

**ZONING PROVISIONS  
90 MIDDLESEX TURNPIKE**

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**SECTION 12.1.4.2.C.**

**PLANNED DEVELOPMENT DISTRICT ZONING PROVISIONS**

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The following Planned Development District Zoning Provisions (hereinafter, the “PDD Zoning Provisions”) shall, except as provided below, govern the development of the Planned Development District (the “PD District”) which is located at the property known as 90 Middlesex Turnpike, (hereinafter, 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 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 12.3+/- acres. To the extent that the Concept Plan does not address an issue of zoning, the development of the PD Premises with respect to any such issue shall be governed by the Zoning By-Laws of the Town of Burlington, Massachusetts in effect on June 1, 2009 (hereinafter, the “June 2009 Zoning By-Laws”).

**Article 1 - Use Regulations:**

The Concept Plan allows for a mixed use development of the PD Premises as shown on the plan entitled “Burlington Dodge Redevelopment PD District Rezoning Concept Plan” dated March 12, 2009, prepared by BSC Group, Inc. which may include a variety of uses including, but not limited to, general office, commercial, retail, and accessory services related to each use. Within the PD District there shall be no restriction on combining different categories of uses within the same building or lot other than those imposed by the State Building Code or other federal, state or local regulations other than Zoning. Pursuant to the Concept Plan the development of the proposed principal uses and accessory uses associated therewith and

designated areas of open space and parking are permitted throughout the PD Premises as allowed in the Use Table annexed hereto as Exhibit "A". Any mixture of uses is permitted within the PD Premises and shall not be deemed a material change or substantial deviation from the Concept Plan and PDD Zoning Provisions as approved by Town Meeting.

Until such time as the Developer elects to commence development (i.e., obtains the necessary permits and approvals with the expiration of all appeal periods and commences construction) for any portion of the PD Premises as provided on the Concept Plan, the structure and uses in existence as of the effective date of the PDD Rezoning may be continued and, to permit orderly development of the PD Premises over time, altered and expanded in accordance with the June 2009 Zoning Bylaws, provided such alteration and/or expansion does not expand by more than twenty percent (20.0%) of its net floor area (as defined in the Zoning By-Laws). Prior to the submission of a finding request to the Planning Board to allow the expansion as noted above, the Developer shall submit to the Inspector of Buildings the appropriate documentation for verification of the existing net floor area calculations in order to determine that maximum permitted expansion. Any recommendation or statement from the Inspector of Buildings verifying the existing net square footage shall be submitted to the Planning Board as part of the petition.

Any new building or new use developed within the PD Premises shall be built in accordance with these PDD Zoning Provisions unless the Developer has elected to waive these PDD Zoning Provisions affecting the PD Premises in accordance with Article XII, Section 12.1.2 of the Zoning Bylaws in which event development shall be governed solely to the then applicable Zoning By-Laws of the Town of Burlington.

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 June 2009 Zoning By-Laws) shall be subject to review by the Burlington Conservation Commission pursuant to Massachusetts General Laws Chapter 131 and Article XIV of the Burlington General By-Laws. All permitted uses at the PD Premises are subject to the issuance

by other Town agencies or boards of all other required licenses and approvals normally required for such use.

As of the date of adoption of these PDD Zoning Provisions and the Concept Plan, the PD Zoning Provisions may be deemed non-conforming with respect to the provisions of Section 8.3.0 (Aquifer and Water Resource Districts as denoted in the June 2009 Zoning Bylaw). As such, the PD Premises shall have the benefit of the provisions of Section 8.3.9 of the Zoning By-Laws (Non-Conforming Uses as denoted in the June 2009 Zoning Bylaw) as the Project is developed pursuant to the Concept Plan.

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

In no event shall development on the entire PD District exceed 80,000 square feet of Net Floor Area<sup>1</sup> of the permitted uses (as set forth on Exhibit “A”) which shall exclude parking facilities and portions of buildings containing parking facilities. If the site is comprised solely of Retail use(s), as allowed in accordance with the Use Table, the total area dedicated to said Retail use(s) shall be limited to no more than 55,000 square feet of Net Floor Area. There shall be a maximum of three detached structures (exclusive of those structures related to infrastructure, conservation, pedestrian or bicycle uses) permitted within the PD Premises.

On all lots within the PD Premises, subject to applicable laws and regulations governing fire and safety, there shall be no required setbacks from the side and rear lot lines for parking, driveways or maneuvering aisle. There shall be no setbacks for buildings located within fifty (50) feet of the Route 128/95 and Route 3 Right-of-Ways.

The Developer and the PD Premises shall continue to have the benefit of Section 5.1.2.2 of the June 2009 Zoning By-Laws to the extent that the PD Premises would be able to claim the benefit of said Section as of the date of the adoption of the PD Zoning Provisions and, further,

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

Section 5.1.2.2 of the Zoning By-Laws shall be applicable to the PD Premises after the date of said adoption of the PD Zoning Provisions. In addition, the grant of an Access Easement by the Developer to the Town in accordance with the provisions of Special Conditions, Section II.C, shall permit the Developer to have the benefit of Section 5.1.2.2 of the June 2009 Zoning By-Laws.

The following dimensional requirements shall be the exclusive dimensional requirements applicable to development in the PD Premises notwithstanding any contrary provisions in the June 2009 Zoning By-Laws including any Overlay District now existing or hereafter adopted.

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

Minimum Frontage .....	100 feet
Minimum Lot Area .....	20,000 s.f.
Minimum Rear Yard .....	15 feet <sup>2</sup>
Minimum Side Yard .....	15 feet <sup>3</sup>
Maximum Building and Structure Height.....	80 feet <sup>4</sup>
Minimum Open Space/ Public Space within the PD Premises.....	40% <sup>5</sup>

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- 2 Unless its outside walls are of fireproof construction and any openings in such walls are protected by a suitable fire restrictive door or shutter or water curtain device, subject to the approval of the Inspector of Buildings, in which event the setback requirements shall be zero (0). There shall extend across the rear of every building or structure an open area of at least 10 feet for firefighting purposes unless waived by the Chief of the Fire Department. Rear Yard shall be measured from the exterior plane of each building face excluding roof overhangs.
  - 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). Side Yard shall be measured from the exterior plane of each building face excluding roof overhangs.
  - 4 Building height shall be measured in accordance with the Zoning By-Laws. The provisions of Section 5.2.0 (as denoted in the June 2009 Zoning Bylaws), concerning maximum height limitations adjacent to RO or RG land shall not apply to the PD Premises.
  - 5 Of the required amount of Open Space, no more than one-half of the required 40% may be Public Space (as defined herein) subject to the groundwater recharge requirements provided herein. The square footage dedicated to so-called "Green Roof" technologies shall count towards the Minimum Open Space requirement. Uses within Open Space or Public Space may include, without limitation, exhibitions, licensed kiosk retail, outdoor seating for on-premises restaurants. Of the required 40% Open Space within

Minimum Open Space/Public space within the Building Envelope.....7%

Minimum Front Yard Landscaping ..... 25 feet<sup>6</sup>

Recharge

To the extent reasonably practicable, unless disallowed by other local or state laws, regulations or ordinances, or pursuant to a decision of other regulating bodies or agencies, the developer of the PD Premises shall improve groundwater recharge such that full post development recharge is at least 10% greater than the amount of recharge existing for the specific development parcel as of the date of the rezoning to a PD District. As part of any individual PD Special Permit, the Developer shall submit to the Planning Board a calculation of existing and proposed recharge data to provide evidence of compliance of the PD Premises with this requirement. This information will be required for individual lots within the PD Premises at such time as said lots are developed in accordance with the PD Zoning Provisions. All new construction shall be built in accordance with the then current state and local stormwater regulations.

**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. Any single lot may be deficient with one or more of the dimensional requirements contained in Article 2 so long as all of the lots within the PD Premises taken in the aggregate comply with the standards contained herein.

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the PD Premises, 7% of which must be located within the Building Envelope as denoted above in Section II.

6 Front yard landscaping shall consist of dense and diverse vegetation consisting of shrubs, grass, mulch and/or other suitable landscaping to provide screening of vehicle headlights while not impeding vehicular or pedestrian sight distance. This requirement shall not prohibit the creation, installation or maintenance of curbcuts, site access driveways, sidewalks or Monument Signage. A landscaping plan shall be submitted to the Planning Board as part of any PD Special Permit application for the Premises.

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

The PD Premises shall provide parking in the amounts as hereinafter provided which may be satisfied either through structured or surface parking. Parking spaces required for one lot may be located on a separate lot within the PD Premises or within 200 feet of the PD Premises. Said lot may be in separate ownership so long as an easement guarantying long-term use of such spaces is provided in a form satisfactory to the Town and 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 applicable parking ratios for uses within the PD Premises shall be in accordance with the June 2009 Zoning By-Laws unless otherwise noted herein. The following maximum ratios shall be applicable to parking at the PD Premises for principal uses:

1. Retail - 6.0 spaces per 1,000 square feet of floor area (calculated in accordance with footnote 1, above);
2. Office - 4.5 spaces per 1,000 square feet of floor area (calculated in accordance with footnote 1, above);
3. Restaurant - 1 space per 2.5 seats;
4. Hotel - 1 space per each keyed hotel room; and
5. General Assembly/Conference Use - 1 space per each three seats of general assembly/conference space.

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

The Planning Board, upon application of the Developer of a PD Special Permit for any portion of the PD Premises, shall be permitted, upon the grant of a Special Permit in accordance with Section 7.2.6 of the Zoning By-Laws (as denoted in the Zoning Bylaw effective on June 1, 2009), to alter the aforementioned ratios from time to time and such change shall not be deemed a material or substantial deviation from the Concept Plan as approved by Town Meeting.

Typical parking space dimensions shall be as follows:

1. Typical parking space -- 9' x 18'
2. Compact parking space -- 8' x 15' (The percentage of Compact spaces proposed by the Developer shall be determined by the Planning Board during the Special Permit process.)
3. Handicap Accessible Spaces -- 13' x 18', inclusive of 5' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.
4. Handicap Van Accessible Spaces -- 16' x 18', including an 8' access aisle, or as otherwise required by applicable federal or state law or regulations governing and controlling such design.

#### **Article 5 - Building Locations:**

The Plans entitled "Burlington Dodge Redevelopment PD District Rezoning Concept Plan" dated March 12, 2009, prepared by BSC Group, Inc. submitted as part of the Concept Plan (hereinafter, the "Development Plans") denotes a certain building envelope 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 envelope shown on the Development Plans subject to compliance with the Density and Dimensional Requirements of these PD Zoning Provisions (including, without limitation, the construction of above ground parking structures, the result of which is to relocate under building parking or separate structures with decks shown on the Development Plan, provided such

construction occurs within the building envelope shown on the Development Plan) and such relocations shall not be deemed a substantial deviation of the Concept Plan.

**Article 6 - Definitions:**

Except as provided below or herein including, without limitation, the Use Table (Exhibit “A”), defined terms shall have the same meanings as in the Zoning By-Law. The following terms shall have the following meanings in the PD District and shall govern the PD Premises:

1. **Frontage.** For purposes of these PD Zoning Provisions, “Frontage” shall mean the line adjacent to: (a) any internal site drive of any length which connects (directly or indirectly) to a way described in subclause (b), (c) or (d), below, said way having been approved by the Planning Board of the Town pursuant to Section 12.1.5 of the Zoning By-Laws as part of any PD Special Permit and Site Development and Use Plan; or (b) a public way which the Town Clerk certifies is maintained and used as a public way; or (c) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law; or (d) a way in existence when the subdivision control law became effective in the Town of Burlington, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Frontage shall be measured in a single, continuous, uninterrupted line along a street or streets.
  
2. **Lot.** A parcel of land used or set aside and available for use on the site of one or more buildings, and buildings accessory thereto, or for any definite purpose in one (1) ownership, having frontage as described above, and may be divided by a street or way and may include any land defined as a wetlands or land within the limits of a public or private way upon which such lot abuts. A lot for purposes of these PD Zoning Provisions may or may not coincide with a lot of record.



3. Open Space. That portion of land that is landscaped, or if vegetated, left in a natural state or the square footage dedicated to a “Green Roof” as further described in Article 2 of these PD Zoning Provisions.
4. Public Space. A publicly accessible area that is intended to promote social interaction and create a pedestrian friendly focal point for surrounding street level activities permitted within the PD Premises. Uses within an area designated as Public Space may include, but are not limited to, the following: passive recreation, bicycle path and bicycle storage, exhibitions, kiosk retail, outdoor restaurant space, and other uses as further specified in the Use Table, attached as Exhibit “A”. Public Space may include a combination of natural and landscaped areas as well as impervious surface areas and sidewalks in order to promote a diversification of activities and uses.

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 (as denoted in the General Bylaw effective on January 1, 2009).
2. Special Sign Permit.

The Zoning Board of Appeals may vary the provisions of these sign provisions in specific cases which appear to them not to have been contemplated by these PDD Zoning Provisions and in cases where enforcement of these provisions of the PDD Zoning Provisions would involve practical difficulties or unnecessary hardship, if in each instance desirable relief may be granted without substantially derogating

from the intent and purpose of this section of the PDD Zoning Provisions but not otherwise. Any decision to vary the provisions of this section of the PDD Zoning Provisions shall be pursuant to a Special Sign Permit decision issued by the Zoning Board of Appeals after a properly noticed public hearing and shall specify any sign alteration allowed and the reasons therefore. Each decision of the Zoning Board of Appeals shall be filed with the Office of the Town Clerk within fourteen (14) days after the hearing and a copy of the decision shall be sent by mail or delivered to the applicant and any other persons appearing at the hearing or so requested in writing.

3. Temporary Signage.

A temporary sign shall be permitted advertising the rental, lease or sale of the premises as well as construction related activities. Such temporary signage shall not exceed forty-eight (48) square feet and in no instance shall exceed ten (10) feet in any direction. Such signage may be freestanding or attached to the face of a building. All freestanding signage shall be set back at least ten feet (10') from any property line.

4. Allowed Signage.

All Allowed Signage within the PD Premises shall be as defined within Section 3.1 of the General Bylaw (as denoted in the General Bylaw effective on January 1, 2009), except as otherwise noted below. Individual signage for any tenant within the PD Premises may be allowed, pursuant to the regulations of Article 7 - Signage, anywhere within the PD Premises.

- a. 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.

- b. 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.
  
- c. 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.
  
- d. 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.
  
- e. Awning Signs - Any sign located on the front or side of an awning. Awnings shall not project more than ten (10) feet from the face of the building. The bottom of the awning shall be seven (7) feet or more above the ground and the top of the awning shall be located below the upper

floor windowsill or first floor eave or cornice. The length of the awning shall be equal to or less than the length of the tenant space.

- f. 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.
  
- g. Business Directory - A Business Directory shall be mounted on the face of a building and shall consist of more than 1 tenant or user located within said building or group of buildings. Each business or tenant listed on the Business Directory sign shall not exceed ten (10) square feet in sign area per side/face of sign.
  
- h. Monument Signs – Monument Signs shall be permanently affixed to the ground through the means of a stone wall, foundation or other decorative device. The total square footage of a Monument Sign shall not exceed thirty (30) square feet and individual tenant signage shall not exceed fifteen (15) square feet per side of the Monument Sign. This maximum sign area shall not include the sign foundation or other decorative or architectural feature. Further, no Monument Sign shall be permitted within ten (10) feet of a public or private way nor shall be permitted to impede vehicle sight distance. Any sign foundation shall not exceed four (4) square feet. Internal illumination of a Monument Sign is prohibited.

- i. Highway Signage - Highway Signage shall be permitted on the face of any structure subject to the following limitations: The height of the signage shall not exceed the following: (i) at the first floor a maximum of eight (8) feet or less in height and the length shall not exceed 1/4<sup>th</sup> of the face of the building upon which the sign is attached; and (ii) if located above the first floor be limited to eight (8) feet or less in height and the length shall not exceed 1/2 of the face of the building upon which the sign is attached. Any sign exceeding the aforementioned dimensional limitations shall require a Special Sign Permit issued by the Board of Appeals. The specific face of said structure permitted to have Highway Signage shall be fifty percent (50.0%) or more visible from Route 3 or Routes 95/128 at a point perpendicular to the center of the face/side building. Qualification for Highway Signage shall be determined by the Building Inspector.
  
- j. Street Banners - Street Banners advertising public entertainment or advertising a charitable, religious, municipal or educational event may be displayed in locations designated by the Building Inspector (which shall be, at a minimum of thirty (30) feet between banners) for a period of time not to exceed fourteen (14) consecutive days, the first of which shall occur not more than thirteen (13) days prior to such entertainment or event. All Street Banners shall be removed within twenty-four (24) hours after such entertainment or event. The Developer shall obtain approval from the Building Inspector to designate the location for the installation of said Street Banners.
  
- k. Directional and Traffic Safety Signs - Signs indicating “Entrance”, “Exit”, “Parking”, street names or similar traffic directional information as well as their location and dimensions shall be approved by the Building Inspector in consultation with the Police Department, as applicable.

5. Maximum Number of Signs. (a) Each individual tenant or user shall not be permitted more than two (2) signs per building advertising said individual tenant. This shall exclude Business Directories. No more than four (4) qualifying Highway Signs shall be permitted per structure.

### **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.

- The use of lighting should be integrally designed as part of the built environment and should reflect a balance for the lighting needs with the contextual ambient light level and surrounding nighttime characteristics which are appropriate for the uses.
- The lighting designers shall utilize lighting designs with automatic controls systems wherever possible.
- A lighting plan, as applicable, shall be included with any Site Development and Use Plan/Special Permit. Architectural lighting may be utilized to highlight special site features and areas.
- Landscape lighting may be utilized to accent landscaping and special site features.
- On-site lighting shall not be directed towards Middlesex Turnpike, Route 128/95 or Route 3. All efforts shall be made when designing the project to minimize headlight glare onto Middlesex Turnpike.

### **Article 9 - Administration and Procedures:**

#### **PD Special Permit**

1. Any Special Permit required under the June 2009 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 June 2009 Zoning By-Laws shall be deemed to constitute compliance with the provisions of Article XII of the June 2009 Zoning By-Laws and in particular Section 12.1.2. for the entire PD Premises.

2. In connection with the grant of any PD Special Permit for portions of the PD Premises located in the Aquifer 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 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.
3. The Planning Board, in granting any PD Special Permit, may attach such conditions and safeguards as it deems necessary to support its findings.
4. The Site Development and Use Plan required under Section 12.1.5 of the June 2009 Zoning By-Laws shall supersede any requirements as to site plan review and approval under the June 2009 Zoning By-Laws.
5. Any substantial changes (as determined in each instance by the Planning Board in accordance with Article XII of the June 2009 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 June 2009 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 June 2009 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 June 2009 Zoning By-Laws or any other by-law or regulation of the Town; or (ii) any ambiguity under the PD Zoning Provisions, such conflict or ambiguity shall be resolved or construed by the Inspector of Buildings in a manner consistent with and to permit satisfaction of the development intent described in the Concept Plan.

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**EXHIBIT "A"**

<b>SECTION</b>	<b>USE DESIGNATION</b>	<b>PERMITTED AT PD DISTRICT</b>  <b>(YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)</b>
<b>1.0</b>	<b>Institutional and Recreational Uses</b>	
1.1	Places primarily used for religious purposes.	YES
1.2	Places primarily used for non-profit educational corporations, museums, libraries, and/or recreational facilities.	YES
1.3	Child Care and Adult Day Care facilities.	YES
1.4	Municipal fire stations and sub-fire stations, municipal police stations (exclusive of fuel storage).	YES
1.5	Public Parks and related facilities.	YES
1.6	Public libraries, public museums, public art galleries and similar facilities.	YES
1.7	Community centers, public recreation buildings and performance centers.	YES
1.8	Non-profit public clubs, recreational centers and facilities.	YES
1.9	Private museums and private art galleries.	YES
1.10	Medical Office (outpatient services only) and associated diagnostic services.	SP
1.11	Buildings for public services.	YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT  (YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)
1.12	Theater and cinemas, subject to construction of an internal access driveway interconnecting the Premises to the adjacent property which is presently occupied by Barnes and Noble.	SP
1.13	Public water and sewer distribution structures.	YES
1.14	Health, sports and fitness clubs and related facilities. 5,000 s.f. or less. In excess of 5,001 s.f.	YES SP
<b>2.0</b>	<b>Office Uses</b>	
2.1	Professional offices such as, but not limited to, physicians, dentists, opticians, real estate brokers, lawyers, etc.	YES
2.2	Administrative executive and similar offices.	YES
2.3	Public Offices.	YES
2.4	Office of salesmen, agents and representatives of manufacturing, distributing, insurance and wholesale companies.	YES
<b>3.0</b>	<b>Retail Uses</b>	
3.1	Personal services businesses such as, but not limited to, barbers, hairdressers, etc.	YES
3.2	Drug stores, health supplies, periodicals, none with the sale of food intended for consumption on premises.	YES

SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT</b>  <b>(YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)</b>
3.3	Individual Retail stores and showrooms as follows: (i) 45,000 square feet or less (ii) 45,001 square feet to a maximum of 55,000 square feet	YES SP
3.4	Post Offices and banks.	YES
3.5	Photographers (with accessory digital/photo imaging), decorators, travel agencies and tailoring.	YES
3.6	Fast order food establishments.	SP
3.7	Restaurants.	SP
3.8	Bakeries	YES
3.9	Diagnostic medical laboratories appurtenant to offices of physicians and dentists.	SP
3.10	Kiosks not to exceed 144 square feet.	SP
3.11	Shoe repair, dry cleaning and laundry. Drop off and pickup stations for laundry and dry cleaning only.	YES
3.12	Printers and similar shops or trades (provided any chemicals used are delivered in pre-packaged containers and self contained within the equipment during use and provided, further, such stored chemicals do not exceed amounts that would require registration with the Board of Health).	SP
3.13	Acceptance from the public of products manufactured on site including but not limited to electronic products and components including, without limitation, computers and telecommunication equipment for servicing	YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT  (YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)
<b>4.0</b>	<b>Commercial Uses</b>	
4.1	Light manufacturing or processing plants.	SP
4.2	Wholesale trade and warehousing.	SP
4.3	Hazardous and toxic materials/chemical use storage, transport, disposal or discharge.	SP
4.4	Generation or storage of hazardous waste limited to the volumes classified as very small quantity generator.	SP
4.5	Hotel with or without amenities such as restaurants, function rooms, lounge facilities, health spa, conference center, etc. (including “Select Service” and “Boutique” hotels).	SP
4.6	Food processors, bakeries not operated at retail.	SP
4.7	Electronics Industries	SP
4.8	Conference Center	SP
4.9	Commercial amusement uses and activities such as, but not limited to, bowling alleys and skating rinks.	SP
4.10	Laboratories engaged in research experimental and testing activities including, but not limited to, the fields of biology, chemistry, electronics, engineering, geology, medicine and physics subject to the Planning Board making the findings set forth in Section 8.3.7.4 of the Zoning By-Laws and subject to the applicable rules and regulations of the Board of Health.	SP

