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M E M O R A N D U M

DATE: August 2, 2013

TO: Land Use Committee of the Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

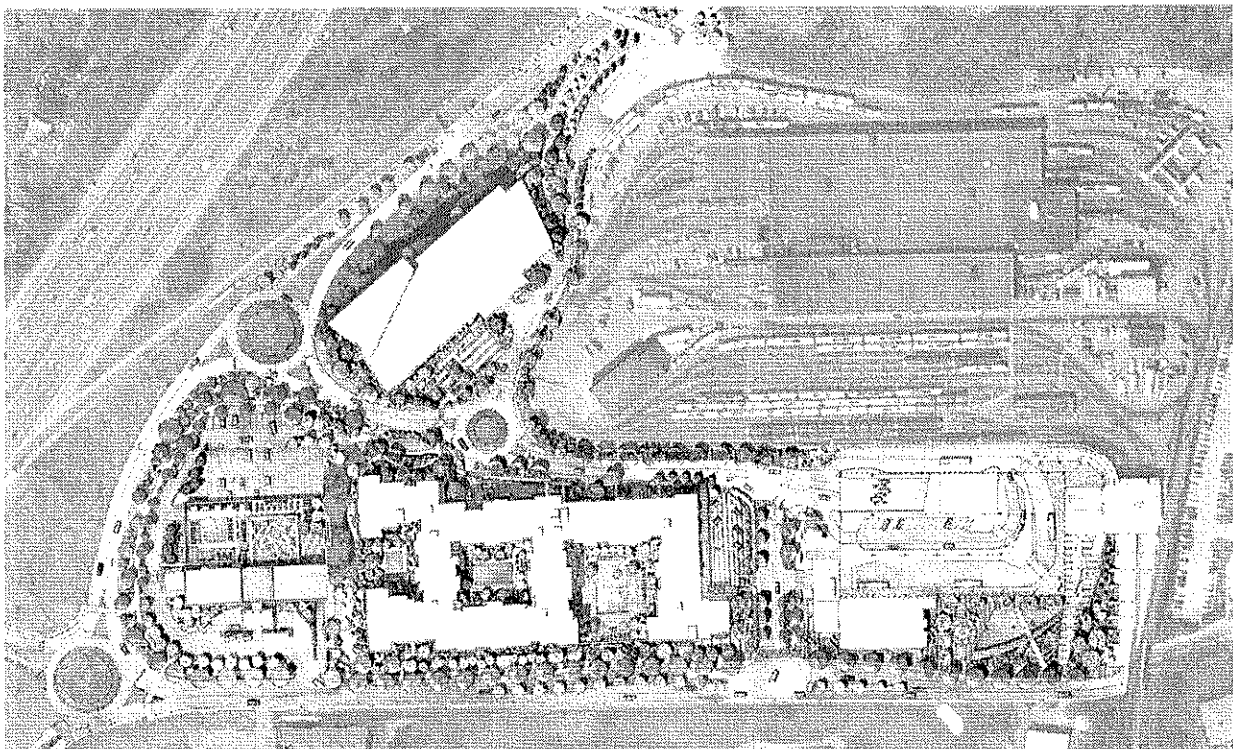
MEETING DATE: August 6, 2013

CC: Board of Aldermen
Planning and Development Board

On July 30th the Land Use Commission reviewed findings for approval of The Station at Riverside. The attached Board Order includes revised findings, as well as conditions for approval for Committee consideration. Review of these findings and conditions will take place on the 6th of August and again on the 13th of August. At that time, a determination will be made as to whether additional meetings are needed to finalize the document prior to submitting to the full Board for review.

PETITION #258-12(2)

327 Grove Street



#258-12(2)

CITY OF NEWTON
IN BOARD OF ALDERMEN
Date TBD, 2013

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), 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-(j)(1-12).

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, and August 13th, 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.

