

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: October 2, 2020

TO Land Use Committee of the City Council

FROM: Jonah Temple, Assistant City Solicitor  
Neil Cronin, Chief Planner for Current Planning

RE: Special Permit #27-20  
Riverside Development (355 and 399 Grove Street)

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Attached is a revised final draft Order for the Special Permit/Site Plan Approval being requested for the Riverside Development. This draft includes revisions to the previous draft submitted for review on September 25, 2020.

The revisions include substantive changes to the timing requirements for completion of construction (Condition 5), the off-site trail work (Condition 18) and traffic monitoring (Condition 69). Additional revisions have been made for the purpose of organization, clarity, and consistency.

Thank you.

ATTACHMENTS

**Attachment A:** Redline Special Permit Order, dated October 2, 2020  
**Attachment B:** Clean Special Permit Order, dated October 2, 2020

#27-20

CITY OF NEWTON  
IN THE CITY COUNCIL

## ORDERED:

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

**PROCEDURAL HISTORY**

1. In accordance with the Zoning Ordinance and the applicable rules of the City Council, MD 399 Grove Owner, LLC, Ramirez Concord, LLC, and BH Normandy Riverside, LLC (collectively, the "Petitioner") filed a special permit/site plan approval application and related plans and information with the City Clerk on December 9, 2019 for a proposed mixed-use development located at 355 and 399 Grove Street (the "Project"), along with a simultaneous request to re-zone portions of land located at 355 Grove Street from the Business Use 2 District to the Mixed Use 3/Transit Oriented District and 399 Grove Street from the Business Use 5 District to the Mixed Use 3/Transit Oriented District (collectively, the "Application").
2. Notice of the public hearing on the Application was published in the Boston Globe on January 14, 2020 and January 21, 2020, and in the Newton Tab on January 22, 2020, and mailed to all parties in interest in accordance with M.G.L. c. 40A, § 11.
3. The Land Use Committee of the City Council opened the public hearing on the Application on January 28, 2020 at Newton City Hall. Additional sessions of the public hearing were held on February 11, 2020, February 25, 2020, March 5, 2020, March 24, 2020, April 7, 2020, April 28, 2020, May 5, 2020, May 12, 2020, May 26, 2020, June 2, 2020, June 9, 2020, June 30, 2020, July 14, 2020, July 28, 2020, August 4, 2020, August 18, 2020, September 10, 2020, ~~and~~ September 29, 2020, ~~and~~ [October 6, 2020](#). As of March 24, 2020 date, all sessions of the public hearing were held remotely via Internet video conferencing, pursuant to Massachusetts executive order, *Order Suspending Certain Provisions of the Open Meeting Law*, G.L. c. 30A, Section 20 (March 10, 2020), and Chapter 53 of the Acts of 2020, an *Act To Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19* (April 3, 2020).

4. Over the course of the public hearing, presentations were made by the Petitioner and its development team including Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP, Damien Chaviano of Mark Development, LLC, Jeff Speck of Speck and Associates LLC, Richard Hollworth and Randy Hart of Vanasse Hangen Brustlin, Inc. (“VHB”), and Tom Chase of New Ecology.
5. Over the course of the public hearing, presentations were also made by City staff, including Jennifer Caira and Neil Cronin and the City’s on-call consultants, Green International Affiliates, HR & A Advisors, Utile, Form+Place, and The Horsley Witten Group.
6. The Land Use Committee received extensive oral and written comments, testimony, and written reports from the public and various City boards, commissions and departments, including the Planning and Development Department, the Engineering Division, the Fire Department, the Newton Council on Aging, the Commission on Disabilities, the Urban Design Commission, the Economic Development Commission, the Conservation Commission, as well as various public interest groups including the Newton Conservators, Green Newton, [Bike Newton](#), [the Riverside Greenway Working Group](#), [the Charles River Watershed Association](#), [the Citizens Commission on Energy](#), [the Lower Falls Improvements Association](#), and the Transportation Advisory Group. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and public.
7. In addition, the City Council received extensive testimony and written reports from the City’s on-call consultants on the adequacy of public facilities in all the areas required by Section 7.3.5.D.1, including adequacy of road and traffic infrastructure, adequacy of water, sewer, and storm water infrastructure, and net fiscal impact. During the review process, the Petitioner’s professional consultants also provided various supplemental materials in response to requests by the City Council, the Planning and Development Department and its consultants, and various City departments that reviewed the Project.
8. All testimony, written reports and supplemental materials prepared by the Petitioner and its consultants, the City and its staff, consultants, boards, commissions and departments, as well as public testimony and supplemental materials submitted by the public, are included in the record of the City Council’s proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this Order.
9. Following a final presentation by the Petitioner and City staff, as well as public testimony, the Land Use Committee closed the public hearing on \_\_\_\_\_, 2020. On \_\_\_\_\_, 2020, the Land Use Committee voted to recommend to the City Council: (i) approval of a Special Permit/Site Plan Approval for the Project, subject to the conditions stated herein, and (ii) adoption of the zone change for 399 Grove Street and portions of 355 Grove Street.

Finding that all applicable provisions of the Zoning Ordinance and the City Council Rules have been complied with, and taking into consideration the testimony and evidence provided by all

interested parties, the City Council GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the Land Use Committee of the City Council.

## **FINDINGS**

### **GENERAL FINDINGS**

1. The Project will redevelop an existing surface parking lot at 355 Grove Street and 399 Grove Street, currently improved with a hotel use, with a new mixed-use development consisting of not more than 1,025,000 square feet of gross floor area (as such term is defined in Section 4.2.4.G.3) in ten buildings that are designed to maximize the principle of walkability and to create a vibrant, transit-oriented hub. These buildings would incorporate approximately 254,120~~253,828~~ square feet of office, laboratory/research medical office space, approximately 582 dwelling units, approximately 39,014~~38,895~~ square feet of retail space, and an approximately 150-key hotel, and include accessory surface parking, and a multi-level parking facility in Buildings 9 and 10 that will provide parking for MBTA patrons and parking for the Project (the "Parking Garage").
2. The Project will be located on an approximately 13.05-acre parcel of land that consists of land on two lots: a portion of 355 Grove Street (also sometimes known as 327 Grove Street) and 399 Grove Street (collectively, the "Development Parcel"). The 355 Grove Street lot is an approximately 22-acre lot owned by the Massachusetts Bay Transportation Authority (MBTA) and is the current site of the Riverside T Station (the "MBTA Parcel"). The 399 Grove Street lot is an approximately 121,700 square foot lot and is the current site of a hotel (the "Hotel Parcel"). The portions of the MBTA Parcel leased or to be conveyed to the Petitioner and the Hotel Parcel are located within the MU3/TOD District, pursuant to Council Orders #258-12, which zoning amendment vested pursuant to Council Orders #258-12 and #258-12(2) through the commencement of construction of the relocation of the MWRA water line on the Development Parcel, and Council Order #26-20 which was adopted by the Council in conjunction with this Order.
3. The Development Parcel is affected by a number of unique physical conditions and legal circumstances, including a complex interplay of intergovernmental jurisdictions controlling access to the Development Parcel. The portion of the Development Parcel owned by the MBTA is presently used by the MBTA for commuter parking. The Petitioner will be required to maintain commuter parking during construction in amounts to be established by the MBTA. In addition, major capital expenditures and construction work is required in order to relocate and reconstruct sewer, water, and drainage pipes crossing the Development Parcel and for transportation improvements.

### **SPECIAL PERMIT CRITERIA**

4. The site is an appropriate location for the Project (§7.3.3.C.1) because:
  - a. The proposed structures and uses are consistent with the uses and dimensions provided for by the MU-3/TOD district.
  - b. There is a mass-transit commuter facility located adjacent to the Development Parcel, and the Development Parcel is proximate to a commuter rail station, and the intersection of I-95 and I-90.
  - c. The Project provides a pedestrian-oriented development that expands needed housing choices, offers diverse commercial options, and adds public open spaces.
  - d. The proposed structures and uses are consistent with and in furtherance of the Riverside Vision Plan.
5. The Project as developed and operated, will not adversely affect the neighborhood (§7.3.3.C.2) because:
  - a. The Development Parcel will be opened for pedestrian, bicycle, and vehicular traffic to Newton Lower Falls and Auburndale, and will provide options for residential and commercial uses that will complement the neighborhoods.
  - b. The Project will replace and enhance a large, paved, and currently underutilized and unattractive site to create a walkable, mixed use environment.
  - c. The Project will provide significant park and open space opportunities open to the public.
  - d. The Project includes significant transportation planning and mitigation to lessen the traffic impacts of the Project.
6. The Project will not be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3) because:
  - a. The Project is pedestrian-centric and the design promotes the safety of pedestrians.
  - b. The Petitioner will implement an array of flexible and measurable transportation demand management measures to mitigate the effect of additional traffic on Grove Street.
  - c. The Project will create protected bicycle facilities and will connect existing recreational trails to enhance nonvehicular access in the surrounding area.
7. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4) because:

- a. The Project includes direct access from I-95 northbound and improvements to Recreation Road to create better vehicle connections within the immediate area.
  - b. The parking for the Project has been limited to a ratio lower than otherwise required under the Zoning Ordinance.
  - c. The Petitioner will implement and maintain a transportation demand management plan that includes incentives for nonvehicular transportation and wayfinding signage to direct vehicles to regional rather than to local roadways
  - d. The Council finds that the Petitioner's traffic studies and implementation plan have been appropriately prepared and have been reviewed by the City's on-call consultants, the Planning and Development Department, and the Department of Public Works, and the access to the Development Parcel is appropriate for the types and numbers of vehicles involved.
8. The site planning, building design, construction, maintenance and long-term operation of the site will contribute significantly to the efficient use and conservation of natural resources and energy (§7.3.3.C.5) because:
- a. The Project will redevelop a previously unimproved parking lot into a new mixed-use environment with new publicly accessible green spaces and stormwater control, thereby mitigating the heat island effect.
  - b. The residential portions of Buildings 3, 4, 5, 6, 7, 8, 9 and 10 will be designed and constructed to reduce the use of energy to levels beyond the requirements of the base building and energy codes.
  - c. The residential portions of at least three of the residential buildings will achieve Passive House certification, the office building and the hotel will be LEED v.4 Silver certifiable, and all residential buildings will be LEED v.4 Gold for Building Design and Construction Multifamily Midrise certifiable.
  - d. Groundwater recharge and water quality discharging into the Charles River will be improved by the installation of a new drainage system and low impact development measures such as permeable paving and pavers, street trees with pits, and a rain garden.
9. The Application complies in all respects with the requirements of the Zoning Ordinance (§7.3.3.D).

#### MU-3/TOD TRANSIT ORIENTED DISTRICT

10. The Project meets the purpose of the MU-3/TOD District as it allows the development of the Riverside MBTA station in a way that is consistent with the City's Comprehensive Plan, encourages comprehensive design within the site and with its surroundings, integrates

complementary uses, provides enhancements to the public infrastructure, provides beneficial open spaces, allows sufficient density to make development economically feasible while ensuring that the district is appropriately designed and scaled, fosters use of alternative modes of transportation, and creates a vibrant destination where people can live, work and play (§4.2.1.B).

11. The Project complies in all respects with the dimensional standards for the MU3/TOC District. (§4.2.4).
12. The Application for the Project complies in all respects with the special filing requirements for projects located in the MU-3/TOD District (§7.3.5.A).
13. The Project is not inconsistent with the City's Comprehensive Plan because it advances the City's planning goals with respect to smart growth and transit-oriented development. The provision of a diversity of housing types, 17.5% of which are affordable, on underutilized land in close proximity to a variety of transportation modes, supports a variety of lifestyles. Design of the Project strives to create a vibrancy and sustainability made possible by a more compact development, which includes a number of complementary uses, activities, and amenities in close proximity to one another, which serve the residents, businesses, and patrons to the Development Parcel as described in the Mixed Use Element of the Comprehensive Plan (§7.3.5.B.1).
14. The Project as developed and operated in accordance with the conditions of this Special Permit/Site Plan Approval offers long-term public benefits to the City, the Newton Lower Falls and Auburndale neighborhoods, and nearby areas including (§7.3.5.B.2):
  - a. Improved access and enhancements to public transportation by providing access from I-95 to the Development Parcel, which enables bus routing onto the Interstate minimizing bus travel on Grove Street, and by connecting interior roadways with bicycle accommodations and parking for vehicles that facilitates easy connections among the various modes of travel.
  - b. Improvements to Grove Street and Recreation Road are intended to mitigate the impact of the Project and reduce negative impacts on abutters and the surrounding neighborhoods of Newton Lower Falls and Auburndale and avoid a deterioration in service to other locations by better accommodating the volume of traffic generated by the Project. Such improvements include modern traffic signals, and dedicated turn lanes on Grove Street and Recreation Road to facilitate the flow of through traffic, as described in the Traffic Impact and Access study prepared by VHB, dated December 2019 and affirmed by a peer review report prepared by Green International Affiliates Inc., dated February 21, 2020.



- c. Visual and public safety improvements to Grove Street such as undergrounding overhead wires along the Development Parcel's frontage and creating dedicated pedestrian and bicycle facilities.
  - d. More housing options for the City with approximately 582 dwelling units at full build out, including 17.5% affordable dwelling units.
  - e. Removal of existing impervious surfaces, the addition of storm water infrastructure improvements to capture storm water and recharge groundwater, and installation of new water and sewer infrastructure.
  - f. Protecting the neighborhood from adverse impacts to the electrical grid by requiring the Petitioner to provide evidence that there is adequate electricity for each building in the Project and to pay for any costs imposed by the electric utility company for upgrades to the electrical system necessary to supply adequate electricity to the Project.
  - g. A monetary payment to fund sewer infrastructure and other improvements.
  - h. Improvements to or a monetary payment for trails or other open space improvements in the vicinity of the Project.
15. As detailed in the report prepared by Municap on behalf of the Petitioner, which has been reviewed by the City and its peer-review consultant HR&A Advisors, the Project will have a positive net fiscal impact on the City after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance (§7.3.5.B.3).
16. Significant roadway improvements will be made to Grove Street and Recreation Road, which together result in improved access to and from the Development Parcel; well-marked routes for pedestrians, cyclists, and motorists both on- and off-site, with wayfinding signs, road markings, and an on-site Transportation Manager, are intended as mitigation measures to prevent nuisance or serious hazard to vehicles or pedestrians (§7.3.5.B.4).
17. Access to the Development Parcel is designed to accommodate and is appropriate for the types and numbers of vehicles involved because the creation of a second access to/egress from the Development Parcel and signage are intended to direct traffic away from residential areas, slow motor vehicles exiting and entering the ramps at I-95, and facilitate access to destinations within the Development Parcel. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Project (§7.3.5.B.4).



18. Appropriate setbacks, buffering, and screening with ample landscaping are provided from nearby residential properties. In accordance with the Zoning Ordinance, more than 42,450 square feet of the beneficial open space will be available to the general public. Potential bicycle and pedestrian connections from the Project to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, will remain available for future improvements, and make possible more robust connections that can take full advantage of the unique opportunities of the Development Parcel and its nearby natural features for use and enjoyment by the community at large (§7.3.5.B.5).
19. The Project provides high quality architectural design and site planning that enhances the visual and civic quality of the Development Parcel and overall experience for residents of and visitors to both the Project and its surroundings. In particular, the proposed design and heights of the buildings breaks up the massing along Grove Street and relates the scale of the buildings to the surrounding neighborhood consistent with the intent of the Mixed Use Element of the Comprehensive Plan to orient buildings towards streets and create pleasurable walks to nearby public spaces. The landscape design of the Project creates a sense of openness and offers points of interest to people of all ages and abilities with a playground, an amphitheater, a lawn area, outdoor seating, and easy access to adjacent shops (§7.3.5.B.6).
20. The comprehensive signage program for the Project is in keeping with the scale and needs for wayfinding in and around the Development Parcel and is complementary to the architectural quality of the Project, the character of the streetscape, and interior of the Development Parcel (§7.3.5.B.7).
21. The Project provides building footprints and articulations scaled to encourage outdoor pedestrian circulation with the uses and associated windows and entrances at the street level, creating activity and interest at the entrance to the Development Parcel, including well-placed crosswalks to enable residents and visitors to the Development Parcel to move freely between the office use, retail, hotel, residential, public plaza, and MBTA station (§7.3.5.B.8).
22. The Project creates public spaces, including beneficial open space and beneficial open space open to the public in excess of what is required under the Zoning Ordinance, as pedestrian-oriented destinations that accommodate a variety of public uses and which are intended to promote a vibrant street life and connect the Project to surrounding neighborhoods and natural resources, as well as to the commercial and residential components of the Project (§7.3.5.B.9).
23. The site planning, building design, construction, maintenance, and/or long-term operation of the Project meets or exceeds the energy and sustainability provisions of the Zoning Ordinance and will contribute significantly to the efficient use and conservation of natural resources and energy (§7.3.5.B.10) for the following reasons:

- a. Impervious surfaces and resulting run-off are reduced with the elimination of the existing parking lot.
  - b. Open space in excess of that required in the MU-3/TOD District is provided.
  - c. There will be energy modeling and commissioning of building energy systems and the buildings will meet or exceed the minimum energy performance requirements equivalent of 780 CMR Chapter 115AA (Stretch Energy Code) so as to optimize the energy performance of the office, laboratory/research and residential buildings.
  - d. There is convenient access to public transportation on-site and Transportation Demand Management practices will help to reduce carbon dioxide emissions from vehicles.
  - e. Stormwater management systems will increase groundwater recharge and enhance water quality through implementation of best management practices to remove contaminants from surface water and provide infiltration on-site.
  - f. Water conservation measures will be employed to minimize impact on sanitary sewer infrastructure, and the submetering of utilities will encourage conservation.
  - g. A monetary payment towards future sewer infrastructure improvements will improve existing systems and reduce impacts on the surroundings by removing inflow and infiltration from the municipal sanitary system.
  - h. Low-impact development techniques will be employed such as using a rain garden and swales to manage storm water and reusing existing site materials to balance cut and fill.
24. Parking studies prepared by the 128 Business Council and reviewed on behalf of the City by Green International Affiliates confirms that parking for the Project is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel, and the encouragement of alternative transportation modes without providing an over-supply of parking on the Development Parcel, and the shared use of parking which along with the Parking Management Plan will encourage the maximum and efficient use of the parking supply (§7.3.5.B.11).
25. Roadway travel lanes, turning lanes, pedestrian crossings, bicycle lanes, traffic signals, and other roadway improvements as proposed by VHB and reviewed on behalf of the City by Green International Affiliates are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such improvements and the traffic and other activities generated by the Project, as well as to improve traffic and access in nearby neighborhoods (§7.3.5.B.12).

26. Consideration has been given to accessibility, adaptability, visibility, and universal design in development of the site plan by providing accessible primary building entries for each building, a number of accessible and adaptable dwelling units, pedestrian connection to the MBTA station that will provide equal access for those with mobility issues, and other outdoor pathways with suitable slopes and adequate widths to accommodate wheelchair access, as well as tactile warning strips at intersections, and accessible parking closest to building entries (§7.3.5.B.13).
27. The Petitioner's traffic mitigation measures are expected to allow the Project to meet the trip generation standards set forth in Section 7.3.5.E of the Zoning Ordinance (§7.3.5.B.14).
28. The preliminary Construction Management Plan includes appropriate mitigation measures for construction impacts, to the neighborhoods of Newton Lower Falls and Auburndale and accommodates the parking and other needs of commuters using the MBTA station during construction. In order to further mitigate potential impacts on abutters and the neighborhoods, the Petitioner has voluntarily reduced its hours of construction and blasting as set forth in the preliminary Construction Management Plan (§7.3.5.B.15).

#### FINDINGS RELATED TO USES

With regard to the special permit for the following uses: for-profit educational use; retail sales use of over 5,000 square feet; restaurant of over 50 seats; personal service use of over 5,000 square feet; place of amusement; open air business; health club on and above the ground floor; animal services; hotel; bank, up to and over 5,000 square feet; theatre/hall; and laboratory/research facility pursuant to Sections 4.4.1, 4.2.4.G, 4.2.4.H, and 7.3 of the Zoning Ordinance:

29. The Project will have approximately ~~254,120~~<sup>253,828</sup> square feet of Category A uses, a portion of which may include laboratory/research facilities. The office and laboratory/research facility uses, in addition to the hotel use, meet the goals in the *Comprehensive Plan* by maintaining a significant commercial real estate tax base, maintaining a significant employment base, and encouraging business growth proximate to public transportation.
30. The Project will have approximately ~~116,314~~<sup>116,195</sup> square feet of Category B uses. The proposed uses meet the goal of having a diversity of Category B uses to serve the needs of the businesses, residents, and visitors to the Development Parcel.
31. The Project will have approximately ~~654,566~~<sup>654,977</sup> square feet of Category C uses. The proposed Category C uses complies with the requirement of being no less than 60% of the gross floor area of the total gross floor area of Category A, B, and C uses.
32. The gross floor area of all uses in the Project does not exceed 1,025,000 square feet.

#### FINDINGS RELATED TO DIMENSIONAL REQUIREMENTS

With regard to the special permit for building heights of up to 170 feet and for up to 11 stories pursuant to Sections 4.2.3 and 4.2.4 of the Zoning Ordinance:

33. The height and number of stories is allowable by special permit in the MU-3 district and the Council finds that the building height of up to 170 feet and 11 stories is appropriate given its location, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of the MU-3 district.

With regard to the special permit for FAR of up to 2.5 (excluding all enclosed parking structures):

34. The Council finds that the FAR of not more than 2.5 is appropriate for the Development Parcel and not inconsistent with the MU-3 district or the City's Comprehensive Plan.

With regard to the special permit for a retaining wall greater than 4 feet in height located in a setback pursuant to Section 5.4.2.B:

35. The Council finds that the location and design of the proposed retaining wall is appropriate for the Development Parcel and is necessary for the design of the project.

#### FINDINGS RELATED TO PARKING STALLS AND FACILITIES

With regard to the waivers to reduce the number of parking stalls and various dimensional requirements for the design of parking facilities, lighting, assigned parking, and the number of off-street loading facilities under Sections 5.1.4.A, 5.1.4.C, and 5.1.13 and a special permit for the following uses: parking facility, accessory, multi-level; parking facility, accessory, single level; and pursuant to Section 4.4.1 and Section 7.3:

36. The proposed waivers to dimensional requirements for the design of parking facilities are appropriate for residents and office employees who are regular users and who will become familiar with the internal workings of the facilities and be able to navigate safely within them. It is in the public interest to minimize the amount of space within the Parking Garage and on the Development Parcel utilized for parking while still providing a sufficient number of parking spaces and appropriate circulation space within the parking facilities for the employees, residents and visitors to the Development Parcel. Similarly, the proposed waiver from the number/design of loading docks is in the public interest because it minimizes the space needed for such functions, while providing adequate means in appropriate locations for serving the needs of the Project.
37. It is in the public interest to reduce the lighting level below one foot-candle given that the level of lighting proposed provides sufficient illumination for safety while allowing the Development Parcel to be more residential in character.
38. The Council finds that in view of the complexity and novelty of the Project and in view of the likelihood that the design of the buildings and public spaces will evolve prior to construction of the Project, the Planning Department and Form+Place have developed a set of Design

Guidelines, dated September 2020, which will provide guidance and inform the final building designs. The Council finds that the use of the Design Guidelines subject to the conditions herein will simplify the process of design and permitting, grant appropriate assurance to the City and the Petitioner, provide a process for final review of plans, and allow avenues for review and refinement of the plans as design progresses.

