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STAFF MEMORANDUM

Meeting Date: **Wednesday, April 19, 2023**
DATE: April 14, 2023
TO: Urban Design Commission
FROM: Shubee Sikka, Urban Designer
SUBJECT: **Additional Review Information**

The purpose of this memorandum is to provide the members of the Urban Design Commission (UDC) and the public with technical information and planning analysis which may be useful in the review and decision-making process of the UDC. The Department of Planning and Development's intention is to provide a balanced view of the issues with the information it has at the time of the application's review. Additional information may be presented at the meeting that the UDC can take into consideration when discussing Sign Permit, Fence Appeal applications or Design Reviews.

Dear UDC Members,

The following is a brief discussion of the sign permit applications that you should have received in your meeting packet and staff's recommendations for these items.

I. Roll Call

II. Regular Agenda

Sign Permits

1. 2-4 Los Angeles Street - Allee

PROJECT DESCRIPTION: The property located at 2-4 Los Angeles Street is within a Manufacturing zoning district and is the subject of a comprehensive permit (attachment A). The applicant is proposing to install the following signs:

1. Four-sided free-standing principal sign, internally illuminated, with approximately 15 sq. ft. of sign area on each side under the bridge between buildings 1A and 1B (location #1).

2. One wall mounted secondary sign, internally illuminated, with approximately 22 sq. ft. of sign area on the southern building façade facing Midland Avenue (location #2).
3. One perpendicular secondary sign, internally illuminated, with approximately 6 sq. ft. of sign area on the southern building façade of building 1 facing Midland Avenue (location #3).
4. One perpendicular secondary sign, internally illuminated, with approximately 6 sq. ft. of sign area on the western building façade of building 2 perpendicular to Los Angeles Street (location #4).
5. One perpendicular secondary sign, internally illuminated, with approximately 6 sq. ft. of sign area (location #5). Applicant has indicated that the exact location of this sign is not decided yet.
6. One wall mounted directional sign (Parking sign), internally illuminated, with approximately 6.25 sq. ft. of sign area on the southern building façade of building 1 facing Midland Avenue (location #6).
7. One wall mounted directional sign (Parking sign), internally illuminated, with approximately 6.25 sq. ft. of sign area (location #7). Applicant has indicated that the exact location of this sign is not decided yet.
8. One wall mounted directional sign (Office sign), internally illuminated, with approximately 2 sq. ft. of sign area southern building façade facing Midland Avenue (location #8).
9. One wall mounted secondary sign, internally illuminated, with approximately 22 sq. ft. of sign area on the western building façade of building 2 facing Los Angeles Street (location #14).
10. One wall mounted directional sign (Resident Parking sign), non-illuminated, with approximately 6 sq. ft. of sign area on the western building façade of building 2 facing Los Angeles Street (location #15).
11. One wall mounted directional sign (Resident Parking sign), non-illuminated, with approximately 6 sq. ft. of sign area (location #16). Applicant has indicated that the exact location of this sign is not decided yet.

TECHNICAL REVIEW:

- The proposed free-standing principal sign appears to be not consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, Sign area of a free-standing sign is defined as the entire area of one side of such sign such that two faces which are back-to-back are counted only once. Since this sign has four sides, the applicant will need to seek relief for it. Per the Zoning Ordinance, one free-standing principal sign is allowed, which the applicant is not exceeding, the maximum size of the sign allowed is 35 sq. ft. and height of 16 feet, which the

applicant is also not exceeding. Per Zoning ordinance §5.2.13 “A. In particular instances, the City Council may grant a special permit to allow free-standing signs and exceptions to the limitations imposed by this Sec. 5.2 on the number, size, location and height of signs where it is determined that the nature of the use of the premises, the architecture of the building or its location with reference to the street is such that free-standing signs or exceptions should be permitted in the public interest.

B. In granting such a permit, the City Council shall specify the size, type and location and shall impose such other terms and restrictions as it may deem to be in the public interest and in accordance with the 780 CMR. All free-standing signs shall not exceed 35 square feet in area, or 10 feet in any linear dimension, or 16 feet in height from the ground, except as further described in Sec. 5.2.7.”

- Both the proposed 22 sq. ft. secondary signs (location #2 & 14) appear to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two secondary signs are allowed, which the applicant is not exceeding, and on this façade of 224 feet, the maximum size of the sign allowed is 50 sq. ft., which the applicant is also not exceeding.
- Three proposed 6.25 sq. ft. perpendicular secondary signs (location #3-5) appear to be not consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two secondary signs are allowed, which the applicant is exceeding.
- Two proposed 6.25 sq. ft. directional signs (locations #6 & 7) appear to be not consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, directional signs of up to 3 sq. ft. are allowed, which the applicant is exceeding.
- The proposed 2 sq. ft. directional office sign (location #8) appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, directional signs of up to 3 sq. ft. are allowed, which the applicant is not exceeding.
- Two proposed 6 sq. ft. directional signs (locations #15 & 16) appear to be not consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, directional signs of up to 3 sq. ft. are allowed, which the applicant is exceeding.

STAFF RECOMMENDATION: Staff recommends the applicant apply to the Commissioner of Inspectional Services Department (ISD) for a Consistency Ruling since there is an existing Comprehensive Permit for this property. Staff has the following recommendations about each sign:

- Four-sided free-standing principal sign (location #1) – apply for consistency ruling to the Commissioner of ISD
- Two 22 sq. ft. secondary signs (location #2 & 14) – recommend for approval
- Three 6.25 sq. ft. perpendicular secondary signs (location #3-5) – apply for consistency ruling to the Commissioner of ISD. Staff also encourages the applicant to provide a location for #5 sign.

- Two proposed 6.25 sq. ft. directional signs (locations #6 & 7) – apply for consistency ruling to the Commissioner of ISD. Staff also encourages the applicant to provide a location for #7 sign.
- One proposed 2 sq. ft. directional office sign (location #8) – recommend for approval
- Two proposed 6 sq. ft. directional signs (locations #15 & 16) - apply for consistency ruling to the Commissioner of ISD. Staff also encourages the applicant to provide a location for #16 sign.

2. 870-880 Walnut Street – Orchid Cleaners

PROJECT DESCRIPTION: The property located at 870-880 Walnut Street is within Business 2 zoning district. The applicant is proposing to install the following sign:

1. One wall mounted principal sign, non-illuminated, with approximately 24 sq. ft. of sign area on the southern façade facing the parking lot.

TECHNICAL REVIEW:

- The proposed wall mounted principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 16 feet, the maximum size of the sign allowed is 48 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of the principal sign as proposed.

3. 1173-1177 Walnut Street – Mimados Pet Spa

PROJECT DESCRIPTION: The property located at 1173-1177 Walnut Street is within a Business 1 zoning district. The applicant is proposing to install the following signs:

1. One wall mounted split principal sign, non-illuminated, with approximately 28 sq. ft. of sign area on the eastern building façade facing Walnut Street.
2. One wall mounted split principal sign, non-illuminated, with approximately 11 sq. ft. of sign area on the eastern building façade facing Walnut Street.
3. There is a third sign shown in the drawings. Staff has requested information about the sign but hasn't heard back from the applicant.

TECHNICAL REVIEW:

- Both the proposed wall mounted split principal signs appear to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two split principal signs are allowed, which the applicant is not exceeding, and on this façade of 18 feet, the maximum size of the total signage allowed is 54 sq. ft., which the applicant is also not exceeding. Per Zoning Ordinance §5.2.8, *"In particular*

instances, due to the nature of the use of the premises, the architecture of the building, or its location with reference to the street, the total allowable sign area may be divided between two wall signs which together constitute the principal wall sign.”

STAFF RECOMMENDATION: Staff recommends approval of both split principal signs as proposed. Staff encourages the applicant to submit information about the third sign.

4. 129-151 North Street – Newton Gardens

PROJECT DESCRIPTION: The property located at 129-151 North Street is within Multi-Residence 2 zoning district. The applicant is proposing to reface the following signs:

1. Reface one free-standing sign, non-illuminated, with approximately 12 sq. ft. of sign area perpendicular to Farewell Street.
2. Reface one free-standing sign, non-illuminated, with approximately 12 sq. ft. of sign area perpendicular to North Street.

TECHNICAL REVIEW:

- Both the signs are a face replacement of existing free-standing signs.

STAFF RECOMMENDATION: Staff recommends approval of reface of both free-standing signs.

5. 1261-1269 Centre Street – Embrace Orthodontics

PROJECT DESCRIPTION: The property located at 1261-1269 Centre Street is within a Business 1 district. The applicant is proposing to install the following sign:

1. One awning mounted principal sign, non-illuminated, with approximately 56 sq. ft. of sign area on the southern building façade facing Beacon Street.

TECHNICAL REVIEW:

- The proposed wall mounted principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 28 feet, the maximum size of the sign allowed is 84 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of the proposed principal sign.

6. 200-220 Boylston Street – Beth Israel Lahey Health

PROJECT DESCRIPTION: The property located at 200-220 Boylston Street is within a Business 4 district and has a comprehensive sign package authorized by a special permit via Board Order # 214-10(2). The applicant is proposing to install the following sign:

1. One wall mounted split principal sign, internally illuminated, with approximately 162 sq. ft. of sign area on the northern façade of building A facing the parking lot.

TECHNICAL REVIEW:

- The comprehensive sign plan allows up to six principal wall signs of greater than 100 sq. ft. but not exceeding 200 sq. ft. per sign. Staff has requested the applicant to provide a list of signs that are more than 100 sq. ft. for the property. The sign also appears to be outside the sign band shown in the comprehensive sign package (attachment B).

STAFF RECOMMENDATION: Staff is waiting to hear back from the applicant regarding the number of existing signs that are greater than 200 sq. ft.

7. 47-61 Langley Road – The Finer Consigner

PROJECT DESCRIPTION: The property located at 47-61 Langley Road is within a Business 1 zoning district and has a comprehensive sign package authorized by a special permit via Board order #138-18 (attachment D & E). The applicant is proposing to install the following signs:

1. One wall split principal sign, non-illuminated, with approximately 3 sq. ft. of sign area on the northern building façade facing Langley Road.
2. One perpendicular split principal sign, non-illuminated, with approximately 6.25 sq. ft. of sign area on the northern building façade perpendicular to Langley Road.

TECHNICAL REVIEW:

- The proposed perpendicular split principal sign appears to be consistent with the comprehensive sign package and dimensional controls specified in §5.2.8. The proposed wall split principal sign appears to be not consistent with the comprehensive sign package but is consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two split principal signs are allowed, which the applicant is not exceeding, and on this façade of 14 feet, the maximum size of the total signage allowed is 42 sq. ft., which the applicant is also not exceeding. Per Zoning Ordinance §5.2.8, *“In particular instances, due to the nature of the use of the premises, the architecture of the building, or its location with reference to the street, the total allowable sign area may be divided between two wall signs which together constitute the principal wall sign.”*

- As per condition #4 of the special permit, if the sign is not consistent with the comprehensive sign package, then it needs to be reviewed by Urban Design Commission.
- Condition #4 of the special permit, *“Through this Special Permit, the maximum size, number, type of content and location of the Special Permit signs are regulated and approved and shall be consistent with the plans and materials listed in Condition 111. Individual tenants and tenant signs may change over time. Changes to the size, number, and types of signs shall follow the below procedure:*
 - a. *If the future signs comply with Section 5.2 of the Newton Zoning Ordinance and are deemed consistent with the Comprehensive Sign package by the Commissioner of Inspectional Services and Director of Planning and Development, the changes(s) shall be permitted as of right.*
 - b. *If the future signs comply with Section 5.2 of the Newton Zoning Ordinance and are deemed inconsistent with the Comprehensive Sign package by the Commissioner of Inspectional Services and Director of Planning and Development, the changes(s) shall submitted to the Urban Design Commission for review and approval.*
 - c. *If the future signs do not comply with Section 5.2 of the Newton Zoning Ordinance, the petitioner shall seek an amendment to this special permit.”*

STAFF RECOMMENDATION: Staff recommends approval of both proposed split principal signs.

8. 1197-1203 Walnut Street – Shiva’s Kitchen

PROJECT DESCRIPTION: The property located at 1197-1203 Walnut Street is within Business 1 zoning district. The applicant is proposing to replace and install the following sign:

1. One awning mounted principal sign, externally illuminated, with approximately 32 sq. ft. of sign area on the northeastern building façade facing Walnut Street.

TECHNICAL REVIEW:

- The proposed awning mounted principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of approximately 45 ft., the maximum size of the sign allowed is 100 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of the principal sign as proposed.

Fence Appeal

1. 33 Staniford Street Fence Appeal (continued from February meeting)

PROJECT DESCRIPTION: The property located at 33 Staniford Street is within a Single Residence 3 district. The applicant is proposing the following fence:

- a) **Side Lot Line** – The applicant has revised the proposed fence since February submission and is now proposing to add a fence, set at varying distance, 10 inches to 35 inches, from the side property line with a new solid fence, 6 feet 8 $\frac{3}{4}$ inches and 7 feet 9 $\frac{1}{2}$ inches tall posts, approximately 17 feet in length.

TECHNICAL REVIEW:

The proposed fence along the side property line appears to be not consistent with the fence criteria outlined in §5-30(d)(2) of the Newton Code of Ordinances.

According to §5-30(d)(2), *“Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height except as provided in subsection (6) below, and further, that any portion of a fence bordering a side lot line which is within two (2) feet of a front lot line shall be graded to match the height of any fence bordering the front lot line.”*

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City’s Fence Ordinance. The proposed fence, however, must be found to comply with the *“requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise.”* The UDC must also determine whether the *“desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good.”*

The applicant is seeking an exception to allow 6 feet 8 $\frac{3}{4}$ inches and 7 feet 9 $\frac{1}{2}$ inches tall posts, approximately 17 feet in length a few inches from the side property line, where the ordinance would permit such a fence to be 6 feet tall with 8 feet tall posts.

The applicant’s stated reasons for seeking this exception are *“The fence meets all applicable design criteria other than the top horizontal slat which was inadvertently manufactured exceeding the height requirements by 8.75”. There is an existing hedge behind the fence which is taller than the fence. This additional 8.75" height of fence for a minimal 17' length along the property line will not be visually intrusive or offensive to the abutting property or neighborhood in general.”*

Update: The UDC reviewed this application at the February meeting and requested the applicant to provide a letter from the neighbor for the March meeting. Staff has not yet

received the letter. Staff encourages the applicant to send the letter before the March 15 meeting.

Note from the applicant – *“The Applicant has not had success obtaining a letter from the neighbor. The neighbor has indicated they are not opposed to the fence and will be ok with whatever the City decides but is unwilling to provide a letter or endorsement of any kind. We would still like to be heard by the Commission at the next available hearing to discuss next steps and our request for the Commission to vote on the application despite the abutter's letter. I will also attach photos from the neighbor's driveway which shows the existing hedge completely blocking any view of the fence.”*

STAFF RECOMMENDATION: Based on the information submitted in the fence appeal application and staff's technical review, staff recommends approval of the fence appeal application.

III. Old/New Business

1. Approval of Minutes

Staff has provided draft meeting minutes from the February meeting that require ratification (Attachment F).

Attachments

- Attachment A – 2-4 Los Angeles Street - Recorded Comprehensive Permit Agreement
- Attachment B - 200-220 Boylston Street - Board Order
- Attachment C - 200-220 Boylston Street - Comprehensive Sign Package
- Attachment D - 47-61 Langley Road - Comprehensive Sign Plans
- Attachment E - 47-61 Langley Road - Recorded Order #138-18
- Attachment F – February UDC meeting minutes

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 2/27/2023 1:32:21 PM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
233551	AGREEMENT		78988/1	10/25/2021	0.00
Property-Street Address and/or Description					
2-4 LOS ANGELES ST					
Grantors					
RESIDENCES ON THE CHARLES LLP, MASSACHUSETTS HOUSING FINANCE AGENCY, MASSACHUSETTS COMM HOUSING & COMMUNITY DEVELOPMENT					
Grantees					
References-Book/Pg Description Recorded Year					
Registered Land Certificate(s)-Cert# Book/Pg					

Middlesex South Registry of Deeds
Electronically Recorded Document

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Recording Information

Document Number	: 233551
Document Type	: AGR
Recorded Date	: October 25, 2021
Recorded Time	: 03:13:11 PM
Recorded Book and Page	: 78988 / 1
Number of Pages(including cover sheet)	: 34
Receipt Number	: 2736753
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
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NEF Rental Regulatory Agreement
Form Revised 04/12/2017

REGULATORY AND USE AGREEMENT

[Rental]

***For Comprehensive Permit Projects in Which Funding is Provided
By Other Than a State Agency***

This Regulatory and Use Agreement (this "Agreement") is made this 7th day of October, 2021, by and between the Massachusetts Housing Finance Agency acting as Subsidizing Agency (the "Subsidizing Agency"), as defined under the provisions of 760 CMR 56.02, on behalf of the Department of Housing and Community Development ("DHCD"), and The Residences on the Charles, LLP a Registered Domestic Limited Liability Partnership having a mailing address at 37 Walnut Street, Suite 110, Wellesley Hills, MA 02481, and its successors and assigns (the "Developer").

RECITALS

WHEREAS, the Developer intends to construct a housing development known as Residences on the Charles at a 3.4-acre site located at 2-4 Los Angeles Street (formerly 15 Riverdale Avenue) in the City of Newton, Massachusetts (the "Municipality"), more particularly described in Exhibit A attached hereto and made a part hereof (the "Development"); and

WHEREAS, DHCD has promulgated Regulations at 760 CMR 56.00 (as may be amended from time to time, the "Regulations") relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (as may be amended from time to time, the "Act") and pursuant thereto has issued its Comprehensive Permit Guidelines (as may be amended from time to time, the "Guidelines") and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules";

WHEREAS, the Development is being financed with a loan of approximately \$53,250,000 by Santander Bank, N.A., as lead arranger and administrative agent ("Santander"), and Salem Five Bank, a Federal Home Loan Bank of Boston ("FHLBB") member bank (the "NEF Lender"), a non-governmental entity for which the Massachusetts Housing Finance Agency acts as Subsidizing Agency pursuant to the Comprehensive Permit Rules; and

WHEREAS, the Massachusetts Housing Finance Agency will serve as Subsidizing Agency on behalf of DHCD pursuant to the Comprehensive Permit Rules and in accordance with the terms and provisions hereof; and

WHEREAS, the Developer has received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality in accordance with the Act, which permit is recorded at the Middlesex South Registry of Deeds ("Registry") in Book 75327, Page 424, as amended by the terms of this Agreement; and

Deed Reference: Book 75420, Page 312

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of 204 rental units, of which a minimum of 25 percent (51 units) (the "Affordable Units") will be rented to Low or Moderate Income Persons and Families (as defined herein) at rentals specified in this Agreement and will be subject to this Agreement; and

WHEREAS, the parties intend that this Agreement shall serve as a "Use Restriction" as defined in and required by Section 56.05(13) of the Regulations; and

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for rental of Affordable Units and that local preference is only applicable at initial rent-up and cannot be granted in a manner which results in a violation of applicable fair housing laws, regulations and subsidy programs; and

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subsidizing Agency and the Developer hereby agree as follows:

DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

Act shall have the meaning given such term in the Recitals hereof.

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines and approved by the Subsidizing Agency, with such changes thereto that may be approved by the Subsidizing Agency, as further set forth in Section 3.

Affordable Units shall have the meaning set forth in the Recitals above.

Allowable Development Costs shall have the meaning given such term in Section 20 hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor regulations).

Area shall mean the Boston-Cambridge-Newton, MA-NH Metropolitan Statistical Area (MSA) as designated by the Department of Housing and Urban Development ("HUD").

Area Median Income ("AMI") shall mean the median gross income for the Area, as determined

from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

Audited Annual Limited Dividend Financial Report shall mean an annual report to be submitted by the Developer on a form prescribed by the Subsiding Agency, pursuant to Section 12(e) hereof.

Comprehensive Permit shall have the meaning given such term in the Recitals hereof.

Comprehensive Permit Rules shall have the meaning given such term in the Recitals hereof.

Construction Lender shall mean the lender(s) making the Construction Loan, and its successors and assigns.

Construction Loan shall mean the loan to the Developer for the construction of the Development.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan.

Cost Certification shall have the meaning given such term in Section 20 hereof.

Cost Method shall have the meaning given such term in Section 7(d) hereof.

Developer Parties shall have the meaning given such term in Section 7(a) hereof.

Developer's Equity shall be determined in the manner set forth in Section 7(d) hereof.

Development shall have the meaning given such term in the Recitals hereof.

Development Revenues: All rental income, receipts and other revenue derived from the operation of the Development other than revenues derived from any sales, financing, or other capital transaction, and not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer.

Distribution Payments shall have the meaning given such term in Section 7(a) hereof.

Event of Default shall mean a default in the observance of any covenant under this Agreement or the Mortgage existing after the expiration of any applicable notice and cure periods.

Excess Development Revenues shall have the meaning given such term in Section 12(e) hereof

Excess Equity: Surplus Cash in excess of the permitted Limited Dividend Distribution, as calculated in accordance with the Audited Annual Limited Dividend Financial Report described in Section 12 hereof.

Excess Equity Account: An interest-bearing account maintained by the Lender (or if the Loan is paid off, with the Subsidizing Agency) for the benefit of the Development during the Term hereof containing Development Revenues which exceed the Limited Dividend Distribution in a given year or years.

Family shall have the same meaning as set forth in 24 C.F.R. §5.403 (or any successor regulations).

Fiscal Year: The fiscal year of the Developer ending December 31.

Guidelines shall have the meaning given such term in the Recitals hereof.

Housing Subsidy Program shall mean any other state or federal housing subsidy program providing rental or other subsidy to the Development.

HUD shall mean the United States Department of Housing and Urban Development.

Lender shall mean the Construction Lender and/or the Permanent Lender.

Limited Dividend Distribution: The aggregate annual distributions permitted to be made to the Developer from Development Revenues as calculated pursuant to the Audited Annual Limited Dividend Financial Report.

Limited Dividend Term shall have the meaning set forth in Section 22(b) hereof.

Loan shall mean the Construction Loan and/or the Permanent Loan.

Low or Moderate Income Persons or Families shall mean persons or Families whose Annual Incomes do not exceed eighty percent (80%) of the Median Income for the Area, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit or any applicable Housing Subsidy Program.

Low or Moderate Income Tenants shall mean Low or Moderate Income Persons or Families who occupy the Affordable Units.

Mortgage shall mean the Construction Mortgage and/or the Permanent Mortgage.

Permanent Lender shall mean the lender(s) making the Permanent Loan to the Developer, and its successors and assigns.

Permanent Loan shall mean the Permanent Loan made or committed to be made by the Permanent Lender to the Developer after completion of construction of the Development, which will replace the Construction Loan, or any subsequent refinancing thereof in compliance with any specific terms of the Comprehensive Permit or any Housing Subsidy Program applicable to the Development.

Permanent Mortgage shall mean the mortgage from the Developer to the Permanent Lender

securing the Permanent Loan, or any replacement thereof.

Regulations shall have the meaning given such term in the Recitals hereof.

Related Person: shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Internal Revenue Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein).

Resident Selection Plan shall mean the Resident Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by the Subsidizing Agency, with such changes thereto which may be approved by the Subsidizing Agency.

Substantial Completion shall have the meaning given such term in Section 19 hereof.

Surety shall have the meaning given such term in Section 21 hereof.

Surplus Cash shall have the meaning given such term in Section 7(c) hereof.

Term shall have the meaning set forth in Section 22 hereof.

Total Development Costs (“TDC”) shall have the meaning set forth in Section 7(h) hereof.

Value Method shall have the meaning given such term in Section 7(d) hereof.

CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Subsidizing Agency and the Municipality (the “Plans and Specifications”), which are consistent with the minimum design and construction standards of the Subsidizing Agency applicable to comprehensive permit projects in accordance with the Comprehensive Permit Guidelines, and in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit, and in accordance with the information describing the Development presented by the Developer to the Subsidizing Agency in its application for Final Approval. The Development must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

(b) The Subsidizing Agency shall monitor compliance with the construction obligations set forth in this section in such manner as the Subsidizing Agency may deem reasonably necessary. In furtherance thereof, the Developer shall provide to the Subsidizing Agency, prior to commencement of construction, a certification from the Construction Lender concerning construction monitoring in a form acceptable to the Subsidizing Agency. If the information provided to the Subsidizing Agency is not acceptable to the Subsidizing Agency, or if at any time after acceptance the NEF Lender's construction monitor fails to provide adequate construction oversight in accordance with the requirements of the NEF Lender's certification, the Subsidizing Agency may require that the Developer fund the cost of a construction monitor retained by the Subsidizing Agency.

USE RESTRICTION/RENTALS AND RENTS

3. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement, with one of the 2-bedroom Affordable Units being affordable to a household earning up to 65% of AMI and one of the 3-bedroom Affordable Units being affordable to a household earning up to 50% of AMI. In fulfilling the foregoing requirement, the Developer will accept referrals of tenants from the Housing Authority in the Municipality, and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Resident Selection Plan. The foregoing provisions shall not relieve the Developer of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program; provided, however, the Subsidizing Agency shall have no obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including but not limited to tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI (or such other higher percentage of AMI established by DHCD for Comprehensive Permit Projects In Which Funding Is Provided By Other Than a State Agency), adjusted for household size, assuming that an Affordable Unit which does not have a separate bedroom is occupied by one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom. Provided further that (i) the annual rental expense for one of the 2-bedroom Affordable Units shall not exceed thirty percent (30%) of sixty-five percent (65%) of AMI and (ii) the annual rental expense for one of the 3-bedroom Affordable Units shall not exceed thirty percent (30%) of fifty percent (50%) of AMI, in both cases adjusted for household size according to the preceding sentence. If rentals of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

(c) For purposes of satisfying the requirement that the Affordable Units shall be occupied by Low or Moderate Income Tenants hereunder, no Low or Moderate Income Tenant shall be denied continued occupancy because, after admission, the Low Moderate Income Tenant's

Annual Income exceeds eighty percent (80%) of Area Median Income. No Low or Moderate Income Tenant shall continue to be counted as a Low or Moderate Income Tenant as of any date upon which such tenant's Annual Income exceeds one hundred forty percent (140%) of the level at which a tenant may be qualified as a Low or Moderate Income Tenant provided, however, that the Developer shall not be in default regarding the requirements of this Agreement to maintain occupancy of the Affordable Units by Low or Moderate Income Tenants if the Developer rents the next available unit to Low or Moderate Income Tenants as needed to achieve compliance with such requirements (thereupon, as rented to a Low or Moderate Income Tenant, such unit or units shall be deemed an Affordable Unit hereunder).

(d) If, after initial occupancy, the income of a tenant in an Affordable Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant. In the event that a Low or Moderate-Income Tenant's Annual Income increases and, as a result of such increase, exceeds one hundred forty percent (140%) of Area Median Income, the Developer may charge the formerly Low or Moderate-Income Tenant a market rate for the dwelling unit.

(e) Rentals for the Affordable Units shall be initially established as shown on the Rental Schedule attached as Appendix A hereto, subject to change from time to time (if necessary to reflect any changes in AMI) in accordance with the terms and provisions of this Agreement and any applicable Housing Subsidy Program. The Developer shall annually submit to the Subsidizing Agency a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that the Subsidizing Agency shall review such schedule with respect to the maximum rents for all the Affordable Units based on the size and required extent of affordability of each Affordable Unit, and shall not take into account the actual incomes of individual tenants in any given Affordable Unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without the Subsidizing Agency's prior approval of either (i) a specific request by the Developer for a rent increase; or (ii) the next annual schedule of rents and allowances as set forth in the preceding sentence. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Developer to all affected tenants.

(f) The Developer shall obtain income certifications satisfactory in form and manner to the Subsidizing Agency at least annually for all Low or Moderate-Income Tenants. Said income certifications shall be kept by the management agent for the Development and made available to the Subsidizing Agency upon request.

(g) Prior to initial lease-up, the Developer shall submit an Affirmative Fair Housing Marketing and Resident Selection Plan (also known as an "AFHMP") for the Subsidizing Agency's approval. At a minimum the AFHMP shall meet the requirements of the Guidelines, as the same may be amended from time to time. The AFHMP, upon approval by the Subsidizing Agency, shall become a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement.

(h) The AFHMP shall designate entities to implement the plan that are qualified to perform their duties. The Subsidizing Agency may require that another entity be found if the Subsidizing Agency finds that the entity designated by the Developer is not qualified. Moreover, the Subsidizing Agency may require the removal of an entity responsible for a duty under the AFHMP if that entity does not meet its obligations under the AFHMP.

(i) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the Term hereof. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as the Subsidizing Agency shall require.

TENANT SELECTION AND OCCUPANCY

4. The Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply with the Resident Selection Plan and AFHMP which are incorporated herein by reference with the same force and effect as if set out in this Agreement.

5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement, and any applicable Housing Subsidy Program, and shall contain clauses, among others, wherein each resident of such Affordable Unit:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from the Developer or the Subsidizing Agency; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

(c) agrees that at such time as the Developer or the Subsidizing Agency may direct, he or she will furnish to the Developer certification of then current family income, with such documentation as the Subsidizing Agency shall reasonably require; and agrees to such charges as the Subsidizing Agency has previously approved for any facilities and/or services which may be furnished by the Developer or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time pursuant to Section 3 above.

EXPIRATION OF RESTRICTIONS - TENANT PROTECTIONS

6. (a) If, upon the expiration of the Term hereof, the affordability requirements under the Comprehensive Permit shall expire, the Developer shall deliver a written notice to all Low or Moderate or Income Tenants of such expiration (the "Expiration Notice") at the same time that it shall provide such notice to the Subsidizing Agency. The Expiration Notice shall inform all Low or Moderate or Income Tenants of the tenant protections described in this Section 6.

(b) For a period of one year after the date of expiration ("Year 1") (the date of expiration is hereinafter referred to as the "Expiration Date"), the Developer may not increase the rentals payable by any Low or Moderate-Income Tenant on the Expiration Date (a "Protected Low or Moderate-Income Tenant"), except for rental increases which would have been permitted by the terms and provisions of the applicable Housing Subsidy Program if such Expiration Date had not occurred.

(c) For a period of two years after Year 1 ("CPI Index Period"), the rentals for units occupied by Protected Low or Moderate Income Tenants may not be increased more than once annually by the greater of: (i) the consumer price index (applicable to the area in which the Development is located) times the rental rate in effect as of the Expiration Date; or (ii) such higher amount as the Subsidizing Agency shall approve. In no event may the Developer increase rentals for such Affordable Units in excess of any limitations contained in a Housing Subsidy Program which remains in effect after the Expiration Date.

(d) For three (3) years after the CPI Index Period (the "Transition Period"), the Developer shall provide Relocation Assistance, as defined herein, for any Protected Low or Moderate-Income Tenant who voluntarily terminates his or her lease during the Transition Period as a result of rental increases. For the purposes hereof, the term "Relocation Assistance" shall mean reasonable assistance in locating a comparable affordable unit, including the payment of any broker's fees and the payment of reasonable moving expenses within a thirty (30) mile radius of the Development.

(e) Upon expiration, the Developer agrees to continue to use the form of occupancy agreement for all Protected Low or Moderate-Income Tenants until the expiration of the periods described in (b) and (c), above. Thereafter, the Developer may require that all Protected Low or Moderate-Income Tenants enter into the lease form used for tenants in the market-rental units or a lease substantially in the form published by the National Apartment Association, provided that any new occupancy agreement shall provide the Protected Low or Moderate-Income Tenants with the benefits of subsection (d), above.

(f) The provisions of this Section 6 shall survive the termination of any other provisions of this Agreement as a result of expiration until the expiration of the periods described in subsections (b), (c), and (d), above.

(g) Protected Low or Moderate-Income Tenants shall have a right to enforce the protections provided them in this Section 6.

