

## AGREEMENT REGARDING PAYMENT IN LIEU OF TAXES

May 27, 2020

This Agreement Regarding Payment in Lieu of Taxes (the "Agreement") is entered into by and between the Town of Needham (the "Town"), a municipal corporation located in Norfolk County, Massachusetts, acting by and through its Select Board, and [The Children's Hospital Corporation, a Massachusetts charitable corporation] having its principal office at 300 Longwood Avenue, Boston, MA 02115 (the "Children's").

### BACKGROUND

Reference is made to the following facts which constitute the background to this Agreement:

A. WHEREAS, a condominium has been created under that certain Master Deed of Center 128 Condominium (the "Condominium") dated July 19, 2012 and recorded with the Norfolk County Registry of Deeds (the "Registry") on August 2, 2012 at Book 30268, Page 511 (together with certain plans of the Condominium recorded with the Registry on August 2, 2012 at Plan Book 616, Pages 11 and 12) (as amended, and hereafter amended from time to time, collectively, the "Master Deed") affecting certain real property described on Exhibit A-1 attached hereto (the "Condominium Land") and depicted on the site plan attached as Exhibit A-2 hereto;

B. WHEREAS, the Condominium Land is located in the New England Business Center Zoning District (the "NEBC");

C. WHEREAS, the Condominium Land is subject to the terms of Major Site Plan Special Permit issued by the Needham Planning Board on October 16, 2012 recorded with the Registry on November 14, 2012 at Book 30675 Page 353, as amended by that certain First Amended and Restated Major Site Plan Special Permit issued by the Needham Planning Board on April 2, 2013 and recorded with the Registry on April 30, 2013 at Book 31283, Page 474, as amended by that certain Major Project Site Plan Special Permit Amendment dated September 17, 2013 and recorded with the Registry on October 7, 2013 at Book 31806, Page 465, as amended by that certain Major Project Site Plan Special Permit Amendment dated January 6, 2015 and recorded with the Registry on January 20, 2015 at Book 32847, Page 371, as further amended by that certain Major Project Site Plan Special Permit Amendment dated April 28, 2015 and recorded with the Registry on May 5, 2015 at Book 33101, Page 234, as further amended by that certain Amendment Decision Major Site Plan Special Permit dated November 10, 2015 and recorded with the Registry on March 8, 2016 at Book 33905, Page 36, and as further amended by that certain Major Project Site Plan Special Permit Amendment dated April 25, 2016 and recorded with the Registry on April 28, 2016 at Book 34048, Page 590

(collectively, as amended and hereafter amended from time to time, the “Special Permit”);

D. WHEREAS, certain medical related uses are not currently permitted under the NEBC zoning now in effect or under the terms of the Special Permit;

E. WHEREAS, Children’s desires to acquire the rights to develop the portion of the Condominium Land that remain undeveloped under the terms of the Special Permit, which are identified as the Building 1 Site, the Building 2 Site and the Building 4 Site on the plan attached hereto as Exhibit B (each a “Building Site” and, collectively, the “Property”);

F. WHEREAS, pursuant to a citizens’ petition filed pursuant to M.G.L. c. 39, §10, Children’s caused to be placed on the warrant of the Town’s 2020 Annual Town Meeting an article to amend the Town’s Zoning Bylaw (the “Article”);

G. WHEREAS, the primary purpose of the Article is to allow a “Medical Facility, Pediatric,” (as that term is defined in the Article) as a special permit use in the NEBC;

H. WHEREAS, a favorable vote on the Article by Town Meeting would allow Children’s to seek, from the Planning Board, approval of an amendment to the Special Permit (the “SP Amendment”) to allow for the construction and use of a Pediatric Medical Facility on the Condominium Land;

I. WHEREAS, notwithstanding the ability to develop each Building Site as a Pediatric Medical Facility after adoption of the proposed zoning amendment, Children’s plans to proceed with the development and use of the Building 1 Site as a Pediatric Medical Facility of approximately 240,000 square feet (the “Project”) as soon as practicable, and represents to the Town that it has no immediate plans to develop the Building 2 Site or Building 4 Site—which are presently vacant—as a Pediatric Medical Facility, or otherwise;

J. WHEREAS, the Town will provide continuing services to the Property as are generally provided in the Town, whether the Property is owned by Children’s or its successors or assigns, and regardless if said owner is an entity exempt from the payment of real estate taxes under the laws of the Commonwealth of Massachusetts. Such services include, but are not limited to, ongoing police and fire services, inspection services and access to public ways for utilities and municipal services;

K. WHEREAS, the Town is supportive of the Article and the Project;

L. WHEREAS, Children’s voluntarily entered into that certain Host Community Agreement with the Town dated on or about the date hereof (the “HCA”) to memorialize Children’s agreement to voluntarily make annual payments to the Town in

support of the Town's youth health initiatives in lieu of making personal property tax payments; and

M. WHEREAS, Children's is willing to voluntarily enter into this agreement to make financial contributions to the Town in the form of a payment in lieu of taxes ("PILOT") in the amount set forth herein to ensure that the Town receives payments equivalent to the real estate taxes that would be generated from the Property notwithstanding that such Property is or may be owned by an entity or organization that is or may be exempt from paying local real estate property taxes.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Town and Children's hereby agree as follows:

1. If Children's or any successor(s) in interest to Children's (or an affiliate of Children's) as an owner of the Property or any part thereof, regardless of the manner, method or form by which such owner received or acquired its ownership interest of the Property or any part thereof, is exempt from the payment of real estate taxes under Massachusetts Laws Chapter 59, the PILOT payment paid by Children's or such successor or affiliate, as the case may be, shall be equal to the amount that would be otherwise due to the Town in property taxes under M.G.L. Chapter 59, which shall be calculated as follows:

- a) The PILOT payment amount for the Project shall be calculated by the Town Assessor as the product of a commercial valuation for ordinary office use multiplied by the commercial real estate tax rate per thousand dollars of valuation. The Town Assessor shall calculate this valuation in a manner that is consistent with the approach used to value comparable commercial properties in the Town (whether office buildings or undeveloped land), and using consistent means and methods including but not limited to income capitalization as well as underlying valuation assumptions such as rental revenue per square foot, expense ratios, capitalization rates and the like. Attached hereto as Schedule 1 is the projected assessed value for the Project.
- b) The PILOT payment so derived for year two and all subsequent years shall be adjusted based on the percentage increase or decrease in the overall tax levy of the Town for the applicable fiscal year; provided, however, that the PILOT payment shall not increase by more than 4 % in any year.

The restrictions set forth in this paragraph shall apply for as long as the entity owning the Property continues to be exempt from such property taxation and shall also apply to any lease by an owner of the Property within the NEBC to a tax-exempt entity if the legal effect of such lease would otherwise be to exempt the owner or lessee of the leased Property from the payment of local real estate taxes. Upon conveyance of the Property, or any part thereof, to a successor in interest subject to the terms of this Agreement, the

prior owner shall not have any liability for payments in lieu of taxes with respect to the period after the date of conveyance of its ownership interest.

2. This Agreement shall become effective only upon the issuance of a building permit for a Pediatric Medical Facility use at the Property; provided, however, the PILOT amount during the period of time between issuance of a building permit and issuance of a final certificate of occupancy for the Project shall be calculated by multiplying the full PILOT amount by a percentage equal to the percentage of completion of construction of the Project complete on June 30<sup>th</sup> prior to the then current fiscal year (i.e., if the Project is 50% complete, Children's shall pay 50% of the PILOT). The requirement to pay the full PILOT amount shall become effective in the fiscal year following the issuance of the final certificate of occupancy for the Project.

3. The Building 2 Site and the Building 4 Site, both presently vacant, shall be taxed as vacant land in the Town's usual manner; provided, however, that, in the event that Children's proceeds with development of a facility on either the Building 2 Site or the Building 4 Site for a tax-exempt purpose, Children's shall, upon issuance of a building permit, make PILOT payments on such facility and its Building Site in an amount determined in accordance with the provisions of Paragraph 1 and in accordance with the timing described in Paragraph 2.

4. The parties acknowledge that the Town will not receive separate payments attributable solely to the parking structures on the Condominium Land because the assessed valuation allocated to such parking structures is deducted from the primary improvement valuation so as to combine to equal the full improvement valuation and, therefore, included in the amounts received from PILOT payments under this Agreement and/or real estate taxes from the already developed portions of the Condominium Land.

5. If, and to the extent that, any such owner of the Property makes PILOT payments to Town pursuant to this Agreement, such owner shall have the right to seek an abatement or reduction in such payment and/or in the valuation upon which the payment is based for any reason as set forth in Chapter 59 of the Massachusetts General Laws (other than by claim of exemption). If such abatement or reduction is denied by the Town, such owner or lessee shall the right to submit such claim to arbitration before the American Arbitration Association, which shall review the request for a reduction in payment and/or in the valuation upon which the payment is based pursuant to the standards of the Appellate Tax Board, as closely as is practicable. The Town and such owner or lessee agrees to be bound by the determination of the arbitrator.

6. The forgoing obligations shall run with the land comprising the Property, as more particularly described on Exhibit A-1 attached hereto, and shall automatically terminate with respect to any Building Site on the date upon which the Building Site is no longer owned by a tax-exempt entity, but shall automatically become reinstated if a tax-exempt entity acquires ownership of the Building Site. Any party seeking to acquire an ownership interest in any Building Site for use as for a tax-exempt purpose shall acknowledge in writing its obligations under this Agreement and provide such

acknowledgement to the Town prior to the transfer to it of any ownership interest in any Building Site.

7. Children's shall inform the Town if Children's, its nominee, or any affiliated entity, purchases or ground leases any additional property within the Town.

8. Children's shall, not later than March 31<sup>st</sup> of each year, provide the Town with an inventory of all of the various uses located at the Property, and shall identify in the inventory any such uses that are not exempt from the payment of local real estate property taxes. The payments that Children's is required to make pursuant to this agreement shall be reduced based on the amount of real estate property taxes that the Town collects from the Property.

9. The first PILOT payment that Children's is required to make pursuant to this Agreement shall be reduced by an amount equal to the total aggregate design and construction costs for any new off-site traffic mitigation required as a condition to an approval of the SP Amendment (the "SP Amendment Mitigation"). To the extent such costs of the SP Amendment Mitigation exceeds the first PILOT payment amount due under this Agreement, subsequent PILOT payments shall not be further adjusted.

10. Children's, for itself and its successors and assigns, covenant and agree that the restrictions set out in this Agreement (i) touch and concern the Property, (ii) are for the purpose of facilitating orderly and harmonious development of property to be located in the Town, (iii) are held in gross by the Town as a restriction held by a governmental body under M.G.L. Chapter 184, sec. 26 and not for the benefit of any land in the Town, (iv) are now and shall continue to be of actual and substantial benefit to the Town, (v) do not impede the reasonable use of the Property for which it is most suitable, and (vi) are enforceable in perpetuity or for the longest term permitted by law and in any event for one hundred years. Children's further covenants that, as an "other restriction held by a governmental body" as that term is used in M.G.L. Chapter 184, sec. 26, such restrictions are not subject to the limitations on enforceability of restriction in M.G.L. Chapter 184, sec. 26 – 30. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of such restrictions, Children's hereby appoints the Select Board of the Town as Children's agent to execute and record such notice and agrees that Children's shall execute and record such notice upon request.

11. The Planning Board may choose to condition its approval of the SP Amendment on compliance with the terms of this Agreement. Children's, for itself and any successors or assigns that hold any interest in the Property, hereby consents and waives any and all objections to the Planning Board's requiring compliance with this Agreement as a condition of the Special Permit (as amended by the SP Amendment), or to any requirement to include this Agreement in the Certificate of Title for the Property (if and to the extent accepted by the Registry).

12. All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

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

with a copy to:

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

If to Children's to:

The Children's Hospital Corporation  
c/o Boston Children's Hospital  
300 Longwood Avenue  
Boston, Massachusetts 02115  
Attention: Lisa Hogarty  
Email: [Lisa.Hogarty@childrens.harvard.edu](mailto:Lisa.Hogarty@childrens.harvard.edu)

with copies to:

The Children's Hospital Corporation  
c/o Boston Children's Hospital  
300 Longwood Avenue  
Boston, Massachusetts 02115  
Attention: Office of General Counsel  
Email: [marykaitlin.oconnor@childrens.harvard.edu](mailto:marykaitlin.oconnor@childrens.harvard.edu)

Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, Massachusetts 02110  
Attention: Timothy Sullivan, Esq.  
Telephone: (617) 574-4179  
Email: [tsullivan@goulstonstorrs.com](mailto:tsullivan@goulstonstorrs.com)

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

13. Failure by Children's to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until Children's fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from the Town to Children's and thereafter fails to complete such cure, correction or remedy within sixty (60) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such sixty (60) day period, within such additional period of time as is reasonably required to remedy such default, provided that Children's exercises due diligence in the remedying of such default.

14. This Agreement shall be binding upon the Parties and their successors and assigns, and shall run with the land.

15. Each Party agrees from time to time, upon not less than twenty one (21) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement, in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Project.

16. Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned. Such approval shall be deemed given if no written response is received within ten (10) business days of the request for approval having been so delivered; provided, however, that, in the event that the Town Manager or his/her designee provides notice within such ten (10) business day period that additional time is needed for the Town to provide such written response not to exceed twenty (20) additional business days, the requested approval shall not be deemed given if a written response is received as soon as practicable but not later than the expiration of the time specified in such notice.



17. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

18. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter thereto. 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 the Select Board and Children's. The Parties do not intend for any third party to be benefited hereby.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first set forth above.

**TOWN:**

By its Select Board

  
\_\_\_\_\_  
Maurice Handel, Chair  
\_\_\_\_\_  
Matthew Borrelli, Vice Chair  
\_\_\_\_\_  
John A. Bulian  
\_\_\_\_\_  
Marianne Cooley  
\_\_\_\_\_  
Daniel P. Matthews



COMMONWEALTH OF MASSACHUSETTS

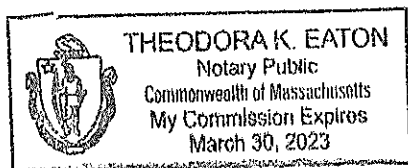
NORFOLK, ss.

On this 29<sup>th</sup> day of May, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_

and proved to me through satisfactory evidence of identification, which was MA Daniel's Weene to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as a member of the Select Board of the Town of Needham.

Theodora K. Eaton  
Notary Public:

My Commission Expires: March 30, 2023



**CHILDREN'S:**

THE CHILDREN'S HOSPITAL  
CORPORATION, a Massachusetts  
charitable corporation

By:

\_\_\_\_\_  
Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_ day of May, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_ and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of the Children's Hospital Corporation.

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

My Commission Expires:

**Schedule 1**

**PROJECTED ASSESSED VALUE**

Projected Full Assessment Upon Completion

\$44,673,000

*Based on 240,000 square feet of improvements + garages.*

Exhibit A-1

A certain tract of land located on the northeasterly side of First Avenue, southerly side of A Street and northerly side of B Street, Needham, Norfolk County, Commonwealth of Massachusetts, being shown as "Total lot area includes Lots 13, 14, 27, 28, D & E, 596.00 ± S.F. or 13.682 ± Ac." on plan of land entitled "Phase 1 - Master Deed Site Plan of Center 128 Condominium in Needham, MA (Norfolk County)", Scale 1" = 50', prepared by Precision Land Surveying, Inc., 32 Turnpike Road, Southborough, Massachusetts 01772, dated July 2, 2012 and recorded August 2, 2012 in Norfolk County Registry of Deeds Plan Book 616, Plan 12.

Together with the benefit of rights granted in deed dated October 16, 1953 from Gerald W. Blakeley, Jr., et al, Trustees of New England Industrial Center u/d/t dated September 12, 1952 and filed as Document No. 148530, to Kraft Foods Company, said Deed dated October 16, 1953 and recorded in Book 3217, Page 543 and filed as Document No. 158539. (Lot 14)



Exhibit B

