

**LOCAL INITIATIVE PROGRAM  
PARTNERSHIP AGREEMENT**  
(139 Linden Street, Wellesley, MA)

This Local Initiative Partnership Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the Town of Wellesley, a Massachusetts Municipal Corporation (the “Town”) acting by and through its Board of Selectmen (the “Selectmen”) and Eugenio Perdoni, Joseph Perdoni, and Renso Perdoni, Trustees of 139 Linden Street Realty Trust, under declaration of trust dated December 28, 1989, recorded with Norfolk Registry of Deeds in Book 8524, Page 39 (“Perdoni”), its successors and assigns.

The background for this Agreement is provided in the following recitals:

A. Perdoni has proposed that the Selectmen enter into a Local Initiative Partnership Agreement (the “Partnership Agreement”) for the purposes of redeveloping the property located at 139 Linden Street in the Town of Wellesley (the “Project”) as a mixed-use residential and commercial project containing affordable housing. (For title reference to the Project property, see deed dated December 28, 1989, recorded with Norfolk Registry of Deeds in Book 8524, Page 45).

B. The proposal seeks to resolve the lengthy history and debate over this site, in a way the Town finds acceptable, all things being considered;

C. To enable the Project to be eligible to obtain a Comprehensive Permit pursuant to M.G.L. Chapter 40B (the “Comprehensive Permit”) and obtain any necessary zoning relief required for the Project to proceed, the Selectmen and Perdoni are entering into this Partnership Agreement to qualify the Project under the Local Initiative Partnership (“LIP”) program established by the Massachusetts Department of Housing and Community Development (“DHCD”).

D. The Selectmen deem it to be in the public interest to enter into this Partnership Agreement to ensure that the Project is developed in accordance with the Town’s goals.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Selectmen and Perdoni hereby agree and covenant as follows:

1. Perdoni agrees that it intends to renovate and redevelop the Project substantially in accordance with the following features:

(a)The Project shall consist of four rental housing units, two as currently exist in the building in the front of the property (139 Linden) and two new duplex units to be created in the building in the rear of the property (139R Linden). The larger of the new duplex units (which shall be located on the left-hand

side of the 139R building, and contain three bedrooms and one and a half baths, and contain approximately 1,800 square feet of floor area) shall be affordable in perpetuity in accordance with the affordability and local preference requirements of the Wellesley Housing Development Corporation (“WHDC”).

(b)The basement of 139 Linden shall contain commercial space for Eugenio’s Beauty Salon, limited to 800 square feet. Exterior signage for the Beauty Salon compliant with the Zoning Bylaw shall be allowed, subject to Design Review Board approval as required.

(c)The ground floor of 139R Linden shall continue to be used for commercial use, subject to the limitations on use hereafter described.

(d) The design and functionality of vehicular parking are extremely important for this site and its interaction with the public way on which the site fronts. Therefore the parties agree that the plans for same will be subject to the Town’s approval, the Town reserving the right to request changes in the plans from time to time. In the event that, after initial approval of such plans, the Selectmen request changes in the plans, the parties shall agree to meet (together with their traffic consultants) to discuss and resolve such issues. Should the Selectmen require any additional traffic and/or parking analysis as a part of such discussions, Perdoni agrees to pay the cost of any such analysis. The current plans, showing twenty-three parking spaces (seventeen surface spaces and six spaces in the garage of 139R Linden), landscaping, and a pedestrian walkway, entitled “139 Linden Street Wellesley, MA Layout Plan” and “139 Linden Street Wellesley, MA Landscape Plan”, dated February 14, 2006, as most recently revised May 4, 2007, drawn by Rizzo Associates (the “Project Plan”), are hereby approved. Perdoni shall implement said Project Plan as the initial parking and traffic circulation plan prior to receiving an Occupancy Permit for any part of the Project property.

(e)A heated pavement element shall be installed and maintained by Perdoni adjacent to the entrance of the garage, substantially as shown on the Project Plan.

