

SECTION 12.1.4.2.d.  
SPECIAL CONDITIONS  
FOR  
PLANNED DEVELOPMENT DISTRICT

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 Cambridge Street, Burlington, Massachusetts as more particularly described in Exhibit "A" annexed hereto (hereinafter, the "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 Trammell Crow Company, a Massachusetts general partnership (hereinafter, the "Developer") as agent for Burlwood Realty Corporation, Robert W. Murray and Arthur DiMartino, Jr., Trustees of Burlington Cambridge Realty Trust.

I. Development of the Project. The Concept Plan provides for the development of the Premises pursuant to the PDD By-Law in three (3) Phases (hereinafter the entire project and each phase of the proposed development individually being referred to as, the "Project") with such phased development to be undertaken by the Developer as follows:

Phase	Approximate Floor Area (Square Feet)	Approximate Floor Area (Square Feet)
	Office/Retail*	Residential
I	120,000	35,000
II	215,000	35,000
III	200,000	30,000

\* (Aggregate office space in the Project shall not exceed 500,000 square feet and retail space in the Project shall not exceed 35,000 square feet.)

The Project shall be a mixed use development consisting of general office, multi-family residential and retail uses and accessory uses relating to each principal use. The multi-family uses shall include attached and detached dwelling units in a grouped or "cluster" type development. Retail uses shall include such business and services of a character which would provide a convenience to the residents and tenants of the Premises and which should mitigate traffic conditions around the Premises by keeping residents and tenants on site. Office uses shall be limited to those uses set forth in Sections 1.2, 1.3 and 1.5 of the Planned Development District 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 25, 1988 Town Meeting. The Concept Plan shows in a general manner, among other things, the location of the buildings comprising the Project, 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 detailed engineering and other data there occurs a relocation of any building or buildings, parking or other improvements, relocation of lot lines within the Premises or changes in design or layout of the Project provided that there shall not occur any change in minimum setbacks, maximum building height, maximum total floor area of development or uses 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. Site and Off-Site Improvements and Responsibilities.

(1) Off-Site Improvements and Responsibilities. The Developer shall undertake or cause to be undertaken and assist the Town in arranging for the following off-site improvements, subject to the provisions of this Paragraph II:

### A. Phase I Off-Site Improvements and Responsibilities

- Installation of (i) a traffic signal with the ability to control right-hand turns; and (ii) a painted pedestrian cross walk across Cambridge Street at the intersection of the site drive and Cambridge Street conforming to the design standards of the United States Department of Transportation Manual on Uniform Traffic Control Devices for Streets and Highways and any applicable Massachusetts supplements thereto.
- Preparation for Town of engineering plans for the off-site roadway improvements for Phase II and III.
- Preparation of required applications for necessary permits, approvals and licenses for construction of off-site improvements in Phase II and III.

(hereinafter, the preceding being collectively referred to as, the "Phase I Off-Site Improvements").

B. Phase II and III Off-Site Improvements and Responsibilities

- Improvements to Route 128 Exit Ramp (Exit 33B South) as described in the Final Environmental Impact Report (hereinafter, the "Ramp Improvements").
- Installation of sidewalks along Cambridge Street and the widening of Cambridge Street to accommodate up to four (4) lanes of traffic each to be accomplished within the existing layout of Cambridge Street (hereinafter, the "Cambridge Street Improvements").
- Improvements to intersection of Mall Road and Cambridge Street within the existing layout of Cambridge Street and Mall Road including the installation of a painted pedestrian crosswalk conforming to the design standards of the United States Department of Transportation Manual on Uniform Control Devices for Streets and Highways and any applicable Massachusetts supplements thereto (hereinafter, the "Intersection Improvements").

Hereinafter the Phase I Off-Site Improvements, Ramp Improvements, Cambridge Street Improvements, Intersection Improvements are collectively referred to as, the "Off-Site Improvements."

The Off-Site Improvements are shown on the Improvements Plan attached hereto as Exhibit "B" (hereinafter, the "Improvements Plan").

(2) Schedule: The Developer hereby agrees with the Planning Board to make the Off-Site Improvements in accordance with the following schedule and limitations:

(i) Phase I - Prior to the issuance of the first certificate of occupancy with respect to Phase I of the Project, the Developer shall have completed the Phase I Off-Site Improvements provided, however, if all necessary permits and approvals have not been obtained and all agreements entered into for the installation of the traffic signal at the time the Developer requests the first certificate of occupancy for Phase I of the Project 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 \$216,000.00 less any costs and expenses paid or incurred by the Developer from the date of approval of the rezoning of the Premises which costs and expenses directly relate (subject to verification by the Planning Board) to the Phase I Off-Site Improvements and such amount shall be in lieu and deemed to be in full satisfaction of the Developer's obligations to construct the Phase I Off-Site Improvements. Any payments to the Town by the Developer shall be disbursed by the Town in accordance with Paragraph III, below. Upon such payment by the Developer, the certificates of occupancy for Phase I of the Project shall be issued provided that any other conditions (except the construction of the Phase I Off-Site Improvements) for the issuance of such certificates have been met by the Developer.

(ii) Phase II - Prior to the issuance of the first certificate of occupancy for Phase II of the Project, the Developer shall have constructed one of the following: (a) the Ramp Improvements; (b) the Cambridge Street Improvements and Intersection Improvements; or (c) such other off-site improvements proposed by the Planning Board and acceptable to the Developer including, without limitation, addressing off-site conditions affecting the abutters of the Premises such as those concerns set forth on Exhibit "C" annexed hereto (hereinafter the elected Phase II off-site improvements being referred to as the, "Phase II Off-Site Improvements"). The Ramp Improvements, Cambridge Street Improvements and Intersection Improvements shall be in substantial accordance with the plans prepared by the Developer during Phase I. Certificates of occupancy shall not be withheld for Phase II of the Project based upon the failure of all permits, approvals and licenses to have been issued or agreements entered into or work completed with respect to the construction of the Phase II Off-Site Improvements at the time the Developer applies for the first certificate of occupancy provided the Developer has used its best efforts to obtain all such necessary permits, approvals, licenses and agreements and/or complete the construction of the Phase I Off-Site Improvements. In such event, the Developer, with the cooperation of the Town, shall continue to use its best efforts to arrange for the issuance and/or execution of such permits, approvals, licenses and agreements and/or complete the construction of the Phase II Off-Site Improvements. In the event that

despite the best efforts of the Developer: (1) such permits, approvals and licenses have not been issued or agreements entered into within eighteen (18) months of the issuance by the Town of the first certificate of occupancy for the improvements in Phase II of the Project; or (2) any required permit, approval or license necessary for the Phase II Off-Site Improvements is denied, then in each such event the Developer shall contribute to the Town \$387,000.00 less any costs and expenses paid or incurred by the Developer from the date of approval of the rezoning of the Premises which costs and expenses directly relate (subject to verification by the Planning Board) to the Phase II Off-Site Improvements and such amount shall be in lieu and in full satisfaction of the Phase II Off-Site Improvements. Any payments to the Town by the Developer shall be disbursed by the Town in accordance with the provisions of Paragraph III, below.

(iii) Phase III - Prior to the issuance of the first certificate of occupancy for Phase III of the Project, the Developer shall, to the extent not completed during Phase II, have constructed one of the following: (a) the Ramp Improvements, Cambridge Street Improvements or Intersection Improvements to the extent not completed during Phase II; or (b) such other off-site improvements proposed by the Planning Board and acceptable to the Developer, including, without limitation, addressing off-site conditions affecting the abutters of the Premises such as those concerns set forth on Exhibit "C" annexed hereto (hereinafter, the off-site improvements undertaken by the Developer during Phase III being referred to as, the "Phase III Off-Site Improvements"). The Ramp Improvements, Cambridge Street Improvements and Intersection Improvements to each to be in substantial accordance with the plans prepared by the Developer during Phase I. Certificates of occupancy shall not be withheld for Phase III of the Project based upon the failure of all permits, approvals and licenses to have been issued or agreements entered into or work completed with respect to the construction of the Phase III Off-Site Improvements at the time the Developer applies for the first certificate of occupancy provided the Developer has used its best efforts to obtain all such necessary permits, approvals, licenses and agreements and/or complete construction of the Phase III Off-Site Improvements. In such event, the Developer, with the cooperation of the Town, shall continue to use its best efforts to

arrange for the issuance and/or execution of such permits, approvals, licenses and agreements and/or complete the construction of the Phase III Off-Site Improvements. In the event that despite the best efforts of the Developer: (1) such permits, approvals and licenses have not been issued or agreements entered into within eighteen (18) months of the issuance by the Town of the first certificate of occupancy for the improvements in Phase III; or (2) any required permit, approval or license necessary for the Phase III Off-Site Improvements is denied, then in each such event the Developer shall contribute to the Town \$360,000.00 less any costs and expenses paid or incurred by the Developer from the date of approval of the rezoning of the Premises which costs and expenses directly relate (subject to verification by the Planning Board) to the Phase III Off-Site Improvements and such amount shall be in lieu and in full satisfaction of the Developer's obligations to construct the Phase III Off-Site Improvements. Any payments to the Town by the Developer shall be disbursed by the Town in accordance with the provisions of Paragraph III, below.

(iv) The Developer shall commence construction of the off-site improvements for each Phase of the Project within twelve (12) months of: (i) the satisfaction of the preconditions to the Developer's obligations as provided in Paragraph II.(4), below; and (ii) the issuance of all governmental and/or private permits, approvals, licenses and the execution of all necessary agreements for the construction of off-site improvements for the relevant Phase of the Project.

(3) Financial Security. To secure the obligations of the Developer to complete the Off-Site Improvements, the Developer shall, prior to the commencement of construction, post a bond, letter of credit or provide other financial security satisfactory to the Town for the performance of the Developer's obligations in a form and in an amount mutually agreed upon by the Planning Board and the Developer. The Town shall not be permitted to draw and apply any funds provided under this Subparagraph unless and until: (i) the Town has approved all Special Permits under the PDD By-Law for the on-site improvements for the relevant Phase (I, II or III); (ii) all other federal, state and local permits, approvals and licenses for the construction of the off-site improvements in the relevant Phase have been granted and all appeal periods with respect thereto have expired without any appeal having been filed; and (iii) the Developer has defaulted in its obligations

under these Special Conditions. The Town shall be permitted to draw upon and apply any funds provided under this Subparagraph only in the amount of the Developer's default in payment and/or performance. In the event that the Developer makes the payments set forth in Subparagraph II., above in lieu and in satisfaction of the Developer's obligation to construct any of the Off-Site Improvements, the Town shall be permitted to draw and apply any funds provided under this Subparagraph only up to the amount of such payment to be made in lieu of the Off-Site Improvements and only in the amount of the Developer's default in payment and performance under these Special Conditions.

(4) Approval Contingencies. The obligations of the Developer to construct the Off-Site Improvements 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 or private) required for the relevant Phase of the Project including, without limitation demolition permits for Phase I to remove the existing structure(s) on the Premises and to construct the access road across a wetlands district.

(5) Supplemental Funding Contingency. The Town, at the request of and/or in conjunction with the Developer, shall make application to various state and/or federal agencies to obtain funding grants to assist in the construction of the Off-Site Improvements. The Developer shall be responsible for the preparation of any such applications. In the event that any grant or grants are awarded for any Off-Site Improvements and such grant or grants reduces the total obligations of the Developer below \$216,000.00 for the Phase I Off-Site Improvements, \$387,000.00 for the Phase II Off-Site Improvements, or \$360,000.00 for the Phase III Off-Site Improvements then the Planning Board shall require that the Developer deposit with the Planning Board the amount of such deficiency reflecting the commitment of the Developer to expend at least such amounts for the relevant Phase of the Project for off-site improvements. The amount of any funds shall be retained and disbursed by the Planning Board subject to the limitations set forth in Paragraph III, 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 Off-Site Improvements due to the failure of all permits, approvals, licenses or agreements to have been issued or executed as provided in Subparagraph II.(2) and (5), 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 (i) that any amounts paid shall be expended by the Planning Board in a manner that the Project directly or indirectly benefits from such improvements; and (ii) up to \$216,000.00 paid to the Planning Board pursuant to Subparagraph II(2)(i) must be used by the Planning Board to improve and/or repair water and sewer service for the Town.

IV. Town Obligations. In connection with the construction of off-site improvements for each Phase of the Project, 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 off-site improvements and entering into agreements to allow for the construction and/or installation of the off-site improvements. 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. It is further understood that the Developer, as set forth in Paragraph II.(5), above ("Supplemental Funding Contingency"), shall be responsible for any preparation, engineering work or studies involved with such applications.

V. Traffic Analysis. The Developer has provided the Town, at the sole cost of the Developer, with a traffic analysis prepared by Vanasse, Hangen Brustlin Associates, a copy of which has been delivered to the Planning Board as part of the Concept Plan. The Developer shall provide the Town with up to \$15,000.00 to pay the cost of a so-called "peer review" of the traffic analysis. At the election of the Planning Board, a portion of the foregoing financial contribution by the Developer for review of the traffic analysis may be used for future updates of the aforementioned traffic report during construction of the Project. The Developer in consultation with the Planning Board shall also establish a task force consisting of the Developer and commercial and residential abutters of the Premises to monitor traffic during construction of the Project and to formulate and recommend to the Planning Board and Town measures to mitigate any impact on the immediate area of the Premises arising from increased traffic and to assist the Planning Board and Town in the implementation of any agreed upon course of action.

VI. Drainage. The Developer shall provide the Planning Board

with the materials prepared by Camp Dresser & McKee which reviews and summarizes the current drainage conditions at the Premises, a copy of which has been delivered to the Planning Board as part of the Concept Plan. The Developer shall, at its sole cost and expense, install up to two meters in existing culverts to measure drainage flows. The Developer shall provide the Planning Board with up to \$10,000.00 to pay the cost of a peer review of the report of drainage conditions. At the election of the Planning Board, a portion of the foregoing financial contribution by the Developer for the review of drainage conditions can be used for future updates of the drainage analysis during construction of the Project. The Developer shall install an on-site well to provide for irrigation needs at the Premises.

VII. Signage. The Developer shall comply with the Zoning By-Law and Town's General By-Law with respect to signage at the Premises. The Developer shall further agree that no illuminated signage shall primarily face abutting residential districts. ~~I-4 ZONE~~

VIII. Affordable Housing. The Concept Plan entails the construction of up to 75 units of residential housing. The Developer shall convey eight (8) units consisting of a minimum of three (3) units for Phase I, two (2) units for Phase II and three (3) Units for Phase III to the Burlington Housing Authority for low and moderate income family housing at such prices as permitted under the federal and/or state program or programs selected by the Developer and the Burlington Housing Authority for the funding of the acquisition.

IX. 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 notwithstanding that Special Permits for future phases have not been applied for by the Developer. 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 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 be governed by the Concept Plan approved by the January 25, 1988 Town Meeting and the applicable provisions of the PDD By-Law in effect on November 16, 1987, the date of the submission of the

Concept Plan unless specifically waived by the owner of the Premises.

X. Access to Adjoining Properties and Emergency Access. The Developer shall not be permitted to access adjoining residential districts from the Premises (such limitation shall not limit or restrict the ability to cross access residential and office areas within the Premises). If doing so would not result in any adverse impact on the development of the Project, the Developer shall grant to the Town a conservation easement or restriction in form and substance satisfactory to the Planning Board and Developer along the border of the Premises abutting residential districts. Any emergency access road to the Premises shall be from Cambridge Street.

XI. Endorsement of Subdivision Road. Upon the granting of the first Special Permit under Section 12.1.5 of the Zoning By-Laws, if the Planning Board has not previously done so the Planning Board shall endorse its approval and permit the recording of the Revised Definitive Subdivision Plan submitted to the Planning Board on March 14, 1986. Approval of the Subdivision Plan shall be "as submitted" with respect to the layout of the subdivision way and without conditions except the usual covenants and conditions generally required by the Planning Board as set forth in the Conditional Approval Agreement annexed hereto as Exhibit "D" shall apply. Internal lot lines shall be established by the Developer and may be altered from time to time at the discretion of the Developer in accordance with the procedures of Section 81P of Chapter 41 of the Massachusetts General Laws for so-called "Approval Not Required Plans" and the applicable provisions of Sections 81K-81GG of Chapter 41 of the Massachusetts General Laws for any subdivision of the PD Premises.

XII. 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 November 16, 1987. The Developer hereby waives any right to apply for a use, dimensional or density variance from the provisions of the Zoning By-Laws.

EXHIBIT "A"

That certain parcel of land situated in Burlington, Middlesex County, Commonwealth of Massachusetts, bounded and described as follows:

Westerly by the easterly line of Cambridge Street, 52.72 feet, 74.90 feet and 472.08 feet;

Northerly by lands of various owners and the southerly limit of Ward Street as shown on plan hereinbelow referenced, 65.59 feet, 155.09 feet, 220.67 feet, 88.09 feet, 19.33 feet, 266.01 feet, 152.53 feet, 318.23 feet, 75.74 feet, 135.45 feet, 166.60 feet, 70.18 feet, 175.67 feet and 74.90 feet;

By land now or formerly of Boston Edison Company, easterly 50.58 feet; and northerly 57.94 feet, 59.32 feet, 58.95 feet and 24.82 feet;

Easterly by lands of various owners as shown on said plan, 1645.82 feet;

By land now or formerly of Sue Ann Tingley, southerly 50.28 feet, and westerly 82.00 feet;

By land now or formerly of Boston Edison Company, southwesterly 247.97 feet; and southerly 34.26 feet;

Southeasterly by the northwesterly end of Ridgewood Avenue, being a private road, 60.20 feet;

Easterly by Ridgewood Avenue, 164.92 feet, 215.80 feet and 187.82 feet;

Northerly by Ridgewood Avenue, 28.69 feet;

Easterly by land now or formerly of Burlwood Realty Corporation, 403.52 feet;

Southeasterly by the northwesterly line of State Highway Route 128, 109.41 feet and 120.59 feet;

By land now or formerly of M. DeMatteo Construction Company, southwesterly 124.76 feet, 212.90 feet, 60.69 feet, 39.74 feet, 40.16 feet, 60.71 feet, 42.15 feet, 17.61 feet, 26.92 feet, 61.77 feet, 116.00 feet and 19.38 feet; southeasterly 18.64 feet; southwesterly 55.17 feet, 14.77 feet, 30.97 feet, 25.40 feet, 29.65 feet, 56.24 feet, 21.63 feet, and 46.95 feet; southeasterly 38.17 feet, and 14.96 feet; southwesterly 21.15 feet; and southeasterly 380.36 feet and 299.86 feet;

Southwesterly by the northeasterly line of Cambridge Street,  
78.00 feet;

Thence N. 64° 01' 40" E a distance of 100.00 feet; N. 47°  
57' 21" E a distance of 184.37 feet; and N 28° 54' 19" W a  
distance of 148.73 feet;

Northwesterly by land now or formerly of Phillips Realty  
Trust, 66.94 feet, 248.19 feet, 24.98 feet, 173.74 feet, 31.96  
feet, 34.61 feet, 23.77 feet, 30.32 feet, 22.33 feet and 11.58  
feet;

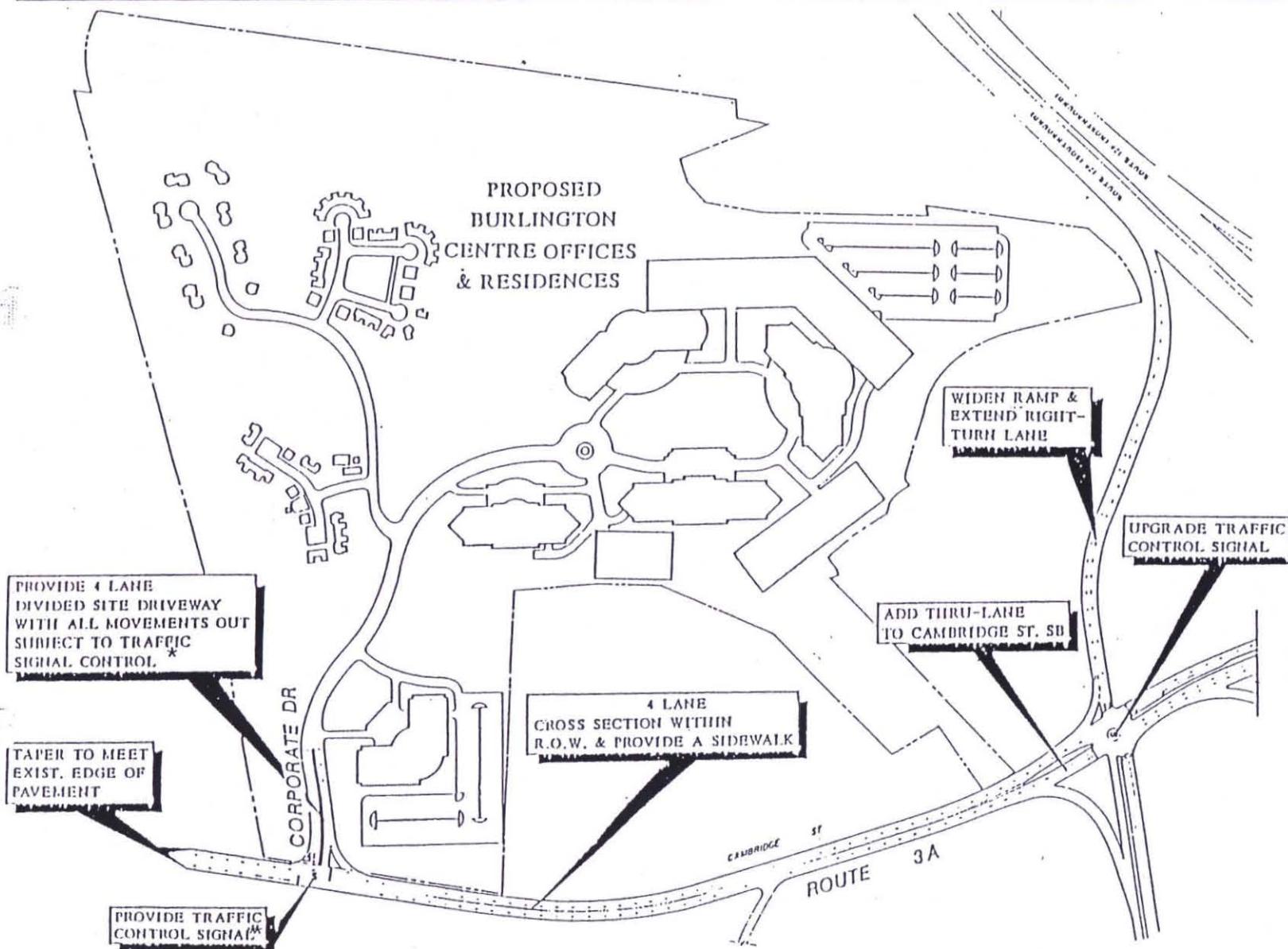
By land now or formerly of L&R Realty Trust, westerly 146.10  
feet, 196.11 feet and 20.56 feet; and southerly 742.95 feet;

Said parcel is shown <sup>as a part of a</sup> ~~as a~~ Definitive Subdivision Plan of Land  
in Burlington, Massachusetts dated December 11, 1985, revised  
February 14, 1986, prepared by Boston Survey Consultants (drawing  
no. 2767-5 and 2767-6).

PWC1.55

EXHIBIT B

Conceptual  
Transportation  
System  
Improvement  
Plan



SOURCE: S.O.M.  
ROADWAY  
IMPROVEMENTS BY VIII

Vanasse Hangen Bruffin, Inc.  
Consulting Engineers  
40 Burlington Street, Suite 1000

Not to Scale



\* designed to control right-hand turns

\*\* and pedestrian crosswalk

Exhibit "C"

Concerns of Abutters

1. Update of traffic analysis in immediate area of Premises including abutting residential developments.
2. Consideration of improvements to Rita Avenue, including the making of Rita Avenue a dead end or a one way road.
3. Safety precautions at the Premises during construction.
4. Pest control resulting from construction activity.

TRAM.70