39. The Council finds that the Petitioner has carefully studied and understands current and projected parking demand and that the redevelopment of this Development Parcel will not adversely affect the future parking availability in Newton Lower Falls. The Petitioner has recognized that current actual parking demand may be less in the future as single occupant vehicular use may be reduced. The parking for the market rate dwelling units will be charged separately from and in addition to the residential rent so as to reduce demand for parking by the market rate dwelling units. The rent for the Inclusionary Units will include parking for one vehicle at no additional charge for those households with a car. Parking demand for the market rate dwelling units has been calculated based on an average of one space per unit and Petitioner has prepared a shared parking analysis to allow office (including laboratory/research facility and medical office), hotel, and retail users to share parking with residential users as appropriate. The Council finds that based upon the limitations proposed on parking and the Petitioner's transportation demand management plan and shared parking analysis, the proposed number of parking spaces is warranted and consistent with the City's goals.

#### FINDINGS RELATED TO SIGNAGE

With regard to the criteria for signage set forth in §5.2.13:

40. The Council finds that exceptions to the number, size, type, location, and height of signs (free-standing or otherwise), as reflected in the comprehensive signage program, are in the public interest given the nature of the use of the Project, the architecture of the Project buildings and the Project's location with reference to abutting streets.

#### FINDINGS RELATED TO SITE PLAN REVIEW CRITERIA

With regard to the site plan approval criteria under §7.4.5.B.1-8:

41. The Council finds that the Project has been designed to ensure the safety of vehicular and pedestrian movement within the Development Parcel and in relation to adjacent streets, properties, and improvements, including regulation of the number, design, and location of access driveways and the location and design of accessible parking. The access driveways include stop signs, open viewing, low planters, and wide sidewalks, and have been located as far away from the intersection as is practical (§7.4.5.B.1).
42. The Council finds that the methods for disposal of sewage, refuse, and other wastes, and that the methods of regulating surface water drainage are adequate for the following reasons:

- a. The City Engineering Division has reviewed submitted plans and raised no concerns with respect to this Project. The Engineering Division will review all plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any building permits.
  - b. The Petitioner will be implementing water conservation measures which will result in an overall reduction in water use and subsequent wastewater generation from the current flow schedule at 314 CMR 7.15 through the use of such measures as low-flow high-efficient faucets and low flow water closets and urinals in the office/laboratory/research building.
  - c. The Petitioner will be making up to a \$7,200,000 contribution to the City of Newton for mitigation and off-site improvements as set forth in Conditions #15-18,, a portion of which will be used for municipal sewer inflow and infiltration ("I&I") improvements (§7.4.5.B.2).
43. The Council finds that provisions for on-street and off-street loading facilities are sufficient to service the buildings and related uses on the Development Parcel (§7.4.5.B.3).
44. The Council finds that screening of parking areas and structures on the Development Parcel from adjoining premises is sufficient because all parking stalls are either in multi-level parking facilities or are internal to the Development Parcel (§7.4.5.B.4).
45. The Council finds that the Project avoids unnecessary topographical changes and the topographical changes made are in keeping with the appearance of neighboring developed areas (§7.4.5.B.5).
46. The Council finds that all utility service lines on Development Parcel that are servicing the Project will be located underground (§7.4.5.B.6).
47. The Council finds that the proposed site design and massing is appropriate in the context of the surrounding area and will serve to improve connections between the Development Parcel, the adjacent land owned by the Department of Conservation and Recreation, the adjacent highways, the MBTA station, and the neighborhoods (§7.4.5.B.6).
48. The Council finds that the Project avoids the removal or disruption of historic resources on or off-site (§7.4.5.B.7).
49. The Council finds that the Project makes a significant contribution to the efficient use and conservation of natural resources and energy for the reasons set forth above in the special permit criteria section (§7.4.5.B.8).

#### OTHER FINDINGS

50. The Council finds that the Project is consistent with the Housing Needs Analysis and Strategic Recommendations, Newton Leads 2040 in that it includes the strategies of pursuing diverse housing choices, including single-level, elevator-served residences, providing housing near walkable, transit-accessible locations, integrating lower-cost housing into a variety of market



areas across the City, and balancing the need for commercial space with housing supply through a mixed-use project at the site of mass transit.

51. The Council finds that the Project is consistent with the findings and principles of the Riverside Vision Plan, which was adopted by the City to guide in the evaluation of the proposed development at the Development Parcel.
52. The Council finds that all dwelling units will conform to the Massachusetts Architectural Access Council (MAAB) requirements for “Group 1” units and are accessible by those in a wheelchair. ~~5% In addition, 7%~~ of the dwelling units in each building will conform to “Group 2A” unit requirements and will be designed spatially for immediate wheelchair use and with the ability to adapt additional components of the units upon need, at the Petitioner’s sole cost and expense. ~~In addition, the Petitioner has voluntarily agreed that an additional 2% of the dwelling units throughout the Project (but not necessarily within each building) will conform to This amount of “Group 2A” unit requirements. units is in excess of the 5% required by MAAB.~~ This will add to the diversity of Newton’s housing stock, thereby increasing housing choices and opportunities in the City.
53. The Council finds that 15% of the dwelling units in the Project will be affordable dwelling units to households earning at or below 80% of Area Median Income (AMI) (Tier 1) and 2.5% of the dwelling units will be affordable to households earning greater than 80%, but at or below 110% of AMI (Tier 2) in accordance with the City’s Inclusionary Zoning Ordinance. In addition, the Petitioner has agreed to make 3 of the Tier 1 units affordable to households earning at or below 50% of Area Median Income. The Board finds these 3 units are in excess of the requirements of the City of Newton Zoning Ordinance.
54. The provision of 17.5% of the dwelling units as affordable units will provide needed affordable housing in Newton. By including two tiers of affordability, as well as providing additional affordability at a lower AMI, there will be potential for upward mobility within the Project, as residents may be afforded the option to transition from one tier to the next, where they would have otherwise been required to relocate or pay market rate rents if their income exceeded the cap on the Inclusionary Units.
55. The Council finds that the site planning, building design, construction, maintenance, and long-term operation of the Project will reduce the use of energy, water, and other natural resources and minimize adverse environmental impacts. The Council finds that the Project either meets the requirements of a green building project under Section 5.13 or, where it does not, the Council finds that such exceptions to Section 5.13 are appropriate because the Petitioner has demonstrated that the same or better environmental outcomes will be achieved through its approach and Project design, and is in the public interest because the Petitioner is committed to exploring the feasibility of several sustainable measures during the design stages and will share the results of those studies with the Director of Planning and Development.



In light of the findings set forth above and the following conditions imposed by this Council Order, the City Council finds that the public convenience and welfare of the City will be served, and the criteria of Sections 4.2.1.B; 4.2.4; 4.4.1; 5.1.4.E; 5.1.13; 5.11; 7.3.3; 7.3.5; 7.4; and 7.4.5 for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #27-20

CO-PETITIONERS: MD 399 Grove Owner, LLC, Ramirez Concord, LLC, and BH Normandy Riverside LLC, their successor(s), assign(s), and/or designee(s). When used in this Council Order, the term "Petitioner" shall refer to MD 399 Grove Owner, LLC, Ramirez Concord, LLC, and BH Normandy Riverside LLC, their successor(s), assign(s), and/or designee(s), and shall include the Organization of Owners required by Section 4.2.4.I of the Zoning Ordinance.

LOCATION: 355 and 399 Grove Street, Newton

OWNER: Massachusetts Bay Transportation Authority, MD 399 Grove Owner, LLC, and Ramirez Concord LLC

ADDRESS OF OWNER: 355 and 399 Grove Street, Newton, MA 02466

TO BE USED FOR: Mixed-use/transit-oriented development with residences, retail, offices, laboratory/research facility and accessory and non-accessory parking facilities, adjacent to the Riverside MBTA station.

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

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

ZONING: Mixed Use 3/Transit-Oriented District

**Approved subject to the following conditions:**

**GENERAL CONDITIONS**

1. All buildings, parking areas, driveways, walkways, landscaping, and all other site features on the Development Parcel associated with this Special Permit/Site Plan Approval shall be located, constructed, and implemented consistent with the set of plans entitled "Riverside

Station,” prepared by VHB, Inc. and signed and stamped by Richard S. Hollworth, P.E., dated December 9, 2019 and revised through July 7, 2020 (the “Special Permit Plan Set”), which are more particularly identified in Exhibit A and are hereby incorporated by reference. No changes to the Project are permitted unless they are consistent with the Special Permit Plan Set as set forth in Conditions #8 through 12.

2. All buildings, parking areas, driveways, walkways, landscaping, and all other site features on the Development Parcel associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the City of Newton Design Guidelines for the Riverside Station Development, dated September 2020 (the “Design Guidelines”), which are on file with the Department of Planning and Development, the Inspectional Services Department, and the City Clerk. No changes to the Project are permitted unless they are consistent with the Design Guidelines as set forth in Conditions #8 through 12.
3. The Special Permit/Site Plan Approval shall be deemed to have been vested for the purposes of utilizing the benefits of the change of zone authorized by Council Order #26-20 for the entire Project for all purposes upon the earliest of: (a) the issuance of a City or State building permit (other than a demolition permit) for all or any portion of the Project (including the Parking Garage) or (b) commencement of the removal or the relocation of the MWRA water line crossing the Development Parcel.
4. Pursuant to Section 7.3.2.E and Section 7.4.5.D of the City of Newton Zoning Ordinance in effect at the time this Special Permit/Site Plan Approval was approved (hereinafter, “Zoning Ordinance”), the time for exercise of this Special Permit/Site Plan Approval is extended to a period of three years, which shall not include such time required to pursue or await the determination of an appeal pursuant M.G.L. c. 40A, § 17 or an appeal of any other local permits or approvals necessary to complete the project, without the necessity of a further public hearing. This Special Permit/Site Plan Approval shall be deemed to have been exercised upon the commencement of construction pursuant to a building permit (other than a demolition permit) for all or any portion of the Project (including the Parking Garage) issued by the City or the State.
5. If within 8 years from the date of this Special Permit/Site Plan Approval (the “Building Permit Date”) the Petitioner has not applied for all building permits necessary to complete construction of the Project, or if within 12 years from the date of this Special Permit/Site Plan Approval (the “Project Completion Date”), the Petitioner has not been issued a certificate of occupancy (temporary or final) for all buildings of the Project, which Building Permit Date and Project Completion Date shall not include such time required to pursue or await the determination of an appeal pursuant to M.G.L. c. 40A, § 17 or an appeal of any other local permits or approvals necessary to complete the Project, ~~the Petitioner has not applied for all building permits necessary to complete construction of the Project,~~ then further construction under this Special Permit/Site Plan Approval is ~~prohibited~~~~not authorized~~ unless the Petitioner seeks and receives an amendment to this Special Permit/Site Plan Approval that extends the time for fulfilling such conditions ~~this condition~~. In no event shall any portion of the Project

for which a certificate of occupancy has been issued in accordance with the provisions of this Special Permit/Site Plan Approval be deemed to be in violation of this Special Permit/Site Plan Approval or be deemed to have lapsed due to the fact that any other portion of the Project has not been commenced or completed.

6. All real and personal property that make up the Development Parcel and the Project, except for ~~any~~the portions of the Parking Garage owned by the MBTA and ~~that are~~ used exclusively by the MBTA for the provision of transportation which are deemed exempt by the Newton Assessors' Office, shall be subject to the assessment of local taxes in accordance with the provisions of M.G.L. c. 59. However, in the event that a final binding decision of the Appellate Tax Board or appellate court determines that any other part of the Development Parcel or the Project is exempt from the assessment of local taxes notwithstanding the first sentence of this Condition, the Petitioner agrees to and shall immediately execute a PILOT with the City of Newton Board of Assessors which will require the Petitioner to make quarterly payments in lieu of taxes based on the market value of the portions of the Project determined to be exempt as though the same were subject to the assessment of local taxes, excluding those portions of the project owned and used by the MBTA for the provision of transportation.
7. Prior to exercise of this Special Permit as defined in Condition #4 above, an organization of all owners of land and ground lessees within the Development Parcel shall be formed (the "Organization of Owners"). Neither the owners of land subject to easements benefitting the Project nor the MBTA are required to join the Organization of Owners. In accordance with the provisions of Section 4.2.4 of the Zoning Ordinance, the Organization of Owners shall be governed by this Special Permit/Site Plan Approval and shall have the authority and obligation to act on behalf of all such owners. The Organization of Owners shall serve as the liaison between the City and any owner, lessee, or licensee within the Development Parcel governed by this Special Permit. Such Organization of Owners shall be the primary contact for the City in connection with any dispute regarding violations of this Special Permit/Site Plan Approval or the Zoning Ordinance and, in addition to any liability of individual owners or lessees (with regard to matters specifically related to the individual owners' or lessees' parcels and not those related to the overall Project or Development Parcel), shall have legal responsibility for compliance of the Project with the terms of this Special Permit/Site Plan Approval and the provisions of the Zoning Ordinance.

#### **DESIGN REVIEW & PLAN CONSISTENCY CONDITIONS**

All buildings, other than the Parking Garage, shall undergo a two- or three-step process set forth in Conditions #8 through 12 for review of each building to ensure the Project is constructed in accordance with the Zoning Ordinance, this Special Permit/Site Plan Approval, and the Design Guidelines.

#### **8. Submission and Review of Schematic Plans**

- a. At the schematic design stage, the Petitioner shall file the following with the Director of Planning and Development and its consultants, the City of Newton's Urban Design Commission (the "UDC"), and the Liaison Committee:
  - i. individual building plans consisting of exterior renderings, preliminary building elevations, building footprints, and representative wall sections showing consistency with the Special Permit Plan Set and the Design Guidelines (the "Schematic Plans"); and
  - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the ~~Schematic Plans~~ ~~Design Development Plans~~ are consistent with the Special Permit Plan Set.
- b. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #8(a), the Director of Planning and Development will review and provide an opinion as to whether the Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the Director's opinion that the Schematic Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #8(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public meeting, will provide an opinion as to whether the Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC's public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. The UDC's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the UDC's opinion that the Schematic Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.
- d. Upon receipt of the written consistency opinions referenced in Condition #8(b) and (c) above, the Petitioner may proceed to the design development stage. If either the UDC or the Director of Planning issues an opinion that the Schematic Plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised Schematic Plans in accordance with Condition #8(a).

9. Submission and Review of Design Development Plans

- a. Upon completion of the schematic plan stage set forth in Condition #8, the Petitioner may proceed to the design development stage. At this stage, the Petitioner shall file the following with the Director of Planning and Development, the UDC, and the Liaison Committee:
  - i. a copy of plans showing consistency with the Special Permit Plan Set and the Design Guidelines for the portions of the Project necessary for the permit or determination being sought (the "Design Development Plans");
  - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the Design Development Plans are consistent with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within forty five (45) days of receipt of a complete submission of the materials set forth in Condition #9(a) the Director of Planning and Development will review and provide an opinion as to whether the Design Development Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the Director's opinion that the Design Development Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Within forty five (45) days of receipt of a complete submission of the materials set forth in Condition #9(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public meeting, will provide an opinion as to whether the Design Development Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC's public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. The UDC's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the UDC's opinion that the Design Development Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.

- d. Upon receipt of the written consistency opinions referenced in Condition #9(b) and (c) above, the Petitioner may proceed to the construction documents stage. If either the UDC or the Director of Planning issues an opinion that the Design Development Plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised Design Development Plans in accordance with Condition #9(a).

#### 10. Submission and Review of Expanded Schematic Plans

- a. In lieu of proceeding through both the schematic plan stage set forth in Condition #8 and the design development stage set forth in Condition #9, for any building or buildings, the Petitioner may combine the two steps into one expanded schematic plan review step if the Petitioner files the following with the Director of Planning and Development, the UDC, and the Liaison Committee:
  - i. individual building plans consisting of exterior renderings, preliminary building elevations, building footprints, representative wall sections, as well as structural and mechanical, electrical, plumbing, fire protection (“MEP/FP”) design narratives showing consistency with the Special Permit Plan Set and the Design Guidelines (the “Expanded Schematic Plans”);
  - ii. a signed certificate from the Petitioner’s architect and/or civil engineer certifying that such plans are consistent with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within sixty (60) days of receipt of a complete submission of the materials set forth in Condition #10(a) the Director of Planning and Development will review and provide an opinion as to whether the Expanded Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development’s review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development’s opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the Director’s opinion that the Expanded Schematic Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Within sixty (60) days of receipt of a complete submission of the materials set forth in Condition #10(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public



meeting, will provide an opinion as to whether the Expanded Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC's public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. The UDC's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the UDC's opinion that the Expanded Schematic Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.

- d. Upon receipt of the written consistency opinions referenced in Condition #10(b) and (c) above, the Petitioner may proceed to the construction documents stage. If either the UDC or the Director of Planning issues an opinion that the Expanded Schematic Plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised Expanded Schematic Plans in accordance with Condition #10(a) or follow the review stages set forth in Conditions #8-9.

#### 11. Submission and Review of Construction Documents

- a. Upon completion of the design development stage set forth in Condition #9 or the expanded schematic plan stage set forth in Condition #10, the Petitioner may proceed to the construction documents stage. At this stage, the Petitioner shall file the following with the Director of Planning and Development:
  - i. a copy of plans showing consistency with the Special Permit Plan Set and the Design Guidelines for the portions of the Project necessary for the permit or determination being sought (the "Construction Documents");
  - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the construction Documents are consistent with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #11(a) the Director of Planning and Development will review and provide an opinion as to whether the Construction Documents are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner, the Commissioner of



Inspectional Services, and the Liaison Committee. If it is the Director's opinion that the Construction Documents are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, the Director has the option to seek the UDC's opinion regarding the Construction Documents.

- c. Upon receipt of the written opinion referenced in Condition #11(b) above, the Petitioner may submit a formal building permit application.

## 12. Formal Submission of a Building Permit Application

- a. Upon receipt of a complete building permit application, the Commissioner of Inspectional Services shall make a final determination, with due consideration given to the written opinions of the Director of Planning and Development and the UDC, as to whether the plans filed with such application are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines.
- b. The formal submission of the building permit application shall include a narrative setting forth the total gross square feet of development proposed in the building permit, the total gross square feet of commercial space proposed in the building permit, the total number of bicycle parking stalls proposed in the building permit, the total gross square feet of development on the Development Parcel for which building permits have already been issued, the total gross square feet of the commercial space for which building permits have already been issued, the total number of bicycle stalls for which building permits have already been issued, the total number of dwelling units and Inclusionary Units proposed (if applicable), the total number of dwelling units and Inclusionary Units on the Development Parcel for which building permits have already been issued, and the total number of parking stalls for which building permits have been issued.
- c. In making the final consistency determination, the Commissioner of Inspectional Services may elect to refer the matter to the Land Use Committee for the Committee's review and recommendation, provided however that referral to the Land Use Committee is required for the Committee's review and recommendation of any modifications or changes to the Special Permit Plan Set concerning the following: (i) increase in building height of two feet or greater where allowed under the Zoning Ordinance; (ii) building location changes greater than five feet without decreasing setbacks; (iii) increase in building dimensions or massing where such increase results in an increase in the total gross floor area of a building greater than five percent from what is shown on the Special Permit Plan Set; (iv) footprints of buildings where such changes alter the footprint area or an overall dimension by more than five percent; (v) material changes to the interior road network layout, including driveway locations; (vi) reduction in open space of more than one percent and less than five percent; (vii) an increase or decrease of the total number of dwelling units up to four percent; (viii) an increase or decrease of

greater than 20 but less than 40 in the number of striped parking stalls from what is shown on the Special Permit Plan Set, provided however that in the event a grocery store is located within the Project, an increase of up to 80 striped parking stalls from what is shown on the Special Permit Plan Set is permitted; and (ix) significant changes to major design elements such as towers, vista terminations, entries, and façade treatments. Consistency determinations that are referred to the Land Use Committee for review and recommendation in accordance with this condition do not require the vote or approval of the Committee.

- d. If the Commissioner determines that the application plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, no building permit will be issued, and the Petitioner may submit revised plans to the Commissioner which the Commissioner deems to be consistent.
- e. The following modifications or changes shall not be eligible for a consistency determination and can only be done through amendment of this Special Permit/Site Plan Approval: (i) increase to the building stories shown on the Special Permit Plan Set; (ii) change in the total number of dwelling units in the Project by more than four percent; (iii) any increase in the total gross floor area of any building greater than ten percent from what is shown on the Special Permit Plan Set; (iv) any increase or decrease of more than 40 striped parking stalls from what is shown on the Special Permit Plan Set, except in the event a grocery store is located in the Project as allowed by Condition #12(c); and (v) decrease of more than five percent to the amount of open space of the Project from what is shown on the Special Permit Plan Set.

#### **OFF-SITE IMPROVEMENT CONDITIONS**

- 13. The Petitioner shall design and construct, at no cost to the City, the Route 128/Interstate-95 Interchange improvements as shown on the Conceptual Plans, dated June 18, 2020 and revised through September 15, 2020, entitled “Massachusetts Department of Transportation Highway Division Plan of Rt 128/I-95 Grove Street (Bridge No. N-12-056) in the City of Newton, Middlesex County” (hereinafter the Off-Site Improvements Plans”), which encompasses both the improvements to the Route 128/Interstate 95 southbound and northbound off ramps (hereinafter, the “Interchange Improvements”).
  - a. Prior to the issuance of any building permits for any of the buildings, except for the Parking Garage, the following must occur in connection with the Interchange Improvements:
    - i. The Massachusetts Department of Transportation (MassDOT) must issue a Section 61 Finding (Mitigation Commitment Document required as part of the Massachusetts Environmental Policy Act (MEPA) process).

- ii. The Petitioner must complete the 25% Design Submission phase of the application process for receiving a Highway Access Permit from MassDOT and receive MassDOT's comments in response to the submission indicating authorization to proceed to the next phase of the application process.
  - iii. The mitigation obligations in the Section 61 Finding and the MassDOT comments on the 25% Design review must support approval of the Interchange Improvements.
- b. The Petitioner shall submit all state and federal submissions in connection with the Interchange Improvements, including engineered plans, to the Commissioner of Public Works for review simultaneous with submission to MassDOT and/or FHWA. The Petitioner shall also provide copies of all comments and responses it receives from any federal or state entity to the Director of Planning and Development and the Commissioner of Public Works in a timely manner. The Petitioner shall provide copies of all such submissions, comments, and responses to the Liaison Committee in a timely manner.
  - c. Any material modifications to the final design of the Interchange Improvements by either MassDOT or FHWA will be considered consistent with the conceptually approved plan if, in the opinion of the Commissioner of Public Works, the modified design achieves the same performance objectives as the conceptually approved design.
  - d. Prior to the issuance of a certificate of occupancy (temporary or final) for any of the buildings, other than the Parking Garage, construction of the Interchange Improvements must be substantially complete and approved by MassDOT ~~(i.e. a final inspection has been completed by MassDOT)~~, but final punch list items for such improvements, including but not limited to landscaping, may be scheduled for completion after the issuance of a temporary certificate of occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner of Inspectional Services (after consultation with the Director of Planning and Development and the Commissioner of Public Works) to be sufficient to complete such outstanding work.
  - e. The Petitioner shall comply with the conditions of any permit issued by MassDOT for off-site improvements, including but not limited to the MEPA Section 61 findings.
14. The Petitioner shall design and construct, at its sole cost, the roadway improvements and mitigation along Grove Street as shown and described on the Off-Site Improvements Plans and as further described in Condition #14(a) below (hereinafter the "Grove Street Improvements").