(f) Perdoni agrees to include a provision in all leases with the commercial tenants of the Project requiring the tenants’ employees (up to a total of five (5) among all tenants) to participate in a parking pass program administered by the Town and under the terms of which, for a reasonable fee, such employees would be issued passes to park their automobiles in the so-called Tailby lot (or other Town-owned space as determined by the Selectmen) in lieu of parking on site. In addition, employees will be encouraged to employ T passes to avoid parking altogether. The Town’s Executive Director shall serve as the contact person on behalf of the Town with whom Perdoni and its tenants shall

coordinate the tenants' participation in this program, and who will monitor such participation on an annual basis.

(g) Perdoni shall remove all heavy equipment from the Project property promptly upon completion of construction, and will not thereafter store any heavy equipment on site.

2. Perdoni agrees to the following additional restrictions:

(a) Perdoni will not enter into any new lease or agreement for any of the following uses on any portion of the Project property:

(i) any use that would not be permitted in a Business District (provided that any use that would be permitted in a Business District with a special permit or other appropriate relief shall similarly be permitted on the Project property with a special permit or such other relief);

(ii) drive-through windows of any kind (including without limitation where food or beverage is purchased, or banking or ATM transactions are completed by customers in vehicles);

(iii) "fast-food" restaurant operations such as McDonalds, Burger King, Kentucky Fried Chicken (KFC), Taco Bell, Roy Rogers, Arbys, Wendy's or Hardee's, Dunkin Donuts, or their respective equivalents or similar restaurant operations, as such companies currently operate their primary restaurant locations; and

(iv) "adult uses" as that term is defined in the Zoning bylaw.

(b) Notwithstanding the foregoing, any non-residential use of any portion of the Project property shall be subject to the reasonable approval of the Selectmen, to be granted or withheld after holding a hearing on the matter, whose decision shall be final. Eugenios is approved. Proposed subsequent retail/commercial tenants shall be reviewed by the Selectmen using, among other criteria as the Selectmen deem appropriate, the criteria applicable to common victuallers licensing, including traffic review (even though a proposed subsequent tenant may not necessarily be a common victualler). In the event that, after approval of any subsequent retail/commercial tenants, the Selectmen determine that issues have arisen relating to traffic and/or parking, the parties shall agree to meet (together with their traffic consultants) to discuss and resolve such issues. Should the Selectmen require any additional traffic and/or parking analysis as a part of such discussions, Perdoni agrees to pay the cost of any such analysis.

(c) Trash removal activities (i.e. picking up and dropping off of dumpster-type containers) from the retail/commercial units will be limited to the hours of 8:00 a.m. through 8:00 p.m. Perdoni agrees to incorporate this restriction in all leases.

(d) Access of trucks making deliveries will be limited to the hours of 7:00 a.m. through 9:00 p.m. each day.

(e) So long as hours of operation for retail stores in the Town of Wellesley are limited to 6:00 a.m. to 11:00 p.m. (subject to existing exceptions granted pursuant to Section 49.2B (a) of the Town Bylaw), the retail/commercial units will not open before 7:00 a.m., and will close (i.e., not admit customers) at or before 10:00 p.m. (Sundays, not open before 10:00 a.m. and close at or before 9:00 p.m.).