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT  (YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)
<b>5.0</b>	<b>Uses in Wetlands District (as defined in Zoning By-Laws)</b>	
5.1	Creation of a pond or pool or other changes in water courses for swimming, fishing or other recreational uses, agricultural uses, scenic features.	SP
5.2	Structures for essential services, which structures shall include roads, ways, sidewalks and drainage.	YES
5.3	Dredging expressly for mosquito or flood control by an authorized public agency.	SP
5.4	Periodic maintenance of existing water courses and maintenance for essential services.	YES
5.5	Temporary, not to exceed three months, storage of materials (excluding fill materials and hazardous and toxic materials) or equipment.	YES
5.6	Outdoor noncommercial recreation, including public parks, non paved playfields, tennis, paddle tennis and similar activities, walking and bike paths.	YES
5.7	Discharges from manmade structures to a Wetlands District.	SP
5.8	Conservation of soil, water plants, and wildlife including wildlife management shelters.	YES

SECTION	USE DESIGNATION	PERMITTED AT PD DISTRICT  (YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)
5.9	Outdoor noncommercial recreation limited to nature study areas, walkways, boating, ice skating or fishing where otherwise legally permitted, and bike paths.	YES
5.10	Maintenance or repair of existing structures, roadways and utilities.	YES
<b>6.0</b>	<b>Accessory Uses</b>	
6.1	Cafeterias, delicatessens, lunch counters, coffee shops, dairy or ice cream establishments, not to exceed 7,000 square feet per use (allowed as an accessory use located within a permitted facility).	SP
6.2	Personal services business such as barbers and hairdressers, not to exceed 2,000 square feet (allowed as an accessory use located within a permitted facility).	YES
6.3	Accessory convenience store of a maximum of 2,000 square feet (allowed as an accessory use located within a permitted facility).	SP
6.4	Digital/photo imaging, copy center (provided any digital and/or photo imaging chemicals are self contained within the equipment and provided, further, such stored chemicals do not exceed amounts that would require registration with the Board of Health) limited to a maximum of 2,000 square feet (allowed as an accessory use located within a permitted facility).	SP
6.5	Accessory Health Club (allowed as an accessory use located within a permitted facility).	SP

SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT</b>  <b>(YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)</b>
6.6	Shoe repair and dry cleaning (drop off and pick-up only).	YES
6.7	Indoor unmanned Automatic Teller Machine not to exceed a gross floor area of 400 square feet.	YES
6.8	Sales/Leasing Office; Office of Real Estate Agent.	YES
6.9	Places and buildings for public assembly such as facilities and conference centers for business, recreation, educational gatherings, seminars and presentations.	YES
6.10	Mail Room	YES
6.11	Garage space or spaces and/or attached or detached structures (above and below ground and under buildings) for parking.	YES
6.12	Maintenance shops/garages, power plants, machine shops and similar structures to support permitted uses.	YES
6.13	The use of roads in the PD Premises for any purposes that roads and ways in the Town of Burlington are used.	YES
6.14	Commercial boarding, care and treatment of animals.	SP
6.15	Massage therapy, ancillary to a personal service use, health club or other similar use facility, subject to Board of Health regulations.	SP

SECTION	USE DESIGNATION	<p style="text-align: center;"><b>PERMITTED AT PD DISTRICT</b></p> <p style="text-align: center;"><b>(YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)</b></p>
6.16	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.	YES
6.17	Satellite dish antennas that are 8 feet or less across at their greatest width <u>and</u> which do not exceed 12 feet in height above the ground or above the roof of a building on which they are mounted.	YES
6.18	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 be applicable to the PD Premises (including any dimensional restrictions), notwithstanding anything to the contrary contained herein.	SP
6.19	During construction of improvements at the premises, off-street outdoor storage of supplies and non-hazardous materials and overnight parking of freight carrying or materials handling vehicles and equipment, provided that from 7 p.m. to 7 a.m. vehicles shall not operate and/or idle.	YES
6.20	Storage of oils and fuels/petroleum products including storage for on-site heating purposes and landscaping maintenance equipment (in excess of 50 gallons).	SP
6.21	Accessory uses in wetlands limited to fences, flagpoles, non-commercial signs and docks.	YES
6.22	Child Care and Adult Day Care facility.	YES



SECTION	USE DESIGNATION	<b>PERMITTED AT PD DISTRICT</b>  <b>(YES = PERMITTED AS MATTER OF RIGHT/ SP = SPECIAL PERMIT REQUIRED)</b>
6.23	Emergency Generators fueled by natural gas or propane.	YES
6.24	Fast order food establishments.	SP
6.25	Restaurant establishment.	SP
6.26	Drive-Thru Facility/Service. No more than two permitted uses within the PD Premises may have a Drive-Thru Facility/Service.	SP

Water Resource District and Aquifer District

Subject to the provisions of Section 8.3.0 of the Zoning By-Laws (as denoted in the June 2009 Zoning Bylaw), 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 Use Table. Notwithstanding anything to the contrary contained in this Use Table, a use that is specifically identified in the June 2009 effective Zoning By-Law as being prohibited in the Aquifer District shall be prohibited in any portion of the PD Premises included within the Aquifer Overlay District.

