

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), dated as of October ___, 2022 is made by Northland Residential Corporation, a Massachusetts corporation and/or its designee (“Northland”) and the Town of Needham, a municipal corporation of the Commonwealth of Massachusetts (the “Town”), acting by and through its Select Board. The Town and Northland are hereinafter collectively referred to as “the Parties.”

Reference is made to the following facts:

- A. In late 2021, the Town and Northland independently became aware that the property known as Castle Farm, located at 484 Charles River Street in Needham, Massachusetts was being made available for sale by its owners, the Barbara D. Foster Trust and the Charles H. W. Foster 2000 Trust (the “Sellers”); and
- B. Castle Farm is made up of three separate parcels of land: 484 Charles River Street (Assessors’ Parcel 199-304-2) (the “484 CRS Parcel”), containing approximately 57.86 acres¹, 0 Charles River Street (Assessors’ Parcel 199-304-4), containing approximately 3 acres, and 0 Charles River Street (Assessors’ Parcel 199-304-5), containing approximately 3 acres (the two approximately 3 acre parcels are hereinafter collectively referred to as “the ANR Parcels” and all three parcels are hereinafter collectively referred to as the “Property”); and
- C. Based on the listing package prepared by the Sellers, the Property was available for purchase price of \$25m; and
- D. In light of the fact that the original offering price exceeded the financial means of each of the Parties on their own, the Town and Northland decided to collaborate and partner in an attempt to secure the right to purchase the Property from the Sellers in order to further their collective interests; and
- E. If successful, the Parties envisioned that the 484 CRS Parcel would be divided into two approximately 28 acre parcels – a Town parcel (the “Town Parcel”) and a Northland parcel (the “Northland Parcel”); and
- F. That the Town would acquire the approximately 28-acre Town Parcel as well as the two approximately 3-acre ANR Parcels (collectively the “Town Parcels”); and
- G. That Northland would develop approximately 15 acres of the approximately 28-acre Northland Parcel for a project consisting of no more or less than 70 units of age-targeted homeownership townhomes, of which 5% of the units (4 units) would be affordable at 80% of Area Median Income, as a “Local Initiative Program” project permitted under a Comprehensive Permit issued pursuant to M.G.L. c.40B, §§20-23 (the “Project”); and

¹ Based on marketing material prepared by Sellers.

- H. That the above outlined land use vision is illustratively described by a plan titled Castle Farm Parcels, Open Space Concept Plan, dated 9.7.22, attached hereto as **Exhibit 1**.
- I. That Town and Northland, if successful in securing a right to purchase the Property, would jointly fund the Property's acquisition, with the Town funding not more than \$2.5m of a potential purchase price and the Northland the balance; and
- J. Subject to this understanding among the Parties, Northland, acting in the role of the buyer of the Property, submitted, on behalf of the Parties, seven (7) separate Offers to Purchase Castle Farm on March 21, 2022, April 12, 2022, May 12, 2022, May 17, 2022, July 22, 2022, August 17, 2022, each of which were rejected by the Sellers; and
- K. The Sellers having accepted at least one known full price offer, which did not mature to a fully executed Purchase and Sale Agreement, came back to the Parties for reconsideration. A revised final Offer to Purchase (styled "revised 9.5.22 v2 – FINAL) was submitted to the Sellers by Northland for a purchase price of \$21.0m; and
- L. Said Offer to Purchase was signed by the Sellers and Northland on September 6th, 2022, a copy of which is attached as **Exhibit 2** for reference; and
- M. By verbal agreement among the Parties this offer contemplated fulfillment of the \$21m purchase price as follows: Northland - \$18.5m for the Northland Parcel and the Town - \$2.5m for the Town Parcels; and
- N. The accepted Offer to Purchase provided that consummation of the purchase of the Property, would be contingent upon, but not limited to the following:
- a. Execution of a binding Purchase and Sale Agreement by Northland and the Sellers.
 - b. Completion of a full due diligence evaluation of the Property to Northland's satisfaction.
 - c. Receipt of clear and marketable title to the Property.
 - d. The presence of no adverse environmental conditions to Northland's satisfaction.
 - e. Execution of a development agreement between Northland and the Town.
 - f. The ability for Northland to apply for a Comprehensive Permit authorizing development of the Project upon the Northland Parcel, as a "Local Initiative Program" project permitted pursuant to M.G.L. c.40B, §§20-23.
 - g. Arrangement for the placement of a Conservation Restriction on the ANR Parcels.
 - h. A restriction limiting unauthorized access to the Town Parcel from the Northland Parcel.
 - i. A vote by Needham Town Meeting to authorize the Select Board to acquire the Town Parcels from Northland for \$2.5M upon such terms as the Select Board determines to be appropriate.
- O. On _____ Northland and the Sellers have executed a purchase and sale agreement for the acquisition of Castle Farm (the "P&S"); and

- P. That the Parties have made certain commitments to each other in order to pursue the acquisition of the Property.

NOW THEREFORE, in consideration of the mutual commitments of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, on behalf of themselves, their successors and assigns, hereby covenant and agree as follows:

1. Property Acquisition. Northland, at its sole cost and expense, will pursue the acquisition of the Property, inclusive of a due diligence evaluation of the Property, from the Seller for a purchase price not to exceed \$21M under commercially reasonable terms and conditions.
2. Town Meeting Authorization. The Town will prepare and post a Warrant Article for Town Meeting consideration at the October 24th 2022 Fall Town Meeting to authorize, among other matters, that the Town, acting through its Select Board, acquire the Town Parcels from Northland for \$2.5m upon such terms as the Select Board deems appropriate.
3. Project Design. The Property will be developed generally in accordance with the plan titled Castle Farm Parcels, Open Space Concept Plan, dated 9.7.22, attached hereto as Exhibit 1. Such land use plan would consist of three Town Parcels – known as the ANR Parcels and the Town Parcel comprising approximately 35 acres in total and an approximately 28 acre development parcel, known as the Northland Parcel.
4. Land Use – Town Parcels. Subsequent to property transfer to the Town from Northland, the Town would place a Conservation Restriction on the ANR Parcels and Northland would place a restrictive covenant on the Northland Parcel limiting access to the 28-acre Town Parcel from the Northland Parcel to emergency, passive recreation (e.g., walking, cross country skiing, snowshoeing), maintenance, and connection to and maintenance of utilities servicing the Northland Parcel.
5. Land Use – Northland Parcel. Northland will develop the Project upon approximately 15 acres of the Northland Parcel upon the issuance of a Comprehensive Permit by the Needham Zoning Board of Appeals pursuant to M.G.L. c.40B. Final design of the Project shall be established and approved by the Zoning Board of Appeals in the Comprehensive Permit. In constructing the Project, Northland shall comply with all conditions, limitations, and safeguards set forth by the Zoning Board of Appeals in the Comprehensive Permit. The filing for a Comprehensive Permit for the Project shall reflect the following: (i) access to the Project shall be via a new access driveway off Charles River Street east of Whitman Road; (ii) the new access driveway shall connect to the existing driveway to provide for emergency access/egress only, inclusive of the placement of a fire access gate, designed and located with input from the Needham Fire Department; (iii) the described 15-acre development area for the Project shall include setback areas from the surrounding abutting land uses as follows - a 100'

Open Space No Disturbance Zone along the Whitman Road subdivision, a 200' Open Space No Building Zone along the Charles River Street frontage area and a 100' Open Space No Disturbance Zone along the existing private driveway servicing the Property; (iv) the Project shall connect to municipal water service at Charles River Street and at the existing service line connection servicing the Property at Whitman Road; (v) sewer service to the Project shall be provided by a new sewer line connection across the Town Parcel from the Northland Parcel to the existing municipal and MWRA sewer lines located along the Charles River; (vi) the Project will not preserve the existing Foster residence and outbuildings and shall contain no more or less than 70 units as shown on the Open Space Concept Plan; (vii) units within the Project shall be developed in a combination of triplexes, duplexes and single unit buildings; (viii) use of the community common areas shall be limited to residents of the dwelling units on the site and their guests; no rentals or other outside functions shall be permitted in the community common area; (ix) the number and approximate placement of dwelling units within the Project as shown conceptually on the Open Space Concept Plan shall be finalized in the course of the issuance of a Comprehensive Permit by the Needham Zoning Board of Appeals; and (x) in no event shall dwelling units within the Project be located in any area within the 100' the Whitman Road subdivision homes, 200' of Charles River Street or within 100' of the existing Property driveway.

Northland shall comply with applicable rules, regulations and by-laws of the Town, the Commonwealth of Massachusetts, and federal agencies as they apply to the construction, maintenance and operation of the Project, including, without limitation, compliance with the Wetlands Protection Act and the State Building Code. The applicable terms of this Agreement shall be incorporated by reference in the Comprehensive Permit issued by the Zoning Board of Appeals for the Project and shall be binding upon Northland and any successor in interest to the Project (or component thereof), as provided in this Agreement. Any non-monetary violation hereof may be treated as a violation enforceable by the Building Inspector following notice and opportunity to cure.

6. Affordable Housing. 5% of the units (4 units) within the Project shall be affordable at 80% of Area Median Income. The affordable units shall consist of a mix of 2 and 3 bedroom homeownership units in accordance with DHCD policy and requirements.
7. Traffic. As part of the 40B Comprehensive Permit filing for the Project, Northland shall prepare a traffic impact analysis ("TIA") that includes analysis of (a) the traffic impacts that are associated with the proposed Project and (b) traffic conditions along Charles River Street. Northland agrees to complete, at its sole cost and expense, the traffic and pedestrian improvements specified in the TIA. The design of these improvements may be reviewed in the course of the Comprehensive Permit review process by an independent traffic engineer hired by the Town to ensure the adequacy of these improvements to provide for safe travel by residents, employees and visitors of the Project while also enhancing safe traffic movement to adjoining properties and

along the corridor. In addition, Northland agrees to implement all Traffic Demand Management program measures specified in the TIA.

8. Plans. Northland will prepare a plan, suitable for Planning Board endorsement as “Approval Not Required” pursuant to M.G.L. c.41, §81P and for recording with the Norfolk Registry of Deeds, that divides the 484 CRS Parcel into the Northland Parcel and the Town Parcel. This plan shall be substantially in accordance with Exhibit 1, and the parties shall work collaboratively on precise the location of the property line dividing the Northland Parcel from the Town Parcel, consistent with the understanding that each party is to acquire 50% of the 484 CRS Parcel, more or less.
9. The Select Board and Town Manager shall support and submit to the Massachusetts Department of Housing and Community Development (“DHCD”) for approval a Project Eligibility Letter application for the Project under the so-called Local Initiative Program (“LIP”). Such support shall include, without limitation, signing the DHCD LIP application, providing a letter of support for the application, and timely responding to any questions and comments from DHCD. To the extent the DHCD review process presents unanticipated issues relative to issuance of a Project Eligibility Letter, the Parties agree to work collaboratively, within the limits of their respective resources and abilities, to resolve such issues and to preserve their joint ability to jointly acquire the Property. The Town further covenants and agrees to cooperate with Northland as it takes whatever further steps as may be reasonably necessary to cause the application for a Project Eligibility Letter to be finally approved by DHCD in order to file for a Comprehensive Permit for the Project.
10. Upon the completion of all development contingencies contained in the Offer to Purchase accepted by Sellers on September 6, 2022, including receipt of a Project Eligibility Letter from DHCD authorizing Northland to apply for a Comprehensive Permit for the Project, Northland will close on the purchase of the Property, contributing \$18,500,000.00 to the purchase of the Property with the Town contributing \$2,500,000.00. As part of the purchase, Northland will convey or assign it rights to the Town Parcels to the Town.
11. Nothing contained in this Agreement shall limit, control, or affect the authority of any other Town board, commission, department or official to carry out their respective powers and duties, or to decide upon and issue, deny, and/or condition applicable permits and other approvals within their jurisdiction.
12. This Agreement shall terminate and no longer be of force or effect if (a) Article 11 on the Warrant for the Fall Town Meeting, scheduled for October 24, 2022 fails to authorize the purchase of the Town Parcels; (b) Northland terminates the P&S; or (c) Northland does not receive a Site Eligibility Letter from DHCD.
13. Applicable Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be

declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties to this Agreement, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

14. **Assignment.** Prior to the acquisition of the Property, this Agreement shall not be assigned by Northland without the prior written approval of the Needham Select Board. After the acquisition of the Property, the Parties agree that Northland may (i) establish a residential condominium association to govern the Project and Northland may freely transfer condominium units to third party purchasers; and (ii) transfer all of the Northland Parcel to another entity (“New Entity”), subject to the Northland’s and the New Entity’s acknowledgement that:
- (a) This Agreement shall run with title to the Northland Parcel and shall be binding upon the Northland insofar as it is the owner of the Northland Parcel, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Northland Parcel and/or their respective interest in thereof, provided that any predecessor-in-title shall be forever released from this Agreement upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Select Board with respect to such successor’s interest; and
 - (b) The obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Town.

