

GRANT AGREEMENT

This Grant Agreement is made and entered into as of the ^{20th} day of September, 2021 by and between the Town of Barnstable's Affordable Housing/Growth & Development Trust Fund (the Trust) by and through Town Manager, Mark S. Ells, in his capacity as the Chair of the Trust and with the business address as 367 Main Street, Hyannis, MA 02601 and , Standard Holdings, LLC a limited liability company, Timothy T. Telman, Manager and Robert Carleton, Manager and Resident Agent (Grantee), with a business address of 540 Main Street, Suite 18, Hyannis, MA 02601.

WHEREAS, the Affordable Housing/Growth & Development Trust Fund was established by the Town Council by order 2007-158 for the purpose of preservation and creation of affordable housing and promoting sound and prudent economic development;

WHEREAS, by on January 23, 2020, the Town Council by order 2020-068 voted to appropriate the sum of \$2.5 Million from Barnstable's Community Preservation Fund to Affordable Housing/Growth & Development Trust Fund (hereinafter "Trust") for acquisition, creation, preservation and support of community housing;

WHEREAS, in March, 2020, the Trust issued a Notice of Funding Availability (NOFA) for the purpose of acquiring land or buildings for affordable housing. The NOFA stated that the project must meet Community Preservation Act (CPA) requirements;

WHEREAS, the CPA identifies the acquisition of community housing or of an interest in community housing as a project eligible for funding;

WHEREAS, on August 18, 2020, Grantee submitted an application to the Trust seeking One Million, Four Hundred Thousand (\$1,400,000) Dollars of Trust funds to create fourteen (14) units of rental housing, affordable to those whose income was at or below 65% of the Area Median Income (AMI), to be located at 850 Falmouth Road, Hyannis, MA as part of a 53-unit multifamily development.

WHEREAS, the Grantee requested that the presentation of its application to the Trust which was scheduled for September 25, 2020 be continued so the Grantee could resolve certain permitting issue.

WHEREAS, on December 8, 2020, the Grantee filed a revised application seeking One Million, Four Hundred (\$1,400,000) Dollars of Trust funds to create ten (10) units of rental housing, affordable to households with income at or below 50 % of the Area Median Income (AMI), to be located at 850 Falmouth Road, Hyannis, MA as part of a 53-unit multifamily development.

WHEREAS, on December 11, 2020, the Grantee made the initial presentation of its application to the Trust. At that meeting, the Trust voted to issue an Invitation for

Qualifications to hire an outside housing consultant to review and analyze the Grantee's *pro forma*.

WHEREAS, on March 5, 2021, Paul Ruchinskas, the hired housing consultant, presented his report to the Trust analyzing the presented his financial analysis of Standard Holdings, LLC *pro forma* which was followed by questions from Trust members and a response from the applicant.

WHEREAS, on March 5, 2021, the Trust voted to approve an award of \$1.4 million dollars to Standard Holdings, LLC from CPA funds, contingent upon the execution of a grant agreement memorializing the conditions of the award, which conditions were to be reviewed by the Trust at its April 9, 2021 meeting.

WHEREAS, on April 9, 2021 meeting, the Trust voted to approve a grant award to the Standard Holdings LLC in the amount of \$1.4 Million from Community Preservation Funds for a project identified as "Residence @ 850", a proposed multifamily housing development to create 10 units of affordable rental housing, to survive foreclosure and to be affordable in perpetuity to individuals and families whose income is 50% of the Area Median Income (AMI), to be located at 850 Falmouth Road, Hyannis, MA, subject to the execution of this Grant Agreement containing a series of conditions necessary to ensure the proper expenditure of Trust Funds.