- a. The Grove Street Improvements shall consist of the following:
- i. The installation of three new traffic signals at the following locations: (1) at the Project's Grove Street entrance; (2) at the Recreation Road Extension intersection/NB Ramp; and (3) at the Grove Street and Recreation Road extension intersection. Such signals shall use adaptive technology as well as transit signal priority and shall be connected to one another. The signal and lane striping at the Project's Grove Street entrance shall ~~discourage~~  
~~encourage~~ left hand turns into the Project, in accordance with the expectation that the City will adopt a traffic regulation prohibiting such left hand turns at this location. Prior to operation of the new traffic signals, as well as prior to any subsequent adjustments or modifications to the timing of the signals, which timing is expected to require the approval of MassDOT, the Petitioner must consult with the Commissioner of Public Works regarding the timing of the signals.
  - ii. Adjustment or modification to the timing of the signal at the intersection of Grove Street and the Riverside Business Center drive entrance, to be reviewed and approved by the Commissioner of Public Works, in order to establish the most beneficial traffic flow.
  - iii. A ten-foot wide two-way bicycle track along the entire length of the Development Parcel's Grove Street frontage and continuing from the southerly end of that frontage to the northerly corner of Grove Street and Asheville Road.
  - iv. A ten-foot wide multi-use path on the westerly side of Grove Street from Asheville Road to the driveway entrance of the Lower Falls Community Center at 545 Grove Street, subject to any necessary approvals from the City which the Petitioner shall diligently pursue.
  - v. A pedestrian walkway along the entire length of the Development Parcel's Grove Street frontage and continuing from the southerly end of that frontage to the northerly corner of Grove Street and Asheville Road which shall be:
    1. no less than six feet in width from the northerly end of the Development Parcel's Grove Street frontage to the Project's Grove Street entrance;
    2. no less than eight feet in width from the southerly side of the Development Parcel's Grove Street entrance/exist to the southerly end of the Project's Grove Street frontage; and

3. no less than 5 feet in width from the southerly end of the Development Parcel's Grove Street frontage to the northerly corner of Grove Street and Asheville Road.
  - vi. A tree way no less than five feet in width throughout its length along the Development Parcel's Grove Street frontage on the easterly side of the two-way bicycle track.
  - vii. Light poles in a buffer separating the two-way bicycle track from the pedestrian walkway for the length of the Development Parcel's Grove Street frontage. This buffer shall be at least 2.5 feet wide. All details of the light poles including but not limited to type, height, fixtures, and level of illumination shall be reviewed and approved by the Commissioner of Public Works or his/her designee.
  - viii. A crosswalk with a Rapid Reflectorized Flashing Beacon (the "RRFB") adjacent to the transit plaza between Buildings 6 and 7. The Petitioner shall also design and construct a sidewalk on the eastern side of Grove Street from the RRFB to the existing sidewalk north of the Project. The final location of these improvements shall be reviewed and approved by the Commissioner of Public Works or his/her designee.
  - ix. The ~~Off-Site Improvements Plans~~<sup>above-referenced plans</sup> shall be updated to retain the crosswalk across Grove Street adjacent to 406-416 Grove Street.
  - x. General grading and drainage improvements on Grove Street as shown in the Special Permit Plan Set.
  - xi. Signage appropriate to direct pedestrians and bicyclists, subject to the approval of Traffic Council and/or the Public Facilities Committee and, to the extent necessary, MassDOT.
- b. To the ~~extent~~<sup>extend</sup> required, it shall be the responsibility of the Petitioner to receive all necessary approvals from MassDOT to complete the Grove Street Improvements.
  - c. Prior to the issuance of any building permits for any of the buildings, except for the Parking Garage, the Petitioner shall submit final engineered plans for the Grove Street Improvements for review and approval by the Public Facilities Committee and docket a petition with the Traffic Council, pursuant to Revised Ordinances, §19-29, for adoption of a regulation prohibiting left turns from Grove Street into the Project. Notwithstanding the foregoing, the Petitioner shall have no obligation to enforce any such traffic regulation and shall not be required to

reconstruct the intersection at ~~make physical modifications to~~ the Grove Street entrance to the Project in connection with the same.

- d. Prior to the issuance of a certificate of occupancy (temporary or final) for any of the buildings, except for the Parking Garage, the Petitioner shall, at its own expense, offer a permanent easement in favor of the City, in a form approved by the Law Department, to allow the public to access and use the portion of the pedestrian and bicycle infrastructure along the Development Parcel's Grove Street frontage that is located within the Development Parcel (which includes the pedestrian walkway, buffer, and two-way bicycle track). Such easement shall be executed and recorded upon substantial completion of the Grove Street Improvements. At the same time, the Petitioner shall also enter into a License Agreement with the City, in a form approved by the Law Department, obligating the Petitioner to indemnify the City and maintain (including but not limited to snow removal), at its sole cost, the pedestrian walkway, two-way bicycle track, and landscaping along the entire length of the Development Parcel's Grove Street frontage that is located between the Development Parcel's property line and the curb line. The License Agreement will not obligate the Petitioner to maintain any lighting, signage or fire hydrants.
- e. Prior to the issuance of any certificate of occupancy (temporary or final) for any part of buildings 5 and 6, construction of the Grove Street Improvements ~~shall be inspected and approved as must be~~ substantially complete and fully operational from a traffic management perspective ~~by the Commissioner of Public Works and the Director of Planning and Development~~, but final punch list items ~~for such improvements~~, including but not limited to landscaping, may be scheduled for completion after the issuance of a temporary certificate of occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner of Inspectional Services to be sufficient to complete such outstanding work.

#### **MITIGATION CONDITIONS**

15. The Petitioner shall make payments in the aggregate amount of \$1,400,000.00 to the City for municipal infrastructure improvements, which amount shall be deemed to satisfy the Petitioner's obligation for inflow and infiltration (I&I) mitigation in accordance with Section 29-169 of the Revised Ordinances of Newton, Massachusetts, 2017 (hereinafter, "Revised Ordinances"). Payments shall be made as follows:
  - a. \$700,000.00 at the first building permit for a residential building in the Project.
  - b. \$700,000.00 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.



16. The Petitioner shall make payments in the aggregate amount of \$1,300,000.00 to the City for off-site traffic mitigation or other neighborhood improvements in the areas of Lower Falls and Auburndale impacted by the Project.

- a. The Petitioner's payments shall be made to a municipal account designated for such mitigation and improvements (hereinafter, the "Mitigation Fund") as follows
  - i. \$650,000.00 at the first building permit for a residential building in the Project.
  - ii. \$650,000.00 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.
- b. The Mitigation Fund shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. Requests for expenditures from the Mitigation Fund may be made by a Community Improvement Group ("CIG"), to be established by the City Council in accordance with this Condition, or at the request of City officials. The CIG shall serve in an advisory role regarding any expenditure from the Mitigation Fund. All requests for expenditures made by the CIG shall be referred to the appropriate City Department for review. All expenditures from the Mitigation Fund shall require, in addition to the approval of the City Council, the approval of the City Department, or State agency, if any, that oversees the proposed improvement.
- c. The City Council shall establish a five-member CIG composed of representatives from the Auburndale and Lower Falls neighborhoods. Any request for expenditures made by the CIG shall require a majority vote of a quorum of three members of the CIG, provided, however, that no vote shall be required when the CIG is providing advice to the City Council on a request for any expenditure from the Mitigation Fund by a party other than the CIG. The City Council may establish terms for the community members as well as additional procedural rules for the CIG, which shall be subject to all applicable laws and regulations.

17. The Petitioner shall make payments in the aggregate amount of \$1,500,000.00 to the City for improvements to the Williams Elementary School. The Petitioner's payments shall be made to a municipal account designated for improvements to the Williams School as follows:

- a. \$750,000.00 at the first building permit for a residential building in the Project.
- b. \$750,000.00 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.

18. As mitigation for the Project, subject to the conditions set forth below, the Petitioner shall design, ~~and~~ construct, and/or make payments for the off-site trail connections and



improvements set forth in and in accordance with the plans entitled "Riverside Station Trail Network," dated April 9, 2020, as the same may be modified pursuant to the terms herein during the permitting process ~~(hereinafter, the "Off Site Trail Work")~~ in an amount up to \$3,000,000.00.

a. Prior to the issuance of any certificate of occupancy (temporary or final) for the Project other than a certificate of occupancy for the Parking Garage, the Petitioner shall make a payment to the Massachusetts Department of Conservation and Recreation ("DCR") to reimburse DCR for its preparation of design plans to MassDOT 100% Highway Design Submission standards for improvements to the following MassDOT-owned bridges: Bridge No. N-12-062 (892) and Bridge No. N-12-061 (891) (the "Two Bridges DCR Payment"). This scope of work is anticipated to include preliminary design plans, a Chapter 85 Structural Review, and 100% design approval for improvements to the above referenced bridges beginning at the Recreation Road Bridge Approach (as described below) to the north as well as a spur trail to access the Leo J. Martin parkland and across the City of Newton Tax Parcel 42012 0031 terminating on Clearwater Road.

~~a.b.~~ The Petitioner shall make best efforts to diligently obtain all necessary approvals prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit for the following design and construction improvements (collectively, the "Trail Design and Construction Work"): ~~The Off-Site Trail Work shall consist of the following:~~

- i. "Pony Truss Trail Link" consists of designing and constructing an approximately 6-8' wide recreational trail on a portion of the land owned by ~~DCR the Commonwealth of Massachusetts Department of Conservation & Recreation ("DCR")~~ which will link the recently restored Pony Truss Trail to the improvements to the Depot Tunnel Link (as described below).
- ii. "Depot Tunnel Link" consists of designing and constructing an approximately 8' wide multiuse recreational trail which links the trail system in Pigeon Hill Park in Newton to the Depot Tunnel Improvements (as described below).
- iii. "Depot Tunnel Improvements" consists of preparing design plans to MBTA 100% Design Submission standards for improvements to MBTA-owned tunnel under the MBTA Worcester Line and the construction of the improvements to include structural, surface, safety, and aesthetic improvements. It is anticipated that the existing tunnel will require minor structural improvement but primarily shall consist of surface, safety and aesthetic improvements. ~~The existing ceiling to floor height will not be increased as part of the Depot Tunnel Improvements.~~

- iv. "MWRA Path Link" consists of designing and constructing an approximately 8' wide multiuse trail which links the proposed 2-way multiuse path along Recreation Road from its terminus at Riverside Park in Weston under the Recreation Road and Framingham MBTA Commuter Rail Overpasses to the existing paved trail adjacent to the existing MWRA facility.

~~v. "Two Bridges Trail Design" consists of reimbursing DCR for its preparation of design plans to MassDOT 100% Highway Design Submission standards for improvements to the following MassDOT-owned bridges: Bridge No. N-12-062 (892) and Bridge No. N-12-061 (891). This scope of work is anticipated to include preliminary design plans, a Chapter 85 Structural Review, and 100% design approval for improvements to the above referenced bridges beginning at the Recreation Road Bridge Approach (as described below) to the north and terminating at City of Newton Tax Parcel 42012-0031 located off of Clearwater Road.~~

- ~~vi.~~v. "Recreation Road Bridge Approach" consists of designing and constructing an approximately 8' wide multiuse trail which links the northern abutment of Bridge No. N-12-061 (891) to the proposed 2-way multiuse path along Recreation Road adjacent to the Project.

~~The Depot Tunnel Improvements, Pony Truss Trail Link, Depot Tunnel Link, MWRA Path Link, and Recreational Road Bridge Approach, as same may be modified to the terms herein during the permitting process, are collectively referred to as the "Trail Design and Construction Work."~~

- ~~b. Prior to the issuance of any certificate of occupancy (temporary or final) for the Project other than a certificate of occupancy for the Parking Garage, the Petitioner shall make a payment to DCR to reimburse DCR for its costs to perform the Two Bridges Trail Design work (the "Two Bridges DCR Funds") and shall provide evidence of such payment to the Director of Planning and Development.~~
- c. The Petitioner's ~~shall make~~ best efforts to diligently obtain all necessary approvals for the Trail Design and Construction Work~~design and construction of the Trail Design and Construction Work prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit. Such best efforts~~ must be documented to the Director of Planning and Development. The Petitioner must consult with the Department of Planning and Development and the non-profit group Newton Conservators Inc. during the design, approval, and construction phases of the Trail Design and Construction Work, including design changes requested by DCR or other permitting agency. The Petitioner shall periodically meet with, update and solicit input and feedback from the Department of

Planning and Development on a quarterly basis following approval of this Special Permit/Site Plan Approval.

- d. Upon receipt of all necessary approvals for the Trail Design and Construction Work, the Petitioner shall diligently commence and diligently complete the Trail Design and Construction Work, up to a maximum of three million dollars (\$3,000,000.00) less the Two Bridges DCR ~~Payment Funds~~. The work shall be completed before the issuance of a certificate of occupancy (temporary or final) for the ~~tenth building constructed or the Project Completion Date, whichever is sooner~~ ~~final dwelling unit~~.
- e. ~~If in the event that~~ the Petitioner reasonably believes that the costs for performing the Trail Design and Construction Work and the Two Bridges DCR ~~Payment Off-Site Trail Work~~ will exceed three million dollars (\$3,000,000.00), the Petitioner shall endeavor to meet with DCR and utilize best efforts to reach agreement with DCR on modifications to the scope of the Trail Design and Construction Work ~~Off-Site Trail Work~~ to reduce the costs ~~of the Off-Site Trail Work~~ to \$3,000,000.00. The Petitioner shall also consult with the Director of Planning and Development prior to any such modifications to the scope of the Trail Design and Construction Work ~~Off-Site Trail Work~~. The Petitioner shall provide an itemized accounting for all design and construction ~~costs incurred~~ ~~work~~ upon request from Director of Planning and Development. ~~At the completion of the Trail Design and Construction Work, ownership of such improvements shall be transferred to DCR.~~
- e.f. In the event the Trail Design and Construction Work is undertaken by the Petitioner in accordance with this Condition, then prior to the issuance of a certificate of occupancy (temporary or final) for the tenth building constructed, or before the Project Completion Date, whichever is sooner, the Petitioner shall make a one-time payment to the Newton Conservators Inc. Trails Fund in the amount of \$50,000.00 (which shall be part of the Petitioner's total \$3,000,000 commitment for the Trail Design and Construction Work and the Two Bridges DCR Payment) to be used by the Newton Conservators to supplement DCR's maintenance of the trails constructed by the Petitioner.
- ~~f.g.~~ In the event the Petitioner fails to secure all necessary approvals for the Trail Design and Construction Work prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit, the Petitioner shall make a payment of three million dollars (\$3,000,000.00), less the Two Bridges DCR ~~Payment Funds~~, to the City for open space/parks and recreation improvements in the vicinity of the Project (the "Trails Payment"). The Trails Payment shall be made to a municipal account designated for such improvements within 30 days after the issuance of the 285th certificate of occupancy (temporary or final). Appropriations of the Trails Payment shall be in accordance with municipal finance law.

~~g.h.~~ In the event that a necessary approval for the Trail Design and Construction Work is denied at any time prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit, or the event a necessary approval is constructively denied (as confirmed by the Director of Planning and Development), the Petitioner shall make the Trails Payment to the City as follows: (i) 50% of the Trails within 60 days after the denial or constructive denial of the approval; and (ii) 50% of the Trails Payment within 120 days after the denial or constructive denial of the approval. **Notwithstanding the preceding requirements, all payments made pursuant to this Condition #18(h) must be made no later than 30 days after the issuance of the 285th certificate of occupancy (temporary or final) for a dwelling unit and no payment shall be required prior to the issuance of a building permit (other than a demolition permit) for the Project by the City.**

~~h. In the event the Trail Design and Construction Work is undertaken by the Petitioner, then prior to the issuance of the final certificate of occupancy for the final dwelling unit, the Petitioner shall make a one time payment to the Newton Conservators Inc. Trails Fund in the amount of \$50,000.00 (which shall be part of the total \$3,000,000 commitment for the Off Site Trail Work) to be used by the Newton Conservators to supplement DCR's maintenance of the trails constructed by the Petitioner.~~

#### **AFFORDABILITY CONDITIONS**

19. In accordance with the Zoning Ordinance, §5.11.4, 17.5% of the dwelling units in the Project shall be affordable housing units (the "Inclusionary Units"), as follows:

- a. 15% of the dwelling units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). Three (3) of these Tier 1 Units must be affordable to households earning at or below 50% of AMI. The breakdown of the three units at greater affordability shall be two 3-bedroom units and one 2-bedroom unit. The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI; alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
- b. 2.5% of the dwelling units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Units").
- c. The Petitioner agrees that if the Project's inclusionary zoning requirement results in a fraction of a unit less than 0.5, it will provide one Inclusionary Unit to capture

that fraction.

20. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable inclusionary zoning provisions of the Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein. The Project is not required to comply with the Zoning Ordinance provision, effective January 1, 2021, changing the requirements for projects with 100 or more dwelling units.
21. The bedroom mix of the Inclusionary Units shall be proportionate to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	Studio	1BR	2BR	3BR
Tier 1 Inclusionary Units	8	42	35	3
Tier 2 Inclusionary Units	1	7	6	1

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for vertical construction, other than the Parking Garage, for the Project.

22. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water, and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Zoning Ordinance, § 5.11.4.D.1.
23. Prior to the issuance of any building permits for the vertical construction of the Project, except for the Parking Garage, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of the Massachusetts Department of Housing and Community Development (DHCD)'s guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery. The nature and extent of the local preference scheme included in any final AFHMP submitted to DHCD for its review and approval shall be in accordance with the applicable provisions of the City's Revised Ordinances and/or Zoning Ordinance governing the percentage of local preferences for Inclusionary Units in a project in effect at the time of such submission to DHCD.
24. Prior to the issuance of any temporary or final certificate of occupancy for any residential portions of the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1

Inclusionary Units in perpetuity.

25. Prior to the issuance of any temporary or final certificate of occupancy for any residential portions of the Project, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Units in perpetuity.
26. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
27. The Inclusionary Units shall be located, designed, and constructed subject to the provisions of the Zoning Ordinance, §5.11.7.
28. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and throughout each residential building, and shall be sited in no less desirable locations than the market-rate units. The locations of such units within a residential building and the location of their parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for vertical construction for such residential building.
29. No dwelling unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the plans submitted with the building permit application for such building.
30. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Zoning Ordinance.
31. Any guest suites or temporary housing that meet the definition of a Dwelling Unit under the Zoning Ordinance shall be counted as a unit for purposes of calculating the Project's inclusionary zoning requirement.

#### **CONSTRUCTION CONDITIONS**

32. In accordance with the Memorandum of Understanding between the City of Newton and the Division of Professional Licensure, dated July 9, 2020, the Petitioner shall apply for all required building, electrical and plumbing permits for construction on the Development Parcel with the City of Newton's Inspectional Services Department, except for the Parking Garage and the improvements between buildings 7 and 8 that connect to the MBTA station. The Petitioner shall provide copies of all building permits and certificates of occupancy issued by the state to the Inspectional Services Department and Department of Planning and Development.



33. The Petitioner shall pay the reasonable fees of the City's consultants for review of the building permit plans or documents described herein submitted to the City or for inspections by the City required herein during the construction phase.
34. Each of the proposed buildings/site improvements may be constructed and occupied prior to construction of the remaining buildings/site improvements provided that the landscaping and public amenities associated with such proposed improvements are in place in accordance with the "Landscaping and Open Space Phasing Plan," dated September 23, 2020, that is part of the Special Permit plan Set or a bond is posted in accordance with Condition #9490.
35. All on-site open spaces that are freely open to the public pursuant to Section 4.2.4.C of the Zoning Ordinance and designated as public in the Special Permit Plan Set (the "Public Open Spaces") shall be open to the public, at no cost to the public or the City, from at least dawn to dusk every day. The Petitioner's obligation to maintain the Public Open Spaces and to allow public access as required by this condition shall continue for so long as the Project authorized by this Special Permit/Site Plan Approval or any amendment thereto is in effect, subject to the following:
- a. The construction of each Public Open Space shall be completed before the issuance of a certificate of occupancy (temporary or final) for the buildings associated with such Public Open Space as set forth in the "Landscaping and Open Space Phasing Plan" or a bond shall be posted in accordance with Condition #9490.
  - b. All Public Open Spaces must be accessible to persons with disabilities.
  - c. The Petitioner shall provide appropriate and adequate lighting of all Public Open Spaces.
  - d. The Petitioner shall maintain the landscape, lawns, and plantings on the Public Open Spaces in good, healthy condition.
  - e. The Petitioner and the City shall work together to allow the City to utilize the Public Open Spaces for public events from time to time, subject to the execution of a mutually acceptable license agreement. The City shall be responsible for the cost to set-up, clean up, and operate such public events, but will not be charged rent for use of the Public Open Spaces.
  - f. The Petitioner may promulgate reasonable rules and regulations that govern use of the Public Open Spaces, which must be reviewed and approved by the Commissioner of Parks, Recreation and Culture Department. The Public Open Spaces may be closed by the Petitioner, at periodic and reasonable times, for private events or for the minimum extent necessary to prevent the establishment of prescriptive easements.
36. All construction activity on the Development Parcel shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-5:00PM on Saturdays, excluding federal, state, and local holidays, unless waived by the Mayor in accordance with Revised Ordinances, § 20-13.

Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.

37. The Petitioner shall submit a demolition management plan for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, Commissioner of Health and Human Services, prior to the issuance of any building permit by the City for the Project (including a demolition permit). The Petitioner shall comply in all material respects with the approved plan.

~~37.~~38. The Petitioner shall comply in all material respects with the Final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer prior to issuance of any building permit by the City for the Project (other than a demolition permit). The Final Construction Management Plan shall be consistent with the Preliminary Construction Management plan submitted to the City Council, dated September 17, 2020. The Final Construction Management Plan and all ~~Thereafter,~~ supplemental/updated CMP's which shall be submitted with each building permit application, ~~that~~ shall include, but not be limited to, the following provisions:

- a. The proposed schedule of the Project, including the general sequencing of the construction activities.
- b. The Proposed timeline and construction schedule for each building for which a building permit is sought.
- c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage areas, on-site staging areas for delivery vehicles, location of security fencing, and locations of on-site dumpsters and regular disposal schedule for each building for which a building permit is sought.
- d. Proposed truck routes that minimize travel on local streets.
- e. Proposed methods for dust control to prevent dust from leaving the Development Parcel, including, but not limited to: on-site water trucks; covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; hosing during demolition and earth work where appropriate; and locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Development Parcel.
- f. Proposed methods of noise control, to ensure compliance ~~with the Revised Ordinances, § 20-13~~ and the Massachusetts Department of Environmental Protection noise regulation and policy. Staging activities should be conducted in

a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practicable from noise sensitive locations.

- g. Proposed methods of vibration control.
  - h. A plan for rodent control during demolition and construction.
  - i. Anticipated dewatering (if any) during construction, site safety, and stability, particularly for driveway entrances.
  - j. A site safety plan, which will show paths of travel for emergency vehicle access during construction of each building for which a building permit is sought.
  - k. 24-hour contact information for the general contractor for each building for which a building permit is sought. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department, shall be posted on a construction activity website to be established by the Petitioner, and shall be posted on the job site.
  - l. Security plan showing how the portions of the Development Parcel under construction will be secured during construction and after hours.
  - m. Offer to provide a pre-construction survey of any buildings and structures within 250 feet of the Development Parcel at no charge to the owners of the buildings and structures.
39. Prior to the issuance of any building permit for the Project by the City (other than a demolition permit), the Petitioner shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance Plan ("O&M Plan") for Stormwater Management for review and approval by the City Engineer for consistency with the Stormwater Report, prepared by VHB, dated December 2019, on file with the City Clerk and the Planning Department. Once approved, the O&M Plan must be adopted, implemented, and maintained by the Petitioner. The Petitioner shall record a copy of the O&M Plan at the Middlesex South Registry of Deeds.
- ~~38.~~40. Prior to the issuance of any building permit for the Project by the City, including a demolition permit, the Petitioner shall develop and submit a Stormwater Pollution Prevention Plan for review and approval by the City Engineer. During construction, the Petitioner shall comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site and provide documentation to the City once every four months during construction that the stormwater pollution control measures to be undertaken during construction have been implemented on an ongoing basis.

