Appendix D

Traffic Memorandum of Understanding

Memorandum of Understanding between Patriot Partners Lexington LLC (the "Applicant") and the Town of Lexington, Massachusetts ("Town")

May __, 2009

The Applicant has filed for a zoning amendment to the PSDUP which was previously approved by the Town of Lexington Town Meeting in May 2004 (hereinafter, the "Original PSDUP") for the property known as "Lexington Technology Park" located at 125, 131, 141 Spring Street (N/K/A 125 Spring Street, 200, 300, 400, and 500 Patriot Way) (collectively , the "Property"). This proposed zoning amendment to the Original PSDUP and DSUP (hereinafter as amended referred to as, the "Amended PSDUP") has been placed on the warrant for the 2009 Special Town Meeting as Article 2.

The Applicant has committed to do specific traffic mitigation measures as part of the Original PSDUP. The Amended PSDUP and DSDUP has proposed additional mitigation measures as specified within the Traffic Study entitled "Lexington Technology Park, Lexington, Massachusetts", dated February 18, 2009, prepared by Tetra Tech Rizzo, (hereinafter , the "Traffic Study"). The purpose of this Memorandum of Understanding (hereinafter, the "MOU") is for the Applicant and the Town, acting by and through the Board of Selectmen, to reach agreement on those provisions having public benefit to the Town as well as benefit to the Property in order for these mitigation provisions to supplement and clarify those proposed in the Traffic Study of the Amended PSDUP to be voted on by Town Meeting and, if approved, to be submitted to the Attorney General of the Commonwealth of Massachusetts for approval. This MOU shall in no way negate the prior obligations and commitments of the Applicant as previously approved by Town Meeting in the Original PSDUP.

I. Traffic Related Obligations

a. Financial Contribution Toward Traffic Mitigation and Transportation Demand Management Funds

The Applicant shall pay to the Town for deposit into the Traffic Mitigation Stabilization Fund and/or the Transportation Demand Management/Public Transportation Fund a mitigation fee in accordance with the following sections.

b. Projects to be Funded Through Traffic Mitigation and Transportation Demand Management Funds

The aforesaid financial contribution shall be utilized to enhance future traffic operations and benefit the Town, the neighborhood, and the Property, at certain locations and via certain improvements, which may include, but are not limited, to the following:

- Design/Construct traffic calming devices along Shade Street.

- Design/Construct a traffic signal at Spring Street/Hayden Avenue intersection;
- Design/Construct a traffic signal at Spring Street/Concord Avenue intersection;
- Design/Construct sidewalks along Hayden Avenue intersection;
- Design/Construct improvements/signal at Waltham Street/Hayden Avenue intersection;

The Town shall determine in its sole discretion the traffic and transportation mitigation improvements and/or services for which the funds shall be expended.

II. Measures commencing upon issuance of approval of the PSDUP by the Attorney General of the Commonwealth of Massachusetts

a. Traffic Master Plan

The Applicant shall within thirty (30) days, upon approval of the Amended PSDUP by the Attorney General, contribute Sixty-Five Thousand ($65,000) Dollars to the Town of Lexington to be deposited in the Traffic Mitigation Stabilization fund to allow the Town, acting by and through the Board of Selectmen and their designees, to undertake the preparation of a traffic master plan of the Spring Street and Hayden Avenue Corridors (hereinafter , the "Corridor Traffic Master Plan"). The purpose of this master planning effort shall be to evaluate and address transportation issues that the corridor currently faces and will likely encounter in the future based upon actual and projected development and the attendant traffic impacts. The Corridor Traffic Master Plan shall provide a dynamic framework to plan and implement traffic improvements as development proceeds. Concurrent with the financial contribution, the Applicant shall provide the Town with a Scope of Work outlining the purpose of the traffic evaluation to allow the Town to expeditiously engage a qualified Traffic Engineering firm to undertake this analysis. The results of this analysis shall be provided to the Applicant upon their request.

If within three (3) years of the receipt of the funding for the Corridor Traffic Master Plan, the Town neglects to engage a qualified Traffic Engineering Firm to commence the analysis, the Town shall reimburse said funds to the Applicant and the obligation under this provision shall cease and shall no longer be in effect, unless extended by the mutual written agreement of the parties. The Applicant shall not unreasonably withhold its consent to any request from the Town for an extension of time to complete this analysis.

b. Shade Street Traffic Calming

The Applicant shall within thirty (30) days, upon approval of the Amended PSDUP by the Attorney General, contribute Fifteen Thousand ($15,000) Dollars to the Town of Lexington to be deposited in the Traffic Mitigation Stabilization fund to allow the Town to study the use of certain so-called "traffic calming" devices and strategies on Shade Street.

III. Measures Commencing prior to issuance of Initial Building Permit

a. The Applicant shall prior to issuance of the building permit for any building permit for net square footage in excess of 505,800, the amount approved in the Original PSDUP, contribute six hundred thousand ($600,000) Dollars to fund traffic and transportation mitigation for the benefit of the Town and the project. The contributed monies shall be disbursed as follows:

   i. Five hundred thousand ($500,000) Dollars shall be contributed to the Traffic Mitigation Stabilization Fund to be disbursed by the Town.

   j. One hundred thousand ($100,000) Dollars shall be contributed to the Transportation Demand Management/Public Transportation Stabilization Fund.

IV. Measures commencing prior to issuance of a Certificate of Occupancy for Second Building

Prior to issuance of a Certificate of Occupancy for any new space (other than parking garages) in excess of the amount authorized by the building permit referenced in Paragraph III a., above, the Applicant shall pay to the Town an additional amount equal to the product of $1,900 multiplied by each new parking space constructed in excess of the number of spaces approved as part of the Original PSDUP (1903).

The following formula shall be used to derive the contribution:

i. Number of net new spaces times $1900, less $680,000.
"Net new spaces" is defined as the total number of parking spaces on site, minus 1903 (the Original DSPUP permitted spaces).

If the result of the above formula is less than zero, no additional payment will be due.

The contribution that is anticipated to be paid by the Applicant in accordance with this formula is $811,700.

This additional payment shall be distributed as follows:

ii. The first one hundred thousand ($100,000) Dollars shall be contributed to the Transportation Demand Management/Public Transportation Stabilization Fund.

iii. The balance of the additional payment shall be contributed to the Traffic Mitigation Stabilization Fund.

V. Measures Commencing after the issuance of a Certificate of Occupancy for Second Building

a. If the Applicant should seek and secure approval for construction of any parking spaces not included in the calculation under section IV, the Applicant, prior to approval, shall contribute one thousand nine hundred ($1900) Dollars for each such parking space to the Town of Lexington to be deposited in the Traffic Mitigation Stabilization Fund to fund traffic and transportation mitigation for the benefit of the Town and the project.

VI. Additional Traffic Mitigation Obligations

a. Transportation Coordinator

The Applicant, as part of the Original PSDUP, has appointed a site transportation coordinator who in responsible to implement a variety of employee based transportation demand management opportunities. The Applicant agrees that the coordinator shall annually submit to the Town Planning Director and Transportation Safety Advisory Council (TSAC), for their review and comment reports as to the strategies employed and their effectiveness to ensure compliance with the requirements of the Original PSDUP.

In addition, the Applicant will work with the Town to explore opportunities to provide the public with service from the Property (or a location nearby) to Alewife Station via shuttle or bus.

b. Grant Application Assistance

The Applicant shall cooperate with and support the Town in its application(s) to obtain grant financing or public monies for public infrastructure improvements in South Lexington (including those listed above), which may include applications to the Massachusetts Opportunity Relocation and Expansion (MORE) Program, Public Works and Economic Development (PWED) Program, Infrastructure Investment Incentive (I-Cubed) Program, and other programs offered by the Commonwealth.

VII Additional Related Obligations

The Amended PSDUP, and any subsequent DSDUP, shall include the following conditions which shall be completed in accordance with said plans and to the satisfaction of the Building Commissioner:

a. Sustainable Design and Construction

The Applicant shall require that any new construction at the Property be designed and constructed in accordance with the "Silver Standard" of The Leadership in Energy and Environmental Design (LEED) Green Building System.

b. Tax Increment Financing

As a precondition to the development of Building 100, the owner of the parcel of land on which said building is to be constructed shall amend the terms and provisions of that certain Tax Increment Financing Agreement by and between the Town and Shire Human Genetic Therapies Inc. ("Shire") dated October 2007 (the "TIF") to remove the value of said parcel from the terms and provisions of the TIF.

IX. Additional Provisions

Binding Effect. This Agreement shall be binding on the Applicant and its successors and assigns and on the Town. This Agreement is for the benefit of the Applicant and the Town, and it may be enforced by any remedy provided at law or in equity. This Agreement and the Lexington Zoning Bylaws shall be construed in such a way as to harmonize any conflicting provisions to the greatest extent reasonably possible, but in the event of any irreconcilable conflict between this Agreement and any provision in the Bylaw, the provisions of the Bylaw shall control (subject always to the provisions of General Laws, Chapter 40A, as amended) as denoted in the Original and Amended PSDUP.

Applicant's Existence and Authority. The Applicant is a Massachusetts limited liability company duly formed, validly existing and in good standing under the laws of the Commonwealth of Massachusetts.

This Agreement constitutes a valid and legally binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms, and neither the execution, delivery or performance of this Agreement 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 Applicant, (ii) any law or any order, writ, injunction or decree of any court or governmental authority, or (iii) any agreement or instrument to which the Applicant is a party by which it is bound.

Dispute and Default. In the event of any dispute or default hereunder, the losing or defaulting party shall reimburse the prevailing party for its costs and expenses, including without limitation, court costs and attorney's fees.

Cooperation. The Applicant hereby agrees to continue to work cooperatively with the Town on an ongoing basis to implement both the specific provisions and the intent and purposes of this Agreement.

Time is of the Essence. Time shall be of the essence of this Agreement.

Permitting. The execution and delivery of this Agreement does not constitute an agreement by the Town that any necessary permit or approval for the Project will in fact be granted. Any provision of this Agreement may be incorporated into, and made a condition of any permit or approval granted by the Town.

Amendment of Agreement. This Agreement may not be amended, modified or terminated except by a written instrument executed by the Applicant and by a majority of the Board of Selectmen.

Enforcement; No Waiver. The failure of the Town to enforce this Agreement shall not be deemed a waiver of the Town's right to do so thereafter. If any provision of this Agreement 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.

Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

Applicable Law. This Agreement 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 Superior Court in and for the County of Middlesex, and the Applicant hereby agrees to the jurisdiction of such court.

Signed:

Patriot Partners Lexington LLC

TOWN OF LEXINGTON
BOARD OF SELECTMEN

Norman P. Cohen, Chairman

Jeanne K. Krieger

Peter C.J. Kelley

Hank Manz

George A. Burnell