

## **NEW ENGLAND EXECUTIVE PARK**

### **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 Burlington Mall Road, Massachusetts State Highway Route 128/95, and further bounded by the property commonly known as the “Burlington Mall” and the property commonly known as “Lahey Clinic”, as more specifically delineated on a plan entitled “Planned Development (PD) District, New England Executive, Burlington, Massachusetts”, dated June 15, 2009 (hereinafter, collectively, the “PD Premises”) as further detailed on 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 49.42+/- acres. 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 1, 2009 (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, structured parking, open space and accessory services related to each use. These uses are permitted pursuant to the limitations specified within the Use Table attached as Exhibit “A”. 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 lot within the PD Premises shall provide parking in the amounts as hereinafter provided which may be satisfied either through structured or surface parking. Any shared parking agreements shall be memorialized in the form of an easement recorded at the Middlesex South Registry of Deeds. 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 throughout the PD Premises as allowed in the Use Table annexed hereto as Exhibit “A”.

Development within the PD Premises shall not exceed 1,500,000<sup>1</sup> in total square footage, subject to the limitations within these Zoning Provisions

- No more than ten percent of the total square footage of development within the PD Premises may be dedicated to the specific uses limited under the “Retail” category of the Use Table, 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 be excluded from the permitted maximum square feet of designated Retail uses. Signage related to Retail Uses permitted within a hotel use shall be developed in compliance with Article 7 of the PD Zoning Provisions but shall not be permitted to have Route 128 signage.

The square footage of any Full Service Hotel, including permitted accessory uses (as defined in Use Table annexed hereto as Exhibit “A”) shall be calculated based on 450 square feet per keyed room.

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

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<sup>1</sup> Square foot measurements for purposes of all permitted uses shall be calculated on the basis of “net leaseable square feet” which is the space leased by tenant(s) exclusive of parking garages, common areas, hallways, building foyers, areas devoted to heating, air conditioning, elevators, and other utility areas. Unless otherwise demonstrated by the Developer, net square footage shall be calculated at 20% less than gross square footage. Net Floor Area calculations shall be verified by the Inspector of Buildings.

Premises as provided on the Concept Plan, the structures and uses in existence as of the effective date of the PDD Rezoning 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 20,000 square feet, whatever is less. Prior to the submission of a finding request to the Planning Board to allow the expansion as noted above, the Developer shall submit to the Inspector of Buildings the appropriate documentation reasonably sufficient to permit the Inspector of Buildings to verify the existing net floor area calculations. A Certificate from the Inspector of Buildings verifying the existing net square footage shall be submitted to the Planning Board as part of the petition. Any new building for a permitted use in excess of 20,000 square feet shall be built in accordance with the provisions of these PDD Zoning Provisions.<sup>2</sup>

Implementation of a new use within the PD Premises authorized in accordance with these PD Zoning Provisions shall be built or conducted in accordance with these PD Zoning Provisions. 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 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

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<sup>2</sup> All legally existing non-conforming ("grandfathered") tenants located within New England Executive Park as of June 1, 2009 shall be considered grandfathered with respect to their existing uses. Any existing grandfathered 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 New England Executive Park pursuant to these provisions for relocation provided in these PDD Zoning Provisions shall file an application with the Planning Board for a new special permit in accordance with the PD Zoning Provisions for the proposed area of relocation and the Planning Board shall, after a public hearing, issue such special permit provided that the Planning Board makes a finding that the relocation of use is no more detrimental to the neighborhood or the interests protected by the underlying Aquifer and/or Water Resource District than at its prior location. The aforementioned finding shall be the sole finding required by the Planning Board in such relocation special permit application, notwithstanding anything to the contrary in the Zoning By-Laws.

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 each lot within the PD Premises, 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 128/95 Right-of-Way, provided, however, that any proposed development adjacent to Vine Brook shall comply with all requirements of the Riverfront regulations of the Wetlands Protection Act.

Land within the PD Premises, if being used for coordinated, integrated 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. 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.

The Developer and the PD Premises shall continue to have the benefit of Section 5.1.2.2 Division of Reduction in Area 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 5.1.2.2 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.

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

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

Minimum Rear Yard .....	15 feet <sup>3</sup>
Minimum Side Yard .....	15 feet <sup>4</sup>
Maximum Building and Structure Height.....	60-155 feet
(See Appendix “B” Height Overlay Map <sup>5</sup> )	
Minimum Open Space/ Public Space .....	40% <sup>6</sup>
Minimum Landscaped Buffer (from the Layout of Burlington Mall Road).....	15 feet <sup>7</sup>

