

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LAND COURT
DOCKET NO. 13 MISC 480330-AH5

LOIS CRANDALL, RANDY MESSER
and DUNCAN PO, as TRUSTEES of the
WOODLAND GROVE CONDOMINIUM
TRUST, MICHELE J. MARTIN, as TRUSTEE
of the E. LARRABEE REALTY TRUST,
RANDALL S. BLOCK, KAREN L. DAVIS,
JOHN G. FRANTZIS and MARTHA KELLOGG,

Plaintiffs,

v.

BH NORMANDY RIVERSIDE, LLC,
MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY, and SCOTT F. LENNON,
ALLAN CICCONE, JR., STEPHEN M. LINSKY,
MARCIA T. JOHNSON, SUSAN ALBRIGHT,
ANTHONY SALVUCCI, TED HESS-MAHAN,
GREER TAN SWISTON, JAY HARNEY,
LEONARD J. GENTILE, JOHN RICE, BRIAN E.
YATES, DEBORAH CROSSLEY, RICHARD
BLAZAR, GREGORY R. SCHWARTZ,
VICTORIA L. DANBERG, R. LISLE BAKER,
MARC C. LAREDO, RUTHANNE FULLER,
MITCHELL L. FISCHMAN and DAVID A.
KALIS as members of the City of Newton Board
of Aldermen and not Individually,

Defendants.

NOTICE OF ACTION

RECEIVED
Newton City Clerk
2013 OCT 30 PM 12:28
David A. Olson, CMC
Newton, MA 02459

To: David A. Olson, Newton City Clerk
City Clerk's Office
1000 Commonwealth Avenue
City Hall, First Floor
Newton, MA 02459

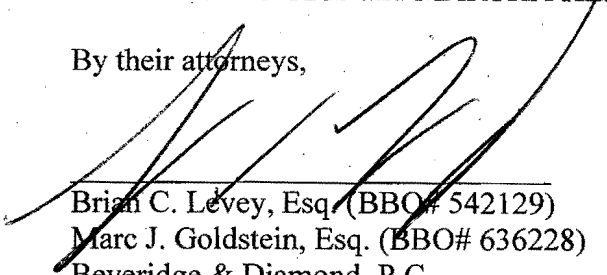
Pursuant to G.L. c. 40A, § 17, please take notice that on October 30, 2013, the plaintiffs
appealed the decision #258-12(2) of the defendant City of Newton Board of Aldermen (filed

with the Office of the Newton City Clerk on October 10, 2013), approving the application of the defendant BH Normandy Riverside LLC and the Massachusetts Bay Transportation Authority for special permits and site plan approval under the Newton Zoning Ordinance for the development of a mixed use, transit oriented development at the property known and numbered as 327, 335, and/or 355 Grove Street, Newton, Middlesex County, Massachusetts.

A copy of the Complaint is attached.

LOIS CRANDALL, RANDY MESSER
and DUNCAN PO, as TRUSTEES of the
WOODLAND GROVE CONDOMINIUM
TRUST, MICHELE J. MARTIN, as TRUSTEE
of the E. LARRABEE REALTY TRUST,
RANDALL S. BLOCK, KAREN L. DAVIS,
JOHN G. FRANTZIS and MARTHA KELLOGG,

By their attorneys,



Brian C. Levey, Esq. (BBO# 542129)
Marc J. Goldstein, Esq. (BBO# 636228)
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October 30, 2013

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LAND COURT

DOCKET NO. 13 MISC 480330-AHS

LOIS CRANDALL, RANDY MESSER)
and DUNCAN PO, as TRUSTEES of the)
WOODLAND GROVE CONDOMINIUM)
TRUST, MICHELE J. MARTIN, as TRUSTEE)
of the E. LARRABEE REALTY TRUST,)
RANDALL S. BLOCK, KAREN L. DAVIS,)
JOHN G. FRANTZIS and MARTHA KELLOGG,)

Plaintiffs,)

v.)

BH NORMANDY RIVERSIDE, LLC,)
MASSACHUSETTS BAY TRANSPORTATION)
AUTHORITY, and SCOTT F. LENNON,)
ALLAN CICCONE, JR., STEPHEN M. LINSKY,)
MARCIA T. JOHNSON, SUSAN ALBRIGHT,)
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MITCHELL L. FISCHMAN and DAVID A.)
KALIS as members of the City of Newton Board)
of Aldermen and not Individually,)

Defendants.)

COMPLAINT

RECEIVED
Newton City Clerk
2013 OCT 30 PM 12:29
David A. Olson, Clerk
Newton, MA 02459

Introduction

1. In this action brought pursuant to G.L. c. 40A, § 17, the plaintiffs seek to annul the decision of the City of Newton Board of Aldermen granting special permits and site plan approval for the redevelopment of Massachusetts Bay Transportation Authority's Riverside Station at Grove Street in Newton "transform[ing] an existing ... parking lot into a vibrant

mixed-use destination” with over one-half million square feet in office, residential, retail, restaurant, community and transportation uses known as The Station at Riverside to be constructed adjacent to a publicly-funded and built multi-level parking garage with more than 1,000 parking spaces where, among other things, (1) the procedures employed in some instances literally precluded the public from commenting on the project and generally rendered it virtually impossible for the public to effectively provide comments to or engage in dialogue with the special permit-granting authority and (2) the decision itself leaves owners and residents in the abutting residential neighbors in Auburndale and Newton Lower Falls neighborhoods exposed to degraded traffic conditions and vulnerable to substantially increased use of neighborhood streets as an overflow parking lot for The Station at Riverside increasing congestion and heightening public safety concerns.

Parties

2. The plaintiff, Lois Crandall, is a trustee of the Woodland Grove Condominium Trust pursuant to a Declaration of Trust recorded in the Middlesex South Registry of Deeds at Book 15569, Page 212 (the “Trust”). She resides at 416 Grove Street, Newton Lower Falls, Middlesex County, MA.

3. The plaintiff, Randy Messer, is a trustee of the Trust and resides at 416 Grove Street, Newton Lower Falls, Middlesex County, MA.

4. The plaintiff, Duncan Po, is a trustee of the Trust and resides at 416 Grove Street, Newton Lower Falls, Middlesex County, MA. (Collectively, Lois Crandall, Randy Messer and Duncan Po shall hereinafter be referred to as “the Trustees”.) The Trust owns the property known and numbered as 416 Grove Street, Newton, Middlesex County, MA, across Grove Street from the proposed project.

5. The plaintiff, Michele J. Martin, is the Trustee of the E. Larrabee Realty Trust pursuant to the Trustee's Certificate recorded in the Middlesex South Registry of Deeds at Book 57308, Page 475 (the "Larrabee Trust"). The Larrabee Trust owns the property at 31 Asheville Road, Newton, Middlesex County, MA.

6. The plaintiffs, Randall S. Block and Karen L. Davis, husband and wife, own and reside at 45 Lafayette Road, Newton, Middlesex County, MA.

7. The plaintiffs, John G. Frantzis and Martha Kellogg, husband and wife, own and reside at 18 Myrtle Avenue, Newton, Middlesex County, MA.

8. The following defendants are the duly elected members of the City of Newton Board of Aldermen and are named in their representative capacity, and not individually:

Scott F. Lennon
55 Jackson Road
Newton, MA 02458

Allan Ciccone, Jr.
22 West Street
Newton, MA 02458

Stephen M. Linsky
9 Simpson Terrace
Newton, MA 02460

Marcia T. Johnson
39 Bemis Street
Newton, MA 02460

Susan Albright
1075 Commonwealth Avenue
Newton, MA 02459-1447

Anthony Salvucci
23 Eddy Street
Newton, MA 02465-2132

Ted Hess-Mahan
871 Watertown Street

West Newton, MA 02465

Greer Tan Swiston
80 Orchard Avenue
Newton, MA 02465

Jay Harney
42 Central Street
Auburndale, MA 02466

Leonard J. Gentile
99 Aspen Avenue
Auburndale, MA 02466

John Rice
9 Selden Street
Newton, MA 02468

Brian E. Yates
1094 Chestnut Street
Newton, MA 02464

Deborah Crossley
26 Circuit Avenue
Newton, MA 02461

Richard Blazar
196 Morton Street
Newton Centre, MA 02459

Gregory R. Schwartz
210 Woodcliff Road
Newton, MA 02461

Victoria L. Danberg
30 Chase Street
Newton Centre, MA 02459

R. Lisle Baker
137 Suffolk Road
Newton, MA 024667

Marc C. Laredo
31 Philmore Road
Newton, MA 02458

Ruthanne Fuller
32 Suffolk Road
Newton, MA 02467

Mitchell L. Fischman
41 Brush Hill Road
Newton, MA 02461

David A. Kalis
66 Andrew Street
Newton, MA 02461

(Collectively, these defendants shall hereinafter be referred to as the "Board.")

9. Massachusetts Bay Transportation Authority is a political subdivision of the Commonwealth of Massachusetts with a principal place of business at 10 Park Plaza, Boston, Suffolk County, MA (the "MBTA"). The MBTA is the owner of a 9.38-acre parcel of land known and numbered as 327, 335, and/or 355 Grove Street, Newton, MA (the "MBTA Parcel"). Presently, the MBTA Parcel is the site of a portion of the Riverside MBTA Station including surface parking.

10. BH Normandy Riverside LLC is a Delaware limited liability corporation with a usual place of business at 99 Summer Street, Boston, Suffolk County, MA ("Normandy"). The plaintiffs are informed and believe that Normandy has entered into a lease with the MBTA for the MBTA Parcel.

Project Overview

11. Normandy's "The Station at Riverside will replace the existing surface parking lot with an office building of approximately 225,000 square feet (exclusive of the parking garage) and 571 parking spaces ("Building A"); a residential building containing not more than 290 apartments and 438 parking spaces, and approximately 5,000 square feet of retail space

("Building B"); a three-story building containing approximately 15,000 square feet of retail space and 11,000 square feet of community space ("Building C")(hereinafter, the "Project"). The Project is proposed to be developed in conjunction with the MBTA's construction of an Intermodal Commuter Facility ("ICF"), the centerpiece of which is a multi-level parking garage containing 1,005 parking spaces to be funded and constructed by the MBTA on an adjacent parcel of land.

12. The Project is proposed to be located on the 9.38-acre MBTA Parcel and an adjacent 0.35-acre parcel, the latter to be used primarily as a roadway (the "Access Parcel"). (Hereinafter, the MBTA Parcel and Access Parcel shall be referred to as the "Locus.") The Indigo Hotel, owned by BH Normandy LLC, abuts the Locus.

13. The Locus is situated in the Mixed-Use 3/Transit-Oriented District (the "MU/TOD Zone" under the City of Newton Zoning Ordinance (the "NZO"). In connection with the Project, the Board rezoned the MBTA Parcel from Public Use District to MU/TOD.

14. Off-site traffic improvements on Grove Street are "intended to mitigate the impact of the Project and reduce negative impacts on surrounding neighborhoods...." Other traffic mitigation measures include a traffic signal, widening of roads, addition of roundabouts on both the east and west Interstate Route 95 off-ramps, the former located near the Trust's property and the latter located in Newton Lower Falls in proximity to the other plaintiffs.

The Applicable Law

15. Section 30-2 of the NZO sets forth the purposes of the NZO as follows:

The provisions of this chapter are ordained by the city for the purpose of promoting the health, safety, convenience and welfare of its inhabitants by:
(a) Encouraging the most appropriate use of land...; (c) Conserving the value of land and buildings...; [and] (e) Lessening the congestion of traffic....

