

**COMMUNITY PRESERVATION FUNDING AGREEMENT
BETWEEN PARKVIEW HOMES, LLC AND THE CITY OF NEWTON TO SUPPORT
AFFORDABLE COMMUNITY HOUSING
AT 192 LEXINGTON STREET**

This AGREEMENT made as of August 5, 2010 by and between Parkview Homes, LLC, a Massachusetts limited liability company, having a usual place of business located at 165 Chestnut Hill Avenue, #2, Brighton, Massachusetts 02135 (hereinafter "Grantee") and the City of Newton, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director or Interim Director of Planning and Development or her/his designated staff, but without personal liability to her/him, (hereinafter the "City"), collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the Grantee owns a certain parcel of land known and numbered 192 Lexington Street, Newton, Massachusetts as evidenced by a deed dated May 10, 2010 and recorded in the Middlesex South Registry of Deeds, in Book 54674, Page 26 (hereinafter the "Property"); and

WHEREAS, the Grantee intends to develop the Property in accordance with and subject to the rights and conditions contained in a certain Comprehensive Permit issued pursuant to G.L. c. 40B, §§ 20-23 by the City of Newton Zoning Board of Appeals in Decision #15-09, filed with the City Clerk on December 29, 2009 and recorded in the Middlesex South Registry of Deeds in Book 54181, Page 169 (the "Comprehensive Permit"), and the plans referred to in the Comprehensive Permit (the "Plans"); and

WHEREAS, the Grantee applied for and received approval from the Community Preservation Committee ("CPC") and the Board of Aldermen, upon the Funding Recommendation of the CPC, a grant in the amount of \$2,041,000.00 (the total appropriated \$2,046,000.00 less \$5,000.00 designated for CPC legal expenses), subject to certain conditions set forth herein; and

WHEREAS, the Comprehensive Permit and the Plans (Attachment A) and the approval of the Board of Aldermen (Attachment B) and the Funding Recommendation of the CPC (Attachment C) provide that Grantee shall construct a ten (10) unit for sale development including two single family detached units and four two-family townhouse style units and of the ten (10) units, six will have sale prices set at 75% of area median income and will be affordable to households earning up to 80% of area median income and four of the units will have sale prices set at 95% of area median income and will be affordable to households earning less than 100% area median income;

NOW THEREFORE, the parties do mutually agree to the following General Provisions:

****GENERAL PROVISIONS****

Subject Matter. This AGREEMENT sets forth the terms and conditions under which the Grantee shall receive funding from the City in the amount of Two Million Forty One Thousand and

00/100 (\$2,041,000.00) Dollars. The Grantee agrees to use such funding to create ten permanently affordable homeownership units of community housing in accordance with the terms and conditions of the Comprehensive Permit and the Plans and the approval of the Board of Aldermen and the Funding Recommendation of the CPC (the "Project").

2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to receipt of funds:

(a) The Grantee shall submit a copy of the Comprehensive Permit to the Massachusetts Department of Housing and Community Development ("DHCD") and the specifics of the Project shall be formalized in an agreement (the "Regulatory Agreement") which shall be executed by the Grantee, City, and DHCD and recorded at the Middlesex South Registry of Deeds.

(b)) Each of the ten (10) affordable units shall be subject to a perpetual affordable housing restriction in the form of a deed rider acceptable to DHCD and the City and shall satisfy the requirements of G.L. c. 184, §32 and shall be a perpetual restriction preserving each of the Property's affordable housing homeownership units. The form of deed rider for the six units which will have sale prices set at 75% of area median income and will be affordable to households earning up to 80% of area median income is attached hereto as Attachment G. The form of deed rider for the four units which will have sale prices set at 95% of area median income and will be affordable to households earning less than 100% of area median income is attached hereto as Attachment H.

(c) The Grantee shall provide evidence that it has secured other funding sources necessary for project feasibility including rates and terms.

(d) The Planning Director, Interim Planning Director or her/his designee shall review and approve the final development budget and final plans for the entire project.

(e) The Grantee shall certify that all necessary zoning relief has been secured.

(f) The Grantee shall provide a copy of the building permit or a letter evidencing that the building permit has been approved.

(g) The Grantee shall provide a copy of the signed fixed-price construction contract.

(h) The Grantee shall provide a copy of the deed evidencing its ownership of the Property.

(i) The Grantee shall formally tender an offer to convey to the City for nominal consideration, a 2,574 sq. ft. triangle in the southeastern portion of the Property in accordance with the terms of the Comprehensive Permit and Plans and approval of the the Board of Aldermen and approval and Funding Recommendation of the CPC.

3. **Release of Grant Funds for Site Work and Construction.**

(a) **Request for Payment.** Following completion of any significant portion of the work on the Project, Grantee shall prepare and submit requests for payment to the City. 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. Requests for payment should be addressed to:

Housing Program Manager
Department of Planning and Development
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

(b) **Disbursement Procedures.** Payment of the grant funds shall be made as follows:

Grantee may submit periodic requests for payment, together with copies of invoices from Grantee's contractor(s), as significant portions of the work are completed. After inspection of the work and approval of Grantee's request for payment, the City shall make a periodic progress payment to Grantee in the amount of the invoice attributable to the completed portion of the work. Upon satisfactory completion of the Project, Grantee shall submit to the City a request for payment in full of any remaining balance, together with copies of invoices from Grantee's contractor(s). Payment of any remaining balance shall be made to Grantee within thirty days, 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. **Conditions Subsequent to Receipt of Funds.**

(a) Grantee shall construct, on the property, a ten (10) unit for sale development including two single family detached units and four two-family townhouse style units and of the ten (10) units, six will have sale prices set at 75% of area median income and will be affordable to households earning up to 80% of area median income and four of the units will have sale prices set at 95% of area median income and will be affordable to households earning less than 100% area median income.

(b) Each of the ten (10) affordable units shall be sold subject to a perpetual affordable housing restriction in the form of a deed rider which is acceptable to the DHCD and the City and shall satisfy the requirements of G.L. c. 184, §32 and shall be a perpetual restriction preserving each affordable housing homeownership unit. The deed rider forms anticipated hereunder are further described in Paragraph 2(b) hereinabove.

(c) Grantee shall comply with all terms and conditions of this AGREEMENT, the Comprehensive Permit and Plans, the Regulatory Agreement, the approval of the Board of Aldermen and the Funding Recommendation of the CPC.

(d) Grantee shall submit to the City's Housing Program Manager, for forwarding to the CPC, an initial project timeline and, along with each request for payment, a status report that describes work that is complete, work remaining, expenditures and target completion date. The format of this report shall be based on the original approved project budget.

(e) Promptly after substantial completion of the Project, Grantee shall submit to the Housing Program Manager, for forwarding to the CPC, a final project development cost statement. The format of this report shall be based on the original approved project budget. Grantee shall return to the City's Community Preservation Fund any portion of the grant funds not used for the Project.

5. **Insurance Requirements** Grantee shall keep the property insured at all times and in such amounts as deemed reasonable and prudent in accordance with standard construction practices and in compliance with Attachment F hereof.
6. **Permanent Reporting Requirements.** Prior to the sale of each affordable unit, Grantee shall submit a report to the City identifying the household composition (number in household) characteristics and income of the prospective homebuyer.
7. **Repayment of Funds.** If the Grantee fails to comply with the requirements of this AGREEMENT, the Comprehensive Permit and Plans, the Regulatory Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then the funds shall revert back to the City's Community Preservation Fund, 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 reacquire such funds.
8. **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.
9. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this AGREEMENT, the Comprehensive Permit and Plans, the Regulatory Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then 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, including without limitation, recapture of funds under paragraph 7.
10. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable local, state and federal laws, ordinances, regulations or codes during the term of the Project.
11. **Equal Opportunity.** The Grantee shall comply with all applicable local, federal and state laws governing discrimination and equal opportunity.

12. **Fair Housing Marketing and Local Preference.** The Grantee shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the WestMetro HOME Consortium Affirmative Marketing Plan. To the extent allowed by applicable law, the units shall be marketed in accordance with the City's Local Preference Policy as adopted by the Newton Housing Partnership as part of the Fair Housing Plan.
13. **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.
14. **Successors and assigns.** The terms of this AGREEMENT, including, but not limited to the Permanent Reporting Requirements in paragraph 6, 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.
15. **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.
16. **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.

17. **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: Director of Planning and Development
 Planning and Development Department
 City Hall
 1000 Commonwealth Avenue
 Newton Centre, MA 02459

To Grantee: Manager
 Parkview Homes, LLC
 165 Chestnut Hill Avenue, #2,
 Brighton, Massachusetts 02135

18. **Changes.** In the event that changes in the Project become necessary, including but not limited to changes in funding, scope, or duration, the Grantee shall request the change in writing. If the City agrees to such changes, they must be approved in writing by the City and incorporated into this AGREEMENT as amendments.
19. **Other Provisions.** All other provisions, if any, are set forth within the following SCHEDULES attached hereto and made a part hereof as listed below:

Attachment A, Comprehensive Permit
Attachment B, Approval of the Board of Aldermen
Attachment C, Approval and Funding Recommendation of the CPC
Attachment D, LLC Certificate of Authority
Attachment E, State Tax Attestation
Attachment F, Insurance Requirements
Attachment G, Deed Rider for 6 units affordable to households earning up to 80% AMI
Attachment H, Deed Rider for 4 units affordable to households earning under 100% AMI

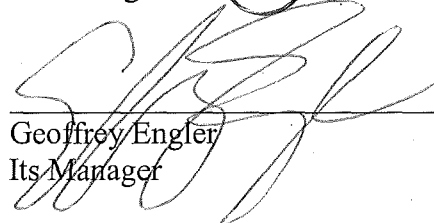
**** SIGNATORIES ****

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT in three sets to be effective when executed by His Honor the Mayor of the City of Newton.

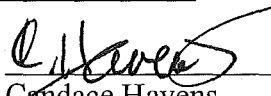
GRANTEE:

Parkview Homes, LLC.

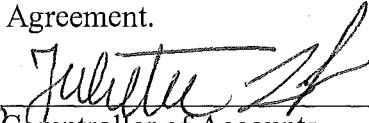
By:  7/27/10
Robert Engler
Its Manager Date

By:  7/27/2010
Geoffrey Engler
Its Manager Date

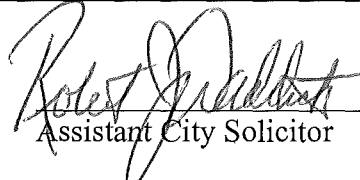
CITY OF NEWTON:

By: 
Candace Havens
Interim Director of Planning and Development


I certify funds are available in the amount of \$2,041,000.00 in Account 21C11413-5797 for this Agreement.

By: 
Assessor Comptroller of Accounts

Approved as to legal form and character

By:  7/29/10
Assistant City Solicitor

CONTRACT APPROVED

By:  8/3/10
Setti D. Warren, Mayor Date

Middlesex South Registry of Deeds Electronically Recorded Document

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Recording Information

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**Middlesex South Registry of Deeds
Eugene C. Brune, Register
208 Cambridge Street
Cambridge, Massachusetts 02141
617/679-6310**