LIMITED DIVIDENDS; USE OF DEVELOPMENT REVENUES

7. (a) The Developer covenants and agrees that no Distribution Payments may be made to the Developer other than Limited Dividend Distributions. Repayment of developer's fee loaned is treated as a Limited Dividend Distribution and is subject to the limitations set forth herein. Limited Dividend Distributions may be made: (i) on a quarterly basis within the Developer's Fiscal Year; (ii) only once all currently payable amounts as identified in subsection (i) below are paid as evidenced by a certificate provided by an independent accountant certifying that no such obligations are more than thirty (30) days past due and that there are no outstanding material extraordinary obligations incurred outside the ordinary course of business, even if thirty (30) or less days past due; and (iii) only after (x) submission by the Developer of the Audited Annual Limited Dividend Financial Report pursuant to Paragraph 12(b) below and (y) acceptance by the Subsidizing Agency of said report. Except with the prior written authorization of the Subsidizing Agency, Limited Dividend Distributions cannot be derived or made from borrowed funds or from the sale of capital assets.

For the purposes hereof, the term "Distribution Payments" shall mean all amounts paid from Development Revenues (herein called "Development Revenues") which are paid to any partner, manager, member or any other Related Person of the Developer (collectively, the "Developer Parties") as profit, income, or fees or other expenses which are unrelated to the operation of the Development or which are in excess of fees and expenses which would be incurred from persons providing similar services who are not Developer Parties and who provide such services on an arms-length basis.

(b) No Limited Dividend Distributions may be made when: (i) a default or an Event of Default has occurred and is continuing under this Agreement; (ii) there has been failure to comply with the Subsidizing Agency's notice of any reasonable requirement for adequate (as determined by the Subsidizing Agency using its reasonable discretion) maintenance of the Development in order to continue to provide decent, good quality and safe affordable housing; or (iii) prior to the expiration of the Term hereof, there is outstanding against all or any part of the Development any lien or security interest other than a lien securing the Loan or a lien expressly permitted by the Subsidizing Agency or Lender.

(c) Subject to the provisions set forth above, Limited Dividend Distributions may only be made to the Developer from Surplus Cash, provided that no Limited Dividend Distribution for any Fiscal Year may exceed ten percent (10%) of Developer's Equity.

"Surplus Cash", which is a balance sheet calculation, represents the long-term accumulation of working capital from the Development's revenues that is available at the end of any quarter in a given Fiscal Year to make: (i) Limited Dividend Distributions; (ii) deposits into the Excess Equity Account; and (iii), if necessary, a distribution to the Municipality for the purpose of developing and/or preserving Affordable Housing. The calculation of Surplus Cash is more fully detailed in Part A of the current "M.G.L. Ch. 40B RENTAL DEVELOPMENTS / Instructions for Use of Calculation Tool for Computation of Excess Equity and Limited Dividend Distributions" (as it exists as the date hereof) available from the Subsidizing Agency and which

currently is the form to be used in the preparation of the Audited Annual Limited Dividend Financial Report.

(d) For the purposes hereof the initial amount of "Developer's Equity" shall be \$14,542,753, subject to adjustment as provided herein. The initial amount of "Developer's Equity" is established at the time of Final Approval based on the Developer's projection pursuant to the Cost Method as defined below. This initial amount shall be adjusted and verified at the time of Cost Certification with respect to the construction of the Development in accordance with the "Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants and Municipalities" (as it may be amended, revised or replaced) as the greater of the amounts determined by (a) the "Cost Method" or (b) the "Value Method." For purposes hereof the term "Cost Method" is defined as (i) actual cash contributed by the Developer to the Development, including tax credit equity (if applicable) plus (ii) the deferred portion of the maximum allowable developer fee determined in accordance with DHCD policy, provided that any payment of such deferred fee from project cash flow is treated as a Distribution Payment in accordance with Section 7 hereof, plus (iii) the appraised "as-is" market value of the land that exceeds the actual purchase price paid by the Developer for said land, if any, or less (iv) the actual purchase price paid by the Developer for said land that exceeds the appraised "as is" market value of the land, if any. For purposes hereof the term "Value Method" is defined as (i) the as-complete and stabilized appraised market value of the Development, as determined by an independent appraisal commissioned by the Subsidizing Agency in accordance with this Section 7(d), less (ii) the sum of secured debt on the Development plus public equity, whether structured as a grant or loan, as determined by the Subsidizing Agency.

Thereafter, Developer's Equity may be adjusted not more than once in any five-year period with the first five - year period commencing with the first Fiscal Year of the Development. Any adjustments shall be made only upon the written request of the Developer. Unless the Developer is otherwise directed by the Subsidizing Agency, the initial appraised market value and any adjustment thereto shall be based upon an appraisal commissioned by (and naming as a client) the Subsidizing Agency and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, the Subsidizing Agency. The appraiser shall submit a Self-Contained Appraisal Report to the Subsidizing Agency in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The costs of such appraisal shall be borne by the Developer. Such appraisal shall use assumptions subject to the reasonable approval of the Subsidizing Agency.

Upon completion of an appraisal as provided above, the Developer's Equity shall be adjusted to equal the appraised value of the Development as determined by the appraisal less the unpaid principal amount of the sum of secured debt on the Development plus public equity, whether structured as a grant or loan determined as of the date of the appraisal. Such new Developer's Equity shall be the Developer's Equity as of the date of such appraisal.

(e) In the event that the amount available for Limited Dividend Distributions in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Fiscal Year pursuant to Section 7(c) above, such excess shall be deposited and administered in accordance with Section 7(f) below. Amounts deposited into the Excess Equity Account may, subject to subsections (a)

through (c) above, and pursuant to the Subsidizing Agency's Limited Dividend Policy, be distributed by the Lender (or the Subsidizing Agency, as applicable) to the Developer in amounts equal to the difference between the amount by which Limited Dividend Distributions actually made in any prior Fiscal Year were less than the amount permitted to be distributed under Section 7(c) hereof for such Fiscal Year. In the event that Surplus Cash is insufficient to allow the Developer to take its Limited Dividend Distribution as permitted herein and there are funds in the Excess Equity Account, Lender (or the Subsidizing Agency, as applicable) may distribute to the Developer an amount equal to the unpaid portion of the permitted Limited Dividend Distribution for such Fiscal Year, provided that, in no event shall the amount so distributed exceed the amount available in the Excess Equity Account.

Notwithstanding the foregoing, in the event that the amount available for Limited Dividend Distributions in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Fiscal Year pursuant to Section 7(c) above, the amount of any such excess may be applied to pay, with simple interest, the amount by which Limited Dividend Distributions made in any of the preceding Fiscal Years were less than the amount permitted to be paid under Section 7(c) hereof for such Fiscal Years, subject to the provisions of subsections (a) through (c) above.

(f) Any amounts available for a Limited Dividend Distribution which may not be distributed in any year pursuant to the provisions of Section 7(c) above ("Excess Equity"), shall be deposited in the Excess Equity Account with the Lender (or if the Loan is paid off, with the Subsidizing Agency). No distributions may be made to the Developer from the Excess Equity Account except those permitted pursuant to Section 7(e) and (f) hereof. Upon the occurrence of an Event of Default under this Agreement or the Mortgage, the Lender (or the Subsidizing Agency, as applicable) may apply any amounts in the Excess Equity Account to the payment of all or any portion of the debt secured by the Mortgage.

Upon the Developer's written request, amounts may also be withdrawn from the Excess Equity Account by the Lender (or the Subsidizing Agency, as applicable) during the Term hereof and applied for any purpose described in Section 7(i) hereof or for any purpose (i) that provides a direct and material benefit to Low or Moderate Income Tenants; (ii) that reduces rent charged to Low or Moderate Income Tenants; (iii) that extends the affordability of the Development; or (iv) that provides relocation and transitional assistance to Low or Moderate Income Tenants as described in Section 6 hereof.

To the extent that the Term of this Agreement extends beyond satisfaction in full of the debt secured by the Mortgage, the Subsidizing Agency may, in its sole discretion, during the remaining Term, make amounts available from the Excess Equity Account to: (a) pay all or a portion of the annual monitoring fee that remains outstanding thirty (30) days after its due date, and/or (b) provide relocation and transitional assistance to tenants of Affordable Units.

Upon the Developer's written request, amounts may also be withdrawn from the Excess Equity Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Development as reasonably determined by the Developer; (iii) deposit of all amounts as may be

deposited in a reserve fund for capital replacements reasonably determined by the Developer to be sufficient to meet anticipated capital needs of the Development which may be held by Lender or a lending institution reasonably acceptable to the Subsidizing Agency and which reserves shall be used for capital expenditures for the Development reasonably determined to be necessary by the Developer; (iv) payments of operating expense loans made by the partners, managers or members of the Developer for Development expenses, provided that the Developer shall have obtained prior written approval for such loans from the applicable Lender (or, if there is no mortgage, or after discharge of the Mortgage, from the Subsidizing Agency) and shall have supplied the applicable Lender (or the Subsidizing Agency) with such evidence as the applicable Lender (or the Subsidizing Agency, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to the Development; or (v) for any other purposes, subject to a determination by the Lender (or, if there is no Mortgage, or the Mortgage is discharged during the Term of this Agreement, the reasonable determination by the Subsidizing Agency) that the expenditure is necessary to address the Development's physical or financial needs and that no other Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii) and (iv) above by the Developer shall be subject to the prior written approval of the Subsidizing Agency, which approval shall not be unreasonably withheld or delayed; it being agreed by the Subsidizing Agency that if the Developer can demonstrate that its proposed operating expenditures and reserves are substantially consistent with those made for comparable developments within the Commonwealth of Massachusetts, the Subsidizing Agency shall approve such request. Further, in no event shall such review or approval be required by the Subsidizing Agency to the extent any such capital expenditures or reserves are mandated by Lender.

In any event, cash available for distribution in any year in excess of 20% of Developer's Equity, subject to payment of a Limited Dividend Distribution pursuant to Section 7(c) hereof, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by the Subsidizing Agency as provided herein, or as otherwise directed by DHCD. Upon the expiration of the Limited Dividend Term (as defined in Section 22(b) hereof), any balance remaining in the Excess Equity Account shall (i) be contributed by the Developer to the replacement reserve held for the Development, if such contribution is deemed by the Subsidizing Agency (in its reasonable discretion) to be necessary, (ii) be distributed to the Subsidizing Agency for the purpose of developing and/or preserving affordable housing, or (iii) be distributed as otherwise directed by DHCD.

(g) All funds in the Excess Equity Account shall be considered additional security for the performance of obligations of the Developer under the Mortgage and this Agreement and the Developer hereby pledges and grants to the Lender (or the Subsidizing Agency, as applicable) a continuing security interest in said funds. Furthermore, the Developer recognizes and agrees that (i) possession of said funds by the Lender (or the Subsidizing Agency, as applicable) constitutes a bona fide pledge of said funds to the Lender (or the Subsidizing Agency, as applicable) for security purposes, (ii) to the extent required by applicable law, this Agreement, in combination, as necessary, with other documents referred to herein, constitutes a valid and binding security agreement, and (iii) the validity and effectiveness of said pledge will not be compromised if said funds are held in a bank or other financial institution. The Developer further acknowledges and agrees that, notwithstanding any nomenclature or title given to the Excess Equity Account by the

bank or other financial institution at which the Excess Equity Account is held, or the fact that the Developer's tax identification number is used with respect to the Excess Equity Account, the Lender (or the Subsidizing Agency, as applicable), and not the Developer, shall be the customer of the bank or other financial institution holding the Excess Equity Account; such bank or other financial institution shall comply with instructions originated by the Lender (or the Subsidizing Agency, as applicable) directing the disposition of funds in the Excess Equity Account, without further consent of the Developer; and the Lender (or the Subsidizing Agency, as applicable), and not the Developer, shall have the exclusive right to withdraw funds from the Excess Equity Account.

(h) Payment of fees and profits from capital sources for the initial development of the Development to the Developer and/or the Developer's related party consultants, partners and legal or beneficial owners of the Development shall, be limited to no more than ten percent (10%) of Total Development Costs, net of (i) such fees and profits, and (ii) any working capital or reserves intended for operation of the Development and approved by the Subsidizing Agency. Such limited payment of fees and profits shall not include fees or profits paid to any other party, whether or not related to the Developer, to the extent the same are arm's length and commercially reasonable in light of the size and complexity of the Development. The Developer shall comply with the requirements of Section 20 below regarding Cost Certification. In accordance with the requirements of 760 CMR 56.04(8)(e), in the event that the Subsidizing Agency determines, following examination of the Cost Certification submitted by the Developer pursuant to Section 20 below, that amounts were paid or distributed by the Developer in excess of the above limitations (the "Excess Distributions"), the Developer shall pay over in full such Excess Distributions to the Municipality within fifteen (15) business days of notice and demand given by the Subsidizing Agency as provided herein.

For the purposes hereof, the term "Total Development Costs" shall mean the total of all costs associated with acquisition, construction (including construction contingency), and general development (such as architectural, engineering, legal, and financing fees, insurance, real estate taxes and loan interest) for the Development. Total Development Costs include (i) developer overhead and developer fees, and (ii) any capitalized reserves intended for operation of the Development and approved by the Subsidizing Agency as being specifically excluded from the calculation of fees and profits payable from capital sources for the initial development of the Development.

(i) The Developer shall apply Development Revenues in the following order of priority: (x) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Loan; and (y) payment of or adequate reserve for all reasonable and necessary expenses of the Development as identified below. With respect to the application of Development Revenues as described above, the Developer agrees as follows:

(i) Payment for services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(ii) Reasonable and necessary expenses which may be payable pursuant to subsection (i), above, shall be directly related to the operation, maintenance or management of the Development; and

(iii) Without the Subsidizing Agency's prior written consent, the Developer may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except in connection with the Construction Loan, the Permanent Loan and any refinancing thereof and as expressly permitted herein.

(j) Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Development shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Developer's Equity.

MANAGEMENT OF THE DEVELOPMENT

8. The Developer shall maintain the Development in good physical condition in accordance with the Subsidizing Agency's requirements and standards and the requirements and standards of the Mortgage and any applicable Housing Subsidy Program. The Developer shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding the foregoing, the Subsidizing Agency shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, the Subsidizing Agency has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS

9. Prior to Substantial Completion, the following actions, without limitation, shall be subject to the Subsidizing Agency's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed):

(a) any change, substitution or withdrawal of any general partner, manager, or agent of the Developer; or

(b) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation,

any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation;

(c) the sale, conveyance, transfer, ground lease, or exchange of the Developer's interest in the Development or any part of the Development.

Prior to any transfer of ownership of the Development or any portion thereof or a Beneficial Interest therein, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

10. After Substantial Completion, Developer shall provide the Subsidizing Agency with thirty (30) days' prior written notice, of any sale, conveyance, transfer, ground lease or exchange of the Developer's interest in the Development or any part of the Development, but no consent shall be required. As in Section 9 above, prior to any transfer of ownership of the Development or any portion thereof or interest therein, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

BOOKS AND RECORDS

11. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Developer's compliance with the requirements of this Agreement shall at all times be kept separate and identifiable from any other business of the Developer which is unrelated to the Development, and shall be maintained, as required by applicable regulations and/or guidelines issued by DHCD and/or the Subsidizing Agency from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Subsidizing Agency or DHCD. Failure to keep such books and accounts and/or make them available to the Subsidizing Agency or DHCD will be an Event of Default hereunder.

ANNUAL FINANCIAL REPORT

12. (a) Within ninety (90) days following the end of each Fiscal Year of the Development, the Developer shall furnish the Subsidizing Agency with a complete annual financial report for the Development based upon an examination of the books and records of the Developer containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of the Subsidizing Agency which include: (i) financial statements submitted in a format acceptable to the Subsidizing Agency; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under Section 7 above. A duly authorized agent of the Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by the Subsidizing Agency.

(b) In addition to the financial information required to be furnished by the Developer to the Subsidizing Agency pursuant to Section 12(a) above, the Developer shall furnish to the Subsidizing Agency, within ninety (90) days of the end of its Fiscal Year, an Audited Annual Limited Dividend Financial Report (including a certificate from the independent certified public accountant (the "CPA") who prepared the Developer's audited financial statements) in the form then required by the Subsidizing Agency. The Subsidizing Agency's agreement to waive or modify the requirement of an Audited Annual Limited Dividend Financial Report for a given Fiscal Year shall not be deemed to constitute a waiver or modification of the requirement of an Audited Annual Limited Dividend Financial Report for any subsequent Fiscal Year. Should the Developer fail in any given year to comply with its obligations under this subparagraph, the Developer acknowledges and agrees that such failure constitutes a knowing waiver and relinquishment of any Limited Dividend Distributions to which it might otherwise be entitled for such Fiscal Year pursuant to Sections 7(c) and/or 7(e) above.

(c) Such Audited Annual Limited Dividend Financial Report shall be accompanied by a Certificate of Developer (in the form as then reasonably required by the Subsidizing Agency) certifying to the Developer's best knowledge and belief, under the pains and penalties of perjury, as to matters such as, without limitation, the fact that (i) the Developer has made available all necessary financial records and related data to the CPA who prepared the Audited Annual Limited Dividend Financial Report, (ii) there are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the Audited Annual Limited Dividend Financial Report, (iii) the Developer has no knowledge of any fraud or suspected fraud affecting the entity involving management, subcontractors, employees who have significant roles in internal control, or others where the fraud could have a material effect on the Audited Annual Limited Dividend Financial Report and has no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others, and (iv) the Developer has reviewed the information presented in the Audited Annual Limited Dividend Financial Report and believes that such determination is an appropriate representation of the Development.

(d) The Subsidizing Agency shall have sixty (60) days after the delivery of the Audited Annual Limited Dividend Financial Report to accept it, to make its objections in writing to the Developer and the Developer's CPA, or to request from the Developer and/or CPA additional information regarding it. If the Subsidizing Agency does not object to the Audited Annual Limited Dividend Financial Report or request additional information with respect to it, the Audited Annual Limited Dividend Financial Report shall have been deemed accepted by the Subsidizing Agency. If the Subsidizing Agency shall request additional information, then the Developer shall provide the Subsidizing Agency with such additional information as promptly as possible and the Subsidizing Agency shall have an additional thirty (30) days thereafter to review such information and either accept or raise objections to such Audited Annual Limited Dividend Financial Report. If no such objections are made within such thirty day (30) period, the Audited Annual Limited Dividend Financial Report shall be deemed accepted by the Subsidizing Agency.

To the extent that the Subsidizing Agency shall raise any objections to such Audited Annual Limited Dividend Financial Report as provided above, then the Developer and the Subsidizing Agency shall consult in good faith and seek to resolve such objections within an additional thirty (30) day period. If any objections are not resolved during such period, then the

Subsidizing Agency may enforce the provisions under this Section 12 by the exercise of any remedies it may have under this Agreement.

(e) If upon the acceptance of an Audited Annual Limited Dividend Financial Report as provided above, such Audited Annual Limited Dividend Financial Report shall show that the aggregate Distribution Payments to the Developer during the applicable Fiscal Year exceed the allowable Limited Dividend Distribution for the Developer, then upon thirty (30) days written notice from the Subsidizing Agency, the Developer shall cause such excess to be deposited in the Excess Equity Account from sources other than Development Revenues to the extent not otherwise required by the Lender to remain with the Development.

If such Audited Annual Limited Dividend Financial Report as accepted shall show that there are Development Revenues which are in excess of the allowable Limited Dividend Distribution which the Developer has not distributed ("Excess Development Revenues"), such amounts shall be applied as provided in Section 7(e) above within thirty (30) days after the acceptance of the Audited Annual Limited Dividend Financial Report as set forth in subsection (d) above.

FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

13. At the request of the Subsidizing Agency, the Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development. The Developer covenants and agrees to secure and maintain on file for inspection and copying by the Subsidizing Agency such information, reports and certifications as the Subsidizing Agency may reasonably require in writing in order to insure that the restrictions contained herein are being complied with. The Developer further covenants and agrees to submit to the Subsidizing Agency annually, or more frequently if required in writing by the Subsidizing Agency, reports detailing such facts as the Subsidizing Agency reasonably determines are sufficient to establish compliance with the restrictions contained hereunder, copies of leases for all Affordable Units, and a certification by the Developer that, to the best of its knowledge, the restrictions contained herein are being complied with. The Developer further covenants and agrees promptly to notify the Subsidizing Agency if the Developer discovers noncompliance with any restrictions hereunder.

NO CHANGE OF DEVELOPMENT'S USE

14. Except to the extent permitted by the Comprehensive Permit, as it may be amended pursuant to the Comprehensive Permit Rules, the Developer shall not change the type or number of Affordable Units without prior written approval of the Subsidizing Agency and an amendment to this Agreement. Except to the extent permitted by applicable zoning requirements then in effect, the Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit.

NO DISCRIMINATION

15. (a) There shall be no discrimination upon the basis of race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, public assistance reciprocity or any other basis prohibited by law in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the construction, operation and management of the Development.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, public assistance reciprocity or any other basis prohibited by law, and providing for nondiscrimination and equal opportunity in housing, including without limitation in the implementation of any local preference as requested by the Municipality and approved by the Subsidizing Agency. Failure or refusal to comply with any such provisions shall be a proper basis for the Subsidizing Agency to take any corrective action it may deem necessary including, without limitation, referral to DHCD for enforcement.

DEFAULTS; REMEDIES

16. (a) If any default, violation, or breach of any provision of this Agreement is not cured to the satisfaction of the Subsidizing Agency within thirty (30) days after the giving of notice to the Developer as provided herein, then at the Subsidizing Agency's option, and without further notice, the Subsidizing Agency may either terminate this Agreement, or the Subsidizing Agency may apply to any state or federal court for specific performance of this Agreement, or the Subsidizing Agency may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. No party other than the Subsidizing Agency or its designee shall have the right to enforce the Developer's compliance with the requirements of this Agreement. The thirty (30) day cure period set forth in this paragraph shall be extended for such period of time as may be necessary to cure a default so long as the Developer is diligently prosecuting such a cure.

(b) If the Subsidizing Agency elects to terminate this Agreement as the result of an uncured breach, violation, or default hereof, then whether the Affordable Units continue to be included in the Subsidized Housing Inventory maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD rules and regulations then in effect.

(c) In the event the Subsidizing Agency or its designee brings an action to enforce this Agreement, unless the Developer prevails in such action the Developer shall pay all fees and expenses (including legal fees) of the Subsidizing Agency and/or its designee. In such event, the Subsidizing Agency and/or its designee shall be entitled to seek recovery of its respective fees and expenses incurred in enforcing this Agreement against the Developer and to assert a lien on the

Development, junior to the lien securing the Loan, to secure payment by the Developer of such fees and expenses. The Subsidizing Agency and its designee may perfect a lien on the Development by recording/filing in the Registry one or more certificates setting forth the amount of the costs and expenses due and owing.

(d) The Developer hereby grants to the Subsidizing Agency or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement, or of taking all actions with respect to the Development which the Subsidizing Agency may determine to be necessary or appropriate to prevent, remedy or abate any violation of this Agreement.

MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY

17. The Subsidizing Agency intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay the Subsidizing Agency fees as partial compensation for its services hereunder, as set forth on Appendix B hereto, initially in the amounts and on the dates therein provided, and hereby grants to the Subsidizing Agency a security interest in Development Revenues as security for the payment of such fees subject to the lien of the Mortgage and this Agreement shall constitute a security agreement with respect thereto.

18. The Subsidizing Agency shall have the right to engage a third party (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. The Subsidizing Agency shall notify the Developer and the Municipality in the event the Subsidizing Agency engages a Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Monitoring Agent an annual monitoring fee in an amount reasonably determined by the Subsidizing Agency, payable within thirty (30) days of the end of each Fiscal Year of the Developer during the Term of this Agreement, but not in excess of the amounts as shown on Appendix B hereto and any fees payable under Section 17 hereof shall be net of such fees payable to a Monitoring Agent; and (ii) the Developer hereby agrees that the Monitoring Agent shall have the same rights, and be owed the same duties, as the Subsidizing Agency under this Agreement, and shall act on behalf of the Subsidizing Agency hereunder, to the extent that the Subsidizing Agency delegates its rights and duties by written agreement with the Monitoring Agent. The Monitoring Agent shall apply and adhere to the applicable standards, guidance and policies of DHCD relating to the administrative responsibilities of subsidizing agencies where available, and otherwise shall apply and adhere to the standards and practices of the Subsidizing Agency where applicable.

CONSTRUCTION AND FINAL COST CERTIFICATION

19. The Developer shall provide to the Subsidizing Agency evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications. Upon Substantial Completion, the Developer shall provide the Subsidizing Agency with a certificate of the architect for the Development in the form of a "Certificate of Substantial Completion" (AIA Form G704) or such other form of completion certificate acceptable to the Subsidizing Agency.

As used herein, the term "Substantial Completion" shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

20. Within ninety (90) days after Substantial Completion, the Developer shall provide the Subsidizing Agency with its Cost Certification for the Development. The Subsidizing Agency may allow additional time for submission of the Cost Certification if significant issues are determined to exist which prevent the timely submission of the Cost Certification, and may in certain circumstances (such as a halt in construction for a significant period of time) require submission of an interim Cost Certification within ninety (90) days of written notice to the Developer.

For the purposes hereof the term "Cost Certification" shall mean the Developer's documentation which will enable determination by the Subsidizing Agency of the aggregate amount of all Allowable Development Costs as a result of its review and approval of: (i) an itemized statement of Total Development Costs together with a statement of gross income from the Development received by the Developer to date, all in the format provided in the Subsidizing Agency's Cost Examination Program, which Cost Certification must be examined (the "Cost Examination") in accordance with the attestation standards of the American Institute of Certified Public Accountants (AICPA) by an independent certified public accountant (CPA) and (ii) an owner's certificate, executed by the Developer under pains and penalties of perjury, which identifies the amount of the Construction Contract, the amount of any approved Change Orders, including a listing of such Change Orders, and any amounts due to subcontractors and/or suppliers. "Allowable Development Costs" shall mean any hard costs or soft costs paid or incurred with respect to Development as determined by and in accordance with the Guidelines.

21. In order to ensure that the Developer shall complete the Cost Certification as and when required by Section 20 hereof and, if applicable, pay any Excess Distributions to the Municipality, the Developer has provided the Subsidizing Agency with adequate financial surety (the "Surety") provided through a letter of credit, bond or cash payment in the amounts and in accordance with the Comprehensive Permit Rules and in a form approved by the Subsidizing Agency. If the Subsidizing Agency shall determine that the Developer has failed in its obligation to provide Cost Certification as and when described above or to pay over to the Municipality any Excess Distributions, the Subsidizing Agency may draw on such Surety in order to pay the costs of completing Cost Certification and/or paying such Excess Distribution amounts due plus reasonable attorneys fees and collections costs.

TERM

22. (a) This Agreement shall bind, and the benefits shall inure to, respectively, the Developer and its successors and assigns, and the Subsidizing Agency and its successors and assigns, until the date which is thirty (30) years from the date hereof (the "Term"). Upon expiration of the Term, this Agreement and the rights and obligations of the Subsidizing Agency hereunder shall automatically terminate without the need of either party executing any additional document. The rights and obligations of the Developer and of the Subsidizing Agency under this Agreement

shall continue for the Term, regardless of whether the loan from the NEF Lender is still outstanding. Prior to the expiration of the Term, the Developer shall enter into a use agreement with the Municipality, or as otherwise required by the Comprehensive Permit Rules, ensuring that the Development will comply with the continued affordability requirements applicable to the Development.

(b) Notwithstanding subsection (a) above, the provisions of Section 7 herein shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and the Subsidizing Agency and its successors and assigns, and the Municipality and its successors and assigns, until the date which is the later of (i) the expiration of the term of the Loan or (ii) fifteen (15) years from the date of Substantial Completion (the "Limited Dividend Term").

INDEMNIFICATION/LIMITATION ON LIABILITY

23. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Subsidizing Agency and any Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Subsidizing Agency or the Monitoring Agent by reason of its relationship to the Development under this Agreement and not involving the Subsidizing Agency or the Monitoring Agent acting in bad faith or with gross negligence.

24. The Subsidizing Agency shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

25. Notwithstanding anything in this Agreement to the contrary, no affiliate and no partner, manager, or member of the Developer or affiliate and no officer, director, shareholder, trustee, member, manager, agent, or employee of the Developer or affiliate or of any partner, manager, or member thereof shall have any personal liability for the payment of any sum of money that is, or may become, payable by the Developer under or pursuant to this Agreement or for the performance of any obligation by the Developer arising pursuant to this Agreement, and the Subsidizing Agency shall look only to the Developer's interest in the Development for such payment or performance.

Nothing herein shall preclude the Subsidizing Agency from asserting such claims as it may have at law or in equity against the Developer for any loss or damage the Subsidizing Agency actually suffers as a result of any of the following:

- (i) a willful breach of the provisions limiting payments or distributions to partners, members, managers, or affiliates as set forth in this Agreement; or
- (ii) intentional fraud committed Developer; or
- (iii) a willful breach of a Developer warranty contained in this Agreement or a false representation of a material fact which was known to be false when made; or

(iv) a false representation knowingly made that the individual signing this Agreement on behalf of the Developer has legal capacity and is authorized to sign this Agreement on behalf of the entity on whose behalf such individual has signed.

Nothing contained in the provisions of this Section 25 or elsewhere shall limit: (i) the right of the Subsidizing Agency to obtain injunctive relief or to pursue equitable remedies under this Agreement, excluding only any injunctive relief ordering payment of obligations by any person or entity for which personal liability does not otherwise exist; or (ii) the liability of any attorney, law firm, architect, accountant or other professional who or which renders or provides any written opinion or certificate to the Subsidizing Agency in connection with the Development even though such person or entity may be an agent or employee of the Developer or of any partner, manager, or member thereof.

CASUALTY

26. Subject to the rights of the Lender, the Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by the Developer then the Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

DEVELOPER'S REPRESENTATIONS, COVENANTS AND WARRANTIES

27. The Developer hereby represents, covenants and warrants as follows:

(a) The Developer (i) is a limited liability partnership duly organized under, and is qualified to transact business under, the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Development is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and any other

documents executed in connection with the loan from the NEF Lender, or other encumbrances permitted by the Subsidizing Agency).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

MISCELLANEOUS CONTRACT PROVISIONS

28. This Agreement may not be modified or amended except with the written consent of the Subsidizing Agency or its successors and assigns and Developer or its successors and assigns.

29. The Developer warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

30. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

31. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

32. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

33. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Subsidizing Agency, the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable rental housing opportunities for eligible families who are often denied such opportunities for lack of financial resources.

NOTICES

34. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

The Residences on the Charles, LLP
c/o Criterion Development Partners
37 Walnut Street, Suite 110
Wellesley Hills, MA 02481

with copies by regular mail or such hand delivery
[or facsimile transmission] to:

Joshua Davis, Esquire
Davis Law, LLC
54 Academy Street
Arlington, MA 02476

If to the Subsidizing Agency:

Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108
Attention: Manager of Planning and Programs
Fax: 617-854-1029

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

RECORDING

35. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to the Subsidizing Agency and the Monitoring Agent, if any, evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

GOVERNING LAW

36. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

CONFLICT; PRIORITY OF AGREEMENT

37. In the event of any conflict or inconsistency (including without limitation more restrictive terms) between the terms of the Comprehensive Permit, any other document relating to the Development and the terms of this Agreement, the terms of this Agreement shall control.

This Agreement is senior to the Mortgage and to any other mortgage encumbering the Development. Furthermore, the Developer understands and agrees that, in the event of foreclosure of the Mortgage and the exercise by the Lender of the power of sale therein, the Development will be sold subject to the restrictions imposed hereby. The Developer acknowledges that any discharge or termination of this Agreement shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Developer to comply with the provisions thereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

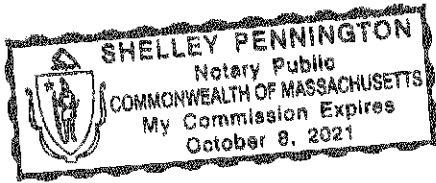
THE RESIDENCES ON THE CHARLES, LLP:

By: [Signature]
Name: JOHN J. ENGLERT
Title: MANAGER

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this 7 day of October, 2021, before me, the undersigned notary public, John Englert personally appeared, proved to me through satisfactory evidence of identification, which was: [] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [X] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he [she] signed it voluntarily for its stated purpose, as manager/managing member for The Residences on the Charles, LLP, a limited liability partnership.