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)(8)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 290 apartments, including 44 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. Construction of the Project will be undertaken in two phases. The retail/community space building (Building C) and adjoining outdoor plaza area, next to an Intermodal Commuter Facility on adjacent MBTA land will be constructed as Phase 1. The office and residential buildings (Buildings A and B, respectively), with parking beneath them, as well as 12 at-grade parking spaces, will be constructed in Phase 2. The total square footage of the Project, excluding accessory parking, does not exceed 580,000 sq. ft. 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 a 9.38-acre 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 has been adopted by the Board in conjunction with, and immediately prior to, this Order, together with a .38 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(1) and (3). The total acreage of the Development Parcel is 9.76 acres. The dimensional requirements for the Project have been based upon the 9.38 acre parcel owned by the MBTA and leased to the Petitioner, given that the use of the .38 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. 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 buildings proposed for the Project.

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 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):

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 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 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 44 affordable and 246 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 for sewer infrastructure improvements that will permit an increase in the capacity of the sanitary sewer system by removing storm water at an 8:1 ratio.

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 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 mixed-use/transit-oriented development, 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 includes amenities such as a community garden, off-leash area for dogs, and 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, which would make it possible to 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 mixed-use/transit-oriented development and its surroundings. In particular, the façade of the residential building (Building B) 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 (Building A) 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 space building (Building C) 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 fundamental 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 required by the Massachusetts Environmental Policy Act (MEPA) and the Department of Energy Resources (DOER), which also require the Petitioner to employ protocols and practices to reduce statewide greenhouse gas emissions levels to between 10% and 25% by 2020 over the baseline year of 1990.
 - 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;
 - f. wastewater 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 using land forms such as rain gardens to manage storm water and using natural materials on the site to balance cut and fill will be employed.
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 (Building A), 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 (B) 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, tracking of mud.
19. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed mixed-use/transit-oriented 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/transit-oriented development, 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 zero setback from the lot lines on its westerly side which abuts I-95 and on its northerly side which abuts the MBTA yard, which is appropriate for a non-residential building and permits greater separation of this building from the residential building and 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.

Retail/Community Use Building (Building C): allow shared parking.

26. It is in the public interest to reduce the lighting level below one foot-candle near Building B (the residential building) given that the level of lighting 2proposed 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), §30-15(v), §30-19(m), and §30-23(c)(2)(a-h) 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).

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.

EXPLANATORY NOTES:

Special permit for mixed-use/transit-oriented development per Section 30-13(g), for mixed-use/transit-oriented development in excess of 20,000 sq. ft.

For Building A (office building):

Section 30-15(v)(1), for reduced minimum setbacks for side setback of proposed office building;

Section 30-19(h)(2)a), for parking stall width;

Section 30-19(h)(2)b) for parking stall depth;

Section 30-19(h)(2)e), for maneuvering space for end stalls of parking spaces;

Section 30-19(h)(4)a) for minimum width for entrance and exit driveways;

Section 30-19(1)(2) and (3), for number of required off-street loading facilities.

For Building B (residential apartment building):
Section 30-19(h)(2)e), for maneuvering space for end stalls;
Section 30-19(j)(1)a), for one foot-candle lighting requirement;

For Building C (retail/community use building):
Section 30-19(d)(22) for shared parking.

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 and are hereby incorporated by reference.
2. The Special Permit/Site Plan Approval shall be deemed to have been:

N.B. This condition is currently being revised and a new draft condition will be presented for consideration at the LUC's 8/6/13 meeting.

- a. exercised for the purposes of utilizing the benefits of the change of zone authorized by Board Order 258-12 upon the issuance of a building permit for the Intermodal Commuter Facility; and
- b. vested and exercised with respect to the entire Project for all purposes once construction under this Special Permit/Site Plan Approval has begun for any portion of the Project. 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 phase of the Project has not been commenced or completed, subject to the ten-year lapse provision contained in Condition 3c below.

3. The Project shall be constructed in two phases. The retail/community space building (Building C) and adjoining outdoor plaza area, next to an Intermodal Commuter Facility on adjacent MBTA land will be constructed as Phase 1. The office and residential buildings (Buildings A and B), with parking beneath them, as well as 12 at-grade parking spaces, will be constructed in Phase 2.

N.B. Currently discussing with Petitioner whether to change phasing so that Phase 1 will be the retail/community building and residential building, with Phase 2 the office building.

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 buildings, as set forth in the Special Permit Plan Set and application, and roadway improvements to support the new structures, are in place, provided, however, that the following improvements have been completed:

- a. Prior to the issuance of any Occupancy Permits for Phase 1, the Intermodal Commuter Facility, 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 completed;
- b. Prior to the issuance of any Building Permits for Phase 2, the Federal Highway Administration and MassDOT must approve designs of roundabouts and connecting roadways within state and federal jurisdiction (*identify what type of approval – is conceptual form to allow final design of the plan elements outlined sufficient?*); and
- c. Prior to the issuance of any Occupancy Permits for Phase 2, construction of the roundabouts and connecting roadways must be completed.

Construction of Phase 1 will not obligate the Petitioner to construct the Phase 2 (or any portion thereof), provided that the Petitioner shall be obligated to complete all requirements that are a condition of a Certificate of Occupancy in accordance with the provisions of this Board Order. If the Petitioner has not commenced construction of any portion of the Project within ten years of the exercise (as defined in Condition 2a, above) of the Special Permit/Site Plan Approval, 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. 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 Highways Administration review, revision, and approval the Petitioner shall design and construct Grove Street improvements as shown on approved plans and consistent with the Board Order.

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 Highways 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;
 - 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;
 - h. queue lane heading east on Grove Street of approximately 200' in length;
 - i. pavement markings to keep clear and prevent blocking of the exit/entrance at the Riverside Business Center at all times; and
 - j. 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 connector 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 Highways 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 connector 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 connector 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 approval prior to receiving a Building Permit for Phase 2.

6. The Petitioner has voluntarily agreed to contribute \$ [REDACTED] to the City to establish a Neighborhood Improvement Fund ("NIF"). The purpose of the NIF is to provide mitigations related to the Project and/or 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. The funds may be used for some of the following public purposes, 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 for the Williams School; noise abatement; 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; and similar purposes.

The Petitioner shall pay the funds as follows: one quarter upon the issuance of a Building Permit for Building B; one quarter upon the issuance of a Building Permit for Building A; one quarter upon the issuance of a Certificate of Occupancy for Building B; and one quarter upon the issuance of a Certificate of Occupancy for Building A.

The Board of Aldermen shall establish a six-member Neighborhood Improvement Council ("NIC"), which shall be composed as follows: the three Aldermen from Ward 4; two representatives from the neighborhood (one from Lower Falls and one from Auburndale); and the Director of Planning and Development. A quorum of four members will be required to vote, and a vote of two-thirds of the members present and voting (i.e., 3 members) will be required to approve an item. 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 NIF shall be under supervision of the Director of Planning and Development. All expenditures from the NIF must be approved by the NIC. Any expenditure from the NIF must be approved by the Board of Aldermen.

7. The Petitioner and the MBTA believe that the Project will be subject to the assessment of local taxes in accordance with the provisions of G.L. c. 59. 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 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 in an amount equal to the assessed value of the land and improvements thereon as though the same were subject to the assessment of local taxes.

8. The Petitioner has agreed to mitigate for infiltration and inflow at a rate of 8:1 at a total cost of \$_____ million to be paid to the City in three equal payments, such 1/3 payment due when the sewer hook-up is requested for each of the three buildings.

N.B. Petitioner is proposing including a formula showing how the 8:1 will be calculated: i.e., 71,315 gallons x 8 = 570,520x \$8.40/gallon = \$4,792,368. This condition will be revised to state the calculation and timing of payments.

9. When school is in session, the Petitioner shall provide a police detail for the school route crosswalk at the Grove Street roundabout 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 his 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 or Police Chief or Commissioner of Public Works 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.

10. Prior to operation of the new traffic signal at the Grove Street entrance, the Commissioner of Public Works or his designee will consult with the owners of the property located at 275 Grove Street and/or their traffic consultant(s) regarding timing of the new traffic signal to seek to establish traffic flow that maximizes benefits to both Sites.

11. 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 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 board order and/or other applicable provisions of the Zoning Ordinance.
12. 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. 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 work with the Petitioner to create the nonprofit entity. The nonprofit entity shall be created prior to the issuance of a Building Permit for Building C.