16. Article IV, Zoning Administration, of the NZO also states as follows:

The purpose of this article is to protect the health, safety, convenience and general welfare of the inhabitants of the city by providing for a review of plans for certain proposed uses and structures in order to better control potential impacts on traffic, parking, municipal and public services, utilities, and environmental quality in the city, to administer the provisions of this ordinance and to ensure that the proposed uses and structures will be located, designed and constructed in a manner which promotes the appropriate use of land and upholds the purposes and objectives set forth in section 2A of Chapter 808 of the Acts of 1975.

17. Under section 30-13(f) of the NZO, the purpose of the MU/TOD Zone is to “allow the development of a mixed-use center ... [at the] Riverside MBTA station” in a manner that “protect neighborhoods from impacts of development....”

18. Under Section 30-23(c)(2)(a) of the NZO, the Board, “[w]hen conducting a site plan approval...shall consider the application in light of the “[c]onvenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking....”

19. Section 30-24 of the NZO governs special permits. Subsection (c), Procedures, provides, among other things, for pre- and post-construction traffic-related impact studies and protective financial mechanisms. The NZO provides that,

(c)(8) *Adequacy of Public Facilities.* Transportation... and other public facilities and infrastructure shall serve the Mixed-Use Development appropriately and safely and without deterioration in serviced to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the petitioner as part of the special permit application process....

- a) Adequacy of road and traffic infrastructure, including the traffic analysis required in section 30-24(j)(6)....

As part of any special permit granted per section 30-13(g), post-construction studies for impacts on road and traffic capacity and water, sewer and storm water service shall also be required....

The special permit shall also require a bond or other security satisfactory to the director of planning and development and commissioner of public works to secure performance. The bond or other security may be forfeited, at the election of the

election of the director of planning and development and commissioner of public works, and proceeds used by the city for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances.

(c)(9) *Post-Construction Traffic Study*. A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the site and their distribution among points of access to the Mixed-Use Development. The special permit shall require a bond or other security satisfactory to the commissioner of public works and director of planning and development to secure performance....

20. Criteria against which the Board must judge the application include the following under Section 30-24(d):

The board of aldermen may grant a special permit when, in its judgment, the public convenience and welfare will be served, and subject to such conditions, safeguards and limitations as it may impose. The board of aldermen shall not approve any application for a special permit unless it finds, in its judgment, that the use of the site will be in harmony with the conditions, safeguards and limitations herein set forth, and that the application meets all the following criteria....:

- (2) The use as developed and operated will not adversely affect the neighborhood;
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians;
- (4) Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved....

21. As part of the zoning amendment establishing the MU/TOD Zone, the following additional special permit criteria were added for the Board's consideration under section 30-24(i):

- (2) *Housing, Public Transportation, Parking, and Utility Infrastructure Improvements*. The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas including:
 - a) Improvements to parking, traffic, and roadways...
 - c) Public safety improvements;
- (4) *Improved Access Nearby*. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed Mixed-

Use Development and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed-Use Development as well as to improve traffic and access in nearby neighborhoods...

- (11) *Adequacy of parking.* Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.
- (12) *Pedestrian and Neighborhood Considerations.* If the proposed Mixed-Use Development project proposes any of the measures listed below, and if such measures, singly or in combination, create a negative impact on pedestrians or surrounding neighborhoods, the petitioner has proposed feasible mitigation measures to eliminate such negative impact:
 - a) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes...
 - c) Traffic signal additions, alterations, or roundabouts; and
 - d) Relocation or alterations to public transport access points.

22. The same zoning amendment for the MU/TOD zone established

additional filing requirements under section 30-24(j)(6)& (7) including

Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Mixed-Use Development may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues.

A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand, such as, but not limited to, Red Sox home games.

23. Finally, the zoning amendment added a new section 30-19(d)(22) which provides that "the parking requirement for a mixed-use development approved under Section 30-13(g) shall be set through a shared-parking analysis, which demonstrates that the number of stalls

provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors....”

Procedural Background

24. The plaintiffs are informed and believe that the application for the Project was filed by Normandy on or about August 12, 2012 (the “Application”).

25. The Board held a public hearing on the Application at Newton City Hall on October 16, November 27, and December 18, 2012, on which date the public hearing was closed. During the public hearing, members of the public, with some exceptions, were each given three (3) minutes to speak and the opportunity to submit written materials. Statements by counsel to property owners were discouraged.

26. Notwithstanding that the Board closed the public hearing, rather than vote or take final action, the Board referred to the Application to the Board’s Land Use Committee (the “LUC”), consisting of eight (8) members of the Board. The LUC then held twelve (12) so-called “working sessions” on the application on March 5, April 2, May 7, May 21, June 4, June 18, July 16, July 23, July 30, August 6, September 26, and September 30, 2013. During the working sessions, the vast majority of the materials including plans and technical studies germane to the Project and the several issues related to it were submitted by Normandy, revised in response to comments of the LUC or City staff and resubmitted by Normandy on multiple occasions. Moreover, representatives of Normandy were routinely allowed to address the LUC at the working sessions. Members of the public, however, were prohibited from speaking. While the public could submit written comments, the flow of information and public access to it did not always allow the public to sufficient time to prepare materials that could be submitted on a timely basis for the LUC’s consideration. The net effect of this process was to create a “public

hearing” whose participants were limited to Normandy, the LUC and City staff. Members of the public were reduced to mere spectators unable to provide meaningful and timely comments or engage in meaningful and timely dialogue with either the LUC. Moreover, during the LUC “working session” process key issues were discussed and determined and much of the final form of Project was determined.

27. For example, the fiscal impact report for the Project required under the NZO was not available to the public at the time of the October 2012 public hearing, despite the date of September 2012. The report was not available at that public hearing because Normandy refused to pay for the report prior to that public hearing resulting in the consultant’s refusal to release it to the City. The fiscal impact report was not discussed at a LUC working session until May 2013. Although written comments were submitted to the LUC, the author of those comments was not allowed an opportunity to discuss those comments with either the City, the Board, LUC or Normandy.

28. At the conclusion of the working session meetings, the LUC voted to (a) recommend approval of a revised application to the Board; and (b) forward a draft decision on the revised application, the so-called Board Order, to the Board for consideration.

29. The Board held public meetings on the Board Order on both October 2 and 7, 2013. During these public meetings, Normandy was permitted to and did address the Board. Members of the public were not allowed to speak. Further revisions were made to the Board Order and the Project.

30. On October 7, 2013, the Board voted to approve the Board Order.

31. On October 10, 2013, the Board’s written decision was filed in the office of the Newton City Clerk. (An attested copy of the decision is attached as Exhibit 1.) Exhibit A to the

Decision lists eight (8) sets plans which in large part define the Project and on which the Board based its Decision. Three sets of the plans post-date the close of the public hearing, four sets of the plans are undated (and unsigned) and only one set pre-dates the close of the public hearing.

Negative Parking and Traffic Impacts

32. Project materials indicate that 660 of the existing 960-space commuter surface parking spaces are typically utilized leaving a buffer of about 300 empty spaces. Presently, when there is Red Sox weekday game (during the day or at night), Riverside's surface parking fills to capacity and parking spills over onto neighborhood streets. During day games, it is conservatively estimated that at least 75 cars park in the neighborhood.

33. Certain of the 1,005 parking spaces in the MBTA's proposed ICF have already been allocated to non-commuter uses as follows: 15 drop-off spaces on the first level, 80 parking spaces for the Project's retail building, and 45 spaces for the Project's community center leaving 865 spaces for commuters. Based on Project estimates that five (5) percent of commuters bound to the Project's office building would use public transit, the number of spaces available to other commuters in the ICF is estimated to be further reduced by 90 spaces (from 865 to 775). Assuming the same usage of parking spaces by commuters (660 spaces), this reduces the buffer of empty spaces from 300 to 115 spaces (775 minus 660). This substantially smaller buffer will result in increased parking on neighborhood streets during Red Sox games particularly, when the ICF must also accommodate parking overflow from the Project's office building (the Decision sanctions a 125 parking space reduction for the office building from 696 to 571 spaces) and the abutting Indigo Hotel (a related decision of the Board sanctions a 75 parking space waiver for this use). Even with no change in the demand for Red Sox parking, it is conservatively estimated that the Project will increase the number of cars parking in the neighborhood from 75 to 260, the

equivalent of 5,200 feet or approximately one (1) mile of parking on narrow side streets in thickly-settled residential areas not designed or intended to serve as a commercial parking lot.

34. Commercial parking in residential areas is contrary to the purposes of the NZO, results in congestion in the neighborhood, creates a hazardous condition by precluding or hindering access for emergency vehicles, introduces more trash and noise into the residential neighborhood, renders it difficult if not impossible for residents to exit their own driveways, reduces the “[c]onvenience and safety of vehicular and pedestrian movement,” “adversely affects the neighborhood,” creates or exacerbates “nuisance or serious hazard to vehicles or pedestrians,” and utterly fails “to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed-Use Development as well as to improve traffic and access in nearby neighborhoods” all in violation of the NZO.

35. Further, Normandy’s parking studies, information and assumptions are not based on conservative assumptions which influence parking demand and, as a result, provide no margin for error so that in the event of an increase in parking demand at the Locus more vehicles can be accommodated on the Locus; rather, the adjacent neighborhood serves as the safety valve for overflow parking for the Project should regular commuter transit demand in combination with Red Sox weekday game parking increase based on any number of factors including changes in gasoline prices, alterations to transit schedules and/or rates, increases in the number of bus routes offered, or changes in commuter parking charges.

36. Similarly, the plaintiffs are informed and believe that the Project results in negative impacts on pedestrian and vehicular traffic such as, for example, decreased levels of service at or in intersections and ramp junctions and decreased safety for (a) pedestrians crossing Grove Street to the Locus at the proposed roundabout, (b) residents nearby the Project’s

proposed roundabout at the intersection of the Route 95 off-ramp and the Asheville Road exiting their driveways and (c) owners and guests of the Trust taking left turns to enter or exit the Trust property. The plaintiffs are informed and believe that the Decision does not fully and properly account for negative impacts on abutting neighborhoods of either (a) the modification of Collector-Distributor ("C-D") road interchange, consisting of I-95 northbound Exits 23-25-24, including the addition of a new weave area on the C-D road or (b) the current lane drop design on Interstate Route 95 ("I-95") implemented by Massachusetts Department of Transportation or possible reversal of this lane drop upon completion of the current "Add- a-lane" highway widening project to be completed on I-95 north. Further, the mitigation fund referenced in the Decision does not provide adequate monies to mitigate the Project's traffic impacts on the Auburndale and Newton Lower Falls neighborhoods.

