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**ARBORPOINT AT BURLINGTON  
PLANNED DEVELOPMENT DISTRICT  
FINAL ZONING ARTICLE APPROVED  
BY TOWN MEETING  
JANUARY 26, 2004**

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## **SECTION A.**

### **Planned Development District 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 Wheeler, Muller and Old Concord Roads (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 69.25± 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 June 16, 2003 (hereinafter, the "Zoning By-Laws").

#### **Article I - Use Regulations:**

The Concept Plan allows for a mixed use development of the PD Premises which may include multi-family, senior age restricted housing (a building owned or occupied by at least one (1) person who is fifty-five (55) years of age or older unless otherwise qualifying as a handicapped adult; and no more than one additional occupant who may be under fifty-five (55) years of age), limited retail, open space and conservation uses. These uses are allocated among the Areas shown on the Concept Plan. Pursuant to the Concept Plan: (i) Area A shall permit the development of limited retail, multi-family residential, senior age restricted residential housing and accessory uses associated therewith, and designated areas of open and conservation space; and (ii) Area B shall be left as open space or designated conservation land with appropriate uses thereon such as walking and

bicycle trails, restricted open space or otherwise allowed in the Use Table annexed hereto as Exhibit "A".

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.

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

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

##### **Area A**

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

- Minimum Frontage ..... 50 feet
- Minimum Lot Area ..... 20,000 s.f.
- Minimum Front Yard ..... 10.0 feet<sup>1</sup>
- Minimum Rear Yard ..... 15.0 feet<sup>2</sup>
- Minimum Side Yard ..... 15.0 feet<sup>2</sup>

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<sup>1</sup> Applies to internal ways only. The Minimum Front Yard for any building containing dwelling units with frontage on Old Concord Road, Muller Road and Wheeler Road shall be 25.0 feet.

<sup>2</sup> 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 requirement 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.

- Minimum separation between buildings ..... 20.0 feet<sup>3</sup>
- Except as provided in (i), below,  
Maximum Building and Structure Height <sup>4</sup> - 4 stories above grade to a maximum height of 55 feet, except
  - (i) within 200 feet of Muller Road, Wheeler Road and Old Concord Road 3 stories above grade to a maximum height of 45 feet.
- (a) Maximum Number of Residential Units ..... 425

**Article III - Lot Lines:**

Additional 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.

**Article IV - Parking and Loading Regulations:**

The following minimum ratios shall be applicable to parking at the PD Premises:

- (a) 1.8 spaces per unit of residential uses;
- (b) 3 spaces per 1,000 square feet of retail use.<sup>5</sup>

The Planning Board, in accordance with Section 7.4.0 of the Zoning By-Law, upon application of the developer of the PD Premises or any portion thereof, shall be permitted to alter the aforementioned ratios from time to time and such change shall not be deemed a material or

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<sup>3</sup> Measured from the exterior plane of each foundation.

<sup>4</sup> Building height shall be measured in accordance with the Zoning By-Laws.

<sup>5</sup> Subject to the aggregate square footage limitation of Section 1.3.3 of the Use Table.

substantial deviation from the Concept Plan as approved by Town Meeting, provided, in no event, shall the aggregate number of parking spaces on the PD Premises exceed 925.

Typical parking space dimensions shall be as follows:

- (a) Typical parking space -- 9' x 18'
- (b) Compact parking space -- 8' x 15' (up to 30% of spaces may be compact)
- (c) Handicap Accessible Spaces -- 13' x 18', including 5' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.
- (d) 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 V - Building Locations:**

The Plans entitled "Burlington Residential Communities, Wheeler Road" prepared by Geller DeVellis 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 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.

#### **Definitions**

Except as provided below, 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 shall 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.

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

- (a) 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 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.



(b) 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.

(c) 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.

#### **Article VII - Signage:**

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

a) Monument Signage shall be permitted at the intersection of the main site drive and Wheeler Road as well as other locations identified on the Site Development and Use Plan. Such signage shall not exceed 20 feet in length and 5 feet in height (not including length of wall).

b) Wall Signs shall be permitted at the main entrance of each building for means of identification. Such signage shall not exceed six square feet.

c) Traffic Control Signage shall be permitted throughout the development and shall be installed at the direction of the Police Department and Department of Public Works.

d) Temporary Signage shall be permitted which advertises rental, sale, or lease of the premises and shall not exceed 24 square feet.

For purposes of signage, Area B of the PD Premises shall be governed by and subject to the signage requirements and limitations as follows:

a) Monument Signage or Directional signage shall be permitted within the premises as a means of identifying trail locations and restricted areas. Monument Signage shall not exceed 5 feet in length and 5 feet in height. Directional signage shall not exceed four square feet.

All signage locations and size shall be permitted as part of approval of any Site Development and Use Plan pursuant to Section 12.1.5 of the Zoning By-Law.

**Article VIII - 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.

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## **SECTION B.**

Exhibit “A” Use Table

**EXHIBIT "A"**  
**USE TABLE <sup>1</sup>**

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
<b>1.1</b>	<b>Residential Uses</b>		
1.1.1	Multifamily housing including, without limitation, townhouses and cluster style buildings	YES	A
1.1.2	Senior age restricted housing (as defined in Article I of the Planned Development District Zoning Provisions)	YES	A
1.1.3	Assisted living, congregate living, continuing care retirement community	YES	A

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
1.2	Uses in Wetlands District (as defined in Zoning By-Laws)		
1.2.1	Creation of a pond or pool or other changes in water courses for swimming, fishing or other recreational uses, agricultural uses, scenic features, drainage improvements.	YES	A, B
1.2.2	Structures for essential services, which structures shall include roads, ways, sidewalks and drainage.	SP	A, B
1.2.3	Dredging expressly for mosquito or flood control by an authorized public agency.	SP	A, B
1.2.4	Periodic maintenance of existing water courses and maintenance for essential services.	SP	A, B
1.2.5	Temporary, not to exceed three months, storage of materials (excluding fill materials and hazardous and toxic materials) or equipment.	SP	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
1.2.6	Outdoor noncommercial recreation not specifically permitted by right in 1.2.9, below, including public parks, nonpaved playfields, tennis, paddle tennis and similar activities, walking and bike paths.	SP	A, B
1.2.7	Discharges from manmade structures into the wetlands.	SP	A, B
1.2.8	Conservation of soil, water plants, and wildlife including wildlife management shelters.	YES	A, B
1.2.9	Outdoor noncommercial recreation limited to nature study areas, walkways, boating, ice skating or fishing where otherwise legally permitted, and bike paths.	YES	A, B
1.2.10	Maintenance or repair of existing structures, roadways and utilities.	YES	A, B

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
1.3	Accessory Uses <sup>2</sup>		
1.3.1	Cafeterias, delicatessens, lunch counters, soda fountains, dairy or ice cream establishments not to exceed 2,000 square feet (permitted only as an accessory use for residents and guests).	SP	A
1.3.2	Personal services business such as barbers and hairdressers, not to exceed 1,000 square feet (permitted only as an accessory use for residents and guests).	YES	A
1.3.3	Accessory convenience store of a maximum of 2,000 square feet (permitted only as an accessory use for residents and guests).	SP	A
1.3.4	Photo processing, copy center of a maximum of 1,000 square feet (permitted only as an accessory use for residents and guests).	SP	A

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
1.3.5	Fitness Center (permitted only as an accessory use for residents and guests).	YES	A
1.3.6	Dry cleaning (drop off and pick-up only) (permitted only as an accessory use for residents and guests).	YES	A
1.3.7	Indoor unmanned Automatic Teller Machine not to exceed a gross floor area of 200 square feet (permitted only as an accessory use for residents and guests).	SP	A
1.3.8	Residential Sales/Leasing Office; Office of Real Estate Agent	YES	A
1.3.9	Places and buildings for public assembly such as facilities and conference centers for business, recreation, educational gatherings, seminars and presentations, not to exceed 4,000 square feet (e.g. clubhouse) (permitted only as an accessory use for residents and guests).	YES	A
1.3.10	Mail Room (permitted only as an accessory use for residents and guests).	YES	A
1.3.11	Garage space or spaces and/or attached or detached structures (above and below ground and under buildings) for parking. <sup>3</sup>	YES	A



SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
1.3.12	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
1.3.13	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
1.3.14	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. <sup>4</sup>	YES	A
1.3.15	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. <sup>4</sup>	YES	A

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	AREA (A or B) PERMITTED
1.3.16	During construction of improvements at the premises, off-street outdoor storage of supplies and 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
1.3.17	Storage and disposal of oils and fuels/petroleum products including storage for on-site heating purposes and landscaping maintenance equipment (in excess of 30 gallons).	SP	A
1.3.18	Accessory uses in wetlands limited to fences, flagpoles, non-commercial signs and docks.	YES	A, B
1.3.19	Child care facility	YES	A
1.3.20	Adult day care facility	YES	A
1.3.21	Emergency Generators fueled by natural gas.	YES	A

### Water Resource 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 District as set forth in the above Table of Uses.

### 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 an Aquifer District as set forth in the above Table of Uses.

### Notes

- <sup>1</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.
- <sup>2</sup> The total combined square footage for accessory uses 1.3.1-1.3.10 shall not exceed 10,000 square feet in the aggregate unless permitted by Special Permit granted by the Planning Board.
- <sup>3</sup> In Area A, 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).
- <sup>4</sup> 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.

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## **SECTION C.**

### **Special Conditions for Planned Development District**

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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 located off of Muller, Wheeler and Old Concord Roads, Burlington, Massachusetts (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 ND/Burlington Communities, LLC (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 the development of multi-family, senior age restricted residential housing, limited retail uses, open space and conservation uses (hereinafter, the foregoing is referred to collectively as, the "Project").

Uses shall be limited to those uses set forth in 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 2004 Town Meeting. The plan entitled "Burlington Residential Communities, Wheeler Road" prepared by Geller DeVellis, Inc. and submitted as part of the Concept Plan (hereinafter, the "Development Plans") shows in a general manner, among other things, the proposed location of the buildings comprising the PD Premises, number of stories, approximate floor area and maximum height of each building 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 a relocation of any building on 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 minimum setbacks, maximum building height, or maximum number of residential units as provided in the Concept Plan 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 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:

#### (a) Sidewalk/Berm/Bicycle Path:

- (a) The Developer shall construct a sidewalk on Wheeler Road from the main site drive of the PD Premises on Wheeler Road to connect to the existing sidewalk on Old Concord Road. Constructing this sidewalk will create a connection between Muller Road and the existing sidewalk on Old Concord Road via new sidewalks to be constructed on the PD Premises.
- (b) Provide a landscaped berm on the perimeter of the PD Premises adjacent to Muller Road as shown on the Development Plans. Such berm shall be approximately 100 feet in length and 6 feet in height measured from the finished grade of Muller Road. Plantings shall be approved by the Planning Board as part of the PD Special Permit.
- (c) In order to connect the existing bicycle path on Blanchard Road with the proposed bicycle path to be constructed through the PD Premises as shown on the Development Plans, the Developer shall pave a strip with a width of approximately eight feet along the perimeter of the PD Premises adjacent to Muller Road from the intersection of Muller Road and Blanchard Road to the location of the bicycle path to be constructed across the PD Premises as shown on the Development Plans.

#### (b) Traffic Improvements: Developer shall complete the following roadway and signalization improvements:

- (a) Developer shall upgrade the existing signal at the intersection of Wheeler Road (east)/Middlesex Turnpike to accommodate the projected site traffic generated by the proposed development as approved.

- (b) Developer shall widen Wheeler Road (east) to accommodate exclusive westbound left and right turn lanes at the intersection of Wheeler Road (east)/Middlesex Turnpike.
- (c) Developer shall either install a new traffic signal or upgrade the existing signal controller at the intersection of Middlesex Turnpike/Wheeler Road (west)/Route 128 northbound ramps.
- (d) Subject to the Town's contribution noted below, Developer shall also install interconnects and system upgrades to synchronize the traffic signals from the existing control signals on Middlesex Turnpike at "Middlesex Commons Mall" through the intersection of Middlesex Turnpike and Burlington Mall Road (7 signalized intersections in total). All signals shall include Opticom traffic control devices. The Town shall contribute the funds presently held by the Planning Board (not less than \$200,000.00) in escrow for these improvements to the overall cost of the foregoing traffic control synchronization project.
- (e) Developer shall re-build and or restore the intersection of Muller, Wheeler and Blanchard Roads in accordance with plans to be approved by the Town. In connection with such obligation, to the extent necessary based upon the final design approved by the Town, the Developer's obligations shall include:
  - a. installation of curbing in the immediate vicinity of the intersection;
  - b. installation of appropriate traffic signage;
  - c. providing up to \$5,000.00 to cover the cost of periodic police details for a maximum of three months for the purpose of traffic enforcement. The timing and frequency of such details shall be at the discretion of the Police Department.
- (f) If requested by the Town, the Developer will work with the Town to seek State approval for a truck ban for Muller Road.
- (c) Water Looping: In order to provide redundancy and to improve municipal water service in the area, the Developer shall loop the municipal water service through the PD Premises by connecting the existing water line located beneath Wheeler Road to the water line located beneath Muller Road.