~~39.~~41. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.

~~40.~~42. There shall be no on-site rock crushing.

~~41.~~43. The Petitioner will comply with applicable state and local laws, regulations, and protocols governing blasting, including the Standard Blasting Conditions for Special Permit/Site Plan Approvals, dated May 31, 2002, on file with the City Clerk. Detonation of blast charges shall be limited to 10:00AM-3:00PM Monday through Friday, excluding federal, state, and local holidays.

~~42.~~44. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by any construction vehicles traveling to or from the Development Parcel. All repair work shall be done prior to the issuance of the final certificate of occupancy for the final dwelling unit in the Project, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.

~~43.~~45. The Petitioner shall implement a Community Engagement Plan during the construction period of the Project in order to predict, preempt and address issues which may arise affecting the general community. Implementation shall begin no less than two (2) months prior to the commencement of any site work and/or other construction activities related to the work approved through this Special Permit/Site Plan Approval. The Community Engagement Plan shall provide, without limitation, a communication plan and schedule for regular construction updates and advisories, point contacts for Petitioner and Petitioner's primary contractors, engagement plan with the Lower Falls and Auburndale residents and local businesses, and communications with Ward Councilors and any other interested Councilors. The Petitioner shall designate a single individual to communicate with the neighbors and the Ward 4 City Councilors via email. The designated individual shall send updates of any changes of the construction schedule to the established distribution list.

~~44.~~46. No more than six (6) months after approval of this Special Permit/Site Plan Approval, a Liaison Committee shall be established consisting of two (2) designees of the Petitioner or Organization of Owners, four (4) residents from the neighborhood surrounding the Project, and two (2) Ward 4 City Councilors, one of which shall be appointed Chair of the Committee. The President of the City Council shall appoint the resident neighborhood members and the City Councilors. The Liaison Committee shall be the "advisory council" required by Section 4.2.3.I of the Zoning Ordinance. Meetings of the Liaison Committee will

be open to the public, and the Liaison Committee will establish such agenda and procedures as it shall see fit.

- a. The purposes of the Liaison Committee shall be:
    - i. To review, discuss, and comment on documents and monitoring reports or results submitted or filed by the Petitioner in connection with the work authorized by this Special Permit/Site Plan Approval.
    - ~~ii.~~ To enhance and ensure communication as to the status and progress of the construction of the Project by the Petitioner.
    - ~~iii.~~ To provide a forum for initial presentation of a construction schedule and any significant changes to schedule or changes of plans for which public review is appropriate.
    - ~~iv.~~ To receive and deal with construction-specific issues including, without limitation, noise, dust, parking and traffic; to monitor implementation of the final Construction Management Plan; and to receive notices and communications from the Department of Inspectional Services and the Planning and Development Department.
    - ~~v.~~ To ensure compatibility of the uses and activities within the Development Parcel and its neighbors after construction is complete.
  - b. The Liaison Committee shall meet regularly after its establishment (monthly through the first six months of the construction period, and thereafter, every three months), unless there is consensus within the Liaison Committee that no meeting is necessary, until at least six (6) months after the initial occupancy of the final building to be completed. The first meeting shall be convened by the Chair of the Committee. The Liaison Committee shall work by consensus, but nothing in the establishment of the Liaison Committee shall inhibit any member, including the Petitioner, from engaging in any lawful activities.
  - c. Following completion of construction, the Liaison Committee shall meet annually unless there is consensus within the Committee that no meeting is necessary or that more frequent meetings are necessary.
  - d. The Liaison Committee shall, at a minimum, give written notice to the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development of its meetings.
- ~~45.47.~~ Any portions of the Project subject to the jurisdiction of the Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the Project that is subject to such jurisdiction.

- ~~46.~~48. All dwelling units ~~shall~~<sup>will</sup> conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, <sup>a minimum of 5% of the dwelling units in each building and</sup> 7% of the dwelling units in the Project shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use and with the ability to adapt additional components of the units upon need, at the Petitioner's sole cost and expense. ~~This amount of "Group 2A" units is in excess of the 5% required by MAAB.~~ At least 17.5% of the "Group 2A" units shall be Inclusionary Units.
- ~~47.~~49. All internal roadways shall be designed as shown on the Special Permit Plan Set and, except as otherwise provided for herein, shall be open to the public.
- ~~48.~~50. All sidewalks and accessible ramps shall be ADA compliant unless a variance for noncompliance is granted. A letter of compliance prepared by a professional engineer registered in the Commonwealth of Massachusetts shall be submitted prior to issuance of a certificate of occupancy (temporary or final) that certifies compliance of any sidewalks and accessible ramps for portions of the Project for which a certificate of occupancy is requested.
- ~~49.~~51. The Petitioner shall locate all utility service lines within the Development Parcel underground, other than utility lines owned or controlled by the MBTA.
- ~~50.~~52. All utility service lines along the frontages of the Development Parcel, other than utility lines owned or controlled by the MBTA, shall be placed underground.
- ~~51.~~53. The Petitioner shall prepare and submit a final site plan and final circulation plan for review by the Fire Department that confirms the Fire Department will have sufficient access to all buildings on the Development Parcel, confirms that fire access will function safely, and shows all hydrants and fire connections, and other features as may be required for Fire Department approval.
- ~~52.~~54. The Petitioner shall ensure that adequate electricity is supplied to the Project. The Petitioner shall be solely responsible for all costs imposed by the applicable electric utility company for upgrades to the electrical system necessary to supply adequate electricity to the Project.
- ~~53.~~55. Prior to the issuance of the first building permit for vertical construction of the Project, the Petitioner shall submit a ~~site~~<sup>photometric</sup> plan detailing lighting locations and levels <sup>of the Project's interior roadways as well as the Grove Street and Recreation Road frontages</sup> to the Director of Planning and Development and Commissioner of Public Works for review and approval. <sup>A copy of the photometric plan shall be provided to the Liaison Committee.</sup>
- ~~54.~~56. No building permit (other than a demolition permit) shall be issued by the City for work on the Project until the Petitioner has submitted a complete Release Abatement Measure Plan to the Department of Environmental Protection in accordance with 310 CMR 40.0444 through 40.0449.



**CONDITIONS RELATED TO SUSTAINABILITY**

- ~~55~~~~57~~. All buildings, except for Buildings 1 and 2 and the non-residential portions of Buildings 9 and 10, shall be designed and constructed to achieve LEED v.4 Gold for Building Design and Construction Multifamily Midrise certifiable standard.
- ~~56~~~~58~~. Buildings 1 and 2 shall be designed and constructed to achieve LEED v.4 Silver certifiable standard.
- ~~57~~~~59~~. The Petitioner shall construct the residential portions of Buildings 7 and 8, plus the residential portions of one additional residential building, to achieve Passive House certification in accordance with the requirements of the Passive House Institute US (PHIUS), the Passive House Institute (PHI), or other recognized passive house certification organization and this Special Permit/Site Plan Approval. The commercial portions of such buildings shall not be obligated to meet such standards and shall be excluded from the certification.
- ~~58~~~~60~~. The Petitioner shall complete Passive House feasibility studies and energy modeling for the residential portions of Buildings 3, 4, 5, 6, 9, and 10 (unless such building is being constructed to achieve Passive House certification) to determine the design and construction approach. Such reports shall be provided to the Director of Planning and Development prior to the issuance of the first building permit for vertical construction of the Project.
- ~~59~~~~61~~. The Petitioner shall complete an embodied carbon analysis to guide materials selection during design and construction. The analysis will include but not be limited to materials for concrete, framing, cladding, and insulation. Such analysis shall be provided to the Director of Planning and Development prior to the issuance of the first building permit for vertical construction of the Project.
- ~~60~~~~62~~. The Petitioner shall achieve and/or implement the following sustainability strategies which shall be incorporated into the Project:
- a. The Petitioner shall utilize all electric sourced heating and cooling systems in the residential portions of all buildings. The Petitioner will explore all electric sourced heating and cooling mechanical systems in Buildings 1 and 2.
  - b. The Petitioner shall utilize all electric sourced domestic hot water in the residential portions of all buildings.
  - c. For all dwelling units, and in all other spaces where applicable, the Petitioner shall utilize electric "Energy Star" appliances (or functional equivalent).
  - d. The Petitioner shall install solar installations on roofs of a sufficient number of residential buildings to offset at least 25 percent of the house load of the passive house buildings. Except for Buildings 9 and 10, all building roofs that are not essential locations for mechanical systems (which the Petitioner must make every

effort to consolidate) shall be solar ready. To the greatest extent feasible, the Petitioner will utilize such building roofs for actual installation and implementation of sustainable strategies including photovoltaic panels, green roofs and/or reflective roof materials. A final roof mapping plan for each building in the Project (other than for Buildings 9 and 10) shall be submitted to the Director of Planning and Development for review and approval prior to the issuance of a building permit for vertical construction of such building.

- e. The Parking Garage shall be designed and constructed to accommodate solar panel coverage on the roof. The Petitioner shall use best efforts to ensure that the MBTA undertakes the necessary procurement effort to implement solar on the roof of the Parking Garage.
  - f. Bicycle parking/storage will be provided for at least 880 bicycles on the Development Parcel at full build out.
  - g. Electric vehicle charging stations will be provided for 10% of the striped non-MBTA parking spaces (anticipated to be 101 spaces), with expansion built in to double the amount to 20% of the non-MBTA parking spaces (anticipated to be 202).
  - h. A rain harvesting system will be utilized to capture some roof rainwater for irrigation.
  - i. Drought tolerant and indigenous plants will be the predominant species installed in the landscape.
  - j. Low Impact Design (LID) strategies will be employed in the design of the stormwater management system.
  - k. Permeable pavement and pavers will be utilized as part of the LID strategy.
- ~~61-63.~~ The Petitioner shall analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, other than the Parking Garage, in order to determine their feasibility and the possible return on investment if they were to be implemented:
- a. Depending on the results of the Passive House feasibility studies as required pursuant to Condition ~~#6058~~ above and Petitioner's return on investment analysis, the Petitioner will seek to achieve Passive House Certification similar to those contemplated in Condition ~~#5957~~ for the residential portions of some or all of the remaining buildings to the fullest extent feasible.
  - b. The Petitioner will study the feasibility of achieving the LEED Gold v.4 certifiable standard for Buildings 1 and 2.

- c. The Petitioner's design teams will utilize the results of the embodied carbon analysis as required by Condition #~~61~~<sup>59</sup> above during the design process so that low embodied carbon materials can be incorporated when cost, availability, and performance is feasible.
- d. Depending on the future utilization of the electric car charging stations and the level of future potential demand, the Petitioner will explore the feasibility of securing increased electrical service to provide charging stations for up to 80% of the non-MBTA striped parking spaces as the market demand for charging stations increases.
- e. Increasing solar installations on residential roofs to offset more than 25 percent of the house load of the passive house buildings.
- f. Installing Level 2 or DC fast-charge electric vehicle charging stations on the Development Parcel.

#### **PARKING CONDITIONS**

- ~~62~~<sup>64</sup>. The cost of residential tenant parking for market-rate units shall be charged separately from residential tenant rents, and the rental period cannot commence prior to, or extend past the end of, the rental period of the unit. Residential tenant parking shall only be rented to current residential tenants. One (1) parking stall shall be available for each Inclusionary Unit without charge to the tenant of such unit.
- ~~63~~<sup>65</sup>. Prior to the issuance of any certificate of occupancy (temporary or final) for the buildings other than the Parking Garage, the Petitioner shall submit a Parking Management Plan (the "Parking Management Plan") to the Director of Planning and Development and the Commissioner of Public Works for review and approval that maximizes the use of available parking spaces, encourages shared parking opportunities, and identifies any valet parking programs. A copy of the Parking Management Plan shall also be provided to the Liaison Committee. The Parking Management Plan shall include, but not be limited to, the following:
  - a. Flexibility in updating the Plan in the event that conditions change that merit different approaches to maximizing the use of available parking spaces. Changes to the Parking Management Plan shall require the approval of the Director of Planning and Development and the Commissioner of Public Works and should be reconsidered with each change in use.
  - b. Number of parking garage staff working during the weekday evening peak hour and any events where inbound transit ridership may conflict with the weekday evening peak hour, e.g. Boston Red Sox games.

- c. Locations and type of signage and staff posted strategically to direct people to available parking on Red Sox game days.
  - d. Incentives to reduce parking demand, such as renting parking spaces separately from rental of dwelling units so as to make extra parking available for use by nonresidents, assigning priority parking for carpoolers, and setting aside spaces for car-sharing.
  - e. Designate a Parking Manager who will respond to neighborhood concerns and enforce the Parking Management Plan, and whose contact information must be provided to the Commissioner of Public Works and the Director of Planning and Development.
- ~~64~~.66. Construction workers performing work on the Project shall not be permitted to park on the streets surrounding the Development Parcel.

#### **TRANSPORTATION CONDITIONS**

- ~~65~~.67. Prior to the issuance of the first building permit for vertical construction for any building other than the Parking Garage, the Petitioner shall submit a final Transportation Demand Management Plan (the "TDM Plan") to the Director of Planning and Development and the Commissioner of Public Works for review and approval. The final TDM Plan shall be consistent with the preliminary TDM Plan dated September 18, 2020 and on file with the City Clerk and the Planning and Development Department. The final TDM Plan shall include, but shall not be limited to, the following provisions:
- a. The fee structure of parking for the dwelling units.
  - b. The identification of the Transportation Management Association and the on-site transportation coordinator, if applicable.
  - c. The transportation subsidy along with transportation marketing services such as promotions and welcome packets that will be available in conjunction with the issuance of the first residential certificate of occupancy (temporary or final).
  - d. A summary of efforts to establish a car-share service and/or bike share service on the Development Parcel.
  - e. A parking layout plan, which shall identify the location of the parking spaces associated with the Inclusionary Units in accordance with Condition #28. Prior to the issuance of any building permit after a certificate of occupancy is issued for the parking garage, the Petitioner shall update the Final TDM Plan to include final as-built floor plans of the Parking Garage indicating which stalls are served by

electric vehicle charging stations and which stalls are wired for future charging stations.

~~66-68.~~ In accordance with Section 7.3.5.E.1.c of the Zoning Ordinance, the Petitioner is required to implement mitigation to reduce the trip counts if the actual total number of vehicle trips exceeds the weekday evening adjusted volume by more than 10%. It is agreed that 110% of the weekday evening vehicle trips adjusted volume is 696 vehicle trips (the "Maximum Trip Count").

~~67-69.~~ Annual monitoring of vehicle trips generated by the Project to determine consistency between the Maximum Trip Count and the actual number of vehicle trips shall take place as follows:

~~a.~~ Annual Monitoring shall begin within ~~threetwelve~~ months after the issuance of certificates of occupancy (temporary or final) for 80% of the gross floor area of the Project. The commencement of annual monitoring may be deferred if in the opinion of the Director of Planning and Development and the Commissioner of Public Works it would be beneficial to commence such monitoring at a later date. ~~earliest of the following occurrences:~~

~~b.~~

~~i. the issuance of certificates of occupancy (temporary or final) for 80% of the gross floor area of the Project; or~~

~~c.a.~~

~~i. the issuance of certificates of occupancy (temporary or final) for 95% of the gross floor area in eight buildings of the Project~~

~~d.b.~~ Annual monitoring ~~The final monitoring~~ shall no longer be required upon the earlier of ~~be conducted in~~ the third year after: (i) the Project reaches 85% occupancy based on the Project's gross floor area; or (ii) the Project Completion Date, unless the Maximum Trip Count (or adjusted Maximum Trip Count) has been exceeded as set forth in Section 7.3.5.~~D.2~~ of the Zoning Ordinance. ~~85% occupancy based on the Project's gross floor area or the Project Completion Date, whichever occurs earlier, is deemed full occupancy and final build out of the Project for purposes of Section 7.3.5.D.2 of the Zoning Ordinance.~~

~~e.c.~~ The Petitioner shall promptly notify the Director of Planning and Development in writing as soon as ~~the Project reaches:~~ (i) certificates of occupancy (temporary or final) have been issued for 80% of the gross floor area of the Project; and (ii) the Project reaches ~~occupancy based on the Project's gross floor area or occupancy of eight buildings, whichever occurs first; and (ii) 85% occupancy based on the Project's gross floor area.~~ In addition, the Petitioner shall provide occupancy information to the Director of Planning and Development and/or the Commissioner of Public Works upon the request of either.

~~f~~.d. The Monitoring counts shall be conducted on dates to be determined by the Director of Planning and Development

~~g~~.e. Monitoring may be required to begin earlier and/or to be conducted more frequently than required by these conditions at the request of the Director of Planning and Development and the Commissioner of Public Works in accordance with Section 7.3.5.E.1.a of the Zoning Ordinance.

~~68~~.70. Monitoring Methodology

- a. Monitoring shall be done by a qualified traffic engineering firm, to be hired and overseen by the Department of Planning and Development and to be paid for by the Petitioner (the "Qualified Traffic Engineering Firm"). Monitoring shall count the actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Project at all access points studied in the Transportation Impact and Access Study, dated December 2019 (the "TIAS"). The City's Qualified Traffic Engineering Firm in consultation with the Petitioner, shall design a methodology to count the number of vehicle trips associated with the transit station as well as the number of vehicle trips that cut-through the Development Parcel, and these trips shall be deducted from the total number of vehicle trips during the weekday evening peak hour.
- b. The Petitioner shall provide data from the MBTA's portion of the Parking Garage and the Petitioner's portion of the Parking Garage to ensure an accurate count of MBTA trips and to ensure vehicles associated with the Project that are parking in the MBTA's portion of the Parking Garage are counted as project trips.
- c. For any monitoring occurrence, the Maximum Trip Count of 696 trips shall be adjusted to reflect current occupancy levels of all buildings, subject to reasonable allowances for internal capture and mode split and consideration of the current mix of uses and construction on the Development Parcel as determined by the Director of Planning and Development in consultation with the City's Qualified Traffic Engineering Firm.

~~69~~.71. If, based on the above annual monitoring, the actual number of vehicle trips to and from the Project, less the vehicle trips associated with the transit station and cut-through vehicle trips, summed over the points of access, exceeds the Maximum Trip Count (or the proportionally adjusted Maximum Trip Count) during the weekday evening peak hour, the Petitioner shall implement additional mitigation measures necessary to reduce the vehicle trips below that number.



- a. All additional mitigation measures, and the financial expenditures for such measures, shall be reviewed and approved by the Director of Planning and Development and the Commissioner of Public Works, and implementation of the measures must commence within six months of notification that the Maximum Trip Count was exceeded. Such mitigation measures may include, but shall not be limited to, the following:
    - i. Increasing the cost of parking associated with the dwelling units and/or the cost of daily non-MBTA parking.
    - ii. Increasing the transit reimbursement or expanding its availability beyond the dwelling units
    - iii. Working with the office use to encourage telecommuting.
    - iv. Establishing a shuttle service to other points of interest.
  - b. The Petitioner is required to expend up to \$1,000,000.00 in implementing such mitigation measures, as approved by the Director of Planning and Development, in the event such measures are required in accordance with this Condition. To secure performance of this obligation, the Petitioner agrees to and shall embody this financial commitment in a contractual agreement with the City to be entered into prior to the issuance of the first building permit for a residential building in the Project, which agreement shall allow for the remedy of specific performance.
  - c. The Petitioner shall submit to the Director of Planning and Development an annual certified financial accounting of the cost of all mitigation measures undertaken in accordance with this Condition.
  - d. Notwithstanding the \$1,000,000 expenditure in this provision, the Petitioner remains obligated to reduce the trip generation to the Maximum Trip Count or less within 12 months of when mitigation begins as required by this Special Permit and Section 7.3.5.E.1.c. of the Zoning Ordinance. Failure to comply with the Maximum Trip Count for two (2) consecutive monitoring periods will constitute a violation of this Special Permit/Site Plan Approval.
- ~~70-72.~~ The Director of Planning and Development or the Commissioner of Public Works may require additional monitoring of trip counts after the Petitioner's monitoring obligations have ceased if the Director reasonably determines that there has been a degradation from the level of service of transportation to or from the Project.

- ~~71-73~~. Within sixty (60) days of the Project reaching 85% occupancy based on the Project's gross floor area, the Petitioner shall establish and operate a shuttle serving the Development Parcel and the Auburndale Commuter Rail Station. The 12-15 seat shuttle shall run for no less than six months, making six trips per day, Monday through Friday, and must be open to the public at no cost during that six-month period. Thereafter, if the Petitioner continues to operate the shuttle, the Petitioner may charge for its use. The Petitioner shall keep ridership records which shall be provided to the Director of Planning and Development and the Commissioner of Public Works upon request.
- ~~72-74~~. Within one year of the Project reaching 85% occupancy based on the Project's gross floor area, the Petitioner shall complete a survey(s) of residents, employees, patrons, and transit users regarding their transportation choices in accordance with the preliminary Transportation Demand Management Plan. The result of such survey(s) and any analysis conducted by the Petitioner shall be submitted to the Director of Planning and Development and the Commissioner of Public Works.
- ~~73-75~~. One year after the Project reaches 85% occupancy based on the Project's gross floor area, and annually thereafter for two additional years, the Petitioner shall submit a TDM monitoring plan to the Director of Planning and Development. Such report shall include but shall not be limited to: the number of transportation reimbursements issued, car share and bike share usage data, and parking utilization data for the dwelling units, office use, and the hotel use. After the ~~three-year~~ ~~three-year~~ reporting period, such information shall be available upon reasonable request by the Director of Planning and Development for an additional ten years.
- ~~74-76~~. The Petitioner will encourage additional shuttle services to the Development Parcel provided they are complementary to the MBTA and operations of the Project.

#### **POST-CONSTRUCTION STUDIES**

- ~~75-77~~. The Petitioner, at its sole cost, shall conduct a post-occupancy water and sewer assessment on the first and second anniversary of the Project reaching 85% occupancy based on the Project's gross floor area. The post-occupancy assessments shall be based upon the actual water usage as indicated in the total of the four (4) quarterly bills issued prior to the measurement date for all Project buildings. In the event that the annual water usage from the Project exceeds 79,961 gallons per day (29,185,765 gallons per year), which amount shall be proportionally adjusted to reflect current occupancy levels, by greater than 10% during any of the two measurements, the Petitioner shall notify the Director of Planning and Development and the Commissioner of Public Works of the mitigation measures being implemented to reduce the water usage and sewage generation from the project. The Director of Planning and Development and the Commissioner of Public Works shall require a bond or other security, including but not limited to a contractual agreement with the City, to

secure performance of such mitigation measures. Mitigation measures may include, but shall not be limited to:

- a. Conducting a water system audit to verify that there are no leaks resulting in excess water use and making any necessary repairs.
- b. Providing educational information to the owners and tenants of the Project for smart water usage.
- c. Using more efficient and upgraded fixtures.

Following completion of such additional mitigation measures, the Petitioner shall continue to annually assess the water usage and sewage generation for the Project as set forth above until such assessments demonstrate for five (5) consecutive years that the annual flow rates have not exceeded projections by more than 10%. These post-occupancy assessments and any mitigation measures implemented shall be deemed satisfaction of all post-construction water and sewer studies and mitigation under Section 7.3.5.D.2 of the Zoning Ordinance.

