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A successful public/private partnership for the Commonwealth by Krokidas & Bluestein

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A project on which my firm, Krokidas & Bluestein, and I have been privileged to represent the Commonwealth, acting through its Division of Capital Asset Management (DCAM), has been particularly gratifying and challenging—a public/private partnership involving the ground leasing and redevelopment of 2.87 acres of Commonwealth land under the Department of Mental Health's (DMH) care and control.

Most of us who work in the real estate industry derive great satisfaction from the tangible results of our work. As a consequence of our contributions, new buildings get built, old buildings are given new life, families are housed, businesses opened. These concrete outcomes are especially satisfying to real estate lawyers when challenging legal issues are resolved in the process.

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The DMH site was the home of its teaching and research arm, the Massachusetts Mental Health Center (MMHC). The MMHC was established in 1912 and was housed for 91 years in several buildings at

the edge of the Longwood Medical Area. In addition to housing research and teaching functions, the MMHC buildings included clinical facilities serving more than 1,000 individuals annually on an outpatient basis, a partial hospital, a 40-bed transitional residential program known as The Fenwood Inn, and case management and intake and evaluation departments.

Over the years, the buildings became outmoded and fell into disrepair. MMHC needed new facilities but had no resources for the aging facilities' rehabilitation or replacement. The buildings were so derelict that MMHC had to move to the Shattuck Hospital in 2003.

A creative solution was adopted by DMH and DCAM using Massachusetts General Laws Chapter 7B. Pursuant to Chapter 7B, the agency responsible for a property's care and control may, with the Asset Management Board's approval in certain circumstances, provide for the leasing or other utilization of the property by third parties.

The Asset Management Board

process resulted in a unique public/private transaction among DCAM, DMH, The Brigham and Women's Hospital (BWH) and the Roxbury Tenants of Harvard (RTH) whereby, in exchange for being granted a 95-year ground lease of the MMHC site, BWH agreed to build and sublease back to DMH 70,000 s/f of new facilities and 50 parking spaces, in addition to paying cash consideration. BWH entered into a Development Agreement with DCAM, pursuant to which BWH contracted to use the ground leased land not only for the new MMHC facilities but also for a new 153,000 s/f building containing affordable housing and community space and a 350,000 s/f medical office and research building to be used by BWH.

After many twists and turns, the MMHC site was divided into three leasehold parcels, plans were approved by the city and Commonwealth, permits and approvals were obtained, ground leases were entered into with BWH, leases back were executed between BWH and

DCAM, and BWH commenced demolition of the old buildings and construction of the new MMHC facilities in 2010. The affordable housing building, being developed by RTH, and the medical office and research building, being developed by BWH, are now well into the planning stages. Last week, eight years after moving out of those crumbling buildings, the staff and patients of the MMHC moved back to their former site adjacent to the Longwood Medical Area, into brand new, built-to-suit, LEED eligible facilities at no capital cost to the Commonwealth - a very happy ending. Cliff Robinson, area director for DMH, views the MMHC Project "hopefully [as] a harbinger of how private and public needs will be met in the future." We offer our congratulations to all involved and special best wishes to the staff and patients at the Massachusetts Mental Health Center.

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