NOW, THEREFORE, in consideration of the mutual covenants contained therein, the parties agree as follows:

1.) **APPROVED APPLICATION.**

1.1 **Project Description:** Pursuant to the revised application and plans submitted to the Trust on December 7, 2020, Grantee shall construct a multifamily apartment complex at 850 Falmouth Road, Hyannis, MA consisting of fifty-three (53) one- and two-bedroom rental units, containing ten (10) affordable rental units, which units shall be affordable to individuals and families earning 50% or below of the Area Median Income (AMI). There shall be forty-four (44) two-bedroom units, eight (8) of which shall be affordable and nine (9) one-bedroom units, two (2) of which shall be affordable. The Project shall be approximately 72,000 SF, 3-level L-shaped structure with an elevator, granite countertops, stainless appliances, dedicated mail and package room, fitness room, climate controlled self-storage, common lobby area, smart-home technology, high-speed 5G fiberoptics, rooftop solar farm, electric automobile charging station, a dog park and an indoor dog washing station,

1.2 In consideration of the award of a grant in the amount of One Million Four Hundred Thousand (\$1,400,000) Dollars to Grantee by the Trust, the Grantee shall construct the project as summarized in Section 1.1 above and as more fully described in Grantee's Revised Application and shall record an Affordable Housing Restriction (AHR) which will ensure that the ten (10) affordable units shall be rented in perpetuity at a rent

which is affordable to an individual or family whose income is 50% or less of the Area Median Income (AMI) adjusted for family size as determined by the U.S. Department of Housing and Urban Development (“HUD”). The monthly rent charged to said tenants shall not exceed an amount equal to thirty percent (30%) of the monthly adjusted income of a family whose gross income equals fifty percent (50%) of the AMI. In determining the maximum monthly rent that may be charged, an allowance for any utilities and services shall be included. The project shall be completed within twenty-four months of the issuance of the building permit; completion shall be evidenced by the issuance of occupancy permits for all units contemplated for construction.

2.) CONDITIONS TO BE FULFILLED BY GRANTEE PRIOR TO THE DISBURSEMENT OF FUNDS.

Until all of the following conditions are fulfilled, the Trust shall have no obligation to disburse funds pursuant to this Grant Agreement:

2.1 Proof of execution of a Note by the Grantee and recordation of a Mortgage, both approved by the Town Attorney, securing the obligations under the Grant Agreement. The mortgage shall be subordinate to the permanent loan. The mortgage would be a monetary, thirty-year mortgage with no interest which shall be forgiven in thirty (30) years if there is no default. In the event of default, the full amount of the One Million, Four Hundred Thousand (\$1,400,000.00) Dollar loan shall become due and payable to the Trust. The Trust shall provide the Grantee notice of any default, whereupon the Grantee shall have sixty (60) days to cure or dispute said default from receipt of such notice.

2.2. Proof of a recordation of an Affordable Housing Restriction (AHR), senior to all encumbrances and which survives foreclosure, approved by the Town Attorney, and executed by the Department of Housing and Community Development (DHCD), the Town and the Grantee requiring that the ten (10) affordable units be rented in perpetuity at a rent which is affordable to an individual or family whose income is 50% or less of the AMI as determined by HUD or any successor agency.

2.3. Proof that the 10 affordable units are eligible for inclusion in the Subsidized Housing Inventory (SHI), which in addition to the recordation of an AHR specified herein shall include documentation of a draft written lease which contains the following terms: a) a minimum of one year term which provides: 1) that during the lease term the tenant can only be evicted for a substantial violation of a material term of the lease and 2) that the tenant shall furnish information to document continued eligibility sufficient to determine compliance with the eligibility requirements.

2.4. A final project budget shall be submitted to the Trust with proof of written funding commitments from Bank Five, MassDevelopment and from DHCD under the HDIP and of the approval by the Town of the Tax Increment Exemption Agreement (“TIE”, “Agreement”)

2.5. A current Certificate of Good Standing from the office of the Secretary of State of the Commonwealth for Standard Holdings LLC.

2.6. Proof of an issuance of a building permit.

2.7. At the time of the closing of Grantee's construction the Grantee shall provide the Trust written documentation from that the Department of Housing and Development (DHCD) has approved the Lottery and Marketing Agent for the Development. In the event that DHCD has not taken on the responsibility for approving the Lottery and Marketing Agent, approval by the Trust of the Lottery and Marketing Plan shall be required.

