

Middlesex South Registry of Deeds

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Middlesex South Registry of Deeds
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Amendment to Restrictive Covenants

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of March 1, 2021, by The Pelham II Corporation ("Borrower") and the Framingham Housing Authority ("Agency").

WHEREAS, Borrower has obtained financing from ORIX Real Estate Capital, LLC ("Lender") for the benefit of the project known as Beaver Terrace Apartments ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of March 1, 2021, and recorded in the Middlesex County South District Registry of Deeds ("Records") together herewith, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower previously received tax-exempt bond financing from the Agency, which Agency required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Regulatory and Land Use Restriction Agreement dated January 1, 1992 and recorded with the Records on January 21, 1992 in Book 21697, Page 167, as amended by that certain First Amendment to Regulatory and Land Use Restriction Agreement dated December 1, 2000 and recorded with the Records on December 19, 2000 in Book 32155, Page 258, as further amended and subordinated by that certain Amendment to Restrictive Covenants dated February 1, 2012 and recorded with the Records on February 27, 2012 in Book 58559, Page 272, and as further amended by that certain Amendment to Restrictive Covenants dated May 1, 2018 and recorded with the Records on May 16, 2018 in Book 71013, Page 504 (as so amended and subordinated, the "Restrictive Covenants") with respect to the Project;

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, HUD requires as a condition of its insuring Lender's financing to the Project, 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 as set forth more fully herein.

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

"Code" means the Internal Revenue Code of 1986, as amended.

"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 ORIX Real Estate 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.

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

"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.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(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 HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, 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 of surplus cash 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. [or
- iv. A HUD-approved collateral assignment of any HAP contract.

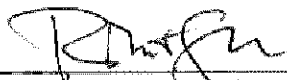
(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(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.

BORROWER:

THE PELHAM II CORPORATION,
a Massachusetts corporation


Robert Engler, President

AGENCY:

THE FRAMINGHAM HOUSING
AUTHORITY

Name and Title:

Jeanne Strickland, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex COUNTY, SS

On this 12th day of March, 2021, before me, the undersigned notary public, personally appeared **Robert Engler**, in his capacity as President of The Pelham II Corporation, proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of said corporation.



Notary Public

My commission expires:



CONCETTINA TALARICO

Notary Public

Commonwealth of Massachusetts

My Commission Expires

January 28, 2022

[Acknowledgments continue on following page.]

BORROWER:

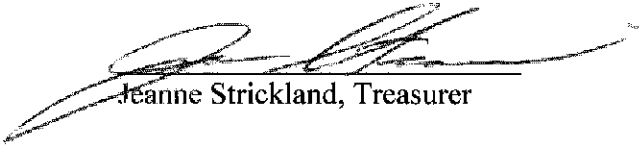
THE PELHAM II CORPORATION,
a Massachusetts corporation

AGENCY:

THE FRAMINGHAM HOUSING
AUTHORITY

Robert Engler, President

Name and Title:



Jeanne Strickland, Treasurer

COMMONWEALTH OF MASSACHUSETTS

COUNTY, SS

On this _____ day of March, 2021, before me, the undersigned notary public, personally appeared **Robert Engler**, in his capacity as President of The Pelham II Corporation, proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of said corporation.

Notary Public

My commission expires:

[Acknowledgments continue on following page.]

COMMONWEALTH OF MASSACHUSETTS

Middlesex COUNTY, SS

On this 11th day of March, 2021, before me, the undersigned notary public, personally appeared **Jeanne Strickland**, in her capacity as Treasurer of The Pelham II Corporation, proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of said corporation.


 Notary Public

My commission expires:

**CONCETTINA TALARICO**

Notary Public

Commonwealth of Massachusetts

My Commission Expires

January 28, 2022

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX COUNTY, SS

On this _____ day of March, 2021, before me, the undersigned notary public, personally appeared _____, in his/her capacity as _____ of the Framingham Housing Authority, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of said Framingham Housing Authority.

 Notary Public

My commission expires:

BORROWER:

THE PELHAM II CORPORATION,
a Massachusetts corporation

Robert Engler, President

AGENCY:

THE FRAMINGHAM HOUSING
AUTHORITY



Paul O. Landers, Executive Director

Jeanne Strickland, Treasurer

COMMONWEALTH OF MASSACHUSETTS

COUNTY, SS

On this _____ day of March, 2021, before me, the undersigned notary public, personally appeared **Robert Engler**, in his capacity as President of The Pelham II Corporation, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of said corporation.

Notary Public

My commission expires:

[Acknowledgments continue on following page.]

COMMONWEALTH OF MASSACHUSETTS

_____, COUNTY, SS

On this _____ day of March, 2021, before me, the undersigned notary public, personally appeared **Jeanne Strickland**, in her capacity as Treasurer of The Pelham II Corporation, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of said corporation.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX COUNTY, SS

On this 8th day of March, 2021, before me, the undersigned notary public, personally appeared Paul O. Landers, in his/her capacity as Executive Director of the Framingham Housing Authority, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness who is personally known to me and who has stated to me that he/she is unaffected by the document or transaction and that he/she knows the person whose name is signed on the preceding/attached document, ☒ personal knowledge of the undersigned, to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of said Framingham Housing Authority.

Notary Public: Janet Bibo

My commission expires: 12/16/2022

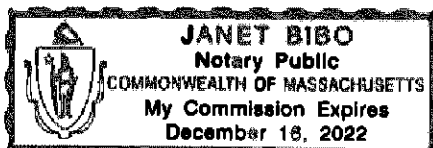


Exhibit ALegal Description

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.