3. Perdoni agrees that it shall complete the Project substantially in accordance with the "Project Specifications" detailed in the LIP Application approved by the Selectmen.
4. Perdoni will prepare and submit to the Selectmen and the WHDC, for their review and approval, a Department of Housing and Community Development ("DHCD") Local Initiative Program application for Comprehensive Permit Projects for the Project (the "LIP Application"). The Selectmen and the WHDC will cooperate with and assist Perdoni in preparing the LIP Application.
5. Once the LIP Application has been approved by the Selectmen and the WHDC, Perdoni shall be authorized to file the LIP Application with the DHCD as a partnership with the Selectmen. Perdoni hereby commits to keep the Selectmen and the WHDC fully informed of the status of the LIP Application at every step during DHCD's approval process. Any and all questions asked, comments made or changes requested by DHCD to the LIP Application or the Project shall be shared with the Selectmen and the WHDC, and Perdoni's responses back to DHCD will be subject to approval by the Selectmen and WHDC. The purpose of this provision is to make sure that Perdoni is committed to not only keeping the Selectmen and WHDC informed, but also to keeping the Selectmen and the WHDC materially involved in the DHCD approval process at every stage to ensure that the Selectmen and the WHDC have the opportunity to review and approve every material, significant or substantial change to the Project sought by DHCD during its approval process.
6. Once DHCD has issued its determination that the Project is eligible under the LIP Program and approved the LIP Application, Perdoni shall prepare and submit to the Selectmen and the WHDC, for their review and approval, a draft of the proposed Comprehensive Permit application to be submitted to the Town's Zoning Board of Appeals ("ZBA") for the Project.
7. If the ZBA denies the Comprehensive Permit, or imposes conditions that Perdoni deems to make the Project uneconomic or that are unacceptable to the Town, the Selectmen, the WHDC and Perdoni shall confer to see what, if any, future steps they can agree upon. If the comprehensive permit as applied for shall issue, then the Selectmen

shall once again have the right of approval, or disapproval, of the project proceeding, although it is presumed that if the permit is issued in substantially the terms applied for (with the Selectmen's approval as aforesaid), then Selectmen approval would issue.

8. Prior to beginning build-out, Perdoni shall propose to the Selectmen, for their approval, a proposed construction mitigation plan, covering hours of operation, construction truck access and other like matters so the impact on the neighborhood during build-out will be minimized.

9. (a) Prior to commencing any work, Perdoni agrees to provide an overseer, approved by the Selectmen, in the nature of a Project Manager, to ensure faithful compliance with all permits, this Partnership Agreement, and all other governing documents. Construction shall be of first class quality and workmanship.

(b) The State Building Code will be complied with in all respects.

10. The Selectmen have made it clear to Perdoni that, while the Comprehensive Permit allows the ZBA to override the authority of many of the Town's boards and officials, Perdoni should nevertheless respect those boards and officials when they comment on the Project. Perdoni agrees. While it is the commitment of the Selectmen to support the Project as proposed through the Comprehensive Permit process, it is neither the Selectmen's nor Perdoni's intention to seek to override local authority inappropriately or to any extent greater than the absolute minimum needed to allow the Project to proceed. In an effort to articulate the specific understanding of the Selectmen and Perdoni on this point, the Selectmen hereby reserve the right to withdraw from this partnership if at any time they deem it necessary to do so. Perdoni acknowledges this, and has elected to proceed on this basis.

11. Both parties acknowledge that they have received copies of DHCD's boilerplate LIP Program documents, including DHCD's Regulatory Agreement and Declaration of Restrictive Covenants, and sample monitoring services agreements.

12. Although the mechanics have not yet been worked out, it is agreed that the Selectmen shall have approved of the lottery process in the selection of the tenant of the affordable unit.

13. Perdoni shall pay to the Town the sum of \$40,000.00 within thirty (30) days of the rental of the last of the four (4) residential units, if not paid sooner. Said payment will be applied to improvements to the Town's offstreet parking facilities as the Selectmen shall decide. In addition if Perdoni realizes a profit in excess of the maximum developer's fee permitted under the LIP Program, Perdoni hereby agrees that any such profit shall be payable to the Town for deposit in the affordable housing trust fund overseen by the WHDC. Any such payment shall be made upon the final certification of the total cost of the project.

14. Laurence D. Shind shall be Perdoni's principal contact with the Selectmen throughout the project, his successor if any, to be approved by the Selectmen.