2.8. At the time of the closing of the Grantee's construction loan, the Grantee shall provide the Trust written documentation that the Department of Housing and Development (DHCD) has approved the Management Agent for the Development. In the event that DHCD has not taken on the responsibility for approving the Management Agent, approval by the Trust of the Management Agent shall be required.

3.) PROCESS FOR DISBURSEMENT OF FUNDS

Upon the fulfillment of the conditions specified in paragraph 2 herein, the Trust shall work with Bank Five, which is an FDIC-insured financial institution, to enter into a written agreement to establish a process for the disbursement of the Trust's grant award on a *pro rata* basis during construction which process shall include providing the Trust with a construction and disbursement schedule and periodic inspection reports throughout the construction period. Ten (10%) percent of the Trust's funding shall be retained by the Trust until certificates of occupancy are issued for the development and there is verification that the Grantee is in compliance with the terms of the Grant Agreement. In the event that the Trust and Bank Five are unable to enter into an agreement for the disbursement of Trust funds, the Grantee shall appear before the Trust to discuss alternative processes for the disbursement of Trust funds. Unless and until there is a written modification to this Agreement delineating an alternative process for the disbursement of Trust funds, no funds shall be disbursed by the Trust.

4.) REPORTING AND RECORDKEEPING REQUIREMENTS.

The Grantee shall keep full and detailed records, accounts, books, and other pertinent information documenting Grantee's compliance with the terms of this Agreement, the AHR and such additional records as may be required by the Trust. The Grantee agrees to make available for examination by the Trust and its designees, such records upon request by the Trust within a period of seven (7) calendar days from such request.

5.) **INDEMNIFICATION.**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and save harmless the Trust and the Town, all of the Trustees and Town officers, agents and employees from and against all suits and claims of liability of every name and nature, including attorney's fees and costs of defending any action or claim, for or on account of any claim, loss, liability or injuries arising out of or resulting from any act, omission, or negligence of the Grantee and their agents or employees in the performance of the work covered by this Grant and/or their failure to comply with terms and conditions of this Grant, regardless of whether said claim is caused in part by the Town, the Trust or any third party. This provision shall survive the termination of this Agreement.

6.) **MODIFICATION.**

Any amendment or modification of this Grant shall be effective only upon the mutual written agreement of the parties. This instrument contains the entire agreement between the parties. No statement, promise or inducement made by any party hereto, which is not contained in this written grant, shall be valid or binding.

7.) **TERM.**

7.1 This Agreement shall terminate within twenty-four (24) months from the date of its execution if the Trust determines that the Grantee has failed to fulfill all of the requirements of paragraph 2 herein, unless the Trust, at its sole discretion, agrees in writing to extend the Term.

7.2 Once the grant funds awarded herein are disbursed, the term of this Agreement shall be the same as the term of the recorded AHR.

8.) **APPROVAL OF TRANSFER BY TRUST.**

For a period of ten years from the date of the closing the Grantee's loan from Bank Five, any transfer of the subject property or any change in the membership of the Standard Holdings, LLC greater than a total of twenty-five (25%) percent of the membership during the ten-year period shall be subject to the prior written approval of the Trust, which approval shall not be unreasonably withheld and/or delayed. It shall be considered reasonable for the Trust to ensure that the proposed transferee has the financial strength and management capabilities to comply with the terms of the Grant Agreement.

9.) **ONE AFFORDABLE UNIT ACCESSIBLE TO PERSONS WITH DISABILITIES.**

9.1 A minimum of one of the ten affordable units shall be fully accessible to persons with disabilities.

9.2 In the event that no person with disabilities can be located to qualify for the affordable accessible unit through the open and fair marketing process, then the unit shall be rented as an affordable rate unit, notwithstanding disability status.

