Westborough Affordable Housing Trust

Request for Proposal
RFP23-0400

Sale and Development of
3 Baylor Ave.
Westborough, Massachusetts 01581

Version 1.0
April 10, 2023

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Section 1: Introduction

The Westborough Affordable Housing Trust (the "Trust"), a duly existing Massachusetts Municipal Affordable Housing Trust organized pursuant to G.L. c. 44, §55C and acting as a board of the Town of Westborough, Massachusetts (the "Town"), is soliciting proposals for the sale of the property located at 3 Baylor Avenue, Westborough, Massachusetts, identified on Assessor's Map 34, Parcel 92, Lot 0 (the "Property"), to a developer that will construct a single-family residence thereon and convey the Property, with the residence, to an income-qualified household. The project includes the demolition and removal of the existing dwelling on the Property, which is not in habitable condition, and the construction of a new dwelling.

The purpose of this Request For Proposals ("RFP") is to select a respondent with experience in developing affordable housing. The Town conveyed the Property to the Trust with the intent to create affordable housing. The Trust will convey the Property to the successful proposer for the construction of an affordable dwelling thereon, which shall be sold to a qualified homebuyer whose income does not exceed 80% of median family income for area that includes the Town of Westborough. The dwelling unit is to be included in the Town of Westborough's Subsidized Housing Inventory ("SHI") that is maintained by the Department of Housing and Community Development ("DHCD").

The Trust is offering the Property for sale at a nominal cost of one (1) dollar. The Trust is committed to the creation of permanent affordable housing on the Property. Understanding the financial challenges of a project of this scale, the Trust is offering the Property at a nominal cost with the goal of creating a financially feasible development.

Proposers must deliver one (1) original and eight (8) copies of their proposals to the Trust so that they are **received by the Trust on or before 11:00 a.m. (ET) on Friday, June 9, 2023**. Proposals should be mailed to the following address:

Westborough Affordable Housing Trust
c/o Town Manager's Office
34 West Main St
Westborough, MA 01581

Section 2: Instructions to Proposers

This project is being Electronically Bid (E-Bid). You can register to become a bidder (free) online at www.BidNetDirect.com. For assistance, contact BidNetDirect.com at 800-835-4603.

The RFP and other bid documents will be available online beginning at **9 AM on Monday April 10, 2023** at https://www.bidnetdirect.com/massachusetts/townwestborough. All vendors must have an active online account on www.bidnetdirect.com to acquire documents, receive project notifications, submit questions and receive addenda. It is the responsibility of prospective proposers to check www.BidNetDirect.com for new information via any addenda to this solicitation. **Any addenda issued will be emailed to all plan holders registered with BidNetDirect.**

Questions regarding this RFP, including requests for interpretation and/or supplemental information, must be received by the Trust no later than 4:00 p.m. on Thursday May 18, 2023. Questions should be directed to Edward Behn, Chair, Westborough Affordable Housing Trust, and mailed to the Trust at 34 West Main Street, Westborough, MA 01581, or sent by e-mail to ebehn@westboroughhousingtrust.org.

Responses to questions and interpretation or supplemental information will be issued in the form of written addenda to the RFP and will be sent by e-mail to all persons on record as having received the RFP on BidNetDirect.com.

Proposals submitted to the Trust shall be securely kept and shall remain unopened until the proposal deadline and the opening of proposals.

Proposals, once submitted may, upon written request of the proposer received prior to the proposal deadline, be withdrawn or amended. If amended, resubmission of the proposal shall comply with all requirements of this RFP.

All proposals shall be signed in ink by the proposer. If the proposer is a corporation, the authority of the individual signing shall be endorsed upon, or attached to, the proposal and certified by the clerk of the corporation.

By submitting a proposal in response to this RFP, the proposer shall be deemed to have certified that no officer, agent, or employee of the Town or the Trust has a direct or substantial financial interest in the procurement, that the proposal is submitted in good faith and exclusively on proposer's own behalf, without fraud, collusion or connection of any kind with any other proposer for the same work or with any undisclosed party. Proposer will be required to execute the "CERTIFICATE OF NON-COLLUSION" attached to this RFP.

All proposals submitted shall be binding upon the proposer for a minimum period of one hundred fifty (150) calendar days following the opening of proposals.

Negligence on the part of the proposer in preparing the proposal confers no right of withdrawal after the proposal deadline. The Trust does not assume any responsibility for errors, omissions, or misinterpretations, which may have resulted in whole or in part from the use of incomplete proposal documents. Any proposer finding an ambiguity, inconsistency, or error shall promptly notify the Trust.

Schedule:

RFP Published	**April 10, 2023**
Pre-Submittal Meeting and Site Walk-Through:	**May 3, 2023, at 10:00 AM**
Respondent Questions and Requests for Supplemental Information Due:	**May 18, 2023, at 4:00 PM**

Answers to Respondent Questions and Requests for Supplemental Information Provided:	**May 30, 2023**
RFP Responses (Proposals) Due:	**June 9, 2023, at 11am**

Regardless of the cause of delay, proposals received after the due date and time will not be considered. The responsibility for assuring the receipt of proposals before the specified due date and time is incumbent upon the proposers.

Upon the opening of the proposals, the Board of Trustees of the Trust (the "Trustees") may: request clarification or additional information from such proposers as the Trustees deem appropriate and interview some or all of the proposers in an open meeting of the Trustees. All proposals will be evaluated based on the criteria established in this RFP. Once the Trustees have completed their evaluation, they will announce the evaluation results and award the sale of the Property in an open meeting of the Trustees.

The Trust reserves the right to reject any and all proposals, to negotiate any and all non-mandatory contract terms with the successful proposer, or to cancel this procurement at any time, without recourse, if it is in the Trust's interest to do so.

The purpose of this RFP is to select a proposer who can demonstrate the experience and capacity necessary to develop the project in conformance with the Trust's Goals and Guidelines, as detailed in Section 6, meet the Minimum Evaluation Criteria described in Section 11, and best meets the Comparative Evaluation Criteria in Section 12.

Please note that in accordance with Massachusetts General Law Chapter 30A, Section 21(a), Paragraph 6, the Trustees' discussions of responses related to the purchase, exchange, lease, or value of real estate may be conducted in Executive Session if the Chair declares that an open meeting may have a detrimental effect on the negotiating position of the Trust.

The Trust reserves the right to modify any specifications and submission requirements associated with the proposal and the scope of the project.

All proposals must be submitted on the forms provided or on attachments approved in advance by the Trust.

All information concerning materials, warrantees, guarantees, complete plans, and complete specifications are due at the time of the proposal opening.

The Trust makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP, or of the documents, records, and other information and data concerning the Property. Prospective developers must undertake their own review and analyses concerning physical conditions, environmental conditions, applicable zoning, required permits and approvals, and other development and legal considerations.

Section 3: Pre-Submittal Meeting and Site Visit

There will be a pre-submission briefing at **10:00 am on Wednesday May 3, 2023**, at the Westborough Town Hall at 34 W. Main Street, Westborough, MA 01907. The Town Hall meeting will be followed by a site visit of the Property. If the Town Hall is closed at the time of the pre-submission briefing due to uncontrollable events, the briefing will be postponed until the next normal business day. **Interested proposers are urged to attend the pre-submission briefing and site visit.**

Section 4: Project Introduction

The Trust invites qualified developers to submit proposals to develop an affordable home on the Property. The proposer shall submit an application to the Department of Housing and Community Development ("DHCD") to include the home as a Local Action Unit ("LAU") under DHCD's Local Initiative Program ("LIP").

Under LIP, the Trust will convey the Property to a developer subject to a Regulatory Agreement entered into with DHCD and the Trust. Once the home has been constructed by the developer, the developer will convey Property to a household earning no more than eighty percent (80%) of the median income of the metropolitan statistical area that includes the Property and subject to a permanent deed rider, maintaining the affordability of the Property in perpetuity. A copy of the template Regulatory Agreement, the deed rider and DHCD's Guidelines are available upon request.

Section 5: Property Description/Site Characteristics

The Property consists of one single family home located at 3 Baylor Avenue, Westborough, MA, as labeled on the attached plan in the Appendix (Assessor Parcel ID: 34-92-0), and contains approximately .201 acre of land.

The Town acquired the Property pursuant to a tax title taking. The Trust acquired the property from the Town by vote of the Select Board in open meeting on July 19, 2022, per the authority granted by Article 22 of the 2022 Annual Town Meeting held on March 8, 2022. For the Trust's title, see deed recorded with the Worcester South District Registry of Deeds in Book 66552, Page 337. A copy of the deed is attached.

Survey: The Property has been surveyed by the Trust. All grading and construction are assumed to be outside the jurisdiction of the Conservation Commission; the Trust anticipates that an Order of Conditions will not be required, but proposers are expected to verify this assumption.

Water: The Property is served by public water

Sewer: The residence has a septic system, which has not been examined or tested for Title V compliance. The Trust expects the septic system is nonfunctional. A stub exists for Town sewer but may need to be repaired or replaced before being put into service.

Utilities: The Property is served by National Grid for electricity. The site does not have natural gas service.

The Trust believes that the exterior siding and interior floor tiles contain asbestos; these items have not been tested.

The Trust has not tested the paint, interior water pipes, or the water feed line for lead. The Trust has not tested the Property for any hazardous materials.

Section 6: Zoning and Permitting

The Property is located in a Residential R zoning district and is existing non-conforming. Reference zoning bylaws: https://www.town.westborough.ma.us/sites/g/files/vyhlif5176/f/uploads/zoning_bylaws_updated_through_2020_atm.pdf. Replacement may require variances. The Trust will cooperate with and support the Respondent in order to secure needed permits.

NOTE: The Select Board for the Town of Westborough voted to waive all permit fees under the control of the Select Board (i.e., building permits and inspections) and sewer connection and privilege fees associated with this project (January 24, 2023).

Section 7: Building Design and Development Guidelines/Specifications

The Trust has the following goals for the house to be developed on the Property:

1. The successful proposer is expected to construct a single-family home having two (2) or three (3) bedrooms, 2 full baths, slab on grade, and contain a minimum of 1,150 square feet. Proposers must include a conceptual site plan and building design with their proposals.

2. The successful proposer will use materials and design features (window trims, elevation detail) that blend in well with the neighborhood, as determined by the Trust in its reasonable discretion. This should be included in the project budget.

