

**AMENDED  
MEMORANDUM OF  
UNDERSTANDING**

This Amended Memorandum of Understanding, dated this *24<sup>th</sup>* day of *January*, 2008, by and between the Town of Douglas (hereinafter "Town"), acting by and through its Board of Selectmen, and NorthBrown, LLC, a Massachusetts limited liability company with a usual place of business at 28 Main Street, Douglas, Massachusetts 01516 (hereinafter "Developer")

**WHEREAS** the Developer has entered into an agreement with the owner of a certain parcel of land on North Street and Brown Road in Douglas, Worcester County, Massachusetts, shown as Parcel 61 on Douglas Assessors Map 117, to purchase the property (hereinafter the "Property"), subject to the Developer obtaining permits and approvals for the residential development of the Property; and

**WHEREAS** the Developer intends to file a Comprehensive Permit Application with the Douglas Zoning Board of Appeals in order to develop the Property pursuant to the provisions of G.L. c. 40B § 20-23; and

**WHEREAS** the Developer has entered into discussions with the Town for the submittal by the Town of an application to the Massachusetts Department of Housing and Community Development (hereinafter "DHCD") under its Local Initiative Program (hereinafter "LIP") for the residential development of the Property; and

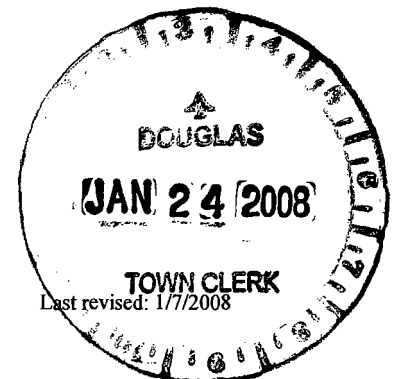
**WHEREAS** prior to signing a LIP application to DHCD, the Town and the Developer desire to set forth the scope of the information, engineering, plans and documentation that the Developer shall provide to the Town in connection with the LIP Application and the Comprehensive Permit Application to be filed pursuant to G.L. c. 40B § 20-23; and

**WHEREAS**, the Town and the Developer wish to set forth binding terms regarding the proposed development; and

**WHEREAS**, the Town and Developer desire that the terms and conditions imposed in this agreement shall be set forth as conditions in any subsequent LIP approval issued by DHCD; and

**WHEREAS**, The Town and Developer have agreed to amend the original Memorandum of Understanding, dated May 1, 2007, and filed with the Douglas Town Clerk on May 17, 2007, in order to conform to certain requirements of DHCD's Local Initiative Program.

**NOW THEREFORE**, the parties hereby agree that:



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1. The Project approved hereunder is shown on the plans prepared by Heritage Design Group, LLC, One Main Street, Whitinsville, Massachusetts, 01588, entitled Conceptual Subdivision Plan "North Village", dated April 17, 2007 (the "Plans"). Any substantial deviation from or amendment to the Plans shall require prior approval from the Board of Selectmen prior to presentation to the Douglas Zoning Board of Appeals (ZBA). The determination of whether a deviation from or amendment to the Plans is "substantial" shall be made by the Douglas Town Engineer.
2. The project shall consist of no more than the units at the ratios indicated in Table 1.

<b>Type of Housing</b>	<b>Affordable</b>		<b>Market Rate</b>		<b>Total # of Units</b>	
Single Family:	7	25%	21	75%	28	100%
Townhouse:	33	31%	72	69%	105*	100%
<b>Total:</b>	40	30%	93	70%	133	100%

\* The 105 Townhouse units shall be divided into 31 – Two bedroom units and 74 – Three bedroom units and shall be dispersed proportionally between the required market rate units and the affordable units.

3. The project shall connect to the municipal water system if allowed by the Douglas Board of Water and Sewer Commissioners. Any such connection shall meet the design, construction and connection requirements of the Douglas Water & Sewer Commissioners, the Douglas Water & Sewer Superintendent and the Douglas Fire Chief. The Developer shall not seek approval for a water connection from the ZBA, as may otherwise be permitted under c. 40B, and shall not seek any waivers from local requirements regarding connections to the municipal water system, except that the Developer may seek waivers from fees for the project's affordable units. Nothing in this MOU shall be construed as an approval of any State permits for water service extensions/connections. In any event, the Town's endorsement hereunder is contingent upon a connection to a public water supply.
4. The project shall connect to the municipal sewer system and shall meet the design, construction and connection requirements of the Douglas Water & Sewer Commissioners, and the Douglas Water & Sewer Superintendent. The Developer shall not seek approval for a sewer connection/extension from the ZBA, as may otherwise be permitted under c. 40B, and shall not seek any waivers from local requirements regarding connections/extensions to the municipal sewer system, except that the Developer may seek waivers from fees for the project's affordable units. Nothing in this MOU shall be construed as an approval of any State permits for sewer extensions/connections.

