

## **ZONING PROVISIONS**

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### **SECTION 12.1.4.2.C.**

#### **PLANNED DEVELOPMENT DISTRICT ZONING PROVISIONS**

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The following Planned Development District Zoning Provisions (hereinafter, the “PDD Zoning Provisions”) shall, except as provided below, govern the development of the Planned Development District (the “PD District”) which is bounded by Middlesex Turnpike, Second Avenue, Massachusetts State Highway Route 3 and Kendall Road/Sun Microsystems Campus (hereinafter, collectively, the “PD Premises”) and shall be in accordance with the Concept Plan (as defined below and of which these PDD Zoning Provisions are a part) approved at the Burlington Town Meeting (hereinafter, these PDD Zoning Provisions including all material submitted to and approved by Town Meeting in connection with the rezoning of the PD Premises to a PD District are collectively referred to as, the “Concept Plan”). The PD District consists in the aggregate of approximately 127+- acres and is divided into two (2) development areas identified as Area A and Area B. To the extent that the Concept Plan does not address an issue of zoning, the development of the PD Premises with respect to any such issue shall be governed by the Zoning By-Laws of the Town of Burlington, Massachusetts in effect on October 31, 2006 (hereinafter, the “Zoning By-Laws”).

#### **Article 1 - Use Regulations:**

The Concept Plan allows for a mixed use development of the PD Premises which may include a variety of uses including general office, commercial, retail, multi-family housing, open space and accessory services related to each use. These uses are allocated among the Areas shown on the Concept Plan. Within the PD District there shall be no restriction on combining different categories of uses within the same building or lot other than those imposed by the State Building Code or other federal, state or local regulations other than Zoning.

Each Area of the PD Premises shall provide parking in the amounts as hereinafter provided which may be satisfied either through structured or surface parking. Pursuant to the Concept Plan the development of the proposed principal uses and accessory uses associated therewith, and designated areas of open space and parking are permitted in all Areas; as allowed

in the Use Table annexed hereto as Exhibit "A". Development in the PD District shall not exceed 3,280,000 in total square footage.

Area A: The aggregate of development within Area A (except as provided below) shall be 1,280,000 square feet of permitted Area A uses (as set forth on Exhibit "A") which shall exclude parking facilities and portions of buildings containing parking facilities. Specific uses shall be limited to a maximum square footage as further detailed below.

- Up to 600,000<sup>1</sup> square feet of retail space may be constructed excluding uses accessory to and located within hotels. Retail uses conducted and located within hotels shall be deemed an accessory use to the hotel principal use and shall not be deducted from the permitted maximum square feet of retail uses in Area A or B.

Area B: The aggregate of development in Area B shall not (except as provided below) exceed 2,000,000 square feet of permitted Area B uses, provided no more than 100,000 square feet shall be permitted retail uses in Area B as set forth in Exhibit "A" and which shall exclude parking facilities and portions of buildings containing parking facilities. In either Area A or B, the square footage of any Full Service Hotel (as defined in Use Table annexed hereto as Exhibit "A") use shall be deemed to be 450 square feet per keyed room.

The Planning Board, by Special Permit, upon application of the Developer of the PD Premises or any portion thereof, shall be permitted to reallocate within and between Area A and Area B the maximum permitted square footage in each use category as follows:

1. Up to 100,000 square feet of retail space may be relocated from Area A to Area B.
2. Up to 100,000 square feet of office/commercial space may be relocated from Area A to Area B and up to 300,000 square feet of office/commercial space may be relocated from Area B to Area A.

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<sup>1</sup> Square foot measurements for purposes of office/commercial/retail uses shall be calculated on the basis of "net leaseable square feet" which is the space leased by tenant(s) exclusive of common areas, hallways, building foyers, areas devoted to heating, air conditioning, elevators, and other utility areas.

In addition to the foregoing, upon application by the Developer, the Planning Board, by Special Permit, may permit the redistribution of a maximum of 10% of any principal use category within any Area, provided that in Area B, any increase in the aggregate of retail principal use shall not exceed 50,000 square feet.

Any of the aforementioned alterations shall not be deemed a material change or substantial deviation from the Concept Plan and PDD Zoning Provisions as approved by Town Meeting. Any principal use reallocations/redistributions may require additional traffic analysis at the discretion of the Planning Board.

Until such time as the Developer elects to commence development (i.e., obtains the necessary permits and approvals and commences construction) for any portion of the PD Premises as provided on the Concept Plan, the structures and uses in existence as of the effective date of the PDD Rezoning on each Area may be continued and, to permit orderly development of the PD Premises over time, altered and expanded in accordance with the Zoning By-Laws, provided such alteration and/or expansion does not expand any individual structure and use by more than twenty percent (20.0%) of its net floor area (as defined in the Zoning By-Laws) or 15,000 square feet, whatever is greater. Any new building for a permitted use in Area B in excess of 40,000 square feet shall be built in accordance with the provisions of these PDD Zoning Provisions.<sup>2</sup> The complete listing of permitted uses at the PD Premises is set forth on the Use Table annexed hereto as Exhibit "A". Uses in a Wetland District (as the same is defined within the Zoning By-Law) shall be subject to review by the Burlington Conservation Commission pursuant to Massachusetts General Laws Chapter 131 and Article XIV of the Burlington General By-Laws. All permitted uses at the PD Premises are subject to the issuance

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<sup>2</sup> All existing tenants located within Northwest Park as of October 31, 2006 shall be considered grandfathered with respect to their existing uses. Any existing tenant at the PD Premises, as of the effective date of the rezoning of the PD Premises to PD District, who proposes to relocate within Northwest Park pursuant to the provisions for relocation provided in these PDD Zoning Provisions shall file an application with the Planning Board for a new special permit and site plan approval for the proposed area of relocation and the Planning Board shall, after a public hearing, issue such special permit and site plan approval provided that the Planning Board makes a finding that the relocation of use is no more detrimental to the neighborhood than at its prior location. The aforementioned finding shall be the sole finding required by the Planning Board in such relocation special permit/site plan application, notwithstanding anything to the contrary in the Zoning By-Laws.

by other Town agencies or boards of all other required licenses and approvals normally required for such use.

As of the date of adoption of these PDD Zoning Provisions and the Concept Plan, the PD Zoning Provisions may be deemed non-conforming with respect to the provisions of Section 8.3.0 (Aquifer and Water Resource Districts). As such, the PD Premises shall have the benefit of the provisions of Section 8.3.9 of the Zoning By-Laws (Non-Conforming Uses) as the Project is developed pursuant to the Concept Plan.

### **Article 2 - Density and Dimensional Requirements:**

In all Areas, subject to applicable laws and regulations governing fire and safety, there shall be no required setbacks from the side and rear lot lines for parking, driveways or maneuvering aisle. There shall be no rear setback for buildings located within fifty (50) feet of the Route 3 Right-of-Way. Land used principally for coordinated, integrated retail and commercial use shall be deemed to be one parcel or lot for density regulations and parking purposes notwithstanding that legal ownership of the land is divided by lease, in fee or otherwise, among two or more owners. The Developer and the PD Premises shall continue to have the benefit of Section 6.6.2 of the Zoning By-Laws to the extent that the PD Premises benefited from said Section as of the date of the adoption of the PD Zoning Provisions and, further, Section 6.6.2 of the Zoning By-Laws shall be applicable to the PD Premises after the date of said adoption of the PD Zoning Provisions. The following dimensional requirements shall be the exclusive dimensional requirements applicable to development in the PD Premises notwithstanding any contrary provisions in the Zoning By-Laws including any Overlay District now existing or hereafter adopted.