Shelley Pennington
Notary Public
My Commission Expires: 10/8/21

Attachments:

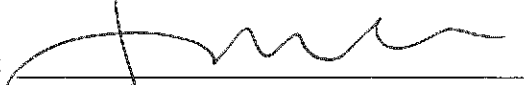
Acknowledgment of Zoning Board of Appeals

Exhibit A – Legal Description

Appendix A – Rent Schedule

Appendix B – Subsidizing Agency Fees

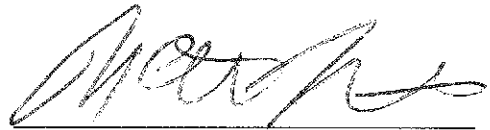
MASSACHUSETTS HOUSING
FINANCE AGENCY, as Subsidizing
Agency as aforesaid

By: 
Jessica Malcolm, Manager
Planning and Programs

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex ss.

On this 6 day of October, 2021, before me, the undersigned notary public, _____ personally appeared, proved to me through satisfactory evidence of identification, which was: at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he][she] signed it voluntarily for its stated purpose, as Manager of the Massachusetts Housing Finance Agency, a body politic and corporate organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts, as amended.


Notary Public
My Commission Expires: 05/19/2028

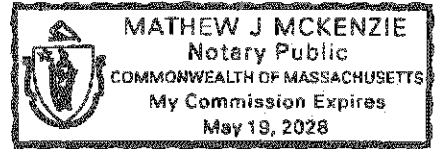


EXHIBIT A

LEGAL DESCRIPTION

A certain parcel of land situated in Newton, Massachusetts and shown on a plan entitled "Plan of Land in Newton, Massachusetts belonging to the Codex Corporation" prepared by Cleverdon, Varney & Pike, Consulting Engineers dated February 19, 1970 and recorded with the Middlesex South District Registry of Deeds in Book 11870, Page 694, bounded and described according to said plan as follows:

- Easterly by Riverdale Avenue, one hundred seventy (170) feet;
- Southeasterly by the intersection of Riverdale Avenue and Midland Avenue, twenty-three and 56/100 (23.56) feet;
- Southerly by Midland Avenue, fifty-five and 70/100 (55.70) feet;
- Easterly across Midland Avenue and by land of others, two hundred twenty-five (225) feet;
- Southerly by land of others, one hundred twenty (120) feet;
- Westerly by Los Angeles Street and across Midland Avenue again, two hundred twenty-five (225) feet;
- Southerly by Midland Avenue, one hundred fifty and 02/100 (150.02) feet;
- Southwesterly by land of others, twenty-six and 05/100 (26.05) feet;
- Westerly by land of others, three hundred fifty-eight and 16/100 (358.16) feet;
- Northwesterly,
Northerly,
Northeasterly,
and Easterly by land of the Commonwealth of Massachusetts (MDC) in six (6) courses measuring thirty-one and 74/100 (31.74) feet, one hundred forty-seven and 64/100 (147.64) feet, one hundred twenty-five and 56/100 (125.56) feet; and one hundred six and 50/100 (106.50) feet, twenty-five and 10/100 (25.10) feet, and seventeen and 93/100 (17.93) feet, respectively.

**APPENDIX A
RENT SCHEDULE (INITIAL)**

Low-Income
Rent Set at 30% of 50% AMI (3BR) or 30% of 65% AMI (2BR)
Qualify with Income at or Below 65% AMI (2BR), or 50% AMI (3BR)

Low/Moderate-Income¹
Rent Set at 30% of 80% AMI
Qualify with Incomes at or Below 80% of AMI

Market Rate
Unrestricted

Number of Bedrooms	1 BR	2 BR	3 BR
Number of Units	NA	1	1
Net SF/Unit	---	1,148	1,295
Elev. (E) / Non-Elev. (N)		E	E
Applicable Base/Gross Rent:		\$1,766	\$1,745
Per: [Boston/Cambridge /Quincy ²] HMFA			
Utility Allowance**		\$266	\$362
Tenant Rent*		\$1,500	\$1,383

	Studio	1 BR	2 BR	3 BR
Number of Units	5	22	17	5
Net SF/Unit	479	685	1,052	1,208
Elev. (E) / Non-Elev. (N)	E	E	E	E
Applicable Base/Gross Rent:	\$1,768	\$1,895	\$2,273	\$2,627
Per: [Boston/Cambridge /Quincy ²] HMFA				
Utility Allowance**	\$112	\$170	\$266	\$362
Tenant Rent*	\$1,656	\$1,725	\$2,007	\$2,625

	Studio	1 BR	2 BR	3 BR
Number of Units	15	65	56	17
Net SF/Unit	513	685	1,083	1,239
Elev. (E) / Non-Elev. (N)	E	E	E	E
Applicable Base/Gross Rent:	\$TBD	\$TBD	\$TBD	\$TBD
Per: [Boston/Cambridge /Quincy ²] HMFA				
Utility Allowance**	N/A	N/A	N/A	N/A
Tenant Rent*	\$TBD	\$TBD	\$TBD	\$TBD

* **Tenant Rents** are net of utility allowances. The total of tenant rent and utility allowance may not exceed the Applicable Base/Gross Rent.

****Utility Allowances** are based on the attached schedule or matrix prepared by the Newton Housing Authority and dated 1/1/2021, as the same may be amended from time to time. The dollar amount listed assumes the following utilities are to be paid by the tenant: *[list all that apply or "All utilities included in rent."]*
 Electric Heat Pump for the Hi-Rise Housing Type;
 Electric Water Heating; Electric Cooking Fuel; and Electricity
 Water and Sewer

The following utilities are to be paid by the owner/landlord and included in the rent: *[list all that apply or "none"]*
 None

[If alternative method for calculation of utility allowances is employed, describe here in detail.]

¹ Maximum NEF Ch. 40B affordable unit Rent Limits are calculated based on 30% of the 80% of the Area Median Income (AMI) Limit as derived from income limits published annually by HUD. Changes to the published income limits will result in changes to the rent limits. Unless subsidized under another housing subsidy program, the 80% of AMI Limit also is the standard used to qualify for occupancy at NEF Ch. 40B affordable housing developments.

² Identify subject income limit area, i.e. Metropolitan Statistical Area (MSA) or HUD Metro FMR Areas (HMFA) – See "Area" definition.

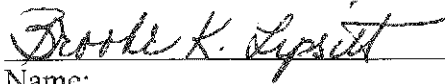
APPENDIX B

FEES PAYABLE TO SUBSIDIZING AGENCY

- **MassHousing NEF Rental Regulatory Agreement Affordability and Limited Dividend Monitoring Fees**
 - Initial Fee Due upon Execution of the Regulatory Agreement by MassHousing
 - \$900 per affordable unit
 - Annual Fee Payable at the time of Initial Occupancy and Annually thereafter
 - \$260.00 per affordable unit per year, with a 2% increase annually on July 1st.

ACKNOWLEDGEMENT OF ZONING BOARD OF APPEALS

The undersigned duly authorized Chairman and members of the Newton Zoning Board of Appeals hereby acknowledges that, after due consideration of the Developer's request, pursuant to the requirements of 760 CMR 56.05(11), the Board hereby agrees that the foregoing Regulatory Agreement satisfies the requirements of the Comprehensive Permit as defined therein. Without limiting the generality of the foregoing, the units in the Development required to be affordable under the Comprehensive Permit shall be affordable if such units are rented in accordance with Section 3, 4 and 5 of the foregoing Regulatory Agreement; any local preference as requested by the Municipality and approved by the Subsidizing Agency shall be implemented only at initial rent-up and only to the extent in compliance with applicable state and federal fair housing rules; and compliance with the limited dividend requirement shall be determined solely by the Subsidizing Agency under the Regulatory Agreement using the standards of the Subsidizing Agency applicable to comprehensive permit projects in accordance with the Comprehensive Permit Rules. In addition, the conflict provision of the Regulatory Agreement shall control over any conflict provision of the Comprehensive Permit.



Name:
Chairman, Newton Zoning Board of Appeals

Name:

Name:

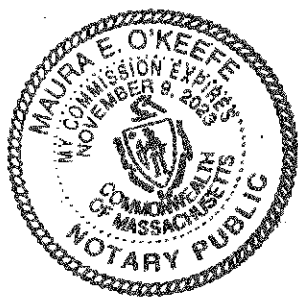
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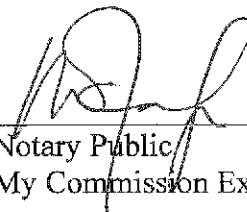
Name:

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this 5th day of October, 2021, before me, the undersigned notary public, Brooke K. Lipsitt personally appeared, proved to me through satisfactory evidence of identification, which was: identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as the Chairman of the Newton Zoning Board of Appeals, for the City of Newton.





Notary Public
My Commission Expires: 11/9/23

Special Permit and Site Plan Approval #214-10(2)

Dated December 6, 2010

(see attached)

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 6, 2010

10 DEC -9 1 P 3: 08
CITY CLERK
NEWTON, MA. 02159

ORDERED:

That the Board of Aldermen (the "Board"), finding that the public convenience and welfare will be substantially served by its action hereunder, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in Chapter 30 of the Revised Ordinances of the City of Newton, Massachusetts (the "Zoning Ordinance"), that the application meets the criteria established in, §30-19(m), §30-20(l), §30-23(c)(2)(a-h) and §30-24 (d)(1)-(5), 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/SITE PLAN APPROVAL in the Business 4 Zoning District (the "BU-4 District") to allow: buildings to exceed dimensional standards for height and number of stories; retaining walls of greater than 4 feet in setbacks; multi-family dwelling; multi-level parking facility; restaurants with greater than 50 seats; open-air businesses; buildings containing individually or in the aggregate 20,000 or more square feet in gross floor area; reduction in parking spaces for compatible uses; waiver of parking spaces for retail, restaurant, office and health club uses constructed and occupied prior to full build-out of the Project; entrance and exit driveways in excess of 25 feet wide; managed and/or valet parking; parking within the required setbacks; a waiver of dimensions for parking stalls, including handicapped parking stalls; two freestanding signs; and signs larger, in quantities, illumination and locations other than allowed by-right in the BU-4 District.

In accordance with the Zoning Ordinance and the applicable rules of the Board, the Petitioner submitted its pre-application for the proposed Project, including the required pre-filing review checklist, to the Chief Zoning Code Official on June 8, 2010. The Chief Zoning Code Official having determined that the Petitioner's submission was complete, issued a Zoning Review Memorandum dated July 29, 2010 itemizing any and all relief required in connection with the proposed project. On August 2, 2010, the Petitioner filed a draft application, addressing all comments noted in the Zoning Review Memorandum, with the Director of Planning and Development, who approved the draft application pursuant to the required Completeness Review. The final application was duly filed with the City Clerk on August 2, 2010.

After due notice of public hearing published in the *Boston Globe* on September 14, 2010, and September 21, 2010, and mailed to all parties in interest all pursuant to and in compliance with the Zoning Ordinance and M.G.L. ch. 40A, the Board held a public hearing at Newton City Hall on September 28, 2010. 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 October 19th, November 4th, November 23rd and November 30th, 2010. 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, Woodward and Curran, Inc. (civil engineering) and McMahan Associates, Inc. (transportation). 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 (as defined below). 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:

1. The Chestnut Hill Square Project will redevelop, in two phases, an existing underutilized site into a mixed-use development of up to 245,000 square feet of commercial space and up to 100 residential units (the "Project"). The Project is anticipated to include approximately 154,000 square feet of retail and restaurant space, 61,000 square feet of medical office space and/or 30,000 square feet of health club space. Phase 1 of the Project will consist of three buildings, for the retail, restaurant, office space, and health club or other by-right uses permitted in the BU-4 District. Phase 2 of the Project will consist of one residential building with commercial space and a parking garage.
2. The entire Project site is located in the BU-4 District, pursuant to that certain Order of the Board # 214-10 which has been adopted by the Board in conjunction with, and immediately prior to, this Order.

With regard to special permits under §§ 30-11(d)(7), (8), (9),(10), and (k), §30-15, Table 3, and the criteria under sec. 30-24(d)(1)-(5):

3. The Project represents a mix of uses, scale and location that advances the City's planning goals, as set forth in the City's Comprehensive Plan and Zoning Ordinance, with respect to smart growth and business development along the Route 9 corridor.
4. The Project site is an appropriate location for the proposed mixed-used development, which is anticipated to include a mix of retail, restaurants including those with over 50 seats, office, health club, residential or other by right uses permitted in the BU-4 District, serving residents and surrounding neighborhoods and attracting visitors because the site is located on Route 9, a state highway and a major transportation and commercial corridor. Furthermore, the Petitioner are required by Mass DOT in accordance with Mass DOT's Section 61 finding to make numerous infrastructure improvements in order to make the Project feasible from a traffic standpoint and to improve travel along this

portion of Route 9 overall. The Project as developed and operated in accordance with the conditions of this Special Permit/Site Plan approval will not adversely affect the surrounding neighborhoods.

5. The design of the Project site and the buildings, including, but not limited to, the building heights, setbacks, open space and pedestrian and vehicular circulation is appropriate for the site and the surrounding area by concentrating the tallest buildings towards the center of the Project, retaining more open space than required in the BU-4 District for commercial projects and creating safe and accessible vehicular and pedestrian circulation routes within the Project.
6. To minimize the Project's impacts on the Florence Street neighborhood, the Project has been designed so that the Florence Street entrance/exit will be not be used for any purpose other than as a secondary construction access point during construction of the Project and for emergency vehicle access during and following construction. In addition, existing vegetation closest to Florence Street will be substantially retained and enhanced with additional trees and plantings to provide a landscaped edge along Florence Street.
7. The Project accommodates vehicular and pedestrian movement through the implementation of numerous on- and off-site measures to support pedestrian, vehicular and bicycle access to the Project, including providing redesigned access to the site in connection with an extensive transportation infrastructure improvement program proposed to improve the Route 9 corridor; newly constructed accessible sidewalks and crosswalks along Rt. 9 and Florence Street and within the Project; landscaped areas within the site to provide safe pedestrian walkways as well as plazas and gathering spaces. As proposed, there will be no nuisance or serious hazard to vehicles or pedestrians.
8. The access to the Project over streets is appropriate for the type(s) and number(s) of vehicles anticipated and the Project will function efficiently within the existing transportation system with the implementation of a proposed transportation infrastructure improvement program. Based on an independent review by McMahan Associates, Inc. the Petitioner has proposed significant roadway improvements to offset the impacts of the proposed Chestnut Hill Square project, many of which originate from and are consistent with "The Route 9 Corridor in Brookline and Newton Report" produced by the Central Transportation Planning Staff for the Massachusetts Highway Department published in February 2002.
9. In addition to those required by current state laws and building code in effect, the Project as proposed incorporates a number of sustainable design measures, which would represent a significant contribution toward the efficient use and conservation of natural resources and energy. These include: redevelopment of an already developed site, open space in excess of that required in the BU-4 District, light-colored reflective roof membranes, solar-ready construction of Building C, construction and operational phase recycling programs, high efficiency exterior lighting systems, a tenant manual requiring tenant water and energy conservation measures and/or participation in Transportation Demand Management measures, tree shaded parking areas, stormwater management

systems (condition 26) and the Petitioner's contributions to the Fats Oils Grease (FOG) program (condition 33). In addition, as required by the Massachusetts Environmental Policy Act (MEPA) and the Department of Energy Resources (DOER), the petitioner will also implement a comprehensive strategy to reduce mobile greenhouse gas emissions.

10. The Petitioner will improve public welfare and safety on the Project site and in the surrounding area through measures such as the installation of an OPTICOM traffic signal preemption system for all modified traffic signals and the implementation of a proposed transportation infrastructure improvement program within the Route 9 corridor to decrease emergency response times within the area.
11. The Petitioner will provide a Construction Management Plan which will include appropriate procedures and protocols to be implemented during construction of the Project to minimize construction related impacts, such as blasting, noise, dust, and construction traffic, and to provide construction parking areas on site to the extent feasible.

With regard to the site plan criteria under §§ 30-23(2)(a)-(h):

12. Based on an independent review by Woodward and Curran, Inc. and comments received from the City's Engineering Department, there is sufficient capacity in the City's water and sewer system to support the Project. The Petitioner has also agreed to: (a) install two 12-inch water lines, which will cross the Project site to connect the water main servicing Route 9 to the water main servicing Florence Street; and (b) make a contribution towards the study of an existing problem related to fats, oils, and grease ("FOG") within the City's sanitary sewer system.
13. The Petitioner will install a stormwater management system, which, based on the independent review by Woodward and Curran, Inc., will result in overall improvement to the flow management and water quality runoff from the Project site.
14. Appropriate landscaping and screening of the parking area(s) and structure(s) will be provided including, but not limited to, buffering from the Florence Street neighborhood by substantially retaining the existing vegetation closest to Florence Street and enhancing the area with additional trees and plantings.
15. The Project is a redevelopment of a site that generally contains only large areas of asphalt and abandoned buildings. To the extent feasible, the Petitioner will minimize removal of viable trees and soil (with nearly all of the existing vegetation immediately along Florence Street intended to be substantially retained and enhanced). The Project will be landscaped in a manner that will enhance the appearance of the site in keeping with the appearance of neighboring, commercially developed areas.
16. The utility services lines along the Project's Route 9 frontage will be located underground subject to necessary permits and approvals. The feasibility of underground location of other utility service lines will be reviewed by the Petitioner in light of other site design considerations, such as the location and configuration of structures, site costs, required earthwork and other similar considerations.

17. No historical resources currently exist on the Project site and demolition of the existing buildings on site requires no further historic review under the City's historic ordinances.

With regard to the reduction in the required number of parking stalls under §30-19(d)(18) and other parking waivers including an additional reduction in parking stalls under § 30-19(m):

18. The Project's use of structured parking, reduction in the number of required parking stalls, and indoor off-street loading facilities creates greater opportunity for open space on the Project site, which allows the Petitioner to increase landscaping and provide for plazas and gathering spaces on site. This design enhances the environmental features of the Project while still providing sufficient parking to accommodate projected demands. The Petitioner's parking space waiver is expressed as a percentage by which the number of spaces that would otherwise be required under the Zoning Ordinance for any given combination of uses in the Project are reduced (the "Parking Reduction").
19. The combination of three (3) or more uses in a single integrated development, as proposed by the Project, allows a reduction of up to 33% of the required number of parking stalls. An additional reduction in the number of parking stalls is justified in view of the anticipated parking demands, and is further justified given that literal compliance is impracticable due to the size and grade of the lot and desired scale, design, and use characteristics for this site. The Petitioner has also submitted a Transportation Demand Management Plan which will help reduce vehicle trips to the site and a Managed Parking Plan which will help manage parking during peak periods.
20. Based on the mix of uses set forth in the application for this Special Permit/Site Plan Approval, at the conclusion of Phase 1, a total of 691 parking stalls will be provided on site, including 22 handicapped spaces; at the conclusion of Phase 2, a total of 908 parking stalls will be provided on site, including 29 handicapped spaces and 392 spaces in the garage; the total number of required parking stalls for the anticipated uses (including 100 dwelling units in the residential building) for both phases is 1375 spaces; the total Parking Reduction for Phase 1 shall not exceed 39% (i.e., a waiver of up to 438 spaces); and the total Parking Reduction at the conclusion of Phase 1 and 2 shall not exceed 34% (i.e., a waiver of up to 467 spaces).

With regard to the criteria for Inclusionary Housing required under section 30-24(f):

21. The Inclusionary Housing Plan filed with the application satisfies all applicable requirements for the issuance of this Special Permit/Site Plan Approval.

With regard to the criteria for waivers for signage under section 30-21(l)

22. The mix of uses within the Project, the complex nature of the building layout (which includes several facades inwardly oriented to encourage pedestrian activity and connectivity) and the unique architecture of the Project, the Board finds that the proposed number, size, location, type and height of the signage program as substantially shown in the Petitioner's Comprehensive Signage Package (see Exhibit A), which include two (2) free standing signs along Rt. 9, are in the best interests of the public as they serve

important wayfinding, building identification and ornamental functions and match the scale of the Project.

With regard to retaining walls in excess of four feet in height under section 30-5(b)(4):

23. The proposed retaining walls greater than four feet in height, which are located within the setbacks as generally shown the Special Permit Plan Set, will not adversely impact immediate abutters because the Petitioner has proposed appropriate materials, designed the walls at an appropriate scale in relation to abutting properties, accommodated stormwater through the proposed stormwater management system so that it is generally detained on-site as required, and will remove any trash and debris that accumulates around and between such retaining walls and abutting properties on at least a semi-annual basis.

In light of the above findings and the following conditions imposed by this Order, the Board of Aldermen finds that the public convenience and welfare of the City will be served and that the criteria of §30-23 and §30-24 for granting a special permit/site plan approval will have been satisfied.

PETITION NUMBER: #214-10(2)

PETITIONER: NED Chestnut Hill Square LLC, successor(s), assign(s) and/or designee(s)

LOCATION: 200-230 Boylston Street, Boylston Street, 7 Hammell Place LLC, 114 and 146 Florence Street; Section 82, Block 2, Lots 8, 9, 10, 11, 12, 13, 14, 15, 15A, 15B, 15C, 18, 29, 30, 32. The project area is shown on the Zoning Plan Exhibit A dated 8/2/10 prepared by Harry R. Feldman, Inc. and referenced on Exhibit A-1 attached hereto.

OWNER: G&K LLC; Key Chestnut LLC; 7 Hammell Place LLC; and NED 220 Boylston LLC

ADDRESS OF OWNER: 200 Boylston Street, Chestnut Hill, MA 02467
One Wells Avenue, Newton, MA 02459

TO BE USED FOR: A mixed-use development of approximately 245,000 square feet of commercial space and up to 100 residential units, and accessory parking as described in Finding 1 above

CONSTRUCTION: New construction including masonry and brick veneer buildings with glass storefronts and windows, accented with metal and glass

windows, accented with metal and glass canopies and metal panels, fieldstone and cement block retaining walls, precast concrete garage

EXPLANATORY NOTES:

The following special permits are granted subject to the Findings and Conditions set forth herein: §30-15, Table 3 to allow buildings to exceed dimensional standards, including height and number of stories as generally shown on the Special Permit Plan Set; §30-5(b)(4) to allow retaining walls of greater than 4 feet, which are located within setbacks as generally shown on the Special Permit Plan Set; §30-11(d)(7) to allow a multi-family dwelling containing up to 100 units, §30-11(d)(8) to allow a multi-level parking facility containing approximately 392 spaces; §30-11(d)(9) to allow restaurants with greater than 50 seats; §30-11(d)(10) to allow open-air businesses; §30-11(k) to allow buildings containing individually or in the aggregate 20,000 or more square feet in gross floor area; §30-19(m) for a waiver of parking spaces by the Parking Reduction set forth in the application for any uses constructed and occupied prior to full build-out of the Project (e.g. 438 of the 1,129 required parking spaces are waived to provide 691 spaces prior to full build-out based on the uses anticipated by the application); §30-19(d)(18) to reduce the sum total of parking spaces required for the Project at full build-out by the Parking Reduction set forth in the application based on the combination of three or more uses in a single integrated development (e.g. 467 of the 1,375 required parking spaces are waived to provide 908 spaces for the Project based on the uses anticipated by the application); §30-19(h)(4), §30-19(m) to allow entrance and exit driveways in excess of 25 feet wide as generally shown on the Special Permit Plan Set; §30-19(h)(5)(b) to allow managed and/or valet parking; §30-19(h)(2)(c), §30-19(m) for parking within the required setbacks and a

waiver of dimensions for parking stalls, including handicapped parking stalls as generally shown on the Special Permit Plan Set; §30-20(f)(9) and §30-20(l) to allow one freestanding primary sign for the residential building and two additional freestanding signs; and §30-20(d)(2), §30-20(c)(1), (2) and (9), §30-20(i)(4), §30-20(l) for signs larger, in quantities, illumination and locations other than allowed by-right

ZONING:

Business 4

Approved subject to the following conditions:

1. All buildings, parking and other site features associated with this Special Permit/Site Plan Approval for the Project shall be located and constructed/implemented consistent with the plan set entitled "Special Permit Application Submission for Chestnut Hill Square Boylston Street/Route 9 Newton, MA" (the "Special Permit Plan Set"), which plans are identified in Exhibit A and are hereby incorporated by reference.
2. This Special Permit/Site Plan Approval shall be deemed to have been (i) exercised, for the purposes of utilizing the benefits of the change of zone authorized by Board Order #214-10, upon the submission to the City of an application for a building permit for all or any portion of the Project; and (ii) 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 this 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 10 year lapse provision contained in condition 3 below.
3. The Project may be constructed in two Phases. Phase 1 of the Project will consist of three buildings for the retail, restaurant, office space, health club or other by-right uses permitted in the BU-4 District. Phase 2 of the Project will consist of one residential/commercial building containing up to 100 residential units and a parking garage. Each of the proposed buildings/site improvements may be constructed and occupied prior to construction of the remaining buildings/site improvements (including the parking structure), provided that adequate parking and landscaping associated with such proposed building, as set forth in the Special Permit Plan Set and application are provided by the Petitioner. The determination as to the adequacy of parking and landscaping shall be subject to the review and approval of the Commissioner of Inspection Services and the Director of Planning and Development and shall be made in accordance with the provisions of condition 16 below. The Petitioner agrees to submit updated construction sequencing plans and landscape sequencing plans to the Director of Planning and Development and the Commissioner of Inspectional Services, together with

a memorandum demonstrating that the current construction and landscaping status and the proposed parking are consistent with the relief granted by this Special Permit/Site Plan Approval in connection with any request for a certificate of occupancy.

Construction of any phase of the Project will not obligate the Petitioner to construct the balance of the Project (or any portion thereof) in a subsequent phase(s), provided that the Petitioner shall be obligated to complete any requirements that are a condition of a certificate of occupancy in accordance with the provisions of condition 16 below. If the Petitioner has not commenced construction of any portion of the Project within ten years of the exercise (as defined in Condition 2(ii) above) of this Special Permit/Site Plan Approval, construction of such portion, even if consistent with the original Special Permit Plan Set, shall require an amendment to this Special Permit/Site Plan Approval.

4. The Petitioner shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, Fire Department, Public Works Commissioner, City Engineer, and City Traffic Engineer. The Final Construction Management Plan shall be materially consistent with the construction sequencing shown in the Special Permit Plan Set, and include appropriate provisions for dust controls, noise, blasting, construction traffic routing, a requirement that access to the site from Florence Street be restricted to use as a secondary construction access point and be chained or gated during construction, and off-site construction parking that may be required to provide parking for uses in operation on the site during construction activities. The final Construction Management Plan shall also include adequate and appropriate procedures and protocols to be implemented to allow effective operation of the Project site during construction, including, without limitation providing temporary cellular antennas to maintain cellular service in the area of the Project during construction activities.
5. The Comprehensive Signage Package submitted by the Petitioner (see Exhibit A) is hereby approved in concept. The Petitioner shall submit a final Comprehensive Signage Package to the Director of Planning and Development for review and approval prior to implementation of the Project signage program. The Director of Planning and Development shall review the Comprehensive Signage Package, in consultation with the Newton Urban Design Commission, and provide the Petitioner with recommendations but in no event shall any such recommendations require the Petitioner to obtain additional relief under the Zoning Ordinance. The Director of Planning and Development shall review any proposed modifications to the Project signage program to ensure that the same are generally in harmony with the findings, safeguards and conditions set forth in this Special Permit/Site Plan Approval and substantially consistent with the Comprehensive Signage Package submitted by the Petitioner in support of the application for this Special Permit/Site Plan Approval.
6. Subject to the provisions hereof and receipt of all necessary state, federal and local permits and/or approvals, including MassDOT review, revision, approval (the "Approvals"), the Petitioner shall design and construct the Route 9 Corridor Improvements and Local Roadway Improvements, which shall include the installation of

an OPTICOM traffic signal preemption system for all modified traffic signals, as substantially set forth in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site Plan Approval (see Exhibit A), as the same may be modified by MassDOT or other applicable authorities (the "Proposed Transportation Improvement Program").

The Board recognizes that certain portions of the Proposed Transportation Improvement Program fall under the jurisdiction of MassDOT or other state agencies and that the Petitioner's obligation to construct the Proposed Transportation Improvement Program may be satisfied through state and/or federal infrastructure work/funding; provided however, that, subject to the provisions of Condition 8 below, the failure of such state and/or federal infrastructure work/funding shall not relieve the Petitioner from this Condition 6. In order to ensure coordination of the Proposed Transportation Improvement Program between state and local jurisdictional areas, the Petitioner, at the request of the Director of Planning and Development, shall provide the City with a summary of the status of MassDOT's review. The Petitioner shall submit to the Director of Planning and Development for review in consultation with the Commissioner of Public Works, City Engineer, the Commissioner of Inspectional Services and the City Traffic Engineer (i) copies of final design plans for the Proposed Transportation Improvement Program upon the final issuance of all of the Approvals for the Proposed Transportation Improvement Program (or any portion thereof); and (ii) a certification from a professional traffic engineer or MassDOT and/or City's Traffic Engineer Peer Reviewer confirming the substantial completion of the Proposed Transportation Improvement Program (or any portion thereof).

Prior to a request for modification of the state highway access permit for the Project, the Petitioner shall meet with the Director of Planning and Development, Commissioner of Public Works, City Engineer, the City Traffic Engineer, and the Commissioner of Inspectional Services to obtain the City's comments and, to the extent feasible, incorporate such comments into the Petitioner's request for modification. Subject to Condition 8 below, the Proposed Transportation Improvement Program shall be substantially completed prior to substantial occupancy of the Project authorized under this Special Permit/Site Plan Approval.

7. Subject to the provisions hereof and receipt of all of the Approvals, the Petitioner shall initially implement the Transportation Demand Management measures, including, without limitation, the shuttle bus service, as generally set forth in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site Plan Approval (see Exhibit A), as the same may be modified by MassDOT or other applicable authorities (the "TDM Measures"). The Petitioner will review the TDM Measures with the Director of Planning and Development prior to the opening of the first building in the Project, including operations of the shuttle service. 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 City Traffic Engineer and shall be

maintained on file at the Project. Subject to Condition 8 below, the TDM Measures shall be substantially implemented prior to initial occupancy 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 City Traffic Engineer.

8. A Certificate of Occupancy may be issued for any portion of the Project prior to completion of the Proposed Transportation Improvement Program or implementation of the TDM Measures upon submission by the Petitioner of a parking analysis and traffic report prepared by a professional traffic engineer to the Commissioner of Inspectional Services, 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 (see Exhibit A), are sufficient to safely and efficiently accommodate the (i) parking required by the Zoning Ordinance (as the same may be adjusted by the Parking Reduction); and (ii) anticipated traffic volumes for 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 City Traffic Engineer.
9. The City has previously secured partial, but not sufficient, funding from another developer for the installation of a traffic signal at the intersection of the Route 9 eastbound offramp and Hammond Pond Parkway (the "HPP Signal") in the amount of \$250,000 (the "Signal Funding"). Upon the issuance of all necessary Approvals, the Petitioner agrees to install or cause to be installed the HPP Signal in accordance with the Proposed Transportation Improvement Program. Upon substantial completion of the HPP Signal, as certified by a professional traffic engineer, the Director of Planning and Development shall request appropriation of the Signal Funding to the Petitioner, provided that nothing in this condition shall require the Mayor and Board of Aldermen to approve such appropriation request.
10. The Petitioner will provide the City with a good faith estimate of the cost to design and construct a sidewalk built to City standards within the northerly portion of the Florence Street right-of-way from 188 Florence Street to the westerly boundary of the Atrium Mall property. If the good faith estimate exceeds \$300,000, the City may either provide the Petitioner with the additional funds necessary to construct the sidewalk or may elect to construct the sidewalk itself in which event the Petitioner shall pay the \$300,000 to the City prior to construction of the sidewalk. If the good faith estimate is less than \$300,000 or the City provides such additional funds to cover the cost in excess of \$300,000, the Petitioner shall, subject to approvals, design and construct the sidewalk. The completion of this work shall not be a condition to the issuance of a Certificate of Occupancy for any portion of the Project, but the Commissioner of Inspectional Services may include the cost to install the sidewalk in the 135% bond or other security in accordance with the provisions of condition 16.

11. Subject to the provisions hereof and receipt of all of the approvals, the Petitioner shall construct the Route 9 sidewalk/landscaped areas proposed in the Special Permit plan set in front of Building C. The Petitioner agrees to seek approval for effective 15' sidewalk/landscaped area (whether owned by MassDOT or Petitioner) which areas may include a five (5) foot sidewalk along Route 9, a four (4) foot planted buffer area and a six (6) foot internal sidewalk/walkway, all subject to review and approval by MassDOT after consultation with the City Traffic Engineer and Director of Planning and Development, provided, further that the petitioner shall not be required to seek amended and/or additional special permits or variances or other relief in connection with the project.

The Petitioner agrees to contact the owners and tenants of the Capital Grille and David's buildings, so called, to discuss expanding the sidewalks adjacent to such buildings and to the extent such owners and/or tenants consent is obtained, and such expansion does not result in zoning or other violations, to implement improved sidewalk conditions at their frontage.

12. The Petitioner shall comply with the Post Development Traffic Monitoring Program set forth in Exhibit B attached hereto.
13. On-site Project sidewalks, pedestrian ramps and handicapped parking spaces shall be constructed in material compliance with any applicable requirements of the City of Newton General Construction Details, the Americans with Disabilities Act (ADA) and/or the Massachusetts Architectural Access Board (MAAB) requirements (unless otherwise allowed by the grant of a waiver or variance). Where new off-site sidewalks are provided at an intersection that the Petitioner will install or modify a traffic signal system, said improvements will be constructed to include pedestrian push buttons, bicycle detection, traffic signal phasing, wheelchair accessible ramps, and associated sign and pavement markings to the extent appropriate and feasible and subject to receipt of all necessary Approvals. The Petitioner agrees to work with the City's Committee for People with Disabilities regarding its reasonable request for the relocation of the handicap parking stalls to enhance utilization of such stalls; provided that no construction, reconstruction, or reconfiguration of Project improvements shall be required other than pavement restriping. The Petitioner will also enforce handicap parking restrictions and will register with the Newton Police Department to allow police enforcement of handicap parking restrictions as well.
14. Managed and/or valet parking operations are permitted at the Project provided they are conducted in all material respects pursuant to a professionally-prepared Parking Management Plan, which shall be maintained on file at the Project and available for review upon request by the Director of Planning and Development. Valet parking must be kept within the Project site.
15. Petitioner will store snow at the Project, except to the extent removal is deemed by the Petitioner to be operationally necessary during peak parking periods. To the extent snow removal is necessary, such removal will be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and available for review upon request by

- the Director of Planning and Development. The Petitioner will request permission from MassDOT to clear the sidewalks along the Route 9 Project frontage of snow and ice. If MassDOT approves the Petitioner's request, the Petitioner shall use commercially reasonable efforts to keep the sidewalks along the Route 9 Project frontage of the site clear of snow and ice at all times in order to improve safe pedestrian travel. The Petitioner shall also remove snow along the sidewalk on its Florence Street frontage in accordance with the City's snow removal ordinance.
16. A Certificate of Occupancy may be issued for any portion of the Project prior to installation of all required landscaping and hardscape/open space areas shown in the Special Permit Plan Set or installation of the sidewalk along Florence Street. Prior, however, to issuance of such Certificate of Occupancy, the Commissioner of Inspectional Services in consultation with the Director of Planning and Development may require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining landscaping, hardscape/open space areas, and the sidewalk along Florence Street to secure the installation of these items. The Commissioner of Inspectional Services may include in the value of such bond or other security the costs associated with any portion or all of the required landscaping, hardscape/open space, and/or Florence Street sidewalk as he deems reasonably necessary to ensure that the site amenities, pedestrian and vehicular circulation pathways, and gathering spaces as show on the Special Permit Plan Site will be installed even if the Project's Phase 1 or Phase 2 are not completely built-out. The review under this condition shall be in addition to the review to be conducted under condition 8 above.
 17. Any plant material required by this Special Permit/Site Plan Approval that becomes diseased or dies shall be replaced with similar material on an annual basis.
 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 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 or otherwise allowed in the BU-4 District such that no increase in the Parking Reduction approved hereunder is required; (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 useable open space 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. Nothing in this Special Permit/Site Plan approval shall prevent the Petitioner from submitting a building(s) to a condominium property regime, provided that the land on which such condominium is located shall not be subdivided. In no event shall the submission of the buildings to a condominium property regime relieve the Petitioner of any applicable requirements of this Special Permit/Site Plan Approval. The violation of the conditions of this Special Permit/Site Plan Approval by an owner or occupant of a single condominium unit within the Project shall not be deemed to be a violation by any other owner or occupant within the Project, but shall be deemed to be a violation by the owner or occupant of the condominium unit(s)/premises violating the conditions of this Special Permit/Site Plan Approval. The City may, at the election of the Commissioner of Inspectional Services, look to the applicable condominium association, or in the event of a lease-hold condominium, the applicable lessor, in connection with such violation. Nothing herein shall limit the rights of a condominium association against a violating owner or occupant.
20. The Petitioner shall merge the existing 11 distinct parcels to one new lot either prior to the issuance of the first building permit for the Project, or within thirty (30) days from the issuance of such permit.
21. The Petitioner shall design and construct an at-grade pedestrian crossing of Route 9 at the signalized Project driveway. Said crossing shall be push button-actuated and include a marked crosswalk. The Petitioner shall work with the City and MassDOT to ensure that the pedestrian crossing phase includes an appropriate amount of time for pedestrians to cross Route 9. The Petitioner shall also install a marked crosswalk across Florence Street and Louise Road at the intersection of these two roadways.
22. The Petitioner will work with the MBTA to establish a bus stop and layover areas within the Project to accommodate the bus routes passing by the site.
23. The Petitioner will implement the TDM Measures as set forth in Condition 7 above and the Post Development Traffic Monitoring Program attached hereto as Exhibit B. The goal of the TDM Measures is to reduce single-occupancy vehicle traffic associated with the Project by a minimum of 10 percent during the commuter peak-hours. This goal (10 percent reduction in single-occupancy vehicle traffic) will be monitored by the Petitioner as a part of the Post Development Traffic Monitoring Program for the Project. Should the Post Development Traffic Monitoring Program indicate that a 10 percent reduction in Project-related peak-hour traffic has not been achieved as a result of the TDM Measures, the Petitioner shall work with the City and the Route 128 Business Council to expand and refine the elements of the TDM Measures.
24. The Petitioner will seek MassDOT approval for roadway treatments or other measures such that the vehicles exiting the easternmost Project driveway are directed through signs and channelization onto the Hammond Pond Parkway off-ramp from Boylston Street.
25. The Petitioner shall not allow the Florence Street entrance/exit to be used for any purpose other than as a secondary construction access point during construction of the Project,

and for emergency vehicle access during and following construction. The Petitioner shall chain or gate the Florence Street access during and after construction.

26. The Petitioner has committed to an ongoing stormwater system cleaning and maintenance effort as described in their Stormwater Operations and Maintenance Plan on file with the City. The Petitioner will comply during construction 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. The Petitioner will provide the City with a Stormwater Pollution Prevention Plan prior the issuance of the initial occupancy permit for any portion of the Project.
27. The utility services lines along the Project's Route 9 frontage will be located underground, subject to necessary Approvals. The feasibility of underground location of other utility service lines will be reviewed by the Petitioner in light of other site design considerations, such as the location and configuration of structures, site costs, required earthwork and other similar considerations.
28. The Petitioner has applied to the Public Facilities Committee to relocate the existing City drain easement and grant the City a new easement for access and maintenance of the new drainage culvert and water main pursuant to the Easement Relocation Plan noted on Exhibit A. The Easement Relocation Plan, once approved by the Board, will be recorded at the Middlesex South Registry of Deeds.
29. The Petitioner will remove any trash that may accumulate between the Petitioner's retaining wall and the retaining wall along Florence Court Condominiums at least semi-annually.
30. The Petitioner shall be responsible at its sole cost for trash disposal for the residential units.
31. 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.
32. The Petitioner will not contest parking restrictions on the north side of Florence Street.
33. The Petitioner will work with the City Engineer regarding a study of an existing problem related to FOG within the City's sanitary sewer system and will negotiate with the City Engineer regarding a contribution towards such study. Such contribution shall be made prior to the issuance of any Certificate of Occupancy.
34. The Petitioner shall prepare a Functional Design Report in support of planned improvements that will provide a review of design alternatives for both the Parker Street and Centre/Cypress Street intersections for review by the Director of Planning and Development in consultation the City Traffic Engineer.

for review in consultation with the Newton Housing Authority for compliance with the provisions of §30-(f)(8).

36. 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 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. with regard to each building permit, 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.
37. The issuance of a Certificate of Occupancy for all or any portion of the Project shall evidence compliance with all Conditions set forth herein except as otherwise expressly set forth herein or properly noted on such Certificate of Occupancy.
38. At the completion of Phase I, the Petitioner will review the as-built condition with the Commissioner of Inspectional Services in consultation with the Director of Planning and Development to determine to what extent, if any, additional pedestrian amenities (i.e. reconfiguration of existing gathering spaces, width of sidewalks, and similar issues) can be reasonably incorporated consistent with the approved site plan. The Petitioner shall not be required to seek amended and/or additional special permits, variances or other relief and shall, further, only be obligated to implement such amenities under the consistency review provision of this Special Permit/Site Plan Approval.

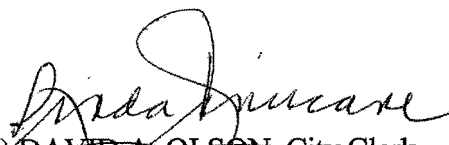
Under Suspension of Rules

Readings Waived and Approved

20 yeas 0 nays 4 absent (Aldermen Freedman, Gentile, Salvucci, and Sangiolo)

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 December 9, 2010. 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:


(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 M.G. Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:

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

EXHIBIT A¹

Special Permit Application Materials

- **Special Permit Application**
 - Special Permit Narrative
 - Zoning Table
 - Parking Table
 - As-of-Right Diagram
 - Easement Relocation and Discontinuance Plan
 - Inclusionary Housing Plan
 - Traffic Impact and Access Study, including the Traffic Demand Management Program
 - Shared Parking Analysis
 - Stormwater Management Report
 - Shadow Study
 - Comprehensive Signage Package
- **Special Permit Plan Set:**
 - C.00 Cover Sheet
 - C.01 Context Plan / Area Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.02 Existing Conditions Site Plan (3/17/09, Stamped and Signed by Robert Applegate, a Professional Land Surveyor)
 - C.03 Layout and Traffic Control Plan (8/2/10, revised 11/30/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.04 Erosion Control Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.05 Grading and Drainage Plan (4/27/10, Stamped and Signed by John Stoy and Duncan Wood, Professional Engineers)
 - C.06 Utility Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.07 Fire Truck Circulation Plan (8/2/10, , revised 11/30/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.08 Service Truck Ingress Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.09 Service Truck Egress Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.10 Pedestrian Circulation Plan (8/2/10, , revised 11/30/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.11 General Notes (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.12 Erosion Control Details (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.13 Drainage Details (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.14 Drainage Details (8/2/10, Stamped and Signed by John Stoy and Duncan Wood, Professional Engineers)
 - C.15 Utility Details (8/2/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.16 Utility Details (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.17 Site Details (8/2/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.18 Grade Plane Calculations (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - SL.01 Site Photometric / Lighting Plan (8/2/10, , revised 11/30/10 Prepared by WSP/Flack and Kurtz, Lighting Consultants)
 - SL.02 Lighting Fixture Lot Sheet (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - L.01 Overall Landscape Plan (8/2/10, , revised 11/30/10 Prepared by CBA Landscape Architects)
 - L.02 Enlarged Landscape Plan North (8/2/10, , revised 11/30/10 Prepared by CBA Landscape Architects)
 - L.03 Enlarged Landscape Plan South (8/2/10, , revised 11/30/10 Prepared by CBA Landscape Architects)
 - L.04 Plant List & Detail (8/2/10, Prepared by CBA Landscape Architects)
 - T.01 Tree Inventory and Location Plan and List (8/2/10, Prepared by CBA Landscape Architects)
 - A.01 Grocer Level and Parking Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.02 Retail Level 1 Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.03 Health Club Level 2 Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.04 Office & Typical Residential Upper Level Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.05 Site Sections (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.06 Site Elevations East, West and North (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.07 Site Elevations South & Interior Retail (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - CS.01 Construction Sequencing Plan 1 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.02 Construction Sequencing Plan 2(8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.03 Construction Sequencing Plan 3 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.04 Construction Sequencing Plan 4 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.05 Construction Sequencing Plan 5 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.06 Construction Sequencing Plan 6 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.07 Construction Sequencing Plan 7 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - Consolidation Plan of Land (3/19/09, Prepared by Harry R. Feldman, Inc.)
 - Zoning Plan Exhibit A (8/2/10 Prepared by Harry R. Feldman, Inc.)
 - Easement Relocation Plan (8/2/10, Prepared by Harry R. Feldman, Inc.)
 - RW-1 – Retaining Walls (or systems of walls) greater than four feet in height

¹ In the event of any inconsistency between the plans set forth on this Exhibit A, the final design shall be deemed to conform to the Layout and Traffic Control Plan (C.03).

EXHIBIT B

Post Development Traffic Monitoring Program

The Petitioner shall complete a post development traffic monitoring program for the Project in order to: (i) document the actual traffic characteristics of the Project; (ii) evaluate the success and refine the elements of the TDM Measures; and (iii) assess traffic volumes and operating conditions at the two primary driveways serving the Project and at specific off-site intersections. The monitoring program will consist of the following elements:

1. Collection of 24-hour automatic traffic recorder counts over a continuous 7-day, week-long period on the two primary driveways serving the Project.
2. Collection of weekday morning (7:00 to 9:00 AM), weekday evening (4:00 to 6:00 PM) and Saturday midday (11:00 AM to 2:00 PM) peak period manual turning movement counts at the following intersections hereafter defined as the "traffic monitoring program study area":
 - Route 9 at the signalized Project driveway/The Mall at Chestnut Hill Driveway
 - Route 9 at the east project driveway
 - Route 9 at Langley Road
 - Route 9 at Florence Street
 - Route 9 at Tully Street
 - Route 9 at Hammond Street
 - Hammond Street at Heath Street
 - Hammond Pond Parkway at the Route 9 Ramps (two locations)
 - Hammond Pond Parkway at the Chestnut Hill Shopping Center Driveway
 - Hammond Pond Parkway at Heath Street
 - Parker Street at the Route 9 Ramps (two locations)
3. Documentation of commuting modes of residents and employees of the Project including public transportation and shuttle bus use.

The traffic counts that form the basis of the Post Development Traffic Monitoring Program will be performed under average-month conditions while public schools are in regular session (April-June, September-October). The results of the Post Development Traffic Monitoring Program will be submitted to the City prior to the end of the calendar year in which the study is completed.

If the results of the Post Development Traffic Monitoring Program indicate: (1) the need to adjust the traffic signal timing for the improved or monitored intersections along Route 9, the Hammond Pond Parkway and/or Parker Street within the traffic monitoring program study area to accommodate traffic volume fluctuations solely related to the Project; (2) the need to install the second traffic control signal at the Parker Street/Route 9 westbound ramp intersection; and/or (3) the actual measured traffic volumes associated with the Project as then constructed and occupied exceed the trip estimates presented in the June 1, 2010 Supplemental Traffic Impact Assessment by more than 10 percent of the projected trip generation for then occupied uses as

measured at the two primary driveways serving the Project; then the Petitioner shall implement the following corrective measures as may be necessary and appropriate, as certified by the professional traffic engineer of record for the Project, and subject to receipt of all necessary rights, permits and approvals:

- a. Adjust the traffic signal timing, phasing and coordination for the improved or monitored intersections along Route 9, the Hammond Pond Parkway, Parker Street, Hammond Street and/or Tully Street within the traffic monitoring program study area;
- b. To the extent necessary implement refinements to on-site traffic flow and parking management;
- c. Construct the traffic signal at the Parker Street/Route 9 westbound ramp intersection and interconnect and coordinate said traffic signal with the traffic signal at the Parker Street/Route 9 eastbound ramp intersection;
- d. Expand or modify the elements of the TDM Measures in order to increase use of public transportation, the shuttle service, car/vanpools or other alternatives to automobile travel. These measures may include expansion of the shuttle bus service schedule and/or route (service area), and other incentives that are designed to encourage residents, employees and customers to use public transportation, the shuttle service or to car/vanpool, or other additional TDM Measures subject to review of the Director of Planning and Development in consultation with the City Traffic Engineer.

The Post Development Traffic Monitoring Program will commence upon occupancy of the first commercial building within the Project. The results of the Post Development Traffic Monitoring Program will be submitted annually in the form of a memorandum for review by the Director of Planning and Development in consultation with the City Traffic Engineer. The Post Development Traffic Monitoring Program will continue on an annual basis for not less than five (5) years following substantial completion of both Phases of the Project, provided, however, if the Petitioner elects not to fully complete either Phase of the Project, the Traffic Monitoring Program shall continue for a period not less than five (5) years following the Petitioner's notice to the Commissioner of Inspectional Services and the Director of Planning and Development that it has reached substantial completion of the Project.

EXTERIOR FINISH LEGEND - (SEE EXTERIOR ELEVATION FOR TAGS)			
MARK	DESCRIPTION	MANUFACTURER	SIZE / COLOR
AL - 01	ALUMINUM PANEL	ALUCOBOND	MATCH EXISTING STOREFRONT
BRK - 01	FACE BRICK	-	-
BRK - 02	CALCIUM SILICATE MASONRY UNITS	-	RENAISSANCE WHITE - ROCK FACE
BRK - 03	CALCIUM SILICATE MASONRY UNITS	-	RENAISSANCE WHITE - SMOOTH
PVC - 01	PRE MOLDED CORNICE	CHEMCREST	TBD
SF - 01	ALUMINUM STOREFRONT	-	FINISH TO MATCH EXISTING STOREFRONT
STN - 01	STONE BASE	-	GRANITE

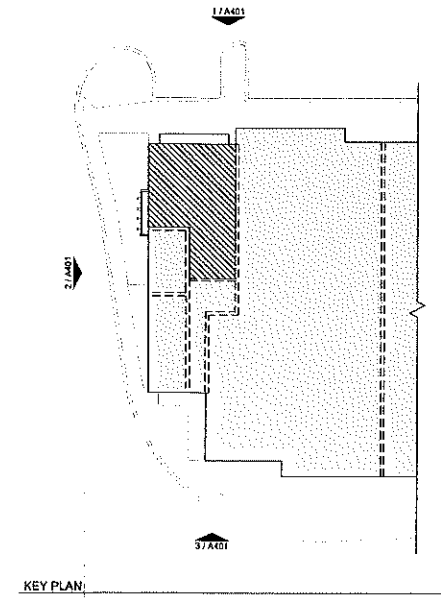
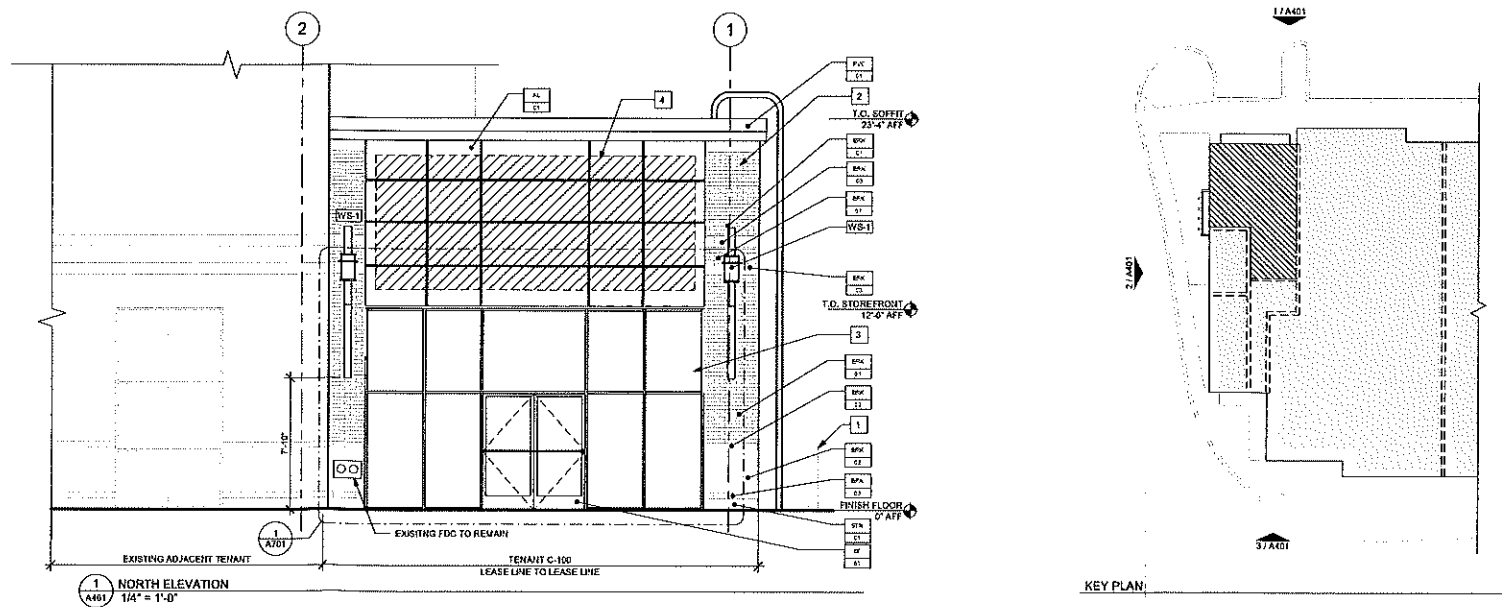
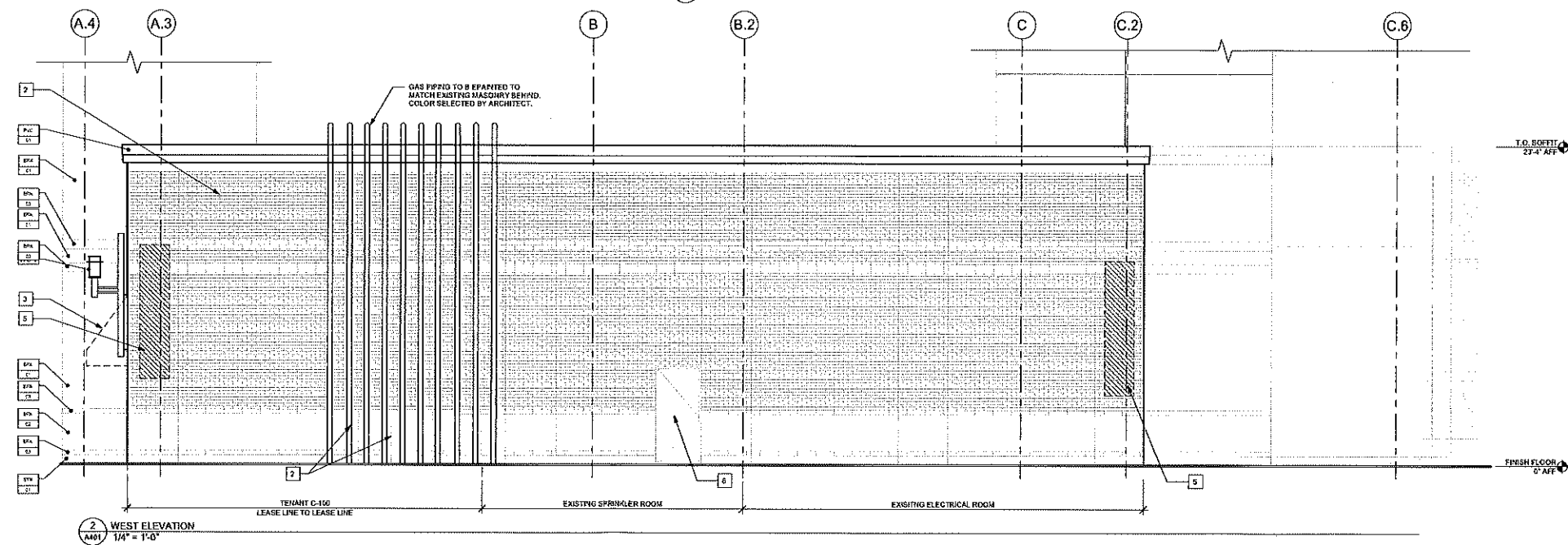
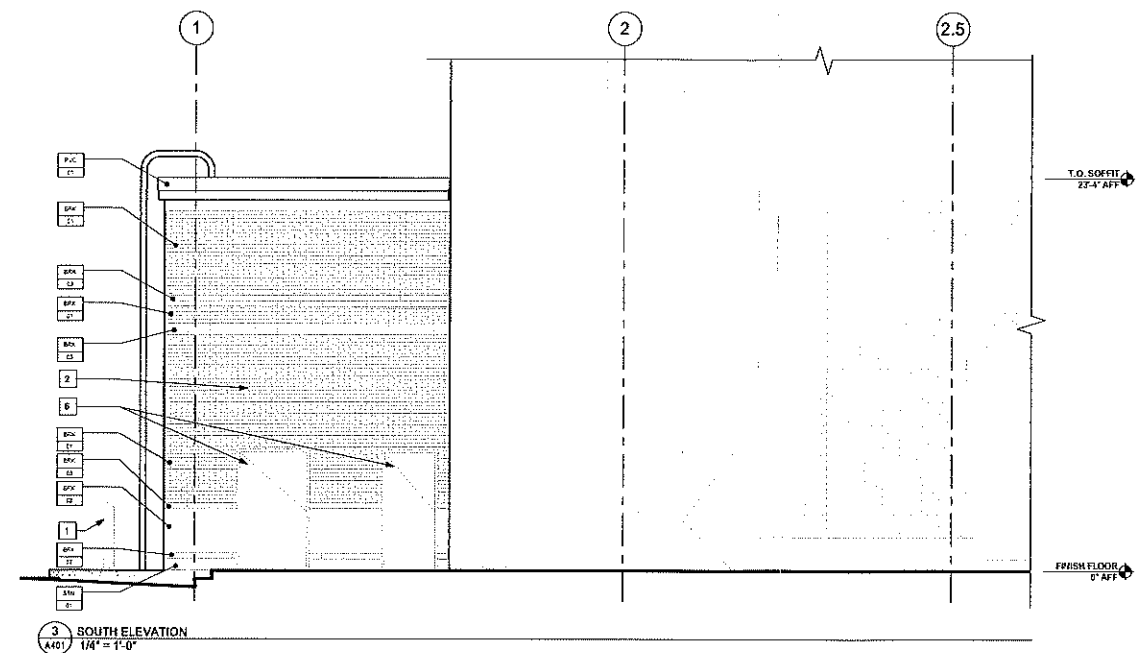
FINISH NOTES

- 1 EXISTING BOLLARDS TO REMAIN.
- 2 EXISTING EXTERIOR WALLS AND FINISHES TO REMAIN, TYP.
- 3 NEW METAL FRAMED FABRIC AWNING INSTALLED BY TENANT. EXISTING DOOR TO REMAIN.
- 4 ZONE OF NEW EXTERIOR PLYWOOD SHEATHING FOR FUTURE TENANT SIGNAGE. (SHOWN AS 8'-6" X 19'-0")
- 5 AREA OF PREVIOUS LIGHT FIXTURE LOCATION. PATCH AND REPAIR DAMAGED MASONRY AS REQUIRED TO MATCH EXISTING ADJACENT WALL FINISH.
- 6 EXISTING DOOR AND FINISHES TO REMAIN.

EQUIPMENT LEGEND



WS - 1: EXISTING WALL SCONCE LIGHT FIXTURE TO BE RELOCATED.



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www.hfa.com

REGULATION COMPLIANCE
This drawing was prepared in accordance with the requirements of the Massachusetts State Board of Building, Fire and Mechanical Inspectors (BFBM) and the National Fire Protection Association (NFPA) codes. The contractor is responsible for obtaining all necessary permits and ensuring compliance with all applicable codes and regulations.

CHESTNUT HILL SQUARE
Store Number: BUILDING C - TENANT #100
200 BOYLSTON STREET
NEWTON, MA 02467
JOB NUMBER: 4017-2400

ISSUE BLOCK

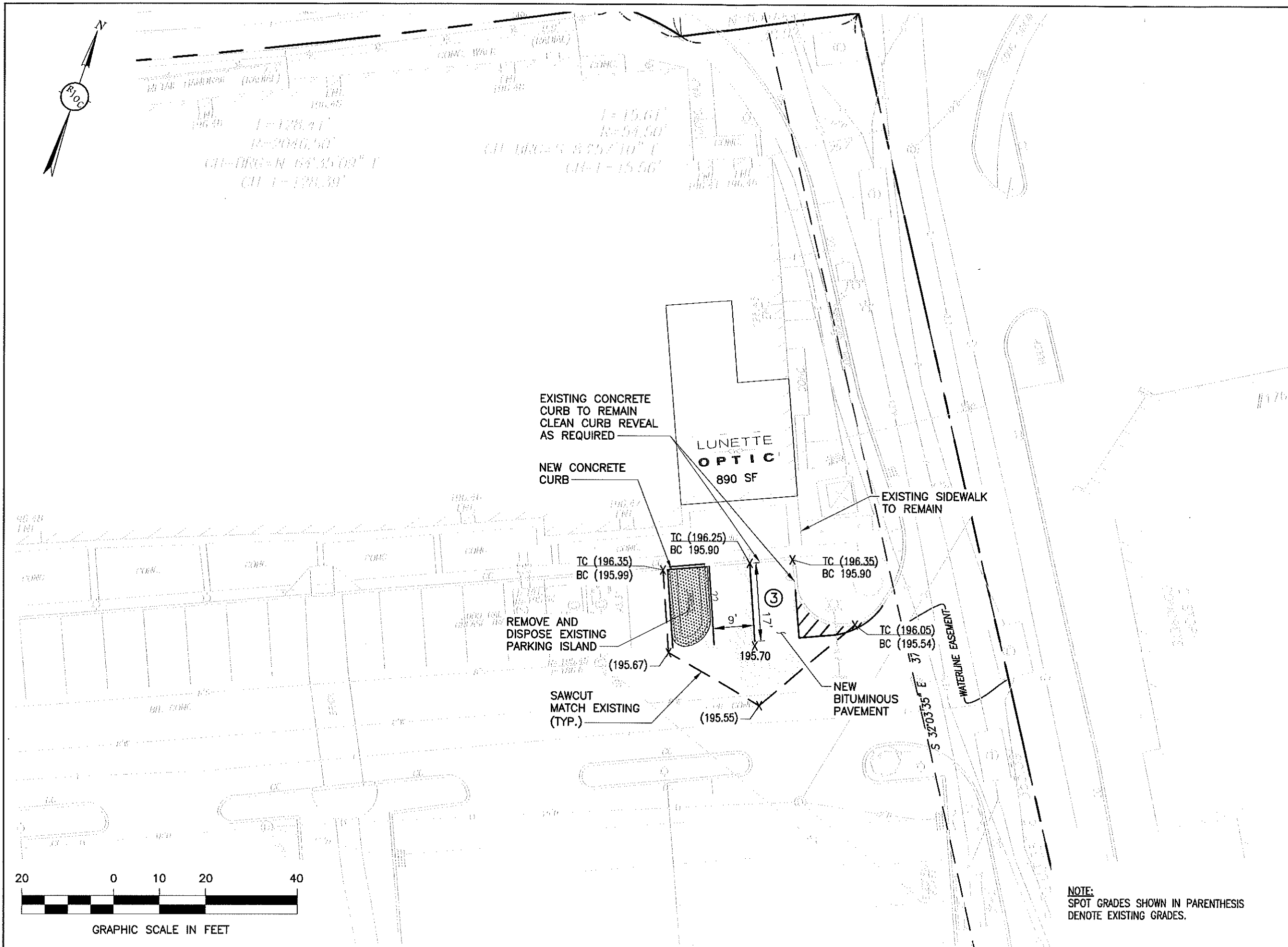
NO.	DATE	DESCRIPTION

CHECKED BY: Checker
DRAWN BY: Author
DOCUMENT DATE: 9-15-2017

NOT FOR CONSTRUCTION

EXTERIOR ELEVATIONS
SHEET: **A401**

07/2017/11/15/17
C:\p\171115\171115.dwg
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Designed by: SPG
 Drawn by: RJK
 Checked by: SPG
 Scale: 1"=20'
 Date: 08/24/2017

Prepared For:
NewEngland
 DEVELOPMENT
 76 PARK STREET
 BOSTON, MA 02116
 617-956-8700

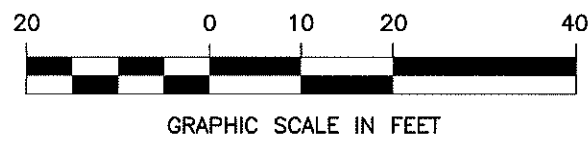
Prepared By:
RJO'CONNELL & ASSOCIATES, INC.
 CIVIL ENGINEERS, SURVEYORS & LAND PLANNERS
 80 MONTVALE AVE
 STORSHAM, MA 02180
 PHONE: (508) 278-0180
 FAX: (508) 278-0112

Project Name:
**CHESTNUT HILL SQUARE
 LUNETTE OPTIC
 NEWTON, MA**

Drawing Name:
SITE PLAN

Drawing No.:
SP-1
 Project No.: 16087

NOTE:
 SPOT GRADES SHOWN IN PARENTHESIS
 DENOTE EXISTING GRADES.



Drawing name: G:\M\Newton\New England Development\Main\Lunette Optic\Panera SP-1 Site Plan.dwg
 Aug 23, 2017 11:59am

Consistency Determination

Dated August 8, 2017

(see attached)

City of Newton



Setti D. Warren
Mayor

Inspectional Services Department

John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
Telephone: (617) 796-1060
Fax: (617) 796-1086
www.ci.newton.ma.us

Building/Zoning Inspectors
(617) 796-1060
Zoning Board of Appeals
(617) 796-1065
Plumbing and Gas Division
(617) 796-1070
Electrical Division
(617) 796-1075
TDD/TTY
(617) 796-1089

August 8,, 2017

Timothy W. Sullivan, Esq.
goulston&storrs, PC
400 Atlantic Avenue
Boston, MA 02110-3333

Re: Consistency ruling for additional level on garage and residential building changes to footprint.

Dear Mr. Sullivan:

I am in receipt of your request for a consistency ruling with regard to the addition of another (fifth) level on the existing garage and a slight change in the layout of the residential building (Phase 2). I have read your letters and attachments. This letter should serve as a cover letter to the facts as presented therein. I understand that the purpose of providing this additional parking is to provide relief during the construction of the proposed residential building. While the level will remain after the residential building is complete as it will also serve as additional parking for the center as a whole.

I find that the addition of a single additional level is not detrimental to the context of the neighborhood nor is it out of character with the center. The additional height is granted in the Special Permit #214-10 (2). This project is not in any way an expansion of the center for tenants or customers but rather a way to accommodate cars during construction and thereafter. I find the proposed project to be consistent with the intent and spirit of the original Special Permit, #214-10(2).

Sincerely,

John D. Lojek

cc: Barney Heath, Director of Planning and Development
David Olson, Clerk of the City Council

*Strict code enforcement makes the city safer
Before buying, renting or leasing check zoning*

March 23, 2017

VIA HAND DELIVERY

John Lojek
Commissioner of Inspectional Services
Newton City Hall, Room 202
1000 Commonwealth Ave.
Newton, MA 02459

Re: Chestnut Hill Square
Consistency Determination and Minor Modification Approval; Residential Project

Dear Commissioner Lojek:

As you know, in connection with the Chestnut Hill Square mixed-use development project on Boylston Street in the City of Newton (the "Project"), the Board of Aldermen granted that certain Special Permit and Site Plan Approval #214-10(2) to NED Chestnut Hill LLC, an affiliate of CHS Commercial Owner LLC (the "Applicant"), in a decision dated December 6, 2010 (the "Special Permit").

The commercial component of the Project, including required parking ("Phase 1"), are complete and occupied at the present time. As you know, we have worked with the Planning Department to confirm that the conditions of the Special Permit relating to Phase 1 have been satisfied and Phase 1, as constructed, is consistent with the Special Permit.

The Applicant is now in a position to advance the previously-approved residential component of the Project ("Phase 2"), together with additional parking. Phase 2 is anticipated to include the construction of (i) a residential building containing up to 100 dwelling units, (ii) approximately 107 parking spaces in support of the residential building, and (iii) an additional level on the existing parking structure, with approximately 76 parking spaces. Upon completion, the Project will provide approximately 1,027 parking spaces. In anticipation of submitting a building permit application for the commencement of Phase 2, the following materials are enclosed for your review:

- Plan Set, including:
 - Existing Conditions
 - Overall Site Plan
 - Grade Plane Calculation
 - Site Plan
 - Grading and Drainage Plan
 - Utility Plan
 - Fire Truck Circulation Plan
 - Landscape Plan and Materials
 - Construction Sequencing Plans
 - Existing Parking Structure Addition Plan
 - Substitute Parking Structure Plans
 - Approved Residential Structure Plans
 - Existing Parking Structure Addition Elevation
 - Building Elevations
- Stormwater Memo
- Utilities Memo

- Traffic Letter
- Parking Summary Table, showing:
 - At full build out, a total of approximately 1027 proposed parking spaces, exceeding the Special Permit requirement to provide at least 932 parking spaces
 - The Project will maintain, at all times, at least 786 parking spaces, which complies with the minimum required by the Special Permit
 - The additional parking to be constructed in Phase 2 will help improve site operations and mitigate any potential congestion or inconvenience.

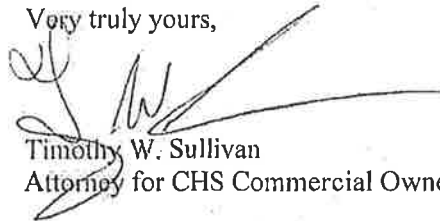
The design, layout, utilities, traffic and related materials in support of the Project were fully reviewed and approved at the time of the issuance of the Special Permit. Accordingly, the materials itemized above and submitted herewith demonstrate that Phase 2 is consistent with previously reviewed and approved materials and the Special Permit. As you will note, certain upgrades have been incorporated into Phase 2, including a slightly modified residential building footprint to improve the site layout and additional structured parking spaces in support of both the proposed residential building and the existing commercial components of the Project. To the extent such upgrades constitute minor modifications to the approved plans, the modifications are allowed pursuant to condition 18 of the Special Permit. The following bullets demonstrate that the plans submitted herewith, including any minor modification to the approved plan set, satisfy the criteria required for approval pursuant to Section 18 of the Special Permit:

- **MEPA** – The proposed minor modifications will not increase vehicle trips, impervious area, number of parking spaces or other reviewable area of impact beyond the thresholds requiring Massachusetts Environmental Policy Act (MEPA) review. Accordingly, the first criterion of Condition 18 is satisfied because the proposed minor modifications do not require further MEPA review.
- **Use/Parking** – The proposed minor modifications will not exceed the approved total commercial and residential uses approved for the Project (i.e., 245,000 square feet of commercial space and up to 100 residential units). Additionally, as demonstrated by the enclosed parking summary table and parking chart, the total parking to be provided will exceed the parking required by the Special Permit without the need to increase the 34% parking waiver applicable to the full build out. The 1,027 parking spaces to be provided at the Project exceeds the parking required (932 spaces) by the Special Permit. Accordingly, the second criterion of Condition 18 is satisfied because the proposed minor modifications constitute a reallocation or reconfiguration of square footage among commercial and residential uses already approved in the Project and an increase in the parking waiver granted by the Special Permit is not required.
- **Zoning Relief** – The proposed minor modifications are consistent with the zoning relief previously granted by the Special Permit, and the increased garage height is a category of relief granted or modified pursuant to the Special Permit. Accordingly, the third criterion of Condition 18 is satisfied because the proposed minor modifications do not require a new type of zoning relief (other than the categories of relief granted and/or modified pursuant to the Special Permit).
- **Open Space** – The amount of open space at the Project is maintained. Accordingly, the fourth criterion of Condition 18 is satisfied because the percentage of useable open space as shown in the approved plan set is not decreased.

John Lojek
Page 3

We trust that this letter, together with the enclosed materials, completes your file to demonstrate (i) the consistency of Phase 2 with the Special Permit and prior submitted materials on file and (ii) the satisfaction of Condition 18 of the Special Permit to the extent you determine there are proposed minor modifications, such that a consistency finding by you is appropriate. We understand that you may seek an Advisory Opinion from the Land Use Committee to assist you in your review. Thank you for your attention to this matter and please feel free to contact me with any questions.

Very truly yours,



Timothy W. Sullivan
Attorney for CHS Commercial Owner LLC

Enclosures

cc: John Twohig
Michael Barelli

CONSISTENCY FINDING CONFIRMED:
NEWTON INSPECTIONAL SERVICES DEPARTMENT

By:  8/8/17
John Lojek, Commissioner

Chestnut Hill Square
Summary of Current & Anticipated Parking Supply

Construction Phase	Parking Supply	Required Spaces¹	Comply
Current <i>Existing Program</i>	944	786	YES
Phase 1 (1 month) <i>Garage Steel Erection</i>	798	786	YES
Phase 2 (2-4 months) <i>Garage Fit-Out</i>	873	786	YES
Phase 3 (16 months) <i>Residential Building Construction</i>	920	786	YES
Post-Completion <i>Existing Program + 91 units</i>	1027	925	YES

1. Required Spaces based on development program noted above and applicable waivers per the Special Permit
2. Parking supply changes will be coordinated with Chestnut Hill Square shopping patterns



35 New England Business Center Drive
Suite 140
Andover, MA 01810-1066
Office: 978-474-8800
Fax: 978-688-6508
Web: www.rdva.com

Ref: 7538

February 23, 2017

CHS Residential Owner LLC
c/o Mr. Michael Barelli
New England Development
75 Park Plaza
Boston, MA 02116

Re: The Residences at Chestnut Hill Square
210 Boylston Street (Route 9)
Newton, Massachusetts

Dear Michael:

Vanasse & Associates, Inc. (VAI) has completed a review of the current proposal by CHS Residential Owner LLC (the "Developer") to advance the previously-approved residential component of the Chestnut Hill Square mixed-use development located at 210 Boylston Street (Route 9) in Newton, Massachusetts (the "Project"). The residential component of the Project was included as a part of the overall development program that was approved by way of the December 6, 2010 Board Order issued by the City of Newton Board of Aldermen granting a Special Permit and Site Plan Approval for the Project, and the current development proposal is consistent with these approvals.

At the present time, the commercial component of the Project is complete and consists of approximately 242,028 square feet (sf) of commercial space, and encompasses the following specific land uses and supporting parking:

- 146,363 sf of retail and restaurant space
- 59,100 sf of medical office space
- 36,565 sf health club (including retail space)
- 944 parking spaces

At this time, the Developer plans to commence construction of an approximately 100-unit residential apartment building and to add 83 parking spaces to the overall parking supply, resulting 1,027 parking spaces at the completion of the residential building. Both the size of the residential building (100 units) and the proposed parking supply (1,027 spaces) are within the scope of the Project that was referenced in the Special Permit. We note that, while the total amount of commercial space that has been constructed is slightly less than that approved as a part of the Special Permit, the allocation of specific uses varies slightly from the mix of uses originally contemplated. Specifically, the health club component of the Project is slightly larger than originally contemplated, but also includes a retail component. The impacts associated with the minor adjustment in floor area are off-set by the reduction in the size of the other components of the Project.

CHS Residential Owner LLC
c/o Mr. Michael Barelli
February 23, 2017
Page 2 of 2

A review of the Site Plan for the Project with the addition of the previously-approved residential building indicates that there are no changes to the internal circulation or parking layout that would alter traffic volumes, trip patterns, or the elements of the Project site access and off-site improvements that have been constructed to support the build-out of the Project as approved as a part of the Special Permit, which included the residential building.

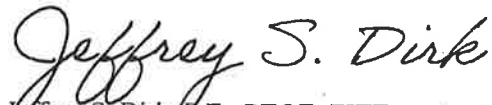
The 2016 Traffic Monitoring Program that was completed for the Project¹ concluded that the transportation system serving the Project site "...continues to function as designed and within accepted standards given current traffic volumes and flow patterns, and affords sufficient capacity to accommodate the planned construction of the residential component of the Project." The monitoring program indicated that the Project is generating lower traffic volumes on an average weekday and on a Saturday when compared to the traffic volume projections that were presented in the 2010 Supplemental Transportation Impact Assessment (STIA) that was prepared in support of the Project and which formed the basis of the roadway, intersection and traffic control improvements that were designed and constructed in conjunction with the Project. We note that the STIA reflected the development of a slightly smaller residential component than is currently proposed (91 units vs. 100 units); however, the resulting increase in peak-hour traffic volumes will be less than 5 vehicle trips and will not result in a material impact on motorist delays or vehicle queuing on the roadways or at the intersections serving the Project site.

In consideration of the above findings, we have concluded that the residential building and the associated modifications to the parking supply are consistent with the overall development program that was included in the Special Permit, and that there are no substantive changes to the Site Plan that would alter traffic volumes, trip patterns, or the elements of the Project site access and off-site improvements that have been constructed to support the build-out of the Project.

If you should have any questions regarding our review or the associated findings and conclusions, please feel free to contact me.

Sincerely,

VANASSE & ASSOCIATES, INC.



Jeffrey S. Dirk, P.E., PTOE, FITE
Principal

JSD/jsd

cc: File

¹Chestnut Hill Square 2016 Traffic Monitoring Program; VAI; October 7, 2016.



RJO'CONNELL & ASSOCIATES, INC.

CIVIL ENGINEERS, SURVEYORS & LAND PLANNERS

80 Montvale Ave., Suite 201
phone 781-279-0180

Stoneham, MA 02180
fax 781-279-0173

Memorandum

Date: February 13, 2017
To: John Twohig (NED)
From: Stephen Glowacki
Regarding: Chestnut Hill Square- Residential: Existing and Proposed Utilities

The proposed project consists of the construction of an approximately 141,600 square foot building including a 42,600 square foot parking structure beneath a 99,000 square foot residential building. The building will be approximately 86.5 feet high with a total of 100 units and 107 parking spaces. In addition, a level providing approximately 70 net new spaces will be added to the existing parking structure at the south side of the project. The following summarizes the existing and proposed utilities on site:

Stormwater Management

Existing

Stormwater runoff from the existing, developed site sheet flows over pavement to existing catch basins, and is directed through pipes to one of several on-site subsurface detention systems, constructed as part of the recent shopping plaza development. The subsurface detention systems were previously designed to store and attenuate storm runoff from the existing site. The subsurface systems outlets to the existing 42-inch drain pipe in Florence Street.

Proposed

Stormwater runoff from the proposed redevelopment will be collected in roof drains and catch basins with deep sumps and hooded outlets, and directed to existing on-site subsurface detention systems, similar to existing conditions. Overall impervious cover of the watershed will be decreased by approximately 1,500 sf. With a reduction in impervious area, the existing stormwater management systems will have sufficient capacity and runoff from the overall site will be reduced. The following table summarizes the pre-redevelopment and post-redevelopment stormwater flows for the proposed building site.

Peak Rates of Discharge (cfs)			
Storm Event	Pre-Redevelopment	Post-Redevelopment	% Decrease
2-year	3.07	3.00	2.41
10-year	4.10	4.00	2.41
25-year	4.78	4.67	2.41
100-year	6.04	5.89	2.41

Sewer

Existing

An 8" gravity sewer line is located in the access driveway to the east of the proposed building. A 6" sewer stub was constructed during the previous overall site redevelopment and intended for future use by the proposed building. Sewer from all buildings on the overall site is collected in an 8" line on-site and flows south and eventually outlets to a sewer main in Florence Street.

Proposed

Sewer from the proposed building will tie into the existing 6" sewer stub to the east. The proposed design flow is approximately 12,870 gallons per day (gpd). Sewer capacity analysis for the overall site, including design flows from the proposed building, was performed during permitting.

Water

Existing

An existing 12" water line runs along the north and west sides of the proposed building and extends to the south and off-site. An existing 8" water line ties into the 12" line at the southern corner of the proposed building and runs to the east.

Proposed

The water line along the west side of the building will be relocated to the west to avoid the building foundation. New water service will be provided via a stub off of the existing 12" line to the north of the building. Based on 110% of the design sewer flow, the future water demand is approximately 14,160 gpd.

Electric

Existing

Currently, electric service is provided to the overall site via underground conduit and electric manholes. There is an existing electric manhole located near the northeast corner of the proposed building which connects conduits running along the site access driveway.

Proposed

New electric service to the proposed building will be provided from the existing electric manhole at the east side of the building into the mechanical room at northeast corner of the building.

Gas

Existing

There is an existing gas line from Boylston Street that runs along the east side of the proposed building.

Proposed

Gas service will be provided at the northeast corner of the proposed building via a new gas line stub from the existing gas line to the east.

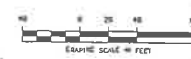
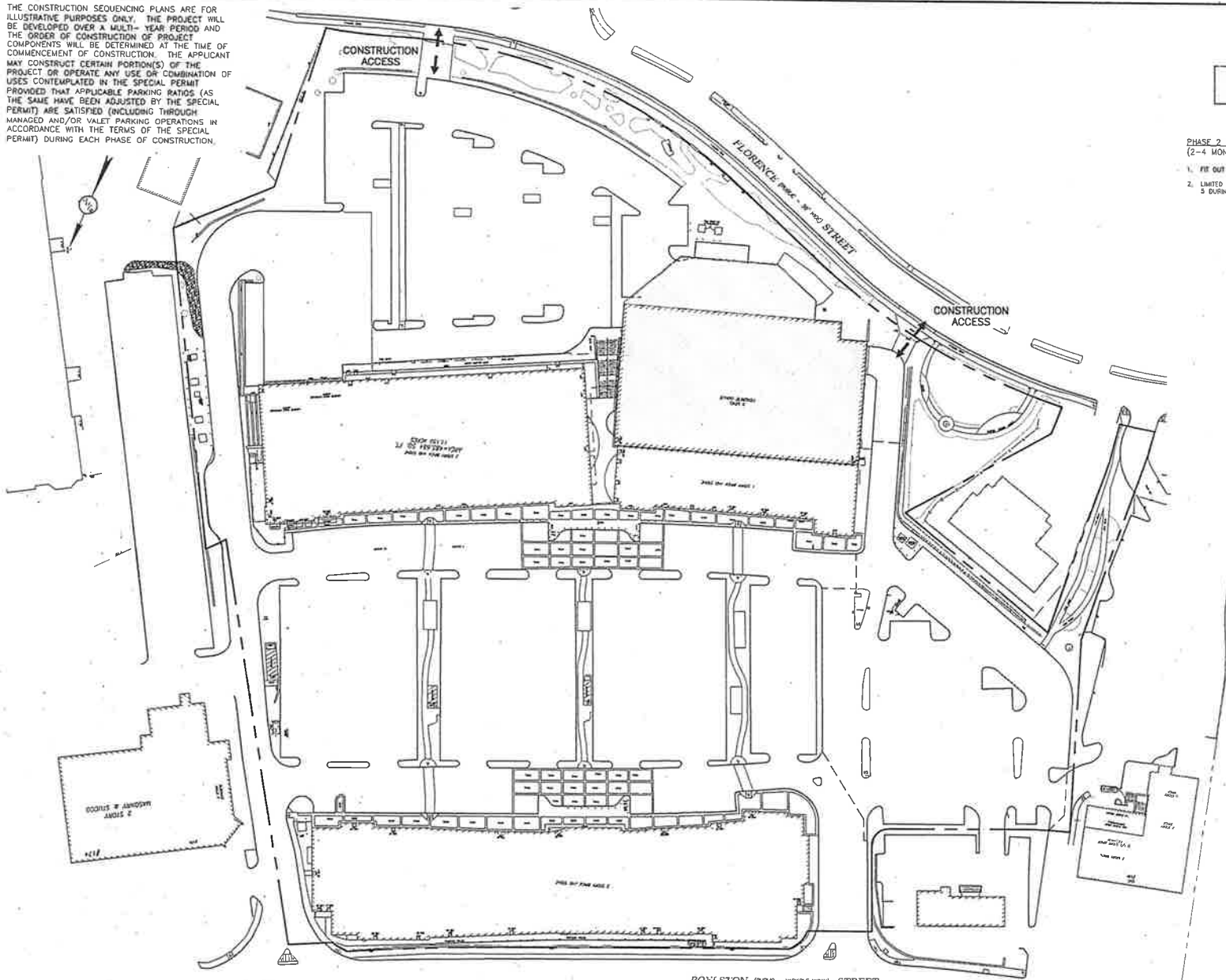
THE CONSTRUCTION SEQUENCING PLANS ARE FOR ILLUSTRATIVE PURPOSES ONLY. THE PROJECT WILL BE DEVELOPED OVER A MULTI-YEAR PERIOD AND THE ORDER OF CONSTRUCTION OF PROJECT COMPONENTS WILL BE DETERMINED AT THE TIME OF COMMENCEMENT OF CONSTRUCTION. THE APPLICANT MAY CONSTRUCT CERTAIN PORTION(S) OF THE PROJECT OR OPERATE ANY USE OR COMBINATION OF USES CONTEMPLATED IN THE SPECIAL PERMIT PROVIDED THAT APPLICABLE PARKING RATIOS (AS THE SAME HAVE BEEN ADJUSTED BY THE SPECIAL PERMIT) ARE SATISFIED (INCLUDING THROUGH MANAGED AND/OR VALET PARKING OPERATIONS IN ACCORDANCE WITH THE TERMS OF THE SPECIAL PERMIT) DURING EACH PHASE OF CONSTRUCTION.

LEGEND



PHASE 2 CONSTRUCTION NOTES:
(2-4 MONTHS)

1. FIT OUT INTERIOR OF PARKING STRUCTURE ADDITION.
2. LIMITED SPACE CLOSURES AS NEEDED ON PARKING LEVEL 5 DURING FIT-OUT OPERATIONS.



Drawing No. CS-2, 2017, 11/15/2017
 Copyright © 2017 by R.J.O'Connell & Associates, Inc.

DATE	DESCRIPTION

Designed by: SPG
 Drawn by: SPG
 Checked by: SPG
 Scale: 1"=40'
 Date: 03/23/2017

NEW ENGLAND DEVELOPMENT
 70 PARK PLAZA
 BOSTON, MA 02116
 617-688-8700

Prepared by:
RJO'CONNELL & ASSOCIATES, INC.
 CIVIL ENGINEERS, SURVEYORS
 & LAND PLANNERS
 80 MONTVALE AVE
 STONEHAM, MA 02180
 781-278-0180
 FAX: 781-278-0132







Project Name:
**CHESTNUT HILL SQUARE
 NEWTON, MA**
 Drawing Name:
**CONSTRUCTION
 SEQUENCING PLAN:
 PHASE 2**

Drawing No.:
CS-2
 Project No.:
 16087

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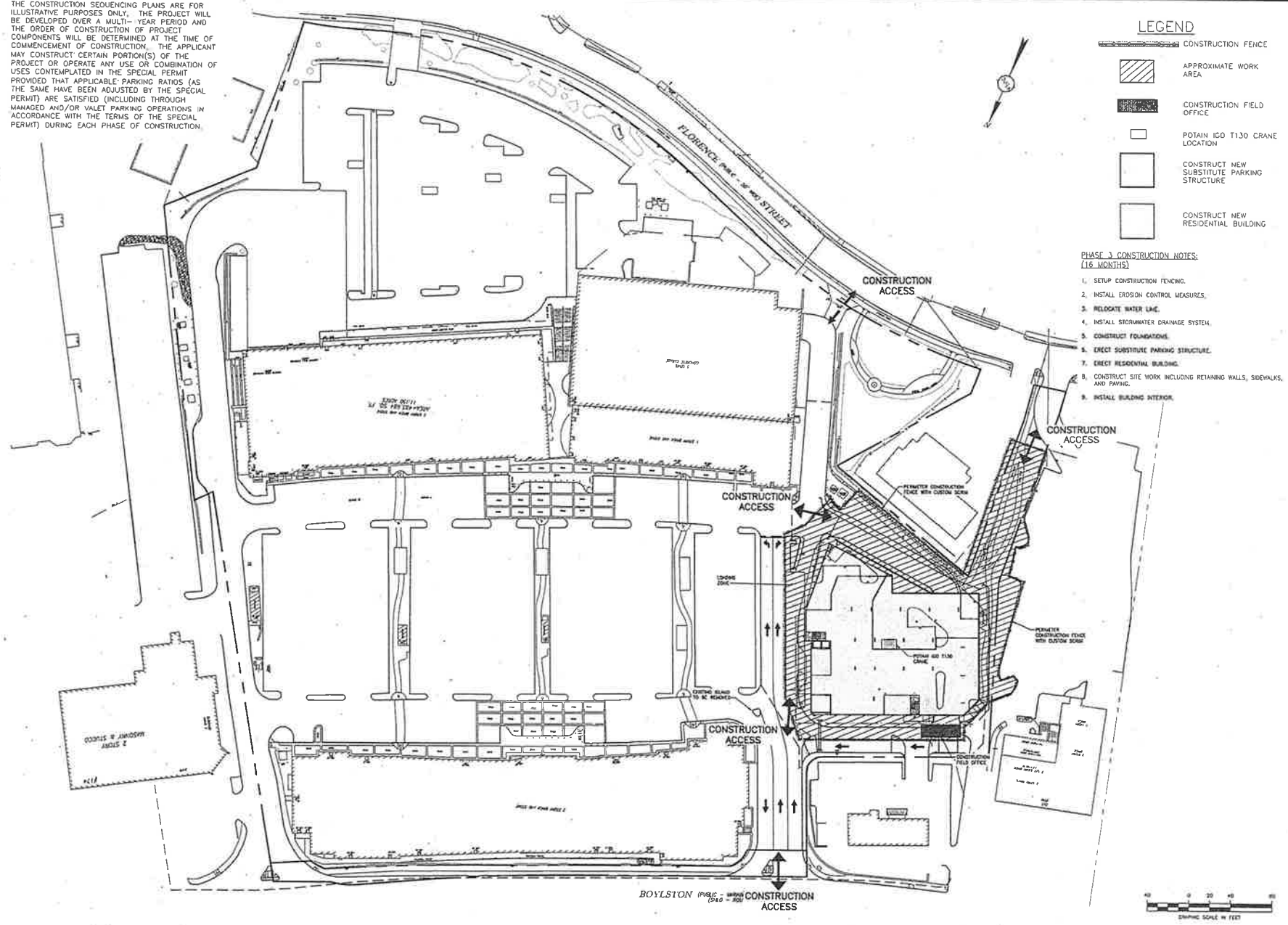
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LEGEND

-  CONSTRUCTION FENCE
-  APPROXIMATE WORK AREA
-  CONSTRUCTION FIELD OFFICE
-  POTAIN IGD T130 CRANE LOCATION
-  CONSTRUCT NEW SUBSTITUTE PARKING STRUCTURE
-  CONSTRUCT NEW RESIDENTIAL BUILDING

PHASE 3 CONSTRUCTION NOTES (16 MONTHS)

1. SETUP CONSTRUCTION FENCING.
2. INSTALL EROSION CONTROL MEASURES.
3. RELOCATE WATER LINE.
4. INSTALL STORMWATER DRAINAGE SYSTEM.
5. CONSTRUCT FOUNDATIONS.
6. ERECT SUBSTITUTE PARKING STRUCTURE.
7. ERECT RESIDENTIAL BUILDING.
8. CONSTRUCT SITE WORK INCLUDING RETAINING WALLS, SIDEWALKS, AND PAVING.
9. INSTALL BUILDING INTERIOR.



