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Deferred Flexible Subsidy Repayment USE AGREEMENT

FHA Project No.: 023-41003
Project Name: Beaver Terrace Apartments

THIS USE AGREEMENT (this "Agreement") is made, as of February 24, 2012 by and between THE PELHAM II CORPORATION, a Massachusetts non-profit corporation (the "Owner"), and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington, D.C. (the "Secretary" or "HUD").

RECITALS:

A. The Owner is the owner of all of that certain real property located in the Town of Framingham, in the County of Middlesex, in the Commonwealth of Massachusetts, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental apartment project known as Beaver Terrace Apartments, known as FHA Project No. 023-41003 (the "Project") and, together with the Real Property, (the "Property").

B. The Property is encumbered by that certain Flexible Subsidy Loan (the "Loan") made to the Owner, or a predecessor in interest, under 12 U.S.C. 1715z-1a, which Loan is evidenced by that certain Note dated January 21, 1992 and certain other instruments executed in connection with the Loan.

C. As part of a recapitalization of the project in order to ensure that the project is preserved as an affordable housing resource, the Owner has requested the Secretary to defer the repayment of the existing Flexible Subsidy Loan, as required by 24 C.F.R. §219.220(b), because there are not adequate resources in the transaction to pay the Flexible Subsidy Loan in full; and as a condition of the Secretary's approval of the deferment of repayment of the Flexible Subsidy Loan, the Owner has agreed that the Project shall be subject to certain rental restrictions and other requirements, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

2. Definitions.

a. "Area Median Income" shall mean the median gross income for a person or a family, as applicable, as from time to time calculated and released by the

Nixon Peabody LLP
100 Summer Street
Boston, MA 02110
Attn: Dara Newman

Second DT and Beaver Terrace Circle From

Secretary, based on the median income for the Boston-Cambridge-Quincy MA-NH HUD Metropolitan Fair Market Rent Area (hereinafter called the "Boston HMFA"). If the Area Median Income for the Boston HMFA is no longer released at least annually by the Secretary, then the median income calculation which most closely approximates the aforesaid calculation, based on available data, as if it had been recalculated annually, shall be substituted as the Area Median Income for all purposes under this Use Agreement, and in such event, the parties hereto shall acknowledge in writing the utilization of such substitute median income calculation.

b. "Current Tenants" shall mean those tenants who are lawfully in residence at the Project on the date of this Use Agreement. Current Tenants shall not include any persons defined below as "New Tenants."

c. "Initial Rent" shall mean the monthly rents noted in the Rent Schedule attached hereto as Exhibit B, and made a part hereof. These rents must not exceed 30% of 95% of Area Median Income for a person or a family, as applicable.

d. "New Tenants" shall mean those tenants who lawfully begin residence at the Project after the date of this Agreement. New Tenants never become Current Tenants.

e. "Lower Income Families" are persons or families whose annual incomes do not exceed 80% of Area Median Income.

f. "Very Low Income Families" are persons or families whose annual incomes do not exceed 50% of Area Median Income.

g. "BMIR Income Families" are persons or families whose annual incomes do not exceed 95% of Area Median Income.

3. Term. This Agreement shall remain in effect until February 1, 2044, such period being hereinafter referred to as the ("Term").

4. Use Restriction. Throughout the Term, the Project shall be used solely as rental housing for BMIR Income Families, with no reduction in the number of residential units and no Current Tenant shall be required to relocate on the basis of his or her income. The owner may rent to Lower Income and Very Low Income families.

a. The Owner shall not rent any unit to any New Tenant whose annual income exceeds ninety five percent (95%) of the Area Median Income. The Owner shall obtain from each prospective New Tenant, prior to admission to the Project, a certification of income signed by such New Tenant. The Owner will make a reasonable effort to certify the accuracy of the income certification made

by the New Tenant. The Owner shall maintain on file, for a period of not less than three (3) years, an executed original of each New Tenant's Income Certification. The Owner shall, following receipt of a written request, provide to the Secretary (or to such third party as the Secretary may, in his sole discretion, determine to give the monitoring function under this Use Agreement) copies of all New Tenant Income Certifications, and such other documents as may be reasonably required to evaluate the Owner's compliance with the terms of this Agreement. Any unit in the Project assisted by a project-based Housing Assistance Payments Contract under Section 8, 42 U.S.C. §1437f, shall be subject to the income eligibility criteria set out in 42 U.S.C. §1437n(c), (as amended).