~~76-78.~~ The Petitioner, at its sole cost, shall conduct a post-occupancy stormwater assessment on the first and second anniversary of the Project reaching 85% occupancy based on the Project's gross floor area. Such assessment shall be in the form of a report submitted by a Professional Engineer detailing any flow from the subsurface stormwater management system (P101) into the City's 60-inch drainpipe within Runaway Brook over the course of the year. Such report shall use an established weather station, selected by the Commissioner of Public Works, to measure rain events and should provide an opinion certifying whether P101 is functioning as designed. Such report shall be provided to the Department of Public Works and the Department of Planning and Development. If after one year in service, the report indicates that P101 is not functioning as designed, as determined by the Commissioner of Public Works, the Petitioner shall meet with the Commissioner of Public Works and the Director of Planning and Development to implement mitigation measures to reduce flow from P101 into the City's drainpipe. The Director of Planning and Development and the Commissioner of Public Works shall require a bond or other security, including but not limited to a contractual agreement with the City, to secure performance of such mitigation measures. Mitigation measures may include, but shall not be limited to:

- a. Inspecting the system and water quality units for excessive scouring, sedimentation or other damage.
- b. Performing additional cleaning/flushing or repairs of the system to enable the system to continue to function as designed.

Following completion of such additional mitigation measures, the Petitioner shall continue to annually assess the stormwater overflow into the City's drainpipe for the Project as set forth above until such assessments demonstrate for five (5) consecutive years that the annual flow

is consistent with the annual rainfall. These post-occupancy assessments and any mitigation measures implemented shall be deemed satisfaction of all post-construction stormwater studies and mitigation under Section 7.3.5.D.2 of the Zoning Ordinance.

~~77~~79. The Petitioner shall pay the reasonable fees of any consultants/peer reviews as necessary for the Director of Planning or the Commissioner of Public Works to review and analyze the post-construction studies required by Conditions ~~#77~~75 and ~~#78~~76.

~~78~~80. The Post-Construction Studies set forth in this section may be required earlier if requested by the Director of Planning and Development and the Commissioner of Public Works if there appears to be a degradation in the level of service of water, stormwater or sewer facilities.

#### **OTHER/ONGOING CONDITIONS**

~~79~~81. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.

~~80~~82. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project. The Petitioner must offer a recycling program to all residential and commercial tenants.

~~81~~83. The Petitioner is responsible for maintaining all internal roadways, sidewalks, berms, and curbing, ensuring they are clean, well-kept and in good and safe working order.

~~82~~84. The Petitioner shall be responsible for keeping the internal roadways and sidewalks clear of snow to ensure safe and reliable access to and from all buildings at all times.

85. The Petitioner shall submit a final Comprehensive Signage Program to the Urban Design Commission (UDC) for review and approval prior to the issuance of any sign permit for the Project. The final Comprehensive Signage Program, and all future tenant signage, shall be consistent with the preliminary Signage Plan, dated September 23, 2020, submitted to and approved by the City Council in accordance with Section 7.3.5.B.7 of the Zoning Ordinance.

#### **CONDITIONS PRECEDENT TO THE ISSUANCE OF DEMOLITION PERMITS**

86. No building permit for demolition (also known as a “demolition permit”) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:

- a. Submitted a demolition management plan for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, Commissioner of Health and Human Services, in accordance with Condition #37.

- b. Submitted a Stormwater Pollution Prevention Plan for review and approval by the City Engineer in accordance with Condition #40.
- ~~a.~~c. Submitted a final Community Engagement Plan for review and approval by the Director of Planning and Development in accordance with Condition #45.

**CONDITIONS PRECEDENT TO THE ISSUANCE OF BUILDING PERMITS**

~~83.~~87. No building permit (other than a demolition permit) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and ~~until~~ the Petitioner has:

- a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.
- b. Within 60 days after issuance of the first building permit issued by the City, submitted a copy of its executed amended lease with the MBTA to the Department of Planning and Development and the Law Department and/or provided its permission for the MBTA to produce the document to the City.
- c. Complied with all applicable sections of the Design Review and Plan Consistency procedures set forth in Conditions #8 through 12 for the specific building(s) subject to such building permit, and obtained a written statement from the Planning and Development Department that confirms the final building permit plans and facade elevations are consistent with the Special Permit Plan Set and Design Guidelines approved in Conditions #1 and 2.
- d. Submitted the required documentation concerning the Interchange Improvements to the Commissioner of Public Works, Director of Planning and Development, and Commissioner of Inspectional Services in accordance with Condition #13(a).
- ~~d.~~e. Submitted final engineered plans for the Grove Street Improvements for review and approval by the Public Facilities Committee and docketed a petition with Traffic Council in accordance with Condition #14(c).
- ~~e.~~f. Submitted the portion of the I/I payment required in accordance with Condition #15.
- ~~f.~~g. Submitted the portion of the Mitigation Fund payment required in accordance with Condition #16.

- ~~g~~.h. Submitted the portion of the Williams School payment required in accordance with Condition #17.
- i. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer, as well as supplemental updates for the specific buildings subject to each building permit sought, in accordance with Condition ~~#3837~~.
- ~~h~~.j. Submitted final engineering, utility, and drainage plans, and an "O&M Plan for review and approval by the City Engineer in accordance with Condition ~~#3938~~.
- ~~i~~.k. Submitted final engineering plans for the specific building(s) subject to such building permit for review and approval by the City Engineer.
- ~~j~~. Submitted a final Community Engagement Plan for review and approval by the Director of Planning and Development in accordance with Condition ~~#43~~.
- ~~k~~.l. Obtained an Order of Conditions from the Newton Conservation Commission if any proposed work set forth in the building permit is subject to the jurisdiction of the Conservation Commission in accordance with Condition ~~#4745~~.
- ~~l~~.m. Submitted a final site plan and final circulation plan of the specific building(s) subject to such building permit for review by the Fire Department in accordance with Condition ~~#5351~~.
- ~~m~~.n. Submitted to the City Engineer for review and approval documentation from the applicable electric utility company confirming that sufficient electrical power is available for the specific building(s) subject to such building permit in accordance with Condition ~~#5452~~.
- ~~n~~.o. Submitted to the Director of Planning and Development, [Commissioner of Inspectional Services](#), and the [Liaison Committee](#), a copy of the Release Abatement Plan submitted to the Department of Environmental Protection in accordance with Condition ~~#5654~~.
- ~~o~~.p. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development for the specific building(s) subject to such building permit, indicating which points each building intends to realize in order to demonstrate LEED certifiability in accordance with Conditions ~~#57-5855-56~~ for the specific building(s) subject to such building permit.



- ~~p-q.~~ For the portions of the residential buildings that will obtain Passive House certification in accordance with Condition #~~59~~~~57~~, submitted: (i) the credentials of the Passive House rater/verifier who will perform testing and verification, (ii) a letter of intent stating that the Passive House rater/verifier has been hired to complete the on-site verification process, (iii) the credentials of the certified Passive House consultant who has provided design, planning, and consulting services, and (iv) a Passive House narrative and/or checklist prepared and certified by the certified passive house consultant to the Director of Planning and Development, indicating standards that will be achieved.
- ~~q-r.~~ Submitted copies of the Passive House feasibility studies and carbon analysis reports to the Director of Planning and Development in accordance with Conditions #~~60-61~~~~58-59~~, and conferred with the Director of Planning and Development concerning additional sustainability strategies in accordance with Condition #~~63~~~~61~~.
- ~~r-s.~~ Entered into a contractual agreement with the City embodying its TDM financial commitment and the City's enforcement rights in accordance with Condition #~~71~~~~69~~(b).
- ~~s-t.~~ To the extent applicable, received approval from the Planning Board for the removal of trees or stone walls within the layout of a designated scenic road in connection with the Grove Street Improvements in accordance with Revised Ordinances, § 22-5.
- ~~t-u.~~ Obtained a certification from the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs indicating that the Final Environmental Impact Report for the Project adequately and properly complies with the Massachusetts Environmental Policy Act.
- ~~u.~~ ~~Developed a Stormwater Pollution Prevention Plan, as total site disturbance is over an acre. During construction, the Petitioner will comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site and provide documentation to the City once every four months during construction that the stormwater pollution control measures to be undertaken during construction have been implemented on an ongoing basis.~~
- v. Submitted to the Newton Health Commissioner and the City Engineer copies of the M.G.L. c. 21E environmental site investigation report covering the area subject to such building permit.
- w. Submitted to the Director of Planning and Development and the Tree Warden for their approval a final landscape plan for landscaping associated with the specific

building(s) subject to such building permit including, but not limited, to the size and type of all trees, shrubs, and other plantings.

- x. Complied with all applicable tree preservation provisions in accordance with Chapter 21 of the Revised Ordinance.

~~84.~~88. No building permit for vertical construction shall be issued by the City pursuant to this Special Permit/Site Plan Approval **unless all applicable terms and conditions have been complied with and** ~~until~~ the Petitioner has:

- a. If applicable, submitted an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with Conditions #23 and #28, and §5.11.8 of the Zoning Ordinance.
- b. Submitted a final roof mapping plan for the specific building(s) subject to such building permit for review and approval by the Director of Planning and Development in accordance with Condition #~~6260~~(d).
- c. Submitted a ~~site~~-photometric plan for review and approval by the Director of Planning and Development and Commissioner of Public Works in accordance with Condition #~~5553~~.
- d. Submitted a Transportation Demand Management Plan for review and approval by the Director of Planning and Development in accordance with Condition #~~6765~~.

#### **CONDITIONS PRECEDENT TO THE ISSUANCE OF CERTIFICATES OF OCCUPANCY**

~~85.~~89. No certificate of occupancy(temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval **unless all applicable terms and conditions have been complied with and** ~~until~~ the Petitioner has:

- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and engineer certifying compliance with Conditions #1 and 2.
- b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division, final as-built survey plans in digital format for the portion of the Project for which a certificate of occupancy is requested.

- c. Substantially completed (i.e., a final inspection has been completed by MassDOT) construction of the Interchange Improvements and provided evidence of MassDOT's approval of the improvements in accordance with Condition #13(d).
- d. Submitted an executed easement agreement for public access and use of the portion of the pedestrian and bicycle infrastructure along the Project's Grove Street frontage, and an executed license agreement concerning maintenance of such infrastructure in accordance with Condition #14(d).
- e. Submitted the portion of the I&I payment required in accordance with Condition #15.
- f. Submitted the portion of the Mitigation Fund payment required in accordance with Condition #16.
- g. Submitted the portion of the Williams School payment required in accordance with Condition #17.
- h. Submitted evidence of payment of the Two Bridges DCR Payment Funds to the Director of Planning and Development in accordance with Condition #18(ab).
- i. If applicable, submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restrictions in accordance with Conditions #24-25.
- j. If applicable, provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
- k. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the market-rate units within such building. If the Inclusionary Units are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed within such building. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
- l. Filed with the City Clerk, the Department of Inspectional Services and Department of Planning and Development a statement by the City Engineer certifying that the infrastructure related to the building that is subject to the certificate of occupancy

has been constructed to the standards of the City of Newton Engineering Department.

- m. Recorded the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with Condition #~~39~~<sup>38</sup>.
- n. Completed all landscaping and open space consistent with the Special Permit Plan Set, the Design Guidelines, and the Landscaping and Open Space Phasing Plan related to the portion of the Project for which a certificate of occupancy is requested in accordance with Conditions #34-35, or posted a bond in accordance with Condition #~~94~~<sup>90</sup>.
- o. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
- p. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that: (i) all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements for "Group 1" units; a minimum of 5% of the dwelling units conform with MAAB requirements for "group 2A" units; and (iii) ~~and~~ stating the number of additional "Group 2A" units, if any, above the 5% minimum in the building, ~~that meet the requirements for "Group 2A"~~ in accordance with Condition #~~48~~<sup>46</sup>.
- q. Filed with the Department of Inspectional Services and the Department of Planning and Development a letter of compliance prepared by a professional engineer certifying that all sidewalks and handicapped ramps constructed as part of the building for which the certificate of occupancy is requested are ADA compliant in accordance with Condition #~~50~~<sup>48</sup>.
- r. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground within the portions of the Project for which a certificate of occupancy is requested to the extent required by Condition #~~52~~<sup>50</sup>.
- s. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for LEED certifiability of the subject buildings have been satisfied in accordance with Conditions #~~57-58~~<sup>55-56</sup>.
- t. For a temporary certificate of occupancy for the residential portions of the three buildings that will meet Passive House certification, filed with the Department of

Inspectional Services and the Department of Planning and Development an updated Passive House narrative and/or checklist prepared and certified by a certified Passive House consultant to the Director of Planning and Development, indicating the measures that have been completed for the building for which a temporary certificate of occupancy is requested in accordance with Condition #~~59~~<sup>57</sup>. For a final certificate of occupancy for the residential portions of the three buildings that will meet Passive House certification, filed with the Department of Inspectional Services and the Department of Planning and Development (i) an affidavit signed by the certified Passive House consultant certifying that the pre-construction commissioning process requirements for Passive House have been met and that the post-construction commissioning process requirements will be met, (ii) the final testing and verification report completed by the Passive House rater/verifier, (iii) the credentials of the certified Passive House consultant, and (iv) an affidavit signed by that professional stating that he/she has reviewed all relevant documents and to the best of his/her knowledge, the documents provided indicate that such portions of the building was built to achieve Passive House certification.

- u. Submitted a Parking Management Plan for review and approval by the Director of Planning and Development and Commissioner of Public Works in accordance with Condition #~~65~~<sup>63</sup>.

~~86~~<sup>90</sup>. No certificate of occupancy (temporary or final) for either Buildings 5 or 6 shall be issued by the City until the Petitioner has substantially completed the Grove Street Improvements, and such improvements are fully operational from a traffic management perspective, in accordance with Condition #14(e).

~~87~~<sup>91</sup>. No certificate of occupancy (temporary or final) for the 285th dwelling unit in the Project shall be issued by the City until the Petitioner has either received all necessary approvals for the Trail Design and Construction in accordance with Condition #18(~~b~~<sup>e</sup>) or submitted the Trails Payment to the City in accordance with Condition #18(g) or (h)(~~f~~).

92. Prior to the issuance of a certificate of occupancy (temporary or final) for the tenth building constructed in the Project or prior to the Project Completion Date, whichever is sooner, the Petitioner shall have completed the Trail Design and Construction Work in accordance with Condition #18(d) and submitted evidence of payment of \$50,000.00 to Newton Conservators, Inc. in accordance with Condition #18(f), but only in the event such work is undertaken by the Petitioner.

~~88~~<sup>93</sup>. No certificate of occupancy (temporary or final) for the final dwelling unit in the Project shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and until the Petitioner has:

- ~~a. Completed the Trail Design and Construction Work in accordance with Condition #18(d), but only in the event the such work is undertaken by the Petitioner.~~

~~b. Submitted evidence of payment of \$50,000.00 to Newton Conservators, Inc. in accordance with Condition #18(g), but only in the event the Trail Design and Construction Work is undertaken by the Petitioner.~~

e.a. Submitted to the Director of Planning and Development evidence that any damage to public ways and public property caused by construction vehicles has been repaired in accordance with Condition #4442.

89.94. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy or final certificates of occupancy for all or portions of the buildings prior to installation of landscaping, open space, or exterior hardscape improvements associated with each such building as set forth in the Landscaping and Open Space Phasing Plan, provided that the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development and the Commissioner of Public Works, concludes that the request is commercially reasonable and the level of completion of the improvements is sufficient to permit temporary occupancy of the buildings without harm to public safety or convenience. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the City Solicitor's Office in an amount not less than 135% of the value of the remaining improvements associated with such building to ensure their completion.



#27-20

CITY OF NEWTON  
IN THE CITY COUNCIL

## ORDERED:

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

**PROCEDURAL HISTORY**

1. In accordance with the Zoning Ordinance and the applicable rules of the City Council, MD 399 Grove Owner, LLC, Ramirez Concord, LLC, and BH Normandy Riverside, LLC (collectively, the "Petitioner") filed a special permit/site plan approval application and related plans and information with the City Clerk on December 9, 2019 for a proposed mixed-use development located at 355 and 399 Grove Street (the "Project"), along with a simultaneous request to re-zone portions of land located at 355 Grove Street from the Business Use 2 District to the Mixed Use 3/Transit Oriented District and 399 Grove Street from the Business Use 5 District to the Mixed Use 3/Transit Oriented District (collectively, the "Application").
2. Notice of the public hearing on the Application was published in the Boston Globe on January 14, 2020 and January 21, 2020, and in the Newton Tab on January 22, 2020, and mailed to all parties in interest in accordance with M.G.L. c. 40A, § 11.
3. The Land Use Committee of the City Council opened the public hearing on the Application on January 28, 2020 at Newton City Hall. Additional sessions of the public hearing were held on February 11, 2020, February 25, 2020, March 5, 2020, March 24, 2020, April 7, 2020, April 28, 2020, May 5, 2020, May 12, 2020, May 26, 2020, June 2, 2020, June 9, 2020, June 30, 2020, July 14, 2020, July 28, 2020, August 4, 2020, August 18, 2020, September 10, 2020, September 29, 2020, and October 6, 2020. As of March 24, 2020 date, all sessions of the public hearing were held remotely via Internet video conferencing, pursuant to Massachusetts executive order, *Order Suspending Certain Provisions of the Open Meeting Law*, G.L. c. 30A, Section 20 (March 10, 2020), and Chapter 53 of the Acts of 2020, an *Act To Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19* (April 3, 2020).
4. Over the course of the public hearing, presentations were made by the Petitioner and its development team including Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP,

Damien Chaviano of Mark Development, LLC, Jeff Speck of Speck and Associates LLC, Richard Hollworth and Randy Hart of Vanasse Hangen Brustlin, Inc. (“VHB”), and Tom Chase of New Ecology.

5. Over the course of the public hearing, presentations were also made by City staff, including Jennifer Caira and Neil Cronin and the City’s on-call consultants, Green International Affiliates, HR & A Advisors, Utile, Form+Place, and The Horsley Witten Group.
6. The Land Use Committee received extensive oral and written comments, testimony, and written reports from the public and various City boards, commissions and departments, including the Planning and Development Department, the Engineering Division, the Fire Department, the Newton Council on Aging, the Commission on Disabilities, the Urban Design Commission, the Economic Development Commission, the Conservation Commission, as well as various public interest groups including the Newton Conservators, Green Newton, Bike Newton, the Riverside Greenway Working Group, the Charles River Watershed Association, the Citizens Commission on Energy, the Lower Falls Improvements Association, and the Transportation Advisory Group. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and public.
7. In addition, the City Council received extensive testimony and written reports from the City’s on-call consultants on the adequacy of public facilities in all the areas required by Section 7.3.5.D.1, including adequacy of road and traffic infrastructure, adequacy of water, sewer, and storm water infrastructure, and net fiscal impact. During the review process, the Petitioner’s professional consultants also provided various supplemental materials in response to requests by the City Council, the Planning and Development Department and its consultants, and various City departments that reviewed the Project.
8. All testimony, written reports and supplemental materials prepared by the Petitioner and its consultants, the City and its staff, consultants, boards, commissions and departments, as well as public testimony and supplemental materials submitted by the public, are included in the record of the City Council’s proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this Order.
9. Following a final presentation by the Petitioner and City staff, as well as public testimony, the Land Use Committee closed the public hearing on \_\_\_\_\_, 2020. On \_\_\_\_\_, 2020, the Land Use Committee voted to recommend to the City Council: (i) approval of a Special Permit/Site Plan Approval for the Project, subject to the conditions stated herein, and (ii) adoption of the zone change for 399 Grove Street and portions of 355 Grove Street.

Finding that all applicable provisions of the Zoning Ordinance and the City Council Rules have been complied with, and taking into consideration the testimony and evidence provided by all interested parties, the City Council GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the Land Use Committee of the City Council.

## **FINDINGS**

### **GENERAL FINDINGS**

1. The Project will redevelop an existing surface parking lot at 355 Grove Street and 399 Grove Street, currently improved with a hotel use, with a new mixed-use development consisting of not more than 1,025,000 square feet of gross floor area (as such term is defined in Section 4.2.4.G.3) in ten buildings that are designed to maximize the principle of walkability and to create a vibrant, transit-oriented hub. These buildings would incorporate approximately 254,120 square feet of office, laboratory/research medical office space, approximately 582 dwelling units, approximately 39,014 square feet of retail space, and an approximately 150-key hotel, and include accessory surface parking, and a multi-level parking facility in Buildings 9 and 10 that will provide parking for MBTA patrons and parking for the Project (the “Parking Garage”).
2. The Project will be located on an approximately 13.05-acre parcel of land that consists of land on two lots: a portion of 355 Grove Street (also sometimes known as 327 Grove Street) and 399 Grove Street (collectively, the “Development Parcel”). The 355 Grove Street lot is an approximately 22-acre lot owned by the Massachusetts Bay Transportation Authority (MBTA) and is the current site of the Riverside T Station (the “MBTA Parcel”). The 399 Grove Street lot is an approximately 121,700 square foot lot and is the current site of a hotel (the “Hotel Parcel”). The portions of the MBTA Parcel leased or to be conveyed to the Petitioner and the Hotel Parcel are located within the MU3/TOD District, pursuant to Council Orders #258-12, which zoning amendment vested pursuant to Council Orders #258-12 and #258-12(2) through the commencement of construction of the relocation of the MWRA water line on the Development Parcel, and Council Order #26-20 which was adopted by the Council in conjunction with this Order.
3. The Development Parcel is affected by a number of unique physical conditions and legal circumstances, including a complex interplay of intergovernmental jurisdictions controlling access to the Development Parcel. The portion of the Development Parcel owned by the MBTA is presently used by the MBTA for commuter parking. The Petitioner will be required to maintain commuter parking during construction in amounts to be established by the MBTA. In addition, major capital expenditures and construction work is required in order to relocate and reconstruct sewer, water, and drainage pipes crossing the Development Parcel and for transportation improvements.

### **SPECIAL PERMIT CRITERIA**

4. The site is an appropriate location for the Project (§7.3.3.C.1) because:

- a. The proposed structures and uses are consistent with the uses and dimensions provided for by the MU-3/TOD district.
  - b. There is a mass-transit commuter facility located adjacent to the Development Parcel, and the Development Parcel is proximate to a commuter rail station, and the intersection of I-95 and I-90.
  - c. The Project provides a pedestrian-oriented development that expands needed housing choices, offers diverse commercial options, and adds public open spaces.
  - d. The proposed structures and uses are consistent with and in furtherance of the Riverside Vision Plan.
5. The Project as developed and operated, will not adversely affect the neighborhood (§7.3.3.C.2) because:
- a. The Development Parcel will be opened for pedestrian, bicycle, and vehicular traffic to Newton Lower Falls and Auburndale, and will provide options for residential and commercial uses that will complement the neighborhoods.
  - b. The Project will replace and enhance a large, paved, and currently underutilized and unattractive site to create a walkable, mixed use environment.
  - c. The Project will provide significant park and open space opportunities open to the public.
  - d. The Project includes significant transportation planning and mitigation to lessen the traffic impacts of the Project.
6. The Project will not be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3) because:
- a. The Project is pedestrian-centric and the design promotes the safety of pedestrians.
  - b. The Petitioner will implement an array of flexible and measurable transportation demand management measures to mitigate the effect of additional traffic on Grove Street.
  - c. The Project will create protected bicycle facilities and will connect existing recreational trails to enhance nonvehicular access in the surrounding area.
7. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4) because:
- a. The Project includes direct access from I-95 northbound and improvements to Recreation Road to create better vehicle connections within the immediate area.

