



2012 00038659

Bk: 58559 Pg: 272 Doc: AMEND  
Page: 1 of 6 02/27/2012 12:06 PM

## AMENDMENT TO RESTRICTIVE COVENANTS

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of **February 1, 2012**, by **THE PELHAM II CORPORATION**, a **Massachusetts nonprofit corporation** ("Borrower") and **FRAMINGHAM HOUSING AUTHORITY** ("Agency").

WHEREAS, Borrower has obtained financing from **RED MORTGAGE CAPITAL, LLC** (the "Lender") for the benefit of the project known as **Beaver Terrace Apartments** (the "Project"), which loan is secured by a Mortgage ("Security Instrument") dated as of **February 1, 2012**, recorded herewith in the **Middlesex South County Registry of Deeds, Massachusetts** (the "Records") and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, the project is situated on certain real property located in **Framingham, County of Middlesex, Massachusetts** more particularly described in Exhibit A attached hereto; and

WHEREAS, the project was financed with the proceeds of the Agency's **Mortgage Revenue Bonds, Series 1992 (GNMA Collateralized — Beaver Terrace Apartments Project)**, and in connection with the issuance thereof Agency required certain restrictions to be recorded against the Project; and

WHEREAS, Borrower and Agency entered into that certain **Regulatory and Land Use Restriction Agreement dated January 1, 1992 recorded in Book 21697 and Page 167 of the Records, and a First Amendment thereto dated December 1, 2000 recorded in Book 32155 and Page 258 of the Records** (collectively the "Restrictive Covenants") with respect to the Project; and

WHEREAS, HUD is requiring that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects.

(b) The following terms shall have the following definitions:

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means **Red Mortgage Capital, LLC**, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended "Program Obligations" has the meaning set forth in the Security Instrument.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), the provisions hereof are expressly subordinate to (i) the Security Instrument, (ii) the HUD Regulatory Agreement and (iii) Program Obligations. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the Security Instrument, HUD Regulatory Agreement, or Program Obligations, the provisions of the Mortgage Loan Documents and Program Obligations shall control and supersede the enforcement of the Restrictive Covenants.

(d) In the event of foreclosure, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, or as otherwise approved by HUD.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the terms of the Security Instrument, the HUD Regulatory Agreement, or any other document relating to the Mortgage Loan to Borrower for the Project, provided that, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants to the extent not in conflict with the Mortgage Loan Documents or Program Obligations.

(f) In enforcing the Restrictive Covenants the Agency will not file any claim against the Project or any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.
- iv. A HUD-approved collateral assignment of any HAP contract.

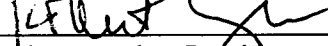
(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

[Signature Pages Follow]

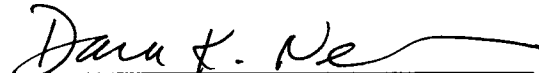
BORROWER:  
THE PELHAM II CORPORATION

By:   
Robert Engler, President

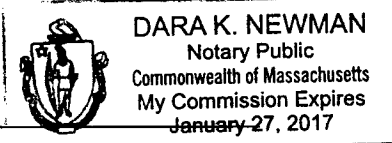
### ACKNOWLEDGMENTS

COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF SUFFOLK February, 2012)

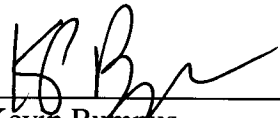
On this 24th day of ~~November, 2011~~, before me, the undersigned notary public personally appeared Robert Engler, President of THE PELHAM II CORPORATION, a Massachusetts nonprofit corporation, proved to me through satisfactory evidence of identification, which was a driver's license personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Public

My Commission Expires: \_\_\_\_\_

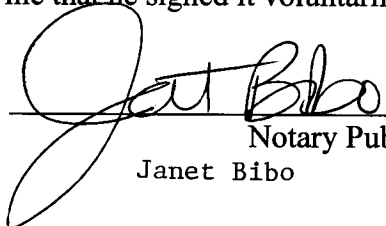


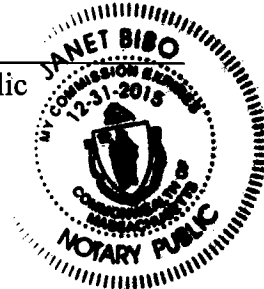
AGENCY:  
FRAMINGHAM HOUSING AUTHORITY

By:   
Kevin Bumpus  
Executive Director

COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF Middlesex

On this 22nd day of November, 2011, before me, the undersigned notary public personally appeared Kevin Bumpus, Executive Director of FRAMINGHAM HOUSING AUTHORITY, proved to me through satisfactory evidence of identification, which was a driver's license/personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Public  
Janet Bibo



My Commission Expires: 12/31/15

## SCHEDULE "A"

A certain parcel of land on the easterly side of Second Street in Framingham, Middlesex County, Massachusetts, shown on a plan recorded with Middlesex South District Registry of Deeds as Plan No. 794 of 1965, Book 10857, Page 397, entitled "Plan of Land in Framingham, Mass. owned by: Anne Snyder, Scale 1" = 40', April 28, 1965, survey by MacCarthy Engineering Service, Inc., Natick, Mass., Nashoba Survey Co., Inc., Marlborough, Mass.", and bounded and described, according to said plan, as follows:

Beginning at a point on the easterly side of Second Street at land of Lena Tiramani & Paul Belbusti and thence running by the last mentioned land.

South 26° 19' 00" East, 717.26 feet; thence running by land of the Framingham Housing Authority

South 18° 45' 39" West, 145.21 feet

South 29° 56' 13" West, 228.92 feet

South 08° 50' 00" West, 48.03 feet

South 16° 50' 20" West, 105.00 feet and

South 13° 09' 40" East, 95.00 feet; thence running by said last mentioned land and land of Mary A. Belbusti

South 67° 05' 20" West, 495.39 feet; thence running by said last mentioned land, land of Harold W. and Muriel A. Fearebay and land of Edward W. & Phyllis M. Emerson

North 19° 33' 46" West, 304.09 feet; thence running by said last mentioned land

South 66° 26' 48" West, 112.67 feet; thence running by land of Sierra Realty Trust  
North 30° 13' 30" East, 97.69 feet and

North 59° 46' 30" West, 140.00 feet to said easterly side of Second Street; and thence running by said Second Street

North 30° 13' 30" East, 417.17 feet and

North 30° 15' 42" East, 758.64 feet to the point and place of beginning.

Containing 665,325 square feet or 15.27± Acres of land, according to said plan.

For title, see Deed dated 1/21/92 and recorded with Middlesex South District Deeds in Book 21697, Page 120.