b. For those units occupied by a Current Tenant, and the unit is not assisted by a project-based Section 8 Housing Assistance Payments Contract, the Owner shall not increase the Initial Rent for the unit without the prior approval by HUD pursuant to the "Procedures for Requesting Approval of an Increase in Maximum Permissible Rents" set out in 24 C.F.R. Part 245, Subpart D. For those units occupied by a Current Tenant, and the unit is assisted by a project-based Section 8 Housing Assistance Payments (HAP) Contract, rent increases shall be processed and determined in accordance with HAP Contract requirements.

c. For those units to be occupied by a New Tenant, the Owner may charge a rent for the unit type that does not exceed 30% of 95% of Area Median Income. Any rent increases resulting from such an increase in the Area Median Income are herein authorized and accepted, without necessity of any further approval or application, and may be implemented by the Owner at any time after such increase in the Area Median Income is released by HUD, subject to applicable requirements of any lease, and to any requirements of State or local law not superseded by Federal law.

5. Displacement Prohibition. No Current Tenant shall be displaced, except for good cause. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the holder of a Certificate or a Voucher under Section 8 of the United States Public Housing Act of 1937 (42 U.S.C. §1437f), or any successor legislation (hereinafter referred to as "Section 8").

6. Tenant Selection. Unless designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.

7. Civil Rights Requirements. The Owner will comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, creed, sex, national origin, handicap, or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. §3601 et seq.; 24 CFR 100 et seq.), Executive Order 11063, and all requirements imposed by or pursuant to the

regulations of the HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107 and 110, and Subparts I and M of Part 200.

8. Housing Standards. The Owner agrees that throughout the Term, it shall (a) maintain the Project in good repair and condition in accordance with applicable local codes, and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G as amended; (b) maintain and operate the Units and related facilities to provide decent, safe and sanitary housing, including the provision of all services, maintenance and utilities; and (c) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended.

9. Management and Maintenance of the Project.

a. The Owner shall provide for the management of the Project in a manner satisfactory to the Secretary. Any management contract entered into by the Owner involving the Project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Secretary addressed to the Owner. Upon receipt of such request the Owner shall immediately terminate the contract within a period of not more than thirty days and shall make arrangements satisfactory to the Secretary for continuing proper management of the Project.

b. The Owner shall not, without the prior written approval of the Secretary, demolish any part of the Project or subtract from, without replacing, any real or personal property of the Project. In the event all or any of the buildings constituting the Project are destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied to rebuild the Project unless otherwise directed by the Secretary.

c. The books and records, documents and other papers relating to the financial condition of the Project, shall at all times be maintained in accordance with Generally Accepted Accounting Principles which can be subjected to an audit performed in accordance with Generally Accepted Auditing Standards and shall be subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. The Owner shall keep copies of all written contracts or other instruments that affect the Project, all or any of which may be subject to inspection and examination by the Secretary or his agents.

10. Violations and Secretary's Remedies. If the Secretary determines that the Owner has violated any of the terms of this Agreement, the Secretary shall notify the Owner of its determination and the Owner shall have thirty (30) calendar days after receipt of such notification in which to cure the violation. Promptly following the expiration of the foregoing thirty (30) day period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. Failure to cure the violation shall deem the owner in default. The parties further agree that upon any default under this Agreement, the Secretary may apply to any court, state

or federal, for specific performance of this Agreement, or for such other equitable relief as may be appropriate, since the injury to the Secretary arising from a violation under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

11. Reports. The Owner shall provide the Secretary an annual financial statement in compliance with 24 CFR Part 5, Subpart H, *Uniform Financial Reporting Standards*. The Owner will provide the Secretary with an annual certification that 1) the unit meets HUD's physical inspection standards contained in 24 CFR Part 5, Subpart G, *Physical Condition Standards and Inspection Requirements*, 2) family income meets the income restrictions as set out in this Agreement, and, 3) eligible families are paying rent for the units that is no more than 30% of 95% of area median income. A supplemental certification will be provided when a family moves or a new unit is substituted.

