

**Memorandum of Understanding between AB Holdings, LLC (“Applicant”)  
and the Town of Lexington, Massachusetts (“Town”)**

**May 9, 2012**

The Applicant has filed for a rezoning of land entitled “The Inn at Hastings Park,” dated December 29, 2011, Amended April 20, 2012 “PSDUP Filing” which has been placed on the warrant for the 2012 Annual Town Meeting as Article 34. The land with the existing buildings thereon is located at Assessor’s Map 49 Parcel 2 (2027 Massachusetts Avenue) and Assessor’s Map 57 Parcel 12 (2013 Massachusetts Avenue) (the “Property”).

The purpose of this Memorandum of Understanding (“MOU”) is for the Applicant and the Town to agree on those provisions having public benefit to the Town as well as benefit to the Property. The terms of this MOU are binding on the Applicant, its successors and assigns as owners of the Property. The Town and the Applicant request that the terms be incorporated by the Zoning Board of Appeals into the Special Permit with Site Plan Review.

**Applicant actions prior to DSDUP.**

The Applicant will undertake the following actions, with the Town’s participation as required. Before the filing of a Definitive Site Development and Use Plan (DSDUP), each item shall be addressed to a sufficient degree in order that they will be incorporated into the Definitive Site Development and Use Plan (DSDUP).

1. Worthen Road Access – The Applicant will prepare the necessary engineering plans and submit a request to amend any permits which may be necessary to implement further driveway improvements for the Worthen Road driveway as agreed to by the Town Engineer.
2. Stone walls facing Massachusetts Avenue that have been proposed for the Massachusetts Avenue parking lot will be constructed at a minimum height of three feet from the finished paved grade of the parking lot to reduce vehicle headlight impact on abutting properties.
3. The Applicant will provide 10,000 dollars for nearby roadway infrastructure improvements as requested by the Town Engineer to further safety in the area. Payment is to be made prior to the issuance of a building permit. Funds not used by the Town within three years of the approval of the DSDUP shall be returned to the Applicant.

**Parking and Transportation Demand Management (PTDM) Plan**

The Applicant agrees to create and implement a multi-modal PTDM plan, describing the specific demand management techniques that will be utilized.

It is expected that the PTDM plan will require amendment and refinement over time, but it must initially include or address the following elements:

1. The Applicant will actively manage site parking and will discourage guests and employees from parking on residential side streets such as Parker and Forest Street by managing on-site spaces so that all overnight guests are assured of an off-street parking space.
2. Restaurant and Inn staff will advise guests at the time of making reservations and at check-in to park only in the on-site parking areas or on Massachusetts Avenue or Worthen Road. Motorists parking in the Worthen Road parking area will be advised of the turn restriction on the Worthen Road driveway, and will be directed to follow Worthen Road to Bedford Street.
3. Employees will be instructed to park on Worthen Road in the area in front of the Town athletic fields or in a municipal parking lot in Town center. They will further be instructed that they are not permitted to park on Worthen Road north of Massachusetts Avenue towards Bedford Street. (This area is a preferred overflow parking area for guests). Newly hired employees will be required to sign a written statement that they fully understand and will comply with the Inn's Employee Parking Policy as a condition of continued employment. The Applicant will develop written training instructions for all new employees and an ongoing training plan describing how this training will be reinforced on an ongoing basis.
4. Should complaints of parking on residential side streets by guests and employees of the Inn become a concern to the Board of Selectmen, the Applicant will in good faith work to secure additional off-street parking space for guests and employees of the Inn. The number of off-street parking spaces shall be determined by the Board of Selectmen in consultation with the Applicant and the parties to the complaint(s). In no case shall the additional parking spaces requested exceed the documented overflow of parking on residential streets by guests and employees. Further, it is expressly understood that Massachusetts Avenue and Worthen Road are not considered residential side streets.
5. The Applicant understands that if it is unable to adequately control parking the Board of Selectmen may, in its proper exercise of power over public safety and license renewals, act to restrict the number of seats licensed in the restaurant or act in any other manner as a means of correcting such deficiencies.

6. Annual reporting will be submitted to the Board of Selectmen and the Planning Board on July 1, or the first business day thereafter, of each year as a prerequisite for annual license renewals. Reports must include the following:
  - a. Data on dates that the Inn is at least 80% occupancy (18 or more rooms are occupied).
  - b. Data on the dates of any meal period when the restaurant serves 54 or more outside patrons.
  - c. Description of employee training efforts made, i.e. how they are meeting the management plan on employee training regarding parking.
  - d. Copy of any written complaints received from neighbor or community members pertaining to the parking operations of the Inn and written response on how the management team resolved or addressed the complaint.
  - e. An employee and/or patron transportation mode split survey.
  - f. The results of the selected PTDM measures and goal attainment.
  - g. Update on any modifications, improvements or problems with the two Management Plans (Trash and PTDM).
  - h. Motor vehicle accidents that have been reported to the police and have occurred within the past 12 months on site or with vehicles turning to or from the site.

### **Ongoing Commitments**

1. The Applicant will maintain landscaping on the site to ensure that sight lines at the corner of Massachusetts Avenue/Worthen Road are kept clear.
2. The restaurant will be located inside the former Dana Home structure.
3. The Applicant will provide \$1,000 a year worth of transit passes, such as for LEXPRESS, the Liberty Ride or the MBTA, for the use of guests and employees for a period of three years, to begin upon issuance of a certificate of occupancy to Applicant.
4. The Applicant will write a trash and recycling management plan. Trash will be stored on site, inside a structure. The containers will be of a size that can be retrieved on site by small collection vehicles (as defined in #5 below), or rolled out curbside to be collected by conventional trash vehicles. Trash containers will not be left unattended at curbside. Trash pick-ups will be scheduled to occur so as

not to conflict with peak hour traffic. Timing of the pick-ups will comply with state and local laws.