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**SPECIAL CONDITIONS  
90 MIDDLESEX TURNPIKE**

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**SECTION 12.1.4.2.D.  
SPECIAL CONDITIONS  
FOR  
PLANNED DEVELOPMENT DISTRICT**

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Pursuant to Section 12.1.4.2.d. of Article XII of the June 2009 Zoning By-Laws of the Town of Burlington, Massachusetts (hereinafter, the “PDD By-Law”), these Special Conditions shall be applicable to the development of the property known as Burlington Dodge which is located at 90 Middlesex Turnpike, 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 R.C. Trust (hereinafter, with any successor in interest to the PD Premises, 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, but not limited to office, retail, commercial, and open space uses (hereinafter, the foregoing are referred to collectively as the “Project”).

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

The Project shall be developed in substantial conformity with the Concept Plan as approved by the Town of Burlington at the September 2009 Town Meeting. The Concept Plan entitled “Burlington Dodge Redevelopment PD District Rezoning Concept Plan”, Burlington, Massachusetts, dated March 12, 2009 prepared by BSC Group, 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 envelope 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**

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

### **A. Sidewalk/Bike path**

- (a) The Developer shall incorporate into any Site Development and Use Plan a sidewalk which shall be constructed along its Middlesex Turnpike frontage and extends to the property line between the PD Premises and 98 Middlesex Turnpike (presently known as Barnes & Noble). Said design and construction shall be subject to the applicable Zoning Provisions for the PD Premises and shall provide for curb cuts pursuant to any Site Development and Use Plan.
- (b) The Developer shall work with the Planning Director and Conservation Agent to identify a mutually agreeable location for the delineation of an easement area for a future bike path ("Bike Path Easement"). Said Bike Path Easement shall be situated within any future interconnection of the PD Premises and the abutting South Avenue parcel (South Avenue parcel is presently used by AMC Cinemas as an accessory parking lot) identified as the "South Avenue Interconnection" and further described within Section II.C. of these Special Conditions. The Bike Path Easement shall be located entirely within the PD Premises unless the Developer provides evidence of an agreement with a neighboring property owner(s). Any final Bike Path Easement shall be filed with the Middlesex (South) Registry of Deeds
- (c) The Developer shall undertake the creation of a pedestrian interconnection between the PD Premises and 98 Middlesex Turnpike within one year of the issuance of a Certificate of Occupancy for any use granted in accordance with a PD Special Permit Decision. This pedestrian interconnection is intended to facilitate access between the PD Premises and 98 Middlesex Turnpike and shall be delineated based on observed pedestrian movements between the subject parcels. This pedestrian interconnection shall be subject to review and approval by the Planning Director.

### **B. Traffic Mitigation Contribution**

The Developer shall contribute to the Middlesex Turnpike Traffic Mitigation Fund in accordance with the formula provided below and subject to the timeline prescribed in Section II. H. "Schedule":

- (a) Prior to the issuance of a Building Permit for the development of any net new floor area above the existing 27,004 gross square feet the Developer shall contribute \$1.00 per square foot of net new floor area (“Mitigation Contribution”) to the Town of Burlington/Planning Board (“Town”) to be deposited into a Middlesex Turnpike Traffic Mitigation Fund (“MT Mitigation Fund”). This Mitigation Contribution shall be used by the Town to implement identified intersection/roadway improvements (“Roadway Improvements”) within the Middlesex Turnpike corridor which would directly benefit the PD Premises pursuant to the Traffic Analysis submitted in accordance with Section II.H. of these Special Conditions. Said improvement shall be completed upon the occupancy of the floor area related to the Mitigation Contribution subject to extension for delays beyond the reasonable control of the Town; such as, but not limited to, weather conditions, time periods in obtaining necessary permits, approvals and consents. The failure of the Town to complete said traffic mitigation shall not impact the Developer’s ability to obtain an occupancy permit for the requisite square footage.

If within 180 days of the payment of the Mitigation Contribution the Town fails to undertake said Roadway Improvements, the Developer, on its own, may undertake the Roadway Improvements and the Town, upon request by the Developer, shall apply said Mitigation Contribution to perform the Roadway Improvements.

- (b) In lieu of the Mitigation Contribution outlined in Section II.B.(a) above, the Developer, in accordance with any PD Special Permit Decision issued by the Planning Board, may, on its own, undertake the identified traffic mitigation improvement (or other equivalent improvement approved by the Planning Board as provided below which provides a direct mitigation benefit to the Middlesex Turnpike corridor and the PD Premises), provided, however, that the Developer’s monetary obligations shall not exceed the maximum required contribution set forth above. The agreement between the Developer and Planning Board shall be formalized in either the PD Special Permit Decision or in a letter endorsed by the Planning Board Chairman and the Developer prior to the commencement of the mitigation improvements. If the total value of both the design and construction of the mitigation improvements agreed to by the Developer is less than the required Mitigation Contribution, then the Developer shall pay the balance into the MT Traffic Mitigation Fund based on the incremental amount not to exceed \$1 per square foot.

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

## **C. Access Easement**

### **South Avenue Interconnection**

The Developer, in conjunction with the Town, shall commence discussions with the abutting property owners of 98 Middlesex Turnpike (presently known as Barnes & Noble) and the parking area located off of South Avenue presently used by AMC Cinemas as an accessory parking lot (collectively known as “Abutting Properties”) to review the potential interconnection of the PD Premises and the Abutting Properties via an internal access roadway within a 40’ layout. Upon agreement by the Town, Developer and Abutting Properties, the Developer, upon request from the Planning Board, shall grant to the Town of Burlington an easement in form and substance reasonably satisfactory to Developer which, in conjunction with land donated by others, could allow vehicular and bicycle access to the Abutting Properties and South Avenue.