The Zoning Appeal; G.L. c. 40A, § 17

37. The plaintiffs repeat and incorporate their allegations in paragraphs 1 through 36 herein.

38. The plaintiffs are persons aggrieved by the Decision.

39. The Decision exceeds the authority of the Board and is arbitrary, capricious and legally untenable because, among other things,

(a) in violation of G.L. c. 40A and the NZO, the public hearing process was fatally flawed by (i) inhibiting and/or precluding public input including prohibiting the public from asking direct questions or raising issues of concern without going through a highly choreographed and filtered process which effectively prevented public input, particularly with respect to new data and study results, some of which were not peer reviewed by the City, that were submitted for the first time in closed session; and (ii)

- the Board's basing the Decision on documents, studies, plans and testimony prepared for, submitted to and considered by the Board after the close of the public hearing;
- (b) in violation of the NZO, the Decision fails to "protect neighborhoods from the impacts of development" as required under the NZO as there is no protection for the adjacent neighborhood from the impacts of overflow parking from the Project;
 - (c) in violation of the NZO, impact studies as to both parking and traffic either omit certain facts or are based on erroneous assumptions and incorrect evaluation including, but not limited to, basing the shared parking on the occupancy of uses that are largely concurrent or correlated (rather than non-correlated) resulting in overflow street parking into the neighborhood;
 - (d) in violation of the NZO, the Decision fails to approve a Project that "will not adversely impact the neighborhood" and "offers... long-term public benefits to the city and nearby areas including...[i]mprovements to parking, traffic and roadways" but rather negatively impacts areas nearby the Project due to increased traffic volumes and inadequate mitigation and lack of an adequate traffic mitigation fund to finance various improvements identified by the City;
 - (e) in violation of the NZO, the Decision fails to "to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed-Use Development as well as to *improve* traffic and access in nearby neighborhoods" (emphasis added);
 - (f) in violation of the NZO, the Decision fails to provide an analysis in tabular form with respect to any of the three traffic issues of concern to the neighborhood, i.e. (i)

- collector road functioning, (ii) parking inadequacies and overflow, and (iii) problem intersections at local roads;
- (g) the reduction in number of parking spaces required under the NZO for various uses at the Project is arbitrary and capricious; and
- (h) in violation of G.L. c. 40A, the Decision leaves for later review and approval by City staff substantive matters essential to the determination of whether to grant the requested zoning relief including approval of the Parking Management Plan and Transportation Demand Management Plan.

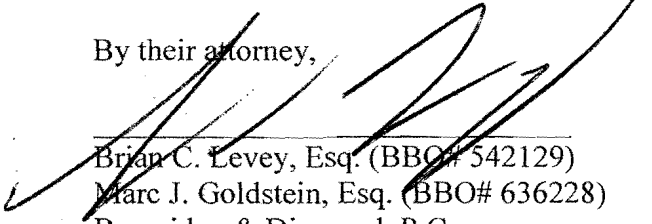
REQUESTS FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that the Court:

1. Annul the Decision of the Board;
2. Remand the Decision to the Board with instructions to re-initiate the public hearing consistent with Chapter 40A procedures and due process;
3. Award the plaintiffs their costs of suit including reasonable attorneys' fees; and
4. Grant such other and further relief as the Court deems appropriate.

LOIS CRANDALL, RANDY MESSER and
DUNCAN PO, as TRUSTEES of the
WOODLAND GROVE CONDOMINIUM
TRUST, MICHELE J. MARTIN, as TRUSTEE
of the E. LARRABEE REALTY TRUST,
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By their attorney,



Brian C. Levey, Esq. (BBO# 542129)

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mgoldstein@bdlaw.com

Dated: October 30, 2013

CITY OF NEWTON
IN BOARD OF ALDERMEN

October 7, 2013

RECEIVED
Newton City Clerk
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David A. Olson, City Clerk
Newton, MA 02459


ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT and SITE PLAN for a mixed-use, transit-oriented development at the Riverside MBTA station, known as The Station at Riverside, and related Site improvements as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Ted Hess-Mahan.

As required by §30-24(j)(1), BH Normandy Riverside LLC (the "Petitioner") presented conceptual plans for the proposed Project which included a description of the proposed Project, Project statistics, and a preliminary site plan. A public meeting was held by the Land Use Committee of the Board of Aldermen to review such plans and information on June 26th, 2012, at which members of the public were invited to comment.

In accordance with the Zoning Ordinance and the applicable rules of the Board, the Petitioner submitted its application for the proposed Project to the Chief Zoning Code Official on August 2, 2012. The Chief Zoning Code Official, having determined that the Petitioner's submission was complete, issued a Zoning Review Memorandum dated August 28th, 2012, itemizing the relief required in connection with the proposed Project. The special permit/site plan application was duly filed with the City Clerk on August 30th, 2012. The application included the additional filing requirements for a special permit for a Mixed-Use Development in excess of 20,000 sq. ft. set out in §30-24(j)(2-12).

After due notice of public hearing published in the Boston Globe on October 2nd, 2012, and October 9th, 2012, and mailed to all parties in interest all pursuant to and in compliance with the Zoning Ordinance and M.G.L. c. 40A, the Board held a public hearing at Newton City Hall on October 16th, November 27th, and December 18th, 2012. At the close of the public hearing, the application was duly referred to the Board's Land Use Committee, which held working session meetings on the application on March 5th, April 2nd, May 7th, May 21st, June 4th, June 18th, July 16th, July 23rd, July 30th, August 6th, September 26th, and September 30th, 2013. At the conclusion of the working session meetings, the Land Use Committee voted to (i) recommend approval of the application to the Board; and (ii) forward a draft written Board Order to the Board for consideration.

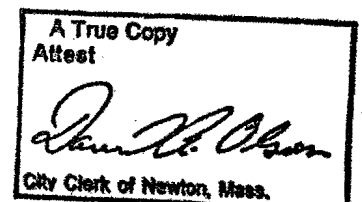
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Comments from the public and various City boards and departments were received by the Board during the public hearing. In addition, the Board received extensive testimony and written reports from the City's professional consultants on the adequacy of public facilities in all the areas required by §30-24(c)(9)a-c, i.e., adequacy of road and traffic infrastructure, adequacy of water, sewer, and storm water infrastructure, and net fiscal impact. During the review process, the Petitioner's professional consultants also provided various supplemental materials in response to requests by the Board, its consultants and various City departments that reviewed the Project. The foregoing written reports and supplemental materials prepared by City staff, as well as comments received from the public, are included in the record of the Board's proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this Order.

Finding that all applicable provisions of the Zoning Ordinance and the Board of Aldermen Rules and Orders have been complied with, the Board GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the Land Use Committee of the Board through its Chairman Alderman Ted Hess-Mahan:

With regard to the dimensional requirements of §30-15(v), §30-15 Table 3, and the locational, density, and mixed-use requirements of §30-13(f)(1), (g)(1) and (2), and §30-24(d)(1):

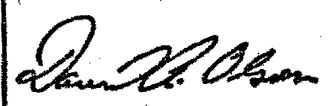
1. The Station at Riverside (the "Project") will redevelop an existing surface parking lot, with an office building of approximately 225,000 sq. ft. (exclusive of the parking garage) and 571 parking spaces ("Building A"); a residential building containing not more than 290 apartments, including 15% of the total number of apartments being affordable units, 438 parking spaces, and approximately 5,000 sq. ft. of retail space ("Building B"); a three-story building containing approximately 15,000 sq. ft. of retail space and 11,000 sq. ft. of community space ("Building C"); and over 174,000 square feet of open space. The retail/community use building (Building C) and adjoining outdoor plaza area will be constructed next to an Intermodal Commuter Facility on adjacent MBTA land. The total square footage of the Project, excluding accessory parking, does not exceed 580,000 sq. ft. (exclusive of community space) and the Project as designed is in compliance with the maximum building height, maximum FAR, minimum lot area, and beneficial open space.
2. The Project site ("Development Parcel" or "Site") consists of 9.38-acre "Development Parcel" owned by the MBTA and leased to the Petitioner located in the Mixed-Use 3/Transit Oriented District, pursuant to Board Order #258-12, which was adopted by the Board prior to this Order, together with a .35 acre parcel ("Access Parcel") adjoining the MBTA parcel over which the Petitioner will have an easement. The Access Parcel is located in the Mixed Use 3/Transit Oriented District, pursuant to Board Order #272-12(2), and will be developed as part of the Project pursuant to Phase 2 identified in Board Order #272-12 and 272-12(3) relating to the Hotel Indigo. The total acreage of the Project site is 9.73 acres. The dimensional requirements for the Project have been based upon the 9.38 acre Development Parcel owned by the MBTA and leased to the Petitioner, given that the use of the .35 acre Access Parcel will be primarily as a roadway.



3. The location of the Development Parcel is a regional transportation center near existing transit and the intersection of I-95 and I-90, which is an appropriate location for the proposed mixed-use/transit-oriented development that may include offices above the ground floor; retail sales, personal services, eating and drinking establishments of less than 5,000 square feet in gross floor area; one eating and drinking establishment of up to 7,500 square feet in gross floor area; health clubs above the ground floor; multifamily dwellings; live/work spaces; and a variety of public and community uses. These uses are allowed by right or by special permit in a Mixed-Use 3/Transit-Oriented District pursuant to Table A of §30-13(f)(2) and include at least one use from Categories A, B, and C of §30-13(g)(2), as well as a community use space. The uses proposed from each Category do not exceed the maximum square footage permitted for each Category.
4. Development of the Site is affected by a number of unique physical conditions and legal circumstances, including a complex interplay of intergovernmental jurisdictions controlling access to the Site. The portion of the Development Parcel leased from the MBTA by the Petitioner is presently used by the MBTA for commuter parking. Until the MBTA Intermodal Commuter Facility is constructed and the surface commuter parking eliminated from the Development Parcel, the Petitioner will be unable to commence construction of any of the office, residential or retail/community use buildings proposed for the Project. In addition, major capital expenditures and construction work is required in order to relocate and reconstruct sewer, water, and drainage pipes crossing the Site before construction of the various Project buildings, including the Intermodal Commuter Facility, can begin. The Petitioner must also secure a Section 61 Finding and comments at the 25% Design review stage as more specifically set forth in Condition 3(a) from the state and federal highway agencies which would allow access to and from the Site from the connector road ("Riverside Station Road") via a roundabout that will permit a left hand turn from the Project back to Grove Street before commencing construction of any Project building. For these reasons, there is "good cause" to clearly define in the conditions of this Board Order what constitutes substantial use or construction of the Project for purposes of complying with the requirement of M.G.L. c. 40A, §9 and §§30-23(c)(4) and 30-24(c)(5), and to vest the Petitioner's rights under this Board Order and Board Order 258-12 establishing the zoning requirements for the Site to avoid a premature lapse of those rights.

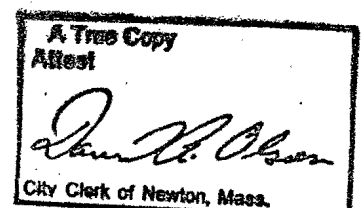
With regard to the criteria for special permits under §30-13(g) for a Mixed-Use Development that proposes an aggregate gross floor area of 20,000 square feet or more, §30-24(d)(1-5), §30-24(f), §30-24(g), §30-24(i)(1-13), and site plan approval under §30-23(c)(2)(a-h), and a special permit for a shared parking arrangement, §30-19(d)(22).

5. The Project is not inconsistent with the Comprehensive Plan, as it advances the City's planning goals with respect to smart growth and transit-oriented development. The provision of a diversity of housing types, 15% of which are affordable, on underutilized land in close proximity to a variety of transportation modes, supports a variety of lifestyles. Design of the Project strives to create a vibrancy and sustainability made possible by a more compact development, which includes a number of complementary uses, activities, and amenities in close proximity to one another, which serve the

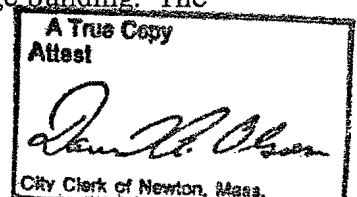
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residents, businesses and travelers to the Site as described in the Mixed Use Element of the Comprehensive Plan.