#### **Area A**

The following dimensional requirements shall be applicable to Area A of the PD Premises:

Minimum Frontage .....	50 feet
Minimum Lot Area .....	10,000 s.f.
Minimum Front Yard .....	10.0 feet

Minimum Rear Yard .....	15.0 feet <sup>3</sup>
Minimum Side Yard .....	15.0 feet <sup>4</sup>
Maximum Building and Structure Height.....	60.0 feet <sup>5</sup>
except as provided in (i) and (ii), below:	
(i) A maximum of 80.0 feet in the areas specified on the Plan entitled "Height Overlay Plan" as shown on Exhibit "B" annexed hereto;	
(ii) With the grant of a Special Permit from the Planning Board, no more than one building with a maximum height of 150 feet shall be permitted within the PD Premises within the areas designated on the Height Overlay Plan.	
Minimum Open Space/ Public Space .....	20% <sup>6</sup>

### Area B

The following dimensional requirements shall be applicable to Area B of the PD Premises:

Minimum Frontage .....50 feet

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**3** Unless its outside walls are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). There shall extend across the rear of every building or structure an open area of at least 10 feet for fire fighting purposes unless waived by the Chief of the Fire Department. Rear Yard shall be measured from the exterior plane of each building face excluding roof overhangs.

**4** Unless its outside walls are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). Side Yard shall be measured from the exterior plane of each building face excluding roof overhangs.

**5** Building height shall be measured in accordance with the Zoning By-Laws. The provisions of Section 5.2.0 concerning maximum height limitations adjacent to RO or RG land of the Zoning By-Laws shall not apply to the PD Premises.

**6** Of the required amount of Open Space, no more than one-half of the required 20% may be Public Space (as defined herein) subject to the groundwater recharge requirements provided herein. To the extent reasonably practicable, unless disallowed by other laws, regulations or ordinances, or pursuant to a decision of other regulating bodies or agencies, the developer of the PD Premises shall improve groundwater recharge such that full post development recharge is at least 10% greater than the amount of recharge existing as of the date of the rezoning to a PD District. Public Space/Open Space shall be calculated based upon the aggregate area of Area A, notwithstanding that legal ownership in the land comprising Area A is divided.

Minimum Lot Area .....	10,000 s.f.
Minimum Front Yard .....	10.0 feet
Minimum Rear Yard .....	15.0 feet <sup>7</sup>
Minimum Side Yard .....	15.0 feet <sup>8</sup>
Maximum Building and Structure Height .....	60.0 feet <sup>9</sup>

Except as provided in (i) and (ii) below,

- i. A maximum height of 80 feet in the specified areas as detailed on the plan entitled "Height Overlay Plan" as shown on Exhibit "B" annexed hereto.
- ii. With the grant of a Special Permit from the Planning Board, no more than one building with a maximum height of 150 feet shall be permitted within the PD Premises within the areas designated on the Height Overlay Plan.

Minimum Open Space - Area B: .....	30% <sup>10</sup>
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- 7 Unless its outside walls are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). There shall extend across the rear of every building or structure an open area of at least 10 feet for fire fighting purposes unless waived by the Chief of the Fire Department. Rear Yard shall be measured from the exterior plane of each building face excluding roof overhangs.
- 8 Unless its outside walls are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). Side Yard shall be measured from the exterior plane of each building face excluding roof overhangs.
- 9 Building height shall be measured in accordance with the Zoning By-Laws. The provisions of Section 5.2.0 concerning maximum height limitations adjacent to RO or RG land of the Zoning By-Laws shall not apply to the PD Premises.
- 10 To the extent reasonably practicable the developer of the PD Premises shall improve groundwater recharge such that full post development recharge is at least 10% greater than the amount of recharge existing as of the date of the rezoning to a PD District unless disallowed by other laws, regulations or ordinances or pursuant to a decision of other regulatory bodies or agencies. This ratio of Open Space shall be calculated based upon the aggregate area of Area B, notwithstanding that legal ownership in the land comprising Area B is divided.

Uses within Open Space in Areas A or B include, without limitation, exhibitions, concerts, festivals, licensed kiosk retail, outdoor seating for on-premises restaurants.

The Developer of the PD Premises shall be required, to the extent reasonably practicable, to enhance groundwater recharge at the PD Premises such that after full development of the PD Premises groundwater recharge in the aggregate for the PD Premises is at least 10% greater than the amount of recharge that existed as of the date of rezoning to a PD District subject to applicable laws, regulations and ordinances including, without limitation, the requirements of the Board of Health of the Town and the Massachusetts Department of Environmental Protection.

### **Article 3 - Lot Lines:**

Subject to the applicable provisions of Article 6, below, internal lot lines may be established pursuant to a subdivision plan to be filed in accordance with Massachusetts General Laws Chapter 41; Section 81K et seq. Lot lines may be altered from time to time in accordance with the procedures of Section 81P of Chapter 41 of the Massachusetts General Laws for so-called "Approval Not Required Plans", and/or the applicable provisions of Sections 81K-81GG of Chapter 41 of the Massachusetts General Laws for any subdivision of the PD Premises. Any single lot may exceed one or more of the dimensional requirements contained herein so long as all of the lots in the district taken in the aggregate do not exceed any of the dimensional standards contained herein.

### **Article 4 - Parking and Loading Regulations:**

Parking spaces required for one lot may be located on a separate lot, which may be in separate ownership so long as an easement guarantying long-term use of such spaces and satisfactory in form to the Town is executed and filed in the Registry of Deeds of Middlesex County. Parking for all buildings and uses may be provided in common parking lots. The following maximum ratios shall be applicable to parking at the PD Premises:

1. 2 spaces per unit of residential uses;
2. 6.0 spaces per 1,000 square feet of floor area of retail use (calculated in accordance with footnote 1, above);

3. 4.5 spaces per 1,000 square feet of floor area of office use (calculated in accordance with footnote 1, above);
4. 1 space per 2.5 seats of restaurant use;
5. 1 space per each keyed hotel room; and
6. 1 space per each 3 seats of general assembly/conference space.

On street parking may be provided on the PD Premises adjacent to internal roadways and any such spaces provided shall be included in determining the required parking ratio. On street parking shall be clearly delineated on the pavement.

The Planning Board, upon application of the Developer of the PD Premises or any portion thereof, shall be permitted, upon the grant of a Special Permit in accordance with Section 7.4.0 of the Zoning By-Laws, to alter the aforementioned ratios from time to time and such change shall not be deemed a material or substantial deviation from the Concept Plan as approved by Town Meeting.

Typical parking space dimensions shall be as follows:

1. Typical parking space -- 9' x 18'
2. Compact parking space -- 8' x 15' (up to 30% of parking spaces dedicated to non-Retail uses may be Compact. The percentage of Compact spaces proposed by the Developer for compliance with parking requirements for Retail uses may be determined by the Planning Board during the Special Permit process.)
3. Handicap Accessible Spaces -- 13' x 18', inclusive of 5' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.
4. Handicap Van Accessible Spaces -- 16' x 18', including an 8' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.

## **Article 5 - Building Locations:**

The Plans entitled “Northwest Park Planned Development District Plan” prepared by Vanasse Hangen Brustlin, Inc. submitted as part of the Concept Plan (hereinafter, the “Development Plans”) denote certain building envelopes wherein proposed structures are to be located. The Developer of the PD Premises or any portion thereof shall be permitted to locate and relocate buildings and modify building footprints within the building envelopes shown on the Development Plans subject to compliance with these PD Zoning Provisions (including, without limitation, the construction of above ground parking structures, the result of which is to relocate under building parking or separate structures with decks shown on the Development Plan, provided such construction occurs within the building envelope shown on the Development Plan) and such relocations shall not be deemed a substantial deviation of the Concept Plan.

## **Article 6 - Definitions:**

Except as provided below or herein including, without limitation, the Use Table (Exhibit “A”), defined terms shall have the same meanings as in the Zoning By-Law. The following terms shall have the following meanings in the PD District and shall govern the PD Premises:

1. **Frontage.** For purposes of these PD Zoning Provisions, “Frontage” shall mean the line adjacent to: (a) any internal site drive of any length which connects (directly or indirectly) to a way described in subclause (b), (c) or (d), below, said way having been approved by the Planning Board of the Town pursuant to Section 12.1.5 of the Zoning By-Laws as part of any PD Special Permit and Site Development and Use Plan; or (b) a public way which the Town Clerk certifies is maintained and used as a public way; or (c) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law; or (d) a way in existence when the subdivision control law became effective in the Town of Burlington, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the

buildings erected or to be erected thereon. Frontage shall be measured in a single, continuous, uninterrupted line along a street or streets.

2. Lot. A parcel of land used or set aside and available for use on the site of one or more buildings, and buildings accessory thereto, or for any definite purpose in one (1) ownership, having frontage as described above, and may be divided by a street or way and may include any land within the limits of a public or private way upon which such lot abuts. A lot for purposes of these PD Zoning Provisions may or may not coincide with a lot of record.
3. Open Space. That portion of land that is landscaped, or if wooded, left in a natural state.
4. Public Space. A publicly accessible area that is intended to promote social interaction and create a pedestrian friendly focal point for surrounding street level activities permitted within Area A. Uses within an area designated as Public Space may include, but are not limited to, the following: passive recreation, bicycle path, exhibitions, open air movies, concerts, festivals, kiosk retail, outdoor restaurant space, and other uses as further specified in the Use Table, attached as Exhibit "A". Public Space may include a combination of natural and landscaped areas as well as impervious surface areas and sidewalks in order to promote a diversification of activities and uses.
5. Full Service Hotel. Full Service Hotel uses shall be permitted within the PD Premises in the Areas designated on the Use Table and shall be defined pursuant to Section 2.37 "Hotel, Motel Hotel or Motel" of the Zoning By-Laws. Any new "Residence hotel/motel" use as defined within the Zoning By-Laws shall not be permitted within this PD Premises.

In the event of any conflict between the aforementioned definitions and the definitions in the Zoning By-Laws, the definitions contained herein shall govern and control.

## **Article 7 - Signage:**

For purposes of signage, the PD Premises shall be governed by and subject to the following signage requirements and limitations:

1. General Administration. All signage permits and applications shall comply with Section 3.2 “Administration” of the General Bylaw of the Town.
2. Sign Corridors.

The PD Premises shall be divided into three Sign Corridors, as follows: “Route 3”, “Main Street” and “Middlesex Turnpike”, with the delineation of each Sign Corridor specified on a plan entitled “NWP Sign Overlay Plan (the “NWP Sign Overlay Play”), as shown on Exhibit “C” annexed hereto. All permitted signage and dimensions shall be as defined within these PDD Zoning Provisions in the PD Premises Signage Table below unless otherwise specifically noted herein.

3. Special Sign Permit.

The Zoning Board of Appeals may vary the provisions of these sign provisions in specific cases which appear to them not to have been contemplated by these PDD Zoning Provisions and in cases where enforcement of these provisions of the PDD Zoning Provisions would involve practical difficulties or unnecessary hardship, if in each instance desirable relief may be granted without substantially derogating from the intent and purpose of this section of the PDD Zoning Provisions but not otherwise. Any decision to vary the provisions of this section of the PDD Zoning Provisions shall be pursuant to a Special Sign Permit decision issued by the Zoning Board of Appeals after a properly noticed public hearing and shall specify any sign alteration allowed and the reasons therefor. Each decision of the Zoning Board of Appeals shall be filed with the Office of the Town Clerk within fourteen (14) days after the hearing and a copy of the decision shall be sent by mail or delivered to the applicant and any other persons appearing at the hearing or so requested in writing.

4. Temporary Signage.

Temporary Signage shall be permitted pursuant to Section 6.7.3.6.2 of the Zoning Bylaw (as the same may be amended from time to time) or the temporary signage permitted within the underlying zoning designation of the PD Premises existing immediately prior to the adoption of these PDD Zoning Provisions.

5. Allowed Signage.

All Allowed Signage within the PD Premises shall be as defined within Section 3.1 of the General Bylaw, except as otherwise noted below. Individual signage for any tenant within the PD Premises may be allowed, pursuant to the regulations of Article 7, anywhere within the PD Premises.

- i. Wall Signs - Any sign attached to, erected against, or painted onto a wall or a building with the exposed face of the sign in a plane parallel to said wall. A Wall Sign in the Main Street and Middlesex Turnpike Corridor shall not exceed four (4) feet in height and six (6) feet in length at the first floor. At any floor above the first floor Wall Signs shall not exceed six (6) feet in height by ten (10) feet in length. Wall Signs within the Route 3 Sign Corridor shall not exceed six (6) feet in height by ten (10) feet in length.
- ii. Sign Band - In multiple storefront buildings, signs of similar size, proportion and materials shall be used for each store, defined within a sign band. The sign band is defined vertically as the space between the first floor transom and the upper floor windowsill or first floor eave or cornice. The length of the sign band shall be equal to or less than the length of the tenant space. The lettering used within the sign band shall not exceed two (2) feet in height.
- iii. Projecting Signs - Any sign suspended from or supported by a building or structure and projecting out at any angle to the plane of the wall or

structure. Projecting signs shall not project more than six (6) feet from the face of the building. The sign shall be seven (7) feet or more above the ground. The top of the sign shall be located below the upper floor windowsill or first floor eave or cornice, or the eave or cornice of the uppermost floor occupied by the tenant. Projecting signs shall be spaced apart by at least a distance equal to the floor-to-floor height of the building floor they are located at.

- iv. Window Signs - Any sign, picture, symbol, or combination thereof, designed to communicate information about a business or tenant, that is placed inside a window or upon the window, so as to be visible from the outside. The lettering on first floor windows should cover no more than ten percent (10%) of the glass area. The lettering and graphics on the second floor windows should cover no more than thirty percent (30%) of the glass area. Any increase in coverage of lettering on the first and second floors shall require the issuance of a Special Sign Permit from the Board of Appeals.
- v. Awning Signs - Any sign located on the front or side of an awning. Awnings shall not project more than ten (10) feet from the face of the building. The bottom of the awning shall be seven (7) feet or more above the ground and the top of the awning shall be located below the upper floor windowsill or first floor eave or cornice. The length of the awning shall be equal to or less than the length of the tenant space.
- vi. Marquee Signs - Any sign attached to, in any manner, or made a part of a marquee. A marquee is defined as any permanent roof-like structure projecting beyond the face of the building. Marquees shall not project more than ten (10) feet from the face of the building. The bottom of the marquee shall be seven (7) feet or more above the ground. The top of the marquee sign shall be located below the upper floor windowsill or first

floor eave or cornice. The length of the marquee shall be equal to or less than the length of the tenant space. The lettering used shall not exceed two (2) feet in height.

- vii. Business Directory - A Business Directory shall be either mounted on the face of a building or permanently affixed to the ground through the means of a stonewall, foundation or other decorative device and shall consist of more than 1 tenant or user located within said building or group of buildings. Each business or tenant listed on the Business Directory sign shall not exceed ten (10) square feet in sign area per side/face of sign. Further, no freestanding business directory shall be permitted within ten (10) feet of a public or private way and shall not be permitted to impede vehicle sight distance.
- viii. Freestanding Signs - Freestanding Signs shall be permanently affixed to the ground through the means of a stone wall, foundation or other decorative device. The total square footage of the Freestanding Sign shall not exceed thirty square feet. This maximum sign area shall not include the sign foundation or other decorative or architectural feature. Further, no Freestanding Sign shall be permitted within ten (10) feet of a public or private way nor shall be permitted to impede vehicle sight distance. Any sign foundation shall not exceed six (6) feet in height unless a Sign Special Permit is issued by the Board of Appeals.
- ix. Route 3 Signage - Route 3 Signage shall be permitted on the face of any structure within the Route 3 Corridor subject to the following limitations: The height of the signage shall be: (i) at the first floor, limited to a maximum of six (6) feet or less in height and the length shall not exceed 1/4<sup>th</sup> of the face of the building upon which the sign is attached; and (ii) if located above the first floor be limited to eight (8) feet or less in height and the length shall not exceed 1/3<sup>rd</sup> of the face of the building upon which

the sign is attached. Any sign exceeding the aforementioned dimensional limitations shall require a Special Sign Permit issued by the Board of Appeals. The specific face of said structure designated for sign installation shall be fifty percent (50.0%) or more visible from Route 3 at a point perpendicular to the center of the building. Qualification for Route 3 Signage shall be determined by the Building Inspector.

- x. Street Banners - Street Banners advertising public entertainment or advertising a charitable, religious, municipal or educational event may be displayed in locations designated by the Building Inspector (which shall be, at a minimum of thirty (30) feet between banners) for a period of time not to exceed fourteen (14) consecutive days, the first of which shall occur not more than thirteen (13) days prior to such entertainment or event. All Street Banners shall be removed within twenty-four (24) hours after such entertainment or event. The Developer shall obtain approval from the Building Inspector to designate the location for the installation of said Street Banners.
- xi. Directional and Traffic Safety Signs - Signs indicating "Entrance", "Exit", "Parking", street names or similar traffic directional information as well as their location shall be approved by the Building Inspector in consultation with the Police Department, as applicable.
- xii. Gateway Signage. The Developer shall be permitted to construct and maintain signage in the Main Street and Middlesex Corridors which is intended to identify the project to be developed at the PD Premises (including tenant identities), which signage shall: (i) be limited to the major access roadways to the PD Premises; (ii) may be attached to existing structures or free standing; and (iii) each identified entity shall be limited to five (5) feet in height per side of said sign. The location of such signage structure(s) shall be approved by the Planning Board and shall be

subject to the provisions of Article 9B., hereof, (Design Review) of the PDD Zoning Provisions.

6. Maximum Number of Signs. (a) Each individual tenant or user within the Main Street Corridor shall not be permitted more than four signs per building advertising said individual tenant.  
(b) With respect to any building containing more than one commercial tenant/user located on the Route 3 Corridor or Middlesex Turnpike Corridor, up to two signs attached to the building (either Wall Signs or Route 3 Signs or combination thereof) shall be permitted in compliance with applicable dimensional requirements.

## PD PREMISES SIGNAGE TABLE

### Legend

✓ = Permitted

X = Prohibited

Signage Type	Main Street	Middlesex Turnpike	Route 3	Notes
<b>Wall</b>	✓	✓	✓	See Section 7.5-i
<b>Sign Band</b>	✓	✓	X	See Section 7.5-ii
<b>Projecting</b>	✓	✓	X	See Section 7.5-iii
<b>Window</b>	✓	✓	X	See Section 7.5-iv
<b>Awning</b>	✓	✓	X	See Section 7.5-v
<b>Marquee</b>	✓	✓	X	See Section 7.5-vi
<b>Business Directory</b>	✓	✓	✓	See Section 7.5-vii
<b>Freestanding</b>	✓	✓	✓	See Section 7.5-viii
<b>Route 3</b>	X	X	✓	See Section 7.5-ix
<b>Street Banner</b>	✓	✓	✓	See Section 7.5-x
<b>Directional &amp; Traffic Safety</b>	✓	✓	✓	See Section 7.5-xi
<b>Gateway Signage</b>	✓	✓	X	See Section 7.5-xii

## **Article 8 - Lighting:**

The purpose of this section is to encourage quality light design while providing a sense of safety and security. The Developer shall consider the following standards when designing a lighting plan.

- The use of lighting should be integrally designed as part of the built environment and should reflect a balance for the lighting needs with the contextual ambient light level and surrounding nighttime characteristics which are appropriate for the uses.
- The lighting designers shall consider utilizing lighting designs with automatic controls systems wherever possible.
- A lighting plan, as applicable, shall be included with any Site Development and Use Plan/Special Permit. Architectural lighting may be utilized to highlight special site features and areas.
- Landscape lighting may be utilized to accent landscaping and special site features.

## **Article 9 - Administration and Procedures:**

### **A. PD Special Permit**

1. Any Special Permit required under the Zoning By-Laws or the PD Zoning Provisions with respect to the PD Premises shall be under the jurisdiction of the Planning Board or Special Permit Granting Authority of the Town in accordance with the then applicable special permit procedures of the Planning Board or Special Permit Granting Authority. The granting of any individual Special Permit under Section 12.1.5 of Article XII of the Zoning By-Laws shall be deemed to constitute compliance with the provisions of Article XII of the Zoning By-Laws and in particular Section 12.1.2.
2. Prior to the submission of any application for a structure in the Aquifer and Water Resource Overlay Districts, the Developer shall consult with

the Conservation Commission and Board of Health of the Town as to the location of the proposed structures and proposed drainage methodology.

3. In approving any PD Special Permit for the PD Premises, the Planning Board, in addition to the findings required under Section 12.1.7 of the Zoning By-Laws shall be required to find that:
  - i. The proposed use as developed will not adversely affect the neighborhood; and
  - ii. There will be no nuisance or hazard to vehicles or pedestrians.
4. In connection with the grant of any PD Special Permit for portions of the PD Premises located in the Aquifer Overlay District, the Planning Board shall determine that at the boundaries of the portion of the PD Premises being permitted, groundwater quality resulting from on-site waste disposal, other on-site operations, natural recharge, and background water quality will not fall below the standards established by the Department of Environmental Protection in “Drinking Water Standards of Massachusetts”, or for parameters where no standard exists, below standards established by the Board of Health and, where existing groundwater quality is already below those standards, upon determination that the proposed activity will result in no further degradation.
5. The Planning Board, in granting any PD Special Permit, may attach such conditions and safeguards as it deems necessary to support its findings.
6. The Site Development and Use Plan required under Section 12.1.5 of the Zoning By-Law shall supersede any requirements as to site plan review and approval under the Zoning By-Laws.
7. Any substantial changes (as determined in each instance by the Planning Board in accordance with Article 12 of the Zoning By-Laws) to, or amendments of, the Concept Plan shall be effectuated in accordance with the provisions of Section 12.1.8 of the Zoning By-Laws which would

require a 2/3 vote of Town Meeting as to any and all substantial changes or amendments.

B. Design Review – Area A

The Planning Board in connection with any PD Special Permit application for a principal use in Area A shall review such applications with respect to the following design criteria:

- i. Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;
- ii. Street façade and exterior walls visible from public ways;
- iii. Public Space;
- iv. Scale of buildings; and
- v. External lighting.

Prior to the submission of any application in Area A for a PD Special Permit, the applicant shall make a presentation to the Planning Board at a public meeting to review the proposed architectural design of the proposal and to receive the comments and input from the Planning Board prior to the formal submission. Such review shall include, without limitation, proposed renderings and elevations of the pedestrian side(s) of the proposed structures.

**Article 10 - Miscellaneous:**

In recognition of the intent and purpose of Article XII of the Zoning By-Laws which is to permit considerable flexibility in the development of individual tracts of land, in the event of: (i) any conflict between the provisions of these PD Zoning Provisions and the Zoning By-Laws or any other by-law or regulation of the Town; or (ii) any ambiguity under the PD Zoning Provisions, such conflict or ambiguity shall be resolved or construed by the Planning Board in a manner consistent with and to permit satisfaction of the development intent described in the Concept Plan.

**EXHIBIT "A"**

**USE TABLE <sup>11</sup>**

<b>SECTION</b>	<b>USE DESIGNATION</b>	<b>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)</b>	<b>AREA (A &amp; B) PERMITTED</b>
<b>1.1</b>	<b>Residential Uses</b>		
1.1.1	Multifamily housing to a maximum of 600 units	YES	A, B
1.1.2	Assisted living, congregate living, continuing care retirement community.	SP	A, B
<b>1.2</b>	<b>Institutional and Recreational Uses</b>		
1.2.1	Places primarily used for religious purposes.	YES	A, B
1.2.2	Places primarily used for non-profit educational corporations, museums, libraries, and/or recreational facilities.	YES	A, B
1.2.3	Child Care and Adult Day Care facilities.	YES	A, B
1.2.4	Fire stations and sub-fire stations, police stations (exclusive of fuel storage).	YES	A, B
1.2.5	Public Parks and related facilities.	YES	A

<sup>11</sup> All uses set forth in this Use Table shall be subject to the issuance of any other permits and approvals required under applicable laws, regulations and ordinances.

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.2.6	Public libraries, public museums, public art galleries and similar facilities.	YES	A
1.2.7	Community centers and public recreation buildings.	YES	A
1.2.8	Non-profit public clubs, recreational centers and facilities.	YES	A
1.2.9	Private museums and private art galleries.	YES	A
1.2.10	Clinic and/or medical office (out patient services only).	SP	A, B
1.2.11	Buildings for public services.	SP	A, B
1.2.12	Theater and cinemas.	YES	A
1.2.13	Public water and sewer distribution structures.	SP	A, B
1.2.14	Health, sports and fitness clubs and related facilities.	YES	A, B
<b>1.3</b>	<b>Office Uses</b>		
1.3.1	Professional offices such as, but not limited to, physicians, dentists, opticians, real estate brokers, lawyers, etc.	YES	A, B
1.3.2	Administrative executive and similar offices.	YES	A, B
1.3.3	Public Offices.	YES	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.3.4	Office of salesmen, agents and representatives of manufacturing, distributing, insurance and wholesale companies.	YES	A, B
1.3.5	Commercial amusement uses and activities such as, but not limited to, bowling alleys and skating rinks.	YES	A
<b>1.4</b>	<b>Retail Uses</b>		
1.4.1	Personal services businesses such as, but not limited to, barbers, hairdressers, etc.	YES	A, B
1.4.2	Drug stores with drive-thru service with no more than two vehicular access lanes, health supplies, periodicals, none with the sale of food intended for consumption on premises.	YES	A, B
1.4.3	Retail stores and showrooms as follows: (i) 39,999 square feet or less (ii) 40,000 square feet to 89,999 square feet (iii) In excess of 90,000 square feet is permitted by Special Permit following a majority vote of Town Meeting approving a conceptual design plan.	YES SP TM	A, B A, B A
1.4.4	Post Offices and banks, drive-thru service is permitted with no more than two vehicular access lanes.	YES	A, B

SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)</b>	AREA (A & B) PERMITTED
1.4.5	Photographers (with accessory digital/photo imaging), decorators, travel agencies, tailoring (provided any dry cleaning and laundry services are limited to drop off and pick-up stations only as permitted in Section 1.4.13).	YES	A, B
1.4.6	Fast order food establishments, drive-thru service is prohibited.	SP	A, B
1.4.7	Restaurants, drive-thru service is prohibited.	SP	A, B
1.4.8	Bakeries	YES	A, B
1.4.9	Commercial boarding, care and treatment of animals.	SP	A
1.4.10	Diagnostic medical laboratories appurtenant to offices of physicians and dentists.	SP	A, B
1.4.11	Kiosks not to exceed 144 square feet.	YES	A
1.4.12	Massage therapy	SP	A, B
1.4.13	Shoe repair, dry cleaning and laundry (provided such dry cleaning and laundry use is limited to drop off and pick-up stations only).	SP	A, B
1.4.14	Printers and similar shops or trades (provided any chemicals used are delivered in pre-packaged containers and self contained within the equipment during use and provided, further, such stored chemicals do not exceed amounts that would require registration with the Board of Health).	SP	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.4.15	Push Carts	SP	A, B
<b>1.5</b>	<b>Commercial Uses</b>		
1.5.1	Light manufacturing or processing plants.	SP	B
1.5.2	Laboratories engaged in research experimental and testing activities including, but not limited to, the fields of biology, chemistry, electronics, engineering, geology, medicine and physics subject to the Planning Board making the findings set forth in Section 8.3.7.4 of the Zoning By-Laws and subject to the applicable rules and regulations of the Board of Health.	SP	A, B
1.5.3	Wholesale trade and warehousing.	SP	A, B
1.5.4	Hazardous and toxic materials/chemical use storage, transport, disposal or discharge.	SP	B
1.5.5	Generation or storage of hazardous waste limited to the volumes classified as very small quantity generator.	SP	B
1.5.6	Generation or storage of hazardous waste in excess of the volumes classified as a very small quantity generator.	SP	B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.5.7	<p>Full Service Hotel with amenities such as restaurants, function rooms, lounge facilities, health spa, etc. (including “Select Service” and “Boutique” hotels).</p> <p>(i) Up to 225 rooms in the aggregate at the PD Premises.</p> <p>(ii) In excess of 225 rooms within the PD Premises permitted by Special Permit following a majority vote of Town Meeting.</p>	<p>YES</p> <p>TM</p>	<p>A, B</p> <p>A, B</p>
1.5.8	Food processors, bakeries not operated at retail.	YES	B
1.5.9	Electronics Industries	SP	A, B
<b>1.6</b>	<b>Uses in Wetlands District (as defined in Zoning By-Laws)</b>		
1.6.1	Creation of a pond or pool or other changes in water courses for swimming, fishing or other recreational uses, agricultural uses, scenic features.	SP	A, B
1.6.2	Structures for essential services, which structures shall include roads, ways, sidewalks and drainage.	YES	A, B
1.6.3	Dredging expressly for mosquito or flood control by an authorized public agency.	SP	A, B
1.6.4	Periodic maintenance of existing water courses and maintenance for essential services.	YES	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.6.5	Temporary, not to exceed three months, storage of materials (excluding fill materials and hazardous and toxic materials) or equipment.	YES	A, B
1.6.6	Outdoor noncommercial recreation, including public parks, non paved playfields, tennis, paddle tennis and similar activities, walking and bike paths.	YES	A, B
1.6.7	Discharges from manmade structures into the wetlands.	SP	A, B
1.6.8	Conservation of soil, water plants, and wildlife including wildlife management shelters.	YES	A, B
1.6.9	Outdoor noncommercial recreation limited to nature study areas, walkways, boating, ice skating or fishing where otherwise legally permitted, and bike paths.	YES	A, B
1.6.10	Maintenance or repair of existing structures, roadways and utilities.	YES	A, B
<b>1.7</b>	<b>Accessory Uses <sup>12</sup></b>		

12 The total combined square footage for accessory uses 1.7.2-1.7.3 shall not exceed 20,000 square feet in the aggregate unless permitted by a Special Permit granted by the Planning Board.

SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)</b>	AREA (A & B) PERMITTED
1.7.1	Cafeterias, delicatessens, lunch counters, coffee shops, dairy or ice cream establishments, not to exceed 5,000 square feet per use (permitted only as an accessory use located within a commercial or residential facility).	SP	A, B
1.7.2	Personal services business such as barbers and hairdressers, not to exceed 1,000 square feet (permitted only as an accessory use located within a commercial or residential facility).	YES	B
1.7.3	Accessory convenience store of a maximum of 2,000 square feet. (permitted only as an accessory use located within a commercial or residential facility).	SP	B
1.7.4	Digital/photo imaging, copy center (provided any digital and/or photo imaging chemicals are self contained within the equipment and provided, further, such stored chemicals do not exceed amounts that would require registration with the Board of Health) limited to a maximum of 2,000 square feet. (permitted only as an accessory use located within a commercial or residential facility).	SP	A, B
1.7.5	Accessory Health Club located entirely within a commercial or residential facility.	SP	A, B
1.7.6	Dry cleaning (drop off and pick-up only).	SP	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.7.7	Indoor unmanned Automatic Teller Machine not to exceed a gross floor area of 400 square feet.	YES	A, B
1.7.8	Residential Sales/Leasing Office; Office of Real Estate Agent.	YES	A, B
1.7.9	Places and buildings for public assembly such as facilities and conference centers for business, recreation, educational gatherings, seminars and presentations, not to exceed 10,000 square feet (permitted only as an accessory use for residents or employees).	YES	A, B
1.7.10	Buildings and structures accessory to public and/or recreational uses such as, but not limited to, equipment rental, refreshment stands, etc., provided such buildings do not exceed 5,000 square feet.	YES	A, B
1.7.11	Mail Room (permitted only as an accessory use for residents and guests).	YES	A, B
1.7.12	Garage space or spaces and/or attached or detached structures (above and below ground and under buildings) for parking. <sup>13</sup>	YES	A, B

13 In Area A or B, any garage space and/or attached or detached structures for 3 or more vehicles (above and below ground and under buildings) for parking not shown on the Development Plans submitted as part of the Concept Plan shall require a special permit (SP).

SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)</b>	AREA (A & B) PERMITTED
1.7.13	Maintenance shops/garages, power plants, machine shops and similar structures to support permitted uses, provided that said structure is located within the building envelope.	YES	A, B
1.7.14	The use of roads in the PD Premises for any purposes that roads and ways in the Town of Burlington are used.	YES	A, B
1.7.15	Antennas, other than satellite dish antennas, for the purpose of private reception of telecommunication signals, which antennas do not exceed 12 feet in height above the ground or 12 feet above the roof of a building on which they are mounted. <b>14</b>	YES	A, B
1.7.16	Satellite dish antennas that are 8 feet or less across at their greatest width <u>and</u> which do not exceed 12 feet in height above the ground or above the roof of a building on which they are mounted. <b>4</b>	YES	A, B

14 Provided such antennas and/or dishes are not used for the purposes regulated and permitted under the Wireless Communications Overlay District under the Zoning By-Law.

SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)</b>	AREA (A & B) PERMITTED
1.7.17	This PDD By-Law shall not have the effect of changing or negating the Wireless Communications Overlay District or its permitted uses and such Wireless Communications Overlay District shall remain applicable to the PD Premises (including any dimensional restrictions), notwithstanding anything to the contrary contained herein.	SP	A, B
1.7.18	During construction of improvements at the premises, off-street outdoor storage of supplies and non-hazardous materials and overnight parking of freight carrying or materials handling vehicles and equipment, provided that from 7 p.m. to 7 a.m. vehicles shall not operate and/or idle.	YES	A, B
1.7.19	Storage of oils and fuels/petroleum products including storage for on-site heating purposes and landscaping maintenance equipment (in excess of 50 gallons).	SP	A, B
1.7.20	Accessory uses in wetlands limited to fences, flagpoles, non-commercial signs and docks.	YES	A, B
1.7.21	Child Care and Adult Day Care facility.	YES	A, B
1.7.22	Emergency Generators fueled by natural gas or propane.	YES	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED TM = SPECIAL PERMIT REQUIRED FOLLOWING TOWN MEETING APPROVAL)	AREA (A & B) PERMITTED
1.7.23	Fast order food establishments located entirely within a permitted principal use, drive-thru service is prohibited.	SP	A, B
1.7.24	Restaurant establishment located entirely within a permitted principal use, drive-thru service is prohibited.	SP	A, B

#### Water Resource District and Aquifer District

Subject to the provisions of Section 8.3.0 of the Zoning By-Laws, the foregoing uses shall be permitted as a matter of right or with a Special Permit in a Water Resource and Aquifer District as set forth in the above Table of Uses. Notwithstanding anything to the contrary contained in this Use Table, a use that is prohibited in the Aquifer District shall be prohibited in any portion of the PD Premises included within the Aquifer Overlay District.

#### **SPECIAL CONDITIONS**

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#### **SECTION 12.1.4.2.D. SPECIAL CONDITIONS FOR PLANNED DEVELOPMENT DISTRICT**

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Pursuant to Section 12.1.4.2.d. of Article XII of the Zoning By-Laws of the Town of Burlington, Massachusetts (hereinafter, the “PDD By-Law”), these Special Conditions shall be applicable to the development of the property known as Northwest Park which is bounded by

Middlesex Turnpike, Second Avenue, Massachusetts State Highway Route 3 and Kendall Road/Sun Microsystems Campus (hereinafter, the “PD Premises”) in accordance with the Concept Plan (hereinafter, together with all other materials submitted pursuant to Section 12.1.4 of the PDD By-Law, the “Concept Plan”) filed by The Nordblom Company and its related entities (hereinafter, with any successor in interest to the PD Premises, collectively, the “Developer”).

## **I      Development of the Project**

- The Concept Plan provides for the development of the PD Premises pursuant to the PDD By-Law to consist of a variety of uses including office, retail, commercial, multi-family residential and open space uses (hereinafter, the foregoing are referred to collectively as, the “Project”).
- Uses shall be limited to those uses set forth in the Use Table prepared as part of the Planned Development District Zoning Provisions (hereinafter, the “PD Zoning Provisions”) submitted as part of the Concept Plan.
- The Project shall be developed in substantial conformity with the Concept Plan as approved by the Town of Burlington at the January 2007 Town Meeting. The Concept Plan entitled “PD District Rezoning, Northwest Park, Middlesex Turnpike”, Burlington, Massachusetts, dated October 31, 2006 revised to November 30, 2006 (hereinafter, the “Development Plans”) shows in a general manner, among other things, the possible location of the buildings in the PD Premises, height limitations, approximate floor area and the approximate distance between buildings. Consistent with the intent of the PDD By-Law, it shall not be deemed a substantial deviation from the Concept Plan, if as a result of more definite engineering and other data, there occurs in any site plan submitted to the Planning Board for a PD Special Permit an alteration to the location and number of buildings within the PD Premises or changes in design or layout of the parking within the building envelopes shown on the Development Plans, provided that there shall not occur any change in maximum development square footage, minimum setbacks, maximum building height, or maximum number of residential units as provided in the PD Zoning Provisions without the approval by Town Meeting as provided in Section 12.1.8 of the Zoning By-Laws.

## **II      Developer’s Responsibilities**

### **1      Developer’s Responsibilities:**

Subject to the provisions of this Paragraph II, including, without limitation, the issuance of all permits and approvals (public and private) necessary for the implementation of all improvements and the availability of sufficient right of way that may be required for construction of the same, the Developer shall undertake or cause to be undertaken, and/or assist the Town in arranging for, the following improvements and benefits, unless otherwise noted:

(a) *Sidewalk/Bikepath:* The Developer shall incorporate into any site design a shared use sidewalk/bike path which interconnects the PD Premises. This sidewalk shall be developed concurrently with the phased build out of the PD Premises.

(b) *Traffic Improvements:* Developer shall complete the following roadway and signalization improvements in accordance with the time line prescribed in Section B “Schedule”, below:

- (a) The Developer shall upgrade the following intersections to accommodate certain geometric and/or signal phasing/timing modifications:
  - a. Middlesex Turnpike and Second Avenue;
  - b. Middlesex Turnpike and Third Avenue;
  - c. South Avenue and Second Avenue; and
  - d. Burlington Mall Road at the Burlington Marriott driveway.
- (b) The Developer shall fund a “Middlesex Turnpike Corridor” Traffic Master Plan to analyze the following: existing daily vehicle trips, adequacy of existing corridor, potential build out analysis under current zoning and possible traffic mitigation options to compensate for new or expanded development. The final scope of work for the Traffic Master Plan shall be established by the Planning Board in consultation with the Developer but in no event shall the Developer’s contribution exceed \$150,000.00; and
- (c) The Developer shall synchronize the traffic signals from the intersection of Middlesex Turnpike and Burlington Mall Road north to the intersection of Middlesex Turnpike and Fourth Avenue.

(c) *Transportation Demand Management:* The Developer shall implement Transportation Demand Management (“TDM”) initiatives designed to promote alternative transportation options, including the following:

- i Employment of a TDM coordinator to implement the recommended TDM measures outlined in the Northwest Park Traffic Impact and Access Study, prepared by VHB, Inc., dated November 2006;
- ii Coordination with the Massachusetts Bay Transportation Authority (“MBTA”), Lowell Regional Transit Authority (“LRTA”) and the

Town of Burlington B-Line to designate new bus stop(s), as applicable, to accommodate any bus line services for the PD Premise; and

iii The Developer shall work with the B-Line coordinator and the Planning Director to identify a new route(s) which will serve the PD Premises and abutting commercial and retail facilities. The Developer shall either, at the Planning Board's option at the time of the issuance of the first certificate of occupancy of a building in Area A developed pursuant to the PD Zoning Provisions: (1) contribute \$25,000 to the B-Line to effectuate such route change; or (2) pay to the Town an annual fee of Ten Thousand (\$10,000.00) Dollars on June 1 of each calendar year for a period of five (5) years, such fee to be used by the Town to operate the B-Line or any successor service.

(d) *Drainage Improvements:* Developer shall construct on the PD Premises drainage improvements that meet Massachusetts Department of Environmental Protection (the "DEP") Stormwater Management Standards and that will result in the following:

A. A net reduction in the peak flow rate of runoff from the PD Premises;

- i Treatment of runoff from the PD Premises in order to reduce or substantially eliminate suspended solids prior to discharge into wetland areas;
- ii Such drainage improvements shall result in reduced peak flow runoff during storm events, thereby improving conditions in the area of the PD Premises;
- iii At full development, groundwater re-charge shall be at least 10% greater than existing re-charge prior to development unless disallowed by other laws, regulations or ordinances or pursuant to a decision of other regulating bodies or agencies (Federal, State, or local including, without limitation the Board of Health of the Town).

(e) *Sewer/Inflow and Infiltration:* (i) Developer shall perform inflow and infiltration work required by the Town of Burlington Department of Public Works in order to mitigate sewer impacts pursuant to the current Administrative Consent Order (the "ACO") between the DEP and the Town and the sewer mitigation policy adopted by the Town pursuant to the ACO. Alternatively, in the event that no additional work is remaining or the Town and Developer otherwise elects, the Developer shall pay the Town a sewer mitigation fee at an amount and rate of 5:1 removal ratio and \$1.50 per

gallon or such lesser rate which may be in effect at the time of permitting the Project or various phases of the Project. Said fee to be due and payable upon the issuance of the occupancy permit for each commercial or residential unit. Such fee shall be credited against any and all funds required to be spent by the Developer for sewer inflow and infiltration work performed by the Developer as directed by the Department of Public Works.

(ii) The Developer shall enter into an agreement with the Town within six (6) months of the issuance of the Attorney General Approval of the PD Zoning District, to fund the costs to the Town to identify sewer inflow/infiltration ("I/I") projects for the PD Premises to a maximum of Three Hundred Thousand (\$300,000.00) Dollars, with such agreement to provide for, among other things: (1) the location and scope of such identification work, (2) the requirement that the Developer either: (a) perform such remediation work; or (b) agrees to pay to the Town the applicable sewer mitigation fee (currently \$1.50/gal on a 5:1 removal ratio) in accordance with a payment schedule satisfactory to the Town and the Developer; and, (3) provide that any allocated gallonage resulting from such I/I remediation shall be reserved by the Town first for the PD Premises to that amount necessary to fully develop the PD Premises in accordance with the Concept Plan, prior to the Town allocating any gallonage for other projects.

(f) Other: To provide the Town with security to address unanticipated impacts from the Project and in conformity with the permitting scheme embodied in the PDD Zoning Provisions, the Developer shall agree to undertake or provide the funds for the Town to undertake any additional mitigation deemed reasonably necessary by the Planning Board after consultation with other Boards and Departments of the Town and after review and consultation with the Developer in connection with any PD Special Permit for the Project provided such mitigation is required to address direct, identifiable impacts from the Project which are beyond the scope of the anticipated impacts addressed in the mitigation set forth in Section II, above. The Developer shall not be responsible to fund mitigation that is related to other development projects in the vicinity of the Project. The Developer shall be provided with copies of any written reports from the Town and/or its consultants detailing the need for any additional mitigation. The Developer shall be permitted to have such reports and/or recommendations reviewed by the Developer's consultants and shall have an opportunity to rebut the need for any supplemental mitigation or to propose alternative mitigation to address the impacts asserted. The Developer shall have the election to perform such mitigation directly or to deposit with the Town an amount to permit the Town to perform such work.

Subject to the provisions of this Paragraph II, including, without limitation, the issuance of all permits and approvals necessary for the implementation of all improvements and the availability of sufficient right of way that may be required for construction of the same, the Developer shall undertake and diligently pursue the Developer's Responsibilities in accordance with the following schedule:

<i>Item</i>	<i>Schedule</i>
<u>Sidewalks/Bike Path</u>	
Shared Use Sidewalk/Bike Path	The Developer shall work with the Town to design a series of interconnected sidewalk/bike paths throughout the PD Premises. Specific sidewalk segments shall be constructed prior to the issuance of a certificate of occupancy as they relate to specific buildings and/or areas.
<u>Traffic Improvements</u>	
Upgrade Middlesex Turnpike at Second Avenue intersection to provide geometric and signal phasing/timing modifications.	To be completed prior to the issuance of a certificate of occupancy for the development of more than 250,000 square feet of new commercial space in excess of the existing 1.4 million square feet of existing density.
Upgrade Second Avenue at South Avenue intersection to provide geometric and signal phasing/timing modifications.	
Upgrade signal at intersection of Burlington Mall Road at the Burlington Marriott driveway	
Upgrade Middlesex Turnpike at Third Avenue intersection to install traffic signal and provide necessary geometric modifications.	To be completed prior to the issuance of a certificate of occupancy for the development of more than 400,000 square feet of new commercial space in excess of the existing 1.4 million square feet of existing density.

<u>Item</u>	<u>Schedule</u>
Synchronize the signalized intersections from Middlesex Turnpike/ Burlington Mall Road to Middlesex Turnpike/Fourth Avenue.	
<u>Traffic Master Plan</u>	The Developer shall commence the preparation of this Plan upon approval by the Massachusetts Attorney General of the re-zoning of the PD Premises to a Planned Development District.
<u>Transportation Demand Management</u>	Prior to the issuance of a Certificate of Occupancy for the first building developed at the PD Premises.
<u>Drainage Improvements</u>	Drainage improvements will be phased and completed as roadways and infrastructure for the project are constructed in accordance with each PD Special Permit issued by the Planning Board.
<u>Sewer/Inflow &amp; Infiltration</u>	Inflow and infiltration work required under the sewer moratorium shall be completed prior to the issuance of a certificate of occupancy for any residential unit or commercial building for which the work was completed. In the event that cash payments are made by the Developer in lieu of inflow and infiltration work, payments are to be made upon the issuance of a certificate of occupancy for said commercial or residential unit.

(2) The above schedule assumes that the Town shall provide the necessary permits, approvals and consents for each of the foregoing. The obligations of the Developer to construct the Developer's Responsibilities are expressly contingent upon the Planning Board and/or the Town having granted all Special Permits required under the PDD By-Law and the issuance of all other permits, approvals, licenses and consents (governmental, federal, state, local or private) required for the relevant portion of the Developer's Responsibilities. If despite the diligent efforts of the Developer to obtain the required governmental and private permits and consents, such permits, approvals and consents do not issue or are not obtained, the Town shall waive any or a portion of the Developer's Responsibilities for any item and shall require contribution by the Developer in an amount agreed upon between the Developer and Town reflecting the reasonable cost of such improvements and/or mitigation which shall be paid by the Developer in lieu of such improvements or mitigation and which shall be deemed to be in full satisfaction of the Developer's Responsibilities with respect to any item(s). Any payments to the Town by the Developer shall be disbursed by the Town in accordance with Paragraph IV, below.

### **III Restriction on Use of Funds**

- In the event that the Developer shall make payment to the Planning Board in lieu of the construction of any of the Developer's Responsibilities the Town, as provided above, at the direction of the Planning Board, shall expend such sums for improvements to the Town's infrastructure as the Planning Board in its reasonable discretion deems advisable provided that any amounts paid shall be expended by the Planning Board in a manner that the Project benefits from such expenditures and the improvements effectuated thereby.

### **IV Town Obligations**

- In connection with the construction of the Developer's Responsibilities under Paragraph II, above, the Town shall take all such action including all necessary endorsements of applications to obtain any and all federal, state and local permits, approvals and licenses and private consents (specifically excluding hostile land takings or eminent domain proceedings) necessary for the construction of the Developer's Responsibilities and entering into agreements to allow for the construction and/or installation of the Developer's Responsibilities. It is expressly understood by the Developer and Town that it is the obligation of the Town to obtain such permits, approvals and licenses where the Town must legally act as applicant or signatory.

### **V Developer Covenants**

- (1) The Developer shall execute a Maintenance Agreement with the Board of Selectmen governing the responsibilities of the Town and the Developer as to the maintenance of all roadways within the PD Premises. Until such time as said Maintenance Agreement is executed, the existing roadways within the PD Premises shall continue to be maintained by the Town. In addition, and notwithstanding the foregoing, the Developer agrees that the Town shall not be responsible for (i) trash collection for any structures constructed on the PD Premises unless the Town is reimbursed for such expense; (ii) installation or maintenance of utilities located on and serving any private property within the PD Premises; or (iii) the installation or maintenance of any drainage systems specifically serving private property within the PD Premises.
- (2) The Developer of the PD Premises shall be responsible for the relocation of any municipal services and infrastructure on the relevant Area of the PD Premises at the Developer's sole cost and expense provided the Town cooperates with the Developer in connection with the permits, approvals and consents necessary to accomplish these obligations.
- (3) The Developer, in connection with the development of the 300 permitted residential units at the PD Premises, approved at the January 22, 2007 Town Meeting, consisting primarily of studios and one and two bedroom units with no

more than three units containing more than two bedrooms agrees, subject to the provisions below, that ten percent (10%) of the residential units (the “Affordable Housing Obligation”) shall be designated as housing units for which the rent is established in accordance with the local, state, or federal guidelines to ensure that it will be rented by a person or household with income at or below the levels established by state statutes and regulations to permit such units to be counted toward any affordable housing unit requirements established by state law and/or regulation (hereinafter, such units are collectively referred to as, the “Affordable Housing Units”). Subject to applicable laws and regulations, Burlington residents shall be given preference with respect to the occupancy of any units created or funded pursuant to this Paragraph, with the local preference criteria to be determined by the Board of Selectmen or its agent. The distribution and phasing of the construction and occupancy of the market rate units and Affordable Housing Units shall be implemented pursuant to an agreement entered into between the Developer and the Town of Burlington acting by and through its Board of Selectmen (hereinafter, the “Affordable Housing Restriction Agreement”).

- (4) The Developer, in connection with the development of the 300 permitted residential units at the PD Premises, approved at the September 23, 2019 Town Meeting, which shall consist primarily of studios and one and two bedroom units with no more than three units containing more than two bedrooms agrees, subject to the provisions below, that fourteen percent (14%) of the residential units (rounded to the nearest whole unit but no more than 42 total affordable units in the aggregate), shall, at the Town’s sole discretion, designate the units as either: (x) housing units for which the rent and qualification guidelines are established by the Town to provide affordable housing opportunities targeted to the senior residents of the Town, subject in all instances to applicable Federal and state laws (the “Local Senior Preference Units” (as to be defined by the Town in a new Affordable Housing Restriction Agreement); or (y) Affordable Housing Units. With respect to the Local Senior Preference Units and subject to applicable laws and regulations, Burlington senior residents shall be given preference, with the local preference criteria to be determined by the Town pursuant to an agreement similar to the Affordable Housing Restriction Agreement, set forth above. Unless the Town, acting by and through its Board of Selectmen, otherwise advises the Developer, the aforementioned percentage of required units shall be developed as Local Senior Preference Units. In no event shall the rent due to Developer for each individual unit under the Affordable Housing Restriction Agreement be less than the applicable rent established by the Commonwealth of Massachusetts Department of Housing and Economic Development for the qualified subsidized housing units under the Affordable Housing Unit Guidelines for residents earning up to eighty percent (80%) of the median income for the applicable census track pursuant to the Regulations issued under M.G.L. Chapter 40B. No new residential building shall contain more than 170 units.

## **VI Traffic and Drainage Analysis**

- The Developer has provided the Town, at the sole cost of the Developer, with a traffic analysis prepared by Vanasse Hangen Brustlin, Inc., copies of which have been delivered to the Planning Board as part of the Concept Plan.

## **VII Effective Date of PDD Zoning**

- The granting and recording of any Special Permit within the time periods specified in Section 12.1.2 of the Zoning By-Laws shall constitute full compliance with Section 12.1.2 of the Zoning By-Laws and vest the Planned Development District zoning of the PD Premises, notwithstanding that Special Permits for future aspects of the Project have not been applied for by the Developer or granted by the Town. The issuance of any Special Permit under Section 12.1.5 of the Zoning By-Laws shall be deemed to constitute, and be conclusive of, the Developer's compliance with all provisions of the Zoning By-Laws at the time of the issuance thereof. Thereafter, the PD Premises shall be developed in accordance with the Concept Plan and the requirements of Section 12.1.5 of the PDD By-Law. In the event of any amendment to the PDD By-Law, the PD Premises shall continue to be governed by the Concept Plan approved by the January 2007 Town Meeting and the applicable provisions of the PDD By-Law in effect on October 31, 2006, the date of the submission of the Concept Plan unless specifically waived by the Developer of the PD Premises.

## **VIII Applicable Zoning By-Laws**

- Except as provided in the Planned Development District Zoning Provisions submitted by the Developer pursuant to Section 12.1.4(c)(2) of the Zoning By-Laws, the Development of the Project shall be governed by the Zoning By-Laws in effect on October 31, 2006.