3. The successful proposer will install Energy Star® rated electric appliances including Washer, Dryer, Stove/Oven, Microwave, Refrigerator/Freezer, Dishwasher, and Disposal to be included.

4. The Trust prefers “green” building designs especially those which will reduce on-going utility and other expenses in the future.

   (a) Minimum green building features include:

i) "Heat pump" whole home heating and cooling system (air transfer or geothermal)
ii) Provision for electric vehicle charging (i.e., 240V Outlet)
iii) Roof-top Solar Panels
iv) Compliance to stretch energy code

(b) Preferred, optional, green building features include:

i) Tankless hot water service for kitchen and bathrooms
ii) Net-Zero or Net-Zero Plus energy profile
iii) Battery backup with at least 12 hours of emergency power for essential systems (heat, hot water, refrigerator/freezer, microwave, Internet, and limited lights)

5. The successful proposer will be responsible for the appropriate removal and disposal of any hazardous materials, such as asbestos and lead.

6. The successful proposer should identify cost effective construction methods in its proposal. The Trust is open to prefabricated (manufactured) housing as well as traditional on-site framing and construction.

7. The Trust will convey the Property subject to a Regulatory Agreement and/or a separate affordable housing restriction acceptable to the Trust/the Town and DHCD, which must survive foreclosure or deed given in lieu thereof.

8. The successful proposer shall be responsible for taking any and all steps, at its expense, to include the dwelling constructed on the Property in DHCD's Subsidized Housing Inventory ("SHI"), including preparing an Affirmative Marketing Plan acceptable to DHCD, and selling the Property to a qualified household having an income equal to or less than 80% of the area median income for the metropolitan statistical area in which Westborough is located (the "AMI"), and meet other asset and other eligibility requirements set forth in DHCD's Guidelines (an "Eligible Purchaser"). Further, the Property must be conveyed subject to a perpetual deed rider approved by the DHCD and the Trust/the Town in accordance with G.L. c.184, §§31-33, and survive foreclosure. Proposers are strongly recommended to review DHCD's 40B Comprehensive Permit Guidelines that are available online to determine what steps are required to include the Property in the SHI, including without limitation, affirmative marketing and tenant selection processes.

9. Construction must commence within twenty-four (24) months of the date that the Trust conveys the Property to the successful proposer.

10. The successful proposer will provide a one (1) year warranty covering the cost of materials, labor, and other expenses resulting from any defects in materials or workmanship, will respond to requests under this warranty promptly, and make commercially reasonable efforts to repair, replace, or otherwise correct the defect as soon as practicable.

Section 8: Terms of P&S and Conveyance

The Trust is the record owner of the Property. The Trust will convey the Property to the successful proposer chosen through this RFP process. The Trust will enter into a mutually satisfactory purchase and sale agreement ("P&S") with the successful proposer within thirty (30) days of awarding the sale of the Property. At the Trust's option, the P&S may provide that the Trust will convey the Property to the successful proposer only when the proposer has secured all necessary financing and permits. However, the Trust may grant exceptions if the successful proposer intends to raise funds through donations or construct the dwelling with volunteer labor, in the Trust's sole and absolute discretion.

It is understood, agreed upon and made a part hereof, and shall be a part of the P&S, that the P&S entered into between the Trust and the successful proposer shall not be assigned or assignable by way of sub-contract or otherwise, unless or until the Trust shall have first assented thereto in writing.

The closing must occur within ninety (90) days from the date on which the parties enter into the P&S, which may be extended by the Trust for good cause.

The Property shall be conveyed subject to a Land Development Agreement ("LDA") that will incorporate the provisions hereof and specify how the developer will develop, construct and operate the project. The parties shall sign the LDA at the closing and record the same prior to the recording of any mortgages or other liens. The LDA shall include, but is not limited to, the following terms, and be attached to and be a part of the purchase and sale agreement:

1. The developer shall, at its sole cost and expense, construct a new single-family residence on the Property (the "Project"). The developer shall commence the Project within sixty (60) days from the date on which the deed from the Trust to the developer is recorded with the Registry and complete said construction one (1) years from said date on which the sale of the Property to the successful proposer. Alternatively, if the developer is a nonprofit that intends to obtain donations and use volunteer labor to construct the dwelling, the construction may commence within two (2) years from the sale of the Property but must be completed no later than three (3) years from the date of sale. The Trust may grant exceptions as warranted.

2. The Property shall be used for affordable housing purposes in perpetuity. The dwelling shall be sold to a qualified homebuyer earning no more than eighty percent (80%) of the area median income at a price acceptable to DHCD and subject to an affordable housing deed rider, as set forth herein.

3. The developer shall incorporate a local preference program to the extent permitted by law.

4. Until the Project has been substantially completed, the developer shall not convey or transfer the property or any portion thereof to any person or entity.

5. The developer is expected to engage the services of a monitoring agent acceptable to the

Trust to market the unit and conduct a lottery to find the Eligible Purchaser.

6. The developer shall obtain the Trust's approval of project plans and specifications, including, without limitation, review of plans for substantial compliance with the RFP, and any material changes thereto

7. Any and all mortgages and other liens on the Property shall be subordinate to the LDA.

Section 9: Proposal Submission Requirements

Each proposal must be submitted in a sealed envelope clearly marked "RFP: 3 Baylor Avenue along with the proposing proposer's name and address, and eight (8) copies of the proposal package.

All Proposals shall include, as a minimum, the following information:

1. Proposer's name, street address, mailing address, and Federal Tax ID Number (FEIN)

2. Proposer's legal structure (corporation, limited liability corporation, partnership, non-profit corporation, etc.), noting relevant non-profit (501c3) or social enterprise (501c4) designation, if applicable.

3. Name of contact person, including phone, fax, and email information. Name and address of all partners, officers, and directors and any other person with an ownership interest greater than 5%.

4. Names of proposer's personnel who will be assigned to manage the Project including any licenses, registrations, and certifications.

5. Names of any Trust or Town officials or employees who are related to any of the partners, officials or directors of any firm working on the Project, or others who have any ownership interest in the firm.

6. Forms 1 through 4. Proposers are required to fill out and sign Forms 1 through 4 (the "Required Forms") attached hereto as Appendix E:

    a. *Form 1, Certificate of Tax Compliance*: required under G.L. c. 62C. §49A, in which the proposer certifies that he or she has complied with all laws of the Commonwealth of Massachusetts relating to taxes.
    b. *Form 2, Certificate of Non-Collusion*: required under G.L. c. 30B, §10, in which the proposer states that this proposal is made in good faith without fraud or collusion or connection with any other person submitting a proposal signed and dated by the proposer.
    c. *Form 3, Certificate of Authority*: in which the proposer, if an entity, identifies the names and addresses of the managers, directors, officers, and/or other parties authorized to act on behalf of the entity.

d. *Form 4, Real Property Disclosure Statement*: required under G.L. c. 7C, §38, in which the proposer identifies the parties who will have a legal or beneficial interest in the Property and whether any such party is a state or local employee.

7. Evidence of Good Standing with respect to corporate filings and, if applicable, non-profit status, if applicable

8. Evidence that the respondent is properly licensed and insured, and that key personnel hold appropriate licenses and certifications.

9. Certify that the respondent is not involved in litigation or under investigation for any matters that would materially affect their ability to perform under the Land Development Agreement.

10. Demonstration that the proposal meets the Minimum Criteria in Section 10 below.

11. Demonstration of how the proposal meets the Comparative Evaluation Criteria in Section 11 below.

12. Project Budget, including the delineation of any in-kind donations, cash requirements and project financing.

13. Conceptual site plan, landscape plan and exterior building plans and elevations for the new dwelling.

14. Proposed floor plan depicting configuration, size and layout for the dwelling unit.

15. Discussion of the proposer's ability to proceed (resources, funding, etc.) with the Project upon Award.

16. If available, a draft affirmative marketing plan (or sample from a recent, similar project), compliant with DHCD regulations, including identifying internal resources and certifications and/or a relationship with an authorized third-party. If not submitted with the proposal, a marketing plan is expected at closing.

17. If available, buyer selection plan and description that outlines how the respondent will comply with DHCD guidelines with regard to income, assets and qualified home buyer status and permanent affordable deed restriction, directly or via an authorized third-party. If not submitted with the proposal, the buyer selection plan and lottery process is expected at closing.

18. A list of recent similar projects, including a brief description of the project, location, costs, and date services provided. Identify projects as completed or underway. Photographs or other visual representations of recent projects should be included where possible.

19. Contact name, phone number, email address and project name for 3 references for similar projects.

20. Proposed scope and proposed timetable and schedule for completion of the Project as outlined in the above.

21. Draft funding plan that identifies Project costs, estimated sales price, and other sources of funding including, but not limited to:

    a. Value of the property transfer
    b. Tax credits
    c. Pre-permit financing from the Westborough Affordable Housing Trust or other subsidizing entity
    d. Financing via Mass Housing, Mass Housing Finance Agency, or other subsidizing entity

22. Explain how the organization works with and involves the community during construction with respect to:

    a. Project awareness
    b. Abutter and neighborhood relations
    c. Permitting
    d. Marketing

23. Other information which will document the respondent's capabilities and qualifications for the project.

Section 10: Proposal Submission Details

Proposals must deliver one (1) original and eight (8) copies of their proposals in a sealed envelope clearly marked "**RFP: 3 Baylor Avenue**" along with the proposing proposer's name and address, to the Westborough Affordable Housing Trust, c/o Town Manager's Office, 34 West Main Street, Westborough, MA 01581, so that they are **received** by the Trust **on or before 11:00 a.m. (ET) on Friday, June 9, 2023.**

Proposal corrections, modifications, or withdrawals may be submitted until the proposal deadline; any such shall be in writing in a sealed enveloped appropriately labeled and delivered as indicated above.

No proposer may withdraw his or her proposal for a period of one hundred fifty (150) days after the date set for the opening thereof.

No more than one proposal from the same proposer, whether or not the same or different names, shall be considered. Reasonable proof for believing that any consultant is interested in more than one proposal for the work contemplated shall cause the rejection of said proposals made by said proposer, directly or indirectly.

A proposal may offer more than one design option for the proposed unit, provided the options are materially different in design and/or cost.

While the Trust believes that the information provided in this RFP, including all exhibits and addendums, if any, is accurate, the Trust makes no representation or warranty, express or implied, as to the accuracy and completeness of the information in this RFP. The proposer assumes all risk in connection with the use of the information and releases the Trust from any liability in connection with the use of the information provided by the Trust. Further, the Trust makes no representation or warranty with respect to the Property, including without limitation, the value, quality or character of the Property or its fitness or suitability for any particular use and/or the physical and environmental condition of the Property. The Property will be sold in its "AS-IS" condition.

Each proposer shall undertake its own review and analysis (due diligence) concerning the physical and environmental condition of the Property, applicable zoning, and other land use laws, required permits and approvals, and other development, ownership, and legal considerations pertaining to the Property, and the use of the Property, and shall be responsible for applying for and obtaining any and all permits and approvals necessary or convenient for the proposer's use of the Property. All costs and expenses of purchasing and developing the Property, including without limitation, all costs of permitting and improvements, shall be the sole responsibility of the successful proposer.

Material submitted in response to this RFP will not be considered confidential under the terms of the Massachusetts Public Records Law.

Section 11: Minimum Evaluation Criteria

Proposers must satisfy the following minimum requirements in order for the Trust to evaluate proposals based on the Comparative Criteria set forth in Section 12

1. Letter of interest signed by the proposer's authorized representative(s).

2. Timely submission of the proposal and required attachments.

3. Submission of a complete proposal, *i.e.,* a proposal that addresses all requirements of this RFP and contains all completed forms and certifications attached to this RFP.

4. Minimum of three (3) years of experience in developing and/or rehabilitation of affordable homeownership units, and development of at least one (1) LIP-eligible homeownership unit on land purchased or leased from a municipality in the Commonwealth of Massachusetts in the past three (3) years.

Section 12: Comparative Evaluation Criteria

Proposals meeting the minimum criteria will then be evaluated on the following additional comparative evaluation criteria, which will be rated on scale of highly advantageous, advantageous or not advantageous.

Proposer Experience	**Description: Experience**
Highly Advantageous	The proposer has more than five (5) years of demonstrable experience with successful affordable housing projects of this nature and scope.
Advantageous	The proposer has at least three (3) years of demonstrable experience with successful affordable housing projects of this nature and scope.
Not Advantageous	The proposer lacks demonstrable experience with successful affordable housing projects of this nature and scope.

References	**Description: References**
Highly Advantageous	The respondent is deemed excellent by all references contacted
Advantageous	The work of the respondent is deemed good or excellent by all references contacted
Not Advantageous	The work of the respondent is not deemed good or excellent by any reference, or does not provide 3 appropriate references

Proposer's Financial Capacity	**Description: Financial Plan**
Highly Advantageous	Proposal includes a letter from a prospective lender for the Project and has identified any existing subsidy gaps, has a plan to address those gaps and experience applying for subsidy monies.
Advantageous	Proposal includes a letter from a prospective lender for the Project and has identified any existing subsidy gaps.
Not Advantageous	Proposal includes a letter from a prospective lender for the Project but does not address whether there are any subsidy gaps.

Funding Subsidy	Description: Subsidy Requirement
Highly Advantageous	The Project as proposed does not requires a subsidy from the Trust greater than the value of the property transfer.
Advantageous	The Project as proposed requires a subsidy from the Trust less than 33% of the total project cost. The subsidy may include the value of the property transfer, cash, financing, or other mechanisms. The subsidy from the Trust does not include subsidies or financing from other sources.
Not Advantageous	The project as proposed requires a subsidy greater than or equal to 33% of the total project cost. The subsidy may include the value of the property transfer, cash, financing, or other mechanisms. The subsidy from the Trust does not include subsidies or financing from other sources.

Ability to Proceed	Description: Closing Timeline
Highly Advantageous	The proposer demonstrates the ability to proceed with the fewest contingencies to closing and the Land Development Agreement; the parties are able to complete the closing promptly after the parties enter into the P&S; and the parties are able to commence work promptly after closing.
Advantageous	The proposer identifies the ability to proceed with contingencies to closing and the Land Development Agreement, but which can be reasonably satisfied; the parties are able to complete the closing within a reasonable period of time after the parties enter into the P&S; and the parties are able to commence work promptly after closing. The sale cannot be contingent on the sale or purchase of other property
Not Advantageous	The proposer requires the satisfaction of contingencies that cannot be reasonably be satisfied within a reasonable period of time after the date the parties enter into the P&S and/or is contingent on the sale or purchase of other property.

Ability to Complete Project	Description: Project Timeline
Highly Advantageous	Proposer is able to begin demolition/construction immediately upon closing and complete Project within the projected time frame
Advantageous	Proposer is able to begin demolition/construction within six (6) months of closing and/or complete Project within the projected time frame
Not Advantageous	Proposer is unable to begin demolition/construction within six (6) months of closing, or unable to complete Project within reasonable time period

Zoning/Permitting	Description: Approvals
Highly Advantageous	The Project as proposed can be built with Planning Board approval as an "ANR" project.
Advantageous	The Project as proposed can be built with Planning Board approval as a "friendly 40B" development
Not Advantageous	The Project as proposed requires variances from the Zoning Board of Appeals

Design	Description: Design Elements
Highly Advantageous	The Project as proposed has a design that is similar in style, size, and appearance to the majority of homes in the neighborhood
Advantageous	The Project as proposed has a design that is generally consistent with the majority of homes in the neighborhood
Not Advantageous	The Project as proposed has a design that is not consistent with the majority of homes in the neighborhood

Sustainability	Description: Energy Efficiency Plan
Highly Advantageous	The proposed Project exceeds current stretch building codes for energy efficiency, as adopted by the Town of Westborough, and is designed to be Net-Zero or better energy with respect to energy efficiency
Advantageous	The proposed Project exceeds current stretch building codes for energy efficiency, as adopted by the Town of Westborough
Not Advantageous	The proposed Project meets current stretch building codes for energy efficiency, as adopted by the Town of Westborough

Community Engagement	Description: Company Reputation
Highly Advantageous	The proposer demonstrates extensive experience in community engagement and relationship building
Advantageous	The proposer demonstrates some experience in community engagement and relationship building
Not Advantageous	The proposer demonstrates little or no experience in community engagement and relationship building

Section 13: Selection and Award of Contract

All proposals shall be submitted to the Trust, as and where set forth above, on or before the proposal deadline. Proposals and unsolicited amendments to proposals received by the Trust after the proposal deadline will not be considered, and requests for extensions of time will not be granted. Proposers who mail proposals should allow sufficient time for receipt by the Trust by the proposal deadline. Proposal received after the proposal deadline will be returned to the proposer unopened.

Proposals that meet all quality requirements shall be evaluated based on responsiveness to the criteria, terms and conditions contained in this RFP and its attachments. Failures to follow the instructions, meet the criteria, or agree to the terms and conditions contained in this RFP may be cause for rejection of the proposal as non-responsive.

The Trust shall review and evaluate all proposals received by the submission deadline select a proposer who meets the minimum evaluation criteria and best satisfies the comparative evaluation criteria. Evaluation of the proposals will be based on the information provided in each proposer's submission in accordance with the submission requirements of this RFP, interviews (if any),

references, and supplemental, clarifying information requested by the Trust. The most advantageous proposal from a responsive and responsible proposer, taking into consideration all evaluation criteria set forth in this RFP, will be selected. The Trust will notify all proposers in writing of its decision.

If the Trust cannot enter into a mutually satisfactory P&S with the successful proposer within thirty (30) days from the date of the award notice, the Trust reserves the right to terminate its negotiations with the designated proposer and to pursue negotiations with the proposer that submitted the next most advantageous proposal received from a responsive and responsible proposer in response to this RFP.

The Trust reserves the right to reject any and all proposals, to negotiate any and all non-mandatory contract terms with the successful proposer, or to cancel this procurement at any time, without recourse, if it is in the Trust's interest to do so.

Appendices

Appendix A: Property Map and Assessor's Property Card

Appendix B: Aerial Photograph

Appendix C: Survey

Appendix D: Copy of Deed

Appendix E: Required Forms

- Form 1: Certificate of Tax Compliance
- Form 2: Certificate of Non-Collusion
- Form 3: Certificate of Authority
- Form 4: Disclosure Statement for Transaction with a Public Agency Concerning Real Property

Appendix F: Sample Purchase and Sale Agreement

- Attachment A: Land Development Agreement

Appendix A: Property Map and Assessor's Card

Unofficial Property Record Card - Westborough, MA

General Property Data

Parcel ID 34-82-0
Prior Parcel ID
Property Owner TOWN OF WESTBOROUGH
Mailing Address 34 WEST MAIN ST
City WESTBOROUGH
Mailing State MA Zip 01581
ParcelZoning R

Account Number 0
Property Location 3 BAYLOR AVE
Property Use TAX TITLE NP
Most Recent Sale Date 11/17/2021
Legal Reference 68552-357
Grantor
Sale Price 0
Land Area 0.201 acres

Current Property Assessment

Building Value 56,800 Xtra Features Value 0 Land Value 220,500 Total Value 277,300

Building Description

Building Style RANCH
# of Living Units 1
Year Built 1956
Building Grade AVG. (-)
Building Condition N/A
Finished Area (SF) 1152
Number Rooms 5
# of 3/4 Baths 0

Foundation Type SLAB
Frame Type WOOD
Roof Structure GABLE
Roof Cover ASPHALT
Siding ASBESTOS
Interior Walls DRYWALL
# of Bedrooms 3
# of 1/2 Baths 0

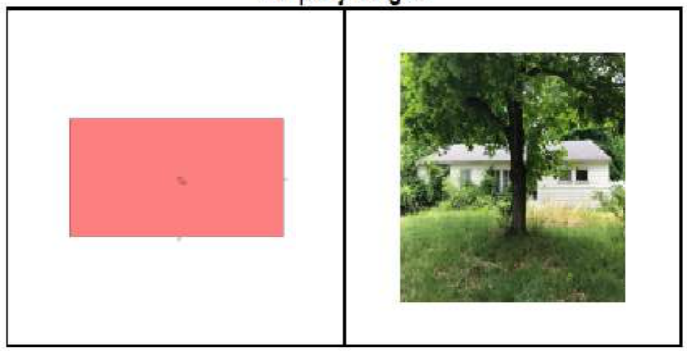
Flooring Type AVERAGE
Basement Floor N/A
Heating Type FORCED H/A
Heating Fuel OIL
Air Conditioning 0%
# of Bsmt Garages 0
# of Full Baths 1
# of Other Fixtures 0

Legal Description

Narrative Description of Property

ssified as TAX TITLE NP with a(n) RANCH style building, built about 1956 , having ASBESTOS exterior and ASPHALT roof cover, with 0 commercial unit(s) and 1 residential unit(s), 5 room(s), 3 bedroom(s), 1 bath(s), 0 half bath(s)

Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranteed.

Appendix B: Aerial Photo

Appendix C: Survey

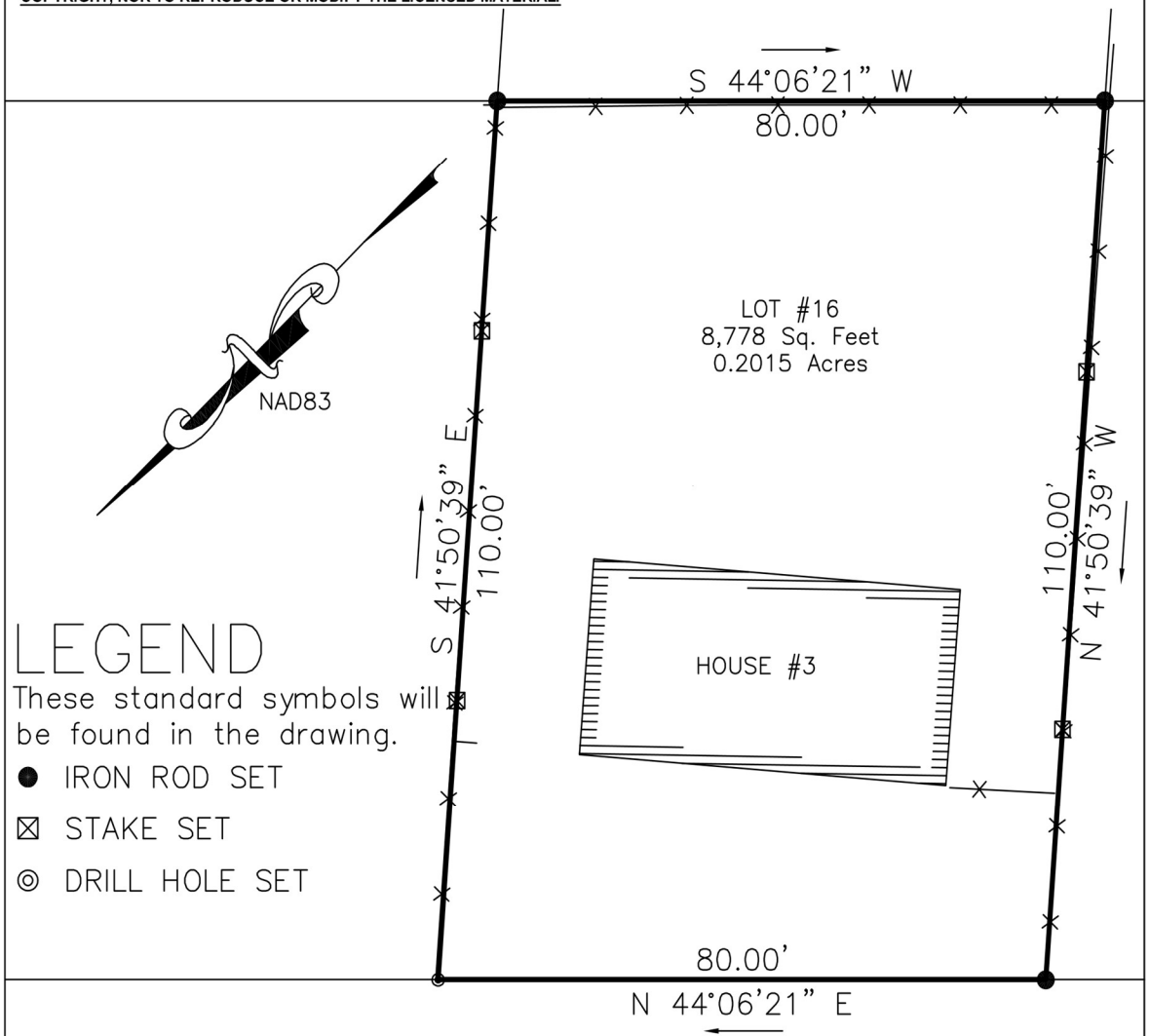
PLAN SHOWING LOT CORNERS SET
PREPARED FOR
WESTBOROUGH AFFORDABLE TRUST FUND
3 BAYLOR AVENUE
WESTBOROUGH, MASSACHUSETTS
NOVEMBER 22,2022
SCALE: 1 INCH = 20 FEET

JARVIS LAND SURVEY, INC
29 GRAFTON CIRCLE
SHREWSBURY, MA 01545
TEL. (508) 842-8087
FAX. (508) 842-0661
KEVIN@JARVISLANDSURVEY.COM

* THE SURVEYOR RETAINS COPYRIGHT TO THE PLAN OF SURVEY, AND RE-USE OF THIS PLAN IS NOT ALLOWED WITHOUT PERMISSION FROM THE SURVEYOR.

1. THIS PLAN HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO THE FINDINGS SUCH A REPORT MIGHT DISCLOSE.
2. THIS PLAN HAS NOT BEEN PREPARED FOR RECORDING PURPOSES.
3.THE LICENSED MATERIAL CONTAINS VALUABLE PROPRIETARY INFORMATION BELONGING EXCLUSIVELY TO JARVIS LAND SURVEY, INC. THE LICENSED MATERIAL AND THE INFORMATION CONTAINED THEREON ARE COPYRIGHTED INSTRUMENTS OF PROFESSIONAL SERVICES AND SHALL NOT BE USED, IN WHOLE OR IN PART, FOR ANY PROJECT OTHER THAN THAT FOR WHICH THEY WERE CREATED, WITHOUT THE EXPRESS WRITTEN CONSENT OF JARVIS LAND SURVEY, INC. **YOU AGREE NEVER TO REMOVE ANY NOTICES OF COPYRIGHT, NOR TO REPRODUCE OR MODIFY THE LICENSED MATERIAL.**

ASSESSORS MAP 34
LOT 92



22-720
16-741(CAD)

Appendix D: Copy of Deed

Bk: 68022 Pg: 303

Worcester South District Registry of Deeds
Electronically Recorded Document

This is the first page of the document – Do not remove

Recording Information

Document Number	: 85971
Document Type	: DEED
Recorded Date	: August 04, 2022
Recorded Time	: 11:54:00 AM
Recorded Book and Page	: 68022 / 303
Number of Pages(including cover sheet)	: 5
Receipt Number	: 1461991
Recording Fee (including excise)	: $155.00

****
MASSACHUSETTS EXCISE TAX
Worcester District ROD #20 001
Date: 08/04/2022 11:54 AM
Ctrl# 240946 20781 Doc# 00085971
Fee: $.00 Cons: $48,000.00
****

Worcester South District Registry of Deeds
Kathryn A. Toomey, Register
90 Front St
Worcester, MA 01608
(508) 798-7717

Bk: 68022 Pg: 304

Property Address: 3 Baylor Street, Westborough, Massachusetts 01473

QUITCLAIM DEED

The **Town of Westborough**, acting by and through its Select Board pursuant to the vote taken under Article 22 of the March 19, 2022 Annual Town Meeting, a certified copy of which is attached hereto and incorporated herein, having an address of Westborough Town Hall, 34 West Main Street, Westborough, Massachusetts 01581,

For consideration paid of Forty-Eight Thousand Dollars ($48,000.00), hereby conveys to

Westborough Affordable Housing Trust Fund, established pursuant to the provisions of G.L. c. 44, Section 55C and the vote taken under Article 10 of the November 7, 2020 Special Town Meeting, having an address of Westborough Town Hall, 34 West Main Street, Westborough, Massachusetts 01581,

With Quitclaim Covenants,

The parcel of land with the improvements and personal property thereon located at 3 Baylor Avenue, Westborough, Massachusetts, identified by the Assessor as Lot 0 on Map 34, Block 92, containing 0.201 acres, more or less, and acquired by the Town by Foreclosure in Tax Lien Case recorded with the Worcester South District Registry of Deeds in Book 66552, Page 337, for affordable housing purposes.

No deed stamps are due under G.L. c. 64D, §1.

The Westborough Affordable Housing Trust Fund's Acceptance of Deed is attached hereto and incorporated herein.

[signature page follows]

Bk: 68022 Pg: 305

Executed under seal as of this 19th day of July, 2022.

TOWN OF WESTBOROUGH,
By Select Board,

Ian Johnson, Chair

Sean Keogh, Vice-Chair

Allen Edinberg, Member

Shelby Marshall, Member

Patrick Welch, Member

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 19th day of July, 2022, before me, the undersigned Notary Public, personally appeared Ian Johnson, Sean Keogh, Allen Edinberg, Shelby Marshall, Patrick Welch member of the Westborough Board of Selectmen, as aforesaid, who proved to me through satisfactory evidence of identification, which was they are personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he/they signed it voluntarily for its stated purpose on behalf of the Town of Westborough.

CELA DORR
Notary Public, Commonwealth of Massachusetts
My Commission Expires November 04, 2027

Cela M. Dorr
Notary Public
My Commission Expires: November 4, 2027

812927/WBOR/0129

Appendix E: Forms

- Form 1: Certificate of Tax Compliance
- Form 2: Certificate of Non-Collusion
- Form 3: Certificate of Authority
- Form 4: Disclosure Statement for Transaction with a Public Agency Concerning Real Property M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

FORM 1

Certificate of Tax Compliance

Pursuant to Chapter 62C, §49A(b) of the Massachusetts General Laws, I,

_____authorized
signatory for (Name)

_____, do hereby certify under the
pains and (Name of Proposer)

penalties of perjury that said proposer has complied with all laws of the Commonwealth of Massachusetts relating to taxes.

Signature: _____

Printed name: _____

Title: _____

Name of Business: _____

Date: _____

813928/WBOR/0027

(Note: This form must be included in the proposal submission)

FORM 2

Certificate of Non-Collusion

The undersigned certifies under the pains and penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

Signature: _____

Printed name: _____

Title: _____

Name of Business: _____

Date: _____

813928/WBOR/0027

(Note: This form must be included in the proposal submission)

FORM 3

CERTIFICATE OF AUTHORITY

Give full names and residences of all persons and parties interested in the foregoing proposal:

(Notice: Give first and last name in full; in case of a corporation, give names of President and Treasurer; in case of a limited liability company, give names of the individual members, and, if applicable, the names of all managers; in case of a partnership or a limited partnership, all partners, general and limited and, in case of a trust, all the trustees)

NAME	ADDRESS	ZIP CODE

Kindly furnish the following information regarding the Respondent:

1) IF A PROPRIETORSHIP

Name of Owner: _____

Address: _____

Name of Business: _____

Home: _____

2) IF A PARTNERSHIP

Business Name: _____

Business Address: _____

Names and Addresses of Partners

PARTNER NAME	ADDRESS	ZIP CODE

_____ _____

_____ _____ _____

3) IF A CORPORATION OR A LIMITED LIABILITY COMPANY

Full Legal Name: _____

State of Incorporation: _____

Principal Place of Business _____

Qualified in Massachusetts: Yes _____ No _____

Place of Business in Massachusetts: _____

4) IF A TRUST

Full Legal Name: _____

Recording Information:_____

Full names and address of all trustees:

NAME	ADDRESS	ZIP CODE

Signature: _____

Printed name: _____

Title: _____

Name of Business: _____

Date: _____

813928/WBOR/0027

(Note: This form must be included in the proposal submission)

FORM 4

DISCLOSURE STATEMENT FOR TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) Real Property:

A parcel of land located at 3 Baylor Avenue, Westborough, Massachusetts, with the building and other improvements thereon, containing 0.2 acres of land, more or less, and described in a deed recorded with the Worcester South District Registry of Deeds in Book 68022, Page 303.

(2) Type of Transaction, Agreement, or Document: Sale of Property by Westborough Affordable Housing Trust

(3) Public Agency Participating in Transaction: Westborough Affordable Housing Trust

(4) Disclosing Party's Name and Type of Entity (if not an individual):

(5) Role of Disclosing Party (Check appropriate role):

_____Lessor/Landlord _____Lessee/Tenant

_____Seller/Grantor ___X__Buyer/Grantee

_____Other (Please describe):_____

DISCLOSURE STATEMENT FOR TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME	RESIDENCE
_____	_____
_____	_____
_____	_____

(7) None of the above- named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

(8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

> *No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the*

leasehold condominium who (i) acquires the time-share on or after a bona fide arm's length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

(9) This Disclosure Statement is hereby signed under penalties of perjury.

_____

Print Name of Disclosing Party (from Section 4, above)

_____

Authorized Signature of Disclosing Party Date (mm / dd / yyyy)

_____

Print Name & Title of Authorized Signer

835485/WBOR/0001

(Note: This form must be included in the proposal submission)

Appendix F: Sample Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

1. Information and Definitions

(a) DATE OF AGREEMENT: _____, 2023.

(b) PREMISES: A parcel of land with improvements thereon located at 3 Baylor Avenue, Westborough, MA, identified as Assessor Parcel 34-92-0, contains 0.2 acres of land, more or less, and described in a deed with the Worcester South District Registry of Deeds in Book 66552, Page 337.

(c) SELLER: Westborough Affordable Housing Trust

Address: 34 West Main Street, Westborough, MA 01581

Seller's Attorney: Shirin Everett, Esq., KP Law, P.C., 101 Arch St., Boston, MA 02110

Phone: (617) 556-0007 Fax: (617) 654-1735

Email: severett@k-plaw.com

(d) BUYER:

Address:

Buyer's Attorney:

Phone: Fax:

Email:

(e) PURCHASE PRICE: The purchase price for the Premises is _____ Dollars, which is to be paid in full on the Closing Date by wire transfer, bank check, or cashier's check.

(f) CLOSING DATE: _____, 2023, at 11:00 a.m. (or an earlier date, upon Buyer providing Seller at least seven (7) days' prior written notice thereof). Time is of the essence.

(g) PLACE: Worcester South District Registry of Deeds, or a closing by mail, at Seller election.

(h) TITLE: Quitclaim Deed

2. Covenant. Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth.

3. Buildings, Structures, Improvements, Fixtures. Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the Seller and used in connection therewith including, if any.

4. Title Deed. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to Buyer, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

(a) provisions of existing building and zoning laws;
(b) such taxes for the then current year as are not due and payable on the date of the delivery of such deed, except as provided in Section 13;
(c) any liens for municipal betterments assessed after the date of this Agreement;
(d) easements, restrictions and/or reservations of record, if any, provided the same do not prohibit the use of the Premises for a single-family residence; and
(e) an Affordable Housing Restriction and a Land Development Agreement, requiring the Premises to be used for affordable housing purposes in perpetuity and granting Seller a right of entry, as set forth more particularly in Section 17 below.

5. Deed; Plans. Seller shall prepare the deed. If a plan is required for conveying the Premises, Buyer shall deliver a plan, acceptable to Seller, with the deed in form adequate for recording or registration.

6. Registered Title. In addition to the foregoing, if the title to said Premises is registered, said deed shall be in a form sufficient to entitle Buyer to a Certificate of Title of said Premises, and Seller shall deliver with said deed all instruments, if any, necessary to enable Buyer to obtain such Certificate of Title.

7. Possession and Control of Premises. Full possession of said Premises free of all tenants and occupants, is to be delivered at the time of the delivery of the deed, said Premises to be then: (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) in compliance with provisions of any instrument referred to in Section 4 hereof. Buyer shall be entitled to inspect said Premises personally prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

8. Extension to Perfect Title or Make Premises Conform. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of up to thirty (30) calendar days. In no event, however, shall reasonable efforts require Seller to expend more than $500.00, including attorneys' fees.

9. Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

10. Buyer's Election to Accept Title. Buyer shall have the election, at either the original or any extended time for performance, to accept such title as Seller can deliver to the said Premises in their then condition and to pay therefore the purchase price, without deduction, in which case Seller shall convey such title.

11. Acceptance of Deed. The acceptance of a deed by Buyer, or its assignee or nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

12. Use of Money to Clear Title. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, for institutional mortgages only, within a reasonable time thereafter in accordance with customary Massachusetts conveyancing practices.

13. Adjustments. A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, §63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by Buyer at the time of delivery of the deed.

14. Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless: (a) no building, structure or improvement of any kind, including driveways and utilities, belonging to any person or entity encroaches upon or under the Premises from other premises; (b) title to the Premises is insurable, for the benefit of Buyer, by a title insurance company acceptable to Buyer, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use; (c) the Premises shall abut a public way, duly laid out or accepted as such by the municipality in which the Premises are located; and (d) all buildings, structures and improvements, including but not limited to any driveways, garages, cesspools and leaching fields, and all existing means of access to the Premises, shall be located completely within the boundary lines of said Premises and shall not encroach upon or under property of any other person or entity.

15. Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

16. Affidavits, etc. Simultaneously with the delivery of the deed, Seller shall execute and deliver: (a) affidavits under oath with respect to parties in possession and mechanic's liens to induce Buyer's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters, without any obligation to indemnify the title insurance company or Buyer therefor, and (b) such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by Buyer's title insurance company to complete the transactions described in this Agreement.

17. Affordable Housing Restriction and Land Development Agreement.

A. Affordable Housing Restriction: The Premises shall be conveyed subject to a restriction, requiring the Premises to be used in perpetuity for housing for a household earning no more than eighty percent (80%) of the area median income for the Town of Westborough, as defined by the United States Department of Housing and Urban Development ("HUD"), adjusted for household size (an "Eligible Purchaser"). Seller may include this restriction in the deed to the Premises; alternatively or in addition thereto, at Seller's discretion, Buyer will grant Seller a separate affordable housing restriction, or Buyer, Seller, and the Department of Housing and Community Development ("DHCD") will enter into a Regulatory Agreement, which shall run with the Premises in perpetuity, be recorded prior to any mortgages or other liens on the Premises, shall survive a foreclosure or deed in lieu of foreclosure or similar action, meet the requirements of G.L. c. 184, §§ 31 and 32, and be in form and substance acceptable to Seller (any, the "Restriction");

B. LDA: Seller shall convey the Premises to Buyer subject to the Land Development Agreement attached hereto as Exhibit A and incorporated herein (the "LDA"), which the parties shall execute at the closing and record immediately after the recording of the deed and prior to any mortgages. Said LDA shall govern the development of the Premises. and require, among other things, the following mandatory terms:

(a) *Construction Obligation*: Buyer shall commence construction in accordance with timelines as specified within the Land Development Agreement attached hereto as Exhibit A, at its sole cost and expense, complete construction of a two or three-bedroom single-family residential dwelling (the "Unit") on the Premises at its sole cost and expense and convey the Unit to an Eligible Purchaser, as defined below, within two (2) years from the date on which the Premises are conveyed to Buyer;

(b) *Affordable Housing Purposes*: The Premises shall be used in perpetuity for low income housing purposes, and Buyer shall convey the Premises with the Unit to an Eligible Purchaser at a price set forth more particularly in the LDA (the "Maximum Initial Sales Price"); the foregoing terms shall be included in the deed to the Premises from Seller to Buyer;

(c) *Deed Rider*: Buyer shall, with the deed conveying the Premises to an Eligible Purchaser, record an affordable housing Deed Rider, enforceable by Seller in perpetuity, free of liens and encumbrances, meeting the requirements of G.L. c. 184, §§ 31 and 32, in form and substance acceptable to Seller and DHCD, and suitable for inclusion of the Unit in the Town of Westborough's Subsidized Housing Inventory ("SHI") maintained by DHCD. The resale and other restrictions contained in said Deed Rider shall be deemed to be an "other restriction" held by a governmental body, as that term is used in G.L. c. 184, §26 such that the restrictions contained therein shall be enforceable for its full term and not be limited in duration by any contrary rule or operation of law, and in any event shall be enforceable for at least ninety-nine (99) years;

(d) *Local Preference*: Buyer shall make the Unit available to low income residents of the Town of Westborough under a local preference program, to the extent permitted by law under the terms of a LIP (defined below) and pursuant to approval from DHCD; and

(e) *Sale or Transfer of Premises*: Buyer shall not convey or transfer the Premises or any portion thereof to any person or entity other than to Eligible Purchasers, except as set forth in the LDA;

C. DHCD Approval: Prior to the sale of the Unit, Buyer shall have obtained approval of the Unit by DHCD as a "local action unit" through the Local Initiative Program ("LIP") and shall have delivered evidence of such approval to the Town. Buyer shall be responsible for obtaining DHCD's consent, at its sole cost and expense;

D. Marketing Plan: Buyer shall market the Premises and shall conduct a buyer selection process in accordance with an affirmative fair marketing plan approved by DHCD through the LIP and by Seller; and

E. Right of Entry: The Premises shall be conveyed subject to a condition subsequent, with the possibility of a reverter retained by Seller pursuant to the terms of the LDA.

18. Contingencies. The obligation of Seller to convey the Premises to Buyer shall be contingent, at Seller's option, on the satisfaction of all of the following conditions:

(a) *Land Development Agreement*: Buyer and Seller shall execute the LDA attached hereto as Exhibit A, which must be executed prior to, and recorded at, the Closing;

(b) *Permits*: Buyer shall have obtained all permits, approvals, licenses and the like, with appeal periods having expired without any appeal being filed, or if filed, the final adjudication of such appeal pursuant to a final court order without further appeal (collectively, the "Permits") from all federal, state and local authorities necessary to construct the Unit on the Premises;

(c) *Financing*: Buyer shall have obtained financing sufficient in the reasonable judgment of both Seller and Buyer for Buyer to construct the Unit and other improvements required under the LDA;

(d) *Approved Design*: Seller shall have approved the design of the Unit to be constructed by Buyer, which approval shall be separate and apart from any review by any local permitting or regulatory authority, said approval not to be unreasonably withheld; and

(e) *Compliance*: Compliance by Buyer and Seller with any other requirements of Massachusetts General or Special laws relative to the disposition of real property by the Seller.

In the event that Buyer is unable to obtain Permits for reasons beyond Buyer's reasonable control or if any necessary Permit is appealed by third parties, and Buyer informs Seller of the same in writing, the parties agree to extend the dates set forth in the LDA to accommodate the additional construction time required.

19. Inspection Rights. (a) Buyer and Buyer's agents shall have the right to enter the Premises, upon at least two (2) business days' prior written notice to Seller, at Buyer's own risk, for the purposes of making a visual inspection of the Premises, provided that Buyer shall have no right to conduct any subsurface or invasive inspections or investigations without the Town's prior written consent, which shall not be unreasonably withheld if Buyer's Phase 1 site assessment report recommends a Phase 2 assessment, and shall promptly restore the Premises to their condition prior to any such disturbance and repair any damage caused to the Premises and/or improvements thereon by Buyer and/or Buyer's agents, employees, representatives, consultants, contractors and/or invitees (with Buyer, the "Buyer Parties"). Seller shall have the right to accompany Buyer during its inspections. Buyer shall release and hold Seller harmless against any claim by Buyer or any of the other Buyer Parties for any harm to them arising from said entry. In the event Buyer finds Hazardous Materials on the Premises in quantities that must be reported to the Department of Environmental Protection under the provisions of G.L. c. 21E or the regulations thereunder, and informs Seller of the same in writing prior to the closing date, this Agreement shall be null and void and without recourse to the parties except for those provisions stated herein to survive the termination. Nothing herein shall in any way require Seller to remediate any contamination on the Premises or make any repairs or improvements thereto. The provisions of this Section shall survive the termination of this Agreement and the delivery of the deed.

(b) Notwithstanding the foregoing, Buyer acknowledges that the dwelling on the Premises is not structurally sound or habitable, and that, in order to fulfill Buyer's obligations hereunder, Buyer needs to demolish the existing dwelling thereon and construct a new structure. Buyer acknowledges that the septic system serving the Premises is not in operable condition, and Seller has no obligation to inspect the same on or prior to the closing, or to bring the system into compliance with applicable laws, rules, regulations and codes. Buyer hereby expressly waives the requirement that the building be provided with a Title 5-compliant septic system, and further waivers the requirement that Seller provide smoke and carbon monoxide detectors at the time of the sale. Buyer hereby releases, indemnifies and saves harmless Seller from any and all

liabilities, damages, loss, costs expenses (including any and all attorneys' fees, and expenses of Seller), causes of action, suits, claims, demands or judgments of any nature whatsoever relating to the condition of the building on the Premises.

(c) Buyer shall defend, indemnify and hold harmless Seller from any claim, damages, liabilities, demands, and/or liabilities for injury, death and/or harm caused by or arising out of Buyer's exercise of its rights hereunder and/or entry onto the Premises, including without limitation, the use, release, discharge or threatened release of any Hazardous Waste by Buyer or Buyer's agents, employees, representatives, contractors, and/or invitees on the Premises. Buyer shall obtain comprehensive liability insurance in the minimum amount set forth herein to support the obligations of Buyer hereunder: General Liability: $1,000,000.00/occurrence, $2,000,000.00/aggregate; Bodily Injury Liability: $1,000,000.00/occurrence, $2,000,000.00/aggregate. Such insurance shall be issued by insurance companies licensed in Massachusetts and having a Best's rating of A- or better. Prior to entering the Premises, Buyer shall provide Seller with a copy of such insurance policy in each case indicating Seller is an additional insured on the policy and showing compliance with the foregoing provisions.

(d) The provisions of this Section shall survive the termination of this Agreement and the delivery of the deed.

20. Brokers. Buyer and Seller each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction, and agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any other broker in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed.

21. Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price, less the permitted adjustments, paid at the Date and Time of Closing and at the Place of Closing. All documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Seller's proceeds may be in the form of a Town Treasurer's check, and the check shall be held in escrow by Seller's attorney who shall release the check to Seller only following the recording of the deed.

22. Taking. Notwithstanding anything herein to the contrary, in the event of a taking of all or part of the Premises or access thereto by eminent domain by any entity other than Buyer, Buyer may, at its sole option, terminate this Agreement without recourse, whereupon all the rights and obligations of the parties shall cease except those that are stated herein to survive such termination.

23. Condition of Premises. Buyer acknowledges that Buyer has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this Agreement. Buyer represents and warrants that it or its agents have conducted a full inspection of the Premises, and based upon Buyer's investigation, Buyer is aware of the condition of the Premises and will accept the Premises "AS IS", subject to Buyer's right to terminate this Agreement under Section 19. Buyer acknowledges that Seller has no

responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste") on, in, under or emitting from the Premises or for any other condition or defect on the Premises. The provisions of this paragraph shall survive the delivery of the deed.

24. Liability of Trustee, Shareholder, Fiduciary, etc. If Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither Seller or Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. Extensions. Buyer and Seller hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile and scanned signatures shall be construed as original.

26. Errors. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within six (6) months of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission. The provisions of this Section shall survive the closing and delivery of the deed.

27. Assignment. Buyer shall not assign this Agreement or any of its rights hereunder without prior written consent of Seller, which may be withheld in Seller's sole and absolute discretion.

28. Construction of Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. Any claims arising under this Agreement shall be brought in the courts of the Commonwealth of Massachusetts.

29. Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

In Witness Whereof, the parties hereto sign this Agreement under seal as of this _____ day of _____, 2023.

BUYER:

By: _____
Name:
Title:

By: _____
Name:
Title:

SELLER: Westborough Affordable Housing Trust,
By its Board of Trustees

_____

_____

_____

_____

_____

Exhibit A: Land Development Agreement

LAND DEVELOPMENT AGREEMENT

This Land Development Agreement (this "Agreement") is entered into on this _____ day of _____, 2023, by and between the **Westborough Affordable Housing Trust** (the "Trust"), acting by and through its Board of Trustees, having an address of 34 West Main Street, Westborough, MA 01581, and _____ (the "Developer"), a _____, having an address of _____.

WHEREAS, the Trust issued a request for proposals (the "RFP"), seeking to convey a parcel of land located at 3 Baylor Avenue, Massachusetts, containing 0.2 acres, more or less, and being the premises acquired by the Trust by deed recorded with the Worcester South District Registry of Deeds in in Book 66552, Page 337 (the "Land"), to an entity that will demolish the existing structure thereon and construct a single family residential dwelling thereon meeting the specifications set forth herein (the "Unit"), and sell the Unit to an Eligible Purchaser (defined below) (the "Project"). The Land, the Unit, and any other improvements now or hereafter constructed on the Land are referred to, collectively, as the "Property";

WHEREAS, the Developer submitted a proposal (the "Proposal") to the RFP, agreeing to undertake the Project, and has been chosen as the successful proposer;

WHEREAS, pursuant to the RFP and the Proposal, the Developer is required to construct the Unit and sell the Unit at a price specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the median household income for the area that includes the Town of Westborough, adjusted for household size;

WHEREAS, pursuant to G.L.c.40B Sec. 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April, 1989, regulations have been promulgated at 760 CMR 45.00 et, seq. (the "Regulations"), which established the Local Initiative Program ("LIP");

WHEREAS, the Commonwealth of Massachusetts, acting by and through its Department of Housing and Community Development ("DHCD") pursuant to Chapter 23B of the General Laws, administers the LIP on behalf of the Commonwealth;

WHEREAS, the Trust has elected to participate in the Local Initiative Program and intends for the Unit to be constructed by the Developer to qualify as "Local Action Units" within the LIP;

WHEREAS, upon a reliable determination of need the Trust may request DHCD to approve a local preference for the sale of the Unit;

WHEREAS, for the purposes of this Agreement, an "Eligible Purchaser" is defined herein as:

(a) A family that will live regularly in the Unit as their primary residence and who are related by blood, marriage, law or who have otherwise evidenced a stable interdependent relationship. In the final lottery conducted to select a purchaser from among eligible and qualified applicants, the Developer will give preference to families whose family size requires the number of bedrooms being built, according to the criteria described in DHCD's LIP Guidelines;

(b) A family whose annual income from all sources is not more than eighty percent (80%) of the median income for the Metropolitan Statistical Area that includes the Town of Westborough, as most recently published by the U.S. Department of Housing and Urban Development ("HUD"), adjusted for household size;

(c) Meeting such other criteria as may be required under the LIP to include the Unit in the Town of Westborough's Subsidized Housing Inventory, as determined by DHCD; and

(d) And meeting other qualifying characteristics related to assets and other limitations as described in detail in the LIP Guidelines.

WHEREAS, the Trust has conveyed the Land to the Developer by a deed recorded with the Worcester South District Registry of Deeds (the "Registry") of even date herewith in Book _____, Page _____, for nominal consideration of _____ (the "Purchase Price"), and the Property is subject to a Regulatory Agreement entered into by the Developer, the Trust, and DHCD and/or an Affordable Housing Restriction, recorded with the Registry in Book _____, Page _____ and/or Book _____, Page _____;

WHEREAS, in consideration for the Land, the Developer hereby agrees to develop the Land and to undertake, at its sole cost and expense, all the work that is required to be done under this Agreement to construct, develop and complete the Project; and

WHEREAS, the Trust and the Developer intend to set forth herein the terms and conditions that will govern the use and development of the Land and the Property.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. RIGHT OF ENTRY

The Developer acknowledges and accepts that the Land has been conveyed to the Developer subject to a Condition Subsequent, reserving to the Trust a Right of Entry, which the Trust may exercise if the Developer: (a) fails to commence construction of the Units within one hundred eighty (180) days from the date on which the deed from the Trust to the Developer is recorded with the Registry (the "Date of Recording") and/or fails to complete said construction within twenty four (24) months from the Date of Recording, (b) fails to sell the Unit to an

Eligible Purchaser within twenty four (24) months from the Date of Recording, (c) conveys, sells or otherwise transfers the Property or any portion thereof to persons other than the Eligible Purchasers, or assigns its interest under this Agreement (as set forth more particularly in Section V(K)), or (d) uses the Property for other than affordable housing purposes. The Town may extend the time for performance under this condition if the Developer fails to perform its obligations hereunder within the time periods set forth above for reasons beyond the Developer's reasonable control, provided that the Developer requests an extension in writing no later than thirty (30) days prior to the expiration of the applicable performance period and gives detailed reasons for the delay; in no event shall any extension exceed six (6) months from the original performance date. For purposes of the dates above, it is agreed that commencing of construction shall mean a Building Permit for the construction shall have issued, and the completion of construction shall mean a Certificate of Occupancy has issued.

The Town, its successors and assigns, shall provide sixty (60) days' written notice to the Developer of its intent to exercise its Right of Entry. If, at the end of such notice period, the Developer has not constructed and sold the Unit as required herein or cured the applicable defect, in the Trust's reasonable discretion, the Trust may reenter the Property and retake all rights, title, interest and possession in and to the Property by executing and recording a certificate of entry with the Registry. Notwithstanding the provisions of anything herein to the contrary, upon recording said Right of Entry, title to the Property and any improvements thereon shall revert to and vest in the Trust without any necessity for suit or without the necessity of a deed from the Developer to the Trust. The Town shall reimburse the Developer for any improvements made by the Developer to the Property from the proceeds of the sale of the Unit to an Eligible Purchaser or from any other sale of the Property, less amounts required to release the Premises of any and all liens, subject to Town Meeting appropriation of funds for such purposes. Such Right of Entry to be in addition to any other rights or remedies the Trust may have for a breach or default under this Agreement.

The Town's Right of Entry shall be deemed released and of no further force and effect upon the recording of deed for the Unit from the Developer to an Eligible Purchaser, attaching to said deed an affordable housing Deed Rider, a Certificate of Compliance issued by the Trust, and, at the Trust's option, an Acceptance of Restriction signed by the Trust.

II. DEVELOPMENT AGREEMENT

the Developer agrees, for itself and its successors and assigns, and in consideration of the conveyance of the Land at the Purchase Price, which it acknowledges is less than the full and fair market value of the Land, to develop the Property and to undertake, at its sole cost and expense, all the work that is required to be done under this Agreement to construct, develop and complete the Project (hereinafter referred to as the "Work") as follows:

A. **Construction Obligations**

1. Construction of Units: The Developer shall, at its sole expense, prepare plans and specifications for the construction of a single-family dwelling on the Property, showing the location, design, layout and size of the Unit, the landscaping, and all other improvements. The plans and specifications shall be submitted to the Trust for the Trust's approval (the "Approved

Plans"). The Unit shall have a minimum of three (3) bedrooms and contain a minimum of one thousand five hundred (1,500) square feet. The Town shall not withhold approval unreasonably, and in the event of disapproval, the Trust shall give the Developer an itemized statement of reasons for disapproval within forty-five (45) days after the plans and specifications are submitted to the Trust. The Developer shall use reasonable efforts to cause such items to be appropriately revised and resubmit the same to the Trust for approval pursuant to this section, but shall not be required to make such changes if they render the Project uneconomic. If no response is received from the Trust within said forty-five (45), the plans and specifications shall be deemed approved by the Trust. The Developer shall construct the Units and perform the Work in accordance the Approved Plans. The Developer agrees not to make any material changes or revisions to the Work or the improvements as described in the RFP, the Proposal, and the Approved Plans during the course of construction without having obtained the Trust's prior written approval, which approval shall not be unreasonably withheld.

2. Construction Schedule: The Developer shall commence construction of the Units within one hundred eighty (180) days from the Date of Recording and complete said construction and sell the Unit to an Eligible Purchaser within twenty four (24) months from said Date of Recording, all in accordance with the terms of this Agreement. Failure to do so shall entitle the Trust to exercise its Right of Entry, as provided in the deed from the Trust to the Developer. For purposes of this Section, the Developer shall be deemed to have completed construction of the Unit upon obtaining a final Certificate of Occupancy for the Unit. The Developer shall use good faith efforts to commence and complete the Project with due diligence.

3. Quality of Work: The Developer shall have obtained all the permits and approvals necessary to construct and operate the Project on the Property before undertaking any Work, and shall cause all the Work to be performed in a good and first-class workmanlike manner and employing materials of good quality and in accordance with the Approved Plans and all applicable laws, ordinances, codes and regulations.

4. Liens: The Developer shall not permit any mechanic's liens or similar liens to remain upon the Land or the Property for labor and materials furnished to the Developer in connection with work of any character performed by or at the direction of the Developer and shall cause any such lien to be released of record without cost to the Trust pursuant to the terms of this Agreement, by satisfaction and discharge of such lien or release of such lien by bond.

5. Warranty: The Developer will provide a one (1) year warranty covering the cost of materials, labor, and other expenses resulting from any defects in materials or workmanship, will respond to requests under this warranty promptly, and make commercially reasonable efforts to repair, replace, or otherwise correct the defect as soon as practicable.

6. Indemnification: The Developer shall comply with the requirements of all applicable laws, rules and regulations. The Developer shall defend, indemnify and hold the Trust harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to the Work, the condition of the Land or Property, or any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the

Developer. This shall not be construed as a limitation of the Developer's liability under the contract or as otherwise provided by law.

The obligations of the Developer hereunder are referred to as the Developer's "Construction Obligations".

B. **Financial Obligations**

1. Construction Loan: The Developer shall be responsible for obtaining all the financing necessary to finance the construction and completion of the Project. Any construction or other loan ("Construction Loan") that is secured by a mortgage on the Land or the Property ("Construction Mortgage") shall be subordinate and subject to this Agreement, and shall be recorded after this Agreement. The Developer shall perform all of the Developer's obligations under the Construction Loan, including the Developer's covenants to make payments when due. The Developer shall cause the holder of the Construction Mortgage (the "Lender") to give at least sixty (60) days prior written notice to the Trust, by registered mail, of the Lender's intention to foreclose upon the Construction Mortgage or to accept a conveyance of the Property in lieu of foreclosure, in which event the Trust shall have the right, but not the obligation, to cure whatever default(s) have entitled the Lender to issue the foreclosure notice, subject to appropriation. The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Land or Property, which may attain a priority over the Construction Mortgage.

2. Affordable Housing: The Developer agrees that the Unit shall be subject to an affordable housing restriction Deed Rider as further described in Section III, below.

3. Initial Sales Price: The Developer shall sell the Unit for no more than the initial sale price set forth in Section III, below.

4. Marketing: The Developer agrees to market the Units as provided in Section III, below.

C. **Use of Property**

1. Use and Maintenance: For so long as the Developer owns the Property, the Developer shall use the Land to develop affordable housing for use by income-eligible persons and shall maintain the Unit and other improvements thereon, if any, in good order, condition and repair.

2. Insurance: The Developer agrees to maintain the following insurance:

(a) *Property Insurance*: The Developer shall continuously maintain in full force, for the term of this Agreement, a policy of comprehensive casualty and property damage insurance, insuring the Property and all improvements thereto, in an amount equal to at least one hundred percent (100%) of the replacement costs thereof, under which, until the completion of the Work, the Trust shall be named as additional insured and under which the insurer agrees to defend, indemnify and hold the Trust harmless from and against all cost, expense and/or liability

arising out of or based upon any and all claims, accidents, injuries and damages related to the Work, the condition of the Land or Property, or any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the Developer, or failure to comply with the provisions of this Agreement or with applicable laws in connection with the exercise of the rights and obligations of the Developer hereunder, in the broadest form of such coverage from time to time available in Massachusetts. The Developer shall submit to the Trust, on or before conveyance of the Land from the Trust to the Developer and no less often than annually thereafter, and at any other time upon the request of the Trust, evidence of such continuous insurance coverage satisfactory to the Trust;

(b) *Liability Insurance*: The Developer shall carry comprehensive public liability insurance in the minimum amount of $1,000,000.00/occurrence, $3,000,000.00/aggregate with property damage liability insurance in limits of $1,000,000.00/occurrence, $3,000,000.00/aggregate;

(c) *Builder's Risk*: During the period of any construction or structural alteration of the Property or the construction of the Unit, the Developer shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Trust may reasonably require.

(d) *Insurance Carried by Contractors*: During the period of any construction or structural alteration of the Property or the construction of the Unit, the Developer shall also require the general contractor for the Work to maintain (i) for the benefit of the Developer and the Trust, as additional insureds, commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death and property damage occurring upon, in or about the premises and on, in and about the adjoining sidewalks and passageways during the construction of the work for at least One Million $1,000,000.00 Dollars per occurrence and, Two Million ($2,000,000.00) Dollars in General Aggregate; (ii) worker's compensation in amounts required by state statute; (iii) employer's liability insurance with limits of not less than One Million Dollars ($1,000,000.00); and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or non-owned, in an amount not less than One Million Dollars ($1,000,000.00) combined single limit.

(e) *Evidence of Insurance*: All policies shall name the Trust as an additional insured and shall be so written that the Trust shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. The Developer shall submit to the Trust certificates of insurance for all the policies required to be maintained by The Developer hereunder, which certificates shall show at least the coverage and limits of liability specified herein the and the expiration date;

(f) *Acceptable Insurers*: All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts and reasonably acceptable to the Trust; and

(g) *Termination*: All responsibility of the Developer under this Section shall terminate upon the construction of the Unit and the sale of the Property to an Eligible Purchaser in accordance with the terms of this Agreement.