6. The Project as developed and operated in accordance with the conditions of this Special Permit/Site Plan approval offers long-term public benefits to the City and nearby areas including:
 - a. improved access and enhancements to public transportation by providing a roundabout on the westerly side of the Site, which enables bus routing onto the Interstate while minimizing traffic on Grove Street; and by connecting interior roadways with a proposed sheltered drop-off/pick-up area at an Intermodal Commuter Facility with taxi stands, bicycle accommodations, and parking for vehicles that facilitates easy connections among the various modes of travel;
 - b. improvements to Grove Street that are intended to mitigate the impact of the Project and reduce negative impacts on surrounding neighborhoods by better accommodating the volume of traffic generated by the Project. Other modifications will add functional, visual and public safety benefits, including the installation of a traffic signal; addition of dedicated turn lanes on Grove Street to facilitate the flow of through traffic; addition of roundabouts at Interstate off-ramps to calm traffic and allow slow, but steady flow of traffic; addition of a roundabout at the westerly entrance that will reduce traffic volumes on the 1100-foot segment of Grove Street between the Grove Street entrance to the Site and I-95 Exit 22 to levels below that which would occur on Grove Street under the "No Build" condition in 2022 by providing an alternative route to the Interstates as described in a Traffic Impact and Access study prepared by Vanasse Hangen Brustlin, dated February 2012 and affirmed by a peer review report prepared by Fay Spofford and Thorndike, dated August 13, 2012; undergrounding of overhead wires; improvements to pedestrian and bicycle facilities, including bike lanes on both sides of Grove Street and new sidewalks on the north side of Grove Street, as well as clear pedestrian walkways that connect uses within the Site;
 - c. more housing options for the City with up to a maximum of 290 apartments, including 15% affordable and 85% market rate apartments;
 - d. removal of existing impervious surfaces and the addition of storm water infrastructure improvements to capture storm water and recharge groundwater; and
 - e. a monetary contribution to fund sewer infrastructure improvements by the City that will reduce stormwater flows or the quantity of groundwater entering the system by eight gallons for every one gallon of new sanitary sewage generated by the Project.

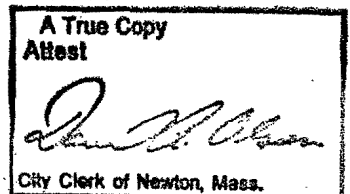


7. The Project will have a positive net fiscal impact on the City after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
8. Significant roadway improvements will be made to Grove Street, which together with improved access to and from the Site; well-marked routes for pedestrians, cyclists, and motorists both on- and off-site, with wayfinding signs, road markings and an on-site Traffic and Parking Manager, are intended as mitigation measures to prevent nuisance or serious hazard to vehicles or pedestrians.
9. Access to the Site is designed to accommodate and is appropriate for the types and numbers of vehicles involved because the addition of roundabouts, creation of a second access to/egress from the Site, and signage are intended to direct traffic away from residential areas, slow motor vehicles exiting and entering the ramps at I-95, and facilitate access to destinations within the Site. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Project, as well as to improve traffic and access in nearby neighborhoods by reducing traffic volumes on Grove Street between the Grove Street entrance and Exit 22 on I-95 to below that which would occur in the "No Build" condition in 2022.
10. Appropriate setbacks, buffering, and screening with ample landscaping are provided from nearby residential properties; open space totals 43% of the Site, and includes 17.5% beneficial open space where 15% is required and will include amenities, which (by way of example) may consist of a community garden, off-leash area for dogs, and an active outdoor plaza, which are appropriate for the number of residents, employees, and customers of the Project. The beneficial open space will be available to the general public. Potential bicycle and pedestrian connections from the Project to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, will remain available for future development, and make possible more robust connections that can take full advantage of the unique opportunities of the Site and its nearby natural features for use and enjoyment by the community at large.
11. The Project provides high quality architectural design and site planning that enhances the visual and civic quality of the Site and overall experience for residents of and visitors to both the Project and its surroundings. In particular, the façade of the residential building uses a number of different materials, incorporates doorways fronting Grove Street, sets back a portion of the building to break up the massing along Grove Street, and buries a portion of the parking garage into the hillside, all in an effort to relate the scale of this building to the surrounding neighborhood and give the appearance of townhouses along a portion of the Grove Street façade, consistent with the intent of the Mixed Use Element of the Comprehensive Plan to orient buildings towards streets and create pleasurable walks to nearby public spaces. Similarly, the façade of the office building is broken up into four different façade types to mitigate the visual impact of this large building. The



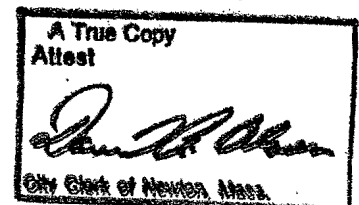
landscape design of the public plaza adjacent to the retail/community use building creates a sense of openness while reinforcing a separation from the driveway around the MBTA Intermodal Commuter Facility to protect the users of this public space and offers points of interest to people of all ages and abilities with gardens, a splash pad, outdoor seating, and easy access to adjacent retail shops and community center.

12. The comprehensive signage proposal for the Project is in keeping with the scale and needs for wayfinding in and around the Site, and is complementary to the architectural quality of the Project, the character of the streetscape, and interior of the Site.
13. The Project provides building footprints and articulations scaled to encourage outdoor pedestrian circulation with the retail uses and associated windows and entrances being at the street level, creating activity and interest at the entrance to the Site; including well-placed crosswalks to enable residents and visitors to the Site to move freely between the retail, residential, public plaza, community use space and MBTA station; and pathways to connect the office building with the hotel at 399 Grove Street and to the residences.
14. The Project creates public spaces as pedestrian-oriented destinations, including a public plaza, community center, community garden, and overlook that accommodate a variety of public uses and which are intended to promote a vibrant street life and connect the Project to surrounding neighborhoods and natural resources, as well as to the commercial and residential components of the Project.
15. The Site planning, building design, construction, maintenance and/or long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy with the redevelopment of an already developed Site for the following reasons:
 - a. Impervious surfaces and resulting run-off are reduced with the elimination of the existing parking lot;
 - b. open space in excess of that required in the Mixed Use 3/Transit-Oriented District is provided;
 - c. there will be energy modeling and commissioning of building energy systems and the building will meet the minimum energy performance requirements equivalent of LEED Silver or better for New Construction so as to optimize the energy performance of the office and residential buildings;
 - d. there is convenient access to public transportation on site and Transportation Demand Management practices will help to reduce carbon dioxide emissions as more specifically described in condition 20(j) below;
 - e. stormwater management systems will maximize groundwater recharge and water quality through implementation of best management practices to remove



contaminants from surface water and provide infiltration on-site and are designed to capture the volume of water generated by the 100-year storm;

- f. water conservation measures will be employed to minimize impact on sanitary sewer infrastructure, and the submetering of utilities will encourage conservation;
 - g. sewer infrastructure improvements that will increase the capacity of the systems and reduce impacts on the surroundings by removing inflow and infiltration of stormwater at an 8:1 ratio from the sanitary system; and
 - h. low-impact development techniques will be employed such as using rain gardens and swales to manage storm water and reusing existing site materials to balance cut and fill.
16. Parking studies prepared by Vanasse Hangen Brustlin and reviewed on behalf of the City by Fay Spofford Thorndike confirm that parking for the Project is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and the encouragement of alternative transportation modes without providing an over-supply of parking on the Site, and the shared use of parking in the Intermodal Commuter Facility, office building, and Hotel Indigo located at 399 Grove Street along with Parking Management Plan will encourage the maximum and efficient use of the parking supply.
17. Consideration has been given to accessibility, adaptability, visibility, and universal design in development of the site plan by providing at-grade handicap-accessible entries on each frontage, a number of handicap accessible and adaptable apartments, direct pedestrian connections to the MBTA station that will be functional for those with mobility issues, and other outdoor pathways with suitable slopes and adequate widths to accommodate wheelchair access, as well as tactile warnings at intersections, and handicap parking closest to building entries. The Project will meet Massachusetts Architectural Access Board requirements and the residential building will be designed to meet ADA standards.
18. The Petitioner will provide a Construction Management Plan, which will include appropriate procedures and protocols to be implemented during construction of the Project to provide construction parking areas on-site and to minimize construction-related impacts, including, but not limited to blasting, noise, dust, construction traffic, and tracking of mud.
19. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Project, as well as to improve traffic and access in nearby neighborhoods.



20. The Petitioner has voluntarily agreed to contribute financially to a Neighborhood Improvement Fund that will provide mitigation of the Project's impact in the surrounding neighborhoods and foster the goals of the Project.

With regard to the special permit for one eating and drinking establishment of up to 7,500 square feet in gross floor area, §30-13(f) Table A, Category B and §30-24:

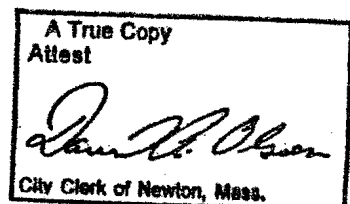
21. The Project will have approximately 19,000 square feet of Category B uses. Allowing a single eating and drinking establishment to exceed the by-right size limit by up to 2,500 square feet will increase the pool of potential restaurant businesses that might locate in the Project without jeopardizing the goal of having a diversity of Category B uses to serve the needs of the businesses, residents and visitors to the Site.

With regard to the setback waivers under §30-15(v):

22. The proposed exceptions to the setback dimensional requirement in §30-15(v)(1) for the office building's side setback from the internal access roadway and front setback for the retail/community building at Grove Street, which results from the widening of Grove Street, are adequate to protect abutting uses and will not have an adverse effect on the Site or surrounding neighborhood.
23. The office building has a 7.5 ft. setback from the lot line on its westerly side which abuts I-95, a 38 ft. setback on its northerly side which abuts the MBTA yard, and a 3.6 ft. setback from the lot line of the abutting Indigo Hotel, which setbacks are appropriate for a non-residential building and permit greater separation of this building from the residential building and Grove Street. The retail/community building has a zero setback from the Intermodal Commuter Facility which is appropriate for this building and permits greater separation of this building from Grove Street.
24. All other setbacks in the Project comply with the requirements of §30-15(v)(1) and Table 3.

With regard to parking waivers related to various dimensional requirements for the design of parking facilities, lighting, and the number of off-street loading facilities under §30-19(m):

25. The proposed waivers to dimensional requirements for the design of parking facilities are appropriate for residential and office buildings with regular users who will become familiar with the internal workings of the facilities and should be able to navigate safely within them. It is in the public interest to minimize the amount of space within the buildings and on the Site utilized for parking while still providing a sufficient number of parking spaces and appropriate circulation space within the parking facilities for the businesses, residents and visitors to the Site. Similarly, the proposed waiver from the number/design of loading docks is in the public interest in that it minimizes the space needed for such functions, while providing adequate means in appropriate locations for serving the needs of the facilities. For each building, the waivers granted are reflected on the approved plans and consist of the following:



Office Building (Building A): exceptions to parking stall width and depth; exceptions to maneuvering space for end stalls; minimum width for entrance and exit driveways; number of loading facilities.

Residential Building (Building B): exceptions to maneuvering space for end stalls; landscape screening; surface and curbing requirements; number/design of loading facilities; number/design of loading docks.