Drawing made by: J. Valentin, New England Development, Inc., 1007-11 CS-3 Construction Sequencing Plan, 1/24/17, 10/23/17, 11/17/17

DATE	BY	REVISION

Designed by: SPC
 Drawn by: SAG
 Checked by: SPC
 Scale: 1"=40'
 Date: 03/23/2017

Prepared for:
NEW ENGLAND DEVELOPMENT
 70 PARK PLAZA
 BOSTON, MA 02116
 517-965-8700

Prepared by:
RJO'CONNELL & ASSOCIATES, INC.
 CIVIL ENGINEERS, SURVEYORS & LAND PLANNERS
 80 MONTVALE AVE
 STONEHAM, MA 02150
 TEL: 781-019-0100
 FAX: 781-279-0173

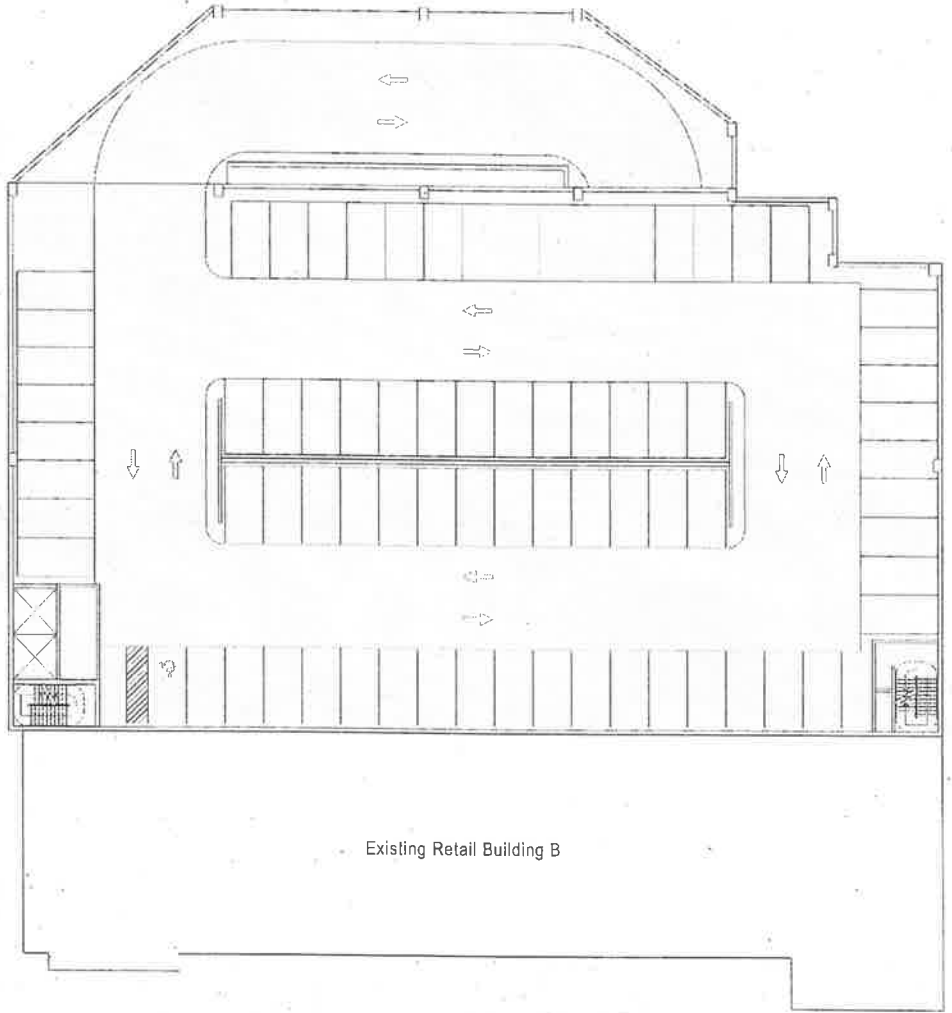
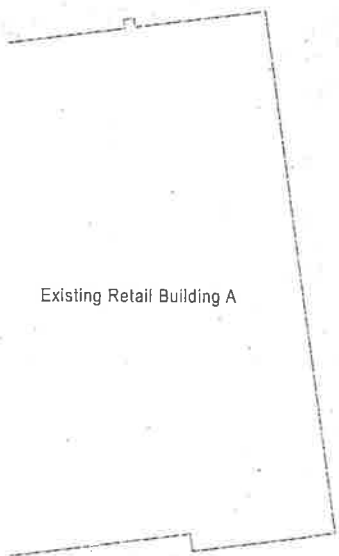
Project Name:
**CHESTNUT HILL SQUARE
 NEWTON, MA**

Drawing Name:
**CONSTRUCTION SEQUENCING PLAN:
 PHASE 3**

Sheet No.:
CS-3
 Project No.:
 16087

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Spaces at Parking Structure Addition	76
Spaces Lost to Circulation at Parking Level 5	(6)
Net Additional Spaces from Parking Structure Addition	70



Chestnut Hill Square
 Newton, MA

NEW ENGLAND DEVELOPMENT
 75 PARK PLAZA
 BOSTON, MA 02110
 617.585.8700

Progress Print
 NOT FOR CONSTRUCTION

Project No.	11059.01
Project Name	EXISTING PARKING STRUCTURE ADDITION
Client	HTS
Architect	BOC
Phase	10 March 2017
Scale	AS SHOWN
Sheet No.	A-100

Existing Parking Structure Addition Plan

Chestnut Hill
 Square
 Newton, MA

Building Summary
107 Total spaces

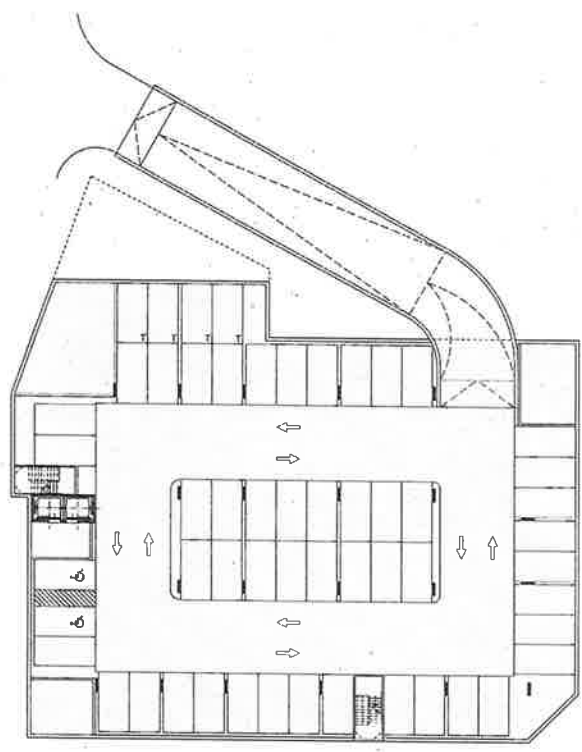
**NEW ENGLAND
 DEVELOPMENT**
 75 PARK PLAZA
 BOSTON, MA 02115
 617.893-6700

Progress Print
 NOT FOR
 CONSTRUCTION

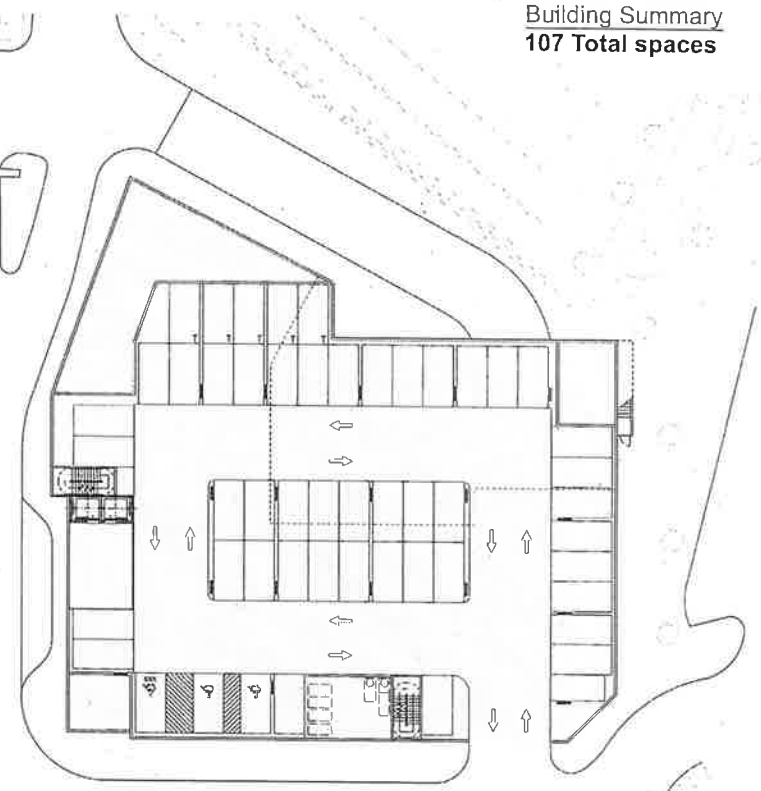
Month	NG
Availability	BOC
Approval	NTS
Approval	10 March 2017
Project No.	11059.01
Rev.	001
Drawn by	03/22/17
Checked by	03/22/17

Substitute
 Parking
 Structure
 Plans

A-101



Lower Level Parking Plan



Grade Level Parking Plan

Building Summary
100 Total units

Chestnut Hill
 Square
 Newton, MA

**NEW ENGLAND
 DEVELOPMENT**
 15 PARK PLAZA
 BOSTON, MA 02116
 617-265-8700

Progress Print
 NOT FOR
 CONSTRUCTION

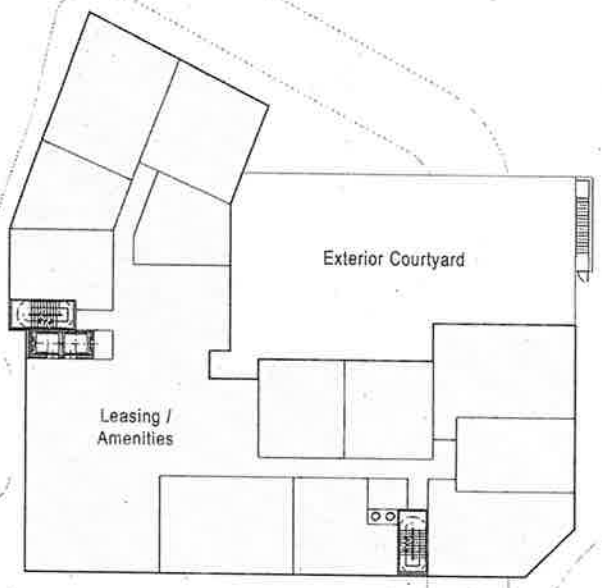
Architect	NG
Engineer	BOC
Inspector	NFS
Approval	16 March 2017

Project No: 11059.01

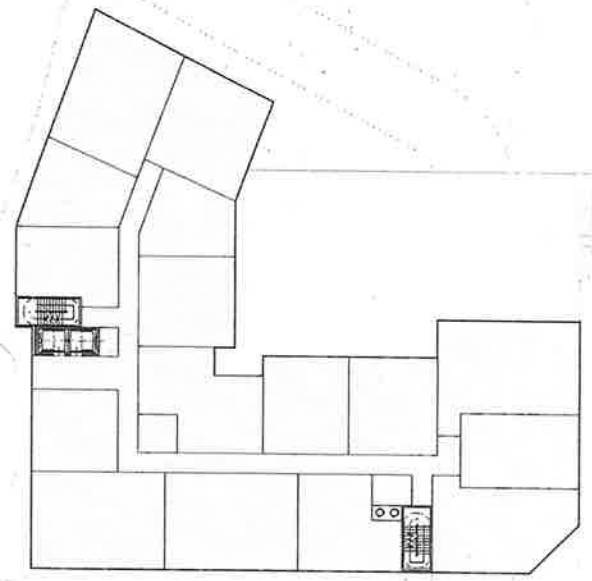
Rev	Description	By
1	ISSUE FOR PERMIT	EFB/2017

Approved
 Residential
 Structure
 Plans

A-102



First Floor Plan



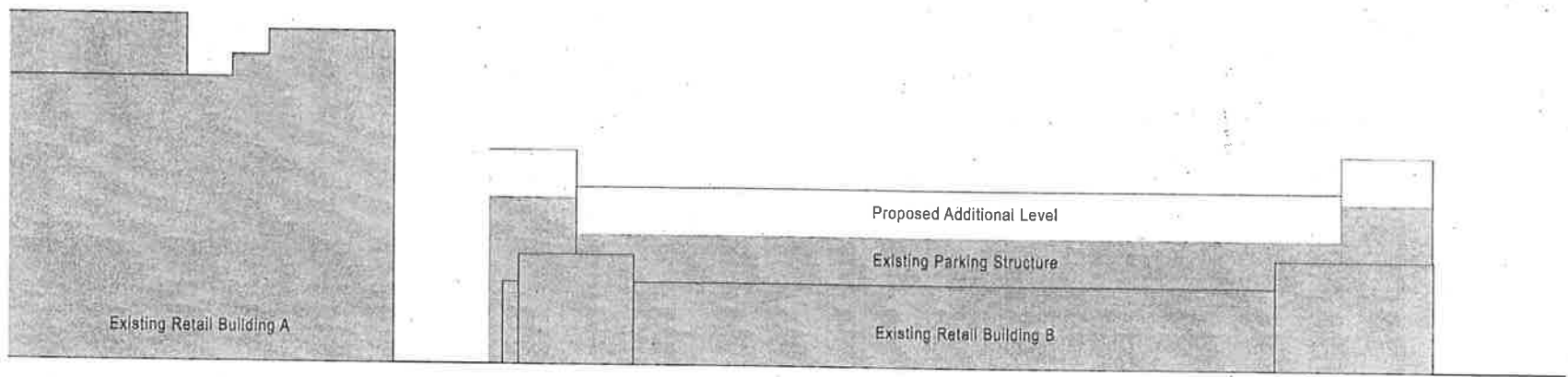
Typical Upper Floor Plan (Levels 2-6)

Chestnut Hill
Square
Newton, MA

**NEW ENGLAND
DEVELOPMENT**
78 PARK PLAZA
BOSTON, MA 02110
617-565-8700

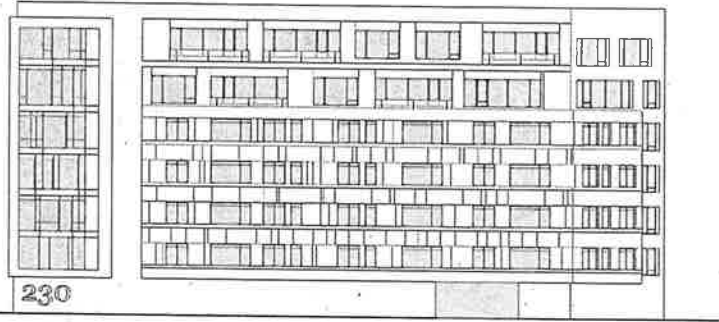
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NOT FOR
CONSTRUCTION

Project:	NG
Designation:	BOC
Revision:	NTS
Date:	10 March 2017
Sheet No.:	11059.01
Total Sheets:	11059.01

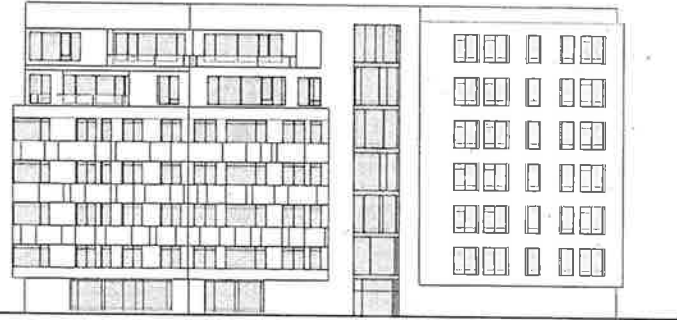


North Elevation

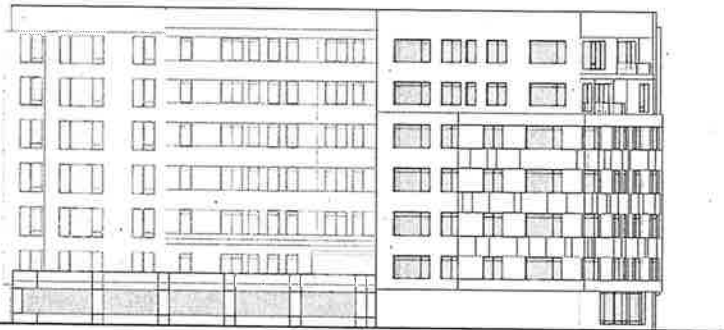
Existing
Parking
Structure
Addition
Elevation



North Elevation



East Elevation



South Elevation



West Elevation

Chesnut Hill
Square
Newton, MA

NEW ENGLAND
DEVELOPMENT
75 PARK PLAZA
BOSTON, MA 02116
617-565-8700

Progress Print
NOT FOR
CONSTRUCTION

NO
BCC
NTS
10 March 2017
11659.01
REGULATOR
CONSTRUCTION PERMIT

Building
Elevations

A-201



Consistency Determination

Dated May 8, 2018

(see attached)

City of Newton



Ruthanne Fuller
Mayor

Inspectional Services Department

John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton, MA 02459
www.newtonma.gov

Telephone
(617) 796-1060
Fax
(617) 796-1086
Email
ISD@newtonma.gov

May 8, 2018

Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Timothy Sullivan

RE: Chestnut Hill Square

Dear Mr. Sullivan:

I am in receipt of your request for a consistency ruling for the conversion of the former loading dock space in the northeast corner of the site to allow an 890 sq. ft. tenant space. This conversion will have no impact on parking, as they will be adding 3 new spaces, nor any impact on the internal circulation of the lot. I find this request for conversion of the former loading dock to be consistent with the intent and purpose of the existing Special Permit.

I hope this serves your purposes. Please contact this office if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Lojek".

John D. Lojek
Commissioner

Consistency Determination

Dated March 7, 2023

(see attached)

City of Newton



Ruthanne Fuller
Mayor

Inspectional Services Department

John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton, MA 02459
www.newtonma.gov

Telephone
(617) 796-1060
Fax
(617) 796-1086
Email
ISD@newtonma.gov

March 7, 2023

John E. Twohig
New England Development
75 Park Plaza
Boston, MA 02116

Re: New Charging stations at C.H. Square/ consistency ruling

Dear Mr. Twohig:

I am in receipt of your request for a consistency ruling for the addition of 12 new Super Charger Stations at the above property. The subject property is under the Special Permit #214-10(2), dated December 6, 2010, and the associated site plan.

The addition of the new charging stations will take up 12 spaces that were previously parking lot spaces. Under Special Permit #214-10(2) the development has sufficient parking, and these new stations will still operate as parking spaces, therefore the parking calculations will not change.

I find that the installation of 12 new Super Charger Stations is consistent with the meaning and intent of Special Permit #214-10(2) and may be installed.

I hope that this letter serves your purposes. Please contact this office if we can be of further assistance

Sincerely,

John D. Lojek

cc: Anthony Ciccariello, Deputy Commissioner ISD
Jennifer Caira, Deputy Director Planning and Development

2 August 2010

Chestnut Hill Square

Newton, Massachusetts

**City Filing Special Permit Application Submission
Tenant Signage**

PREPARED BY
ARROWSTREET

Architecture
Urban Design
Planning
Signage and Interiors
Somerville, MA
Tel: 617-621-5555
Fax: 617-625-4546
www.arrowstreet.com

APPLICANT
NewEngland
DEVELOPMENT
phone 617-965-8700 - fax 617-243-7329

CHESTNUT HILL SQUARE

Tenant Signage Table¹

SIGN PROVISIONS (§ 30-20)			
Sign Type ²	Proposed	Allowed	Relief Required
<u>Awning signs.</u> 30-20(c)(2)(e).	Awning signs will have lettering/graphics occupying a maximum of 50% of the awning area.	Twenty (20) percent of the awning area (as-of-right).	Special permit to allow lettering/graphics to occupy up to 50% of the awning area.
<u>Window signs.</u> 30-20(c)(2)(f) and 30-20(f)(6).	Windows will have lettering/graphics occupying less than 25% of the area of the window through which they are visible.	Twenty -five (25) percent of the area of the window through which they are visible (as-of-right).	None.
Except as provided in subsection 30-20(j)(2), for each business establishment there may be one <u>principal wall sign.</u> 30-20(f)(1).	Generally, tenants will have principal wall signs that conform to this provision. However, 10 tenants will have more than one (1) principal wall sign greater than 100 sf. The total sign square footage at the Project will not exceed the total allowable square footage, as shown in the attached plans.	Three (3) square feet for each foot of sign frontage of the wall to which it is affixed or 100 square feet, whichever is less (as-of-right).	Special permit to allow each of the following: Sign frontage to include all internal driveways and walkways; Total square footage for each individual business establishment to be divided between up to two (2) wall signs per bay; Up to 10 tenants to each have more than one principal wall sign; and Up to six (6) principal wall sign(s) will be greater than 100 sf. but not exceeding 200 sf. per sign. Potential presence of more than one principal /secondary sign on the same wall.
Except as provided in subsection 30-20(j)(2), for each separate building entrance, or frontage on a street or parking area, there may be one <u>secondary wall sign.</u> 30-20(f)(2).	Generally, tenants will have secondary wall signs that conform to this provision. However, a limited number of tenants will have secondary wall signs that are greater than 50 sf.	One(1) square foot for each foot of sign frontage of the wall to which it is affixed or 50 square feet, whichever is less (as-of-right). The sign may not be erected on the same wall as a principal sign and there may not be more than 2 secondary signs.	Special permit to allow up to five secondary wall signs greater than 50 square feet but not exceeding 100. Special permit to allow up to two secondary wall signs greater than 50 square feet but not exceeding 150. Potential presence of more than one principal /secondary sign on the same wall.
<u>No sign shall be lighted between the hours of 11:00 p.m. and 7:00 a.m.,</u> except in the case of a commercial establishment, signs which may be lighted during a period extending from one-half hour before opening for business and to one-half hour after closing. The board of aldermen may allow for other signs to lie illuminated if said board finds that such illumination is in the public interest.	Restaurant signs will remain illuminated one (1) hour after last restaurant closes.	As-of-right	Special permit to extend lighting one (1) hour after closing.

¹Based on signage as currently contemplated. Signage locations, allocations, sizes, quantity and design may be revised from time to time provided no signage dimensions, when measured in the aggregate for each Sign Type, is increased by more than 10%.

²Each individual business establishment may choose to simultaneously display awning, window and principal wall signs. Additionally, any lighting will be continuous and shall be either interior, nonexposed or exterior illumination.

1692134

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Chestnut Hill Square
Newton, Massachusetts

COMPREHENSIVE SIGN PLAN
Tenant Signage

Retail A

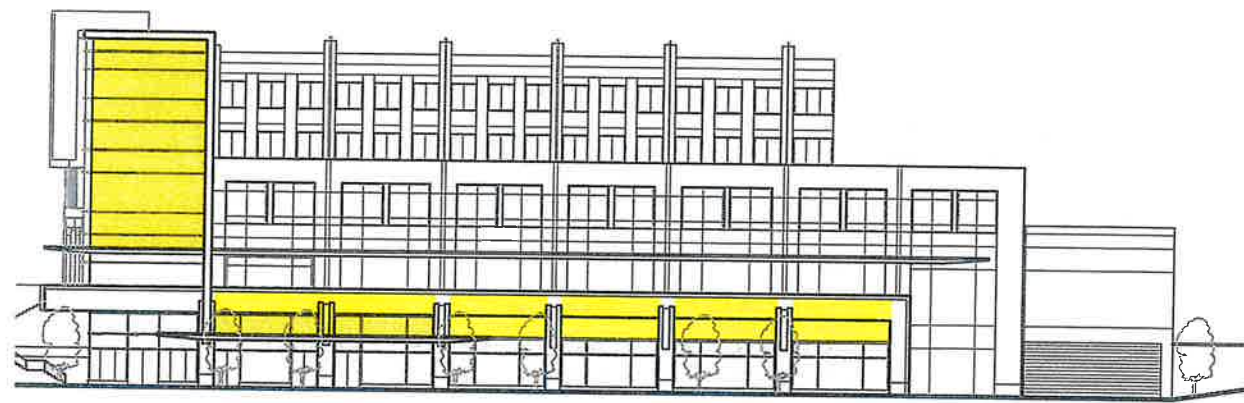
PERMISSIBLE ZONE OF SIGNAGE



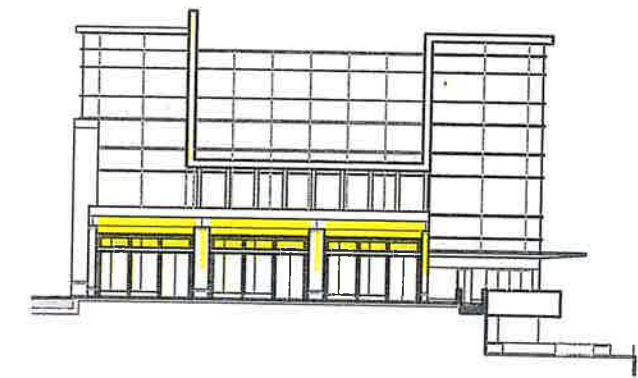
A-1: Retail Building A, North Elevation
 scale: 1" = 50'-0"



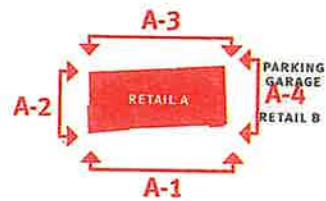
A-2: Retail Building A, East Elevation
 scale: 1" = 50'-0"



A-3: Retail Building A, South Elevation
 scale: 1" = 50'-0"



A-4: Retail Building A, West Elevation
 scale: 1" = 50'-0"



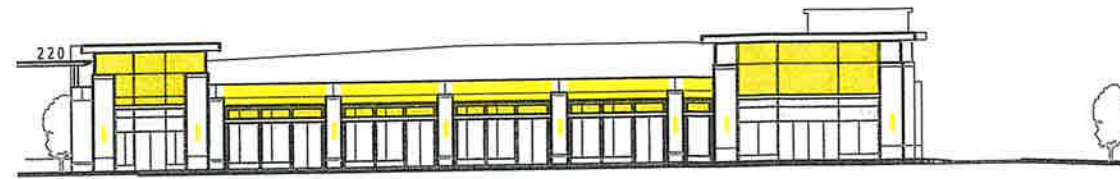
RETAIL D

RETAIL C

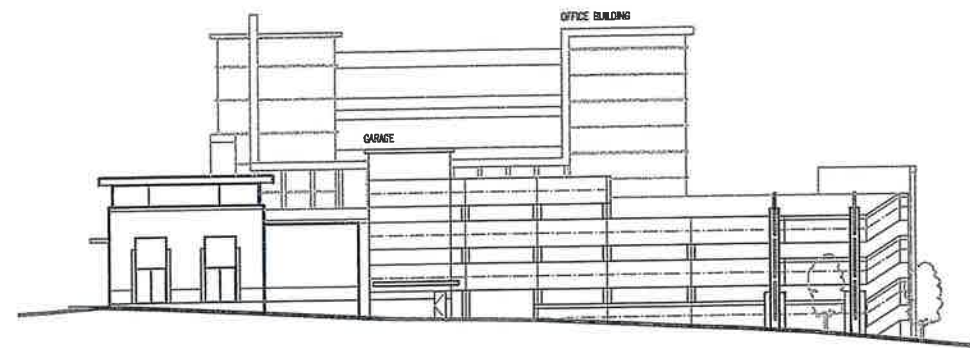
Tenant Signage

Retail B

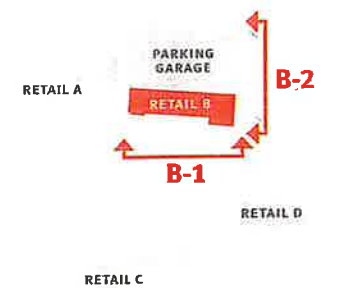
PERMISSABLE ZONE OF SIGNAGE



B-1: Retail Building B, North Elevation
scale: 1" = 50'-0"



B-2: Retail Building B, West Elevation
scale: 1" = 50'-0"



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Chestnut Hill Square
Newton, Massachusetts

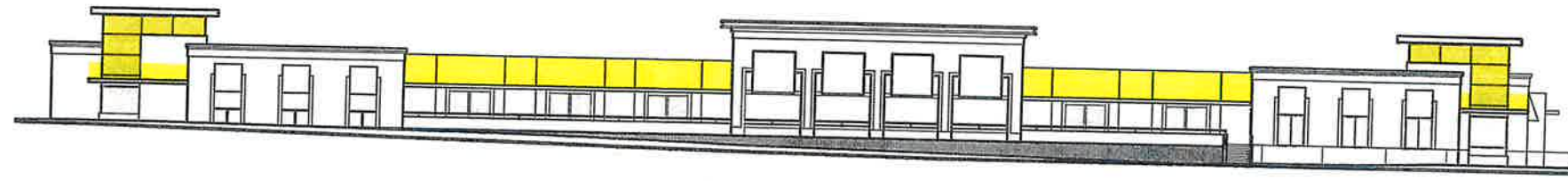
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2 August 2010

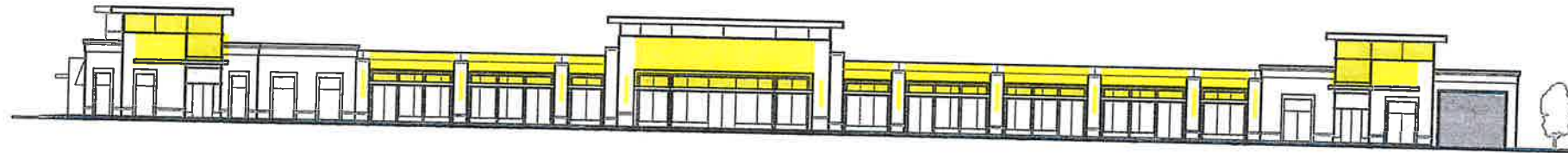
Tenant Signage

Retail C

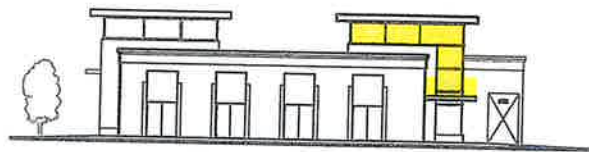
PERMISSIBLE ZONE OF SIGNAGE



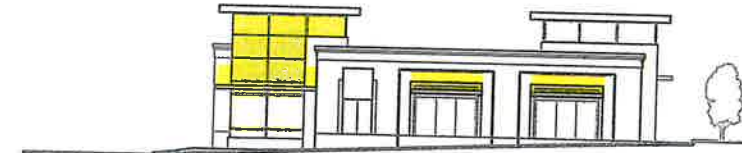
C-1: Retail Building C, North Elevation
scale: 1" = 50'-0"



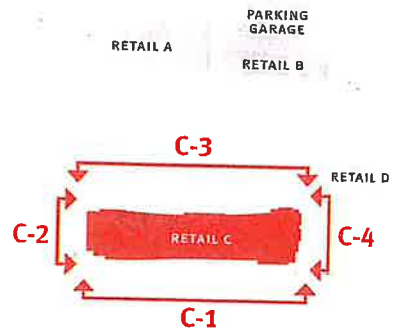
C-3: Retail Building C, South Elevation
scale: 1" = 50'-0"



C-2: Retail Building C, East Elevation
scale: 1" = 50'-0"



C-4: Retail Building C, West Elevation
scale: 1" = 50'-0"



Retail D

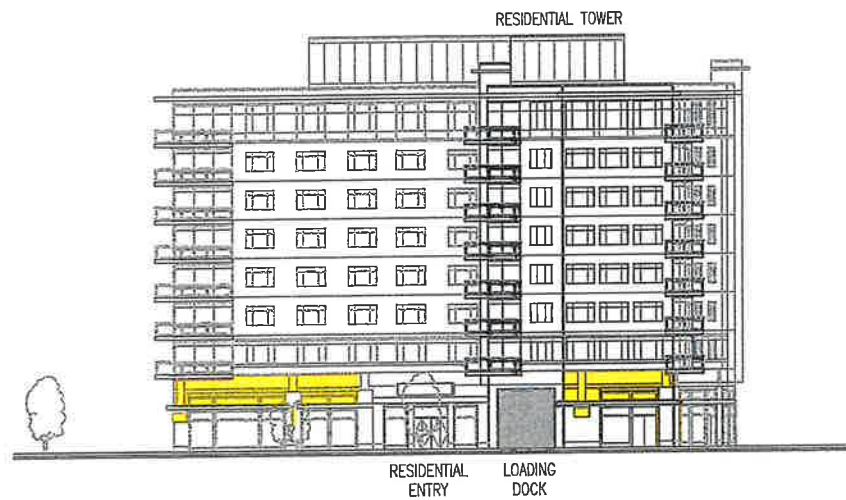
PERMISSABLE ZONE OF SIGNAGE



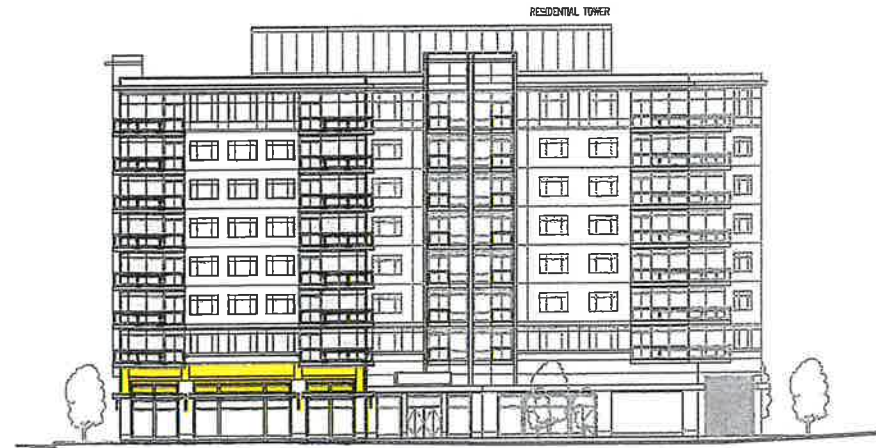
D-1: Retail Building D, North Elevation
 scale: 1" = 50'-0"



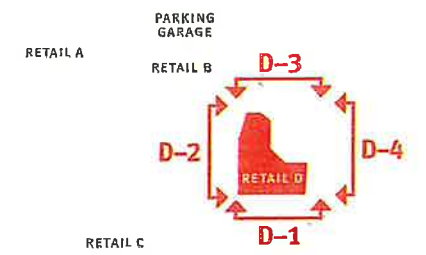
D-2: Retail Building D, East Elevation
 scale: 1" = 50'-0"



D-3: Retail Building D, South Elevation
 scale: 1" = 50'-0"



D-4: Retail Building D, West Elevation
 scale: 1" = 50'-0"



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Chestnut Hill Square
 Newton, Massachusetts

February 6, 2013

Director of Planning and Development
Newton Urban Design Commission
c/o Eve Tapper
City of Newton
Newton City Hall
1000 Commonwealth Ave
Newton Centre, MA 02459

VIA HAND DELIVERY

Re: Chestnut Hill Square – Comprehensive Signage Package

Dear Eve:

On behalf of CHS Commercial Owner LLC (the “Applicant”), we are pleased to submit the enclosed final Comprehensive Signage Package for review and approval (please note that the specification sheets regarding the proposed sign colors, materials and lighting will be available at the meeting with the Urban Design Commission). For your reference the paragraphs below summarize the existing signage approvals for the Chestnut Hill Square project (the “Project”) and demonstrate that the enclosed final Comprehensive Signage Package is consistent with such approvals.

Signage Approvals

As you know, in connection with obtaining Special Permit/Site Plan Approval #214-10(2), dated December 6, 2010 (the “Special Permit”), a comprehensive signage package was developed for the Project. The comprehensive signage package consisted of representative restaurant/retail, office and health club signage (the “Tenant Signage Plans”) as well as representative residential, wayfinding and Project identification signage (the “Project ID & Wayfinding Plans”).

The Board of Aldermen approved, the Tenant Signage Plans and the Project ID & Wayfinding Plans as a “Comprehensive Signage Package” and granted the necessary relief in connection therewith. Pursuant to the terms of the Special Permit, a final Comprehensive Signage Package must be submitted to the Director of Planning and Development and the Newton Urban Design Commission for review and approval prior to implementation of the Project signage program. Accordingly, on behalf of the Applicant, we are pleased to submit the enclosed Tenant Signage Plans and the Project ID & Wayfinding Plans as the final Comprehensive Signage Package for review and approval.

