

Memorandum of Understanding (“MOU”) between 186 Bedford Street, LLC (“Owner”) and the
Town of Lexington, Massachusetts (“Town”)

For 186 Bedford Street, Lexington (the “Property”)

April __, 2019

I. Background

186 Bedford Street, LLC is the owner of the Property. The Property was vacant when the Owner purchased it from Eliot Community Health Services (“Eliot”) in September 2018. The Property, a 1.36-acre lot, currently houses a 2.5 story commercial building (the “Building”), a one story addition built in 1969 (the “1969 Addition”), and a one story accessory building (the “Barn”), and contains access driveways, surface parking areas, a garden, and landscape/hardscape improvements. The Building and Barn are listed in the Lexington Cultural Resources Inventory and Massachusetts Historical Commission database as structures with historical value.

The Owner has proposed to rezone the Property from the present RS One Family Dwelling District to create a Planned Development District to allow for renovation and addition to the existing buildings on the Property. The Owner plans to demolish the 1969 Addition, preserve and renovate the Building and the Barn, construct a new addition to the Building (the “New Addition”), and implement additional site improvements (the “Site Improvements”). The Owner proposes to use the Property as a mixed-use residential and commercial development (the “Development”) (together with the Site Improvements, the “Project”). A residential component of the Development will include 13 one-bedroom apartments, including four affordable housing units, all located on the second floor and attic levels of the Building and the New Addition (the “Living Units”), resulting in a 30% affordable housing commitment and allowing all 13 units to be counted toward the Town’s affordable housing inventory. The commercial component of the Development will be located on the ground floor of the Building and New Addition, and will be used for the Owner’s salon business and other businesses. The Barn will be used as office space for management of the Owner’s salon, the Property, and other family businesses.

The Town, acting through the Lexington Town Meeting, is expected to consider, and may approve, a Preliminary Site Development and Use Plan in April 2019 for the PD-4 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 Board of Selectmen, sets forth certain additional mitigation measures to be completed or undertaken by the Owner as part 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 bicycle parking within the Project.
2. Prior to the issuance of a Certificate of Occupancy for the Project, the Owner shall make a one-time financial contribution of \$30,000 to the Town, being \$2,000 per each parking space being added over the existing number of spaces currently located on the Property. This payment is intended to provide the Town funding for transportation and transportation demand management improvements, including but not limited to sidewalk and crosswalk improvements.
3. Prior to the issuance of a Certificate of Occupancy for the Project, the Owner shall contribute an additional \$20,000 for transportation demand management improvements, including but not limited to a proposed bus shelter or other improvements in the vicinity of the Project, and \$2,500 toward public improvements at Garfield Park.

B. TDM Obligations. 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, dated December 17, 2018 in connection with the Project. In addition, the Owner agrees to:

1. Restrict on-site residential parking to one space per apartment, to be enforced by the Owner via lease restrictions.
2. Provide offsite parking for employees in the event additional parking is required during peak periods of use, notwithstanding the MDM parking and traffic analysis indicating that adequate on-site parking is provided.

III. Affordable Housing Commitment within Project

- ### **A.**
- The Owner agrees to establish and maintain in perpetuity a minimum of four (4) of the thirteen (13) Living Units as affordable “Local Action Units” certified under the Massachusetts Department of Housing & Community Development’s (“DHCD”) Local Initiative Program (the “Affordable Units”). All Affordable Units shall be situated within the Project so as not to be in a less desirable location than the market rate units and shall be spread evenly throughout the Project. The Affordable Units shall be integrated into the rest of the Project and shall be compatible in size, design, appearance, construction, and quality of materials with the market rate units.

- B. The Owner shall, at its sole expense, undertake a lottery and implement an Affirmative Fair Housing Marketing Plan (the “Marketing Plan”) to solicit interest for the occupancy of the Affordable Units in accordance with applicable DHCD procedures then in effect. The lottery and the Marketing Plan shall be conducted by a DHCD-approved agency. The lottery shall be conducted before the last Certificate of Occupancy for the Project is issued. To the maximum extent permitted by law, preference for the occupancy of at least 70% of the Affordable Units shall be given to residents of the Town claiming a local preference.
- C. Consistent with the terms and conditions established in this section, the Owner and the Town, subject to DHCD’s review and approval, shall draft and execute a binding, recordable affordable housing agreement that will detail the protocol for the marketing, leasing, management and oversight of the Affordable Units.
- D. The Owner shall submit a proposed Local Action Unit (“LAU”) application, including a draft Regulatory Agreement and Monitoring Agreement, to the Town at the same time as it submits its Site Plan Review application to the Planning Board. The Town and DHCD shall jointly serve as Monitoring Agents for the LAU. The Owner shall reimburse the Town, or the Regional Housing Services Office (“RHSO”) which provides services to the Town, for any monitoring fees incurred as Monitoring Agent.
- E. The Owner shall submit a final, signed LAU application to DHCD within 90 days of the Planning Board’s determination on the Site Plan. Prior to the issuance of any building permits for the Project: (a) the Owner and the Town shall execute and the Owner shall record a Regulatory Agreement at the Middlesex South Registry of Deeds, and (b) the Owner shall submit five (5) sets of final approved plans from DHCD, stamped by a professional engineer, to the Town’s Planning Office, together with a narrative indicating any changes from plans previously approved by the Planning Board through the Site Plan Review process. If the Building Commissioner determines that there are any substantial changes between the plans approved by the Planning Board and the plans approved by DHCD, the Planning Board shall review the DHCD-approved plans.
- F. It is the present intention of the Owner to complete all of the residential units at the same time. In the event the units are not available at substantially the same time, Certificates of Occupancy for the Affordable Units shall be issued such that for every four dwelling units completed, one dwelling unit shall be an Affordable Unit. The last Certificate of Occupancy issued for the Project shall be for a market rate unit.

IV. Access and Utility Easements

- A. Provide screen gate at emergency egress driveway using comparable materials to the existing or new fence along Reed Street to screen views and discourage on-street parking.

V. Noise Testing & Abatement

- A. The Owner agrees to comply with the Town’s Noise Control Bylaw, Chapter 80 of the Town’s General Bylaws. In its Site Plan Review application(s) for the Project, the Owner and its acoustic consultant will submit a testing protocol to be used to establish ambient noise levels. These ambient noise levels will be used to determine compliance with the Noise Control Bylaw. This protocol shall also be used in the event of future noise complaints to establish compliance with the Noise Control Bylaw. The Town may hire, at the Owner’s expense, an acoustic peer review consultant to review the testing protocol.
- B. If the Town receives any noise complaints for the Project, or if the Owner makes future improvements to the Project, the Owner shall demonstrate to the Town its compliance with the Noise Control Bylaw. The Town may hire, at the Owner’s expense, a third-party acoustic consultant to review said compliance.
- C. Upon occupancy of the Project, the Owner agrees to prohibit deliveries to the Project between the hours of 7 P.M. until 7 A.M. on weekdays and from 7 P.M. until to 8 A.M. on weekends and holidays.

VI. Sustainability

- A. Prior to the issuance of a Certificate of Occupancy for either building in the Project, Owner shall certify to the Town that such building has been designed and built in accordance with LEED Silver standards established by the U.S. Green Building Council.

VII. Consumer Price Index Adjustment

- A. The Owner anticipates commencing construction of the Site Improvements not later than the summer of 2021. However, in the event commencement of construction of the Site Improvements is delayed, Owner agrees that, any 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.

VIII. Other Commitments

- A. The Owner agrees to include or address, as the case may be, the following matters in conjunction with its application for Site Plan Review, in addition to any other considerations required by the Planning Board in the Site Plan Review Process:
1. The Owner shall preserve and renovate the Building and Barn that were originally built circa 1874.
 2. Depict locations of abutting property buildings and related improvements for context with respect to the Project plan.
 3. Provide adequate landscape and fence screening along the perimeter of the property that abuts residential properties. Coordinate with residential abutters regarding review of the preferred screening plan. Review existing fence conditions and repair/replace as necessary.
 4. Design site lighting to maintain appropriate illumination for public safety and to not introduce light trespass onto abutting residential property. Site lighting design to conform with applicable Zoning By-law regulations.
 5. Add deciduous canopy tree quantity to mitigate the number of trees removed as a result of the Project.
 6. Specify New England native plant materials with consideration for use of recommended Middlesex County plant materials lists for consistency.
 7. Evaluate if a portion of proposed surface parking adjacent to abutting residential property can be relocated to create additional open space in this area.
 8. Develop a snow storage plan that summarizes Owner's snow management protocol to remove snow off-site during periods of heavy snow accumulation.
 9. Location of trash dumpster will be moved away from the lot line of the adjacent residence. Consider lockable dumpster units to discourage rodents and illegal dumping.
 10. Relocate electric transformer away from abutting residential lot. Final transformer location subject to approval by private utility company.
 11. Maintain compact parking spaces along front of retail to minimize tree root disturbances. Maintain a 2' grass zone with no plantings at end of parking stalls to allow for vehicle overhang.
 12. Retain a certified arborist to assess health of existing mature trees. The Arborist in consultation with the Landscape Architect shall provide

guidance for tree preservation and root protection measures during site/utility construction.

13. Design retaining wall systems to reflect traditional New England dry-laid natural stone wall style.
14. Submit details on Project site identity signage and locations in accordance with the PSDUP and applicable Zoning By-law regulations.
15. Consistent with Lexington sustainability objectives, the design of the Project will follow LEED Silver standards established by the U.S. Green Building Council, with a focus on sustainability and environmental air quality.
16. Initial heating and air conditioning design will utilize electric air source heat pumps or a combination of high efficiency natural gas heat with air source heat pumps for air conditioning, depending on projected operating costs and engineering requirements. Consistent with Lexington sustainability objectives, preference will be given to all electric air source heat pumps to the extent that is able to provide comfort and economy.
17. Initially, two to four electric vehicle charging stations will be installed, with capacity to add additional stations. Owner will take advantage of available sustainability programs.
18. Short term rentals, such as Airbnb, will be prohibited and enforced by the Owner via lease restriction.
19. The Barn will not be used for real estate sales or rental as a principal use; this limitation shall not prohibit use of the Barn to provide leasing and management services for the Project.
20. Business or professional office use will not exceed 25% of the commercial space of the New Addition.
21. The Owner will, upon request, make a meeting room in the Barn available for Precinct 8 community meetings during non-business hours.

IX. 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 Developer 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 Board of Selectmen 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.

- 2. 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, prior to applying for a building permit for construction of the Project, promptly record a Notice of this MOU with the Middlesex South Registry of Deeds and furnish proof of the recorded notice to the Building Commissioner's Office, Town of Lexington, 1625 Massachusetts Avenue, Lexington, MA 02420 and to the Conservation Administrator, Town of Lexington, 1625 Massachusetts Avenue, Lexington, MA 02420.

B. Owner's Existence and Authority. The Owner represents that it is a Massachusetts 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 (1) 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 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, the Owner shall cure any monetary default hereunder within thirty 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 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 Board of Selectmen.
- 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

BOARD OF SELECTMEN

Suzanne E. Barry, Chairperson

Joseph N. Pato

Jill Hai

Mark Sandeen

Douglas Lucente

OWNER:

186 Bedford Street, LLC,
a Massachusetts limited liability
company

By: _____