Retail/Community Use Building (Building C): allow shared parking based on Finding #16 above; number/design of loading facilities; number/design of loading docks.

26. It is in the public interest to reduce the lighting level below one foot-candle near the residential building given that the level of lighting proposed provides sufficient illumination for safety while allowing the Site to be more residential in character.

27. In light of the findings set forth above and the following conditions imposed by this Board Order, the Board of Aldermen finds that the public convenience and welfare of the City will be served, and the criteria of §§30-13(g), 30-13(f) Table A, Category B, 30-23, 30-24(d)(1-5), (f), (g), and (i), §30-19(m), §30-23(c)(2)(a-h), and §30-19(22) for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #258-12(2)

CO-PETITIONERS: BH Normandy Riverside, LLC, its successor(s), assign(s), and/or designee(s) and the Massachusetts Bay Transportation Authority. When used in this Board Order, the term "Petitioner" shall refer to BH Normandy Riverside, LLC, its successor(s), assign(s), and/or designee(s), and shall include the Organization of Owners required by §30-13(g)(3).

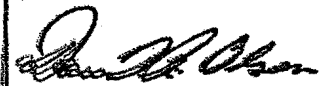
LOCATION: 327 Grove Street, Newton, MA 02466

OWNER: Massachusetts Bay Transportation Authority

ADDRESS OF OWNER: 327 Grove Street, Newton, MA 02466

TO BE USED FOR: Mixed-use/transit-oriented development with residences, retail, offices, and community use space adjacent to the Riverside MBTA station.

CONSTRUCTION: Steel and wood-framed structures, with brick and cementitious siding.

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EXPLANATORY NOTES Special permits, site plan approval, and parking waivers for the Project, all as more specifically set forth in the Findings.

ZONING: Mixed Use 3/Transit-Oriented District

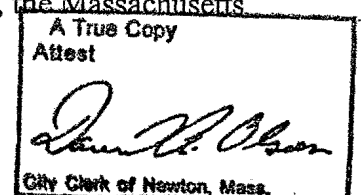
Approved subject to the following conditions:

1. All buildings, parking and other Site features associated with this Special Permit/Site Plan Approval shall be located and constructed/implemented consistent with the plans identified in *Exhibit A* which are hereby incorporated by reference.
2. The Special Permit/Site Plan Approval shall be deemed to have been:
 - a. vested for the purposes of utilizing the benefits of the change of zone authorized by Board Order 258-12 and for the entire Project for all purposes upon: a) the commencement of the removal of the MBTA surface drain line crossing the Site, or b) commencement of the relocation of the water line crossing the Site, even if these improvements are constructed in advance of the commencement of construction or occupancy of the Intermodal Commuter Facility; and
 - b. tolled for purposes of the running of the one year period for commencement of construction imposed by §§ 30-23(c)(4) and 30-24(c)(5) and M.G.L. c. 40A, §9 until the earlier of: (a) the date that construction of the office building or residential building or retail/community use building has been commenced, or (b) the date that the MBTA Intermodal Community Facility has received final state approval for its use, subject to the provisions of condition 3 below.

All time periods established by this Board Order shall also be tolled during the period of time beginning on the date that an appeal of this Special Permit/Site Plan Approval has been filed, and ending on the date that such appeal has been dismissed and the dismissal becomes final and nonappealable.

In no event shall any portion of the Project for which a Certificate of Occupancy has been issued in accordance with the provisions of the Special Permit/Site Plan Approval be deemed to be in violation of this Special Permit/Site Plan Approval or be deemed to have lapsed due to the fact that any portion of the Project has not been commenced or completed.

3. Each of the proposed buildings/site improvements may be constructed and occupied prior to construction of the remaining buildings/site improvements provided that adequate parking, landscaping, and public amenities associated with such proposed building, as set forth in the Special Permit Plan Set and application, and roadway improvements to support the new structures, are in place, and further provided that the following improvements have been completed:
 - a. Prior to the issuance of any Building Permits for any of the following: the office building, residential building, or retail/community use building, the Massachusetts

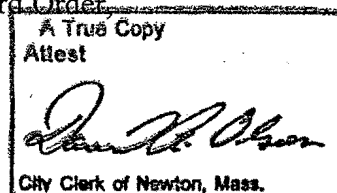


Department of Transportation must issue a Section 61 Finding (Mitigation Commitment Document required as part of the Massachusetts Environmental Protection Act (MEPA) process), comments to the MassDOT Highway Access Permit 25% Design Submission, and a favorable response from the Federal Highway Administration on the Project Framework Document related to the proposed roundabouts and access to and from Riverside Station Road via a roundabout that will permit a left hand turn from the Project back to Grove Street. The mitigation obligations in the Section 61 Finding, comments on the 25% Design review, and comments on the Project Framework document must support the underlying design improvements (roundabouts and left hand turn from the Project back to Grove Street) and permit the plan review process to proceed to the next level;

- b. Prior to the issuance of final state approval for use of the Intermodal Commuter Facility, the traffic signal on Grove Street, the roadway that connects the Intermodal Commuter Facility to new signalized intersection on Grove Street, as well as Grove Street improvements within the City's jurisdiction must be substantially completed (i.e., all such improvements must be operational from a traffic handling prospective as determined by the Commissioner of Public Works, but final punch list items, including but not limited to landscaping, may be scheduled for completion after the issuance of final state approval provided the Petitioner posts a bond or other security as determined by the Commissioner to be sufficient to complete such outstanding work);
- c. Prior to the issuance of any Occupancy Permit for any of the following: the office building, residential building, or retail/community space building, construction of the roundabouts and connecting roadways must be substantially complete (i.e., all such improvements must be operational from a traffic handling prospective as determined by the Commissioner of Public Works, but final punch list items, including but not limited to landscaping, may be scheduled for completion after the issuance of the Certificate of Occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner to be sufficient to complete such outstanding work).

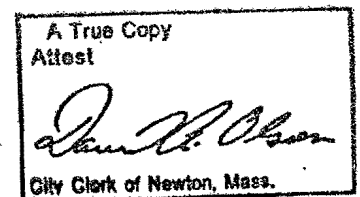
Construction of any portion of the Project will not obligate the Petitioner to construct any other portion of the Project, provided that the Petitioner shall be obligated to complete all requirements that are a condition of a Certificate of Occupancy of the constructed portion of the Project in accordance with the provisions of this Board Order.

If within five (5) years from the date of this Board Order, either a) the Petitioner has not received a building permit and commenced construction of any of the following: office building, residential building, or retail/community use buildings, or b) the MBTA Intermodal Commuter Facility has not received final state approval for its use, then further construction under this Special Permit/Site Plan Approval is not authorized unless a majority of the Board of Aldermen vote to extend the time for fulfilling these conditions. If the Petitioner has not commenced construction of any portion of the Project within ten years of the date of this Board Order,



construction of such portion, even if consistent with the original Special Permit Plan Set, shall require an amendment to the Special Permit/Site Plan Approval.

4. The Petitioner shall design and construct Grove Street improvements as shown on the approved plans and as further approved by the Public Facilities Committee of the Board of Aldermen and Traffic Council, and subject to the provisions hereof and receipt of all necessary state, federal and local permits and/or approvals, including Massachusetts Department of Transportation and Federal Highway Administration review, revision, and approval. Any material modification(s) of the preferred designs by either the Public Facilities Committee or Traffic Council will be considered consistent with the preferred design(s) if, in the opinion of the Commissioner of Public Works or his designee, the modified design(s) achieves the same performance objectives as the preferred design(s). In making a consistency determination, the Commissioner of Public Works shall consult with the Land Use Committee prior to making such determination. It is anticipated that state funding will be made available for construction of the Grove Street improvements. The City will cooperate with the Petitioner for purposes of applying for public funding for such improvements; provided, however, that in no event shall the City be liable for the cost or construction of any such improvements.
5. The Petitioner shall submit engineered plans for off-site improvements to the Commissioner of Public Works or his designee for review prior to submittal to Massachusetts Department of Transportation and the Federal Highway Administration that show preferred designs including:
 - a. five-foot bike lanes wherever possible, including cycle tracks without limitation on the bridge over I-95;
 - b. transitions of the bike lanes at the roundabouts and trestles near the MBTA station on Grove Street;
 - c. deflection at the off ramps to calm traffic on the approaches to the roundabouts;
 - d. the most suitable permanent pedestrian safety features at the crosswalk nearest the Hotel Indigo, whether signs, reflectors, lights, or other state-of-the art devices for protecting pedestrians at the roundabouts;
 - e. integration of traffic calming modifications at the corner of Asheville and Grove Streets in design of roundabout and roadway nearest that intersection to deter drivers from speeding around the corner, and which provides some visual screening without causing visibility hazards for motor vehicles existing Asheville Street onto Grove Street, if possible;
 - f. protection of the stone wall at 416 Grove Street;
 - g. continuous sidewalk from 416 Grove Street to the nearest crosswalk; and



- h. roundabouts and roadway improvements within the state and federal jurisdictions as shown on Plans for Special Permit and Site, dated July 23, 2013 and referenced in Exhibit A attached hereto, and more specifically, to allow motor vehicles exiting the Project through the Riverside Station Road roundabout to turn left towards Grove Street.

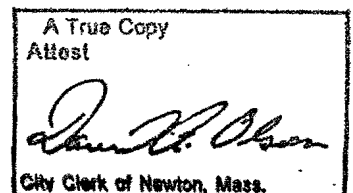
Any material modification(s) of the preferred designs by either the Massachusetts Department of Transportation or the Federal Highway Administration will be considered consistent with the preferred design(s) if, in the opinion of the Commissioner of Public Works or his designee, the modified design(s) achieves the same performance objectives as the preferred design(s), provided, however, that no modification of the Riverside Station Road roundabout that prevents exiting motor vehicles from turning left towards Grove Street will be considered consistent with the preferred design. Any modification of the preferred design of the Riverside Station Road roundabout which prevents exiting motor vehicles from turning left towards Grove Street shall require that the Petitioner seek an amendment to this Special Permit prior to receiving a Building Permit for any portion of the Project. In making a consistency determination, the Commissioner of Public Works or his designee shall consult with the Land Use Committee prior to making such determination.

6. The Petitioner has voluntarily agreed to contribute \$6,100,000 to the City to establish a Mitigation Fund ("Fund"). The purpose of the Fund is to provide mitigations related to the Project such as sewer and stormwater mitigations, and traffic improvements and/or mitigations that foster the desired attributes of this mixed-use/transit-oriented development, particularly those that enhance connections between modes of transportation and enhance the access to the natural features of the surroundings.

As further discussed below, the Fund may be used for the following public purposes: improvements to the sewer and stormwater systems infrastructure to reduce inflow and infiltration; traffic studies and/or traffic mitigation in the areas of Lower Falls and Auburndale impacted by the Project; and for such other public purposes as set out in this condition.

The Petitioner shall pay the \$6,100,000 voluntary contribution to the City as follows: one quarter upon the issuance of a Building Permit for the residential building; one quarter upon the issuance of a Building Permit for the office building; one quarter upon the issuance of a Certificate of Occupancy for the residential building; and one quarter upon the issuance of a Certificate of Occupancy for the office building.

Inflow and Infiltration Allocation: \$4,100,000 of the Fund shall be dedicated to sewer and stormwater improvements directed at eliminating inflow and infiltration ("I&I", with the allocation among the buildings being 64.7% for the residential building, 24.1% to the office building, and 11.2% to the retail/community building. The monies placed in the I&I Allocation of the Fund shall be deemed to satisfy the Petitioner's obligation for I & I mitigation, including for purposes of sewer connection permits for all buildings in the Project, provided that the Petitioner undertakes the water conservation measures set out in this Condition.