5. The Applicant agrees to limit regular truck access to the site based on the engineering design level achieved for interior circulation and access/egress. The size limit will be set by the Zoning Board of Appeals in the special permit, based on common engineering practices for turning analysis.
6. All lighting will be fully shielded, even if in excess of the requirements of the bylaw. Lighting shall be set on automatic timers to turn off exterior lighting between 11 PM and dawn, except at locations where it is demonstrated lower light levels are needed for safety. Interior lighting must be shielded to minimize the light spill from the windows at night.
7. The Applicant acknowledges that the noise pollution standard contained in the Town's general Noise Bylaw may not be appropriate for this specific proposal and agrees that between the hours of 10:00 p.m. and 6:00 a.m., normal operations of the Inn and restaurant will not exceed a noise level of 5dBA above established ambient noise levels at the boundaries of lots with residential dwellings. The Applicant will submit a design report as part of the DSDUP submission, done by an acoustical engineer, showing how they will achieve such a standard.

The ambient noise level will be established by a series of measurements taken at one hour increments over a seven-day period and there may be more than one level established.

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

8. The Applicant will have quiet hours after 10:00 p.m. There will be a written management plan explaining how the Applicant will make guests and staff aware of this provision.
9. Should the Town need to rebuild the Massachusetts Avenue/Worthen Road intersection in the future, the Applicant agrees to provide the necessary right of way (ROW) to the Town without dispute. ROW shall be provided to the Town, free of charge, as long as it does not exceed 15' in depth along the frontage of the property, and as long as it does not impact the ongoing parking or permanent use of the site. In exchange, the Town agrees to replace, free of charge to the then owner, any landscaping or other physical site amenities disturbed by the Town during the rebuilding of the intersection.

**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 Bylaw 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).

**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 organizational documents of the Applicant, (ii) any law or any order, writ, injunction or decree of any court of governmental authority, or (iii) any agreement or instrument to which the Applicant is a party by which it is bound.

**Dispute and Default.** The Applicant agrees that there are inadequate remedies at law for the material breach of any provision of this MOU and that the Town is entitled to seek specific performance and other equitable remedies in addition or in lieu of monetary damages in the event of any such breach by the Applicant. 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 will be incorporated into, and made a condition of, any permit or approval granted by the Town. If for any reason this Agreement is not incorporated into the special permit granted by the Zoning Board of Appeals, this Agreement shall be recorded by the Applicant (or satisfactory evidence hereof if the Agreement itself is not accepted for recording at the Middlesex South Registry of Deeds). At the time of any such recording the Applicant shall take all steps necessary (in the Town's discretion) to ensure that this Agreement will have priority from a title perspective over any outstanding monetary liens on the Property.

**Amendment of Agreement.** This Agreement may not be amended, modified or terminated except by a written instrument executed by the Applicant and by or on behalf of a majority of the Board of Selectmen. It is the responsibility of the Applicant to request any modification of the special permit that may be required due to such a modification.

**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.

For title reference, see Deed of The Dana Home of Lexington, Inc. dated May 19, 2011, and recorded with Middlesex South Registry of Deeds in Book 56880, Page 171 (covering 2027 Massachusetts Ave.), and also Deed of The Dana Home of Lexington, Inc. dated \_\_\_\_\_, 2012, recorded with said Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (covering 2013 Massachusetts Ave.).

PROPERTY ADDRESS: 2027 and 2013 Massachusetts Ave., Lexington, Massachusetts.

*Signatures on following page*

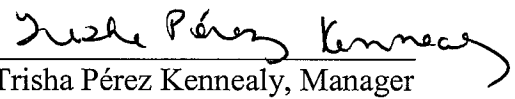
Memorandum of Understanding between AB Holdings, LLC  
and the Town of Lexington, Massachusetts  
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Signature Page

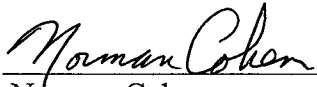
Executed as a sealed instrument as of the date first above written.

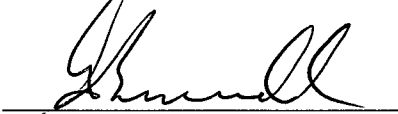
Town of Lexington  
Board of Selectmen

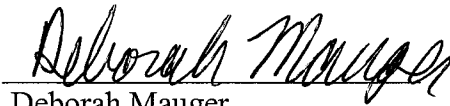
AB Holdings, LLC

By:   
Hank Manz

By:  Manager  
Trisha Pérez Kennealy, Manager

  
Norman Cohen

  
George Burnell

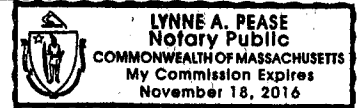
  
Deborah Mauger

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 9<sup>th</sup> day of May, 2012, before me, the undersigned notary public, personally appeared Hank Manz, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose. as a Selectman of the Town of Lexington.

Lynne A. Pease  
Lynne A. Pease, Notary Public  
My commission expires:



THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 9<sup>th</sup> day of May, 2012, before me, the undersigned notary public, personally appeared Trisha Pérez Kennealy, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose. as Manager of AB Holdings, LLC.

Lynne A. Pease  
Lynne A. Pease, Notary Public  
My commission expires:

