SOUTH AVENUE
PLANNED DEVELOPMENT DISTRICT
APPROVED BY TOWN MEETING
SEPTEMBER 24, 2007
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1. ZONING PROVISIONS
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The following Planned Development District Zoning Provisions (hereinafter, the “PDD Zoning Provisions”) shall, except as provided below, govern the development of the Planned Development District (the “PD District”) which is bounded by Second Avenue, State Highway Route 3 and South Avenue, Burlington, Massachusetts (hereinafter, collectively, the “PD Premises”) and shall be in accordance with the Concept Plan (as defined below and of which these PDD Zoning Provisions are a part) approved at the September 24, 2007 Burlington Town Meeting (hereinafter, these PDD Zoning Provisions including all material submitted to and approved by Town Meeting in connection with the rezoning of the PD Premises to a PD District are collectively referred to as, the “Concept Plan”). The PD District consists in the aggregate of approximately 16.0 acres. To the extent that the Concept Plan does not address an issue of zoning, the development of the PD Premises with respect to any such issue shall be governed by the Zoning By-Laws of the Town of Burlington, Massachusetts in effect on July 31, 2007 (hereinafter, the “Zoning By-Laws”).

Article 1 - Use Regulations:

The Concept Plan allows for a mixed use development of the PD Premises which may include a variety of uses including general office, industrial, retail, consumer and trade uses, and accessory services related to each use. Within the PD District there shall be no restriction on combining different categories of the uses listed in the Use Table (Exhibit “A” attached) within the same building or lot other than those imposed by the State Building Code or other federal, state or local regulations other than Zoning.

Parking in the amounts as hereinafter provided may be satisfied either through structured or surface parking. Pursuant to the Concept Plan the development of the proposed principal uses and accessory uses associated therewith, and parking are permitted; as allowed in the Use Table annexed hereto as Exhibit “A”. Development in the PD District shall not exceed 525,000 square feet of Class A office and research and development plus 10,000 square feet of retail, consumer and trade uses, plus one (1) restaurant consisting of no more than 250 seats and 10,000 square feet. Biosafety level 4
lab uses are prohibited throughout the PD Premises. The total net square footage of the project shall not exceed 545,000 square feet. The Total gross square footage of the project shall not exceed 610,400 square feet.

Until such time as the Developer elects to commence development (i.e., obtains the necessary permits and approvals and commences construction) for any portion of the PD Premises as provided on the Concept Plan, the structures and uses in existence as of the effective date of the PDD Rezoning may be continued. The complete listing of permitted uses at the PD Premises is set forth on the Use Table annexed hereto as Exhibit “A”. Uses in a Wetland District (as the same is defined within the Zoning By-Law) shall be subject to review by the Burlington Conservation Commission pursuant to Massachusetts General Laws Chapter 131 and Article XIV of the Burlington General By-Laws. All permitted uses at the PD Premises are subject to the issuance by other Town agencies or boards of all other required licenses and approvals normally required for such use. Any use that is prohibited in the Aquifer Overlay District shall continue to be prohibited in the Aquifer Overlay District despite anything contrary contained in the PDD Provisions for any portion of the PD Premises which is within the Aquifer Overlay District.

**Article 2- Density and Dimensional Requirements:**

Within the PD Premises, subject to applicable laws and regulations governing fire and safety, there shall be no required setbacks from the side and rear lot lines for parking, driveways or maneuvering aisle. Land used principally for coordinated, integrated retail and commercial use shall be deemed to be one parcel or lot for density regulations and parking purposes notwithstanding that legal ownership of the land is divided by lease, in fee or otherwise, among two or more owners. The Developer and the PD Premises shall continue to have the benefit of Section 6.6.2 of the Zoning By-Laws to the extent that the PD Premises benefited from said Section as of the date of the adoption of the PD Zoning Provisions and, further, Section 6.6.2 of the Zoning By-Laws shall be applicable to the PD Premises after the date of said adoption of the PD Zoning Provisions. The following dimensional requirements shall be the exclusive dimensional requirements applicable to development

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1. Biosafety in Microbiology and Biomedical Laboratories (BMBL) 5th Edition 2007 CDC/NIH.

2. Square foot measurements for purposes of office/industrial/retail uses shall be calculated on the basis of “net leaseable square feet” which is the net space leased by tenant(s) or occupied by the user of the space if the building is not leased (i.e. owner/user) exclusive of common areas, hallways, building foyers, areas devoted to heating, air conditioning, elevators, and other utility areas.
in the PD Premises notwithstanding any contrary provisions in the Zoning By-Laws including any Overlay District now existing.

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

Minimum Frontage ........................................................... 50 feet
Minimum Lot Area ............................................................. 20,000 s.f.
Minimum Front Yard ......................................................... 10.0 feet
Minimum Rear Yard .......................................................... 15.0 feet
Minimum Side Yard ........................................................... 15.0 feet

Maximum Building and Structure Height

Building 1 ........................................................................ 90 feet
Building 2 ........................................................................ 120 feet
Building 3 ........................................................................ 45 feet

Maximum Impervious Surface Area

In the event that the project is done in phases, at no time can the Maximum Impervious Surface Area exceed 70% and upon full build out of the PD Premises the Maximum Impervious Surface Area for the entire PD Premises shall not exceed 65%.

Building envelopes shall be as shown on the Concept Plan.

3 Unless its outside walls are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). There shall extend across the rear of every building or structure an open area of at least 10 feet for fire fighting purposes unless waived by the Chief of the Fire Department. Rear Yard shall be measured from the exterior plane of each building face excluding roof overhangs.

4 Unless the outside walls of any space/structure are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). Side Yard shall be measured from the exterior plane of each building face excluding roof overhangs.

5 Building height shall be measured in accordance with the Zoning By-Laws.
Article 3 - Lot Lines:

Subject to the applicable provisions of Article 6, below, internal lot lines may be established pursuant to a subdivision plan to be filed in accordance with Massachusetts General Laws Chapter 41; Section 81K et seq. Lot lines may be altered from time to time in accordance with the procedures of Section 81P of Chapter 41 of the Massachusetts General Laws for so-called “Approval Not Required Plans”, and/or the applicable provisions of Sections 81K-81GG of Chapter 41 of the Massachusetts General Laws for any subdivision of the PD Premises.

Article 4 - Parking and Loading Regulations:

Parking spaces required for one lot may be located on a separate lot, which may be in separate ownership so long as an easement guarantying long-term use of such spaces and satisfactory in form to the Town is executed and filed in the Registry of Deeds of Middlesex County. Parking for all buildings and uses may be provided in common parking lots. The following maximum ratios shall be applicable to parking at the PD Premises:

1. 6.0 spaces per 1,000 square feet of floor area of retail use (calculated in accordance with footnote 1, above);
2. 4.5 spaces per 1,000 square feet of floor area of office use (calculated in accordance with footnote 1, above);
3. 1 space per 2.5 seats of eating establishment;
4. 2.5 spaces per 1,000 square feet of floor area of manufacturing and industrial use;
5. 1 space per 1,000 square feet of floor area of storage use.
6. Handicapped parking shall be in accordance with ADA, AAB and any other federal, state or local regulation applicable at the time of construction.

The parking ratio for the full build out of the PD Premises including all possible principal and accessory uses shall not exceed 4.0 spaces per 1,000 square feet of net floor area.

The Planning Board, upon application of the Developer of the PD Premises or any portion thereof, shall be permitted, upon the grant of a Special Permit in accordance with Section 7.4.0 of the Zoning By-Laws, to alter the aforementioned ratios from time to time and such change shall not be deemed a material or substantial deviation from the Concept Plan as approved by Town Meeting.
Typical parking space dimensions shall be as follows:

1. Typical parking space -- 9' x 18'

2. Compact parking space -- 8' x 15' (up to 30% of parking spaces located within structured parking may be Compact and up to 20% surface parking may be Compact. Compact spaces may not be utilized directly adjacent to any Retail use(s), nor in close proximity as determined by the Planning Board to the entrances of any building unless a finding is made by the Planning Board during the Special Permit process to vary this limitation).

3. Handicap Accessible Spaces -- 13' x 18', inclusive of 5' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.

4. Handicap Van Accessible Spaces -- 16' x 18', including an 8' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.

**Article 5 - Building Locations:**

The Plans entitled South Avenue Planned Development District prepared by Vanasse Hangen Brustlin, Inc. submitted as part of the Concept Plan (hereinafter, the “Development Plans”) denote certain building envelopes wherein proposed structures are to be located. The Developer of the PD Premises or any portion thereof shall be permitted to locate and relocate buildings and modify building footprints within the building envelopes shown on the Development Plans subject to compliance with these PD Zoning Provisions (including, without limitation, the construction of above ground parking structures, the result of which is to relocate under building parking or separate structures with decks shown on the Development Plan, provided such construction occurs within the building envelope shown on the Development Plan) and such relocations shall not be deemed a substantial deviation of the Concept Plan.

**Article 6 - Definitions:**

Except as provided below or herein including, without limitation, the Use Table (Exhibit “A”), defined terms shall have the same meanings as in the Zoning By-Law. The following terms shall have the following meanings in the PD District and shall govern the PD Premises:
1. **Frontage.** For purposes of these PD Zoning Provisions, "Frontage" shall mean the line adjacent to: (a) any internal site drive of any length which connects (directly or indirectly) to a way described in subclause (b), (c) or (d), below, said way having been approved by the Planning Board of the Town pursuant to Section 12.1.5 of the Zoning By-Laws as part of any PD Special Permit and Site Development and Use Plan; or (b) a public way which the Town Clerk certifies is maintained and used as a public way; or (c) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law; or (d) a way in existence when the subdivision control law became effective in the Town of Burlington, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereto or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Frontage shall be measured in a single, continuous, uninterrupted line along a street or streets.

2. **Lot.** A parcel of land used or set aside and available for use on the site of one or more buildings, and buildings accessory thereto, or for any definite purpose in one (1) ownership, having frontage as described above, and may be divided by a street or way and may include any land within the limits of a public or private way upon which such lot abuts. A lot for purposes of these PD Zoning Provisions may or may not coincide with a lot of record.

In the event of any conflict between the aforementioned definitions and the definitions in the Zoning By-Laws, the definitions contained herein shall govern and control.

**Article 7 - Signage:**

For purposes of signage, the PD Premises shall be governed by and subject to the following signage requirements and limitations:

1. **General Administration.** All signage permits and applications shall comply with Section 3.2 "Administration" of the General Bylaw of the Town.
2. **Special Sign Permit.**

The Zoning Board of Appeals may vary the provisions of these sign provisions in specific cases which appear to them not to have been contemplated by these PDD Zoning Provisions and in cases where enforcement of these provisions of the PDD Zoning Provisions would involve practical difficulties or unnecessary hardship, if in each instance desirable relief may be granted without substantially derogating from the intent and purpose of this section of the PDD Zoning Provisions but not otherwise. Any decision to vary the provisions of this section of the PDD Zoning Provisions shall be pursuant to a Special Sign Permit decision issued by the Zoning Board of Appeals after a properly noticed public hearing and shall specify any sign alteration allowed and the reasons therefor. Each decision of the Zoning Board of Appeals shall be filed with the Office of the Town Clerk within fourteen (14) days after the hearing and a copy of the decision shall be sent by mail or delivered to the applicant and any other persons appearing at the hearing or so requested in writing.

3. **Temporary Signage.**

Temporary Signage shall be permitted pursuant to Section 6.7.3.6.2 of the Zoning Bylaw (as the same may be amended from time to time) or the temporary signage permitted within the underlying zoning designation of the PD Premises existing immediately prior to the adoption of these PDD Zoning Provisions.

4. **Allowed Signage.**

All Allowed Signage within the PD Premises shall be as defined within Section 3.1 of the General Bylaw, except as otherwise noted below. Individual signage for any tenant within the PD Premises may be allowed, pursuant to the regulations of this Article 7, anywhere within the PD Premises subject to the following provisions:

i. **Wall Signs** - Any sign attached to, erected against, or painted onto a wall or a building with the exposed face of the sign in a plane parallel to said wall. A Wall shall not exceed four (4) feet in height and six (6) feet in length at the first floor. At any floor above the first floor Wall Signs shall not exceed six
(6) feet in height by ten (10) feet in length. Wall Signs directed towards Route 3 shall not exceed six (6) feet in height by ten (10) feet in length.

ii. **Sign Band** - In multiple storefront buildings, signs of similar size, proportion and materials shall be used for each store, defined within a sign band. The sign band is defined vertically as the space between the first floor transom and the upper floor windowsill or first floor eave or cornice. The length of the sign band shall be equal to or less than the length of the tenant space. The lettering used within the sign band shall not exceed two (2) feet in height.

iii. **Projecting Signs** - Any sign suspended from or supported by a building or structure and projecting out at any angle to the plane of the wall or structure. Projecting signs shall not project more than six (6) feet from the face of the building. The sign shall be seven (7) feet or more above the ground. The top of the sign shall be located below the upper floor windowsill or first floor eave or cornice, or the eave or cornice of the uppermost floor occupied by the tenant. Projecting signs shall be spaced apart by at least a distance equal to the floor-to-floor height of the building floor they are located at.

iv. **Window Signs** - Any sign, picture, symbol, or combination thereof, designed to communicate information about a business or tenant, that is placed inside a window or upon the window, so as to be visible from the outside. The lettering on first floor windows should cover no more than ten percent (10%) of the glass area. The lettering and graphics on the second floor windows should cover no more than thirty percent (30%) of the glass area. Any increase in coverage of lettering on the first and second floors shall require the issuance of a Special Sign Permit from the Board of Appeals.

v. **Awning Signs** - Any sign located on the front or side of an awning. Awnings shall not project more than ten (10) feet from the face of the building. The bottom of the awning shall be seven (7) feet or more above the ground and the top of the awning shall be located below the upper floor windowsill or
vi. Marquee Signs - Any sign attached to, in any manner, or made a part of a marquee. A marquee is defined as any permanent roof-like structure projecting beyond the face of the building. Marquees shall not project more than ten (10) feet from the face of the building. The bottom of the marquee shall be seven (7) feet or more above the ground. The top of the marquee sign shall be located below the upper floor windowsill or first floor eave or cornice. The length of the marquee shall be equal to or less than the length of the tenant space. The lettering used shall not exceed two (2) feet in height.

vii. Business Directory - A Business Directory shall be either mounted on the face of a building or permanently affixed to the ground through the means of a stonewall, foundation or other decorative device and shall consist of more than 1 tenant or user located within said building or group of buildings. Each business or tenant listed on the Business Directory sign shall not exceed ten (10) square feet in sign area per side/face of sign. Further, no freestanding business directory shall be permitted within ten (10) feet of a public or private way and shall not be permitted to impede vehicle sight distance.

viii. Freestanding Signs - Freestanding Signs shall be permanently affixed to the ground through the means of a stone wall, foundation or other decorative device. The total square footage of the Freestanding Sign shall not exceed thirty square feet. This maximum sign area shall not include the sign foundation or other decorative or architectural feature. Further, no Freestanding Sign shall be permitted within ten (10) feet of a public or private way nor shall be permitted to impede vehicle sight distance. Any sign foundation shall not exceed six (6) feet in height unless a Sign Special Permit is issued by the Board of Appeals.

ix. Route 3/Route 128 Signage - Signage shall be permitted on the face of any structure principally directed towards Route 3/Route 128 subject to the
following limitations: The height of the signage shall be: (i) at the first floor, limited to a maximum of six (6) feet or less in height and the length shall not exceed $1/4$ of the face of the building upon which the sign is attached; and (ii) if located above the first floor be limited to eight (8) feet or less in height and the length shall not exceed $1/3$ of the face of the building upon which the sign is attached. Any sign exceeding the aforementioned dimensional limitations shall require a Special Sign Permit issued by the Board of Appeals. The specific face of said structure designated for sign installation shall be fifty percent (50.0%) or more visible from Route 3 at a point perpendicular to the center of the building as determined by the Building Inspector.

x. **Street Banners** - Street Banners advertising public entertainment or advertising a charitable, religious, municipal or educational event may be displayed in locations designated by the Building Inspector (which shall be, at a minimum of fifty (50) feet between banners) for a period of time not to exceed fourteen (14) consecutive days, the first of which shall occur not more than thirteen (13) days prior to such entertainment or event. All Street Banners shall be removed within twenty-four (24) hours after such entertainment or event. The Developer shall obtain approval from the Building Inspector to designate the location for the installation of said Street Banners.

xi. **Directional and Traffic Safety Signs** - Signs indicating "Entrance", "Exit", "Parking", street names or similar traffic directional information as well as their location shall be approved by the Building Inspector in consultation with the Police Department, as applicable.

xii. **Gateway Signage.** The Developer shall be permitted to construct and maintain signage which is intended to identify the project to be developed at the PD Premises (including tenant identities), which signage shall: (i) be limited to the major access roadways to the PD Premises; (ii) may be attached
to existing structures or free standing; and (iii) each identified entity shall be limited to five (5) feet in height per side of said sign. The location of such signage structure(s) shall be approved by the Planning Board.

With respect to any building containing more than one commercial tenant/user, up to three signs attached to the building (either Wall Signs or signs directed towards Route 3/Route 128 or combination thereof) shall be permitted in compliance with applicable dimensional requirements.

**Article 8 - Lighting:**

The purpose of this section is to encourage quality light design while providing a sense of safety and security. The Developer shall consider the following standards when designing a lighting plan, subject to Planning Board approval:

- The use of lighting should be integrally designed as part of the built environment and should reflect a balance for the lighting needs with the contextual ambient light level and surrounding nighttime characteristics which are appropriate for the uses.

- The lighting designers shall consider utilizing lighting designs with automatic controls systems wherever possible.

- A lighting plan, as applicable, shall be included with any Site Development and Use Plan/Special Permit. Architectural lighting may be utilized to highlight special site features and areas.

- Landscape lighting may be utilized to accent landscaping and special site features.

- All lighting proposed shall be sensitive to the night sky. The Developer shall utilize Illuminating Engineering Society of North America (IESNA) guidance for any lighting design.

**Article 9 - Administration and Procedures:**

A. **PD Special Permit**

   1. Any Special Permit required under the Zoning By-Laws or the PD Zoning Provisions with respect to the PD Premises shall be under the jurisdiction of
the Planning Board or Special Permit Granting Authority of the Town in accordance with the then applicable special permit procedures of the Planning Board or Special Permit Granting Authority. The granting of any individual Special Permit under Section 12.1.5 of Article XII of the Zoning By-Laws shall be deemed to constitute compliance with the provisions of Article XII of the Zoning By-Laws and in particular Section 12.1.2.

2. Prior to the submission of any application for a structure in the Aquifer and Water Resource Overlay Districts, the Developer shall consult with the Conservation Commission and Board of Health of the Town as to the location of the proposed structures and proposed drainage methodology.

3. In approving any PD Special Permit for the PD Premises, the Planning Board, in addition to the findings required under Section 12.1.7 of the Zoning By-Laws shall be required to find that:
   i. The proposed use as developed will not adversely affect the neighborhood; and
   ii. There will be no nuisance or hazard to vehicles or pedestrians.

4. In connection with the grant of any PD Special Permit for portions of the PD Premises located in the Aquifer and/or Water Resource Overlay District, the Planning Board shall determine that at the boundaries of the portion of the PD Premises being permitted, groundwater quality resulting from on-site waste disposal, other on-site operations, natural recharge, and background water quality will not fall below the standards established by the Department of Environmental Protection in “Drinking Water Standards of Massachusetts”, or for parameters where no standard exists, below standards established by the Board of Health and, where existing groundwater quality is already below those standards, upon determination that the proposed activity will result in no further degradation.

Prior to the submission of a PD Special Permit pursuant to Section 1.4.2 of the Use Table attached hereto as Exhibit “A”, the Developer shall fund a peer review consultant at the discretion of the Board of Health to review
the proposed use, said agents to be used, processes to be implemented, waste generated and safety protocols to be implemented. Any final recommendation issued by said peer review consultant and adopted by the Board of Health as part of the PD Special Permit review process shall be considered by the Planning Board prior to the issuance of a PD Special Permit.

Prior to the issuance of a PD Special Permit, the Developer shall have their Licensed Site Professional (LSP) submit a written opinion to the Board of Health which details proposed on-site development activities, including any blasting, if applicable, and installation of drainage structures) and the impact on ongoing and planned environmental remedial activities. Said opinion shall include a statement that the on-site development activities will not materially adversely exacerbate contaminant concentrations emanating from the PD Premises into the Town’s drinking water wells.

No blasting shall occur on-site without Board of Health notification. If blasting is to occur, the Developer shall obtain all necessary permits and approvals, including but not limited to a Blasting Permit from the Fire Department prior to any on-site blasting activities.

5. The Planning Board, in granting any PD Special Permit, may attach such conditions and safeguards as it deems necessary to support its findings.

6. The Site Development and Use Plan required under Section 12.1.5 of the Zoning By-Law shall supersede any requirements as to site plan review and approval under the Zoning By-Laws.

7. Any substantial changes (as determined in each instance by the Planning Board in accordance with Article 12 of the Zoning By-Laws) to, or amendments of, the Concept Plan shall be effectuated in accordance with the provisions of Section 12.1.8 of the Zoning By-Laws which would require a
2/3 vote of Town Meeting as to any and all substantial changes or amendments.

**Article 10- Miscellaneous:**

In recognition of the intent and purpose of Article XII of the Zoning By-Laws which is to permit considerable flexibility in the development of individual tracts of land, in the event of: (i) any conflict between the provisions of these PD Zoning Provisions and the Zoning By-Laws or any other by-law or regulation of the Town; or (ii) any ambiguity under the PD Zoning Provisions, such conflict or ambiguity shall be resolved or construed by the Planning Board in a manner consistent with and to permit satisfaction of the development intent described in the Concept Plan. In no event shall anything herein override the Town's Local Wetland By-Laws.
EXHIBIT "A"

USE TABLE ¹

<table>
<thead>
<tr>
<th>SECTION</th>
<th>USE DESIGNATION</th>
<th>PERMITTED AT PD DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Institutional and Recreational Uses</td>
<td></td>
</tr>
<tr>
<td>1.1.1</td>
<td>Places primarily used for religious purposes.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.2</td>
<td>Places primarily used for non-profit educational corporations, museums, libraries, and/or recreational facilities.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.3</td>
<td>Child Care and Adult Day Care facilities.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.4</td>
<td>Fire stations and sub-fire stations, police stations (exclusive of fuel storage).</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.5</td>
<td>Public Parks and related facilities.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.6</td>
<td>Public libraries, public museums, public art galleries and similar facilities.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.7</td>
<td>Community centers and public recreation buildings.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.8</td>
<td>Non-profit public clubs, recreational centers and facilities.</td>
<td>YES</td>
</tr>
</tbody>
</table>

¹ All uses set forth in this Use Table shall be subject to the issuance of any other permits and approvals required under applicable laws, regulations and ordinances.
<table>
<thead>
<tr>
<th>SECTION</th>
<th>USE DESIGNATION</th>
<th>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT  SP = SPECIAL PERMIT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.9</td>
<td>Private museums and private art galleries.</td>
<td>YES</td>
</tr>
<tr>
<td>1.1.10</td>
<td>Clinic and/or medical office (out patient services only).</td>
<td>SP</td>
</tr>
<tr>
<td>1.1.11</td>
<td>Buildings for public services.</td>
<td>SP</td>
</tr>
<tr>
<td>1.1.12</td>
<td>Public water and sewer distribution structures.</td>
<td>SP</td>
</tr>
<tr>
<td>1.1.13</td>
<td>Health, sports and fitness clubs and related facilities.</td>
<td>SP</td>
</tr>
<tr>
<td>1.2</td>
<td>Office Uses</td>
<td></td>
</tr>
<tr>
<td>1.2.1</td>
<td>Professional offices such as, but not limited to, physicians, dentists, opticians, real estate brokers, lawyers, etc.</td>
<td>YES</td>
</tr>
<tr>
<td>1.2.2</td>
<td>Administrative executive and similar offices.</td>
<td>YES</td>
</tr>
<tr>
<td>1.2.3</td>
<td>Public Offices.</td>
<td>YES</td>
</tr>
<tr>
<td>1.2.4</td>
<td>Office of salesmen, agents and representatives of manufacturing, distributing, insurance and wholesale companies.</td>
<td>YES</td>
</tr>
<tr>
<td>1.3</td>
<td>Retail, Consumer and Trade Uses</td>
<td></td>
</tr>
<tr>
<td>1.3.1</td>
<td>Personal services businesses such as, but not limited to, barbers, hairdressers, etc.</td>
<td>YES</td>
</tr>
<tr>
<td>1.3.2</td>
<td>Post Offices and banks, drive-thru service is permitted with no more than two vehicular access lanes.</td>
<td>YES</td>
</tr>
<tr>
<td>SECTION</td>
<td>USE DESIGNATION</td>
<td>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT)</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
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<tr>
<td>1.3.3</td>
<td>Photographers (with accessory digital/photo imaging), decorators, travel agencies, tailoring (provided any dry cleaning and laundry services are limited to drop off and pick-up stations only as permitted in Section 1.3.10).</td>
<td>YES</td>
</tr>
<tr>
<td>1.3.4</td>
<td>Restaurants and drive-thru service is prohibited.</td>
<td>SP</td>
</tr>
<tr>
<td>1.3.5</td>
<td>Bakeries</td>
<td>YES</td>
</tr>
<tr>
<td>1.3.6</td>
<td>Diagnostic medical laboratories appurtenant to offices of physicians and dentists.</td>
<td>SP²</td>
</tr>
<tr>
<td>1.3.7</td>
<td>Kiosks not to exceed 144 square feet.</td>
<td>YES</td>
</tr>
<tr>
<td>1.3.8</td>
<td>Massage therapy</td>
<td>SP</td>
</tr>
<tr>
<td>1.3.9</td>
<td>Shoe repair, dry cleaning and laundry (provided such dry cleaning and laundry use is limited to drop off and pick-up stations only).</td>
<td>SP</td>
</tr>
<tr>
<td>1.3.10</td>
<td>Printers and similar shops or trades (provided any chemicals used are delivered in pre-packaged containers and self contained within the equipment during use and provided, further, such stored chemicals do not exceed amounts that would require registration with the Board of Health).</td>
<td>SP</td>
</tr>
</tbody>
</table>

2 Any use that is prohibited in the Aquifer Overlay District shall continue to be prohibited in the Aquifer Overlay District despite anything contrary contained in the PDD Provisions for any portion of the PD Premises which is within the Aquifer Overlay District.
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<tr>
<td>1.4</td>
<td>Industrial Uses</td>
<td></td>
</tr>
<tr>
<td>1.4.1</td>
<td>Light manufacturing or processing plants.</td>
<td>SP</td>
</tr>
<tr>
<td>1.4.2</td>
<td>Laboratories engaged in research development, experimental and testing activities including, but not limited to, the fields of biology, chemistry, biotechnology, pharmaceuticals, life sciences, biomedical devices, nanotechnology, electronics, engineering, geology, medicine and physics subject to the Planning Board making the findings set forth in Section 8.3.7.4 of the Zoning By-Laws and subject to the applicable rules and regulations of the Board of Health.</td>
<td>SP²</td>
</tr>
<tr>
<td>1.4.3</td>
<td>Wholesale trade and warehousing (except toxic and hazardous materials and salt).</td>
<td>SP</td>
</tr>
<tr>
<td>1.4.4</td>
<td>Hazardous and toxic materials/chemical use storage, transport, disposal or discharge. Disposal must be off-site and under appropriate manifest and discharge must only be to sanitary sewer if allowed by Massachusetts Water Resources Authority and the Burlington Department of Public Works.</td>
<td>SP</td>
</tr>
<tr>
<td>1.4.5</td>
<td>Generation or storage of hazardous waste limited to the volumes classified as very small quantity generator with approval of Board of Health.</td>
<td>SP</td>
</tr>
<tr>
<td>1.4.6</td>
<td>Generation or storage of hazardous waste limited to the volumes classified as small quantity generator with approval of Board of Health.</td>
<td>SP²</td>
</tr>
<tr>
<td>1.4.7</td>
<td>Electronics Industries</td>
<td>SP</td>
</tr>
<tr>
<td>SECTION</td>
<td>USE DESIGNATION</td>
<td>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT, SP = SPECIAL PERMIT)</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1.5</td>
<td>Uses in Wetlands District (as defined in Zoning By-Laws)</td>
<td></td>
</tr>
<tr>
<td>1.5.1</td>
<td>Creation of a pond or pool or other changes in water courses for swimming, fishing or other recreational uses, agricultural uses, scenic features.</td>
<td>SP</td>
</tr>
<tr>
<td>1.5.2</td>
<td>Structures for essential services, which structures shall include roads, ways, sidewalks and drainage.</td>
<td>YES</td>
</tr>
<tr>
<td>1.5.3</td>
<td>Dredging expressly for mosquito or flood control by an authorized public agency.</td>
<td>SP</td>
</tr>
<tr>
<td>1.5.4</td>
<td>Periodic maintenance of existing water courses and maintenance for essential services.</td>
<td>YES</td>
</tr>
<tr>
<td>1.5.5</td>
<td>Temporary, not to exceed three months, storage of materials (excluding fill materials and hazardous and toxic materials) or equipment.</td>
<td>YES</td>
</tr>
<tr>
<td>1.5.6</td>
<td>Outdoor noncommercial recreation, including public parks, non-paved playfields, tennis, paddle tennis and similar activities, walking and bike paths.</td>
<td>YES</td>
</tr>
<tr>
<td>1.5.7</td>
<td>Discharges from manmade structures into the wetlands.</td>
<td>SP</td>
</tr>
<tr>
<td>1.5.8</td>
<td>Conservation of soil, water plants, and wildlife including wildlife management shelters.</td>
<td>YES</td>
</tr>
<tr>
<td>1.5.9</td>
<td>Outdoor noncommercial recreation limited to nature study areas, walkways, boating, ice skating or fishing where otherwise legally permitted, and bike paths.</td>
<td>YES</td>
</tr>
<tr>
<td>SECTION</td>
<td>USE DESIGNATION</td>
<td>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT)</td>
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<tr>
<td>---------</td>
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<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1.5.10</td>
<td>Maintenance or repair of existing structures, roadways and utilities.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6</td>
<td>Accessory Uses $^3$</td>
<td></td>
</tr>
<tr>
<td>1.6.1</td>
<td>Cafeterias, delicatessens, lunch counters, coffee shops, dairy or ice cream establishments, not to exceed 5,000 square feet per use.</td>
<td>SP</td>
</tr>
<tr>
<td>1.6.2</td>
<td>Personal services business such as barbers and hairdressers, not to exceed 1,000 square feet (permitted only as an accessory use located within a commercial facility).</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.3</td>
<td>Accessory convenience store of a maximum of 2,000 square feet. (permitted only as an accessory use located within a commercial facility. For the purposes of this Use Table, a parking structure shall be deemed a commercial facility).</td>
<td>SP</td>
</tr>
<tr>
<td>1.6.4</td>
<td>Digital/photo imaging, copy center (provided any digital and/or photo imaging chemicals are self contained within the equipment and provided, further, such stored chemicals do not exceed amounts that would require registration with the Board of Health) limited to a maximum of 2,000 square feet. (permitted only as an accessory use located within a commercial facility).</td>
<td>SP</td>
</tr>
<tr>
<td>1.6.5</td>
<td>Accessory Health Club located entirely within an industrial or office facility.</td>
<td>YES</td>
</tr>
</tbody>
</table>

$^3$ The total combined square footage for accessory uses 1.6.2-1.6.3 shall not exceed 20,000 square feet in the aggregate unless permitted by a Special Permit granted by the Planning Board. This square footage limitation excludes accessory cafeteria and health club space.
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1.6.6</td>
<td>Dry cleaning (drop off and pick-up only).</td>
<td>SP</td>
</tr>
<tr>
<td>1.6.7</td>
<td>Indoor unmanned Automatic Teller Machine not to exceed a gross floor area of 400 square feet.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.8</td>
<td>Places and buildings for public assembly such as facilities and conference centers for business, recreation, educational gatherings, seminars and presentations, not to exceed 10,000 square feet (permitted only as an accessory use for residents or employees).</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.9</td>
<td>Garage space or spaces and/or attached or detached structures (above and below ground and under buildings) for parking.</td>
<td>SP</td>
</tr>
<tr>
<td>1.6.10</td>
<td>Maintenance shops/garages, power plants, machine shops and similar structures to support permitted uses, provided that said structure is located within the building envelope. Subject to the requirements of Section 1.4.4 above.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.11</td>
<td>The use of roads in the PD Premises for any purposes that roads and ways in the Town of Burlington are used.</td>
<td>YES</td>
</tr>
</tbody>
</table>
| 1.6.12  | Antennas, other than satellite dish antennas, for the purpose of private reception of telecommunication signals, which antennas do not exceed 12 feet in height above the ground or 12 feet above the roof of a building on which they are mounted.  

Provided such antennas and/or dishes are not used for the purposes regulated and permitted under the Wireless Communications Overlay District under the Zoning By-Law. | YES                      |

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4 Provided such antennas and/or dishes are not used for the purposes regulated and permitted under the Wireless Communications Overlay District under the Zoning By-Law.
<table>
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<tr>
<th>SECTION</th>
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<tbody>
<tr>
<td>1.6.13</td>
<td>Satellite dish antennas that are 8 feet or less across at their greatest width and which do not exceed 12 feet in height above the ground or above the roof of a building on which they are mounted.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.14</td>
<td>This PDD By-Law shall not have the effect of changing or negating the Wireless Communications Overlay District or its permitted uses and such Wireless Communications Overlay District shall remain applicable to the PD Premises (including any dimensional restrictions), notwithstanding anything to the contrary contained herein.</td>
<td>SP</td>
</tr>
<tr>
<td>1.6.15</td>
<td>During construction of improvements at the premises, off-street outdoor storage of supplies and non-hazardous materials and overnight parking of freight carrying or materials handling vehicles and equipment, provided that from 7 p.m. to 7 a.m. vehicles shall not operate and/or idle.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.16</td>
<td>Above ground storage of oils and fuels/petroleum products including storage for on-site heating purposes and landscaping maintenance equipment (in excess of 50 gallons). Underground storage is prohibited.</td>
<td>SP²</td>
</tr>
<tr>
<td>1.6.17</td>
<td>Accessory uses in wetlands limited to fences, flagpoles, non-commercial signs and docks.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.18</td>
<td>Child Care and Adult Day Care facility.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.19</td>
<td>Emergency Generators fueled by natural gas.</td>
<td>YES</td>
</tr>
<tr>
<td>1.6.20</td>
<td>Fast order food establishments located entirely within a permitted principal use, drive-thru service is prohibited.</td>
<td>SP</td>
</tr>
<tr>
<td>SECTION</td>
<td>USE DESIGNATION</td>
<td>PERMITTED AT PD DISTRICT (YES = PERMITTED AS MATTER OF RIGHT SP = SPECIAL PERMIT)</td>
</tr>
<tr>
<td>---------</td>
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<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1.6.21</td>
<td>Restaurant establishment located entirely within a permitted principal use, drive-thru service is prohibited.</td>
<td>SP</td>
</tr>
</tbody>
</table>

Water Resource District and Aquifer District

Subject to the provisions of Section 8.3.0 of the Zoning By-Laws, the foregoing uses shall be permitted as a matter of right or with a Special Permit in a Water Resource and Aquifer District as set forth in the above Table of Uses. Notwithstanding anything to the contrary contained in this Use Table, a use that is prohibited in the Aquifer District shall continue to be prohibited in any portion of the PD Premises within the Aquifer Overlay District.
Pursuant to Section 12.1.4.2.d. of Article XII of the Zoning By-Laws of the Town of Burlington, Massachusetts (hereinafter, the “PDD By-Law”), these Special Conditions shall be applicable to the development of the property which is bounded by Second Avenue, Massachusetts State Highway Route 3 and South Avenue, Burlington, Massachusetts (hereinafter, the “PD Premises”) in accordance with the Concept Plan (hereinafter, together with all other materials submitted pursuant to Section 12.1.4 of the PDD By-Law, the “Concept Plan”) filed by The Gutierrez Company and its related entities (hereinafter, with any successor in interest to the PD Premises, collectively, the “Developer”).

I. Development of the Project

The Concept Plan provides for the development of the PD Premises pursuant to the PDD By-Law to consist of a variety of uses including office, retail, consumer and trade, a restaurant and industrial uses (hereinafter, the foregoing are referred to collectively as, the “Project”).

Uses shall be limited to those uses set forth in the Use Table prepared as part of the Planned Development District Zoning Provisions (hereinafter, the “PD Zoning Provisions”) submitted as part of the Concept Plan.

The Project shall be developed in substantial conformity with the Concept Plan as approved by the Town of Burlington at the September 2007 Town Meeting. The Concept Plan entitled “South Avenue Planned Development District Concept Plan” dated July 31, 2007 prepared by Vanasse Hangen Brustlin, Inc. (hereinafter, the “Development Plans”) shows in a general manner, among other things, the possible location of the buildings in the PD Premises, height limitations, approximate floor area and the approximate distance between buildings. Consistent with the intent of the PDD By-Law, it shall not be deemed a substantial deviation from the Concept Plan, if as a result of more definite engineering and other data, there occurs in any site plan submitted to the Planning Board for a PD Special Permit an alteration to the location and number of buildings within the PD Premises or changes in design or layout of the parking within the building envelopes shown on the Development Plans, provided that there shall not occur any change in maximum development square footage, minimum setbacks or maximum building height as provided in the PD Zoning Provisions without the approval by Town Meeting as provided in Section 12.1.8 of the Zoning By-Laws.

II. Developer’s Responsibilities

A. Developer’s Responsibilities:

Subject to the provisions of this Paragraph II, including, without limitation, the issuance of all permits and approvals (public and private) necessary for the
implementation of all improvements and the availability of sufficient right of way that may be required for construction of the same, Developer shall undertake or cause to be undertaken, and/or assist the Town in arranging for, the following improvements and benefits, unless otherwise noted, in accordance with the time line prescribed below:

(a) **Sidewalk/Bikepath**: Developer shall incorporate into any Site Development and Use Plan for the PD Premises a shared use sidewalk/bike path which interconnects the PD Premises with abutting pedestrian and bike path amenities on both public or private properties. The Developer shall work cooperatively with abutting property owners to coordinate construction activities.

(b) **Traffic Improvements**: Developer shall complete the following transportation improvements:

**Within 120 days of Certification by the Attorney General of the PDD rezoning language:**

   (i) The Developer will submit a memorandum of understanding to the Board of Selectmen and Planning Board showing the approximate layout of the Second Avenue land donation to be made to the Town of Burlington.

   (ii) The Developer shall donate $40,000 to the Town of Burlington’s transportation master planning effort for the purposes of advancing select alternatives determined by the Planning Board from the Middlesex Turnpike Corridor Transportation Master Plan.

**Within one (1) year from the date of the Attorney General’s approval of the PDD rezoning:**

   (i) The Developer shall donate $5,000 towards the Burlington B-Line or any successor service, for a period of 5 years (or a lump sum donation of $25,000).

**Prior to the occupancy of the first 225,000 square feet of any use on the project site:**

   (i) The Developer shall eliminate the one-way designation along South Avenue in front of the project site and upgrade of the roadway section to provide safe and efficient two-way flow of traffic along South Avenue (including accommodation of pedestrian and other modes of
transportation), in accordance with roadway improvement plans approved by the Board of Selectmen.

(ii) The Developer shall provide an easement for the land along Second Avenue to the Town of Burlington at no fee (or similar conveyance process) to accommodate the widening of Second Avenue pursuant to plans prepared by Vanasse Hangen Brustlin, Inc. Donation may be made sooner if requested by the Board of Selectmen.

(iii) The Developer shall install sidewalks and other non-motorized vehicle enhancements within the project site which would connect to the surrounding network where applicable.

(iv) The Developer shall implement a TDM program for the site consistent with the program detailed within the traffic study prepared by Vanasse Hangen Brustlin, Inc.

(v) The Developer shall prepare a functional design report for the intersection of South Avenue at Middlesex Turnpike which would document recommended signal timing and phasing changes and any other minor alterations, etc.) to be implemented by the Developer concurrently with the elimination of the South Avenue one-way designation.

Upon the issuance of building permits for the final 320,000 square feet of development, the Developer shall complete the following (assuming roadway improvements were in place associated with the Northwest Park Planned Development (PD) District project):

(i) The Developer shall donate $500,000\(^1\) to the Town of Burlington towards the construction of additional off-site roadway and pedestrian improvements (project and location to be determined by the Planning Board).

(ii) The Developer shall connect existing and proposed bicycle and pedestrian amenities with those being proposed by the Northwest Park project (location and adequacy of connections to be determined by the Planning Board).

In the event that the improvements required as part of the Northwest Park Planned Development (PD) District project do not move forward prior to the construction and occupancy of the PD Premises, the Developer shall complete the following improvements in lieu of the $500,000 contribution noted above:

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\(^1\) There shall be a 1.5% per year cost of inflation allowance to begin one year from the date of the Attorney General’s Approval of the PDD rezoning.
(i) Design, permit and construct adequate roadway and pedestrian improvements including, but not limited to, the intersection of Second Avenue/Middlesex Turnpike and Burlington Mall Road (to be determined through discussions with the Planning Board) such that the project’s transportation impacts would be mitigated. These improvements would be substantially in conformance with those plans being considered by the Northwest Park project and should be substantially complete prior to occupancy of any additional square footage over 225,000 square feet.

B. Leadership in Energy and Environmental Design ("LEED"): 

The Developer is committed to redeveloping South Avenue in an environmentally sensitive manner and will take a proactive approach to addressing the environmental impacts that are associated with a real estate redevelopment project such as this.

The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED gives building owners and operators the tools they need to have an immediate and measurable impact on their buildings’ performance. LEED promotes a whole-building approach to sustainability by recognizing performance in the five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

LEED provides a roadmap for measuring and documenting success for every building type and phase of a building lifecycle. To that end, the Developer shall pursue a LEED’s qualified project that is sensitive to the environmental considerations outlined above.

(c) Drainage Improvements: Developer shall construct on the PD Premises drainage improvements that meet Massachusetts Department of Environmental Protection (the “DEP”) Stormwater Management Standards and that will result in the following:

(i) A net reduction in the peak flow rate of runoff from the PD Premises;

(ii) Treatment of runoff from the PD Premises in order to reduce or substantially eliminate suspended solids prior to discharge into wetland areas;

(iii) Such drainage improvements shall result in reduced peak flow runoff during storm events, thereby improving conditions in the area of the PD Premises;
(d) **Sewer/Inflow and Infiltration:** Developer shall perform inflow and infiltration work required by the Town of Burlington Department of Public Works in order to mitigate sewer impacts pursuant to the current Administrative Consent Order (the “ACO”) between the DEP and the Town and the sewer mitigation policy adopted by the Town pursuant to the ACO. Alternatively, in the event that no additional work is remaining or the Town otherwise elects, the Developer shall pay the Town a sewer mitigation fee at an amount and rate of 5:1 removal ratio and $2.25 per gallon or such greater/lesser rate which may be in effect at the time of permitting the Project or various phases of the Project. Said fee to be due and payable upon the issuance of the occupancy permit for each commercial unit. Such fee shall be credited against any and all funds required to be spent by the Developer for sewer inflow and infiltration work performed by the Developer as directed by the Department of Public Works. If valid permits are existing, mitigation shall only be required when Developer is seeking to exceed permitted levels.

(e) **Infrastructure:** (Water & Sewer) Developer shall contribute $20,000 to the Town of Burlington Department of Public Works to allow the Town to undertake a Water Consumption Analysis and Sewer System Capacity Analysis. Said contribution shall be made upon issuance of the first PD Special Permit. Copies of all findings shall be provided to the Developer.

(f) **Other:** To provide the Town with security to address unanticipated impacts from the Project and in conformity with the permitting scheme embodied in the PDD Zoning Provisions, the Developer shall agree to undertake or provide the funds for the Town to undertake any additional mitigation deemed reasonably necessary by the Planning Board after consultation with other Boards and Departments of the Town and after review and consultation with the Developer in connection with any PD Special Permit for the Project provided such mitigation is required to address direct, identifiable impacts from the Project which are beyond the scope of the anticipated impacts addressed in the mitigation set forth in Section II, above. The Developer shall not be responsible to fund mitigation that is related to other development projects in the vicinity of the Project. The Developer shall be provided with copies of any written reports from the Town and/or its consultants detailing the need for any additional mitigation. The Developer shall be permitted to have such reports and/or recommendations reviewed by the Developer’s consultants and shall have an opportunity to rebut the need for any supplemental mitigation or to propose alternative mitigation to address the impacts asserted. The Developer shall have the election to perform such mitigation directly or to deposit with the Town an amount to permit the Town to perform such work.

Subject to the provisions of this Paragraph II, including, without limitation, the issuance of all permits and approvals necessary for the implementation of all improvements and the
availability of sufficient right of way that may be required for construction of the same, the
Developer shall undertake and diligently pursue the Developer's Responsibilities in
accordance with the conditions above (subject to the provisions contained herein).

The above Developer's Responsibilities assumes that the Town shall provide the necessary
permits, approvals and consents for each of the foregoing. The obligations of the Developer
to construct the Developer's Responsibilities are expressly contingent upon the Planning
Board and/or the Town having granted all Special Permits required under the PDD By-Law
and the issuance of all other permits, approvals, licenses and consents (governmental, federal,
state, local or private) required for the relevant portion of the Developer's Responsibilities. If
despite the diligent efforts of the Developer to obtain the required governmental and private
permits and consents, such permits, approvals and consents do not issue or are not obtained,
the Town shall waive any or a portion of the Developer’s Responsibilities for any item and
shall require contribution by the Developer in an amount agreed upon between the Developer
and Town reflecting the reasonable cost of such improvements and/or mitigation which shall
be paid by the Developer in lieu of such improvements or mitigation and which shall be
deemed to be in full satisfaction of the Developer’s Responsibilities with respect to any
item(s). Any payments to the Town by the Developer shall be disbursed by the Town in
accordance with Paragraph III, below.

III. Restriction on Use of Funds

In the event that the Developer shall make payment to the Planning Board in lieu of the
construction of any of the Developer’s Responsibilities the Town, as provided above, at the
direction of the Planning Board, shall expend such sums for improvements to the Town’s
infrastructure as the Planning Board in its reasonable discretion deems advisable provided
that any amounts paid shall be expended by the Planning Board in a manner that the Project
benefits from such expenditures and the improvements effectuated thereby.

IV. Town Obligations

In connection with the construction of the Developer’s Responsibilities under Paragraph II,
above, the Town shall take all such action including all necessary endorsements of
applications to obtain any and all federal, state and local permits, approvals and licenses and
private consents (specifically excluding hostile land takings or eminent domain proceedings)
necessary for the construction of the Developer’s Responsibilities and entering into
agreements to allow for the construction and/or installation of the Developer’s
Responsibilities. It is expressly understood by the Developer and Town that it is the
obligation of the Town to obtain such permits, approvals and licenses where the Town must
legally act as applicant or signatory.

V. Developer Covenants

The Developer of the PD Premises shall be responsible for the relocation of any municipal
services and infrastructure on the relevant Area of the PD Premises at the Developer’s sole
cost and expense provided the Town cooperates with the Developer in connection with the
permits, approvals and consents necessary to accomplish these obligations.
VI. Traffic and Drainage Analysis

The Developer has provided the Town, at the sole cost of the Developer, with a traffic analysis prepared by Vanasse Hangen Brustlin, Inc., dated August 2007, copies of which have been delivered to the Planning Board as part of the Concept Plan.

VII. Effective Date of PDD Zoning

The granting and recording of any Special Permit within the time periods specified in Section 12.1.2 of the Zoning By-Laws shall constitute full compliance with Section 12.1.2 of the Zoning By-Laws and vest the Planned Development District zoning of the PD Premises, notwithstanding that Special Permits for future aspects of the Project have not been applied for by the Developer or granted by the Town. The issuance of any Special Permit under Section 12.1.5 of the Zoning By-Laws shall be deemed to constitute, and be conclusive of, the Developer’s compliance with all provisions of the Zoning By-Laws at the time of the issuance thereof. Thereafter, the PD Premises shall be developed in accordance with the Concept Plan and the requirements of Section 12.1.5 of the PDD By-Law. In the event of any amendment to the PDD By-Law, the PD Premises shall continue to be governed by the Concept Plan approved by the September 2007 Town Meeting and the applicable provisions of the PDD By-Law in effect on July 31, 2007, the date of the submission of the Concept Plan unless specifically waived by the Developer of the PD Premises.

VIII. Applicable Zoning By-Laws

Except as provided in the Planned Development District Zoning Provisions submitted by the Developer pursuant to Section 12.1.4(c)(2) of the Zoning By-Laws, the Development of the Project shall be governed by the Zoning By-Laws in effect on July 31, 2007 unless waived in whole or in part by the Developer.