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

- (a) A net reduction in the peak flow rate of runoff from the site.
- (b) Treatment of runoff from the site in order to reduce or substantially eliminate suspended solids prior to discharge into wetland areas.
- (c) Such drainage improvements shall result in reduced peak flow runoff during storm events, thereby improving conditions in the area of the PD Premises.

Such drainage improvements shall result in reduced peak flow runoff during storm events thereby improving flooding conditions in the area of the Premises.

(e) Sewer/Inflow and Infiltration: 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 Massachusetts Department of Environmental Protection 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 otherwise elects, the Developer shall pay the Town in lieu of such work \$1,000 per residential unit as a sewer mitigation fee, said fee to be due and payable upon the issuance of the occupancy permit for each residential unit. Such fee shall be credited against any and all funds spent by the Developer for sewer inflow and infiltration work performed by the Developer as directed by the Department of Public Works.

(f) Other: Developer shall make the following one time payments to the Town to be used for the purposes set forth below:

- (a) \$25,000 to be applied to the purchase of new water lines to connect of the water tower located on Blanchard Road to the water tower located off of Cambridge Street and Mall Road; and
- (b) \$25,000 to be used by the Town's Recreation Department to assist in the acquisition and development of recreational facilities for the residents of the Town.



- (c) To provide the Town with security to address unanticipated impacts from the Project, the Developer shall agree to undertake or provide the funds for the Town to undertake (subject to the financial limitations contained herein) any additional mitigation deemed reasonably necessary by the Town after review and consultation with the Developer to address direct impacts from the Project which are beyond the scope of the anticipated impacts addressed in the mitigation set forth in this Section II. The Town shall provide the Developer with its assessment of the need for additional mitigation within six months of the issuance of the certificate of occupancy for the 350<sup>th</sup> unit at the PD Premises (the "Mitigation Notice"). 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. Notwithstanding anything to the contrary contained herein, in no event shall the obligations of the Developer under this subparagraph F. exceed \$200,000.00. Except for mitigation identified in the Mitigation Notice, the obligation of the Developer to perform any supplemental mitigation as provided in this subsection (c) shall terminate twelve (12) months after the date of the Mitigation Notice.

The items listed in sub-paragraphs II(1)A-F are hereinafter individually and collectively referred to as, the "Developer's Responsibilities". The foregoing Developer's Responsibilities are more particularly depicted on the plans and illustrations submitted as part of this rezoning.

(2) Schedule

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:

<u>Item</u>	<u>Schedule</u>
A. Sidewalk	To be completed prior to the issuance of a certificate of occupancy for any residential unit
B. Traffic	
(a) Upgrade Existing Signal at intersections of Wheeler Road (east) and Middlesex Turnpike	To be completed prior to the issuance of a certificate of occupancy for any residential unit.
(b) Widen Wheeler Road (east)	To be completed prior to the issuance of a certificate of occupancy for any residential unit.
(c) Upgrade Signal/Controller	To be completed prior to the issuance of a certificate of occupancy for the 350 <sup>th</sup> residential unit. <sup>1</sup>
(d) Complete Traffic Interconnects	By the occupancy of the 350 <sup>th</sup> dwelling unit, provided, in the event that synchronization of the signals has not occurred as of occupancy of the 350 <sup>th</sup> dwelling unit, despite the diligent efforts of the Developer to obtain the necessary permits and approvals, then said improvements shall be substantially complete prior to occupancy of the 425 <sup>th</sup> dwelling unit. <sup>1</sup>
C. Water Looping	To be completed prior to the issuance of a certificate of occupancy for any residential unit.
D. Drainage Improvements	Drainage improvements will be phased and completed as roadways and infrastructure for the project are constructed.

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<sup>1</sup> Does not preclude the issuance of an occupancy permit for a building containing the maximum unit count but shall only prohibit the occupation of any unit in excess of the maximum unit count.

E. Other

(a) \$25,000 Payment to Recreation Department

Payment is to be made upon the issuance of a certificate of occupancy for any residential unit.

(b) \$25,000 Payment for Water Line

Payment is to be made upon the issuance of a certificate of occupancy for any residential unit.

F. Sewer/Inflow & Infiltration

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 for which the work was completed. In the event that cash payments are made in lieu of inflow and infiltration work, payments are to be made upon the issuance of a certificate of occupancy for permits for the residential units.

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. In the event that such permits and approvals are not granted, and the Developer has used its best efforts in connection with obtaining such necessary permits and approvals and agreements, the Developer shall contribute to the Town the cost of the aforementioned improvements which said improvements are to be made for the items listed in II.(1)A-F, above, respectively, less any costs and expenses paid or incurred by said Developer from the date of approval of the rezoning of the PD Premises which costs and expenses directly relate (subject to verification by the Planning Board) to each of the applicable Developer's Responsibilities (including, without limitation, the cost of any takings or easements for the widening of any right of way) and such amount shall be in lieu and deemed to be in full satisfaction of the Developer's Responsibilities with respect to such item. Any payments to the Town by the Developer shall be disbursed by the Town in accordance with Paragraph IV, below.

### **III. Project Phasing**

The development of the PD Premises shall be phased as follows:

- No units may be occupied prior to the last day of the 12th month after the issuance of the initial PD Special Permit issued for the project;
- No more than 250 units may be occupied between the period that commences on the last day of the 12th month after the issuance of the initial PD Special Permit and ends on the expiration of the 24th month after the issuance of the initial PD Special Permit;
- No more than 350 units, in the aggregate, may be occupied between the period that commences on the last day of the 24th month after issuance of the initial PD Special Permit and ends on the expiration of the 36th month after issuance of the initial PD Special Permit; and
- No more than 425 units, in the aggregate, may be occupied after the last day of the 36th month after the issuance of the initial PD Special Permit.

Notwithstanding the foregoing, certificates of occupancy may be issued at any time for the use and occupancy of the proposed amenity center and/or accessory retail or other accessory uses permitted at the PD Premises.

### **IV. 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 due to the failure of all permits, approvals, licenses or agreements to have been issued or executed as provided in Subparagraph II, above, the Town, at the direction of the Planning Board, shall expend such sums for improvements to the Town's infrastructure as the Planning Board in its 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, such as, but not limited to, the upkeep and maintenance of the conservation and open space as depicted on the Plan.

### **V. 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.

**VI. Developer Covenants**

- (1) The Developer agrees that all ways located on the PD Premises shall be private ways and shall remain private ways and shall be permanently maintained by the property owners of the land comprising the PD Premises. In addition, 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 the PD Premises; or (iii) the installation or maintenance of any drainage systems specifically serving the PD Premises.
- (2) The Developer shall grant to the Conservation Commission of the Town of Burlington a Conservation Restriction pursuant to Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33, which provides in Area B for a pedestrian trail in areas shown on the Plan. This restriction shall prohibit vehicular access (but not bicycle access) across said area except for emergency access and maintenance vehicles. Prior to the issuance of a certificate of occupancy for the first building constructed at the PD Premises, the Developer shall submit the aforementioned Conservation Restriction for state and local approval. If approved, the Conservation Restriction shall be recorded with the Middlesex South Registry of Deeds.
- (3) 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.
- (4) Subject to the provisions below, the Developer agrees that ten percent (10%) of the residential units (the "Affordable Housing Obligation") shall be designated as housing units for which the purchase price or rent is established in accordance with the local, state, or federal guidelines to ensure that it will be purchased or 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").

**VII. 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.

**VIII. 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 2004 Town Meeting and the applicable provisions of the PDD By-Law in effect on June 16, 2003, the date of the submission of the Concept Plan unless specifically waived by the Developer of the PD Premises.

**IX. 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 June 16, 2003.

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## **SECTION D.**

### **Master Plan**