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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 firefighting 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 calculated in accordance with the definition prescribed within Zoning By-Laws. The provisions of Section 5.2.0 of the Zoning By-Laws concerning maximum height limitations adjacent to RO or RG land of the Zoning By-Laws shall not apply to the PD Premises. Maximum Building Height impacting individual structures within the PD Premises shall be limited as depicted on the Height Overlay Map attached hereto as Appendix B. Within 100 feet of Burlington Mall Road (measured from the roadway layout) building height shall not exceed 60 feet. Beginning at a distance of 101 feet from the layout of Burlington Mall Road to 250 feet the maximum Building Height shall not exceed 110 feet. The maximum Building Height for the remainder of the PD Premises shall not exceed 155 feet.
- 6** Of the required amount of Open Space, no more than twenty-five percent (25%) of the required 40% may be Public Space (as defined herein) subject to the groundwater recharge requirements provided herein. Public Space/Open Space shall be calculated based upon the aggregate area of PD Premises, notwithstanding that legal ownership in the land comprising PD Premises is divided. The square footage dedicated to so-called “vegetated green roof” technologies shall count towards the minimum Open Space/Public Space requirement.
- 7** The Landscaped Buffer shall consist of shrubs, grass, mulch and/or other suitable landscaping which shall be designed and installed so as to not impede vehicular or pedestrian sight distance. The creation of new parking spaces within the Landscaped Buffer shall be prohibited. These provisions shall not prohibit the creation, installation or maintenance of roadway curbcuts, site access driveways/roadways, sidewalks, pedestrian amenities or signage within the landscaped buffer.

Uses within Open Space/Public include, without limitation, exhibitions, concerts, festivals, outdoor seating for on-premises restaurants.

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

Subject to the applicable provisions of Article 6 Definitions, 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.

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

Parking spaces required for one lot or use 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 specific permitted uses within the PD Premises (All other permitted uses shall utilize the parking ratios permitted within the Zoning By-Laws as of the date of the adoption of these PDD provisions by the Town):

1. 4.5 spaces per 1,000 square feet of floor area of office use (calculated in accordance with footnote 1, above);
2. 6.0 spaces per 1,000 square feet of floor area of retail use (calculated in accordance with footnote 1, above);
3. 1 space per 2.5 seats of restaurant or fast-order food establishment use;
4. 1 space per each keyed hotel room; and
5. 1 space per each 3 seats of general assembly/conference space.

Notwithstanding the forgoing parking ratios, in the event that the aggregate number of parking spaces constructed within the PD Premises is in excess of the sum of: A) the maximum

allowed parking ratios permitted within the 2009 Zoning By-Laws (i.e. 3.0/1,000 s.f. of office space and 4.5/1,000 s.f. of retail), plus B) an additional 5% of the aggregate number of the foregoing clause A, and the additional parking spaces requested by the Developer cannot be accommodated through re-striping or a more efficient layout within the existing impervious surface area on the subject lot, such additional parking spaces shall, at the discretion of the Planning Board, be constructed within a structured parking garage.

The Developer may propose to the Planning Board as part of any PD Special Permit process to implement “shared parking” for uses which the Developer can demonstrate that opportunities exist where the same parking space can be utilized by two or more different land uses due to differences in principal operating hours for the uses involved. Shared parking facilities may be allowed as a finding issued concurrently with the applicable PD Special Permit. Any subsequent change in land uses within the mixed use development for which the shared parking facility is created shall require the Developer to provide evidence to the Planning Board that sufficient parking will be available.

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 7.2.6 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’ (The Developer may propose to dedicate up to 30% of parking spaces within any lot which comprises the PD Premises to be compact subject to approval 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 "Planned Development (PD) District, New England Executive, Burlington, Massachusetts", dated June 15, 2009, 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 or the square footage dedicated to a “Green Roof” as further described in Article 2 of these PD Zoning Provisions.
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. 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, 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.

6. Prototype Manufacturing. The manufacture of a full-scale or partial scale model of a new product or new version of an existing product which will be mass manufactured elsewhere.

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. 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 therefore. 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.

3. Temporary Signage.

Temporary Signage shall be permitted pursuant to Section 13.1.4.6.2 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.

4. 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 within the PD Premises 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.
- 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 mounted on the face of a building 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 twelve (12) 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. Monument Signs - Monument 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 any individual Monument Sign shall not exceed thirty square feet per side and may include the building address, property owner, property management company and individual tenants. This maximum sign area shall not include the sign foundation or other decorative or architectural feature. Further, no Monument Sign shall be permitted within ten (10) feet of a public way nor shall be permitted to impede vehicle sight distance.
- ix. Route 128 Signage - Route 128 Signage shall be permitted on the face of any structure within the Route 128 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 1/2 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 128 at a point perpendicular to the center of the building. Qualification for Route 128 Signage shall be determined by the Inspector of Buildings.

- 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 (freestanding or otherwise) indicating “Entrance”, “Exit”, “Parking”, street names, building addresses 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/or maintain qualifying Gateway Signage within the PD Premises, which may consist of two attached or freestanding signs, with said signs to be permitted as follows: 1) Project Identification Sign, which shall be used to identify the project (i.e. New England Executive Park), property owner and/or management company. Said Project Identification Sign shall not exceed 88 square feet, and; 2) Tenant Directory Sign, which may be used to identify the property management company, property owner and all tenants located within the PD Premises and the project known as New England Executive Park including those buildings/tenants served by vehicular access via the roadways commonly known as New England Executive Park Drive and Park Place even if situated outside of the PD Premises. Said Tenant Directory Sign shall not exceed 161 square feet.