9.3 Grantee shall notify the Lottery and Marketing Agent of the requirement that a minimum of one of the fully accessible units shall be set aside as an affordable unit.

9.4 In the event that a person with disabilities who is renting the affordable accessible unit becomes over-income as defined in the AHR, then the next available accessible market rate unit shall be rented as an accessible affordable unit; provided, however, if there is no accessible market-rate unit available at the time that the occupant of the accessible affordable unit becomes over-income, then the next available market rate unit shall become an affordable unit. If upon a vacancy in a market rate accessible unit, there is no accessible affordable unit currently occupied, then that unit shall be first offered as an accessible affordable unit. Under no circumstances shall there be more than ten (10) occupied affordable units.

10.) INSURANCE REQUIREMENTS.

Grantee, at its sole cost and expense, shall keep in full force and effect property casualty insurance and builders risk insurance on the property and improvements located at 850 Falmouth Road, Hyannis, MA in an amount of not less than \$1,400,000. The Grantee shall provide the Trust with a Certificate of Insurance naming the Town of Barnstable as an additional insured.

11.) MONITORING AND REPORTING REQUIREMENTS.

11.1 Grantee shall work with the Planning and Development Department, the Town Attorney's Office and the Trust to enter into a Monitoring Services Agreement in a form that is approved by the Town Attorney's Office, that enforces the affordability requirements for both Special Permit Application No. 2020-03 and this Grant Agreement. The Applicant agrees that no occupancy permits shall be issued until such time as the the Monitoring Services Agreement is executed, as is required by Special Permit No 2020-03, filed with the Barnstable Town Clerk on January 25, 2021 and recorded in the Barnstable County Registry of Deeds in Book 33868 Page 262.

11.2 Annual Reporting. Every twelve months from the date of the recording of the AHR, Grantee shall provide the Monitoring Agent certification of tenant income eligibility, rent charged for the Unit, vacancy information, other information required under the AHR and any other additional information requested by the Monitoring Agent or the Trust. The Monitoring Agent shall provide the Trust with a copy of its annual Monitoring Report.

12.) DEFAULT.

In the event the Grantee fails to fulfill its obligations under the terms of this Agreement, the Trust shall have the right, in its sole discretion, to pursue any rights or remedies available at law or in equity, as well as any rights or remedies provided within the AHR, Note, Mortgage, Monitoring Services Agreement or this Agreement, including without limitation, recapture of funds. After a Declaration of Default, Standard Holdings, LLC shall have sixty (60) days to cure said default. Nothing in the previous sentence shall be construed as prohibiting the Trust from seeking injunctive or other appropriate relief where a sixty (60) day delay will, in the reasonable judgment of the Trust, cause irreparable harm to the Trust.

13.) COMPLIANCE WITH LAW.

GRANTEE agrees to conduct its operation hereunder in strict compliance with all laws, bylaws, ordinances, rules and regulations of all federal, state, regional and local authorities as from time-to-time are applicable.

14.) CHOICE OF LAW.

The laws of the Commonwealth of Massachusetts shall govern this Agreement and the Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Grant Agreement.

15.) NOTICES.

Any and all notices, or other communications required or permitted under this Grant Agreement, shall be in writing and delivered by hand or mailed postage prepaid, or by other reputable delivery service, to the parties at the addresses set forth on page 1 hereof or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, or if so mailed, when deposited with the U.S. Postal Service or if sent by private overnight or other delivery service, when deposited with such delivery service.

16.) SEVERABILITY.

Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.

WITNESS, our hands and seals this 14th day of September, 2021.

**Town of Barnstable Affordable
Housing/Growth & Development Trust
Fund by its Chair**


Mark S. Ellis

**Standard Holdings, LLC, by its Managers
Grantee,**

By:


Timothy Telman

Signature

(Printed

Name: TIMOTHY TELMAN)

Title:

Grantee,

By:


Robert Carleton

Signature

(Printed

Name: ROBERT CARLETON)

Title: