

Memorandum of Understanding (“MOU”) between BH GRP 1050 Waltham Owner LLC (the
“Owner”) and the
Town of Lexington, Massachusetts (the “Town”)

For 1050 Waltham Street, Lexington (the “Property”)
March 9, 2020

I. Background

The Owner is the owner of the Property. The Property was acquired by the Owner in April 2019. The Property is located at 1050 Waltham Street, Assessors Map 5, Lot 14 currently improved with two (2) office buildings, off-street surface parking, and associated site improvements, which were developed in the 1970’s. One of the buildings is completely vacant since the former occupant moved out several years ago.

The Owner has proposed to rezone the Property from the present CLO-Local Office zoning district to create a Planned Development District (“PD-5”) to allow for redevelopment of the property. The Owner plans to replace the existing structures with a lab/office building designed for life science research and development uses, including approximately 157,000 square feet of occupiable space, with ground floor amenity space, up to 475 parking spaces in a structured parking garage, outdoor public space and pedestrian ways, and associated site improvements (the “Project”).

The Town, acting through the 2020 Lexington Annual Town Meeting, is expected to consider, and may approve, a Preliminary Site Development and Use Plan for the proposed PD-5 District in connection with the Project (the “PSDUP”). In the event that the Lexington Town Meeting approves the PSDUP, this MOU between the Owner and the Town, acting by and through its Select Board, sets forth certain additional mitigation measures to be completed or undertaken by the Owner in connection with the construction and operation of the Project. This MOU supplements the obligations and commitments of the Owner as established in the PSDUP. This MOU shall not negate the obligations and commitments of the Owner in any other permit, certificate or approval issued, or which may later be issued, by the Town in connection with the Project.

II. Traffic

A. Financial Contributions & Mitigation Measures.

1. The Owner shall provide long-term and short-term bicycle parking and locker/shower facilities within the Project, as determined by the Planning Board through Site Plan Review.
2. Prior to the issuance of a Certificate of Occupancy for the Project, the Owner shall make a one-time financial contribution payable to the Town associated with the total net new off-street parking spaces constructed as part of the Project as follows:
 - a. \$2,000 per each off-street parking space in excess of the existing two hundred thirty-six (236) off-street parking spaces presently located on the Property up to 416 total parking spaces (this increase of 180 spaces would result in an initial payment of \$360,000); and

- b. \$4,000 per each additional off-street parking space in excess of 416 total parking spaces up to a maximum of 475 total parking spaces allowed under the PSDUP for the Project (this increase to the maximum of an additional 59 spaces would result in an additional payment of \$236,000).

This payment is intended to provide the Town funding for associated transit and transportation demand management improvements, which include but are not limited to sidewalk and crosswalk improvements. Any future increase in parking spaces on the Property provided for the Project up to the maximum of 475 total parking spaces allowed in the PSDUP shall require the Owner make an additional payment to the Town under the terms hereof. Funds are to be deposited into the Traffic Mitigation Stabilization Fund or the Transportation Demand Management/Public Transportation Stabilization Fund, to be determined at the discretion of the Town Manager.

3. The Owner shall make an annual financial contribution of \$5,000, payable to the Town, for local transit such as Lexpress or other transit service trial projects, as determined by the Select Board. Funds are deposited into the Transportation Demand Management/Public Transportation Stabilization Fund. The first payment shall be made prior to the issuance of a Certificate of Occupancy for the Project, and thereafter annual payments shall be made in each subsequent calendar year prior to July 15th.

4. To support the Project, the Owner shall maintain membership in the Route 128 Business Council and seek to extend the Alewife Route A North Shuttle to include 1050 Waltham Street. If the Route 128 Business Council shuttle cannot be extended to serve the Project, or another shuttle service cannot be provided to serve the Project, the Owner will develop a shuttle system unique to the property to provide service to employees from 1050 Waltham Street to the Alewife MBTA Station. For at least a six (6) month trial period, the Owner shall allow residents to use any spare capacity on this shuttle (only if there are vacant seats available after employees are accommodated) and may charge a reasonable fee to non-employee residents that may utilize said shuttle; however, the Owner will not be obligated to provide access to parking or other facilities within the Project. At any time in the future in which the operation of this shuttle service is no longer adequately used, the Owner may petition the Select Board to discontinue the shuttle service, at which time, the Owner shall contribute \$5,000 per year payable to the Town each July 15th to develop a shared shuttle with other South Lexington area property owners, in consultation with the Lexington Transportation Manager. Funds are to be deposited into the Transportation Demand Management/Public Transportation Stabilization Fund.

B. TDM Obligations.

1. The Owner agrees to implement the transportation demand management policies, measures, and improvements ("TDM Measures") associated with the Project in accordance with the Traffic Impact Study prepared by MDM Transportation Consultants, Inc., dated March 9, 2020, as amended through the Planning Board Site Plan Review in connection with the Project, as attached hereto as Attachment A. Additionally, the Owner agrees to the following:

2. The Owner shall require all tenants of the Project to implement a pre-tax transit pass sales program through the MBTA Perq Program (<https://www.mbta.com/pass-program/corporate>) or a similar program.
3. The Owner shall appoint a Transportation Liaison to work with the Town and Project tenants to ensure the Owner's TDM obligations are complied with, to enhance transportation services in the area of the Project, and to ensure that tenants and tenant employees have adequate access to information regarding public transportation, alternative modes of transportation, and transit passes, including participation in Bay State Commute, or an equivalent (as determined by the Lexington Transportation Services Manager) ride matching service. On an annual basis (July 15th), Owner will provide the name and contact information for the Transportation Liaison to the Lexington Town Manager.
4. The Owner shall include annual parking demand counts in its annual report to the Town, submitted to the Planning Department by July 15 of each year to include the following components:

Annual PTDM Monitoring Report - Owner will prepare an annual PTDM monitoring report that identifies the status, participation level and/or inventory of each component of the PTDM program to include the following:

 - Summary of property building size, building occupancy/vacancies and employment levels.
 - Parking inventory that quantifies the garage and surface parking supply by category including HOV/carpool, handicap accessible, car share spaces, EV charging spaces, and visitor spaces.
 - Property tenant employee commuter survey results that summarizes commuting methods and preferences. The tenant employee survey shall be administered on a biennial basis by the Transportation Coordinator to provide an inventory of employee commute distances and methods (drive alone, public transit, carpool, walk/bike and other).
 - Status reporting on PTDM mitigation elements: Route 128 Business Council Membership
 - Transportation Coordinator contact information
 - Shuttle Service
 - Participation level in transit subsidy program
 - Bike Share program inventory and participation level
 - Bike space inventory
 - Car Share inventory and coordination efforts
 - Property Website link
 - Summary of transportation management events held at the Property
 - Summary of registered carpool groups at the Property
 - Copy of tenant manual
5. To improve pedestrian safety in the vicinity of the Project, prior to Site Plan Review, the Owner shall provide alternate designs for an improved crosswalk at Waltham Street;

including but not limited to Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) options for the Town of Lexington Engineering Division to evaluate and for its approval prior to the issuance of a building permit for the Project. During construction of the Project, the Owner shall install the approved crosswalk design at the Owner's expense. Crosswalk installation shall be complete prior to the issuance of a final Certificate of Occupancy for the Project, or as approved by the Town Engineer or their designee. All work in the right-of-way must be coordinated with the Town Engineer or their designee.

6. To improve bicycle and vehicular access in the vicinity of the Project, prior to Site Plan Review, the Owner shall provide a pavement marking design plan of Waltham Street – similar to Figure 13 “Conceptual Roadway Improvement Plan” prepared by MDM Transportation Consultants, Inc. dated February 5, 2020, that includes two thru-lanes, one center turning lane and two bike lanes, starting from the Lexington-Waltham Town line, continuing north beyond the Property, and transitioning to the existing pavement markings before the intersection of Waltham Street and Concord Avenue at a point to be approved by the Town Engineer or their designee. This plan shall be subject to approval by the Town Engineer or their designee prior to the issuance of a building permit for the Project. The Owner shall implement the approved Waltham Street pavement marking design during the construction of the Project at the Owner's expense, and such pavement markings shall be completed prior to issuance of a final Certificate of Occupancy for the Project, as approved by the Engineering Division.

7. Upon the earlier of (i) two years after the issuance of a Certificate of Occupancy for the Project or (ii) reaching equal to or greater than 80% occupancy of the Project, the Owner shall conduct a traffic monitoring study, at its expense, of scope to be approved by the Town Engineer or their designee. The traffic monitoring study shall include driveway counts of daily trip activity generated to/from the Project for a weeklong period on weekdays during average season/typical operating conditions. If average daily traffic counts exceed those projected in the pre-construction traffic study by more than 5%, the Owner will make a one-time contribution, payable to the Town, to fund (i) transit programs and/or (ii) all or a portion of the cost of traffic improvements to Waltham Street, as approved by the Town Engineer and constructed at the discretion of the Town, not to exceed a total contribution from the Owner of \$50,000. Funds to be deposited into the Traffic Mitigation Stabilization Fund or the Transportation Demand Management/Public Transportation Stabilization Fund, to be determined at the discretion of the Town Manager. Average daily traffic counts for purposes of this MOU are defined as the measured two-way (entering and exiting) daily trip activity for the Project as averaged over a weeklong period.

8. The Project shall provide space for a public bike share station, in coordination with any bike share program that may be implemented by the Town.

9. The Project shall provide bus shelters and/or benches for shuttle services and/or any MBTA or other bus service that may be extended to the Project, location subject to approval of the Lexington Department of Public Works. Bus shelters and/or benches to be maintained by Owner, bus shelters and/or benches will have solar-powered illumination.

III. Trail Access

A. Pedestrian Access Easement:

Subject to obtaining all necessary approvals and proceeding with the construction of the Project improvements, the Owner agrees, prior to the issuance of a Certificate of Occupancy for the Project or within twenty-four (24) months after commencement of construction activities on the Property (whichever is earlier), to tender to the Town for acceptance, a recordable easement to the public to allow for pedestrian access from Waltham Street across the Property to the trail network accessible through the adjoining Brookhaven property, located at 1010 Waltham Street (subject to agreement and coordination with Brookhaven). This easement shall be limited to daytime use only and will be properly marked with signage installed by the Owner and the easement area shall be maintained at the Owner's expense. The easement will be subject to the Owner's reasonable rules and regulations so as not to interfere with the use and operation of the Project. The Owner shall not be responsible for improvements or easements on the adjoining Brookhaven property.

B. Continuing Financial Obligation for Trails.

The Owner shall make an annual financial contribution of \$5,000 per year, payable to the Lexington Nature Trust Fund, for maintenance and management of conservation land and connecting trail networks or to purchase any easements on private land or planning for trail development to connect the Property to the Town's trail network. The first payment shall be made prior to the issuance of a Certificate of Occupancy for the Project, and thereafter annual payments shall be made in each subsequent calendar year prior to July 15th.

IV. Laboratory impact

The Owner shall make an annual financial contribution of \$5,000 per year per laboratory tenant within the Project, payable to the Town, for the purposes of supporting the annual review of tenants' laboratory biosafety plans, laboratory animal review fees, hazmat plan review or rDNA fees. The first payment shall be made prior to the issuance of a Certificate of Occupancy for the Project, and thereafter annual payments shall be made in each subsequent calendar year prior to July 15th. Funds are to be deposited in the Lab Animal Permit Revolving Fund.

In the event that a regulatory fee structure is established by the Board of Health pursuant to duly adopted regulations to compensate the Town for the regulation of laboratories or laboratory uses, the obligation to make the payments required under this section shall cease and only the applicable regulatory fees shall be due.

V. Access and Utility Easements

The Owner shall determine the location of the 36" drain line that runs along the front of the Property, and shall provide a minimum 10-foot setback from any building, structure or overhang, in order to provide adequate access, subject to approval by the Town of Lexington Engineering Division. The Owner shall review whether an easement exists for this drain line, and shall tender, at the issuance of the building permit for the Project, an easement to the Town

for acceptance in a form acceptable to Town Counsel.

Above grade site improvements, including sidewalks, plazas, stairs, walls, plantings, signs and other site furnishings may be located in the setback area, subject to approval by the Town of Lexington Engineering Division.

The Owner shall provide, at the time of site plan review for the Project, calculations for the design flow sewer volume for the Project, and information regarding the anticipated types of waste from the Project. If, based on such information, the Town Engineer or their designee determines, prior to the issuance of a building permit for the Project, or when any new business whose operation warrants certain on-site controls such as but not limited to a macerator are needed, the Owner shall install the equipment on-site per the Town Engineer or their designee's specifications.

At the time of site plan review for the Project, the downstream sanitary sewer system must be analyzed from the Property to the Concord Ave Pump Station (including the station) to ensure sufficient capacity. The analysis will require peer review at the Owner's expense.

If, within five years after the issuance of a Certificate of Occupancy for the Project, it is reasonably determined by the Engineering Division that the sewer flows of the Project are greater than 15,000 gpd on an annualized basis, the Owner will install a flow meter and, based on actual readings over the course of one (1) year, will make a one-time payment to the Town for the Inflow and Infiltration mitigation fee as per the Code of the Town of Lexington.

VI. Noise Testing & Abatement

1. The Owner agrees that between the hours of 10:00 p.m. and 6:00 a.m., normal operations will not exceed a noise level of 5dBA above established ambient noise levels at the boundaries of lots with residential dwellings. The Owner will submit a design report as part of the Site Plan Review submission for the Project, conducted by an acoustical professional engineer licensed in the Commonwealth of Massachusetts, or other professional certification such as a Board Certification from the Institute of Noise Control Engineering (INCE), showing how the Owner will achieve such a standard.

During Site Plan Review, the pre-construction, existing ambient noise level will be established based on the L90 (90th percentile) by a series of measurements taken between the hours of 10:00 p.m. and 6:00 a.m. at one-hour increments over a seven (7) day period.

During Site Plan Review, the Owner and its engineer will also submit a testing protocol to be used to confirm compliance with the standard. The protocol will specify the type of measurement instruments to be used, where the instruments will be placed, and when the measurements will be taken. The Town will hire, at Owner's expense, a noise consultant to review the testing protocol, and, at a later date, to review the Owner's data showing compliance with the noise standard.

2. If the Town receives any noise complaints associated with the Project mechanical equipment or if the Owner makes future improvements to the Project, the Owner shall demonstrate to the Town its compliance with the standards in this agreement and Massachusetts Noise Regulations 310 CMR 7.10. The Town may hire, at the expense of the Owner, a third-party acoustic professional engineer licensed in the Commonwealth of Massachusetts consultant, or other qualified professional, to review said compliance. The Owner shall modify the mechanical equipment if it is found to be out of compliance with 310 CMR 7.10.

VII. Sustainability

1. Prior to the issuance of a Certificate of Occupancy for the Project, the Owner shall certify to the Town that the Project has been designed and built in accordance with LEED v4 for BD+C: Core and Shell standards established by the U.S. Green Building Council, at the Silver level, including procurement of renewable electricity. Furthermore, the Owner will review and evaluate the Project in comparison to the integrated building design and construction policy that has been adopted by the Town of Lexington.

2. Prior to the issuance of a building permit for the Project, the Owner will develop energy efficient design options for the building and HVAC systems in the Project, including options that utilize electric heat pumps or a combination of high efficiency natural gas heat with electric heat pumps for air conditioning, depending on projected operating costs and engineering requirements, including tenant requirements for laboratory research and development uses. Consistent with Lexington sustainability objectives, preference will be given to electric based HVAC systems to the extent financially and operationally feasible. The Owner shall include in its Site Plan Review submission for the Project specifications and/or proposed standards for the Project's HVAC systems with the goal of minimizing greenhouse gas emissions for consideration by the Planning Board.

3. Owner shall provide a minimum of ten (10) electric vehicle charging stations or 2% of the total off-street parking spaces, whichever is greater, and associated infrastructure (e.g., transformers, etc.) to be installed prior to the issuance of a Certificate of Occupancy for the Project. Such associated infrastructure shall be installed with sufficient electrical panels, conduit/raceways, overprotection devices, wires and pull boxes to allow for increased future capacity to add a minimum of an additional ten (10) electric vehicle charging stations or an additional 2% of the total off-street parking spaces, whichever is greater. In addition, Owner will take full advantage of electric vehicle charging station incentive programs offered by the utility company at the time of construction.

4. The Owner agrees to install a solar photovoltaic (PV) canopy on the roof of the parking garage, to the extent that permitting and construction of a PV system is operationally and financially feasible at the time of construction of the Project. Prior to the issuance of a building permit for the Project, the Owner shall ensure that the structural design of the parking garage is "solar-ready" to accommodate a PV system on the roof, and the Owner shall provide a feasibility analysis for installation of a PV system in light of available financial incentives, if

any. Owner shall include in its Site Plan Review submission for the Project specifications and/or proposed standards for the PV canopy with the goal of maximizing solar energy production for consideration by the Planning Board.

VIII. Consumer Price Index Adjustment

The Owner anticipates commencing construction of the Project not later than December 31, 2022. However, in the event commencement of construction of the Project is delayed, Owner agrees that, all payments required under this MOU that are made after January 1, 2023 shall be increased by the Consumer Price Index for all Urban Consumers, Boston- Cambridge-Newton, published by the Bureau of Labor Statistics, U.S. Department of Labor (CPI-U) for the previous calendar year(s); provided, however, that these figures shall never be reduced below the base established herein. The first such adjustment, if applicable, shall be completed on the initial CPI-U Adjustment Date based on changes in CPI-U for the preceding calendar year. If the Bureau of Labor Statistics should cease to publish the CPI-U in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall reasonably be designated by the Town in substitution therefor. The CPI-U for any year relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such previous calendar year.

IX. Other Commitments -Site and Building Lighting

External site and landscape lighting associated with the Project shall be designed to minimize light trespass and enhance public safety in accordance with the requirements set forth in Section 5.4 of the Zoning Bylaw. The Owner shall include in its Site Plan Review submission for the Project specifications and/or proposed standards for internal building lighting designed to minimize impacts on neighboring residential uses for consideration by the Planning Board.

X. Miscellaneous

A. Binding Effect.

1. This MOU shall run with the Property as an encumbrance and shall bind and inure to the benefit of the Owner and its successors and assigns as owners of the Property for as long as use of the Property is subject to the PSDUP. The Town and the Owner agree that the Owner may transfer all, a portion of, or an interest in the Project to a new entity provided that any new entity acknowledges that:

a) This MOU shall run with title to each portion of or interest in the Project and shall be binding upon any entity with an ownership interest in the Property, and each of its successors or assigns as to the obligations which arise under this MOU during their respective periods of ownership of the Property, provided that each predecessor-in-title shall be forever released from this MOU 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 MOU and that this MOU shall be enforceable against such successor by the Select Board with respect to such successor's portion(s) of the Property; and

b) The obligations created hereunder shall not be treated as assumed by any new entity, and no prior entity shall be released from such obligations, until such notice is delivered to the Town.

5. This MOU may be enforced by any remedy provided at law or in equity. This MOU and the Lexington Zoning Bylaw (“Bylaw”), as modified by the PSDUP, shall be construed in such a way as to reasonably harmonize any conflicting provisions, but in the event of any irreconcilable conflict between this MOU and the Bylaw as so modified, the Bylaw as so modified shall control, subject to the provisions of any applicable State or Federal law.