- b. The parking for the Project has been limited to a ratio lower than otherwise required under the Zoning Ordinance.
  - c. The Petitioner will implement and maintain a transportation demand management plan that includes incentives for nonvehicular transportation and wayfinding signage to direct vehicles to regional rather than to local roadways
  - d. The Council finds that the Petitioner's traffic studies and implementation plan have been appropriately prepared and have been reviewed by the City's on-call consultants, the Planning and Development Department, and the Department of Public Works, and the access to the Development Parcel is appropriate for the types and numbers of vehicles involved.
8. The site planning, building design, construction, maintenance and long-term operation of the site will contribute significantly to the efficient use and conservation of natural resources and energy (§7.3.3.C.5) because:
- a. The Project will redevelop a previously unimproved parking lot into a new mixed-use environment with new publicly accessible green spaces and stormwater control, thereby mitigating the heat island effect.
  - b. The residential portions of Buildings 3, 4, 5, 6, 7, 8, 9 and 10 will be designed and constructed to reduce the use of energy to levels beyond the requirements of the base building and energy codes.
  - c. The residential portions of at least three of the residential buildings will achieve Passive House certification, the office building and the hotel will be LEED v.4 Silver certifiable, and all residential buildings will be LEED v.4 Gold for Building Design and Construction Multifamily Midrise certifiable.
  - d. Groundwater recharge and water quality discharging into the Charles River will be improved by the installation of a new drainage system and low impact development measures such as permeable paving and pavers, street trees with pits, and a rain garden.
9. The Application complies in all respects with the requirements of the Zoning Ordinance (§7.3.3.D).

#### MU-3/TOD TRANSIT ORIENTED DISTRICT

10. The Project meets the purpose of the MU-3/TOD District as it allows the development of the Riverside MBTA station in a way that is consistent with the City's Comprehensive Plan, encourages comprehensive design within the site and with its surroundings, integrates complementary uses, provides enhancements to the public infrastructure, provides beneficial open spaces, allows sufficient density to make development economically feasible

while ensuring that the district is appropriately designed and scaled, fosters use of alternative modes of transportation, and creates a vibrant destination where people can live, work and play (§4.2.1.B).

11. The Project complies in all respects with the dimensional standards for the MU3/TOC District. (§4.2.4).
12. The Application for the Project complies in all respects with the special filing requirements for projects located in the MU-3/TOD District (§7.3.5.A).
13. The Project is not inconsistent with the City's Comprehensive Plan because it advances the City's planning goals with respect to smart growth and transit-oriented development. The provision of a diversity of housing types, 17.5% of which are affordable, on underutilized land in close proximity to a variety of transportation modes, supports a variety of lifestyles. Design of the Project strives to create a vibrancy and sustainability made possible by a more compact development, which includes a number of complementary uses, activities, and amenities in close proximity to one another, which serve the residents, businesses, and patrons to the Development Parcel as described in the Mixed Use Element of the Comprehensive Plan (§7.3.5.B.1).
14. The Project as developed and operated in accordance with the conditions of this Special Permit/Site Plan Approval offers long-term public benefits to the City, the Newton Lower Falls and Auburndale neighborhoods, and nearby areas including (§7.3.5.B.2):
  - a. Improved access and enhancements to public transportation by providing access from I-95 to the Development Parcel, which enables bus routing onto the Interstate minimizing bus travel on Grove Street, and by connecting interior roadways with bicycle accommodations and parking for vehicles that facilitates easy connections among the various modes of travel.
  - b. Improvements to Grove Street and Recreation Road are intended to mitigate the impact of the Project and reduce negative impacts on abutters and the surrounding neighborhoods of Newton Lower Falls and Auburndale and avoid a deterioration in service to other locations by better accommodating the volume of traffic generated by the Project. Such improvements include modern traffic signals, and dedicated turn lanes on Grove Street and Recreation Road to facilitate the flow of through traffic, as described in the Traffic Impact and Access study prepared by VHB, dated December 2019 and affirmed by a peer review report prepared by Green International Affiliates Inc., dated February 21, 2020.
  - c. Visual and public safety improvements to Grove Street such as undergrounding overhead wires along the Development Parcel's frontage and creating dedicated pedestrian and bicycle facilities.



- d. More housing options for the City with approximately 582 dwelling units at full build out, including 17.5% affordable dwelling units.
  - e. Removal of existing impervious surfaces, the addition of storm water infrastructure improvements to capture storm water and recharge groundwater, and installation of new water and sewer infrastructure.
  - f. Protecting the neighborhood from adverse impacts to the electrical grid by requiring the Petitioner to provide evidence that there is adequate electricity for each building in the Project and to pay for any costs imposed by the electric utility company for upgrades to the electrical system necessary to supply adequate electricity to the Project.
  - g. A monetary payment to fund sewer infrastructure and other improvements.
  - h. Improvements to or a monetary payment for trails or other open space improvements in the vicinity of the Project.
15. As detailed in the report prepared by Municap on behalf of the Petitioner, which has been reviewed by the City and its peer-review consultant HR&A Advisors, the Project will have a positive net fiscal impact on the City after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance (§7.3.5.B.3).
16. Significant roadway improvements will be made to Grove Street and Recreation Road, which together result in improved access to and from the Development Parcel; well-marked routes for pedestrians, cyclists, and motorists both on- and off-site, with wayfinding signs, road markings, and an on-site Transportation Manager, are intended as mitigation measures to prevent nuisance or serious hazard to vehicles or pedestrians (§7.3.5.B.4).
17. Access to the Development Parcel is designed to accommodate and is appropriate for the types and numbers of vehicles involved because the creation of a second access to/egress from the Development Parcel and signage are intended to direct traffic away from residential areas, slow motor vehicles exiting and entering the ramps at I-95, and facilitate access to destinations within the Development Parcel. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Project (§7.3.5.B.4).
18. Appropriate setbacks, buffering, and screening with ample landscaping are provided from nearby residential properties. In accordance with the Zoning Ordinance, more than 42,450 square feet of the beneficial open space will be available to the general public. Potential bicycle and pedestrian connections from the Project to open spaces, recreational areas, trails,

and natural resources, including the banks of the Charles River and adjacent public property, will remain available for future improvements, and make possible more robust connections that can take full advantage of the unique opportunities of the Development Parcel and its nearby natural features for use and enjoyment by the community at large (§7.3.5.B.5).

19. The Project provides high quality architectural design and site planning that enhances the visual and civic quality of the Development Parcel and overall experience for residents of and visitors to both the Project and its surroundings. In particular, the proposed design and heights of the buildings breaks up the massing along Grove Street and relates the scale of the buildings to the surrounding neighborhood consistent with the intent of the Mixed Use Element of the Comprehensive Plan to orient buildings towards streets and create pleasurable walks to nearby public spaces. The landscape design of the Project creates a sense of openness and offers points of interest to people of all ages and abilities with a playground, an amphitheater, a lawn area, outdoor seating, and easy access to adjacent shops (§7.3.5.B.6).
20. The comprehensive signage program for the Project is in keeping with the scale and needs for wayfinding in and around the Development Parcel and is complementary to the architectural quality of the Project, the character of the streetscape, and interior of the Development Parcel (§7.3.5.B.7).
21. The Project provides building footprints and articulations scaled to encourage outdoor pedestrian circulation with the uses and associated windows and entrances at the street level, creating activity and interest at the entrance to the Development Parcel, including well-placed crosswalks to enable residents and visitors to the Development Parcel to move freely between the office use, retail, hotel, residential, public plaza, and MBTA station (§7.3.5.B.8).
22. The Project creates public spaces, including beneficial open space and beneficial open space open to the public in excess of what is required under the Zoning Ordinance, as pedestrian-oriented destinations that accommodate a variety of public uses and which are intended to promote a vibrant street life and connect the Project to surrounding neighborhoods and natural resources, as well as to the commercial and residential components of the Project (§7.3.5.B.9).
23. The site planning, building design, construction, maintenance, and/or long-term operation of the Project meets or exceeds the energy and sustainability provisions of the Zoning Ordinance and will contribute significantly to the efficient use and conservation of natural resources and energy (§7.3.5.B.10) for the following reasons:
  - a. Impervious surfaces and resulting run-off are reduced with the elimination of the existing parking lot.
  - b. Open space in excess of that required in the MU-3/TOD District is provided.

- c. There will be energy modeling and commissioning of building energy systems and the buildings will meet or exceed the minimum energy performance requirements equivalent of 780 CMR Chapter 115AA (Stretch Energy Code) so as to optimize the energy performance of the office, laboratory/research and residential buildings.
  - d. There is convenient access to public transportation on-site and Transportation Demand Management practices will help to reduce carbon dioxide emissions from vehicles.
  - e. Stormwater management systems will increase groundwater recharge and enhance water quality through implementation of best management practices to remove contaminants from surface water and provide infiltration on-site.
  - f. Water conservation measures will be employed to minimize impact on sanitary sewer infrastructure, and the submetering of utilities will encourage conservation.
  - g. A monetary payment towards future sewer infrastructure improvements will improve existing systems and reduce impacts on the surroundings by removing inflow and infiltration from the municipal sanitary system.
  - h. Low-impact development techniques will be employed such as using a rain garden and swales to manage storm water and reusing existing site materials to balance cut and fill.
24. Parking studies prepared by the 128 Business Council and reviewed on behalf of the City by Green International Affiliates confirms that parking for the Project is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel, and the encouragement of alternative transportation modes without providing an over-supply of parking on the Development Parcel, and the shared use of parking which along with the Parking Management Plan will encourage the maximum and efficient use of the parking supply (§7.3.5.B.11).
25. Roadway travel lanes, turning lanes, pedestrian crossings, bicycle lanes, traffic signals, and other roadway improvements as proposed by VHB and reviewed on behalf of the City by Green International Affiliates are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such improvements and the traffic and other activities generated by the Project, as well as to improve traffic and access in nearby neighborhoods (§7.3.5.B.12).
26. Consideration has been given to accessibility, adaptability, visibility, and universal design in development of the site plan by providing accessible primary building entries for each building, a number of accessible and adaptable dwelling units, pedestrian connection to the MBTA station that will provide equal access for those with mobility issues, and other outdoor

pathways with suitable slopes and adequate widths to accommodate wheelchair access, as well as tactile warning strips at intersections, and accessible parking closest to building entries (§7.3.5.B.13).

27. The Petitioner's traffic mitigation measures are expected to allow the Project to meet the trip generation standards set forth in Section 7.3.5.E of the Zoning Ordinance (§7.3.5.B.14).
28. The preliminary Construction Management Plan includes appropriate mitigation measures for construction impacts, to the neighborhoods of Newton Lower Falls and Auburndale and accommodates the parking and other needs of commuters using the MBTA station during construction. In order to further mitigate potential impacts on abutters and the neighborhoods, the Petitioner has voluntarily reduced its hours of construction and blasting as set forth in the preliminary Construction Management Plan (§7.3.5.B.15).

#### FINDINGS RELATED TO USES

With regard to the special permit for the following uses: for-profit educational use; retail sales use of over 5,000 square feet; restaurant of over 50 seats; personal service use of over 5,000 square feet; place of amusement; open air business; health club on and above the ground floor; animal services; hotel; bank, up to and over 5,000 square feet; theatre/hall; and laboratory/research facility pursuant to Sections 4.4.1, 4.2.4.G, 4.2.4.H, and 7.3 of the Zoning Ordinance:

29. The Project will have approximately 254,120 square feet of Category A uses, a portion of which may include laboratory/research facilities. The office and laboratory/research facility uses, in addition to the hotel use, meet the goals in the *Comprehensive Plan* by maintaining a significant commercial real estate tax base, maintaining a significant employment base, and encouraging business growth proximate to public transportation.
30. The Project will have approximately 116,314 square feet of Category B uses. The proposed uses meet the goal of having a diversity of Category B uses to serve the needs of the businesses, residents, and visitors to the Development Parcel.
31. The Project will have approximately 654,566 square feet of Category C uses. The proposed Category C uses complies with the requirement of being no less than 60% of the gross floor area of the total gross floor area of Category A, B, and C uses.
32. The gross floor area of all uses in the Project does not exceed 1,025,000 square feet.

#### FINDINGS RELATED TO DIMENSIONAL REQUIREMENTS

With regard to the special permit for building heights of up to 170 feet and for up to 11 stories pursuant to Sections 4.2.3 and 4.2.4 of the Zoning Ordinance:

33. The height and number of stories is allowable by special permit in the MU-3 district and the Council finds that the building height of up to 170 feet and 11 stories is appropriate given its location, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of the MU-3 district.

With regard to the special permit for FAR of up to 2.5 (excluding all enclosed parking structures):

34. The Council finds that the FAR of not more than 2.5 is appropriate for the Development Parcel and not inconsistent with the MU-3 district or the City's Comprehensive Plan.

With regard to the special permit for a retaining wall greater than 4 feet in height located in a setback pursuant to Section 5.4.2.B:

35. The Council finds that the location and design of the proposed retaining wall is appropriate for the Development Parcel and is necessary for the design of the project.

#### FINDINGS RELATED TO PARKING STALLS AND FACILITIES

With regard to the waivers to reduce the number of parking stalls and various dimensional requirements for the design of parking facilities, lighting, assigned parking, and the number of off-street loading facilities under Sections 5.1.4.A, 5.1.4.C, and 5.1.13 and a special permit for the following uses: parking facility, accessory, multi-level; parking facility, accessory, single level; and pursuant to Section 4.4.1 and Section 7.3:

36. The proposed waivers to dimensional requirements for the design of parking facilities are appropriate for residents and office employees who are regular users and who will become familiar with the internal workings of the facilities and be able to navigate safely within them. It is in the public interest to minimize the amount of space within the Parking Garage and on the Development Parcel utilized for parking while still providing a sufficient number of parking spaces and appropriate circulation space within the parking facilities for the employees, residents and visitors to the Development Parcel. Similarly, the proposed waiver from the number/design of loading docks is in the public interest because it minimizes the space needed for such functions, while providing adequate means in appropriate locations for serving the needs of the Project.
37. It is in the public interest to reduce the lighting level below one foot-candle given that the level of lighting proposed provides sufficient illumination for safety while allowing the Development Parcel to be more residential in character.
38. The Council finds that in view of the complexity and novelty of the Project and in view of the likelihood that the design of the buildings and public spaces will evolve prior to construction of the Project, the Planning Department and Form+Place have developed a set of Design Guidelines, dated September 2020, which will provide guidance and inform the final building designs. The Council finds that the use of the Design Guidelines subject to the conditions

herein will simplify the process of design and permitting, grant appropriate assurance to the City and the Petitioner, provide a process for final review of plans, and allow avenues for review and refinement of the plans as design progresses.

39. The Council finds that the Petitioner has carefully studied and understands current and projected parking demand and that the redevelopment of this Development Parcel will not adversely affect the future parking availability in Newton Lower Falls. The Petitioner has recognized that current actual parking demand may be less in the future as single occupant vehicular use may be reduced. The parking for the market rate dwelling units will be charged separately from and in addition to the residential rent so as to reduce demand for parking by the market rate dwelling units. The rent for the Inclusionary Units will include parking for one vehicle at no additional charge for those households with a car. Parking demand for the market rate dwelling units has been calculated based on an average of one space per unit and Petitioner has prepared a shared parking analysis to allow office (including laboratory/research facility and medical office), hotel, and retail users to share parking with residential users as appropriate. The Council finds that based upon the limitations proposed on parking and the Petitioner's transportation demand management plan and shared parking analysis, the proposed number of parking spaces is warranted and consistent with the City's goals.

#### FINDINGS RELATED TO SIGNAGE

With regard to the criteria for signage set forth in §5.2.13:

40. The Council finds that exceptions to the number, size, type, location, and height of signs (free-standing or otherwise), as reflected in the comprehensive signage program, are in the public interest given the nature of the use of the Project, the architecture of the Project buildings and the Project's location with reference to abutting streets.

#### FINDINGS RELATED TO SITE PLAN REVIEW CRITERIA

With regard to the site plan approval criteria under §7.4.5.B.1-8:

41. The Council finds that the Project has been designed to ensure the safety of vehicular and pedestrian movement within the Development Parcel and in relation to adjacent streets, properties, and improvements, including regulation of the number, design, and location of access driveways and the location and design of accessible parking. The access driveways include stop signs, open viewing, low planters, and wide sidewalks, and have been located as far away from the intersection as is practical (§7.4.5.B.1).
42. The Council finds that the methods for disposal of sewage, refuse, and other wastes, and that the methods of regulating surface water drainage are adequate for the following reasons:
- a. The City Engineering Division has reviewed submitted plans and raised no concerns with respect to this Project. The Engineering Division will review all plans submitted



- for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any building permits.
- b. The Petitioner will be implementing water conservation measures which will result in an overall reduction in water use and subsequent wastewater generation from the current flow schedule at 314 CMR 7.15 through the use of such measures as low-flow high-efficient faucets and low flow water closets and urinals in the office/laboratory/research building.
  - c. The Petitioner will be making up to a \$7,200,000 contribution to the City of Newton for mitigation and off-site improvements as set forth in Conditions #15-18,, a portion of which will be used for municipal sewer inflow and infiltration (“I&I”) improvements (§7.4.5.B.2).
- 43. The Council finds that provisions for on-street and off-street loading facilities are sufficient to service the buildings and related uses on the Development Parcel (§7.4.5.B.3).
  - 44. The Council finds that screening of parking areas and structures on the Development Parcel from adjoining premises is sufficient because all parking stalls are either in multi-level parking facilities or are internal to the Development Parcel (§7.4.5.B.4).
  - 45. The Council finds that the Project avoids unnecessary topographical changes and the topographical changes made are in keeping with the appearance of neighboring developed areas (§7.4.5.B.5).
  - 46. The Council finds that all utility service lines on Development Parcel that are servicing the Project will be located underground (§7.4.5.B.6).
  - 47. The Council finds that the proposed site design and massing is appropriate in the context of the surrounding area and will serve to improve connections between the Development Parcel, the adjacent land owned by the Department of Conservation and Recreation, the adjacent highways, the MBTA station, and the neighborhoods (§7.4.5.B.6).
  - 48. The Council finds that the Project avoids the removal or disruption of historic resources on or off-site (§7.4.5.B.7).
  - 49. The Council finds that the Project makes a significant contribution to the efficient use and conservation of natural resources and energy for the reasons set forth above in the special permit criteria section (§7.4.5.B.8).

#### OTHER FINDINGS

- 50. The Council finds that the Project is consistent with the Housing Needs Analysis and Strategic Recommendations, Newton Leads 2040 in that it includes the strategies of pursuing diverse housing choices, including single-level, elevator-served residences, providing housing near walkable, transit-accessible locations, integrating lower-cost housing into a variety of market areas across the City, and balancing the need for commercial space with housing supply through a mixed-use project at the site of mass transit.

51. The Council finds that the Project is consistent with the findings and principles of the Riverside Vision Plan, which was adopted by the City to guide in the evaluation of the proposed development at the Development Parcel.
52. The Council finds that all dwelling units will conform to the Massachusetts Architectural Access Council (MAAB) requirements for “Group 1” units and are accessible by those in a wheelchair. 5% of the dwelling units in each building will conform to “Group 2A” unit requirements and will be designed spatially for immediate wheelchair use and with the ability to adapt additional components of the units upon need, at the Petitioner’s sole cost and expense. In addition, the Petitioner has voluntarily agreed that an additional 2% of the dwelling units throughout the Project (but not necessarily within each building) will conform to “Group 2A” unit requirements. This will add to the diversity of Newton’s housing stock, thereby increasing housing choices and opportunities in the City.
53. The Council finds that 15% of the dwelling units in the Project will be affordable dwelling units to households earning at or below 80% of Area Median Income (AMI) (Tier 1) and 2.5% of the dwelling units will be affordable to households earning greater than 80%, but at or below 110% of AMI (Tier 2) in accordance with the City’s Inclusionary Zoning Ordinance. In addition, the Petitioner has agreed to make 3 of the Tier 1 units affordable to households earning at or below 50% of Area Median Income. The Board finds these 3 units are in excess of the requirements of the City of Newton Zoning Ordinance.
54. The provision of 17.5% of the dwelling units as affordable units will provide needed affordable housing in Newton. By including two tiers of affordability, as well as providing additional affordability at a lower AMI, there will be potential for upward mobility within the Project, as residents may be afforded the option to transition from one tier to the next, where they would have otherwise been required to relocate or pay market rate rents if their income exceeded the cap on the Inclusionary Units.
55. The Council finds that the site planning, building design, construction, maintenance, and long-term operation of the Project will reduce the use of energy, water, and other natural resources and minimize adverse environmental impacts. The Council finds that the Project either meets the requirements of a green building project under Section 5.13 or, where it does not, the Council finds that such exceptions to Section 5.13 are appropriate because the Petitioner has demonstrated that the same or better environmental outcomes will be achieved through its approach and Project design, and is in the public interest because the Petitioner is committed to exploring the feasibility of several sustainable measures during the design stages and will share the results of those studies with the Director of Planning and Development.

In light of the findings set forth above and the following conditions imposed by this Council Order, the City Council finds that the public convenience and welfare of the City will be served, and the

criteria of Sections 4.2.1.B; 4.2.4; 4.4.1; 5.1.4.E; 5.1.13; 5.11; 7.3.3; 7.3.5; 7.4; and 7.4.5 for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #27-20

CO-PETITIONERS: MD 399 Grove Owner, LLC, Ramirez Concord, LLC, and BH Normandy Riverside LLC, their successor(s), assign(s), and/or designee(s). When used in this Council Order, the term "Petitioner" shall refer to MD 399 Grove Owner, LLC, Ramirez Concord, LLC, and BH Normandy Riverside LLC, their successor(s), assign(s), and/or designee(s), and shall include the Organization of Owners required by Section 4.2.4.I of the Zoning Ordinance.

LOCATION: 355 and 399 Grove Street, Newton

OWNER: Massachusetts Bay Transportation Authority, MD 399 Grove Owner, LLC, and Ramirez Concord LLC

ADDRESS OF OWNER: 355 and 399 Grove Street, Newton, MA 02466

TO BE USED FOR: Mixed-use/transit-oriented development with residences, retail, offices, laboratory/research facility and accessory and non-accessory parking facilities, adjacent to the Riverside MBTA station.

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

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

ZONING: Mixed Use 3/Transit-Oriented District

**Approved subject to the following conditions:**

**GENERAL CONDITIONS**

1. All buildings, parking areas, driveways, walkways, landscaping, and all other site features on the Development Parcel associated with this Special Permit/Site Plan Approval shall be located, constructed, and implemented consistent with the set of plans entitled "Riverside Station," prepared by VHB, Inc. and signed and stamped by Richard S. Hollworth, P.E., dated December 9, 2019 and revised through July 7, 2020 (the "Special Permit Plan Set"), which are

more particularly identified in Exhibit A and are hereby incorporated by reference. No changes to the Project are permitted unless they are consistent with the Special Permit Plan Set as set forth in Conditions #8 through 12.

2. All buildings, parking areas, driveways, walkways, landscaping, and all other site features on the Development Parcel associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the City of Newton Design Guidelines for the Riverside Station Development, dated September 2020 (the "Design Guidelines"), which are on file with the Department of Planning and Development, the Inspectional Services Department, and the City Clerk. No changes to the Project are permitted unless they are consistent with the Design Guidelines as set forth in Conditions #8 through 12.
3. The Special Permit/Site Plan Approval shall be deemed to have been vested for the purposes of utilizing the benefits of the change of zone authorized by Council Order #26-20 for the entire Project for all purposes upon the earliest of: (a) the issuance of a City or State building permit (other than a demolition permit) for all or any portion of the Project (including the Parking Garage) or (b) commencement of the removal or the relocation of the MWRA water line crossing the Development Parcel.
4. Pursuant to Section 7.3.2.E and Section 7.4.5.D of the City of Newton Zoning Ordinance in effect at the time this Special Permit/Site Plan Approval was approved (hereinafter, "Zoning Ordinance"), the time for exercise of this Special Permit/Site Plan Approval is extended to a period of three years, which shall not include such time required to pursue or await the determination of an appeal pursuant M.G.L. c. 40A, § 17 or an appeal of any other local permits or approvals necessary to complete the project, without the necessity of a further public hearing. This Special Permit/Site Plan Approval shall be deemed to have been exercised upon the commencement of construction pursuant to a building permit (other than a demolition permit) for all or any portion of the Project (including the Parking Garage) issued by the City or the State.
5. If within 8 years from the date of this Special Permit/Site Plan Approval (the "Building Permit Date") the Petitioner has not applied for all building permits necessary to complete construction of the Project, or if within 12 years from the date of this Special Permit/Site Plan Approval (the "Project Completion Date"), the Petitioner has not been issued a certificate of occupancy (temporary or final) for all buildings of the Project, which Building Permit Date and Project Completion Date shall not include such time required to pursue or await the determination of an appeal pursuant to M.G.L. c. 40A, § 17 or an appeal of any other local permits or approvals necessary to complete the Project, then further construction under this Special Permit/Site Plan Approval is prohibited unless the Petitioner seeks and receives an amendment to this Special Permit/Site Plan Approval that extends the time for fulfilling such conditions. In no event shall any portion of the Project for which a certificate of occupancy has been issued in accordance with the provisions of this Special Permit/Site Plan Approval be deemed to be in violation of this Special Permit/Site Plan Approval or be deemed to have

lapsed due to the fact that any other portion of the Project has not been commenced or completed.

6. All real and personal property that make up the Development Parcel and the Project, except for any portion of the Parking Garage owned by the MBTA and used exclusively by the MBTA for the provision of transportation which are deemed exempt by the Newton Assessors' Office, shall be subject to the assessment of local taxes in accordance with the provisions of M.G.L. c. 59. However, in the event that a final binding decision of the Appellate Tax Board or appellate court determines that any other part of the Development Parcel or the Project is exempt from the assessment of local taxes notwithstanding the first sentence of this Condition, the Petitioner agrees to and shall immediately execute a PILOT with the City of Newton Board of Assessors which will require the Petitioner to make quarterly payments in lieu of taxes based on the market value of the portions of the Project determined to be exempt as though the same were subject to the assessment of local taxes, excluding those portions of the project owned and used by the MBTA for the provision of transportation.
7. Prior to exercise of this Special Permit as defined in Condition #4 above, an organization of all owners of land and ground lessees within the Development Parcel shall be formed (the "Organization of Owners"). Neither the owners of land subject to easements benefitting the Project nor the MBTA are required to join the Organization of Owners. In accordance with the provisions of Section 4.2.4 of the Zoning Ordinance, the Organization of Owners shall be governed by this Special Permit/Site Plan Approval and shall have the authority and obligation to act on behalf of all such owners. The Organization of Owners shall serve as the liaison between the City and any owner, lessee, or licensee within the Development Parcel governed by this Special Permit. Such Organization of Owners shall be the primary contact for the City in connection with any dispute regarding violations of this Special Permit/Site Plan Approval or the Zoning Ordinance and, in addition to any liability of individual owners or lessees (with regard to matters specifically related to the individual owners' or lessees' parcels and not those related to the overall Project or Development Parcel), shall have legal responsibility for compliance of the Project with the terms of this Special Permit/Site Plan Approval and the provisions of the Zoning Ordinance.

#### **DESIGN REVIEW & PLAN CONSISTENCY CONDITIONS**

All buildings, other than the Parking Garage, shall undergo a two- or three-step process set forth in Conditions #8 through 12 for review of each building to ensure the Project is constructed in accordance with the Zoning Ordinance, this Special Permit/Site Plan Approval, and the Design Guidelines.

#### **8. Submission and Review of Schematic Plans**

- a. At the schematic design stage, the Petitioner shall file the following with the Director of Planning and Development and its consultants, the City of Newton's Urban Design Commission (the "UDC"), and the Liaison Committee:

- i. individual building plans consisting of exterior renderings, preliminary building elevations, building footprints, and representative wall sections showing consistency with the Special Permit Plan Set and the Design Guidelines (the “Schematic Plans”); and
  - ii. a signed certificate from the Petitioner’s architect and/or civil engineer certifying that the Schematic Plans are consistent with the Special Permit Plan Set.
- b. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #8(a), the Director of Planning and Development will review and provide an opinion as to whether the Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development’s review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development’s opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the Director’s opinion that the Schematic Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #8(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public meeting, will provide an opinion as to whether the Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC’s public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. The UDC’s opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the UDC’s opinion that the Schematic Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.
- d. Upon receipt of the written consistency opinions referenced in Condition #8(b) and (c) above, the Petitioner may proceed to the design development stage. If either the UDC or the Director of Planning issues an opinion that the Schematic Plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised Schematic Plans in accordance with Condition #8(a).



9. Submission and Review of Design Development Plans

- a. Upon completion of the schematic plan stage set forth in Condition #8, the Petitioner may proceed to the design development stage. At this stage, the Petitioner shall file the following with the Director of Planning and Development, the UDC, and the Liaison Committee:
  - i. a copy of plans showing consistency with the Special Permit Plan Set and the Design Guidelines for the portions of the Project necessary for the permit or determination being sought (the "Design Development Plans");
  - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the Design Development Plans are consistent with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within forty five (45) days of receipt of a complete submission of the materials set forth in Condition #9(a) the Director of Planning and Development will review and provide an opinion as to whether the Design Development Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the Director's opinion that the Design Development Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Within forty five (45) days of receipt of a complete submission of the materials set forth in Condition #9(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public meeting, will provide an opinion as to whether the Design Development Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC's public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. The UDC's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the UDC's opinion that the Design Development Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.

- d. Upon receipt of the written consistency opinions referenced in Condition #9(b) and (c) above, the Petitioner may proceed to the construction documents stage. If either the UDC or the Director of Planning issues an opinion that the Design Development Plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised Design Development Plans in accordance with Condition #9(a).

#### 10. Submission and Review of Expanded Schematic Plans

- a. In lieu of proceeding through both the schematic plan stage set forth in Condition #8 and the design development stage set forth in Condition #9, for any building or buildings, the Petitioner may combine the two steps into one expanded schematic plan review step if the Petitioner files the following with the Director of Planning and Development, the UDC, and the Liaison Committee:
  - i. individual building plans consisting of exterior renderings, preliminary building elevations, building footprints, representative wall sections, as well as structural and mechanical, electrical, plumbing, fire protection (“MEP/FP”) design narratives showing consistency with the Special Permit Plan Set and the Design Guidelines (the “Expanded Schematic Plans”);
  - ii. a signed certificate from the Petitioner’s architect and/or civil engineer certifying that such plans are consistent with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within sixty (60) days of receipt of a complete submission of the materials set forth in Condition #10(a) the Director of Planning and Development will review and provide an opinion as to whether the Expanded Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development’s review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development’s opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the Director’s opinion that the Expanded Schematic Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Within sixty (60) days of receipt of a complete submission of the materials set forth in Condition #10(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public

meeting, will provide an opinion as to whether the Expanded Schematic Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC's public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. The UDC's opinion shall be submitted in writing to the Petitioner, the Commissioner of Inspectional Services, and the Liaison Committee. If it is the UDC's opinion that the Expanded Schematic Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.

- d. Upon receipt of the written consistency opinions referenced in Condition #10(b) and (c) above, the Petitioner may proceed to the construction documents stage. If either the UDC or the Director of Planning issues an opinion that the Expanded Schematic Plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised Expanded Schematic Plans in accordance with Condition #10(a) or follow the review stages set forth in Conditions #8-9.

#### 11. Submission and Review of Construction Documents

- a. Upon completion of the design development stage set forth in Condition #9 or the expanded schematic plan stage set forth in Condition #10, the Petitioner may proceed to the construction documents stage. At this stage, the Petitioner shall file the following with the Director of Planning and Development:
  - i. a copy of plans showing consistency with the Special Permit Plan Set and the Design Guidelines for the portions of the Project necessary for the permit or determination being sought (the "Construction Documents");
  - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the construction Documents are consistent with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #11(a) the Director of Planning and Development will review and provide an opinion as to whether the Construction Documents are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner, the Commissioner of

Inspectional Services, and the Liaison Committee. If it is the Director's opinion that the Construction Documents are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, the Director has the option to seek the UDC's opinion regarding the Construction Documents.

- c. Upon receipt of the written opinion referenced in Condition #11(b) above, the Petitioner may submit a formal building permit application.

## 12. Formal Submission of a Building Permit Application

- a. Upon receipt of a complete building permit application, the Commissioner of Inspectional Services shall make a final determination, with due consideration given to the written opinions of the Director of Planning and Development and the UDC, as to whether the plans filed with such application are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines.
- b. The formal submission of the building permit application shall include a narrative setting forth the total gross square feet of development proposed in the building permit, the total gross square feet of commercial space proposed in the building permit, the total number of bicycle parking stalls proposed in the building permit, the total gross square feet of development on the Development Parcel for which building permits have already been issued, the total gross square feet of the commercial space for which building permits have already been issued, the total number of bicycle stalls for which building permits have already been issued, the total number of dwelling units and Inclusionary Units proposed (if applicable), the total number of dwelling units and Inclusionary Units on the Development Parcel for which building permits have already been issued, and the total number of parking stalls for which building permits have been issued.
- c. In making the final consistency determination, the Commissioner of Inspectional Services may elect to refer the matter to the Land Use Committee for the Committee's review and recommendation, provided however that referral to the Land Use Committee is required for the Committee's review and recommendation of any modifications or changes to the Special Permit Plan Set concerning the following: (i) increase in building height of two feet or greater where allowed under the Zoning Ordinance; (ii) building location changes greater than five feet without decreasing setbacks; (iii) increase in building dimensions or massing where such increase results in an increase in the total gross floor area of a building greater than five percent from what is shown on the Special Permit Plan Set; (iv) footprints of buildings where such changes alter the footprint area or an overall dimension by more than five percent; (v) material changes to the interior road network layout, including driveway locations; (vi) reduction in open space of more than one percent and less than five percent; (vii) an increase or decrease of the total number of dwelling units up to four percent; (viii) an increase or decrease of

greater than 20 but less than 40 in the number of striped parking stalls from what is shown on the Special Permit Plan Set, provided however that in the event a grocery store is located within the Project, an increase of up to 80 striped parking stalls from what is shown on the Special Permit Plan Set is permitted; and (ix) significant changes to major design elements such as towers, vista terminations, entries, and façade treatments. Consistency determinations that are referred to the Land Use Committee for review and recommendation in accordance with this condition do not require the vote or approval of the Committee.

- d. If the Commissioner determines that the application plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, no building permit will be issued, and the Petitioner may submit revised plans to the Commissioner which the Commissioner deems to be consistent.
- e. The following modifications or changes shall not be eligible for a consistency determination and can only be done through amendment of this Special Permit/Site Plan Approval: (i) increase to the building stories shown on the Special Permit Plan Set; (ii) change in the total number of dwelling units in the Project by more than four percent; (iii) any increase in the total gross floor area of any building greater than ten percent from what is shown on the Special Permit Plan Set; (iv) any increase or decrease of more than 40 striped parking stalls from what is shown on the Special Permit Plan Set, except in the event a grocery store is located in the Project as allowed by Condition #12(c); and (v) decrease of more than five percent to the amount of open space of the Project from what is shown on the Special Permit Plan Set.

#### **OFF-SITE IMPROVEMENT CONDITIONS**

- 13. The Petitioner shall design and construct, at no cost to the City, the Route 128/Interstate-95 Interchange improvements as shown on the Conceptual Plans, dated June 18, 2020 and revised through September 15, 2020, entitled “Massachusetts Department of Transportation Highway Division Plan of Rt 128/I-95 Grove Street (Bridge No. N-12-056) in the City of Newton, Middlesex County” (hereinafter the Off-Site Improvements Plans”), which encompasses both the improvements to the Route 128/Interstate 95 southbound and northbound off ramps (hereinafter, the “Interchange Improvements”).
  - a. Prior to the issuance of any building permits for any of the buildings, except for the Parking Garage, the following must occur in connection with the Interchange Improvements:
    - i. The Massachusetts Department of Transportation (MassDOT) must issue a Section 61 Finding (Mitigation Commitment Document required as part of the Massachusetts Environmental Policy Act (MEPA) process).

- ii. The Petitioner must complete the 25% Design Submission phase of the application process for receiving a Highway Access Permit from MassDOT and receive MassDOT's comments in response to the submission indicating authorization to proceed to the next phase of the application process.
  - iii. The mitigation obligations in the Section 61 Finding and the MassDOT comments on the 25% Design review must support approval of the Interchange Improvements.
- b. The Petitioner shall submit all state and federal submissions in connection with the Interchange Improvements, including engineered plans, to the Commissioner of Public Works for review simultaneous with submission to MassDOT and/or FHWA. The Petitioner shall also provide copies of all comments and responses it receives from any federal or state entity to the Director of Planning and Development and the Commissioner of Public Works in a timely manner. The Petitioner shall provide copies of all such submissions, comments, and responses to the Liaison Committee in a timely manner.
  - c. Any material modifications to the final design of the Interchange Improvements by either MassDOT or FHWA will be considered consistent with the conceptually approved plan if, in the opinion of the Commissioner of Public Works, the modified design achieves the same performance objectives as the conceptually approved design.
  - d. Prior to the issuance of a certificate of occupancy (temporary or final) for any of the buildings, other than the Parking Garage, construction of the Interchange Improvements must be substantially complete and approved by MassDOT, but final punch list items for such improvements, including but not limited to landscaping, may be scheduled for completion after the issuance of a temporary certificate of occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner of Inspectional Services (after consultation with the Director of Planning and Development and the Commissioner of Public Works) to be sufficient to complete such outstanding work.
  - e. The Petitioner shall comply with the conditions of any permit issued by MassDOT for off-site improvements, including but not limited to the MEPA Section 61 findings.
14. The Petitioner shall design and construct, at its sole cost, the roadway improvements and mitigation along Grove Street as shown and described on the Off-Site Improvements Plans and as further described in Condition #14(a) below (hereinafter the "Grove Street Improvements").



- a. The Grove Street Improvements shall consist of the following:
- i. The installation of three new traffic signals at the following locations: (1) at the Project's Grove Street entrance; (2) at the Recreation Road Extension intersection/NB Ramp; and (3) at the Grove Street and Recreation Road extension intersection. Such signals shall use adaptive technology as well as transit signal priority and shall be connected to one another. The signal and lane striping at the Project's Grove Street entrance shall discourage left hand turns into the Project, in accordance with the expectation that the City will adopt a traffic regulation prohibiting such left hand turns at this location. Prior to operation of the new traffic signals, as well as prior to any subsequent adjustments or modifications to the timing of the signals, which timing is expected to require the approval of MassDOT, the Petitioner must consult with the Commissioner of Public Works regarding the timing of the signals.
  - ii. Adjustment or modification to the timing of the signal at the intersection of Grove Street and the Riverside Business Center drive entrance, to be reviewed and approved by the Commissioner of Public Works, in order to establish the most beneficial traffic flow.
  - iii. A ten-foot wide two-way bicycle track along the entire length of the Development Parcel's Grove Street frontage and continuing from the southerly end of that frontage to the northerly corner of Grove Street and Asheville Road.
  - iv. A ten-foot wide multi-use path on the westerly side of Grove Street from Asheville Road to the driveway entrance of the Lower Falls Community Center at 545 Grove Street, subject to any necessary approvals from the City which the Petitioner shall diligently pursue.
  - v. A pedestrian walkway along the entire length of the Development Parcel's Grove Street frontage and continuing from the southerly end of that frontage to the northerly corner of Grove Street and Asheville Road which shall be:
    - 1. no less than six feet in width from the northerly end of the Development Parcel's Grove Street frontage to the Project's Grove Street entrance;
    - 2. no less than eight feet in width from the southerly side of the Development Parcel's Grove Street entrance/exist to the southerly end of the Project's Grove Street frontage; and

3. no less than 5 feet in width from the southerly end of the Development Parcel's Grove Street frontage to the northerly corner of Grove Street and Asheville Road.
- vi. A tree way no less than five feet in width throughout its length along the Development Parcel's Grove Street frontage on the easterly side of the two-way bicycle track.
- vii. Light poles in a buffer separating the two-way bicycle track from the pedestrian walkway for the length of the Development Parcel's Grove Street frontage. This buffer shall be at least 2.5 feet wide. All details of the light poles including but not limited to type, height, fixtures, and level of illumination shall be reviewed and approved by the Commissioner of Public Works or his/her designee.
- viii. A crosswalk with a Rapid Reflectorized Flashing Beacon (the "RRFB") adjacent to the transit plaza between Buildings 6 and 7. The Petitioner shall also design and construct a sidewalk on the eastern side of Grove Street from the RRFB to the existing sidewalk north of the Project. The final location of these improvements shall be reviewed and approved by the Commissioner of Public Works or his/her designee.
- ix. The Off-Site Improvements Plans shall be updated to retain the crosswalk across Grove Street adjacent to 406-416 Grove Street.
- x. General grading and drainage improvements on Grove Street as shown in the Special Permit Plan Set.
- xi. Signage appropriate to direct pedestrians and bicyclists, subject to the approval of Traffic Council and/or the Public Facilities Committee and, to the extent necessary, MassDOT.
- b. To the extent required, it shall be the responsibility of the Petitioner to receive all necessary approvals from MassDOT to complete the Grove Street Improvements.
- c. Prior to the issuance of any building permits for any of the buildings, except for the Parking Garage, the Petitioner shall submit final engineered plans for the Grove Street Improvements for review and approval by the Public Facilities Committee and docket a petition with the Traffic Council, pursuant to Revised Ordinances, §19-29, for adoption of a regulation prohibiting left turns from Grove Street into the Project. Notwithstanding the foregoing, the Petitioner shall have no obligation to enforce any such traffic regulation and shall not be required to reconstruct the intersection at the Grove Street entrance to the Project in connection with the same.

- d. Prior to the issuance of a certificate of occupancy (temporary or final) for any of the buildings, except for the Parking Garage, the Petitioner shall, at its own expense, offer a permanent easement in favor of the City, in a form approved by the Law Department, to allow the public to access and use the portion of the pedestrian and bicycle infrastructure along the Development Parcel's Grove Street frontage that is located within the Development Parcel (which includes the pedestrian walkway, buffer, and two-way bicycle track). Such easement shall be executed and recorded upon substantial completion of the Grove Street Improvements. At the same time, the Petitioner shall also enter into a License Agreement with the City, in a form approved by the Law Department, obligating the Petitioner to indemnify the City and maintain (including but not limited to snow removal), at its sole cost, the pedestrian walkway, two-way bicycle track, and landscaping along the entire length of the Development Parcel's Grove Street frontage that is located between the Development Parcel's property line and the curb line. The License Agreement will not obligate the Petitioner to maintain any lighting, signage or fire hydrants.
- e. Prior to the issuance of any certificate of occupancy (temporary or final) for any part of buildings 5 and 6, construction of the Grove Street Improvements shall be inspected and approved as substantially complete and fully operational from a traffic management perspective by the Commissioner of Public Works and the Director of Planning and Development, but final punch list items for such improvements, including but not limited to landscaping, may be scheduled for completion after the issuance of a temporary certificate of occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner of Inspectional Services to be sufficient to complete such outstanding work.

#### **MITIGATION CONDITIONS**

- 15. The Petitioner shall make payments in the aggregate amount of \$1,400,000.00 to the City for municipal infrastructure improvements, which amount shall be deemed to satisfy the Petitioner's obligation for inflow and infiltration (I&I) mitigation in accordance with Section 29-169 of the Revised Ordinances of Newton, Massachusetts, 2017 (hereinafter, "Revised Ordinances"). Payments shall be made as follows:
  - a. \$700,000.00 at the first building permit for a residential building in the Project.
  - b. \$700,000.00 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.
- 16. The Petitioner shall make payments in the aggregate amount of \$1,300,000.00 to the City for off-site traffic mitigation or other neighborhood improvements in the areas of Lower Falls and Auburndale impacted by the Project.

- a. The Petitioner's payments shall be made to a municipal account designated for such mitigation and improvements (hereinafter, the "Mitigation Fund") as follows
    - i. \$650,000.00 at the first building permit for a residential building in the Project.
    - ii. \$650,000.00 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.
  - b. The Mitigation Fund shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. Requests for expenditures from the Mitigation Fund may be made by a Community Improvement Group ("CIG"), to be established by the City Council in accordance with this Condition, or at the request of City officials. The CIG shall serve in an advisory role regarding any expenditure from the Mitigation Fund. All requests for expenditures made by the CIG shall be referred to the appropriate City Department for review. All expenditures from the Mitigation Fund shall require, in addition to the approval of the City Council, the approval of the City Department, or State agency, if any, that oversees the proposed improvement.
  - c. The City Council shall establish a five-member CIG composed of representatives from the Auburndale and Lower Falls neighborhoods. Any request for expenditures made by the CIG shall require a majority vote of a quorum of three members of the CIG, provided, however, that no vote shall be required when the CIG is providing advice to the City Council on a request for any expenditure from the Mitigation Fund by a party other than the CIG. The City Council may establish terms for the community members as well as additional procedural rules for the CIG, which shall be subject to all applicable laws and regulations.
17. The Petitioner shall make payments in the aggregate amount of \$1,500,000.00 to the City for improvements to the Williams Elementary School. The Petitioner's payments shall be made to a municipal account designated for improvements to the Williams School as follows:
- a. \$750,000.00 at the first building permit for a residential building in the Project.
  - b. \$750,000.00 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.
18. As mitigation for the Project, subject to the conditions set forth below, the Petitioner shall design, construct, and/or make payments for the off-site trail connections and improvements set forth in and in accordance with the plans entitled "Riverside Station Trail Network," dated April 9, 2020, as the same may be modified pursuant to the terms herein during the permitting process in an amount up to \$3,000,000.00.

- a. Prior to the issuance of any certificate of occupancy (temporary or final) for the Project other than a certificate of occupancy for the Parking Garage, the Petitioner shall make a payment to the Massachusetts Department of Conservation and Recreation (“DCR”) to reimburse DCR for its preparation of design plans to MassDOT 100% Highway Design Submission standards for improvements to the following MassDOT-owned bridges: Bridge No. N-12-062 (892) and Bridge No. N-12-061 (891) (the “Two Bridges DCR Payment”). This scope of work is anticipated to include preliminary design plans, a Chapter 85 Structural Review, and 100% design approval for improvements to the above referenced bridges beginning at the Recreation Road Bridge Approach (as described below) to the north as well as a spur trail to access the Leo J. Martin parkland and across the City of Newton Tax Parcel 42012 0031 terminating on Clearwater Road.
- b. The Petitioner shall make best efforts to diligently obtain all necessary approvals prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit for the following design and construction improvements (collectively, the “Trail Design and Construction Work”):
  - i. “Pony Truss Trail Link” consists of designing and constructing an approximately 6-8’ wide recreational trail on a portion of the land owned by DCR which will link the recently restored Pony Truss Trail to the improvements to the Depot Tunnel Link (as described below).
  - ii. “Depot Tunnel Link” consists of designing and constructing an approximately 8’ wide multiuse recreational trail which links the trail system in Pigeon Hill Park in Newton to the Depot Tunnel Improvements (as described below).
  - iii. “Depot Tunnel Improvements” consists of preparing design plans to MBTA 100% Design Submission standards for improvements to MBTA-owned tunnel under the MBTA Worcester Line and the construction of the improvements to include structural, surface, safety, and aesthetic improvements. It is anticipated that the existing tunnel will require minor structural improvement but primarily shall consist of surface, safety and aesthetic improvements.
  - iv. “MWRA Path Link” consists of designing and constructing an approximately 8’ wide multiuse trail which links the proposed 2-way multiuse path along Recreation Road from its terminus at Riverside Park in Weston under the Recreation Road and Framingham MBTA Commuter Rail Overpasses to the existing paved trail adjacent to the existing MWRA facility.