### **Internal Access Driveway**

Prior to the issuance of a Building Permit for any development within the PD Premises which is subject to a PD Special Permit, the Developer shall submit to the Planning Board any non-privileged correspondence with the abutting property owner(s) of 98 Middlesex Turnpike concerning the potential creation of an internal access driveway interconnecting 98 Middlesex Turnpike and the PD Premises. Said internal access driveway shall be configured to align with the Route 128/95 off ramp. The Developer shall utilize diligent efforts to pursue a mutually agreeable driveway location and shall provide the Planning Board with periodic updates verifying any ongoing discussions. The Developer shall provide to the Planning Board the contact information for the property owner of 98 Middlesex Turnpike.

## **D. Transportation Demand Management:**

The Developer shall implement Transportation Demand Management (“TDM”) initiatives designed to promote alternative transportation options, including the following:

- (a) Employment of a TDM coordinator to implement the recommended TDM measures outlined in the Traffic Impact and Access Study dated March 2009, prepared by BSC Group submitted as part of the Concept Plan. In the event that the Town or other appropriate agency implements a TDM coordination program which provides similar services to tenants along the Middlesex Turnpike corridor, the Developer shall require all tenants within the PD Premises to participate in said program and pay any requisite reasonable fee based upon a uniform schedule for all participants;
- (b) Coordination with the Massachusetts Bay Transportation Authority (“MBTA”), Lowell Regional Transit Authority (“LRTA”) and the

Town of Burlington B-Line to designate new bus stop(s), as applicable, to accommodate any bus line services for the PD Premises; and

- (c) The Developer shall work with the B-Line coordinator (or successor entity) and the Planning Director to identify a new route(s) which may serve the PD Premises. If any new B-Line service is provided to the PD Premises this service any associated facilities (i.e. bus stop internal to the PD Premises) shall be subject to certain conditions including, within limitation, conditions to insure that the service shall not impact on-site circulation, parking spaces, open space or result in any liability for the Developer. The Developer shall at the time of the issuance of the first Building Permit of a building in the PD Premises developed pursuant to the PD Zoning Provisions: (1) contribute \$25,000 to the B-Line to effectuate such route change; or (2) commence payment to the Town an annual fee of Five Thousand (\$5,000.00) Dollars on June 1 of each calendar year for a period of five (5) years, such fee to be used by the Town to operate the B-Line or any successor service.

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

**E. Drainage Improvements:**

The Developer shall construct on the PD Premises drainage improvements that meet the then current Massachusetts Department of Environmental Protection (the "DEP") Stormwater Management Standards that will result in the following:

- (a) Treatment of runoff from the PD Premises in order to reduce suspended solids prior to discharge into wetland areas; and,
- (b) Such drainage improvements shall result in equal or reduced peak flows during storm events, thereby improving conditions in the area of the PD Premises.
- (c) To the extent reasonably practicable, unless disallowed by other local or state laws, regulations or ordinances, or pursuant to a decision of other regulating bodies or agencies, the developer of the PD Premises shall improve groundwater recharge such that full post development recharge is at least 10% greater than the amount of recharge existing for the specific development parcel as of the date of the rezoning to a PD District. As part of any individual PD Special Permit, the Developer shall submit to the Planning Board a calculation of existing and proposed recharge data to provide evidence of compliance of the PD Premises with this requirement. This information will be required

for individual lots within the PD Premises at such time as said lots are developed in accordance with the PD Zoning Provisions. All new construction shall be built in accordance with the then current state and local stormwater regulations.

**F. Sewer/Inflow and Infiltration:**

The Developer shall perform inflow and infiltration work required by the Town of Burlington Department of Public Works in order to mitigate sewer impacts pursuant to the current Administrative Consent Order (the “ACO”) between the DEP and the Town and the sewer mitigation policy adopted by the Town pursuant to the ACO. Alternatively, in the event that no additional work is remaining or the Town and Developer otherwise elects, the Developer shall pay the Town a sewer mitigation fee at an amount and rate of 5:1 removal ratio and \$2.25 per gallon or at such rate and per gallon charge 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 to the Town upon the issuance of an occupancy permit related to the applicable structure or user.

**G. 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 traffic 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 Paragraph II, above. The Town shall be responsible for identifying the additional traffic impacts and mitigation program within six (6) months following the issuance of an occupancy permit for the full buildout of the PD Premises in accordance with the Concept Plans.

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. The contribution of said funds shall be deemed full compliance with this condition and shall not unduly delay the issuance of any Certificate of Occupancy for the applicable project within the PD Premises.

**H. Supplemental Traffic Analysis**

Concurrent with the filing of a PD Special Permit for any project within the PD Premises subject to these PD Zoning Provisions, the Developer shall provide the Planning Board with a Supplemental Traffic Analysis which provides a comparison of projected peak period trip generation and intersection impacts for the proposed use with the Traffic Analysis prepared by the BSC Group submitted as part of this Concept Plan. In addition, the Supplemental Traffic Analysis shall reevaluate the proposed then “No Build” condition (i.e., other anticipated projects identified in the background growth projections of the Developer’s initial traffic analysis which have not been commenced) to the proposed development based on the existing traffic infrastructure on the impacted corridor. In the event that any identified “Background Growth” project(s) has obtained their requisite Building Permits or at the time of the filing of the PD Special Permit are actively under construction for any portion of the project and said “Background Growth” project is required to undertake specific mitigation projects said mitigation shall be factored into the Supplemental Traffic Analysis.

Upon the determination that the traffic generated as a result of said proposal exceeds the estimated site generated trips by more than 5% at the intersections analyzed pursuant to the Supplemental Traffic Analysis, the Developer shall propose additional traffic mitigation or a monetary contribution reasonably satisfactory to the Planning Board. Said additional mitigation requirements shall be incorporated into a PD Special Permit granted for the proposed mixed-use project.