15. The parties agree that, in partnering with Perdoni, the Town does not incur, and indeed specifically disclaims, any responsibility over, or liability for, the actual development itself, including, without limitation, responsibility over, or liability to contractors; residents; future residents; occupants; licensees or invitees. All such developer responsibility and potential liability shall remain exclusively with Perdoni, its successors and assigns. Perdoni shall, and hereby does, indemnify the Selectmen, the WHDC and the Town, and its officers, agents, employees and volunteers from and against any and all such liability. Perdoni agrees to include a notice to this effect in all contractual undertakings with all of its contractors and other parties with whom it has obligations, including leases with prospective residents.

16. Prior to applying for a building permit, Perdoni shall have provided the Selectmen and the WHDC with evidence, reasonably acceptable to the Selectmen and the WHDC, that Perdoni has the equity capital and commitments for the mortgage financing adequate to complete the construction and marketing of the Project, and that the contractor for the Project has obtained appropriate payment and performance bonds.

17. This Agreement shall (subject to the terms and conditions set forth herein) be binding on Perdoni and their successors and assigns, and on the Town, and is intended to run with the Property, and be binding on the owner of the Perdonis' interest therein from time to time. This Agreement is for the benefit of Perdoni and the Town, and may be enforced by any remedy provided at law or in equity. Prior to the issuance of a building permit for any portion of the Project, the Owner shall provide to the Selectmen evidence reasonably satisfactory to the Town that this Agreement has been recorded with the Norfolk County Registry of Deeds and/or the Norfolk County Registry District of the Land Court, if any or all of the Property is registered land. Perdoni shall incorporate by reference in any subsequent transfer of the Property the obligations incurred by it pursuant to this Agreement.

18. Except as otherwise expressly set forth in this Agreement, the terms and conditions hereof shall be perpetual. In the event that any additional act is required to ensure that the rights of the Town hereunder are perfected, and Perdoni (meaning to include its successors and assigns) shall fail to execute, acknowledge and deliver to the Selectmen such instruments as the Town Counsel may reasonably determine to be necessary to so perfect the Town's rights hereunder within thirty (30) days after written request therefor, then Perdoni hereby irrevocably designates the then Chairperson of the Board of Selectmen of the Town of Wellesley as Perdoni's attorney-in-fact to execute, acknowledge and deliver the same, such appointment to be coupled with an interest. This Agreement may not be amended, modified or terminated except by a written instrument executed by Perdoni and by a majority of the then Board of Selectmen of the Town.

IN WITNESS WHEREOF, the Wellesley Board of Selectmen and Perdoni have hereunto set their hands and seals the day and year first above written.

WELLESLEY BOARD OF SELECTMEN

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\_\_\_\_\_  
\_\_\_\_\_

139 LINDEN STREET REALTY TRUST

By: \_\_\_\_\_  
Renso Perdoni, Trustee

By: \_\_\_\_\_  
Eugenio Perdoni, Trustee

By: \_\_\_\_\_  
Joseph Perdoni, Trustee

Personally guaranteed as to the faithful compliance of the foregoing:

\_\_\_\_\_  
Renso Perdoni

\_\_\_\_\_  
Eugenio Perdoni

\_\_\_\_\_  
Joseph Perdoni

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned notary public, personally appeared Renso Perdoni, Eugenio Perdoni and Joseph Perdoni, Trustees aforesaid and also individually, proved to me through satisfactory evidence of identification, being (check whichever applies): ( ) driver=s license or ( ) other state or federal governmental document bearing a photographic image, ( ) oath or affirmation of credible witness known to me who knows the above signatory, or ( ) my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her on behalf of said trust and also individually voluntarily for its stated purpose.

Notary Public\_\_\_\_\_

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

Approved:

\_\_\_\_\_  
Laurence D. Shind, Esq.

Approved as to form:

\_\_\_\_\_  
Albert S. Robinson  
Town Counsel