These maximum dimensional requirements shall be exclusive of the sign base if freestanding.

5. Maximum Number of Signs. (a) Each individual tenant or user within the PD Premises shall not be permitted more than four signs within the PD Premises advertising said individual tenant.

#### **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 for submission with a PD Special Permit application.

- 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 utilize 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.
- On-site lighting shall not be directed towards Burlington Mall Road.

#### **Article 9 – Drainage Mitigation:**

##### **Groundwater Recharge**

To the extent reasonably practicable, unless disallowed by other local or state 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 15% greater than the amount of recharge existing for the specific development parcel as of the date of the rezoning to a PD

District. As part of any individual PD Special Permit, the Developer shall submit to the Planning Board a calculation of existing and proposed recharge data to provide on-going evidence of the PD Premises to comply with this requirement as development progresses. This information will be required for individual lots within the PD Premises at such time as said lots are developed in accordance with the PD Zoning Provisions. The Planning Board has the ability to reduce this 15% infiltration requirement on a lot by lot basis if the Developer incorporates so-called “Green Roof” technologies into any individual project permitted in accordance with these Zoning Provisions.

#### **Article 10 - 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. 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;
  - ii. There will be no nuisance or hazard to vehicles or pedestrians.
  - iii. Social, economic, or community needs are served by the proposal;
  - iv. There will be no significant adverse impacts on traffic flow and safety, including parking and loading;



- v. There will exist adequacy of utilities and other public services;
  - vi. There will be no adverse impact on neighborhood character and social structures;
  - vii. There will be no significant adverse impacts on the natural environment; and
  - viii. Potential fiscal impact, including impact on town services, tax base, and employment.
- 3. The Planning Board, in granting any PD Special Permit, may attach such conditions and safeguards as it deems necessary to support its findings.
  - 4. 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.
  - 5. 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 11 - 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 Inspector of Buildings in a manner consistent with and to permit satisfaction of the development intent described in the Concept Plan.

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New England Executive Park  
Zoning Provisions

**EXHIBIT "A"**  
**NEW ENGLAND EXECUTIVE PARK**  
**USE TABLE <sup>1</sup>**

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
<b>1.0</b>	<b>Institutional and Recreational Uses</b>		
1.1	Places primarily used for religious purposes.	YES	YES/YES
1.2	Places primarily used for non-profit educational corporations, museums, libraries, and/or recreational facilities.	YES	YES/YES
1.3	Child Care and Adult Day Care facilities.	YES	YES/YES
1.4	Fire stations and sub-fire stations, police stations (exclusive of fuel storage).	YES	YES/YES
1.5	Public Parks and related facilities.	YES	YES/YES
1.6	Public libraries, public museums, public art galleries and similar facilities.	YES	YES/YES

<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.

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
1.7	Community centers and public recreation buildings.	YES	YES/YES
1.8	Non-profit public clubs, recreational centers and facilities.	YES	YES/YES
1.9	Private museums and private art galleries.	YES	YES/YES
1.10	Clinic and/or medical office (out-patient services only).	SP	YES/YES
1.11	Buildings for public services.	SP	YES/YES
1.12	Theater and cinemas.	SP	YES/YES
1.13	Public water and sewer distribution structures.	SP	SP/SP
1.14	Health and sports clubs, fitness clubs, and related facilities.	YES	YES/YES
1.15	Commercial amusement uses and activities such as, but not limited to, bowling alleys and skating rinks.	SP	YES/YES
1.16	Diagnostic medical laboratories appurtenant to offices of physicians and dentists provided however that any generation or storage of hazardous waste shall be limited to the volumes classified as very small quantity generator.	SP	SP/SP
2.0	Office Uses		

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
2.1	Professional offices such as, but not limited to, physicians, dentists, opticians, real estate brokers, lawyers, leasing office, etc.	YES	YES/YES
2.2	Administrative executive and similar offices.	YES	YES/YES
2.3	Public Offices.	YES	YES/YES
2.4	Office of salesmen, agents and representatives of manufacturing, distributing, insurance and wholesale companies.	YES	YES/YES
2.5	Conference Centers.	YES	YES/YES
<b>3.0</b>	<b>Retail Uses <sup>2</sup></b>		YES/YES
3.1	Personal services businesses such as, but not limited to, hair salons and health spa.	YES	SP/SP
3.2	Drug stores without drive-thru service, health supplies, periodicals, none with the sale of food intended for consumption on premises.	YES	YES/YES

<sup>2</sup> The total combined square footage for Section 3.1, 3.2, 3.3 and 3.4 as principal or accessory uses shall not exceed 10% in the aggregate of the total gross square footage within the property known as New England Executive Park unless permitted by a Special Permit granted by the Planning Board.

