

DEVELOPMENT SERVICES AGREEMENT

278 MAYNARD ROAD

This DEVELOPMENT SERVICES AGREEMENT ("Agreement") is made as of the 3rd day of February, 2011, by and among SUDBURY HOUSING TRUST, a Massachusetts Trust established pursuant to the provisions of M.G.L. Chapter 44 Section 55C ("Owner"), and NEIGHBORHOOD OF AFFORDABLE HOUSING, INC., a Massachusetts nonprofit corporation established pursuant to the provisions of M.G.L. Chapter 108 ("NOAH"). NOAH referred to herein as "Developer."

RECITALS

- A. The property known and numbered as 278 Maynard Road, Sudbury, Massachusetts is currently vacant land that shall be developed into three units of affordable housing ("Project"), located at 278 Maynard Road, Sudbury, Massachusetts 01776 ("Property").
- B. The Owner has advertised a Request for Proposals ("RFP") requesting proposals from qualified developers for the design, development and construction of the Project.
- C. The Developer submitted a proposal dated May 1, 2009 and addendum dated May 29, 2009 which was deemed most advantageous by the Owner pursuant to the criteria established by the Owner.
- D. The Owner and the Developer have executed a Letter of Intent dated June 25, 2009 indicating their desire to complete the Project, including conveyance of the Property, permitting, and construction.
- E. The original proposal has been amended to reduce the number of units constructed from six (6) units to three (3) units by mutual consent of the Owner and the Developer, as shown in Site Development Plans dated October 21, 2010, prepared by Meridian Associates (containing 9 sheets) and Architectural Plans prepared by The Narrow Gate, dated October 6, 2010 (containing 4 sheets), with amendments required by the Comprehensive Permit Decision dated November 8, 2010 ("Comprehensive Permit").
- F. In connection with its purchase of the Property and construction of the Project, the Developer warrants and represents that it is borrowing certain funds to complete the construction of the Project as evidenced by a letter of interest from Boston Private Bank and Trust Company, dated November 1, 2010, and attachment hereto as Exhibit A. A commitment letter for construction financing from Boston Private Bank and Trust Company (or another NEF Program lender) shall be provided prior to Closing as provided below.
- G. The Developer intends to construct three (3) residential units, form a condominium pursuant to M.G.L. c. 183A, sell the three units on the Property as "Affordable Housing" (as defined under Paragraph H below), and enter into a Regulatory Agreement with MassHousing which specifies certain uses, restrictions and other requirements in general compliance with the plan and specifications as referenced herein as may be amended. The construction activities ("Construction") are expected to commence as soon as reasonably practicable after all the

requirements of Section 1(e) and other requirements described in this Agreement below are satisfied. By March, 2012, the Developer expects to have completed construction of the Property unless otherwise extended by agreement of the parties.

- H. The three residential units to be constructed on the Property shall be maintained as housing for persons earning 100% or less of the area median income in perpetuity, as more specifically described in the Comprehensive Permit, and in accordance with the terms of a Regulatory Agreement to be executed by the Developer and MassHousing, as Project Administrator ("Affordable Housing").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Services Provided.** Developer shall provide services ("Development Services") to the Owner until the earlier of either the sale of all three Project units, or the construction of the Project is completed, which Development Services are limited to the following:
 - a) Developer to make reasonably diligent efforts: to apply for a Building Permit for the Project as soon as reasonably practicable after all final Project Approvals (as defined below) have been obtained; and, to satisfy other conditions set forth in this Agreement.
 - b) Developer to obtain Owner's approval on the construction/building specifications prior to selection of a building contractor and commencement of construction;
 - c) Developer to obtain Owner's approval for the proposed list of Project general contractors to be selected to be part of the pool of prospective bidders and on the Project general contractor selected to complete the Construction of the Project, which approval shall not be unreasonably withheld, delayed or denied, and further defined in paragraph 6 below;
 - d) To execute a Regulatory Agreement acceptable to the Owner prior to the issuance of a certificate of occupancy for the first unit of the Project unless otherwise required by MassHousing;
 - e) To prepare and execute a Purchase and Sale Agreement within forty five (45) days of execution of this Agreement, upon terms and conditions mutually acceptable to the Owner and Developer, which shall include the following contingencies as a precondition to the conveyance of the Property by Owner to Developer:
 - (i) *Project Approvals.* The Developer shall have obtained any and all "final" federal, state, local, building, zoning and other licenses, permits and approvals, including but not limited to a Comprehensive Permit Decision, a Letter of Final Approval issued by MassHousing in accordance with 760 CMR 56.00, building permits, reasonably deemed necessary or appropriate by the Developer under applicable laws for the construction and operation of the Project, that shall not contain any condition, restriction or limitation upon any such license, permit or approval that is unacceptable to Developer in its sole reasonable discretion (the "Project Approvals") ,except for the issuance by MassHousing

of the so-called "Letter of Final Approval" required to be issued in accordance with 760 CMR 56.04(7) which shall be obtained prior to application for a building permit . For purposes hereof, "final" shall mean that any applicable appeal period has expired without an appeal having been taken thereto, or if any such appeal has been taken, then such appeal has been dismissed or otherwise resolved to Developer's reasonable satisfaction.

(ii) *Financing Commitment.* A firm commitment shall have been obtained by Developer from one or more institutional lender(s) or other funding sources (the "Funding Source"), , without conditions that cannot readily, or at the time of the Closing be anticipated to, be met, to purchase the Property, and to design, construct and operate the Project ("Project Financing");

(iii) *Plans and Specifications.* The Developer shall deliver and the Owner shall be entitled to copies of all plans, specifications, approvals, contracts and other matters developed as part of the Development Services, and the Purchase Agreement shall provide for proper assignment in the event of termination of this Agreement prior to completion of the Project upon terms and conditions satisfactory to both Owner and Developer.

(iv) *Construction Contract, and Construction Schedule.* A fully executed Construction Contract, including an agreement related to construction costs dictated by the bid from the selected general contractor, and Construction Schedule shall be provided to Owner;

(v) *Construction Budget.* Project construction budget shall be agreed to by Owner and Developer, based upon the costs dictated by the bid to be awarded to the selected general contractor in accordance with the process in paragraph six (6),

(vi) *Common Driveway Easement Agreement.* Evidence of a fully executed common driveway easement agreement between the Owner and the record owner of real property known and numbered as 288 Maynard Road, which shall be fully assignable to Developer without condition, shall be delivered to the Developer.

(vii) The deadlines set forth in Section 1(e)(i) through (vi) shall be extended for certain defined "Force Majeure" events and otherwise for good cause, all of which shall be described in the Purchase Agreement.

f. Owner agrees to assist the Developer and Developer agrees to assist the Owner in the following manner.

i) Advising the Developer with respect to design and to scope of Project;

ii) Assisting the Developer in the compliance of all conditions of the Comprehensive Permit;

iii) Developer applying for and obtaining Project Financing to carry out construction of the Project;

- iv) Interviewing, selecting, and advising with respect to the hiring of an independent general contractor to undertake construction of the Project;
 - v) Consulting and negotiating with community and civic leaders and organizations in order to construct the Project in accordance with the Comprehensive Permit;
 - vi) Negotiating and coordinating with Town, State, and Federal officials regarding construction of the Project in accordance with the Comprehensive Permit and to cooperate in the sale of the three residential units to qualified persons;
 - vii) Assisting the Developer in obtaining a Letter of Final Approval from MassHousing as described above;
 - viii) Assisting the Owner in performing all its obligations relating to any agreement entered into with any governmental body or agency relating to the terms and conditions of construction of the Project;
 - ix) Preparing and submitting to the Owner such reports relating to the Project as the Owner may reasonably require; and
 - x) Negotiating and enforcing all contracts, actions and arrangements which must be made or carried out, and doing all other things which are reasonably necessary or convenient in connection with the Project.
 - xi) Conducting marketing and lottery for all units by Owner including preparing final Affirmative Marketing Plan, obtaining all approvals from state agency, preparing outreach materials, placing ads in appropriate papers, qualifying applicants, and educating buyers.
 - xii) Providing Monitoring Services for affordability requirements by Owner, subject to approval by MassHousing.
 - xiii) Reviewing and approving all documents related to the formation of the proposed condominium association for the Project.
- g. After receipt of the second payment by the Owner to the Developer of the Development Subsidy described in section 5, the Developer hereby agrees to assign the "Work Product" (defined below) to the extent said Work Product is assignable, but said assignment shall only be effective upon the earlier of the date of termination of this Agreement as a result of Developer's default and failure to timely cure, or the date of Project completion, all as provided under Paragraph 4 herein (the "Effective Date"). Upon the Effective Date of said assignment, the Developer shall deliver to the Owner a copy of all plans, specifications, approvals, contracts and other matters developed by or on behalf of Developer as part of the Development Services, including electronic files (but excluding any working drafts or privileged, internal, proprietary, or marketing materials, any internal financial projections and all other proprietary matters) as Developer shall determine in its reasonable discretion (collectively, the "Work Product"). All of the Work Product shall be delivered by Developer to Owner without any warranty,

express or implied, as to accuracy or completeness; it being agreed and understood by Owner, that unless Owner retains any such third party directly, such third party shall be released from claims brought by Owner resulting from alleged errors or omissions.

2. **Level of Service.** Developer shall use reasonably diligent efforts at all times in furnishing or performing such services to promote and advance the best interests of the Owner to the end that the Project shall be constructed, to the extent practicable, in an economical and efficient manner and in accordance with Project Approvals. Construction activities shall be performed in accordance with the approved schedule as required in paragraph 1(e)(iv) above and subject to paragraph 1(e)(vii) above.
3. **Independent Contractor; Third Party Contractors.** The Developer shall at all times be an independent contractor and not an employee of the Owner.
4. **Termination.** This Agreement shall terminate on the date of final completion of the Project, as evidenced by the last unit sold in the Project. This Agreement may be terminated by the Owner at any time prior to such final completion for Developer's failure to perform or breach of obligations upon thirty days' written notice by Owner to Developer, and if Developer fails to cure such failure or breach within ninety (90) days after receipt of said notice. This Agreement may be terminated by the Developer at any time prior to such final completion due to Owner's failure to perform, or breach of obligations, upon thirty days' written notice by Developer to Owner, and if the Owner fails to cure such failure or breach within ninety (90) days after receipt of said notice. After termination of this Agreement as a result of default of Owner, the Owner shall remain liable to the Developer only for any portion of the "Development Subsidy" (as defined in Section 5 below) earned by Developer up to the date of the notice of failure to perform or breach of obligations, and upon adequate documentation of costs to that date.
5. **Development Subsidy.** As compensation for the Development Services, the Owner shall pay to Developer a subsidy ("Development Subsidy"), in the amount of \$440,000, which shall be due and payable as follows:
 - a) \$120,000 upon signing of this Agreement;
 - b) \$ 80,000 upon submission of Application for Letter of Final Approval to MassHousing;
 - c) \$ 40,000 upon execution of the Final Agreement as defined in section 6(h) below;
 - d) \$120,000 upon delivery, acceptance and recording of a quitclaim deed to the Property pursuant to a Purchase and Sale Agreement to be signed;
 - e) \$50,000 upon issuance of the first certificate of occupancy in the Project;
 - f) Final payment upon last unit sold to a third party buyer, unless no third party buyer purchases the last unit sold within 180 days after the construction of said last unit is completed, and diligent efforts to sell the last unit have been undertaken by the Developer.

6. **Approved Budget Process.** In order to ensure that either the "Project Budget" (as defined under paragraph 6(e) below), or if applicable, the "Amended Budget (as defined under paragraph 6(h) below), is approved by the Owner and Developer prior to execution of a Construction Contract, and once construction has commenced, in order to ensure that Project costs are examined to ensure that such Project costs do not exceed the Project Budget (or Amended Budget) throughout the Project construction process ("Cost Overruns"), the Owner and Developer agree to implement the following process:
- a) Developer prepares Project bid plans and specifications for review and written approval by the Owner;
 - b) Upon Developer's receipt of Owner's written approval, Developer identifies at least three prospective general contractors having the requisite experience to complete the Project ("bidders"), and Owner may identify additional prospective general contractors to which bid materials may be distributed by Developer;
 - c) Upon Developer's receipt of Owner's written approval of at least three prospective bidders, Developer distributes bid documents to no less than three of the approved prospective bidders;
 - d) Upon receipt of responses to Project bid requests, Developer distributes a copy of the responses from each bidder to Owner for review;
 - e) After consultation with the Owner, the Developer may select and enter into a contract with Developer's preferred bidder at any time during the process described in this Section 6, provided that the preferred bidder's projected costs do not exceed the amount shown as "Hard Costs Total" on the Sudbury proforma version 25 dated 10/25/10 (attached as Exhibit A) unless otherwise jointly agreed to by Owner and Developer ("Project Budget");
 - f) If either the Developer is not satisfied with one or more of the bids, or if one or more of the bids is in excess of the amount of the Project Budget, the Developer shall consult with, and propose to, the Owner a strategy for cost reduction/specification modification in an attempt to bring said costs to a level at or below the amount of the Project Budget, and thereafter, will make a good faith attempt to negotiate reduced Project costs and/or a reduced scope and/or a modified specifications with one or more bidders with the objective of bringing said costs to at or below the amount of the Project Budget, and with the objective of providing alternative specifications which are deemed as adequate substitutes for the original specifications proposed (the "Bid Negotiations");
 - g) Upon completion of Bid Negotiations, the Developer will consult with Owner concerning the results of the same, shall identify the remaining bidder(s) and for each remaining bid as well as Developer's preferred bidder (the "Preferred Bidder"), shall identify the amount (if applicable) each bid exceeds the Project Budget, along with any modified specifications designed to reduce Project costs, as well as a proposed revised budget and set of specifications for the Project with the goal of selecting the lowest eligible and

responsible bidder based upon costs, proposed final specifications and other factors described in the bid package;

- h) If Owner consents to the Developer's selection of the Preferred Bidder (including the final amended budget which exceeds the Project Budget (the "Amended Budget") and specifications contained within a final contract), then Developer shall proceed to finalize the terms of a contract, and as a precondition to the Developer executing a final contract with the Preferred Bidder, the Owner shall agree to fund the Amended Budget (the "Final Agreement").
- i) If the Owner does not consent to the Developer's selection of the Preferred Bidder because the bidder costs exceed the amount of the Project Budget, then Developer may elect to either terminate this Agreement (upon which time the Developer shall be reimbursed to the amount of Project Subsidy earned to date in accordance with section 5, and thereafter, this Agreement is declared null and void and of no further force and effect), or the Developer may agree to assume said cost overage and proceed to execute a contract with the Preferred Bidder.
- j) Upon execution of the Final Agreement, the Developer shall proceed to construct the Project.
- k) Should construction commence, and thereafter, the costs of construction described in the Project Budget or Amended Budget, as appropriate, be exceeded through no fault of the Owner (the "Cost Overrun"), then the Developer shall assume such Cost Overrun to the extent not paid for by or through the Preferred Bidder or other source, including Owner approved cost overruns.
- l) On the other hand, should construction commence, and thereafter, the costs of construction described in the Project Budget or Amended Budget, as appropriate, be exceeded as a result of the fault of the Owner (the "Cost Overrun"), then the Owner shall assume such Cost Overrun to the extent not paid for by or through the Preferred Bidder or other source.
- m) Owner reserves the right to approve changes to the plans and specifications requested by Developer as needed during construction, provided that such approval does not significantly increase costs, and provided that such approval is not unreasonably withheld, delayed or denied.

7. Miscellaneous.

- a) Nothing herein contained shall be construed to constitute any party as the agent of another party, except as provided herein, or in any manner to limit the parties in the carrying on of their own respective business or activities.
- b) All notices provided for herein shall be in writing and transmitted by registered or certified mail postage prepaid, by prepaid courier delivery, or by telecopier to each party at its address as shown on this Agreement, or as changed by notice given to each party.

Each party shall be responsible for notifying the other parties of any changes in its address.

Sudbury Housing Trust: Neighborhood for Affordable Housing, Inc.:

278 Old Sudbury Road 143 Border Street

Sudbury, MA 01776 East Boston, MA 02128

Attn: Beth Rust

Attn: Executive Director

- c) It is the intent of the parties that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be determined in accordance with the provisions of the laws of the Commonwealth of Massachusetts.
 - d) Owner hereby consents to the assignment of this Agreement by the Developer to a related Massachusetts special purpose entity to be created, subject to written notice of same to the Owner, for the sole purpose of owning and developing the Property and Project in accordance with the RFP and the Developer's proposal as modified by the Project Approvals and the terms of this Agreement. Otherwise, the Developer shall not have the right to assign, transfer, sublet, convey or otherwise dispose of any contract which results from this Agreement, or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without written consent of the Owner. Subject to the foregoing, this Agreement shall be assignable by the Owner only with the written consent of the Developer.
 - e) This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. This Agreement shall be binding upon trustees, the heirs, executors, administrators, successors and assigns of the parties hereto. Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.
 - f) This Agreement may be amended only by written instrument executed by all the parties hereto.
8. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one Agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes, without producing or accounting for any other counterpart thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

OWNER: SUDBURY HOUSING TRUST



Name: Michael C. Fee

Title: Chairperson

NOAH: NEIGHBORHOOD OF AFFORDABLE HOUSING, INC., a
Massachusetts charitable corporation

By: 

Name: _____

Title: _____

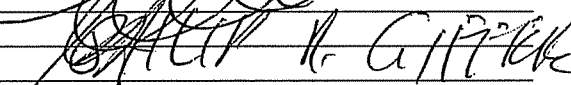




EXHIBIT A



Sudbury Housing
278 Maynard Road
Developer: NOAH

10/25/2010

3 UNITS

Assumptions:	80%	100%	Total units	# bedrooms	Net s.f.
One bedroom	0	0	0	0	0
Two bedroom Town House	0	2	2	4	1260
Two bedroom Flat	1	0	1	2	1015
Storage	0	0	0	0	0
Total Net Area	1	2	3	6	3,535
Gross Area					3,607

Square Footage Summary	Total sq ft	Cost sq. ft.	Hard Cost
Construction	3,535 \$	- \$	-
Storage	0 \$	- \$	-
General Contractor	0% \$	- \$	-
Total	3,535 \$	- \$	-

Acquisition Cost \$ 310,000 \$ 103,333 Expended 23%

CONSTRUCTION HARD COSTS	PER UNIT	PER SQ FT
Site preparation - septic	\$ 134,100 \$ 44,700	\$ 37.93
Direct construction budget	\$ 388,002 \$ 129,621	\$ 110.00
Green Additions	\$ - \$ -	-
Construction contingency 60%	\$ - \$ -	-
Hard Costs Total*	\$ 549,082 \$ 183,021	\$ 155.32

SOFT COSTS	PER UNIT	Expended to Date
Architect new contract plus expended	\$ 108,268 \$ 36,030	\$ 41,168
Permits	\$ - \$ -	-
Owner's Rep	\$ - \$ -	-
Engineer estimate of expended + new	\$ 85,000 \$ 28,333	\$ 59,690
Bond Premium	\$ - \$ -	-
Legal	\$ 35,000 \$ 11,607	\$ 6,053
Legal for Lender	\$ 7,500 \$ 2,500	-
Title & Recording	\$ 6,000 \$ 2,000	-
Accounting & Cost Certification	\$ 10,000 \$ 3,333	-
Appraisal	\$ 3,000 \$ 1,000	-
R.E. Taxes	\$ - \$ -	-
Insurance	\$ 6,000 \$ 2,000	-
Marketing Materials/Ads	\$ - \$ -	-
Marketing - lottery units	\$ 7,500 \$ 2,500	-
Contingencies Loan Interest	\$ 31,200 \$ 10,400	-
Inspecting Engineer	\$ 6,750 \$ 2,250	-
Financing Fees	\$ 7,000 \$ 2,333	-
Development Green Consultant	\$ 5,330 \$ 1,777	\$ 5,330
4CB Permits	\$ 1,000 \$ 363	\$ 1,000
Monitoring Fee	\$ 1,000 \$ 333	-
Soft cost contingency	\$ 16,320 \$ 5,100	-
Soft Cost Total	\$ 335,938 \$ 111,979	\$ 113,021
Developer Overhead + Profit	\$ 150,000 \$ 50,000	\$ 54,000
	\$ - \$ -	-
	\$ 150,000 \$ 50,000	\$ 167,921

SOURCE OF FUNDS

SALES PRICES		
0 1-bedrm units at 80% AMI	\$ -	-
0 1-bedrm unit at 100% AMI	\$ -	-
1 2-bedrm unit at 80%	\$ 150,000 \$ 150,000	price increase based on IIR
2 2-bedrm unit at 100%	\$ 445,000 \$ 222,500	price increase based on IIR
TOTAL SALES PROCEEDS	\$ 595,000 \$ 198,233	
3 Trust Funds	\$ 440,000 \$ 148,667	Additional funds to stay within \$250,000 limit
3 Trust Funds for Land purchase	\$ 310,000 \$ 103,333	
TOTAL GRANT FUNDS	\$ 750,000 \$ 250,000	
TOTAL REVENUE	\$ 1,345,000 \$ 448,233	

Plus/Minus (Gap) \$0

Sudbury proforma v25 (2).xls

10/25/2010