Consistency with Approved Tenant Signage Plans

The enclosed Tenant Signage Plans are in harmony with the findings, safeguards and conditions set forth in the Special Permit and substantially consistent with the Comprehensive Signage Package submitted in support of the application for the Special Permit.

Pursuant to the Special Permit and the City of Newton Zoning Ordinance, each tenant may display certain as-of-right signage, which includes (a) one principal wall sign with a total sign area of 3 square feet for each foot of sign frontage up to 100 square feet; (b) one secondary wall sign with a total sign area of 1 square foot for each foot of sign frontage up to 50 square feet; and (c) window signs with lettering/graphics occupying up to 25% of the area of the window. As shown on the enclosed Tenant Signage Plans, many tenants utilize one or more of these as-of-right signs in the proposed signage programs, which is consistent with the Comprehensive Signage Package.

Additionally, the Special Permit granted the following relief to the Project for the benefit of its tenants¹:

- Up to ten tenants may have more than one principal wall sign;
- Up to six principal wall signs may be greater than 100 square feet, but not exceeding 200 square feet per sign;
- Up to five secondary wall signs may be greater than 50 square feet, but not exceeding 100 square feet;
- Up to two secondary wall signs may be greater than 50 square feet, but not exceeding 150 square feet; and
- Awning signs with lettering/graphics occupying up to 50% of the awning area.

As shown more specifically on the enclosed Tenant Signage Plans, the Project, at this time, includes 5 principal wall signs greater than 100 square feet, but not exceeding 200 square feet; 5 tenants with more than one principal wall sign; 1 secondary wall signs greater than 50 square feet, but not exceeding 100 square feet; and 2 secondary wall signs greater than 50 square feet, but not exceeding 150 square feet. Accordingly, the Tenant Signage Plans are consistent the Comprehensive Signage Package because the signage is either allowed as-of-right or within the parameters of the relief granted by the Special Permit.

With respect to some smaller tenants, signage programs have not yet been finalized. In these instances, as shown on the enclosed Tenant Signage Plans, these tenants will incorporate (i) as -of right principal wall signs (i.e., one principal wall sign with a total sign area of 3 square feet for each foot of sign frontage up to 100 square feet) displayed within the general areas highlighted on the enclosed Tenant Signage Plans; (ii) as-of-right secondary wall signs (i.e., one secondary wall sign with a total sign area of 1 square foot for each foot of sign frontage up to 50 square feet) displayed within the general areas highlighted on the enclosed Tenant Signage Plans; (iii) as-of-right window signs (i.e., window signs with lettering/graphics occupying up to 25% of the area of the window) displayed within the dashed red line shown on the enclosed Tenant Signage Plans; and (iv) awning signs (i.e., awning signs with lettering/graphics occupying up to 50% of the awning area) displayed within the dashed red line shown on the enclosed Tenant Signage Plans. The highlighted areas and the areas within the dashed red line as shown on the Tenant Signage Plans shall be referred to herein as the "Permissible Signage Area". Accordingly, once finalized, these tenant signage programs will be consistent the Comprehensive Signage Package because the signage is either allowed as-of-right or within the parameters of the relief granted by the Special Permit.

We request that the Commission acknowledge that tenants who have not yet finalized their signage programs shall be able to apply for a permit from the Inspectional Services Department to install their signage,

¹ The Special Permit also granted relief to allow sign frontage to include all internal driveways and walkways, the total square footage for each individual business establishment to be divided between two wall signs per bay, more than one principal/secondary wall sign to be present on the same wall, lighting to extend one hour after the last restaurant closes and individual tenants to simultaneously display awning, window and wall signage.

without further review or approval, as long as their final signage program is within the Permissible Signage Area and otherwise consistent with the foregoing criteria.

Consistency with Approved Project ID & Wayfinding Signage Plans

The enclosed Project ID & Wayfinding Signage Plans are also generally in harmony with the findings, safeguards and conditions set forth in the Special Permit and substantially consistent with the Comprehensive Signage Package submitted in support of the application for the Special Permit.

Pursuant to the Special Permit and the City of Newton Zoning Ordinance, the Project may display certain as-of-right signage, which includes (i) signs indicating warnings, hazards or public conveniences such as restroom signs; and (ii) window signs with lettering/graphics occupying up to 25% of the area of the window. As shown on the enclosed Project ID & Wayfinding Signage Plans, the Project utilizes this as-of-right signage consistent with the Comprehensive Signage Package.

Additionally, the Special Permit granted the following relief to the Project:

- Up to 30 square feet in sign area for signs indicating the name and address of the occupant of the dwelling;
- One sign located above the roof plate;
- Up to two principal wall signs for the residential building with up to 30 square feet in sign area;
- A freestanding sign for the residential building with up to 30 square feet of sign area displayed in addition to the proposed wall sign;
- Up to two principal wall signs for the Project with up to 160 square feet in sign area;
- Up to two freestanding signs for the Project with up to 35 square feet in sign area displayed in addition to the proposed wall sign;
- Directional signage ranging from 4 to 45 square feet in sign area; and
- Up to eight three-sided eight foot directory kiosks with up to 20 square feet of sign area per side.

As shown more specifically on the enclosed Project ID & Wayfinding Signage Plans, the Project, at this time, includes address signs of less than 30 square feet; two principal wall signs for the residential building with 30 square feet of sign area, one freestanding sign for the residential building with 30 square feet of sign area, one principal wall sign for the Project with 90 square feet in sign area, one double sided principal wall sign for the Project with 80 square feet in sign area, one freestanding sign for the Project with up to 35 square feet in sign area, directional signage ranging from 4 to 45 square feet in sign area and eight three-sided eight foot directory kiosks with up to 20 square feet of sign area per side. Accordingly, the Project ID & Wayfinding Signage Plans are consistent the Comprehensive Signage Package because the signage is either allowed as-of-right or within the parameters of the relief granted by the Special Permit.

For the reasons forth above, the enclosed final Comprehensive Signage Package is in harmony with the findings, safeguards and conditions set forth in the Special Permit and substantially consistent with the Comprehensive Signage Package submitted in support of the application for the Special Permit. Accordingly, on behalf of the Applicant, we respectfully request your approval of the enclosed materials. Furthermore, we trust that upon issuance of such approval, each tenant will be able to apply for a permit from the Inspectional Services Department to install its signage without further review or approval.

February 6, 2013

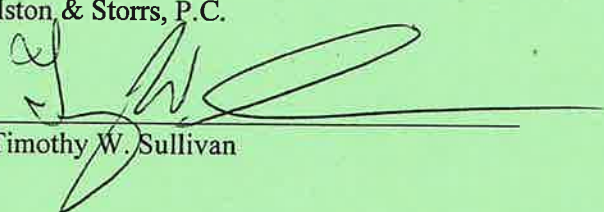
Page 4

We look forward to discussing the above materials and the Chestnut Hill Square Project at the Urban Design Commission meeting on February 20, 2013. To the extent it would be helpful, we would be happy to meet with you as you begin your review of the enclosed materials.

Very truly yours,

CHS COMMERCIAL OWNER LLC

By Its Attorneys,
Goulston & Storrs, P.C.

By: 
Timothy W. Sullivan

TWS/dim

cc: Candace Havens
William R. Cronin, Jr.
John E. Twohig, Esq.

6 February 2013

Chestnut Hill Square

Newton, Massachusetts

City Filing Special Permit Application Submission
Comprehensive Sign Plan, Tenant Signage

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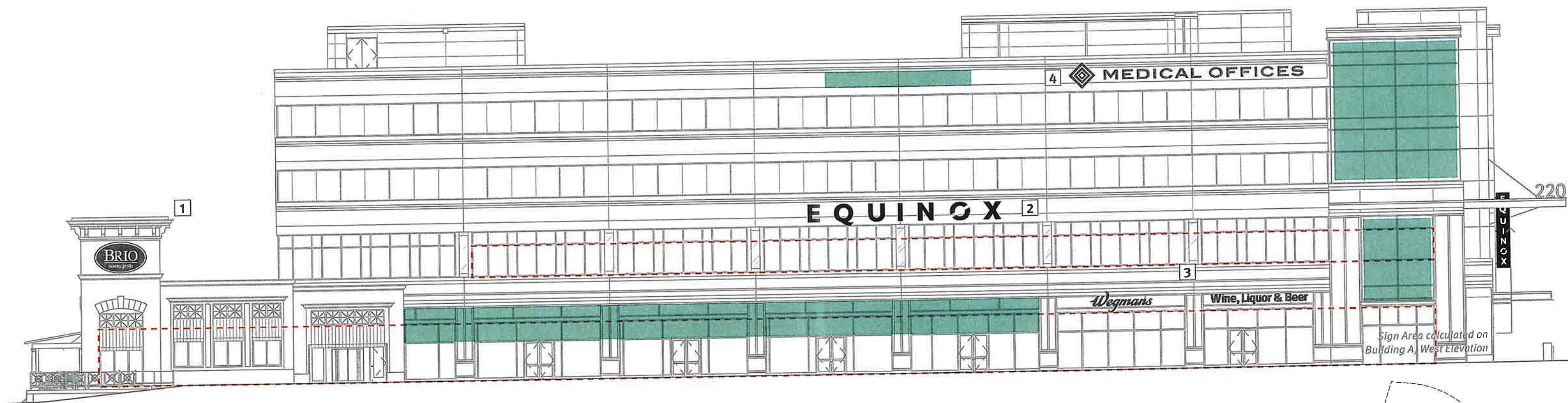
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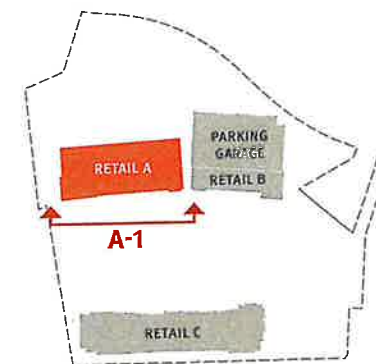
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Retail A				SIGN DESCRIPTION	COMPLIANCE WITH SPECIAL PERMIT
SIGN	TENANT	SIGN AREA	NOTES		
1	Brio	77 SF	As-of-Right Principal Wall Sign	Internally illuminated channel letters with ivory faces and white LED's over dark green olive green oval sign cabinet	✓
2	Equinox	153.5 SF	Special Permit Principal Wall Sign between 100 – 200 sf	Illuminated channel letters with aluminum faces and white LED's	✓
3	Wegmans Wine & Spirits	96.83 SF	As-of-Right Principal Wall Sign Split over Two Bays Pursuant to Special Permit (49.61 sf + 47.22 sf)	Internally illuminated channel letters with red faces	✓
4	Medical Office ID	200 SF	Special Permit Principal Wall Sign between 100 – 200 sf	Halo illuminated channel letters with aluminum faces	✓
	Permissible Sign Area		Principal wall sign not to exceed 3sf per linear foot of frontage up to 100 sf per tenant; Secondary wall sign not to exceed 1 sf per linear foot of frontage up to 50 sf per tenant; Windows with lettering/graphics occupying less than 25% of the area of the window through which they are visible and awning signs with lettering/graphics occupying less than 50% of the awning area may be displayed in this area		✓



A-1: Retail Building A, North Elevation (View from Upper Parking Area Towards Florence Street)
scale: 1" = 20'-0"



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PROJECT **Chestnut Hill Square // Comprehensive Sign Plan, Tenant Signage**

LOCATION NEWTON, MA

SCALE AS NOTED

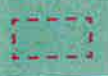
JOB NO. 09057

DATE 6 FEBRUARY 2013

SHEET

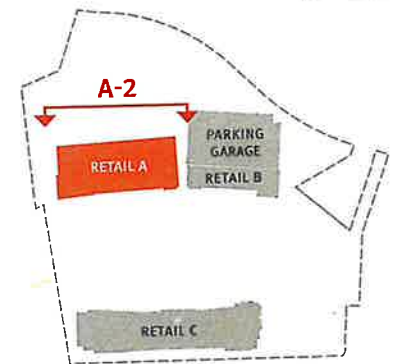
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Retail A

SIGN	TENANT	SIGN AREA	NOTES	SIGN DESCRIPTION	COMPLIANCE WITH SPECIAL PERMIT
5	Equinox	119 SF	Special Permit Secondary Sign between 50 – 150 sf	Reverse halo illuminated channel logo with white LED's and aluminum and black finish	✓
6	Wegmans	51.67 SF	As-of-Right Principal Wall Sign	Internally illuminated channel letters with red faces	✓
7	Wegmans	199 SF	Special Permit Principal Wall Sign between 100 – 200 sf	Internally illuminated channel letters with red faces	✓
8	Wegmans	48.89 SF	As-of-Right Secondary Sign	Reverse channel halo LED illuminated graphic with red trim and face sign body	✓
 Permissible Sign Area		Principal wall sign not to exceed 3sf per linear foot of frontage up to 100 sf per tenant; Secondary wall sign not to exceed 1 sf per linear foot of frontage up to 50 sf per tenant; Windows with lettering/graphics occupying less than 25% of the area of the window through which they are visible and awning signs with lettering/graphics occupying less than 50% of the awning area may be displayed in this area			✓



A-2: Retail Building A, South Elevation (View from Florence Street)
scale: 1" = 20'-0"



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PROJECT **Chestnut Hill Square // Comprehensive Sign Plan, Tenant Signage**

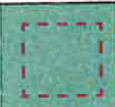
LOCATION NEWTON, MA

SCALE AS NOTED

JOB NO. 09057

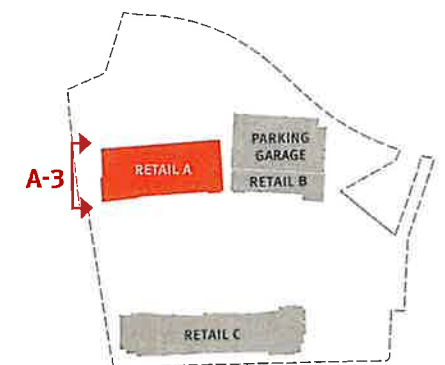
DATE 6 FEBRUARY 2013

SHEET

SIGN	TENANT	SIGN AREA	NOTES	SIGN DESCRIPTION	COMPLIANCE WITH SPECIAL PERMIT
Retail A 9	Brio	77 SF	Special Permit Secondary Sign between 50 – 100 sf	Internally illuminated channel letters with ivory faces and white LED's over dark green olive green oval sign cabinet	✓
	Permissible Sign Area	Principal wall sign not to exceed 3sf per linear foot of frontage up to 100 sf per tenant; Secondary wall sign not to exceed 1 sf per linear foot of frontage up to 50 sf per tenant; Windows with lettering/graphics occupying less than 25% of the area of the window through which they are visible and awning signs with lettering/graphics occupying less than 50% of the awning area may be displayed in this area			✓



A-3: Retail Building A, East Elevation (View from Miltons)
scale: 1" = 20'-0"



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PROJECT **Chestnut Hill Square // Comprehensive Sign Plan, Tenant Signage**

LOCATION **NEWTON, MA**

SCALE **AS NOTED**

JOB NO. **09057**

DATE **6 FEBRUARY 2013**

SHEET

3

Retail A

SIGN	TENANT	SIGN AREA	NOTES	SIGN DESCRIPTION	COMPLIANCE WITH SPECIAL PERMIT
10	Wegmans Wine & Spirits	96.83 SF	As-of-Right Principal Wall Sign Split over Two Bays Pursuant to Special Permit (49.61 sf + 47.22 sf)	Internally illuminated channel letters with red faces	✓
11	Equinox	12.25 SF	Principal Wall Sign	Push through internally illuminated blade sign with aluminum sign box and clear push through letters	✓
12	Equinox	40.94 SF	Principal Wall Sign	Individual channel letters with clear aluminum finish and white LED illuminate	✓
	Permissible Sign Area		Principal wall sign not to exceed 3sf per linear foot of frontage up to 100 sf per tenant; Secondary wall sign not to exceed 1 sf per linear foot of frontage up to 50 sf per tenant; Windows with lettering/graphics occupying less than 25% of the area of the window through which they are visible and awning signs with lettering/graphics occupying less than 50% of the awning area may be displayed in this area		✓



A-4: Retail Building A, West Elevation (View from Capital Grille)
scale: 1" = 20'-0"



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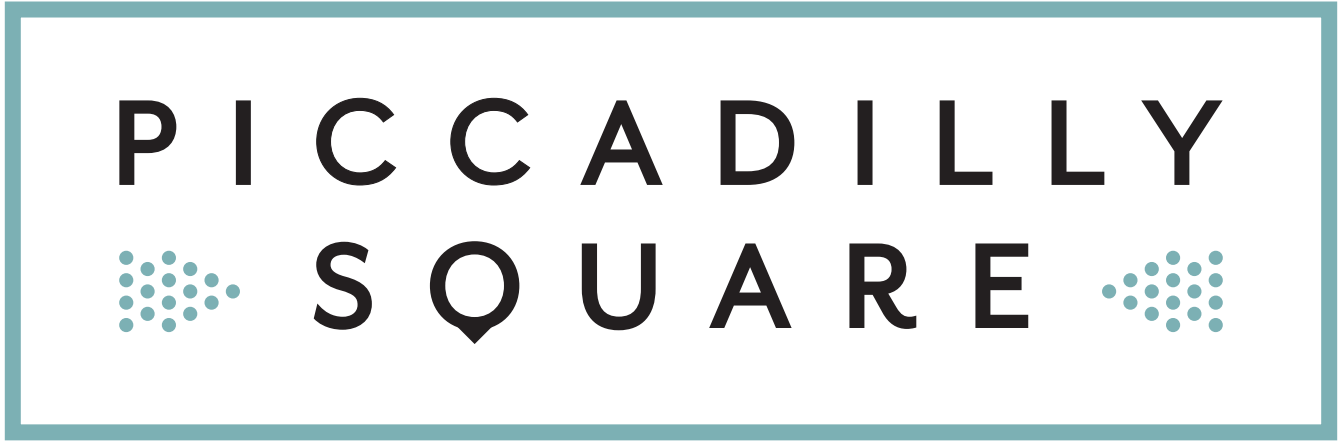
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PROJECT **Chestnut Hill Square // Comprehensive Sign Plan, Tenant Signage**
LOCATION NEWTON, MA SCALE AS NOTED
JOB NO. 09057 DATE 6 FEBRUARY 2013 SHEET



Signage Plan — January 2018

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Sign Criteria: 49 Union St, 73-107R Union St, 47-57 Langley Rd

- (i) All signs must be wood carved or have raised lettering. The maximum sign dimensions are 32 inches wide by 28 inches length (32" x 28"), however the actual size of the sign is at the discretion of the Tenant with Landlord approval. Materials and size may be substituted with like materials – along with the color design, illumination, and location as designated and approved by Landlord in writing. No rights are granted to Tenant to use the outer walls or the roof of the demised premises without Landlord's written consent. Landlord shall have the right to remove the sign(s) at any time or from time to time during the term of this lease, as may be necessary in order to paint or make any other repairs, alterations, or improvements in or upon said premises or the building herein same is situated, or any part thereof, providing the same be removed and replaced at Landlord's expense upon completion of said work. Tenant shall at no time utilize any flashing or neon sign or lights in the demised premises, without the Landlord's prior written consent, and the bulbs of all permitted signs and lights shall be replaced as soon as they become defective or lose their intensity. The Tenant shall be responsible to restore property to original condition if the sign (s) are removed upon move-out, the bracket remains the property of the Landlord.
- (ii) Tenant agrees that it will use only Tenant's Tradename as specified in Section 1 of the Lease in the conduct of its business on the demised premises, including but not limited to its signs and advertising; and that no other tradename or style will be used without Landlord's prior written consent. No Telephone Numbers, emails or websites allowed on signs.
- (iii) Tenant shall not maintain or display any signs, lettering, or lights on the exterior of the demised premises or any shop window thereof, which is visible from the exterior unless approved by Landlord in writing. Tenant shall provide and maintain proper sign(s) on the exterior of the demised premises. All signs shall be erected, maintained, and repaired by Landlord's Sign Company, or pre-approved Sign Company, which approval shall not be unreasonably withheld.
- (iv) All signs are subject to the issuance of a city permit.

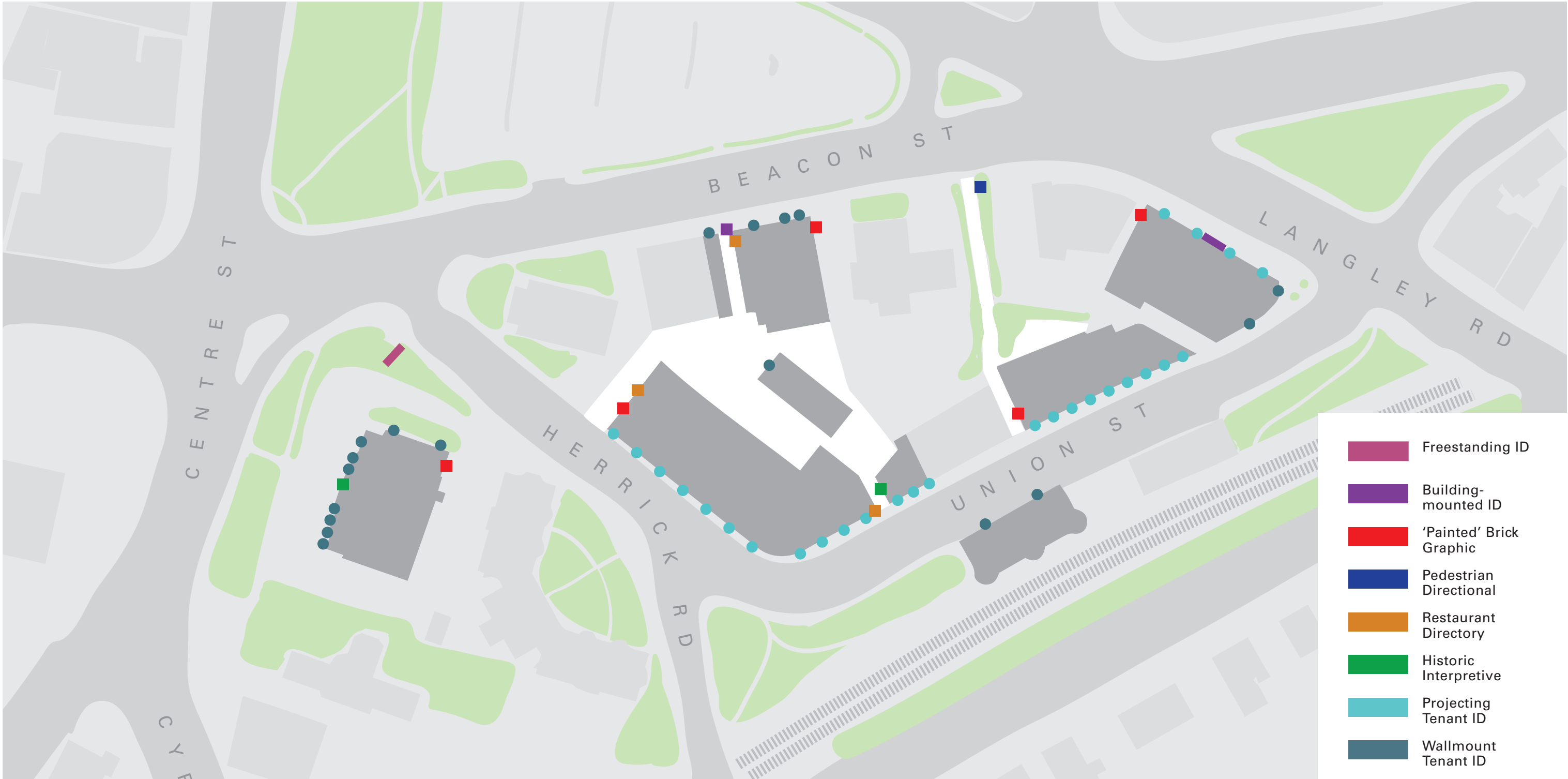
Sign Criteria: 1280 Centre Street

- (i) All signs must be wood carved or have raised lettering. The maximum sign dimensions are 2 feet high by 10 feet in length (24" x 120"), however the actual size of the sign is at the discretion of the Tenant with Landlord approval. Materials and size may be substituted with like materials – along with the color design, illumination, and location as designated and approved by Landlord in writing. No rights are granted to Tenant to use the outer walls or the roof of the demised premises without Landlord's written consent. Landlord shall have the right to remove the signs or any of them at any time or from time to time during the term of this lease, as may be necessary in order to paint or make any other repairs, alterations, or improvements in or upon said premises or the building herein same is situated, or any part thereof, providing the same be removed and replace at Landlord's expense upon completion of said work. Tenant shall at no time utilize any flashing or neon sign or lights in the demised premises, without the Landlord's prior written consent, and the bulbs of all permitted signs and lights shall be replaced as soon as they become defective or lose their intensity. The Tenant shall be responsible to restore property to original condition if the sign and bracket are removed upon move-out.
- (ii) Tenant agrees that it will use only Tenant's Tradename as specified in section 1 in the conduct of its business on the demised premises, including but not limited to its signs and advertising; and that no other tradename or style will be used without Landlord's prior written consent. No Telephone Numbers, emails or websites allowed on signs.
- (iii) Tenant shall not maintain or display any signs, lettering, or lights on the exterior of the demised premises or any show window thereof, which is visible from the exterior unless approved by Landlord in writing. Tenant shall provide and maintain a proper sign on the exterior of the demised premises. All signs shall be erected, maintained, and repaired by Landlord's Sign Company, or pre-approved Sign Company, which approval shall not be unreasonably withheld.
- (iv) All signs are subject to the issuance of a city permit.

Sign Criteria: 792 Beacon Street

- (i) All signs must be wood carved or have raised lettering. The size of the sign is at the discretion of the Tenant with Landlord approval. Materials and size may be substituted with like materials – along with the color design, illumination, and location as designated and approved by Landlord in writing. No rights are granted to Tenant to use the outer walls or the roof of the demised premises without Landlord's written consent. Landlord shall have the right to remove the signs or any of them at any time or from time to time during the term of this lease, as may be necessary in order to paint or make any other repairs, alterations, or improvements in or upon said premises or the building herein same is situated, or any part thereof, providing the same be removed and replace at Landlord's expense upon completion of said work. Tenant shall at no time utilize any flashing or neon sign or lights in the demised premises, without the Landlord's prior written consent, and the bulbs of all permitted signs and lights shall be replaced as soon as they become defective or lose their intensity. The Tenant shall be responsible to restore property to original condition if the sign and bracket are removed upon move-out.
- (ii) Tenant agrees that it will use only Tenant's Tradename as specified in section 1 in the conduct of its business on the demised premises, including but not limited to its signs and advertising; and that no other tradename or style will be used without Landlord's prior written consent. No Telephone Numbers, emails or websites allowed on signs.
- (iii) Tenant shall not maintain or display any signs, lettering, or lights on the exterior of the demised premises or any show window thereof, which is visible from the exterior unless approved by Landlord in writing. Tenant shall provide and maintain a proper sign on the exterior of the demised premises. All signs shall be erected, maintained, and repaired by Landlord's Sign Company, or pre-approved Sign Company, which approval shall not be unreasonably withheld.
- (iv) All signs are subject to the issuance of a city permit.