3. The Owner shall record this MOU with exhibits at the Middlesex South Registry of Deeds prior the commencement of permitting with the Town after the approval of the Lexington Town Meeting. The Owner shall submit proof of the MOU with exhibits being recorded to the Select Board and the Department of Land Use, Health & Development, Town of Lexington, 1625 Massachusetts Avenue, Lexington, MA 02420.

B. Owner's Existence and Authority. The Owner represents that it is a Delaware Limited Liability Company duly formed, validly existing, in good standing and duly registered to do business in the Commonwealth of Massachusetts. This MOU constitutes a valid and legally binding obligation of the Owner, enforceable against Owner in accordance with its terms, and neither the execution, delivery or performance of this MOU nor compliance herewith conflicts with or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (i) the organization documents of the Owner, (ii) any law or any order, writ, injunction or decree of any court or governmental authority, or (iii) any agreement or instrument to which Owner is a party by which it is bound.

C. Cooperation. The Owner hereby agrees to cooperate with the Town on an ongoing basis to implement this MOU.

D. Default; Opportunity to Cure. Failure by either party to this MOU to perform any term or provision of this MOU shall not constitute a default under this MOU unless and until the defaulting party fails to commence to cure, correct or remedy such failure within fifteen (15) 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 (60) days of the receipt of such written notice, or, with respect to defaults that 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 the defaulting party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, the Owner shall cure any monetary default hereunder within thirty (30) days following the receipt of written notice of such default from the Town.

E. Time is of the Essence. Time shall be the essence for this MOU. Any reference in this MOU to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years, as applicable. As used in this MOU, the term “Business Day”

shall mean any day other than a Saturday, Sunday, recognized federal holiday or recognized state holiday in the Commonwealth of Massachusetts. If the last date for performance by either party under this MOU occurs on a Saturday, Sunday, or recognized federal or state holiday in the Commonwealth of Massachusetts, then the last date for such performance shall be extended to the next occurring Business Day.

F. Permitting. The execution and delivery of this MOU does not constitute an agreement by the Town that any necessary permit or approval for the Project will in fact be granted, including, without limitation, approval of the PSDUP by the Lexington Town Meeting or issuance of any permit, certificate or approval for the Project. The execution of this MOU shall be incorporated into and made a condition of the PSDUP.

G. Effective Date. This MOU shall become binding when all permits necessary for the Project, including the PSDUP and any Special Permits, Site Plan Approvals and Order of Conditions for the Project, are effective and the Owner has notified the Town in writing of its intention to proceed with construction of the Project (the "Effective Date"). In the event that (i) the changes to the Zoning Bylaw effectuating the PSDUP are disapproved by the Massachusetts Attorney General or a court of competent jurisdiction, (ii) the Owner fails to obtain or maintain any permit, certificate, or approval necessary for the Project or (iii) the Owner chooses not to proceed with the construction of the Project and notifies the Town accordingly, this MOU shall be null and void.

H. Amendment of MOU. This MOU may not be amended, modified, or terminated except by a written instrument executed by Owner or a successor owner and by the Select Board.

I. Enforcement; No Waiver. The failure of the Town or the Owner to enforce this MOU shall not be deemed a waiver of the Town or the Owner's right to do so thereafter.

J. Severability. The invalidity of any provisions of this MOU as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. If any provision of this MOU or its applicability to any person or circumstances shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.


K. Applicable Law. This MOU shall be governed by and according to the laws of the Commonwealth of Massachusetts, as amended from time to time. Any action brought by the Town hereunder may be brought in the Land Court or the Superior Court in and for the County of Middlesex, and the Owner hereby agrees to the jurisdiction of such court.

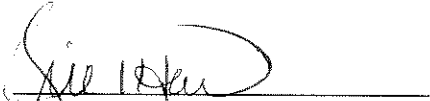
Executed under seal as of the date first set forth above.


TOWN OF LEXINGTON


SELECT BOARD


Douglas Lucente, Chairperson


Joseph N. Pato


Jill Hai


Mark Sandeen


Suzanne E. Barry

OWNER:

BH GRP 1050 Waltham Owner LLC,
a Delaware limited liability company

By: 
Kevin Sheehan