett
Gail Flackett, Trustee as aforesaid and not individually

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

By: Frederic Clanagan
Frederic Clanagan, Trustee as aforesaid and not individually

CITY OF NEWTON



By: _____
Director of Planning & Development

I certify funds are available within Acct. 21011415997 in the amount of \$100,000.00 for this Agreement.

By: _____
Comptroller of Accounts

Approved as to legal form and character

By: Catherine L. Funes
Assistant City Solicitor

CONTRACT APPROVED

By: _____
Mayor

2/9/05
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, Incorporated; and that
(Print name of corporation)

2. Gail Flackett 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 February 1, 2005 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 Flackett 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: Frederic Clanagan
(signature of Clerk/Secretary)

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

DATE: February 10, 2005
*(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

List of Board of Directors/Trustees

Names

Names

**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. *

Gail Florett, President CLN
Signature

Name of Contractor (Agency)

Federal Identification Number
or Social Security Number

2/10/05
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.



MORTGAGE

MORTGAGOR: Gail Flackett, Eric Packer and Frederic 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 District Registry of Deeds in Book 40950, Page 439("Owner")

MORTGAGEE: City of Newton ("City")

THE OBLIGATIONS: (1) To maintain affordable rental housing units for a maximum occupancy of 12 individuals who are 55 years of age or older, with 10 units limited to individuals who have annual household incomes at or below 50% of area median income and 2 units limited to individuals who have annual household incomes at or below 60% of area median income; (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; (3) to satisfy all the obligations set forth in the Funding Agreement and Note, both of even date, also signed by Community Living Network, Incorporated, the sole beneficiary of the Owner; and (4) to satisfy all the obligations of the Declaration of Affordable Housing Covenants, dated September 19, 2003 and recorded with said Deeds in Book 40950, Page 471.

THE MORTGAGED PREMISES: (also, the "Property") 45 Pelham Street, Newton, more specifically described as follows:

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.

RETURN TO:
ROBINSON & COLE LLP
ONE BOSTON PLACE
BOSTON, MA 02108

13244.1999/ECK

45 Pelham St, Newton

3/0

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Being the same premises conveyed to Owner by deed of Central Directory for Nurses, Inc., dated September 19, 2003, and recorded with Middlesex South District Registry of Deeds in Book 40950, Page 447.

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.

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 10th day of February, 2005.

Gail Flackett, Eric Packer and Frederic Clanagan, Trustees of Pelham Realty Trust

By: Gail Flackett
Gail Flackett, Trustee as aforesaid and not individually

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

By: Frederic Clanagan
Frederic Clanagan, Trustee as aforesaid and not individually

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

February 10, 2005

On this 10th day of February, 2005 before me, the undersigned notary, personally appeared the above-named Gail Flackett, proved to me through satisfactory evidence of identification, which were Mass Driver License #, to be the person whose name is signed on the proceeding document, and acknowledged to me that she signed it voluntarily for its stated purpose.

(as Trustee of Pelham Realty Trust)

Catherine L. Farrell
Notary Public
My Commission expires



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

February 10, 2005

On this 10th day of February 2005 before me, the undersigned notary, personally appeared the above-named Eric Packer, proved to me through satisfactory evidence of identification, which were Mass Drivers License #, to be the person whose name is signed on the proceeding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

(as Trustee of Pelham Realty Trust)

Catherine L. Farrell

Notary Public
My Commission expires:



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

February 10, 2005

On this 10 day of February 2005 before me, the undersigned notary, personally appeared the above-named Frederic Clanagan, proved to me through satisfactory evidence of identification, which were Mass Drivers License, to be the person whose name is signed on the proceeding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

(as Trustee of Pelham Realty Trust)

Catherine L. Farrell

Notary Public
My Commission expires:



CALS/03-661/CPAmortgage100k.doc

John C. Brewer
Not. Middlesex S. Register

COPY

Date: February 10, 2005
Place: Newton, Massachusetts

PROMISSORY NOTE

FOR VALUE RECEIVED, Community Living Network, Incorporated and Gail Flackett, Eric Packer and Frederic Clanagan, Trustees of the Pelham Realty Trust under a declaration of trust dated as of September 15, 2003, and recorded with Middlesex South District Registry of Deeds, Book 4090, Page 439 (called the "Borrower"), promises to pay to the order of the City of Newton (called the "City"), the sum of one hundred thousand dollars (\$100,000.00) 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

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 affordable rental housing units for the property at 45 Pelham Street ("Property") for a maximum occupancy of 12 individuals who are 55 years of age or older, with 10 units limited to individuals who have annual household incomes at or below 50% of area median income and 2 units limited to individuals who have annual household incomes at or below 60% 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;
- (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 Pelham Street, Newton which Mortgage shall be recorded at the Middlesex South District Registry of Deeds. Said property is owned by Pelham Realty Trust. Community Living Network, Incorporated is the sole beneficiary of Pelham Realty Trust.

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.

Community Living Network, Incorporated

By: Paul Fleckitt
Its: president

Clay C. P. P. P.
Witness

Pelham Realty Trust

By: *Gail Flackett*
Gail Flackett, Trustee as aforesaid and not individually

Oleg C. Pchel
Witness

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

Oleg C. Pchel
Witness

By: *Frederic Clanagan*
Frederic Clanagan, Trustee as aforesaid and not individually

Oleg C. Pchel
Witness