The Petitioner has agreed to mitigate for infiltration and inflow at a rate of 8 gallons for each gallon of sanitary sewage generated by the buildings, at a cost of \$8.40 per gallon of mitigation. The Petitioner intends to implement water conservation measures which will result in a minimum overall reduction of 15% in water use and subsequent wastewater generation from the current flow schedule at 314 CMR 7.15. To secure such water conservation measures, the Petitioner has agreed to install in all buildings low flow fixtures (water closets, faucets, urinals, showerheads) and high-efficiency appliances (washing machines, dishwashers), which meet at a minimum the baseline water consumption standards for IP Units as more specifically set out in the excerpt from the Leadership in Energy and Environmental Design (LEED®) Green Building Rating System version 4 concerning Indoor Water Use Reduction on file with the Commissioner of Inspectional Services.

Traffic and Neighborhood Improvements Allocation: \$2,000,000 of the Fund shall be allocated to traffic improvements or other neighborhood improvements as follow, which are offered by way of illustration and not by way of limitation: traffic studies and/or traffic mitigation in the areas of Lower Falls and Auburndale impacted by the Project; improvements to the Williams School; fire and safety equipment; a study of the Charles River Basin area in close proximity to the Site; improvements to the rail trail running over I-95 from Newton Lower Falls to the MBTA Riverside Facility; playground and/or park improvements; and similar purposes. A minimum of 60% of this allocation will be dedicated to traffic improvements, which may be expended for such traffic improvements either prior to or subsequent to the post-occupancy traffic studies required by this Special Permit/Site Plan Approval. If based on the post-occupancy traffic studies the Petitioner is obligated to undertake additional traffic mitigation measures to fulfill the requirements of this Special Permit/Site Plan Approval, the Petitioner shall receive a credit towards such traffic mitigation measures up to the greater of the following: a) all funds actually spend on traffic mitigations, or b) 60% of this allocation. Nothing in this Condition shall relieve the Petitioner from paying the cost of all required post-occupancy traffic mitigations that may exceed monies available for this purpose from the Fund.


The Mitigation Fund shall be expended only with the approval of the Board of Aldermen. Requests for expenditures from the Mitigation Fund may be made by a Neighborhood Improvement Council ("NIC") to be established by the Board of Aldermen in accordance with this condition, or at the request of City officials. The NIC shall serve in an advisory role regarding any expenditure from the Traffic and Neighborhood Improvements Allocation. All requests for expenditures made by the NIC shall be referred to the appropriate City Department for review. All expenditures from the Mitigation Fund shall require, in addition to the approval of the Board of Aldermen, the approval of the City Department, or State agency, if any, where the improvement is proposed.

The Board of Aldermen shall establish a five-member NIC, which shall be composed as follows: one alderman from Ward 4 and two representatives each from the Auburndale and Lower Falls neighborhoods. Any request for expenditures made by the NIC shall require a majority vote of a quorum of three members of the NIC., provided, however, that no vote

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shall be required when the NIC is providing advice to the Board of Aldermen on a request for any expenditure from the Fund. The Board of Aldermen may establish terms for the community members as well as additional procedural rules for the NIC, which shall be subject to the same laws and regulations as any other City board or commission. The NIC shall be staffed by the Planning and Development Department.

7. If for any reason the Project, or any part thereof, is not subject to the assessment of local taxes in accordance with the provisions of M.G.L. c. 59, the Petitioner agrees to and shall immediately negotiate and execute a PILOT with the City of Newton Board of Assessors which will require it to make a payment in lieu of taxes for the Project thereon as though the same were subject to the assessment of local taxes.
8. When school is in session, the Petitioner shall provide a police detail for the school route crosswalk at the Grove Street roundabout nearest 399 Grove Street during the morning and afternoon when children walk to school commencing upon the occupancy of the first building. Upon the granting of a Certificate of Occupancy for and actual occupancy of each additional building, the Petitioner shall employ a transportation professional to obtain pedestrian counts at various times during the day and week during the subsequent three months, which shall be submitted to the Commissioner of Public Works or designee and Police Chief who shall determine the additional need or lack thereof for police details and shall require adjustments based on this information. Should conditions change, the Petitioner may present additional data or Police Chief or Commissioner of Public Works who may request additional data to make further determinations. The Director of Planning and Development shall approve the qualifications of the transportation professional employed by the Petitioner and shall also approve the exact time of the study and the methodology of the study to ensure that the data collected is an accurate representation of the pedestrian counts.
9. Prior to operation of the new traffic signal at the Grove Street entrance and to subsequent adjustments or modifications to the timing of the signal, the Commissioner of Public Works or designee will consult with the owners of the property located at 269-287 Grove Street (known as the "Riverside Business Center") and/or their traffic consultant(s) regarding the initial timing and any subsequent adjustments or modifications to the timing of the new traffic signal to seek to establish traffic flow that maximizes benefits to that property and the Site.
10. Prior to exercise of this Special Permit as defined in Condition 2 above and in accordance with the provisions of sec. 30-13(g)(3), as amended from time to time, an organization of all owners of land within the Development Parcel, except for owners of land subject to easements benefiting the Project, shall be formed. The Organization of Owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the City or its representatives regarding compliance with the Zoning Ordinance. The Organization shall serve as the liaison between the City and any owner, lessee, or licensee within the Development Parcel. Such Organization shall be the primary contact for the City in connection with any dispute regarding violations of the Zoning Ordinance and, in addition to any liability of individual owners (with regard to

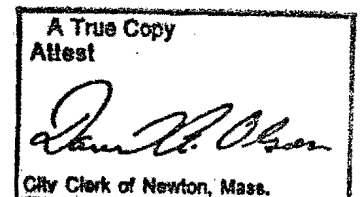
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matters specifically related to the individual owners' parcels and not those related to the overall Project or Site), shall have legal responsibility for compliance of the Project with the terms of this special permit/site plan approval and/or other applicable provisions of the Zoning Ordinance.

11. The Petitioner shall provide legal assistance and pay the initial filing fees to create a nonprofit entity which will oversee operations at the Community Center. In no event shall the legal fees and filing fees paid by the Petitioner pursuant to this condition exceed \$15,000. The Board of Aldermen will establish a steering committee which will include an alderman from Ward 4, the Cultural Affairs Director, a representative of the Parks and Recreation Department, a member of the Board of Directors of the Newton Highlands Community Development Corporation, a representative from the Lower Falls community, a representative from the Auburndale community, and such other member(s) as the Board deems appropriate. The steering committee will provide advice to the Petitioner in connection with the creation of the nonprofit entity. The nonprofit entity shall be created prior to the issuance of a Building Permit for the retail/community use building.

The retail/community use building will include a basketball court/community room, limited service kitchen, storage area, office, and bathrooms as more specifically described in a Memorandum prepared by ADD, Inc., dated April 10, 2013, on file with the Commissioner of Inspectional Services and the Director of Planning and Development. Upon granting of occupancy of the Community Use Facility, the nonprofit entity will be responsible for maintenance of the interior, payment for utilities, and oversight of operations. The building will remain in the ownership of the Petitioner, who shall be responsible for maintaining the exterior of the building in good condition. The nonprofit will lease the Facility for \$1 a year. If the nonprofit entity fails to enter into, to renew, or to remain in compliance with, its lease, the retail/community use building shall be released from the requirements of this condition, provided, however, prior to the retail/community use building being released, the following must occur: a) the nonprofit entity shall receive notice of any failure to enter into, to renew, or to remain in compliance with its lease; b) the nonprofit entity shall be given a six-month opportunity to cure such failure; and c) further provided that the non-profit entity may assign its rights under this condition to operate the Facility to another nonprofit entity for the same purposes and on the same conditions.

The retail/community use building shall be built and its certificate of occupancy issued no later than 24 months from the issuance of any certificate of occupancy for either the residential building or the office building. The Petitioner shall commence construction of the retail/community use building within six months of the date of issuance of a final certificate of occupancy for the earliest to be constructed of the retail /community use building within eighteen months of the issuance of a building permit for the same. The Petitioner shall deposit \$3,000,000 with the City of Newton as follows: \$1,500,000 at the time a building permit is issued for the first to be built of either the residential building or the office building, and \$1,500,000 at the time a certificate of occupancy is issued for such building.



Upon issuance of a building permit and commencement of construction of the retail/community use building, the City shall release the \$3,000,000 to the Petitioner in four equal payments of \$750,000 each at 25%, 50%, 75% and 100% completion points. The City shall not be required to pay interest on the \$3,000,000 while it holds the same.

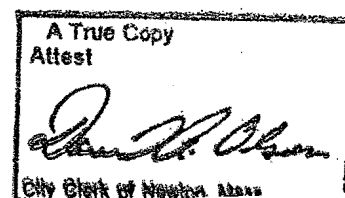
If the Petitioner fails to commence and complete construction of the retail/community use building within 24 months as outlined in this condition and the plans referenced in Exhibit A, the \$3,000,000 deposit shall be forfeited to the City and be subject to appropriation by the City.

The Petitioner has estimated the cost of the community center to be \$1.8 Million. The Petitioner has agreed to escrow \$3 million in order to furnish additional security to the City. However, in doing so, the City acknowledges that the Petitioner is not required to construct more than is referenced in the plan and in this Board Order.

12. Until a Certificate of Occupancy is issued for a particular building, the Petitioner will be responsible for keeping clear of snow the internal roadways and sidewalks on Grove Street abutting the Development Parcel to ensure safe and reliable access to and from that building at all times. The Petitioner must submit a snow storage and removal plan that identifies:
- a. where snow will be stored on the Site; and
 - b. a plan of action for removal of snow from the Site when available snow storage is at capacity.

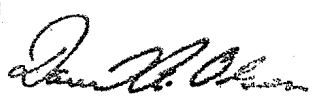
The Organization of Owners and/or the MBTA shall be responsible for snow removal following the issuance of Certificates of Occupancy for all the buildings.

13. The Petitioner shall be responsible for complying with the requirements in § 30-24(f) of the Newton Zoning Code, as amended from time to time, including § 30-24(f)(8) Inclusionary Housing Plans and Covenants which require the Petitioner to submit an inclusionary housing plan prior to issuance of any building permit for the residential building. The Inclusionary Housing Plan and Covenant shall be subject to review and approval by the Director of Planning and Development following consultation with the Newton Housing Partnership and the Fair Housing Committee, as well as review by the Newton Housing Authority. In addition, upon completion of the housing component of the Project, fifteen percent (15%) of the total number of housing units as required by the Zoning Ordinance shall be subject to such Inclusionary Housing Plan and Covenant.
14. If, after a Certificate of Occupancy is issued for a particular building, the demand for bicycle spaces exceeds the supply, the then-owner of such building shall provide additional bicycle racks. The then-owner of such building shall provide a location for bicycles associated with a bike-sharing program (e.g., Hubway), should one be extended to the MBTA station, and a location designated on the final Site plan.



15. The Owner of each Project building, for as long as it is the Owner of that component, will be responsible at its sole expense for trash disposal for the commercial, residential and retail uses, although the Owner may allocate such costs among the tenants of those spaces.
16. All utility service lines along the frontages of the subject property shall be placed underground. Consideration of undergrounding, as well as other work on Grove Street should be coordinated to the extent possible with other planned street improvements listed in the City's Capital Improvement Program.
17. Until a Certificate of Occupancy is issued for all buildings within the Project, the Petitioner shall make every reasonable effort to obtain the required approvals from the Department of Conservation Recreation and/or the Massachusetts Bay Transit Authority, the governing bodies or owners of properties to which connections can be made, and, if necessary, the Conservation Commission, to install the overlook by the Charles River, and to improve the abandoned rail bed over I-95 so it can be used by residents to travel from the Lower Falls neighborhood to the Project. Following the issuance of Certificates of Occupancy for all buildings within the Project, the Organization of Owners shall renew requests for such approvals at least annually and shall annually submit evidence of its efforts to secure such approvals to the Director of Planning and Development and Commissioner of Inspectional Services for so long as the rights granted pursuant to this Board Order are exercised. The Organization of Owners shall be responsible for construction of the overlook and the improvement of the abandoned rail bed at its sole cost if such approvals are received following the issuance of Certificates of Occupancy for so long as the rights granted pursuant to this Board Order are exercised.
18. No changes to the Project shall be permitted, except as otherwise set forth in this Special Permit/Site Plan Approval, unless they are consistent with the Special Permit Plan Set. Consistency determinations shall be subject to review and approval by the Commissioner of Inspectional Services (other than consistency determinations made by the Director of Public Works pursuant to Conditions 4 and 5 above), but shall not require approval of the Board. When making a request for a consistency determination, the Petitioner shall submit updated construction sequencing plans and a memorandum to the Commissioner of Inspectional Services demonstrating that such change(s): (i) do not require further Massachusetts Environmental Policy Act (MEPA) review under 301 CMR 11.10(8); (ii) constitute a reallocation or reconfiguration of square footage among uses in the Project provided that the same are consistent with the provisions of §30-13(g)(2) and are still in compliance with the approved shared parking plan; (iii) do not require a new type of zoning relief (other than the categories of relief granted and/or modified pursuant to this Special Permit/Site Plan Approval); and (iv) maintain the same percentage of beneficial open space which is freely open to the public as shown in the Special Permit Plan Set. If the Commissioner of Inspectional Services grants any consistency ruling pursuant to this Condition, he shall provide a copy to the Land Use Committee of the Board. The Land Use Committee shall not be required to vote or to approve the consistency request.
19. The Advisory Council required by §30-13(g)(3) shall consist for the following members:
a Ward 4 alderman; one representative each from the Auburndale and Lower Falls

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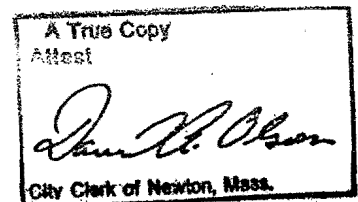


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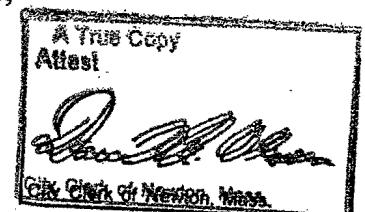
neighborhoods; and one representative each from the Woodland Grove Condominiums, the Riverside Business Center, and the Petitioner or its successor Organization of Owners. The Board of Aldermen may establish terms for the community members as well as additional procedural rules for the Advisory Council, which shall be staffed by the Planning and Development Department. The purpose of the Advisory Council is to assure continued compatibility of the uses and activities within the Development Parcel and its neighbors during and after construction. The Advisory Council shall be established by the Board of Aldermen prior to the commencement of construction of the Intermodal Commuter Facility.

20. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the Petitioner has:

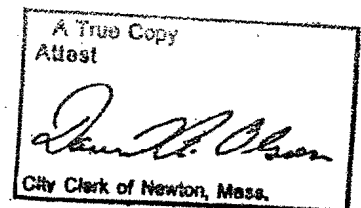
- a. recorded a certified copy of this Board Order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
- b. filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
- c. submitted final plans and elevations of the building to the Director of Planning and Development to assure consistency with the applicable plans approved under this Special Permit/Site Plan Approval.
- d. submitted documentation to the Commissioner of Public Works, Director of Planning and Development and Commissioner of Inspectional Services that the Petitioner has satisfied the requirements of Condition 3(a) above.
- e. submitted final engineering plans for review and approval by the City Engineer, in accordance with the memorandum from the Associate City Engineer, dated October 3, 2012, on file with the City Clerk.
- f. submitted a final Site circulation plan for review by the Fire Department that confirms a bus 45 template for fire access will function safely, particularly around the roundabouts, showing all hydrants and fire connections, and other features as may be required for Fire Department approval.
- g. submitted a final sign package for approval by the Director of Planning and Development and Commissioner of Public Works or his designee that, in addition to signs shown in draft sign plans, which shall include:
 - i. signs at the roundabouts on Grove Street that direct motor vehicles to:
 - ii. Quinobequin Road
 - iii. the westerly entrance/entrance to the Project
 - iv. to rear entrance to the parking lot at Hotel Indigo



- v. colors, materials, and design details of Site identification and interior directional signs
 - vi. final designs for tenant identification signs
- h. complied with the City of Newton Tree Preservation Ordinance, if applicable.
- i. obtained a certification from the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs indicating that the Final Environmental Impact Report for the Project adequately and properly complies with the Massachusetts Environmental Protection Act.
- j. developed a Stormwater Pollution Prevention Plan, as total Site disturbance is over an acre. During construction, the Petitioner will comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site and provide documentation to the City once every four months during construction that the stormwater pollution control measures to be undertaken during construction have been implemented on an ongoing basis.
- k. submitted to the Newton Health Commissioner and the City Engineer copies of the 21E investigation and report. if requested by the Commissioner of Inspectional Services, engage an Inspectional Group acceptable to the Commissioner and under his supervision.
- l. submitted to the Director of Planning and Development for review and approval a photometric and lighting plan that shows exterior lights on the residential building placed so as to have minimal impact on neighborhood residential and commercial abutters.
- m. performed a pre-blast survey and obtained a Blasting Permit from the Newton Fire Department. If on-site rock crushing is planned, the Petitioner shall address issues in regards to noise control & dust control. The times for on-site rock crushing shall be limited to the mid-morning to mid-afternoon hours to reduce disruption to the surrounding residential neighborhoods. Dust control shall include steps to prevent dust from leaving the Site and may include, as needed in the discretion of the Commissioner of Inspections Services, an on-site water truck and the covering of dirt piles. The Petitioner will comply with applicable state and local laws, regulations and protocols governing blasting, including the Standard Blasting Conditions for Special Permit/Site Plan Approvals, dated May 31, 2002 on file with the City Clerk.
- n. submitted to the Director of Planning and Development and the Urban Forester for their approval a final landscape plan including, but not limited to:
- i. the size and type of all trees, shrubs, and other plantings;



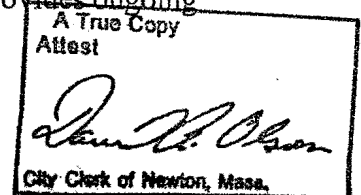
- ii. landscaping along the pathway to the overlook at the Charles River;
 - iii. plantings in the median of Grove Street that complement those on the easterly end of Grove Street and that assure good visibility for drivers; and
 - iv. pedestrian ways, including a route from Office Building (A) to the rear of the Indigo Hotel.
- o. submitted to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, Commissioner of Public Works, and Fire Department a Construction Management Plan for review and approval. The Petitioner shall comply in all material respects with the final Construction Management Plan, which shall be consistent with the Special Permit Plan Set. At a minimum, the Construction Management Plan shall specify:
- i. The hours of construction from 8:00 a.m. – 4:00 p.m. Monday through Friday, unless otherwise extended with the approval of the Commissioner of Inspectional Services and subject to receipt of a Noise Ordinance waiver from the Mayor if necessary. Hours for construction on Grove Street and on state and federal roadways will be subject to the control of those governmental agencies having jurisdiction over such roadways.
 - ii. A commitment that there shall be no construction on weekends, evenings, or holidays, except in an emergency, and only with prior approval from the Commissioner of Inspectional Services
 - iii. Proposed timeline/construction schedule of the Project
 - iv. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging area(s) for delivery vehicles, location of any security fencing, truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Site, locations of on-site dumpsters and regular disposal schedule
 - v. Construction truck route(s) for both the Project buildings and the MBTA Intermodal Commuter Facility that minimize, to the maximum extent feasible, travel on local streets. Construction truck access to the Site for both the Project buildings and the MBTA Intermodal Commuter Facility shall not be through the Grove Street driveway entrance, but shall be limited to access either from the Recreation Road, or from the C-D connector road.
 - vi. Proposed methods for dust control including, but not be limited to using covered trucks for transportation of excavated material



- vii. Anticipated dewatering during construction, site safety, and stability, particularly for driveway entrances
- viii. A site safety plan, which will show paths of travel for emergency vehicle access during construction, as Riverside MBTA is part of an Emergency Evacuation System so access must never be hindered during construction
- ix. Phasing of The Project with anticipated completion dates and milestones
- x. Name(s) of emergency contact personnel
- xi. How the Site will be secured during construction and after hours
- xii. Proposed methods for noise control in accordance with the City of Newton's Ordinances
- xiii. How staging activities will be conducted in a manner that will minimize off-site impacts of noise, with noise-producing staging activities located as far as practical from noise-sensitive locations


21. No occupancy permit for building authorized by this Special Permit/Site Plan approval shall be issued until the Petitioner has:

- a. filed with the Clerk of the Board, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
- b. submitted to the City Engineer, Department of Inspectional Services, and the Department of Planning and Development final as-built plans for the building subject to the occupancy permit in digital and paper format, with the latter sealed by a licensed surveyor that should show all utilities and final grades, any easements and final grading.
- c. filed with the Clerk of the Board, the Department of Inspectional Services and Department of Planning and Development a statement by the City Engineer certifying that the infrastructure related to the building that is subject to the occupancy permit) has been constructed to the standards of the City of Newton Engineering Department.
- d. filed with the Clerk of the Board and the Department of Inspectional Services a statement from the Director of Planning and Development approving the final location, number and type of plant materials and confirming that Site lighting has been installed in accordance with the approved plans for the building subject to the occupancy permit.
- e. recorded with the Middlesex South District Registry of Deeds an Operations and Maintenance Plan for Stormwater Management Facilities that provides ongoing



stormwater system cleaning and maintenance and provided a copy of the recorded document to the City Engineer.


- f. substantially completed (i.e., fully operational from a traffic management perspective) construction of all improvements to Grove Street as more specifically stated in Condition 3(b) prior to the issuance of an occupancy permit for any of the following: the office building, the residential building, or the retail/community use building.
- g. substantially completed (i.e., fully operational from a traffic management perspective) construction of all roundabouts and roadway improvements as more specifically stated in Condition 3(c) above prior to issuance of an occupancy permit for any of the following : the office building, the residential building, or the retail/community use building.
- h. designated a Traffic and Parking Manager who will respond to neighborhood concerns and enforce the Parking Management Plan and Transportation Demand Management Plan, and whose contact information must be provided to the Commissioner of Public Works and the Director of Planning and Development.
- i. submitted a Parking Management Plan to the Director of Planning and Development and City Traffic Engineer for their review and approval that maximizes the use of available parking spaces and encourages shared parking opportunities. The Plan shall include, but not be limited to, the following:
 - i. a Memorandum of Understanding between the Petitioner and the MBTA regarding use of parking within the Intermodal Commuter Facility for visitors to the retail and community use space and the details of a proposed validation system with the retailers and nonprofit entity that oversees operations of the Community Use Facility.
 - ii. flexibility in updating the Plan in the event that conditions change that merit different approaches to maximizing the use of available parking spaces. Changes to the Final Parking Management shall be to the approval of the Director of Planning and Development and the Director of Transportation and should be reconsidered with each change in use.
 - iii. locations and type of signage and staff posted strategically to direct people to available parking on Red Sox game days.
 - iv. incentives to reduce parking demand, such as renting parking spaces separately from rental of residential units so as to make extra parking available for use by nonresidents, assigning priority parking for carpoolers, and setting aside spaces for car-sharing (e.g., Zipcar).

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- v. provision for valet parking for Hotel Indigo in the office building (Building A) as referenced in the Parking Management Plan for Hotel Indigo located at 399 Grove Street.

- j. submitted to the Director of Planning and Development and Commissioner of Public Works a Transportation Demand Management Plan (TDM) with incentives to reduce use of single- occupancy vehicles and increase use of alternative modes of transportation. The Petitioner shall review the TDM measures with the Director of Planning and Development. At the request of the Director of Planning and Development or at the Petitioner's election, the Petitioner will annually evaluate the effectiveness of the TDM measures to determine whether any proposed adjustment to the TDM measures should be made to optimize the TDM program. Any adjustments to the TDM measures resulting from such annual review will be submitted to the Director of Planning and Development and the Commissioner of Public Works and shall be maintained on file at the Project. TDM measures shall be substantially implemented prior occupancy of each phase of the Project authorized under this Special Permit/Site Plan approval, unless otherwise determined by the Director of Planning and Development in consultation with the Commissioner of Public Works. The TDM shall require that:
 - i. until final Certificates of Occupancy are issued for the buildings in the Project, the Petitioner shall become a member of the Route 128 Business Council to further the goals of shared transit use. Thereafter, the owner's association representative shall be such a member.
 - ii. buses destined for the highway shall be directed to enter and exit the Site by way of the westerly roundabout to minimize bus traffic onto Grove Street and foster ease of use of the transit system.

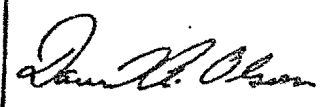
- k. An occupancy permit may be issued for any portion of the Project prior to the completion of the entire development or implementation of the Parking and Transportation Demand Management measures upon submission by the Petitioner of a parking analysis and traffic report prepared by a professional traffic engineer to the Commissioner of Inspectional Service, Director of Planning and Development, and the City Traffic Engineer evidencing that the parking provided and improvements completed together with any necessary alternative measures proposed by the Petitioner in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site plan approval (Exhibit A), are sufficient to safely and efficiently accommodate the parking demand and traffic generated by the portion of the Project for which the occupancy permit is sought. The parking analysis and traffic report shall be subject to review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development and the Commissioner of Public Works, or his designee.

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22. The Petitioner shall install all landscaping as proposed and approved through this Special Permit/Site plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced by the then-owner on an annual basis with similar material.
23. Notwithstanding the provisions of Condition 22 the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the Site prior to installation of final landscaping provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.
24. As part of this special permit, post-construction studies for impacts on road and traffic capacity and water, sewer and storm water service shall be required. These studies must be conducted within twelve months of full occupancy of each building in other than the Intermodal Community Facility the Project, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for two years following final build-out. If the actual impacts are consistent with projections provided by the Petitioner in the Traffic Impact and Assessment Study as revised pursuant to peer review, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development are consistent with the special permit.

The post-construction study for traffic shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Site and their distribution among point of access to the mixed-use/transit-oriented development. The Petitioner or Organization of Owners must provide a bond or other security in an amount sufficient to secure performance of the post-construction study and satisfactory to the Commissioner of Public Works and Director of Planning and Development to secure performance as specified herein. Up to 60% of the monies allocated in the Mitigation Fund for traffic and neighborhood improvements can be considered as the required bond or other security, provided that the Petitioner or Organization of Owners shall be required to post an additional bond or security if the estimated cost of the study and necessary mitigations exceeds the amount available for this purpose in the Mitigation Fund. The bond or other security may be forfeited at the election of the Director of Planning and Development and the Commissioner of Public Works, and proceeds used by the City for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels by special permit, subject to reasonable extensions under the circumstances.

- a. Monitoring of vehicle trips for this purpose shall begin within twelve months of full occupancy of the Project, or earlier if requested by the Director of Planning

Attest

 City Clerk of Newton, Mass.

and Development and Commissioner of Public Works, and continue annually for two years following final build-out. Measurements shall be made at all driveway accesses to the Project and/or intersections studied in the pre-construction Roadway and Transportation Plan. The Commissioner of Public Works may require traffic monitoring earlier or more frequently if in his or her judgment, there appears to be degradation from the level of service projected by the pre-construction Roadway and Transportation Plan.

- b. A traffic engineering firm shall be retained by the City and paid for by the Petitioner or successor to measure the actual number of weekday peak hour, Saturday peak hour and weekday daily vehicle trips to and from the Project at all points studied in the pre-construction Roadway and Transportation Plan.
- c. Mitigations will be required if total number of vehicle trips to and from the Project measured per subsection b, above, summed over the points of access exceed the Adjusted Volume of vehicle trips projected per §30-24(c)(9) by more than ten percent (10%) as a result of traffic generated by the Project. Within six months of notification, the owner of the Site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the petitioner in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The Commissioner of Public Works and Director of Planning and Development shall approve any mitigation efforts prior to implementation.

Under Suspension of Rules

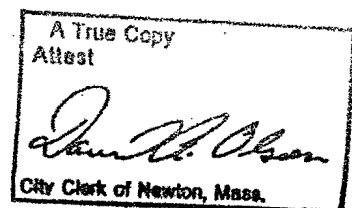
Readings Waived and Approved

21 yeas 0 nays 1 absent (Alderman Lappin) 1 recused (Alderman Sangiolo) 1 vacancy

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on October 10, 2013. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

David A. Olson
(SGD) ~~DAVID A. OLSON~~, City Clerk
acting Clerk of the Board of Aldermen



I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

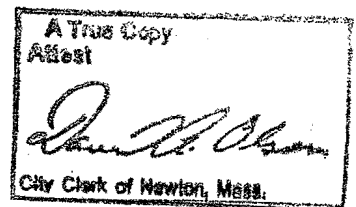
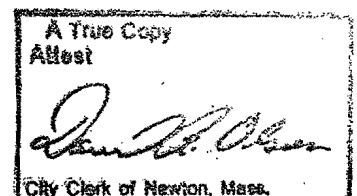


EXHIBIT A

- a. Plans by Harry R. Feldman, Inc. dated February 14, 2011, revised June 3, 2011 as follows:
 - i. Sheet 1 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
 - ii. Sheet 2 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
 - iii. Sheet 3 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
 - iv. Sheet 4 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"

- b. Plans by Vanasse Hangen Brustlin, Inc. dated August 27, 2012, revised July 23, 2013 as follows:
 - i. Sheet No. S-1.0 entitled "Legend and General Notes"
 - ii. Sheet No. S-2.0 entitled "Area Plan"
 - iii. Sheet No. S-2.1 entitled "Overall Zoning Assessment for Development Parcel" (further revised September 24, 2013)
 - iv. Sheet No. S-2.2 entitled "Zoning Assessment for Building A" (further revised September 24, 2013)"
 - v. Sheet No. S-2.3 entitled "Zoning Assessment for Building B" (further revised September 24, 2013)
 - vi. Sheet No. S-2.4 entitled "Zoning Assessment for Building C" (further revised September 13, 2013)
 - vii. Sheet No. S-2.5 entitled "Beneficial Open Space for Development Parcel" (further revised September 24, 2013)
 - viii. Sheet No. S-3.1 entitled "Layout & Materials Plan"
 - ix. Sheet No. S-3.2 entitled "Layout & Materials Plan" (further revised September 24, 2013)
 - x. Sheet No. S-3.3 entitled "Layout & Materials Plan"
 - xi. Sheet No. S-4.1 entitled "Grading and Drainage Plan"
 - xii. Sheet No. S-4.2 entitled "Grading and Drainage Plan" (further revised September 24, 2013)
 - xiii. Sheet No. S-4.3 entitled "Grading and Drainage Plan"
 - xiv. Sheet No. S-5.1 entitled "Utility Plan"
 - xv. Sheet No. S-5.2 entitled "Utility Plan" (further revised September 24, 2013)
 - xvi. Sheet No. S-5.3 entitled "Utility Plan"
 - xvii. Sheet No. S-5.4 entitled "Sanitary Sewer Profile"
 - xviii. Sheet No. S-6.1 entitled "Details"
 - xix. Sheet No. S-6.2 entitled "Details"
 - xx. Sheet No. S-6.3 entitled "Details"



- xxi. "Proposed MBTA Riverside Station Redevelopment Conceptual Improvement and Access Plan," dated September 15, 2013
- c. Plans by Ground, Inc. dated August 27, 2012, revised July 23, 2013 as follows:
- i. Sheet No. L-1.1 entitled "Building A Landscape Plan"
 - ii. Sheet No. L-1.2 entitled "Building B Landscape Plan"
 - iii. Sheet No. L-1.3 entitled "Building C Landscape Plan"
 - iv. Sheet No. L-2.1 entitled "Landscape Construction Details"
 - v. Sheet No. L-2.2 entitled "Planting Details"
- d. Plans by ADD, Inc. respecting Building A dated August 30, 2012 (unsigned) as follows:
- i. Sheet No. AP-100 entitled "Office Parking Layout Levels 0-5"
 - ii. Sheet No. A-102 entitled "Floor Plans Levels 0-1"
 - iii. Sheet No. A-103 entitled "Floor Plans Levels 2,3-4"
 - iv. Sheet No. A-104 entitled "Floor Plans Level 5"
 - v. Sheet No. A-105 entitled "Levels 6-10 & Roof Plan"
 - vi. Sheet No. A-301 entitled "Building Elevations"
- e. Plans by ADD, Inc. respecting Building B (undated and unsigned) as follows:
- i. Sheet No. B-100.1 entitled "Building B Parking Layouts"
 - ii. Sheet No. B-100.2 entitled "Building B Lower Parking Floor Plan"
 - iii. Sheet No. B-100.3 entitled "Building B Upper Parking Floor Plan"
 - iv. Sheet No. B-101 entitled "Building B First Residential Floor Plan"
 - v. Sheet No. B-102 entitled "Building B Second Floor Residential Floor Plan"
 - vi. Sheet No. B-103 entitled "Building B Third Floor Residential Floor Plan"
 - vii. Sheet No. B-104 entitled "Building B Fourth Floor Residential Floor Plan"
 - viii. Sheet No. B-200 entitled "Building B Elevations"
- f. Plans by ADD, Inc. respecting Building C (undated and unsigned) as follows:
- i. Sheet No. C-102 entitled "Floor Plans"
 - ii. Sheet No. C-301 entitled "Building Elevations"
- g. Plan by ADD, Inc. respecting Signage (undated and unsigned) as follows:
- i. Sheet No. D-480 entitled "Exterior Signage"
- h. Plan by Lam Partners dated January 28, 2013, revised July 16, 2013 (unsigned) as follows:
- i. Sheet No. Lam SLL-01 entitled "Preliminary Site Lighting Plan"