3. Obligation to Restore: In the event that any damage or destruction of the Property or any part thereof occurs as a result of fire or other casualty during the term of this Agreement, the Developer shall be responsible for the restoration of the Property to the extent of its insurance proceeds, provided, however, that if such damage or destruction is caused as a result of the gross negligence or willful act or omission of the Developer, or of any of its employees or agents, The Developer shall be responsible for the full restoration of the damaged or destroyed Property regardless of the cost thereof or the available insurance proceeds, until such time as the Developer has completed construction and sold to an Eligible Purchaser the Unit damaged or destroyed by fire or other casualty.

III. AFFORDABLE HOUSING PROVISIONS

A. Initial Unit Sale Price; Affordable Housing Restriction: The Property shall be used for low-income housing purposes in perpetuity. Upon completion of the construction of the Unit and the issuance of a final Certificate of Occupancy, the Developer shall convey the Unit to an Eligible Purchaser. The initial sale price of the Units shall be set at an amount affordable to Eligible Purchaser, as determined in accordance with DHCD Guidelines, and reasonably acceptable to the Trust. The deed to the Eligible Purchaser shall include a Deed Rider substantially similar in form and content to the document attached hereto as Exhibit A and incorporated herein or in such other form as acceptable to the Trust and to DHCD under LIP, ensuring that the Unit will stay affordable in perpetuity and count toward the Town of Westborough's Subsidized Housing Inventory. The resale restrictions contained in the Deed Rider that encumbers the Unit pursuant to the requirements of this Agreement are affordable housing restrictions, as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§26, 31, 32 and 33, and shall also be an "other restriction" held by a governmental body, as that term is used in G.L. c. 184, §26, such that the restrictions contained therein shall be enforceable for its full term and not be limited in duration by any contrary rule or operation of law, and in any event shall be enforceable for at least ninety-nine (99) years. Such resale restrictions shall be for the benefit of the Trust and DHCD. The Town and DHCD shall be deemed to be holders of the affordable housing restriction created by the Resale Restrictions in said Deed Rider.

B. Marketing Plan: The Developer shall market the Property and shall conduct a buyer selection process for the Property in accordance with an affirmative fair marketing plan approved by DHCD through the LIP and by the Trust.

C. DHCD Approval: Prior to the sale of the Unit, the Developer shall have obtained approval of the Unit by DHCD as a "local action unit" through the LIP and shall have delivered evidence of such approval to the Trust. The Developer shall be responsible for obtaining DHCD's consent, at its sole cost and expense.

D. Certificate of Compliance, Acceptance of Restriction: Upon the sale of the Unit by the Developer in accordance with this Agreement, there shall be recorded with the Unit deed, at the Developer's expense, a Certificate of Compliance issued by the Trust indicating compliance with the provisions of this Agreement, such Certificate not to be unreasonably withheld, and an Acceptance of Restriction, signed by the Board of Trustees.

E. No Discrimination: Neither the Developer or the Trust shall discriminate on the basis of race, creed, color, sex, age (except as permitted by law in senior housing communities), handicap, marital status, national origin, or any other basis prohibited by law in the selection of buyers for the Property; and the Developer shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

The obligations of the Developer hereunder are referred to as the Developer's "Affordable Housing Obligations".

IV. DEFAULT

If, prior to the expiration of this Agreement,

A. The Developer shall have failed observe or perform any of the Developer's covenants, agreements, or obligations set forth in this Agreement within thirty (30) days following receipt of written notice from the Trust specifying such failure (or if such failure or violation cannot be cured within said thirty (30)-day period, to commence to cure the same within said period and diligently to proceed thereafter to complete such curing, but in no event later than sixty days (60) from the date of the Trust's notice);

B. The Developer shall have failed, after all applicable cure periods, to observe or perform any of the Developer's covenants, agreements, or obligations under the Construction Mortgage;

C. The Developer shall have sold, assigned, exchanged, mortgaged or otherwise transferred the Property or any portion thereof (other than the Construction Mortgage to secure the Construction Loan and the sale of the Units to Eligible Purchasers) or transferred its interests under this Agreement without the Trust's prior written consent prior to the completion of the Project (as set forth more particularly in Section V(K);

D. There shall have issued any execution or attachment against the Developer or any of the Developer's property pursuant to which the Property shall be taken or occupied or attempted to be taken or occupied, provided the Developer is first provided an opportunity to cure the same within sixty (60) days unless extended by agreement of the parties; or

E. The Developer shall have filed a voluntary petition, or there shall have been filed against the Developer an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of the Developer, or the filing by the Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other

present or future applicable federal, state, or other statute or law, or the assignment by the Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of the Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against the Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of the Developer or of all or any part of the Developer's property, without the consent or acquiescence of the Developer, such appointment shall not have been vacated or otherwise discharged.

then, the Trust shall have the right (i) exercise its Right of Entry, if applicable, and/or (ii) to exercise any and all rights and remedies available to it, under law or in equity, including actions and proceedings to compel specific performance and money damages.

V. GENERAL PROVISIONS

A. Access: The Developer shall permit the Trust or its agents to enter the Property, including, without limitation, the Unit, at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this Agreement, provided, however, that the Trust provides the Developer at least forty-eight (48) hours' prior notice thereof, except in the event of emergency, in which case notice shall be given as soon as practicable.

B. Compliance with Laws: The Developer shall carry out the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all necessary permits.

C. Development Costs: The Developer shall be solely liable for all costs incurred in construction of all the Work required under this Agreement to develop the Project on the Land in compliance with all laws, ordinances, rules, regulations and codes applicable to the permitted use, and in including the Unit in DHCD's Subsidized Housing Inventory. The Town assumes no responsibility or obligation whatsoever for the development of the Property by the Developer, and the Developer hereby agrees to indemnify and hold the Trust harmless from any loss or damage arising from the development of the Property.

D. Cooperation: The Town agrees to use reasonable efforts to assist the Developer in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authorities with respect to any construction or other work to be performed on the Land or Property, but the Developer acknowledges that the Trust has no control over and cannot guarantee that permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees will be waived.

E. Indemnification: The Developer agrees to defend, indemnify, and hold the Trust harmless from and against any and all liabilities, losses, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Trust by reason of this Agreement, except to the extent that the same is caused by the negligence or willful misconduct of the Trust or its employees or agents. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and

liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

F. Environmental: The Developer shall comply with all state and federal environmental laws and shall defend, indemnify, and hold the Trust harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Trust arising from any release or threat of release of any hazardous materials which are placed, released or disposed on, in or under all or any portion of the Property on or after the date of this Agreement.

G. Costs of Enforcement: In the event that the Trust successfully takes enforcement or other legal proceedings to enforce this Agreement or to otherwise redress a breach of this Agreement by the Developer, in addition to any other remedies to which the Trust may be entitled, the Developer shall pay to the Trust forthwith any and all costs and expenses, including attorneys' fees, that are incurred in enforcing this Agreement or prosecuting any such proceedings.

H. Obligations and Rights and Remedies Cumulative and Separable: The respective rights and remedies of the Trust and the Developer, whether provided by this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

I. Notices: Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (1) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified above or such other address as the respective parties may designate in writing:

J. Waiver: The failure on the part of the Developer or Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Trust shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

K. Restrictions on Transfers and Junior Encumbrances: Until the Project has been completed in accordance with this Agreement, the Developer shall not sell, assign, exchange, mortgage or otherwise transfer the Property or any portion thereof, other than the Construction Mortgage to secure the Construction Loan and the sale of the Units to Eligible Purchasers, or

transfer its interests under this Agreement without the Trust's prior written consent, which shall not be withheld unreasonably for any financing necessary to construct the Project. Any sale, assignment or other transfer of the Property or any portion thereof, whether before or after the completion of the Project, shall be subject to the terms of this Agreement, and the buyer, assignee or transferee shall assume the Developer's obligations under this Agreement in writing as if it were the original developer hereunder. Any attempted assignment or other transfer made contrary to this Section shall be void.

L. Limitation on Liability: Notwithstanding anything in this Agreement to the contrary, neither party shall be liable to the other for consequential, incidental, or punitive damages.

M. Time of Essence: Time shall be of the essence hereof.

N. No Partnership: Nothing contained under this Agreement shall be construed to create a partnership or joint venture between the Trust and the Developer or to make the Trust an associate in any way of the Developer in the conduct of the Developer's business, nor shall the Trust be liable for any debts incurred by the Developer in the conduct of the Developer's business.

O. No Brokers: Each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Agreement. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Agreement or the negotiation therefor.

P. Headings and Captions for Convenience Only: The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

Q. Term of Agreement: This Agreement and the restrictions and covenants contained herein shall be enforceable by the Trust in perpetuity or for the longest period permitted by law, which in any event shall be for at least ninety-nine (99) years. Notwithstanding the foregoing, this Agreement shall terminate upon the sale of the Unit to an Eligible Purchaser and the recording of a Deed Rider, a Certificate of Compliance, and the Acceptance signed by the Trust, with the deed to the Unit.

R. Binding: The terms of this Agreement shall be binding on the parties, and their respective successors, heirs and assigns. All covenants, agreements, terms and conditions of this Agreement shall be construed as covenants running with the land.

S. Entire Agreement of Parties; No Oral Agreement: There are no oral agreements between the parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between

the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Agreement.

T. Governing Law: This Agreement shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

U. Recording: Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to the Trust evidence of such recording or filing including the date and instrument number, book and page, or registration number of this Agreement. The Agreement shall be recorded prior to the recording of any mortgages.

[signature page follows]

WITNESS the above execution hereof under seal as of the day and year first above written.

BUYER:

By: _____
Name:
Title:

By: _____
Name:
Title:

SELLER: Westborough Affordable Housing Trust,
By its Board of Trustees

_____

_____

_____

_____

_____

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this ____ day of _____, 2023, before me, the undersigned notary public, personally appeared _____, Trustees of the Westborough Affordable Housing Trust, as aforesaid, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the persons whose names are signed on the preceding instrument and acknowledged to me that he/she/they signed the foregoing instrument as Trustees of the Westborough Affordable Housing Trust.

_____
(Official Signature and Seal of Notary)

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 2023, before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, as _____ of the _____.

_____
(Official Signature and Seal of Notary)

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