15. **Notices.** All notices or requests concerning this Agreement shall be in writing, and addressed to the parties as follows:

Town:

Kate Fitzpatrick, Town Manager
Town of Needham
1471 Highland Avenue
Needham, MA 02492
Telephone: (781) 455-7500
Email: kfitzpatrick@needhamma.gov

with a copy to:

Christopher H. Heep, Esq.
Miyares and Harrington LLP
40 Grove Street Suite 190
Wellesley, MA 02482
Telephone: (617) 489-1600
Email: cheep@miyares-harrington.com

Northland:

John C. Dawley, President
80 Beharrell Street, Suite E
Concord, MA 01742
Telephone: (781) 229-4700
Email: jdawley@northlandresidential.com

With a copy to

Peter L. Tamm, Esq.
Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110
Telephone: (617) 574-7891
Email: ptamm@goulstonstorrs.com

16. Entire Agreement. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter thereto and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by all Parties. Amendments to the terms of this Agreement may be agreed to on behalf of the Town by its Select Board.
17. Forbearance from Suit. The Parties shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provision(s) of this Agreement, and Northland shall procure written acknowledgment that such forbearance shall bind any successor or assign. Such forbearance shall not preclude either party to this Agreement from bringing any action for breach of contract on the part of the other party or acts of intentional misconduct with respect to matters contemplated herein.
18. Force Majeure. Northland shall not be considered to be in breach of this Agreement for so long as Northland is unable to complete any work or take any action required hereunder due to a *force majeure* event or other events beyond the reasonable control of Northland.

19. **Default; Opportunity to Cure.** Failure by either Northland or the Town to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting party fails to commence to cure, correct or remedy such failure within fifteen days of receipt of written notice of such failure from the other party and thereafter fails to complete such cure, correction, or remedy within sixty days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such sixty-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, Northland shall cure any monetary default hereunder within thirty days following the receipt of written notice of such default from the Town.
20. **Northland Obligations.** The obligations of Northland do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. The liability of Northland is in all cases limited to their interest in the Property or portion thereof at the time such liability is incurred and shall not extend to any other portion of the Property for which the Town has assumed responsibility pursuant to this Agreement. In the event that all or any portion of the Northland Parcel is subjected to a condominium regime or a long term ground lease, the condominium association or the ground lessee, as applicable, shall be deemed to be the owner/New Entity of the affected portion of the Northland Parcel.
21. **Estoppels.** Each party to this Agreement agrees, from time to time, upon not less than twenty-one days' prior written request from the other, to execute, acknowledge and deliver a statement in writing certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, setting them forth in reasonable detail); (ii) that the party delivering such statement has no defenses, offsets or counterclaims against its obligations to perform its covenants hereunder (or if there are any of the foregoing, setting them forth in reasonable detail); (iii) that there are no uncured defaults of either party under this Agreement (or, if there are any defaults, setting them forth in reasonable detail); and (iv) any other information reasonably requested by the party seeking such statement. If the party delivering an estoppel certificate is unable to verify compliance by the other party with certain provisions hereof despite the use of due diligence, it shall so state with specificity in the estoppel certificate, and deliver an updated estoppels certificate as to such provisions as soon thereafter as practicable. Any such statement delivered pursuant to this section shall be in a form reasonably acceptable to, and may be relied upon by any, actual or prospective purchaser, tenant, mortgagee or other party having an interest in the Project. The Town Manager is hereby authorized to execute and deliver any such estoppel certificate on behalf of the Select Board.
22. **Cooperation.** The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly

set forth herein, that may be necessary in connection with the development of the Project or the implementation of the goals and objectives of this Agreement.

23. **Compliance.** Upon its purchase of the Northland Parcel, Northland acknowledges and agrees that the Town, operating through its officers and employees and upon notice to Northland, shall have the right to enter the Northland Parcel as reasonably necessary to inspect to confirm compliance with the terms of this Agreement.
24. **Counterparts; Signatures.** This Agreement may be executed in several counterparts and by each party to this Agreement on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.
25. **Record Notice.** A notice of this Agreement in a form reasonably acceptable to the Northland may be recorded on title to the Northland Parcel with the Norfolk Registry of Deeds along with the Comprehensive Permit for the Project
26. **No Third-Party Beneficiaries.** Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby.
27. **The Parties respectively represent and warrant that:**
 - a. Each is duly organized and existing and in good standing, has the full power, authority and legal right to enter into and perform this Agreement, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, law, bylaw or regulation, and (ii) do not conflict with, or constitute a default under, any agreement or instrument to which they are a party or by which either party may be bound or affected; and
 - b. This Agreement has been duly authorized, executed and delivered; this Agreement constitutes legal, valid and binding obligations of each party, enforceable in accordance with its terms; there is no action, suit or proceeding pending or, to the knowledge of any party, threatened against or affecting either wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder, except as otherwise specifically noted in this Agreement.

Executed this ____ day of October, 2022.

Northland Residential Corporation

John C. Dawley, President

Town of Needham

Kate Fitzpatrick, Town Manager

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Exhibits

Exhibit 1: Castle Farm Parcels, Open Space Concept Plan, dated 9.7.22.

Exhibit 2: Offer to Purchase, as accepted by the Sellers September 6, 2022.

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