Should there be a section here that clarifies ownership and responsibility of the Community Use Facility and a detailed description of such space, e.g., the community use building will include a basketball court/community room, catering kitchen storage area, office, and bathrooms. 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.
13. The Petitioner will be responsible for keeping clear of snow the internal roadways and sidewalks on Grove Street to ensure safe and reliable access to and from the Site 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.
14. The Petitioner shall be responsible for complying with the requirements in sec. 30-24(f) of the Newton Zoning Code, as amended from time to time, including sec. 30-24(f)(8) Inclusionary Housing Plans and Covenants which require the Petitioner to submit an inclusionary housing plan. In addition, upon completion of the housing component of the project, fifteen percent (15%) of the total number of housing units, i.e., 44 units must be eligible for listing on the MA Department of Housing and Community Development's Subsidized Housing Inventory (SHI).
 15. If demand for bicycle spaces exceeds the supply, the Petitioner shall provide additional bicycle racks. The petitioner 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.
 16. The Petitioner will be responsible at its sole expense for trash disposal for the commercial, residential and retail uses, although the Petitioner may allocate such costs among the tenants of those spaces.
 17. 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.
 18. The Petitioner shall make every effort to obtain the required approvals from the Department of Conservation and Recreation and the Massachusetts Bay Transit Authority and governing bodies 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.
 19. 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 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 Federal Highway Administration and the Massachusetts Department of Transportation have granted final approval of designs for all roundabouts and associated roadway improvements within State jurisdiction prior to issuance of a building permit for Phase 2.
- 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. **[Need to determinate applicability of Ordinance]**
- i. established an advisory council consisting of representatives of the adjacent neighborhoods and the Organization of Owners to assure continued compatibility of the uses and activities within the development parcel and its neighbors during and after construction. Members shall

represent all neighborhood interests and shall include **[Need to determine members per sec. 30-13(g)(3)]**

- j. 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.
- k. 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.
- l. obtained approvals from the Conservation Commission for any work within the wetland jurisdictional areas or in the buffer zone on the development parcel and Department of Conservation and Recreation property if construction is proposed on its land, resolved any outstanding Orders of Conditions for prior work under the Wetlands Protection Act, and complied with the Massachusetts Department of Environmental Protection stormwater regulations for a redevelopment project.
- m. submitted to the Newton Board of Health and the Engineering Division of the Department of Public Works copies of the 21E investigation and report.
- n. if requested by the Commissioner of ISD, engage an Inspectional Group acceptable to the Commissioner and under his supervision.
- o. 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.
- p. 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 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.

- q. 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. trees 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.
- r. 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 construction sequencing shown in the Special Permit Plan Set. At a minimum, the plans shall include:
- i. The hours of construction from 7:00 a.m. – 3:00 p.m.
 - 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. Truck route(s) that minimize travel on local streets
 - 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
20. No occupancy permit for any phase described in of the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
- a. filed with the City Clerk, 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 in digital and paper format, with the latter sealed by a licensed surveyor, and 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 improvements authorized by this Board Order have been constructed to the standards of the City of Newton Engineering Department.
 - d. filed with the City Clerk 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.
 - 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. completed construction of the Intermodal Commuter Facility and the installation of a traffic signal and roadway improvements on Grove Street prior to issuance of Certificate of Occupancy for Building C (retail/community use building).
 - g. completed construction of all roundabouts and roadway improvements within state jurisdiction prior to occupancy of the residential or office buildings.

- 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 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).
 - 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. the Petitioner shall become a member of the Route 128 Business Council to further the goals of shared transit use.
 - 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. A Certificate of Occupancy 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 Certificate of Occupancy 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.
21. 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 Petitioner on an annual basis with similar material.

22. Notwithstanding the provisions of Condition 22, above, 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.
23. 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 phase, 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 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. 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 each phase, 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. Measurements shall be made at all driveway accesses to the mixed-use/transit-oriented development 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 mixed-use/transit-oriented development 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 mixed-use/transit-oriented development measured per subsection b, above, summed over the points of access Adjusted Volume projected per section 30-24(i)(5) by more than ten percent (10%) as a result of traffic generated by the mixed-use/transit-oriented development. Within six months of notification, the owner of the mixed-use/transit-oriented development 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 and listed in the mixed-use/transit-oriented development special permit 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.

EXHIBIT A

Plan References

Complete when plans received
Steve offered to assemble this list

DRAFT