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5. Prior to the commencement of construction or major site work, the Project shall be submitted to and receive all approvals under the Massachusetts Endangered Species Act (MESA) required by the state Natural Heritage and Endangered Species Program (NHESP). During the local hearing before the ZBA, the Developer shall fully disclose all information regarding MESA issues and allow the ZBA to include such issues in its review of the project. Nothing herein shall constitute a waiver of any local jurisdiction over wildlife issues.
6. A list of requests for waivers from applicable local by-laws, regulations and requirements is attached hereto as Exhibit A. The Board of Selectmen supports waiver requests that will allow construction of the number of units on the locations and lots depicted on the Plans. As to all other waiver requests, including with particularity waivers on strictly technical requirements, the Board of Selectmen shall defer to the Town Engineer on the degree to which any such waiver may be warranted. Any additional waiver requests must be approved by the Board of Selectmen prior to being presented to the ZBA, provided that additional insubstantial or purely technical waiver requests may be endorsed by the Town Engineer, without Board of Selectmen approval.
7. The Developer shall construct a fully functional emergency access, in a manner approved by the Douglas Fire Department from the end of Roadway D, as shown on the Plans to Brown Road. No occupancy permits for the single family homes shall be granted until such emergency access is constructed.
8. During the hearing before the ZBA, the Applicant shall be required to demonstrate that the project's stormwater management system complies with all Department of Environmental Protection (DEP) Guidelines and Best Management Practices (BMPs). The Applicant shall provide the Town's Engineer and/or any ZBA peer reviewer with sufficient information to determine whether the system is compliant with DEP Guidelines and BMPs.
9. The Developer shall assist the Town Housing Partnership or other designated municipal entity with the Development and Implementation of an Affordable Housing Plan that meets the requirements of the Massachusetts Department of Housing and Community Development in an effort to obtain a two-year grace period from Comprehensive permit development projects. To assist the Town in this endeavor, within 30 days after an application is submitted to the ZBA, the Developer shall provide a sum of money necessary for the hiring of expert consultants to prepare such a plan, not to exceed \$4,000.00. Such consultant shall be selected and such funds shall be deposited in accordance with G.L. c. 44, §53G.

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10. The Applicant shall be responsible for payment of the Town's outside consultant peer reviewer(s) in accordance with the Comprehensive Permit Rules adopted by the Douglas Zoning Board of Appeals (ZBA) on July 12, 2001, as may be amended, which reviewers may include, but not necessarily be limited to: legal (Town or Special Counsel) and engineering (water, environmental, sewer, traffic, civil, stormwater). The Town, with the assistance of the Applicant, shall seek and apply for such grants and technical assistance as may be available from DHCD or other sources for review of the project, and the development of the Affordable Housing Plan. As evidence of Community Support of the project, as contained in the LIP Application, the Town shall support the Applicant in seeking waivers of the ZBA Comprehensive Permit Application fee for the project, and all building permit and all municipal connection fees for the affordable units within the project.
11. The Project shall include a playground or park along North Street on the land shown as Lot 29 on the plan entitled "Conceptual Subdivision Plan "North village" Douglas, Massachusetts, July 10, 2006 1"=100'", for use by residents of the Town of Douglas, which land, upon completion of the improvements, shall be deeded to the Town of Douglas. The design and construction standards of said park shall be approved by the ZBA with input from the Board of Selectmen and the Recreation Committee.
12. The submittal shall conform to the requirements contained in the Comprehensive Permit Rules adopted by the Douglas Zoning Board of Appeals (ZBA) on July 12, 2001, as may be amended.

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13. The Developer shall, where permitted, construct bituminous concrete sidewalks with bituminous concrete vertical curbs along any portion of North Street that is being dug up or otherwise disturbed to install, sewer/water lines or other project infrastructure. Such sidewalks shall be constructed in accordance with any requirements imposed by the Town and shall be constructed prior to the receipt of any occupancy permits for the second phase of the Project, as defined in the phasing scheme shown on the Developer's Plans. Additionally, the Developer shall continue dialog with the Board of Selectmen regarding the construction of sidewalks along the remaining portions of North Street between Colonial Road and the North Street – Gilboa Street intersection, it being expressly understood that such dialog shall not bind the Developer or the Town to undertaking any particular additional action. To that end, the Developer shall, at its sole expense provide to the Town Community Development Department, surveyed and engineered plans showing the design of the sidewalks, along with a report on associated construction cost estimates. Engineering design drawings of these sidewalks shall be provided to the Town Engineer in AutoCAD R14 format, and thereafter. The Developer shall have no additional obligations with respect to sidewalk construction North Street between Colonial Road and the North Street – Gilboa Street intersection.
14. After installation of utilities in North Street, the Developer shall, at its sole expense, provide a full width paved overlay of all portions of North Street that are dug up or otherwise disturbed in order to install project utilities or infrastructure. Such repaving, which shall be completed in accordance with requirements imposed by the Douglas Highway Department, must be completed within two (2) years from the completion of work and the placement of a temporary patch in North Street. Additionally, such work shall be secured by a covenant, pass-book agreement, cash deposit agreement or tri-party agreement in a form approved by the Town.
15. During the Comprehensive Permit application process, consideration shall be given for other off-site improvements that may be borne out of the ZBA's peer review consultant(s), provided such off-site improvements would not make the project uneconomic, in accordance with G.L. c. 40B.
16. The Town agrees that the Developer shall be given at least 48 hours advance notice of any meeting of the Board of Selectmen at which the project is scheduled to be discussed or where any vote is to be taken regarding any aspect of the project.