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
3.3	Retail stores and showrooms as follows: (i) 15,000 square feet or less; (ii) In excess of 15,001 square feet but not to exceed 29,999 square feet.	YES SP	YES/YES
3.4	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).	YES	YES/YES
3.5	Post Offices and banks.	YES	YES/YES
3.6	Fast order food establishments (drive-thru service is prohibited).	SP	YES/YES
3.7	Restaurants (drive-thru service is prohibited).	SP	YES/YES
3.8	Bakeries	YES	YES/YES
3.9	Commercial boarding, care and treatment of animals.	SP	YES/YES
3.10	Kiosks not to exceed 144 square feet.	SP	YES/YES
3.11	Massage Therapy, as defined and limited in accordance Zoning Bylaw restrictions and regulations of the Commonwealth of Massachusetts	SP	YES/YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
3.12	Shoe repair, dry cleaning and laundry (provided such dry cleaning and laundry use is limited to drop off and pick-up stations).	SP	YES/YES
3.13	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	SP/YES
3.14	Push Carts	SP	YES/YES
<b>4.0</b>	<b>Commercial Uses</b>		
4.1	Light manufacturing or processing plants.	SP	SP/SP
4.2	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	SP/YES
4.3	Wholesale trade and warehousing.	SP	SP/YES
4.4	Hazardous and toxic materials/chemical use storage, transport, disposal or discharge.	SP	SP/SP

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
4.5	Generation or storage of hazardous waste limited to the volumes classified as very small quantity generator.	SP	SP/SP
4.6	Generation or storage of hazardous waste in excess of the volumes classified as a very small quantity generator.	SP	NO/SP
4.7	Full Service Hotel with amenities such as restaurants, function rooms, conference rooms, lounge facilities, health spa, etc. (including "Select Service" and "Boutique" hotels).  (i) Up to 225 rooms in the aggregate at the PD Premises.  (ii) In excess of 225 rooms.	YES  SP	YES/YES  YES/YES
4.8	Food processors, bakeries not operated at retail.	YES	YES/YES
4.9	Electronics Industries	SP	SP/SP
4.10	Research and Development.	YES	YES/YES
4.11	Prototype Manufacturing	YES	YES/YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
4.12	<p>Biotechnology – Research, development and manufacturing in the fields of biotechnology, medical, pharmaceutical, physical, biological and behavioral sciences and technology, environmental science, toxicology, genetic engineering, comparative medicine, bioengineering, cell biology, human and animal nutrition including the production of equipment, apparatus, machines and devices for research, development, manufacturing and advance and practical application in any such field or area, and including, office, administrative and support facilities related to any of the foregoing activities.</p> <p>Biotechnology uses are subject to all federal, state and local regulations. NIH Biosafety Level 4 (BL-4) laboratories are prohibited in Burlington.</p>	SP	SP/SP
<b>5.0</b>	<b>Uses in Wetlands District (as defined in Zoning By-Laws)</b>		
5.1	Creation of a pond or pool or other changes in water courses for swimming, fishing or other recreational uses, agricultural uses, scenic features.	YES	NO/YES



SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
5.2	Structures for essential services, which structures shall include roads, ways, sidewalks and drainage.	YES	YES/YES
5.3	Dredging expressly for mosquito or flood control by an authorized public agency.	SP	YES/YES
5.4	Periodic maintenance of existing water courses and maintenance for essential services.	YES	YES/YES
5.5	Temporary, not to exceed three months, storage of materials (excluding fill materials and hazardous and toxic materials) or equipment.	YES	YES/YES
5.6	Outdoor noncommercial recreation, including public parks, non paved playfields, tennis, paddle tennis and similar activities, walking and bike paths.	YES	YES/YES
5.7	Discharges from manmade structures into the municipally zoned wetlands.	SP	SP/YES
5.8	Conservation of soil, water plants, and wildlife including wildlife management shelters.	YES	YES/YES
5.9	Outdoor noncommercial recreation limited to nature study areas, walkways, boating, ice skating or fishing where otherwise legally permitted, and bike paths.	YES	YES/YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
5.10	Maintenance or repair of existing structures, roadways and utilities.	YES	YES/YES
<b>6.0</b>	<b>Accessory Uses</b>		
6.1	Cafeterias, delicatessens, lunch counters, coffee shops, dairy or ice cream establishments (permitted only as an accessory use to a permitted principal use).	YES	YES/YES
6.2	Personal services business such as barbers and hairdressers, (permitted only as an accessory use to a permitted principal use).	YES	YES/YES
6.3	Accessory convenience store (permitted only as an accessory use to a permitted principal use).	YES	YES/YES
6.4	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) (permitted only as an accessory use to a permitted principal use).	YES	YES/YES
6.5	Accessory Health Club located entirely within a commercial facility.	YES	YES/YES
6.6	Dry cleaning (drop off and pick-up only).	YES	YES/YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
6.7	Indoor unmanned Automatic Teller Machine not to exceed a gross floor area of 400 square feet.	YES	YES/YES
6.8	Places and buildings for public assembly such as facilities and conference centers for business, recreation, educational gatherings, seminars and presentations, (permitted only as an accessory use to a permitted principal use).	YES	YES/YES
6.9	Parking Garage as attached or detached structures (above and below ground and under buildings).	YES	YES/YES
6.10	Maintenance shops/garages, power plants, machine shops and similar structures to support permitted uses.	YES	YES/YES
6.11	The use of roads in the PD Premises for any purposes that roads and ways in the Town of Burlington are used.	YES	YES/YES
6.12	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>3</sup>	YES	YES/YES