**I. Schedule:**

Subject to the provisions of this Paragraph II, including, without limitation, the issuance of all permits and approvals necessary for the implementation of all improvements and the availability of sufficient right of way that may be required for construction of the same, the Developer shall undertake and diligently pursue the Developer’s Responsibilities in accordance with the following schedule:

<u>Item</u>	<u>Schedule</u>
a. <u>Sidewalk/Bike Path</u>	Prior to the issuance of a certificate of occupancy for the first building constructed pursuant to the PD Zoning Provisions the Developer shall complete the obligations outlined in Section II.A, as follows: 1) construct a sidewalk along its Middlesex Turnpike frontage in accordance with any Site Development and Use Plan for the PD Premises; 2) provide a pedestrian interconnection between the PD Premises and 98 Middlesex Turnpike (n/f Barnes & Noble); and, 3) work with the Planning Director and Conservation Agent to identify a mutually agreeable location for the delineation of the Bike Path Easement.



<u>Item</u>	<u>Schedule</u>
<u>b. Traffic Mitigation</u>	The Developer shall contribute to the Town of Burlington Middlesex Turnpike Traffic Mitigation Fund in accordance with Section II.B.
<u>c. Access Easement</u>	Within six (6) months of the issuance of the Attorney General approval for the PD Premises rezoning.
<u>d. Transportation Demand Management</u>	Prior to the issuance of a Certificate of Occupancy for the first building developed at the PD Premises.
<u>e. Drainage Improvements</u>	Drainage improvements will be phased and completed as the project is constructed in accordance with each PD Special Permit issued by the Planning Board, as applicable.
<u>f. Sewer/Inflow &amp; Infiltration</u>	Inflow and infiltration work required under the sewer moratorium shall be completed prior to the issuance of a certificate of occupancy for any new commercial building for developed pursuant to the PD Zoning Provisions. In the event that cash payments are made by the Developer in lieu of inflow and infiltration work, payments are to be made upon the issuance of a certificate of occupancy for said commercial development.
<u>g. Other</u>	To be determined by the Town within six (6) months of the issuance of an occupancy permit for the full buildout of the PD Premises in accordance with the Concept Plans.
<u>h. Mixed-Use Project - Supplemental Traffic Analysis</u>	To be submitted in accordance with Section II.H. as stated above.

The above schedule 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 IV, below.

### **III. Restriction on Use of Funds**

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

### **IV. Town Obligations**

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

### **V. Developer Covenants**

#### **A. Infrastructure Obligations**

The Developer of the PD Premises shall be responsible for the relocation of any municipal services and infrastructure within 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.

#### **B. Parking Garage Design Review**

The Developer agrees to regulate the façade design of the any free standing structured parking garage through the integration of architectural design features on the portion of said garage which is oriented towards Middlesex Turnpike. This portion of the building façade shall be designed with articulated exterior walls and/or include reasonable ornamentation in an effort to minimize any large expanses of continuous plane. The Developer shall submit to the Planning Board as part of any PD Special Permit application for said free standing garage architectural renderings depicting such exterior design to allow the Planning Board to determine that the design complies with the forgoing condition.

#### **C. Retail Restrictions**

The Developer agrees that notwithstanding the specifications within the Zoning Provisions and Use Table approved as part of the Concept Plan for the PD Premises, relative to permitted Retail Uses, the Developer shall agree to regulate the design of a so-called "big box" retail use. Attributes of a "big box" retail use may include one or more of the following:

- A use typically conducted in a large windowless, industrial appearance, rectangular single-story building including warehouse clubs;
- A use typically conducted on property with no community or pedestrian amenities on site;
- A use typically requiring a structure 30+ feet in height for interior storage purposes.

For purposes of this Section V, the following use definitions shall apply:

Warehouse Clubs: are establishments with an industrial appearance which provide a limited number of product items in bulk to its members.

In all instances where a proposed Individual Retail Use falls within the Big Box category as defined above, the Developer shall agree to submit architectural renderings to the Planning Board as part of any required Special Permit application for their reasonable review to determine compliance with the applicable standards outlined in this section and incorporation into any final PD Special Permit decision. Said architectural renderings shall incorporate the following criteria into the building design:

- In multi-story buildings, a distinction shall be provided between upper and lower floors through the use of architectural details, moldings, banding, etc.
- Any side of the building that is visible from Middlesex Turnpike or provides direct public access into the building shall have at least 20% active frontage through the use of doors, windows/glass and architectural design.
- Flat roofs shall be trimmed with architectural enhancements or moldings.
- Any side of the building that is visible from Route 128/3 shall incorporate a varied painting scheme to minimize the appearance of any expansive length of uniform façade.

#### **VI. Traffic and Drainage Analysis**

The Developer has provided the Town, at the sole cost of the Developer, with a traffic analysis entitled “Traffic Impact Study”, dated March 2009 prepared by BSC Group. Copies of said Traffic Analysis have been delivered to the Planning Board as part of the Concept Plan.

The Developer has provided the Town, at the sole cost of the Developer, with a drainage analysis entitled “Preliminary Stormwater Report” dated March 12, 2009 prepared by BSC Group. Copies of said Drainage Analysis 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 June 2009 Zoning By-Laws shall constitute full compliance with Section 12.1.2 of the June 2009 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 June 2009 Zoning By-Laws shall be deemed to constitute, and be conclusive of, the Developer's compliance with all provisions of the June 2009 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 June 2009 Zoning By-Laws. In the event of any amendment to the PDD By-Law, the PD Premises shall continue to be governed by the Concept Plan approved by the September 2009 Town Meeting and the applicable provisions of the June 2009 Zoning By-Laws 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 12.1.4.2(c) of the June 2009 Zoning By-Laws, the Development of the Project shall be governed by the Zoning By-Laws in effect on June 1, 2009.

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