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17. The Town shall file this MOU with the Town Clerk within seven days of full execution by the parties, and thereafter the Board of Selectmen shall sign the LIP Application, and provide the Applicant with a letter of support for the Local Initiative Program Application for Comprehensive Permit Projects to be filed with DHCD, and shall otherwise cooperate with the Applicant in obtaining DHCD approval of the Project. This Memorandum of Understanding (MOU) shall expire exactly two years from the date of filing with the Town Clerk if a Comprehensive Permit from the ZBA is not issued prior to that date. Extensions may be granted for periods of no longer than one (1) year each and only if both parties agree in writing to said extension. Extensions must be requested prior to the expiration of this document or an agreed upon extension. However, if there is a third party appeal of any ZBA approval or any other permit or approval necessary for the construction of the project and the Developer is actively defending such appeal or review then this MOU shall be automatically extended for such period of time as is necessary to fully and completely determine such appeal(s) or review(s).
18. This MOU constitutes a binding Massachusetts contract between the parties and may be enforced, in equity, by a court of competent jurisdiction. The Developer may not seek relief from the Massachusetts Housing Appeals Committee for any alleged breach of this MOU, but the Developer otherwise retains and reserves the right to seek relief from the Massachusetts Housing Appeals Committee from any decision of the ZBA, as may be allowed by G.L. c. 40B, including, but not limited to, the review of any denial or conditional grant of a Comprehensive Permit by the ZBA. In the event that the Board of Selectmen is in support of any such decision by the ZBA, the Board may withdraw from its obligations hereunder, in which event, the LIP endorsement shall become null and void. In the event that the Developer breaches this MOU, as determined by a court of competent jurisdiction, or this MOU expires before a Comprehensive Permit is issued by the ZBA, any LIP endorsement by DHCD shall be considered null and void and, as a consequence, the requirements of 760 CMR 31.01(1)(b) shall be deemed NOT to be satisfied.
19. Notwithstanding the binding effect of this MOU, the Town may terminate the same if unforeseen environmental factors are discovered that will adversely impact the public health, safety, or welfare.
20. Any amendments to this MOU shall be in writing, signed by all parties.
21. This MOU may not be assigned without the express written authorization of the Town.

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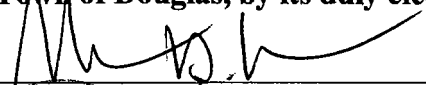

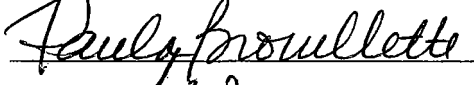
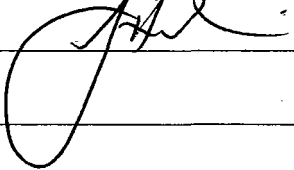
Executed as a sealed instrument this 24th day of January, 2008.

**NorthBrown, LLC**

By: 

Its Manager, duly authorized

**Town of Douglas, by its duly elected Board of Selectmen**

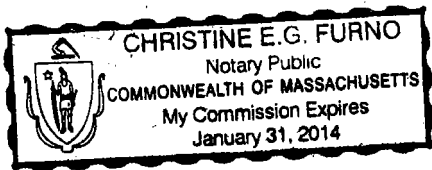
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COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

January 16, 2008.

On this day before me the undersigned notary public, personally appeared Michael Hughes, who proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily in his capacity for its stated purpose.



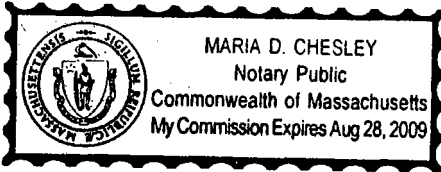
Christine E.G. Furno  
Notary Public  
My commission expires: January 31, 2014

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

January 24, 2008.

On this day before me the undersigned notary public, personally appeared Edwin Taipale, who proved to me through satisfactory evidence of identification, which was personally known to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily in their capacity for its stated purpose.



Maria D. Chesley  
Notary Public  
My commission expires: 8/28/09