An event of default by the owner will include any of the following:

- a. Failure to provide an annual certification as required by the above paragraph.
- b. Failure to provide a supplemental certification as required by the above paragraph.
- c. Failure to submit the annual report as required by the above paragraph, or submission of an annual report that contains inaccurate information.
- d. Failure to charge income eligible residents occupying affordable housing units an amount that is within the monthly affordable rent limits.

Upon an event of default and the owner's failure to take corrective action to the Secretary's satisfaction, the Owner agrees to provide the Secretary with liquidated damages. The liquidated damages shall be in an amount no less than \$1,000 per violation per unit. Such liquidated damages shall be levied every three months commencing with the end of the corrective period until compliance is achieved. In the event of a default under part d, the liquidated damages will be calculated monthly and will be equal to the amount by which the rent actually charged in any month for any affordable housing unit exceeds the monthly affordable housing rent for that unit.

The Secretary may seek any other legal or equitable remedy, including but not limited to, specific performance, in addition to liquidated damages.

12. Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter

executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Secretary hereby agrees that, upon the request of the Owner made on or after the expiration of the Term, the Secretary shall execute a recordable instrument approved by the Secretary for purposes of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

13. Superiority. The parties hereto understand and agree that, notwithstanding any provisions contained in this Agreement, or any other instrument or agreement affecting the Property, the restrictions and covenants hereunder are not intended by the parties hereto to either create a lien upon the Property, or grant any right of foreclosure, under the laws of the jurisdiction where the project is located, to any party hereto or third party beneficiary hereof upon a default of any provision herein, rather they are intended by the parties hereto to constitute a restrictive covenant that is filed of record prior in time to any instrument or agreement granting a security interest in the Project, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

14. Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this Agreement and that, in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

15. Binding Effect. Upon conveyance of the Property during the Term, the Owner shall require its successor or assignee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

16. Amendment. This Agreement may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

17. Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

18. Recording. The Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement shall immediately be recorded by Owner, at no expense to HUD, in the appropriate land records office and returned to HUD as soon as possible following recordation and prior to prepayment.

19. Notice to Tenants upon Expiration of Use Agreement. The Owner shall notify each Tenant at least 90 days prior to the expiration of the Term of the Use Agreement that after the expiration of the Term of the Use Agreement, the Owner will be free to alter unit rents without the Secretary's approval (to the extent that the unit rents are not otherwise regulated by the Secretary under a Housing Assistance Payments Contract), and that the Tenant will be required to bear the entire cost of the rent, subject to any applicable requirements or restrictions under the lease or under State or local law. The notice to each Tenant shall also state: (a) The actual (if known) or the estimated unit rent that each Tenant will be charged for the unit that Tenant occupies following the expiration of the Term of the Use Agreement; (b) the difference between the actual (if known) or estimated unit rent that each Tenant will be charged for the unit that Tenant occupies, and the current unit rent paid by each Tenant the Terms of the Use Agreement. The Owner shall provide the Secretary a certification that each Tenant has been notified in accordance with this provision with an example of the text of the notice attached.

20. Headings. The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

21. Governing Law. This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

22. Counterparts. This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.

23. Signatory Authority. Any person signing this Agreement on behalf of a party (e.g., the General Partner signing for an owner) represents that he or she has the authority to bind the party for whom he or she is signing.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Use Agreement to be executed and made effective as of the date first above written.