3      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	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
6.13	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.	YES	YES/YES
6.14	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.	YES	YES/YES
6.15	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	YES/YES
6.16	Storage of oils and fuels/petroleum products including storage for on-site heating purposes and landscaping maintenance equipment (in excess of 50 gallons).	SP	SP/SP
6.17	Accessory uses in wetlands limited to fences, flagpoles, non-commercial signs and docks.	YES	YES/YES
6.18	Child Care and Adult Day Care facility.	YES	YES/YES
6.19	Emergency Generators fueled by natural gas or propane.	YES	YES/YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT REQUIRED)	PERMITTED IN THE AQUIFER/WATER RESOURCE DISTRICT
6.20	Fast order food establishments located entirely within a permitted principal use, drive-thru service is prohibited.	YES	YES/YES
6.21	Restaurant establishment located entirely within a permitted principal use, drive-thru service is prohibited.	YES	YES/YES

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**SPECIAL CONDITIONS  
NEW ENGLAND EXECUTIVE PARK**

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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 New England Executive Park which is bounded by Burlington Mall Road, Massachusetts State Highway Route 128, and further bounded by the properties known as the “Burlington Mall” and “Lahey Clinic”, as more specifically delineated on a plan entitled “Planned Development (PD) District, New England Executive, Burlington, Massachusetts”, dated June 15, 2009, prepared by Vanasse Hangen Brustlin, Inc. (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 Equity Office Properties 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 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 September 2009 Town Meeting. The Concept Plan entitled “Planned Development (PD) District, New England Executive, Burlington, Massachusetts”, dated June 15, 2009 (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 or market demands, 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 surface parking or parking structures within the building envelopes shown on the Development Plans, provided that there shall not occur any change in maximum development square footage for the PD Premises, minimum setbacks or maximum building height 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**

### **A. 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/Pedestrian Path:** The Developer shall incorporate into any site design a sidewalk or pedestrian path which interconnects the PD Premises. This sidewalk shall be developed concurrently with the phased build out of any individual lots within the PD Premises.

- (b) **Traffic Improvements:**

The Developer shall perform an inventory and make a financial contribution to a traffic and transportation mitigation fund which will allow for specific roadway enhancements and improvements to Burlington Mall Road, as follows:

#### **1. Burlington Mall Road Traffic Control and Geometric Inventory**

Within 90 days of the approval of the Attorney General of this Planned Development (PD) District, the Developer shall prepare and submit to the Planning Board an inventory of the existing traffic signal control and roadway geometry of Burlington Mall Road from the intersection of Cambridge Street/Route 3A to Middlesex Turnpike which provides the following data: 1) overview of existing roadway system and traffic infrastructure conditions; 2) summary of roadway design deficiencies; 3) summary of traffic infrastructure deficiencies; 4) recommendations for geometric roadway and traffic signal enhancements. The purpose of this document is to identify improvements to the corridor that address existing deficiencies and provide some additional capacity for future traffic growth.

#### **2. Financial Contributions**

##### **Burlington Mall Road Analysis Contribution ("BMR Analysis Contribution")**

Prior to the issuance of a final Occupancy Permit for the development of any allowed use(s) under the PD Zoning Provisions with a net new floor area of 50,000 square feet in the aggregate created in excess of the existing 1,012,978 gross square feet currently in existence within the PD Premises, the Developer shall deposit \$25,000 (“BMR Analysis Contribution”) into a Burlington Mall Road Traffic Mitigation Fund (“BMR Fund”), with said fund to be appropriately established by the Planning Board. This BMR Analysis Contribution along with any other funding acquired by the Planning Board and deposited into the BMR Fund as a result of projects outside of the PD Premises, shall be utilized by the Planning Board to undertake analysis of specific roadway intersection improvements and needs within the Burlington Mall Road corridor based on future traffic growth in the area. The analysis shall also identify a specific sub-set of improvements that are needed for mitigating impacts resulting from development within the PD Premises. This analysis would supplement the findings of the existing conditions inventory described in Section II.A.(b) 1 above. Any reports generated as a result of said analysis shall be provided to the Developer. If within 180 days of the contribution of said funds by the Developer in accordance with this condition, the Planning Board fails to undertake said analysis, the Developer, on its own, may undertake this analysis and the Planning Board shall apply said funds to perform this analysis. Upon completion of this report, the Developer shall deliver a copy of the final report to the Planning Board in satisfaction of this obligation.

#### **Burlington Mall Road Mitigation Fee (BMR Mitigation Fee)**

Prior to the issuance of a Building Permit for the development of any additional net new floor area in excess of the square footage identified in item II.A.(b) 2. above (existing 1,012,978 square feet, plus 50,000 net new floor area), the Developer shall contribute \$1.00 per square foot of net new floor area to the Town of Burlington to be deposited into the BMR Fund (“BMR Mitigation Fee”) to supplement any remaining amount in the fund after the completion of the analysis described in the previous paragraph.

The accumulated amount in the BMR Fund shall be used by the Town of Burlington to implement traffic improvements designed to mitigate traffic impacts from development within the PD Premises in accordance with the study derived from the BMR Analysis Contribution listed above and the existing inventory in Section II.A.(b)1. Said improvement(s) shall be completed upon the occupancy of the floor area related to the BMR Mitigation Fee,



subject to extension for delays beyond the reasonable control of the Town of Burlington; such as, but not limited to, weather conditions, time periods in obtaining necessary permits, approvals, easements and/or consents. The failure of the Town of Burlington to complete said traffic mitigation shall not impact the Developer's ability to obtain an occupancy permit for the requisite square footage

In lieu of the BMR Mitigation Fee contribution outlined above, the Developer, in accordance with any PD Special Permit Decision issued by the Planning Board, may, on its own, undertake the traffic mitigation improvement(s) to mitigate traffic impacts from development within the PD Premises in accordance with the study derived from the BMR Analysis Contribution listed above and the existing inventory in Section II.A.(b)1. (or other equivalent improvement approved by the Planning Board which provides a direct mitigation benefit to the Burlington Mall Road corridor in general and the permitted development within the PD Premises in particular), provided, however, that the Developer's monetary obligations shall not exceed the maximum required contribution set forth above. The agreement between the Developer and Planning Board shall be memorialized in either the Planning Board decision at the time of the PD Special Permit or in a letter endorsed by the Planning Board Chairman and the Developer prior to the commencement of the construction of the mitigation, if the total value of both the design and construction of the mitigation improvements agreed to by the Developer is less than the required BMR Mitigation Fee, then the Developer shall pay the balance into the BMR Fund based on the incremental amount not to exceed \$1 per square foot.

In the event the Developer and Planning Board agree during the deliberation of any PD Special Permit application that the BMR Mitigation Fee (and any other fees collected by the Planning Board for the BMR Fund) is insufficient to complete a specific roadway improvement project deemed necessary to mitigate the traffic impacts created as a result of said project within the PD Premises (pursuant to a traffic analysis provided by the Developer for the specific project), then the Developer shall contribute up to an additional 50% of the BMR Mitigation Fee to the BMR Fund (in excess of the \$1.00 per square foot charge) to be applied to the specific mitigation project ("Additional Contribution"). The Additional Contribution shall be deducted from any future BMR Mitigation Fee obligations of the Developer for any future qualifying project as calculated above. The total of any Additional Contribution plus any BMR Mitigation Fee(s) paid by the

Developer shall not exceed the maximum amount required pursuant to the BMR Fee calculation.

(There shall be a 1.5% per year cost of inflation allowance applied to payments not yet due and payable by the Developer to begin one year from the date of the Attorney General's Approval of the PDD rezoning applicable to the financial contributions outlined in Section II A. b (2)).

- (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 or in the event that the Town or other appropriate agency implements a TDM coordination program which provides similar services to tenants along the Burlington Mall Road corridor, the Developer shall require all tenants within the PD Premises to participate in said program and pay any requisite reasonable fee based upon a uniform schedule for all participants;
  - (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 Premises; 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 Building Permit for the construction of a new building 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 Five Thousand (\$5,000.00) Dollars on June 1 of each calendar year for a period of five (5) years, such fee to be used by the Town to supplement the operation of the B-Line or any successor service. If the B-Line ceases to exist then the contribution required pursuant to this section shall be redirected towards other TDM measures benefiting the PD Premises at the mutual agreement of the Developer and Planning Board Chairman.
- (d) Drainage Improvements: The Developer shall construct on the PD Premises drainage improvements that meet Massachusetts Department of Environmental Protection (the "DEP") Stormwater Management Standards, applicable local regulations, and shall comply with the provisions of Section II.A.(d)i-vi unless disallowed or otherwise prohibited by other local or state law, regulation or statute, or pursuant to a

decision of other regulating bodies or agencies. Subject to the aforementioned limitations, said Drainage Improvements shall result in the following:

- (i) Treatment of runoff from the PD Premises in order to reduce suspended solids prior to discharge into wetland areas; and,
- (ii) Such drainage improvements shall result in reduced peak flows during storm events, thereby improving conditions in the area of the PD Premises.

In addition, any Site Development and Use Plan submitted to the Planning Board for development of new commercial space within the PD Premises shall incorporate specified design standards and drainage enhancements as specified below:

- (iii) Low Impact Design:

The use of Low Impact Development (“LID”) techniques such as biofiltration swales, biofiltration islands and rain gardens and their associated design requirements shall be permitted throughout the PD Premises, notwithstanding the provisions of the Aquifer and Water Resource Overlay District limitations prescribed in the Zoning By-Laws. These LID techniques shall be installed where feasible given space and safety constraints otherwise, conventional drainage systems may be proposed.

- (iv) Recharge:

To the extent reasonably practicable, unless disallowed by other local or state 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 15% greater than the amount of recharge existing for the specific development parcel as of the date of the rezoning to a PD District. As part of any individual PD Special Permit, the Developer shall submit to the Planning Board a calculation of existing and proposed recharge data to provide evidence of compliance of the PD Premises with this requirement. This information will be required for individual lots within the PD Premises at such time as said lots are developed in accordance with the PD Zoning Provisions. All new construction shall be built in accordance with the then current state and local stormwater regulations.

- (v) Vine Brook Riverfront area:

1. As part of an individual lot/parcel redevelopment adjacent to Vine Brook, the Developer shall upgrade and/or repair the existing curbing directly adjacent to Vine Brook or implement an approved Low Impact Design technique designed to eliminate untreated sheet flow into the brook at such time as individual lots/parcels are developed, and;
2. As part of a commercial development project creating net new commercial space adjacent to the Vine Brook, the Developer shall increase the amount of green space within the riverfront area of Vine Brook.

(vi) Access Road Improvements:

The Developer shall incrementally upgrade the drainage system within the existing pavement of New England Executive Park Drive and Park Place in accordance with the following provisions:

The existing drainage system located within the roadways known as New England Executive Park Drive and Park Place shall be upgraded to meet Massachusetts Department of Environmental Protection (the "DEP") Stormwater Management Standards and applicable local regulations in three separate phases as further delineated on the attached plan (Exhibit C) entitled "Roadway Drainage Improvements Phasing, New England Executive Park, Planned Development District Rezoning, Burlington, Massachusetts", dated September 3, 2009, prepared by Vanasse Hangen Brustlin, Inc. and denoted as Phase A, Phase B and Phase C. Each of the three phases may occur in any order and will include the areas as follows.

Phase A drainage improvements shall be designed and permitted concurrently with any PD Site Development and Use Plan submitted for the development of 50,000 square feet or more of net new floor area in the aggregate for any of the existing properties known as 1, 3, or 24 New England Executive Park, whichever comes first. The area of Phase A shall encompass New England Executive Park Drive north of Park Place.

Phase B drainage improvements shall be designed and permitted concurrently with any PD Site Development and Use Plan submitted for the development of 50,000 square feet or more of net new floor area in the aggregate for any of the existing properties known as 6, 7 or 8 New England Executive Park, whichever comes first. Phase B shall consist of the section of New England Executive Park Drive south of Park Place and include the ending

cul-de-sac. The land and impervious surface areas located within Phase B discharge into an existing 15-inch drain line situated within an easement between Building 10 and Building 8. Drainage structures improvements to the existing 15-inch drain may be necessary to accommodate improvements within Phase B.

Phase C drainage improvements shall be designed and permitted concurrently with any PD Site Development and Use Plan submitted for the development of 50,000 square feet or more of net new floor area in the aggregate for any of the existing properties known as 12, 15, 16 or 17 Park Place. Phase C will include drainage from the existing Park Place and the existing and proposed connections to adjacent properties. Improvements to the drainage system in Park Place shall be sized to handle flows from the proposed redevelopment in the contributing areas.

- (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 \$2.25 per gallon or such 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 the applicable square footage developed pursuant to the PD Zoning Provisions. 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.

B. 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/Pedestrian Path	The Developer shall work with the Town to design a series of interconnected sidewalk/pedestrian 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>(b) Traffic Improvements</u>	Traffic Mitigation shall be undertaken in accordance with schedule prescribed in Section II.A.(b)
<u>(c) Transportation Demand Management</u>	Prior to the issuance of a Certificate of Occupancy for the first building developed at the PD Premises.
<u>(d) Drainage Improvements</u>	Drainage improvements will be undertaken in three phases (Phase A, B, and C) and completed in accordance with Section II.A(d) as further detailed in each applicable PD Special Permit issued by the Planning Board.
<u>(e) 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 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 building.

The above schedule assumes that the Town, to the extent required, shall provide the necessary permits, approvals and consents for each of the foregoing. The obligations of the Developer to satisfy 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. Traffic and Infrastructure Analysis**

The Developer has provided the Town and the Planning Board as part of the Concept Plan, at the sole cost of the Developer, with the following reports in accordance with the PD submission requirements:

- Traffic Evaluation Summary dated June 15, 2009 prepared by Vanasse Hangen Brustlin, Inc.
- Wastewater Generation, Water Use and Drainage memorandum dated June 15, 2009 prepared by Vanasse Hangen Brustlin, Inc.

### **VI. Effective Date of PDD Zoning**

Recognizing that the PD Premises will be developed over an extended time period, the granting and recording of any Special Permit (for a single lot/parcel or multiple lots/parcels) 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 September 2009 Town Meeting and the applicable provisions of the PDD By-Law in effect on June 16, 2009, the date of the submission of the Concept Plan unless specifically waived by the Developer of the PD Premises.

**VII. Applicable Zoning By-Laws**

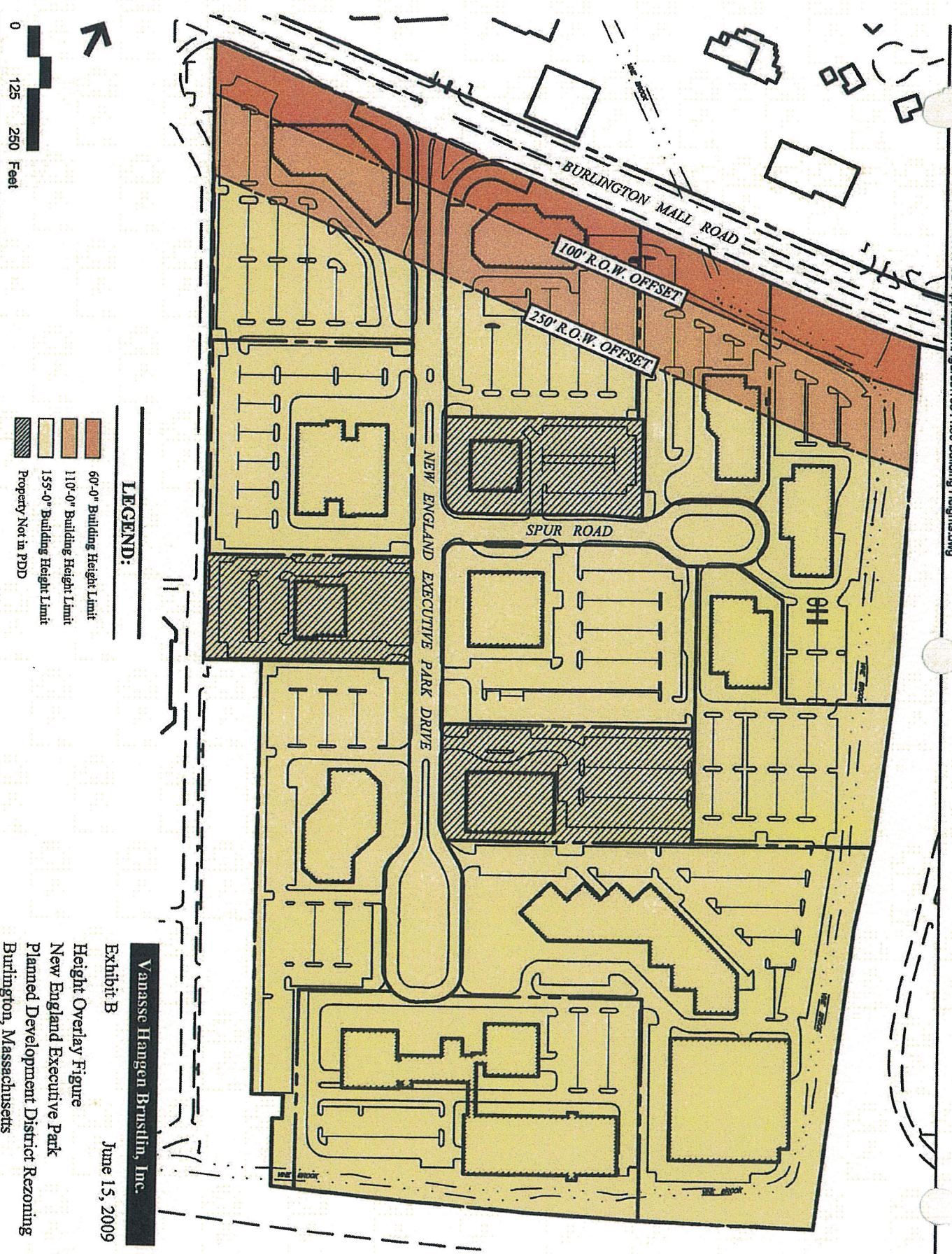
Except as provided in the Planned Development District Zoning Provisions submitted by the Developer pursuant to Section 12.1.4(c)(2) of the Zoning By-Laws, the Development of the Project shall be governed by the Zoning By-Laws in effect as of June, 2009.

MMC/blc

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Vanasse Hangen Brustlin, Inc.  
Exhibit B  
Height Overlay Figure  
New England Executive Park  
Planned Development District Rezoning  
Burlington, Massachusetts  
June 15, 2009