Project Signage Overview



47-61 Langley Road - SW Facade

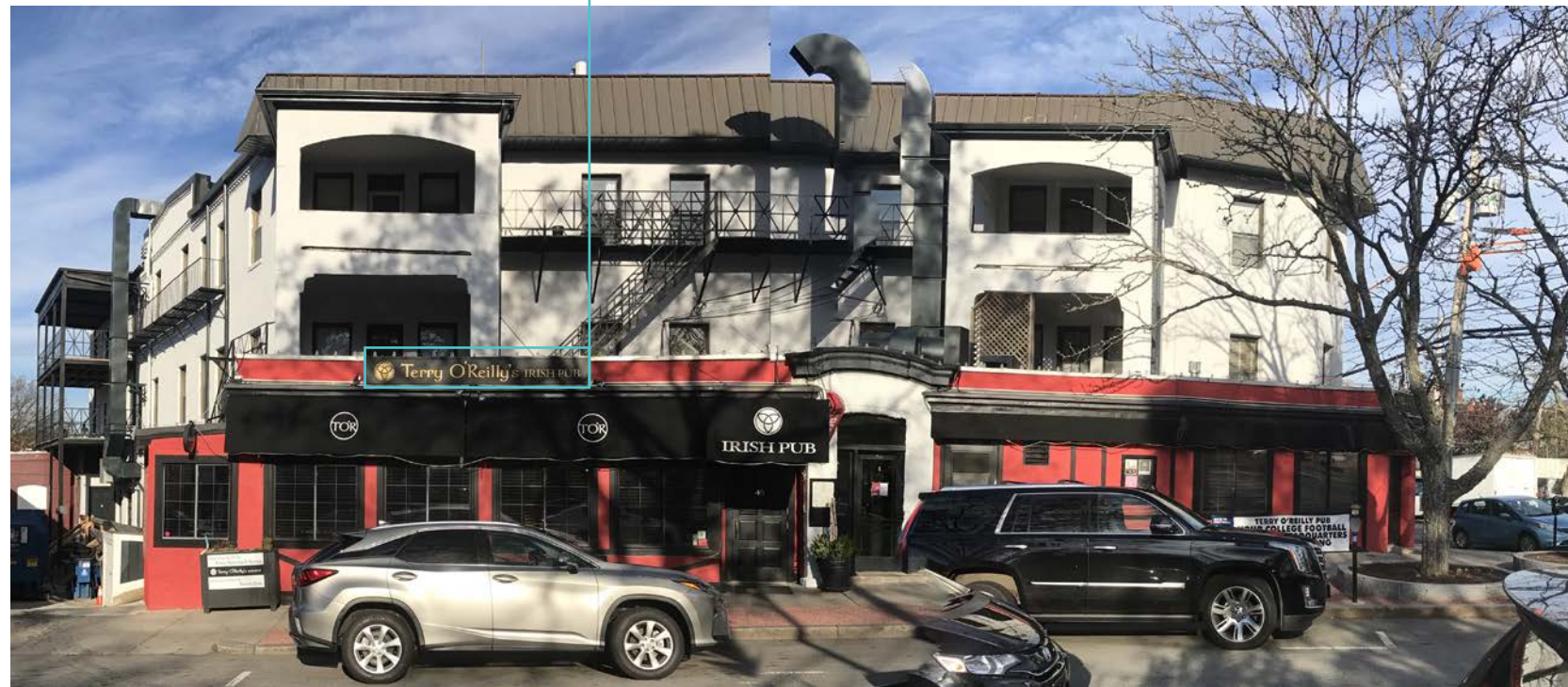
Frontage: ~84 ft side street frontage on Union St (per assessor's sketch)

Proposed Common Signs:

- none



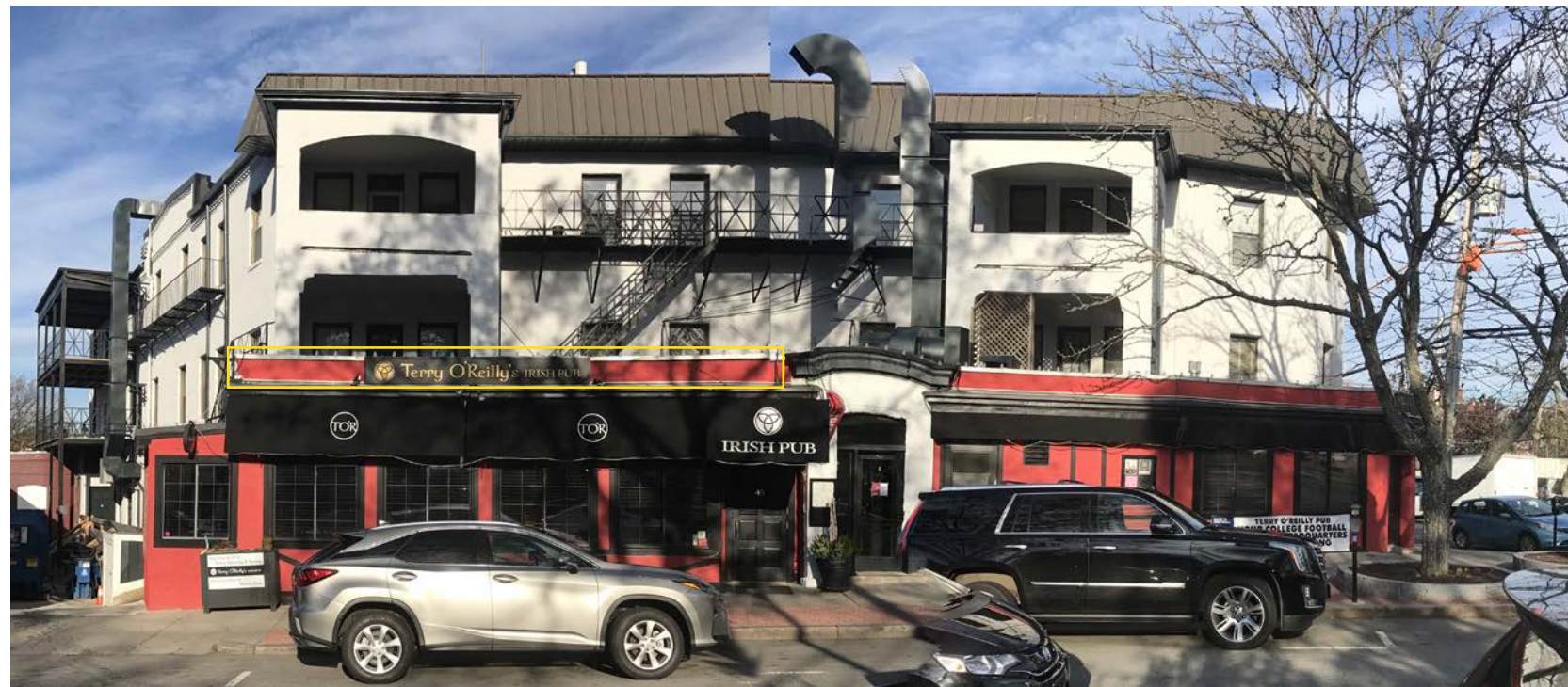
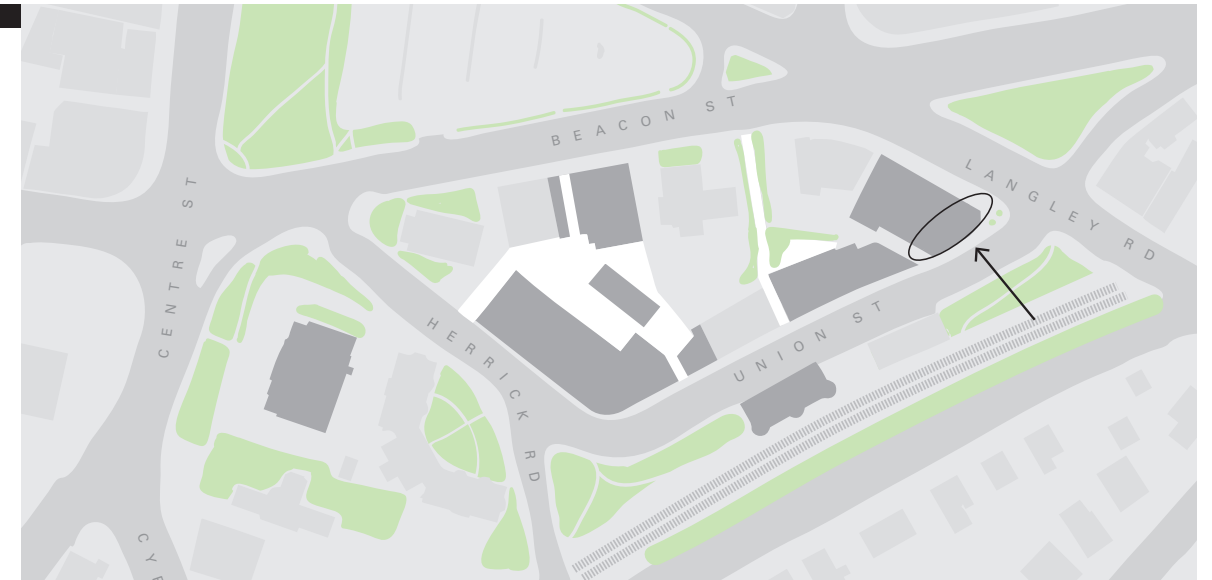
Tenant ID



47-61 Langley Road - SE Facade



Yellow indicates sign band allocated for tenant use.
Wall mounted tenant signs not to exceed 22 sf



47-61 Langley Road - NE Facade



Tenant ID



47-61 Langley Road - NE Facade

Frontage: 125 ft (per assessor's database)

Proposed Common Signs:

- Wallmounted ID
- 'Painted' Brick Graphic facing driveway

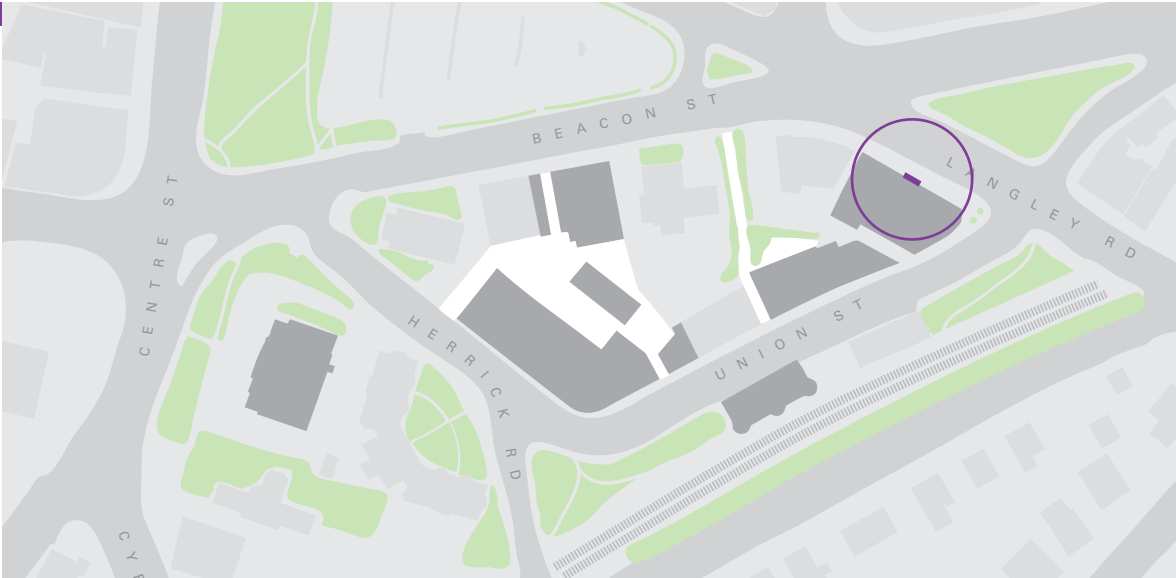


Yellow indicates sign band allocated for tenant use.
Wall mounted tenant signs not to exceed 22 sf



Building-mounted ID (47-61 Langley Road)

Preliminary Design
Sign Area: ~100 sf



47-61 Langley Road - NW Facade



Tenant ID
6.25 sf

Tenant ID
6.25 sf

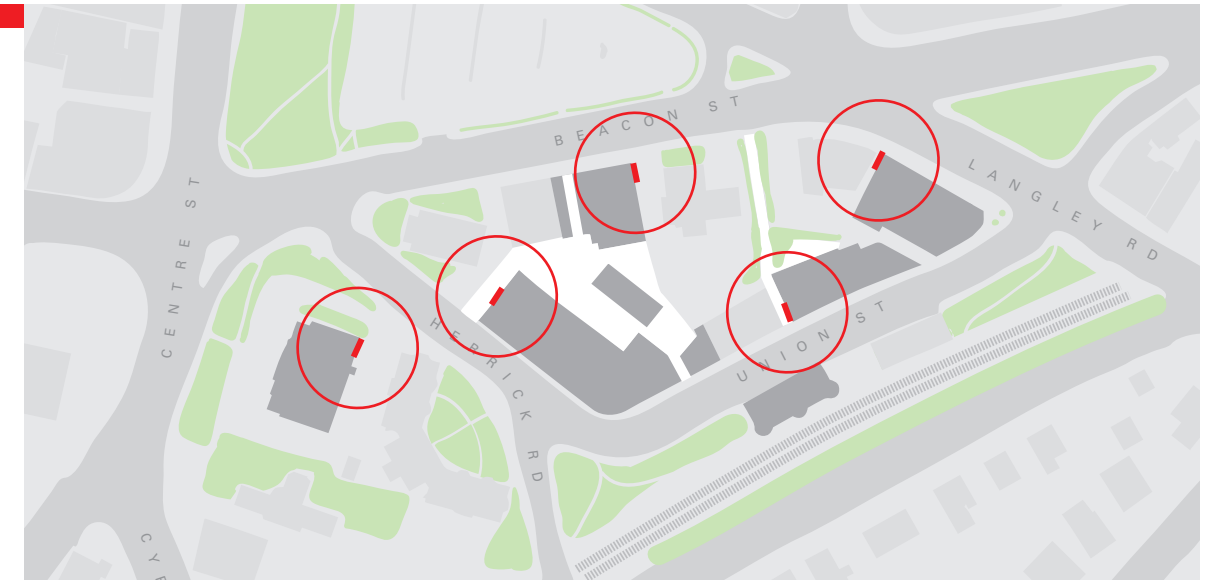
Tenant ID
6.25 sf

'Painted' Brick Graphic
80 sf



'Painted' Brick Graphics

Sign Area: As noted, varies by location



1280 Centre Street: 80 sf



93 Union Street: 65 sf



49-63 Union Street: 65 sf



47-61 Langley Road: 80 sf



790-794 Beacon Street: 80 sf



4 B



2018 00073508

Bk: 71056 Pg: 474 Doc: DECIS

Page: 1 of 4 05/24/2018 03:19 PM



#138-18

49-63 Union Street

CITY OF NEWTON

IN CITY COUNCIL

April 17, 2018

2018 APR 19 PM 3:33
RECEIVED
CITY OF NEWTON

ORDERED:

That the City Council, 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/SITE PLAN APPROVAL to grant exceptions to the number, type, and size of signs, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The exceptions to the number, size, and type of signs are in the public interest because:
 - a. The approved signs will enhance pedestrian wayfinding given the subject properties front four different public ways, contain pedestrian passageways, and have multiple access points; and
 - b. The approved signs are consistent with the unique identity of these commercial properties and will help brand and develop a sense of place, key components of the 2007 Comprehensive Plan. (§5.2.3, §5.2.8, and §5.2.13)

PETITION NUMBER: #138-18

PETITIONER: First General Realty Corp.

LOCATION: 49-63 Union Street, on land known as Section 61, Block 36, Lot 07, containing approximately 8, 735square feet of land; 93-105 Union Street, on land known as Section 61, Block 36, Lot 09, containing approximately 31, 455 square feet of land; 1280 Centre Street, on land known as Section 61, Block 35, Lot 05, containing approximately 27, 560 square feet of land; 47-51 Langley Road, on land known as Section 61, Block 36, Lot 06, containing approximately 10, 037 square feet of land; and 790-794 Beacon Street, on land known as Section 61, Block 36, ~~Lot 03, containing~~

LOT B

LOTA

8029-185

139934

238150

A True Copy
Attest

CITY CLERK OF NEWTON, MASS.

approximately 7, 400 square feet of land

OWNERS:

Union Realty Trust (93-105 Union Street); Picclang LLC (47-61 Langley Road); ¹⁶⁰²Beacon 792 LLC (790-794 Beacon Street); Elm Realty Trust (1280 Centre Street); and Forty-Nine Union Trust (49-63 Union Street)

ADDRESS OF OWNER:

93 Union Street, Suite 315
Newton, MA 02459

TO BE USED FOR:

Signs

CONSTRUCTION:

Signs

EXPLANATORY NOTES:

§5.2.13 to allow a freestanding sign exceeding ten feet in any linear direction; §5.2.3, §5.2.8, and §5.2.13 to allow two identity signs, four common identity signs, three restaurant directory signs, and two historic interpretive signs

ZONING:


Business Use 1

Approved subject to the following conditions:

CONDITIONS

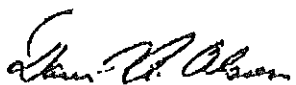
1. All Special Permit approved signs shall be located and constructed consistent with the following plans: "Piccadilly Square Signage Plan", prepared by Whitney Veigas, dated January 5, 2018, consisting of 36 sheets.
 - a. The plans referenced above shall be revised to remove the free standing pedestrian directional sign along Beacon Street shown in page 36.
2. All signs shall be designed and installed to comply with applicable building codes.
3. The Petitioner will control the content of all signage. Signs will be approved by the Petitioner for compliance with the Comprehensive Sign Package and the conditions of this Special Permit before presentation to the Commissioner of Inspectional Services

A True Copy
Attest



City Clerk of Newton, Mass.

- and Director of Planning and Development for review and approval. The building permit application shall include a location map.
4. Through this Special Permit, the maximum size, number, type of content and location of the Special Permit signs are regulated and approved and shall be consistent with the plans and materials listed in Condition #1. Individual tenants and tenant signs may change over time. Changes to the size, number, and types of signs shall follow the below procedure:
 - a. If the future signs comply with Section 5.2 of the Newton Zoning Ordinance and are deemed consistent with the Comprehensive Sign package by the Commissioner of Inspectional Services and Director of Planning and Development, the changes(s) shall be permitted as of right.
 - b. If the future signs comply with Section 5.2 of the Newton Zoning Ordinance and are deemed inconsistent with the Comprehensive Sign package by the Commissioner of Inspectional Services and Director of Planning and Development, the changes(s) shall submitted to the Urban Design Commission for review and approval.
 - c. If the future signs do not comply with Section 5.2 of the Newton Zoning Ordinance, the petitioner shall seek an amendment to this special permit.
 5. Signs shall not have cut-outs, projections or extensions beyond the dimensions specified in the approved plans.
 6. Signs shall have no moving parts, nor flashing or blinking lights so as to create an animated effect.
 7. Petitioner and/or Tenant shall keep all signs reasonably clean and neat and in proper condition, and all necessary and ordinary/customary maintenance shall be performed by Petitioner and/or Tenant (as appropriate).
 8. Petitioner and/or Tenant (as appropriate) shall repair or restore to a safe condition any part of a sign when the sign is damaged.
 9. 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 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 order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.

A True Copy
Attest


10. No Final Inspection/Occupancy Permit for 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 statements by a licensed design professional that the signs have been installed to comply with applicable building codes.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed design professional.

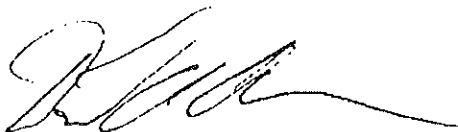
Under Suspension of Rules

Readings Waived and Approved

19 yeas 0 nays 4 absent (Councilors Auchincloss, Lipof, Norton, and Schwartz) 1 recused (Councilor Laredo)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council 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 April 19, 2018. 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:



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

I, David A. Olson, as the Clerk of the City Council 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 Newton City Council in the Office of the City Clerk on 4/19/18 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

Recorded Land Title Refs:

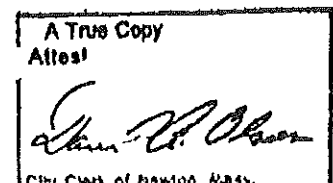
11827-451

12380-470

67653-217



(SGD) DAVID A. OLSON, City Clerk
acting Clerk of the Council





CITY OF NEWTON, MASSACHUSETTS

Urban Design Commission

MEETING MINUTES

A meeting of the City of Newton Urban Design Commission (UDC) was held virtually on Wednesday, **February 8, 2022** at 7:00 p.m. via Zoom

<https://us02web.zoom.us/j/84184823048>

Ruthanne Fuller,
Mayor

The Chair, Michael Kaufman, called the meeting to order at 7:02 P.M.

Barney Heath,
Director
Planning & Development

I. Roll Call

Those present were Michael Kaufman (Chair), Jim Doolin, and Bill Winkler. John Downie joined at 7:04 pm and Visda Saeyan joined at 7:22 pm. Visda Saeyan was not able to vote since she hadn't signed the official City of Newton Oath Book since being reappointed to UDC. Shubee Sikka, Urban Designer, was also present.

Shubee Sikka,
Urban Designer
Planning & Development

II. Regular Agenda

Sign Permits

Members
Michael Kaufman, Chair
Jim Doolin, Vice Chair
John Downie
William Winkler
Visda Saeyan

Mr. Kaufman asked if the Commission felt there were any applications they could approve without discussion. The Commission agreed to approve the following signs without discussion:

2. 201 Needham Street – Michael's

Proposed Signs:

- One wall mounted principal sign, internally illuminated, with approximately 95 sq. ft. of sign area on the eastern building façade facing Needham Street.
- One wall mounted principal sign, internally illuminated, with approximately 95 sq. ft. of sign area on the southern building façade facing Tower Road.

1000 Commonwealth Ave.
Newton, MA 02459
T 617/796-1120
F 617/796-1142

MOTION: Mr. Kaufman made a motion to approve the proposed signs at 201 Needham Street – Michael's. Mr. Winkler seconded the motion, and none opposed. All the members present voted, with a 3-0 vote, Michael Kaufman, Jim Doolin, and William Winkler in favor and none opposed.

www.newtonma.gov

1. 55-71 Needham Street – Jersey Mike's Subs

Applicant/Representative: Michael Privitera

Proposed Signs:

- One wall mounted secondary sign, internally illuminated, with approximately 49 sq. ft. of sign area on the eastern building façade facing Needham Street.

- One wall mounted secondary sign, internally illuminated, with approximately 49 sq. ft. of sign area on the southern building façade facing the side parking lot.
- One wall mounted secondary sign, internally illuminated, with approximately 9 sq. ft. of sign area on the western building façade facing the rear parking lot.

Presentation and Discussion:

- Staff informed UDC before the meeting by email that the applicant has submitted revised sign drawings that appear to be compliant with the comprehensive sign package. The above dimensions reflect the revised sign area for all three signs. As per the comprehensive sign package, 2 secondary signs of 50 sq. ft. each and one secondary sign of up to 12 sq. ft. are allowed.
- Mr. Kaufman commented that it looks like from the photoshop images that the primary sign on the side is not centered on the panel, is that intentional? The applicant responded that its probably a graphic error, the sign will be centered on the rectangular panel, just like the front. Mr. Winkler agreed with Mr. Kaufman.

MOTION: Mr. Kaufman made a motion to approve the signs with a clarification at 55-71 Needham Street – Jersey Mike’s Subs. Mr. Doolin seconded the motion, and none opposed. All the members present voted, with a 4-0 vote, Michael Kaufman, Jim Doolin, John Downie, and William Winkler in favor and none opposed. The Commission recommended the secondary sign for approval with the clarification that the sign facing the side parking lot will be centered on the panel.

3. 1121 Washington Street – Fleet Homes

Applicant/Representative:

Melanie Fleet

Tom, Fastsigns of Needham

Proposed Sign:

- One wall mounted principal sign, non-illuminated, with approximately 12 sq. ft. of sign area on the eastern façade on the second floor.

Presentation and Discussion:

- Mr. Kaufman commented at the last meeting, UDC looked at various places to put this sign on the Trader Joe’s building and it looks like it’s been proposed for a small sign on the eastern façade, non-illuminated sign. There was a discussion last time about a comprehensive sign permit. Now, there is a letter sent by the building owner that they don’t plan to request permission to install any additional signage on the building facades nor will they promise signs to any prospective tenants. Mr. Kaufman asked if that means that the building owner is not planning to put up any more signs? Ms. Fleet responded that’s correct. The applicant commented that the building owner has also mentioned that most of the current tenants have been there for over a decade and none of them want signs and he won’t promise signs for future tenants.
- The applicant commented that one of the comments at the last meeting was that one of the concerns was the location of the sign wasn’t where Fleet Homes office is and this new proposal is right above their window.

- Mr. Doolin commented that he appreciates the letter, its less than ironclad guarantee but its pretty good and UDC will have the high ground to any other future discussions. Mr. Kaufman agreed.
- Mr. Doolin commented that it's a difficult situation for the applicant and UDC appreciates their revisions in response to the discussion last time.

MOTION: Mr. Doolin made a motion to approve the proposed sign at 1121 Washington Street – Fleet Homes. Mr. Winkler seconded the motion, and none opposed. All the members present voted, with a 4-0 vote, Michael Kaufman, Jim Doolin, John Downie, and William Winkler in favor and none opposed.

Comprehensive Sign Package

1. 1-55 Boylston Street – The Street

Applicant/Representative: Amanda Chisholm, WS Development

Proposed Signs:

- Three new wall directory signs on the eastern façade of 27 Boylston Street (W5).
- Three new column capital signs on the eastern façade of 27 Boylston Street (W6).
- Three new directory signs on the southern façade of 27 Boylston Street (W5).
- One free-standing vehicular directional sign, with 3 sq. ft. of sign area, in a landscaped island north of 27 Boylston Street (M3).
- The applicant has also extended sign bands and tenant sign locations for 27 Boylston Street south and west elevation.

Presentation and Discussion:

- The applicant's representative provided a summary of the project. This current proposal is related to signs at 27 Boylston Street which is actively under reconstruction. At the last discussion about a year ago, there was a demising plan for the first floor but that is changing now and because of that there are some changes to the building signage that was previously approved for 27 Boylston Street. The applicant walked through the changes that are proposed at this time and summarized the revisions to the building. The change that was made was made to the first floor interior layout and the grading of the building is a little unusual. So, there's three story's third floor, second floor, and the first floor is below grade on the south side. To access the retail spaces that are down there, the only way indirectly is through the outdoor area where you would walk down a staircase, and then enter the storefronts. There's no direct access into the rest of the space from the side. Last year, there were going to be larger tenants on the first floor, but now there will be smaller tenants which is creating an internal corridor that runs from north to south in the building, which is being called a Paseo. There'll be several interior facing storefronts that won't have an exterior storefront or exterior sign. So that's really driving the request that the applicant is making to give those tenants some more visibility by allowing them to have some signage on the exterior of the building. The applicant showed the drawings of the north side of the building facing the pond and the north parking lot, some of the storefronts that are on grade can be entered on the side of the building but there is also some sunken space that is not visible because it's behind the wall. As you walk across the site, the storefronts are still obscured because they are below the exterior platform. There's a staircase and also a grade change and a series of ramps going

down, it's a little more accessible but still not most visible so just trying to figure out how to make it happen. The applicant commented that to create the Paseo and then to put some smaller storefronts that don't have exterior presence, they are looking to make changes to the sign plan.

- Mr. Kaufman asked about the old movie theater. The applicant responded that it used to be old AMC theater and they are trying to preserve the canopy, it is a unique feature so would like to keep it and highlight it as part of the new development.
- The applicant showed the list of waivers that are in the current special permit and they are not proposing to change that but to add new zones. Below is the list of the zones and signs that the applicant is proposing to add:
 - Three new wall directory signs on the eastern façade of 27 Boylston Street (W5).
 - Three new blade and column capital signs on the eastern façade of 27 Boylston Street (W6).
 - Three new directory signs on the southern façade of 27 Boylston Street (W5).
 - CHECK FOR W4 signs (above the Paseo entrance)
 - One free-standing vehicular directional sign, with 3 sq. ft. of sign area, in a landscaped island north of 27 Boylston Street (M3).
 - The applicant has also extended sign bands and tenant sign locations for 27 Boylston Street south and west elevation.
- The applicant showed some precedent images to give an idea of what it might look like. The applicant commented that the sign will be artistic with tenant names listed. They are also working to brand this Paseo area with a particular name so for the sign area that is for tenant name, the applicant is proposing to put the collective name of the Paseo as opposed to an individual tenant (don't have the name yet).
- Mr. Doolin asked if the Paseo tenant names would be set on the glazing, so you would see the tenant list on the actual glass as you enter? The applicant responded that it will be on the glass and most likely exceed the 25% of window sign allowance.
- Mr. Winkler asked if the entrance to the Paseo is open air or are there doors there? The applicant responded that there will be doors but on nice weather days, the doors will remain open so they would not like to do something directly on the door with the tenant names but maybe on the glazing next door. Mr. Winkler asked if this will be branded as The Paseo. The applicant responded they don't know yet but they are hoping to find a collective theme amongst the tenants and come up with a collective name for those tenants and use that as the branding.
- Mr. Doolin commented that it would have been nice to put some placeholders in all the locations in the renderings to see the complete picture. Mr. Kaufman agreed that it will be helpful to show some signs that are where they intend to be located, even though the lettering may not be exactly what it will be. Mr. Kaufman asked the applicant if they will be able to locate the signs on the renderings? The applicant responded that they could do what they did on the elevations and put sort of blades in the areas, it won't be the final version. Mr. Kaufman commented that this project is at a point where UDC knows where the sign bands are so it would be helpful to know where the actual signs will go. Mr. Kaufman

requested the applicant to resubmit this, the drawings without the band colors and showing where the signs will be installed? The applicant responded that they could show the sign locations but without the tenants, it won't be the final placement.

- Mr. Doolin commented that the applicant can make their best shot to represent what the intention is, of the actual sign locations. For example, don't put a blank wall, instead photoshop a sign there so UDC can see a whole picture of columns with something on the wall, something on the glazing, and show it on the sign band above. The applicant commented that the colors and style will change but the location will be consistent.
- Mr. Doolin commented that the Paseo is a very interesting, creative idea and asked about the width. The applicant responded it will be 16 feet wide.
- The applicant commented that they will do some mockups with some precedent images. Mr. Kaufman commented that the applicant could also take the two renderings shown and Photoshop where the signs will go. It will be good to see the applicant's intent, there will be flexibility to move them because they will be within the sign bands.
- Mr. Winkler suggested for the directory wall sign, maybe two-thirds of that sign could be a real live art piece, something bright and nice and then on the last third, there could be a list of the shops with a method for adding and subtracting from them. The applicant responded that their intent is to incorporate art wherever possible, so it is creative and beautiful, thanks for the good suggestion.
- There was discussion about an art piece facing Boylston Street – "Put a little Love in your heart". The applicant commented that they got permission from the Cultural department since it is an art piece. UDC asked if it should have been reviewed by them. Staff responded that they would check about it.

At 7:57 pm, Mr. Kaufman suspended the Urban Design Commission, and enter the Commission in its role as Fence Appeal Board.

Fence Appeal

1. 33 Staniford Street – Fence Appeal

Homeowner: Zaid Ashai

Applicant/Representative: Regan Andreola, Beals and Thomas

Fence Appeal: The property located at 33 Staniford Street is within a Single Residence 3 district. The applicant is proposing the following fence:

- a) Side Lot Line – The applicant has revised the proposed fence since February submission and is now proposing to add a fence, set at varying distance, 10 inches to 35 inches, from the side property line with a new solid fence, 6 feet 8 ¾ inches and 7 feet 9 ½ inches tall posts, approximately 17 feet in length.

The proposed fence along the side property line appears to be not consistent with the fence criteria outlined in §5-30(d)(2) of the Newton Code of Ordinances.

Presentation and Discussion:

- Mr. Kaufman asked the applicant why ISD denied the fence permit application? The homeowner responded that it's a partial fence and it's a couple of feet from the property line. It will be used as a privacy screen, so this is not a fence that is through the whole property line. There are eight-foot posts that meet the city's regulations but there are slats which are more than six feet, so they are approximately 7 feet tall.
- The applicant (Regan Andreola) commented that the homeowners are very good residents of Newton and have gone through other permitting processes in the city, so they are here for about a bit of a ask for forgiveness for a fence, small section that was installed on their property inadvertently, just slightly higher than the allowable height for a fence. And Buddy was at the property to talk with the homeowners about another small project that they're pursuing, and he happened to notice it and measured it and said it's a little bit over. He said to submit the building permit which will be rejected, then you'll go in front of UDC with a fence appeal and, he didn't seem to have an issue with the fence really. But we wanted to go through the correct steps and explain why the fence itself although we are eight- and three-quarter inches above the six-foot height maximum. It is a small stretch of fence that is also set behind an existing hedge. It's just to help screen the existing uses on the patio and is barely visible from any right of way and doesn't provide any other impacts to the neighbors. The applicant shared her screen and provided a summary of the fence appeal application.
- Mr. Kaufman asked if the homeowner or the applicant has talked with the neighbors about this? The homeowner responded that they have talked to them, and they are fine with it because it provides screening but there wasn't anything in writing from them and said they have no objections to this. Mr. Kaufman commented that if there was a letter from the neighbor that they had no objection to the fence being eight inches taller than allowed, then he would be happy to grant the appeal and asked other commissioners about their thoughts.
- Staff asked if the bottom portion of the fence is open, the photos submitted showed the bottom is open and the photos shown now at the meeting, the bottom is not open. The applicant commented that they have changed the design since the submission and the bottom portion of the fence has been filled in and is not open now. Staff requested the applicant to submit updated drawings showing the change.
- Mr. Doolin asked about the fence material. The applicant responded it is AZEK from Walpole Outdoors.
- Mr. Doolin commented that it shows in the application that there was notification sent to all the abutters and there was nothing filed about any responses so in his opinion, there are no objections to the appeal. Mr. Kaufman responded he would feel more comfortable if the immediate abutters said that they have no issues with this instead of silence. Mr. Kaufman commented that UDC could do one of the two things, either vote on this tonight or table this and wait for a letter from the abutter and vote on it next time.
- Ms. Saeyan commented that there is also evergreens next to the fence so the neighbors will probably not see this fence.
- Mr. Winkler commented that the heavy landscaping saves the day, and he is in favor of this appeal application.
- Mr. Downie asked if a slat could be taken out of the fence, so the fence height is less than 6 feet? The applicant responded that if it was needed then they would, it will have to be taken apart and moved down so it's not completely infeasible. Mr. Downie commented that his question revolves around they put up a fence without a permit, its too tall according to the fence ordinance and now they are just asking for permission to keep it as is without exploring what it would take to make it comply. It seems like that the effort on the part of the applicant

is not exceptional. The homeowner responded that he respectfully pushes back on that the effort wasn't exceptional. He commented that they have worked with Beals and Thomas to make sure that they go through this permitting process. They just didn't sit on this with Buddy. There were no complaints from a neighbor, that's not the reason we're here. It's not visible to the neighbor. And as Reagan has mentioned, they've done past projects where wetlands have been remediated in the back on Staniford Street, there was a former landfill, which there's a lot of mess that's been left in Staniford. So, the homeowner would take to exception that it's not a strong effort, think they've made a strong effort. The posts are within regulation. This is about slats that are eight inches. And obviously both homeowners want to do the right thing. The homeowner's view is that this fence has been up for a couple of months. The neighbors have not objected to it, notifications have been sent through this permitting process and obviously the neighbors aren't here, or they've not sent a letter objecting to it.

- The applicant commented that regarding the structural content, the internal slats are made in complete panels so they can't just take the top off, the entire piece would have to come down and reconfigured. It could be physically done but it would be an incredible effort to have to do that.
- Mr. Kaufman asked Commissioners if they would like to see a letter from the neighbor or vote now? Mr. Downie and Mr. Winkler responded that he would like to see a letter from the neighbor. Mr. Kaufman commented that the UDC will table this item until next month to wait for the letter from the neighbor.

At 8:28 the Commission adjourned the Fence Appeal Board portion of the meeting and reconvened as the Urban Design Commission.

III. Old/New Business

1. Meeting minutes

The Commission reviewed the minutes of November and December meeting.

MOTION: Mr. Kaufman made a motion recommending approval of the regular meeting minutes for November and December as submitted. Mr. Downie seconded the motion. All the members present voted, with a 4-0 vote, Michael Kaufman, Jim Doolin, John Downie, and William Winkler in favor and none opposed. The decision is hereby incorporated as part of these minutes.

IV. ADJOURNMENT

Mr. Kaufman made a motion to adjourn the meeting and there was general agreement among the members.

The meeting was adjourned at 8:48 p.m.

Respectfully submitted by Shubee Sikka

Approved on