WITNESS/ATTEST:

Dana Ne

OWNER:

THE PELHAM II CORPORATION,
a Massachusetts not for profit corporation

By: *Robert Engler*

Name: Robert Engler

Title: President

COMMONWEALTH OF MASSACHUSETTS)

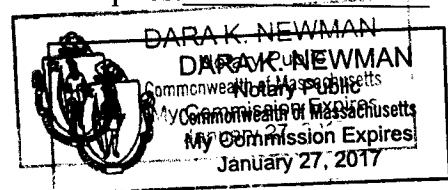
COUNTY OF SUFFOLK)

On this 24th day of February, 2012, before me, the undersigned notary public, personally appeared Robert Engler, as the President of The Pelham II Corporation, a Massachusetts not for profit corporation, proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose as the President of The Pelham II Corporation.

Dana K. Newman

Notary Public

My commission expires:

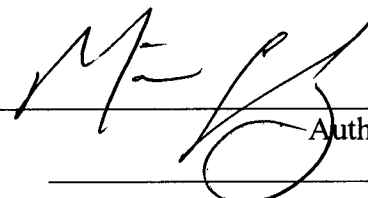


WITNESS:

SECRETARY OF HOUSING
AND URBAN DEVELOPMENT,
WASHINGTON, D.C.



By:



Authorized Agent
Office

Maurice E. Barry
Director of Project Management

Commonwealth of Massachusetts)
Suffolk County)ss.

On this 24th day of February, 2012, before me personally appeared Maurice E. Barry, to me personally known, who, being by me duly sworn, acknowledged himself/herself to be duly authorized agent of the Secretary of Housing and Urban Development pursuant to Section 204 of the National Housing Act, and that as such authorized agent he/she signed and delivered the said **Use Agreement**, and acknowledged said instrument to be the free act and deed of the Secretary of Housing and Urban Development.

My Commission Expires: Feb. 13, 2015



Notary Public Wm J. Mroz

Exhibit A

Legal Description

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.

Exhibit B
Rent Schedule

January 2011

EXHIBIT B**SCHEDULE OF MAXIMUM INITIAL RENTS
FOR BEAVER TERRACE APARTMENTS**

I. The Initial Rents for units that are not assisted under a project-based section 8 contract, and that are occupied by Current Tenants, including those Current Tenants who are assisted with tenant-based housing choice vouchers, are:

Schedule of Initial Rents for Occupied Non-Contract Units Without Tenant-Based Voucher

<u>Unit</u>	<u>Rent</u>	<u>Bedrooms</u>
C067B	792	1
C079A	741	1
C085D	738	1
C087D	773	1
C107B	931	2
C109B	961	2
C111B	961	2
C093B	854	2
C095A	839	2
C017B	857	2
C007B	927	2
C008B	1060	3
C011A	0 (EMPLOYEE)	3
C013A	1048	3
C013B	1095	3
C003B	1156	3
C103B	1060	3
C105A	1156	3
S034B	1031	3
S036A	1156	3
C038A	1060	3
C046B	1156	3
S058B	1156	3
C005B	1156	3

Schedule of Initial Rents for Occupied Non-Contract Units with Tenant Based Voucher

<u>Unit</u>	<u>Gross Rent</u>	<u>Bedrooms</u>
C069D	774	1
C032A	792	1
C024C	692	1
C025B	884	2
C057B	950	2
S056A	1009	2
C111A	859	2
C006A	998	3
C099B	1156	3
C043A	1048	3
C053B	1213	3
S066B	1048	3

Exhibit B (cont.)

II. The rents for units assisted under a project-based section 8 housing assistance payments contract are set and will be adjusted in the future pursuant to the section 8 program. The Initial Rents for those units are the current section 8 contract rents of:

One-bedroom units:	\$831
Two-bedroom units:	\$1,009
Three-bedroom units:	\$1,213

III. The maximum Initial Rents for units not assisted under a project-based section 8 contract, and that become occupied by New Tenants, are based upon 30% of 95% of HUD's FY 2012 Area Median Income for the Boston-Cambridge-Quincy MA-NH HUD Metropolitan Fair Market Rent Area, and they are further based upon an imputed family size of 1.5 people per bedroom. Such rents subsequently may be adjusted under this Use Agreement.

One-bedroom units:	\$1448
Two-bedroom units:	\$1737
Three-bedroom units:	\$2007