- v. "Recreation Road Bridge Approach" consists of designing and constructing an approximately 8' wide multiuse trail which links the northern abutment of Bridge No. N-12-061 (891) to the proposed 2-way multiuse path along Recreation Road adjacent to the Project.
- c. The Petitioner's best efforts to diligently obtain all necessary approvals for the Trail Design and Construction Work must be documented to the Director of Planning and Development. The Petitioner must consult with the Department of Planning and Development and the non-profit group Newton Conservators Inc. during the design, approval, and construction phases of the Trail Design and Construction Work, including design changes requested by DCR or other permitting agency. The Petitioner shall periodically meet with, update and solicit input and feedback from the Department of Planning and Development on a quarterly basis following approval of this Special Permit/Site Plan Approval.
- d. Upon receipt of all necessary approvals for the Trail Design and Construction Work, the Petitioner shall diligently commence and diligently complete the Trail Design and Construction Work, up to a maximum of three million dollars (\$3,000,000.00) less the Two Bridges DCR Payment. The work shall be completed before the issuance of a certificate of occupancy (temporary or final) for the tenth building constructed or the Project Completion Date, whichever is sooner.
- e. If the Petitioner reasonably believes that the costs for performing the Trail Design and Construction Work and the Two Bridges DCR Payment will exceed three million dollars (\$3,000,000.00), the Petitioner shall endeavor to meet with DCR and utilize best efforts to reach agreement with DCR on modifications to the scope of the Trail Design and Construction Work to reduce the costs to \$3,000,000.00. The Petitioner shall also consult with the Director of Planning and Development prior to any such modifications to the scope of the Trail Design and Construction Work. The Petitioner shall provide an itemized accounting for all design and construction costs incurred upon request from Director of Planning and Development.
- f. In the event the Trail Design and Construction Work is undertaken by the Petitioner in accordance with this Condition, then prior to the issuance of a certificate of occupancy (temporary or final) for the tenth building constructed, or before the Project Completion Date, whichever is sooner, the Petitioner shall make a one-time payment to the Newton Conservators Inc. Trails Fund in the amount of \$50,000.00 (which shall be part of the Petitioner's total \$3,000,000 commitment for the Trail Design and Construction Work and the Two Bridges DCR Payment) to be used by the Newton Conservators to supplement DCR's maintenance of the trails constructed by the Petitioner.



- g. In the event the Petitioner fails to secure all necessary approvals for the Trail Design and Construction Work prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit, the Petitioner shall make a payment of three million dollars (\$3,000,000.00), less the Two Bridges DCR Payment, to the City for open space/parks and recreation improvements in the vicinity of the Project (the "Trails Payment"). The Trails Payment shall be made to a municipal account designated for such improvements within 30 days after the issuance of the 285th certificate of occupancy (temporary or final). Appropriations of the Trails Payment shall be in accordance with municipal finance law.
- h. In the event that a necessary approval for the Trail Design and Construction Work is denied at any time prior to the issuance of the certificate of occupancy (temporary or final) for the 285th dwelling unit, or the event a necessary approval is constructively denied (as confirmed by the Director of Planning and Development), the Petitioner shall make the Trails Payment to the City as follows:
  - (i) 50% of the Trails within 60 days after the denial or constructive denial of the approval; and
  - (ii) 50% of the Trails Payment within 120 days after the denial or constructive denial of the approval.Notwithstanding the preceding requirements, all payments made pursuant to this Condition #18(h) must be made no later than 30 days after the issuance of the 285th certificate of occupancy (temporary or final) for a dwelling unit and no payment shall be required prior to the issuance of a building permit (other than a demolition permit) for the Project by the City.

#### **AFFORDABILITY CONDITIONS**

- 19. In accordance with the Zoning Ordinance, §5.11.4, 17.5% of the dwelling units in the Project shall be affordable housing units (the "Inclusionary Units"), as follows:
  - a. 15% of the dwelling units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). Three (3) of these Tier 1 Units must be affordable to households earning at or below 50% of AMI. The breakdown of the three units at greater affordability shall be two 3-bedroom units and one 2-bedroom unit. The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI; alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
  - b. 2.5% of the dwelling units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Units").
  - c. The Petitioner agrees that if the Project's inclusionary zoning requirement results

in a fraction of a unit less than 0.5, it will provide one Inclusionary Unit to capture that fraction.

20. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable inclusionary zoning provisions of the Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein. The Project is not required to comply with the Zoning Ordinance provision, effective January 1, 2021, changing the requirements for projects with 100 or more dwelling units.
21. The bedroom mix of the Inclusionary Units shall be proportionate to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	Studio	1BR	2BR	3BR
Tier 1 Inclusionary Units	8	42	35	3
Tier 2 Inclusionary Units	1	7	6	1

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for vertical construction, other than the Parking Garage, for the Project.

22. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water, and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Zoning Ordinance, § 5.11.4.D.1.
23. Prior to the issuance of any building permits for the vertical construction of the Project, except for the Parking Garage, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of the Massachusetts Department of Housing and Community Development (DHCD)'s guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery. The nature and extent of the local preference scheme included in any final AFHMP submitted to DHCD for its review and approval shall be in accordance with the applicable provisions of the City's Revised Ordinances and/or Zoning Ordinance governing the percentage of local preferences for Inclusionary Units in a project in effect at the time of such submission to DHCD.
24. Prior to the issuance of any temporary or final certificate of occupancy for any residential portions of the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of

Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.

25. Prior to the issuance of any temporary or final certificate of occupancy for any residential portions of the Project, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Units in perpetuity.
26. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
27. The Inclusionary Units shall be located, designed, and constructed subject to the provisions of the Zoning Ordinance, §5.11.7.
28. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and throughout each residential building, and shall be sited in no less desirable locations than the market-rate units. The locations of such units within a residential building and the location of their parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for vertical construction for such residential building.
29. No dwelling unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the plans submitted with the building permit application for such building.
30. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Zoning Ordinance.
31. Any guest suites or temporary housing that meet the definition of a Dwelling Unit under the Zoning Ordinance shall be counted as a unit for purposes of calculating the Project's inclusionary zoning requirement.

#### **CONSTRUCTION CONDITIONS**

32. In accordance with the Memorandum of Understanding between the City of Newton and the Division of Professional Licensure, dated July 9, 2020, the Petitioner shall apply for all required building, electrical and plumbing permits for construction on the Development Parcel with the City of Newton's Inspectional Services Department, except for the Parking Garage and the improvements between buildings 7 and 8 that connect to the MBTA station. The Petitioner shall provide copies of all building permits and certificates of occupancy issued by the state to the Inspectional Services Department and Department of Planning and Development.

33. The Petitioner shall pay the reasonable fees of the City's consultants for review of the building permit plans or documents described herein submitted to the City or for inspections by the City required herein during the construction phase.
34. Each of the proposed buildings/site improvements may be constructed and occupied prior to construction of the remaining buildings/site improvements provided that the landscaping and public amenities associated with such proposed improvements are in place in accordance with the "Landscaping and Open Space Phasing Plan," dated September 23, 2020, that is part of the Special Permit plan Set or a bond is posted in accordance with Condition #94.
35. All on-site open spaces that are freely open to the public pursuant to Section 4.2.4.C of the Zoning Ordinance and designated as public in the Special Permit Plan Set (the "Public Open Spaces") shall be open to the public, at no cost to the public or the City, from at least dawn to dusk every day. The Petitioner's obligation to maintain the Public Open Spaces and to allow public access as required by this condition shall continue for so long as the Project authorized by this Special Permit/Site Plan Approval or any amendment thereto is in effect, subject to the following:
  - a. The construction of each Public Open Space shall be completed before the issuance of a certificate of occupancy (temporary or final) for the buildings associated with such Public Open Space as set forth in the "Landscaping and Open Space Phasing Plan" or a bond shall be posted in accordance with Condition #94.
  - b. All Public Open Spaces must be accessible to persons with disabilities.
  - c. The Petitioner shall provide appropriate and adequate lighting of all Public Open Spaces.
  - d. The Petitioner shall maintain the landscape, lawns, and plantings on the Public Open Spaces in good, healthy condition.
  - e. The Petitioner and the City shall work together to allow the City to utilize the Public Open Spaces for public events from time to time, subject to the execution of a mutually acceptable license agreement. The City shall be responsible for the cost to set-up, clean up, and operate such public events, but will not be charged rent for use of the Public Open Spaces.
  - f. The Petitioner may promulgate reasonable rules and regulations that govern use of the Public Open Spaces, which must be reviewed and approved by the Commissioner of Parks, Recreation and Culture Department. The Public Open Spaces may be closed by the Petitioner, at periodic and reasonable times, for private events or for the minimum extent necessary to prevent the establishment of prescriptive easements.
36. All construction activity on the Development Parcel shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-5:00PM on Saturdays, excluding federal, state, and local holidays, unless waived by the Mayor in accordance with Revised Ordinances, § 20-13.

Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.

37. The Petitioner shall submit a demolition management plan for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, Commissioner of Health and Human Services, prior to the issuance of any building permit by the City for the Project (including a demolition permit). The Petitioner shall comply in all material respects with the approved plan.
38. The Petitioner shall comply in all material respects with the Final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer prior to issuance of any building permit by the City for the Project (other than a demolition permit). The Final Construction Management Plan shall be consistent with the Preliminary Construction Management plan submitted to the City Council, dated September 17, 2020. The Final Construction Management Plan and all supplemental/updated CMP's which shall be submitted with each building permit application, shall include, but not be limited to, the following provisions:
  - a. The proposed schedule of the Project, including the general sequencing of the construction activities.
  - b. The Proposed timeline and construction schedule for each building for which a building permit is sought.
  - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage areas, on-site staging areas for delivery vehicles, location of security fencing, and locations of on-site dumpsters and regular disposal schedule for each building for which a building permit is sought.
  - d. Proposed truck routes that minimize travel on local streets.
  - e. Proposed methods for dust control to prevent dust from leaving the Development Parcel, including, but not limited to: on-site water trucks; covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; hosing during demolition and earth work where appropriate; and locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Development Parcel.
  - f. Proposed methods of noise control, to ensure compliance with the Revised Ordinances, § 20-13 and the Massachusetts Department of Environmental Protection noise regulation and policy. Staging activities should be conducted in

a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practicable from noise sensitive locations.

- g. Proposed methods of vibration control.
  - h. A plan for rodent control during demolition and construction.
  - i. Anticipated dewatering (if any) during construction, site safety, and stability, particularly for driveway entrances.
  - j. A site safety plan, which will show paths of travel for emergency vehicle access during construction of each building for which a building permit is sought.
  - k. 24-hour contact information for the general contractor for each building for which a building permit is sought. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department, shall be posted on a construction activity website to be established by the Petitioner, and shall be posted on the job site.
  - l. Security plan showing how the portions of the Development Parcel under construction will be secured during construction and after hours.
  - m. Offer to provide a pre-construction survey of any buildings and structures within 250 feet of the Development Parcel at no charge to the owners of the buildings and structures.
39. Prior to the issuance of any building permit for the Project by the City (other than a demolition permit), the Petitioner shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance Plan ("O&M Plan") for Stormwater Management for review and approval by the City Engineer for consistency with the Stormwater Report, prepared by VHB, dated December 2019, on file with the City Clerk and the Planning Department. Once approved, the O&M Plan must be adopted, implemented, and maintained by the Petitioner. The Petitioner shall record a copy of the O&M Plan at the Middlesex South Registry of Deeds.
40. Prior to the issuance of any building permit for the Project by the City, including a demolition permit, the Petitioner shall develop and submit a Stormwater Pollution Prevention Plan for review and approval by the City Engineer. During construction, the Petitioner shall comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site and provide documentation to the City once every four months during construction that the stormwater pollution control measures to be undertaken during construction have been implemented on an ongoing basis.
41. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.



42. There shall be no on-site rock crushing.
43. The Petitioner will comply with applicable state and local laws, regulations, and protocols governing blasting, including the Standard Blasting Conditions for Special Permit/Site Plan Approvals, dated May 31, 2002, on file with the City Clerk. Detonation of blast charges shall be limited to 10:00AM-3:00PM Monday through Friday, excluding federal, state, and local holidays.
44. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by any construction vehicles traveling to or from the Development Parcel. All repair work shall be done prior to the issuance of the final certificate of occupancy for the final dwelling unit in the Project, unless the Commissioner of Public Works determines either:
  - (a) that the damage to the public way is so extensive that it limits the use of the public way;
  - (b) that the damage interferes with traffic flow; or
  - (c) that the damage poses a threat to public safety.In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
45. The Petitioner shall implement a Community Engagement Plan during the construction period of the Project in order to predict, preempt and address issues which may arise affecting the general community. Implementation shall begin no less than two (2) months prior to the commencement of any site work and/or other construction activities related to the work approved through this Special Permit/Site Plan Approval. The Community Engagement Plan shall provide, without limitation, a communication plan and schedule for regular construction updates and advisories, point contacts for Petitioner and Petitioner's primary contractors, engagement plan with the Lower Falls and Auburndale residents and local businesses, and communications with Ward Councilors and any other interested Councilors. The Petitioner shall designate a single individual to communicate with the neighbors and the Ward 4 City Councilors via email. The designated individual shall send updates of any changes of the construction schedule to the established distribution list.
46. No more than six (6) months after approval of this Special Permit/Site Plan Approval, a Liaison Committee shall be established consisting of two (2) designees of the Petitioner or Organization of Owners, four (4) residents from the neighborhood surrounding the Project, and two (2) Ward 4 City Councilors, one of which shall be appointed Chair of the Committee. The President of the City Council shall appoint the resident neighborhood members and the City Councilors. The Liaison Committee shall be the "advisory council" required by Section 4.2.3.I of the Zoning Ordinance. Meetings of the Liaison Committee will be open to the public, and the Liaison Committee will establish such agenda and procedures as it shall see fit.
  - a. The purposes of the Liaison Committee shall be:

- i. To review, discuss, and comment on documents and monitoring reports or results submitted or filed by the Petitioner in connection with the work authorized by this Special Permit/Site Plan Approval.
  - ii. To enhance and ensure communication as to the status and progress of the construction of the Project by the Petitioner.
  - iii. To provide a forum for initial presentation of a construction schedule and any significant changes to schedule or changes of plans for which public review is appropriate.
  - iv. To receive and deal with construction-specific issues including, without limitation, noise, dust, parking and traffic; to monitor implementation of the final Construction Management Plan; and to receive notices and communications from the Department of Inspectional Services and the Planning and Development Department.
  - v. To ensure compatibility of the uses and activities within the Development Parcel and its neighbors after construction is complete.
- b. The Liaison Committee shall meet regularly after its establishment (monthly through the first six months of the construction period, and thereafter, every three months), unless there is consensus within the Liaison Committee that no meeting is necessary, until at least six (6) months after the initial occupancy of the final building to be completed. The first meeting shall be convened by the Chair of the Committee. The Liaison Committee shall work by consensus, but nothing in the establishment of the Liaison Committee shall inhibit any member, including the Petitioner, from engaging in any lawful activities.
  - c. Following completion of construction, the Liaison Committee shall meet annually unless there is consensus within the Committee that no meeting is necessary or that more frequent meetings are necessary.
  - d. The Liaison Committee shall, at a minimum, give written notice to the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development of its meetings.
47. Any portions of the Project subject to the jurisdiction of the Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the Project that is subject to such jurisdiction.
48. All dwelling units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, a minimum of 5% of the dwelling units in each building and 7% of the dwelling units in the Project shall be designed as "Group 2A" units,

which are designed spatially for immediate wheelchair use and with the ability to adapt additional components of the units upon need, at the Petitioner's sole cost and expense. At least 17.5% of the "Group 2A" units shall be Inclusionary Units.

49. All internal roadways shall be designed as shown on the Special Permit Plan Set and, except as otherwise provided for herein, shall be open to the public.
50. All sidewalks and accessible ramps shall be ADA compliant unless a variance for noncompliance is granted. A letter of compliance prepared by a professional engineer registered in the Commonwealth of Massachusetts shall be submitted prior to issuance of a certificate of occupancy (temporary or final) that certifies compliance of any sidewalks and accessible ramps for portions of the Project for which a certificate of occupancy is requested.
51. The Petitioner shall locate all utility service lines within the Development Parcel underground, other than utility lines owned or controlled by the MBTA.
52. All utility service lines along the frontages of the Development Parcel, other than utility lines owned or controlled by the MBTA, shall be placed underground.
53. The Petitioner shall prepare and submit a final site plan and final circulation plan for review by the Fire Department that confirms the Fire Department will have sufficient access to all buildings on the Development Parcel, confirms that fire access will function safely, and shows all hydrants and fire connections, and other features as may be required for Fire Department approval.
54. The Petitioner shall ensure that adequate electricity is supplied to the Project. The Petitioner shall be solely responsible for all costs imposed by the applicable electric utility company for upgrades to the electrical system necessary to supply adequate electricity to the Project.
55. Prior to the issuance of the first building permit for vertical construction of the Project, the Petitioner shall submit a photometric plan detailing lighting locations and levels of the Project's interior roadways as well as the Grove Street and Recreation Road frontages to the Director of Planning and Development and Commissioner of Public Works for review and approval. A copy of the photometric plan shall be provided to the Liaison Committee.
56. No building permit (other than a demolition permit) shall be issued by the City for work on the Project until the Petitioner has submitted a complete Release Abatement Measure Plan to the Department of Environmental Protection in accordance with 310 CMR 40.0444 through 40.0449.

#### **CONDITIONS RELATED TO SUSTAINABILITY**

57. All buildings, except for Buildings 1 and 2 and the non-residential portions of Buildings 9 and 10, shall be designed and constructed to achieve LEED v.4 Gold for Building Design and Construction Multifamily Midrise certifiable standard.

58. Buildings 1 and 2 shall be designed and constructed to achieve LEED v.4 Silver certifiable standard.
59. The Petitioner shall construct the residential portions of Buildings 7 and 8, plus the residential portions of one additional residential building, to achieve Passive House certification in accordance with the requirements of the Passive House Institute US (PHIUS), the Passive House Institute (PHI), or other recognized passive house certification organization and this Special Permit/Site Plan Approval. The commercial portions of such buildings shall not be obligated to meet such standards and shall be excluded from the certification.
60. The Petitioner shall complete Passive House feasibility studies and energy modeling for the residential portions of Buildings 3, 4, 5, 6, 9, and 10 (unless such building is being constructed to achieve Passive House certification) to determine the design and construction approach. Such reports shall be provided to the Director of Planning and Development prior to the issuance of the first building permit for vertical construction of the Project.
61. The Petitioner shall complete an embodied carbon analysis to guide materials selection during design and construction. The analysis will include but not be limited to materials for concrete, framing, cladding, and insulation. Such analysis shall be provided to the Director of Planning and Development prior to the issuance of the first building permit for vertical construction of the Project.
62. The Petitioner shall achieve and/or implement the following sustainability strategies which shall be incorporated into the Project:
  - a. The Petitioner shall utilize all electric sourced heating and cooling systems in the residential portions of all buildings. The Petitioner will explore all electric sourced heating and cooling mechanical systems in Buildings 1 and 2.
  - b. The Petitioner shall utilize all electric sourced domestic hot water in the residential portions of all buildings.
  - c. For all dwelling units, and in all other spaces where applicable, the Petitioner shall utilize electric "Energy Star" appliances (or functional equivalent).
  - d. The Petitioner shall install solar installations on roofs of a sufficient number of residential buildings to offset at least 25 percent of the house load of the passive house buildings. Except for Buildings 9 and 10, all building roofs that are not essential locations for mechanical systems (which the Petitioner must make every effort to consolidate) shall be solar ready. To the greatest extent feasible, the Petitioner will utilize such building roofs for actual installation and implementation of sustainable strategies including photovoltaic panels, green roofs and/or reflective roof materials. A final roof mapping plan for each building in the Project (other than for Buildings 9 and 10) shall be submitted to the Director

of Planning and Development for review and approval prior to the issuance of a building permit for vertical construction of such building.

- e. The Parking Garage shall be designed and constructed to accommodate solar panel coverage on the roof. The Petitioner shall use best efforts to ensure that the MBTA undertakes the necessary procurement effort to implement solar on the roof of the Parking Garage.
  - f. Bicycle parking/storage will be provided for at least 880 bicycles on the Development Parcel at full build out.
  - g. Electric vehicle charging stations will be provided for 10% of the striped non-MBTA parking spaces (anticipated to be 101 spaces), with expansion built in to double the amount to 20% of the non-MBTA parking spaces (anticipated to be 202).
  - h. A rain harvesting system will be utilized to capture some roof rainwater for irrigation.
  - i. Drought tolerant and indigenous plants will be the predominant species installed in the landscape.
  - j. Low Impact Design (LID) strategies will be employed in the design of the stormwater management system.
  - k. Permeable pavement and pavers will be utilized as part of the LID strategy.
63. The Petitioner shall analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, other than the Parking Garage, in order to determine their feasibility and the possible return on investment if they were to be implemented:
- a. Depending on the results of the Passive House feasibility studies as required pursuant to Condition #60 above and Petitioner's return on investment analysis, the Petitioner will seek to achieve Passive House Certification similar to those contemplated in Condition #59 for the residential portions of some or all of the remaining buildings to the fullest extent feasible.
  - b. The Petitioner will study the feasibility of achieving the LEED Gold v.4 certifiable standard for Buildings 1 and 2.
  - c. The Petitioner's design teams will utilize the results of the embodied carbon analysis as required by Condition #61 above during the design process so that low embodied carbon materials can be incorporated when cost, availability, and performance is feasible.

- d. Depending on the future utilization of the electric car charging stations and the level of future potential demand, the Petitioner will explore the feasibility of securing increased electrical service to provide charging stations for up to 80% of the non-MBTA striped parking spaces as the market demand for charging stations increases.
- e. Increasing solar installations on residential roofs to offset more than 25 percent of the house load of the passive house buildings.
- f. Installing Level 2 or DC fast-charge electric vehicle charging stations on the Development Parcel.

#### **PARKING CONDITIONS**

- 64. The cost of residential tenant parking for market-rate units shall be charged separately from residential tenant rents, and the rental period cannot commence prior to, or extend past the end of, the rental period of the unit. Residential tenant parking shall only be rented to current residential tenants. One (1) parking stall shall be available for each Inclusionary Unit without charge to the tenant of such unit.
- 65. Prior to the issuance of any certificate of occupancy (temporary or final) for the buildings other than the Parking Garage, the Petitioner shall submit a Parking Management Plan (the "Parking Management Plan") to the Director of Planning and Development and the Commissioner of Public Works for review and approval that maximizes the use of available parking spaces, encourages shared parking opportunities, and identifies any valet parking programs. A copy of the Parking Management Plan shall also be provided to the Liaison Committee. The Parking Management Plan shall include, but not be limited to, the following:
  - a. Flexibility in updating the Plan in the event that conditions change that merit different approaches to maximizing the use of available parking spaces. Changes to the Parking Management Plan shall require the approval of the Director of Planning and Development and the Commissioner of Public Works and should be reconsidered with each change in use.
  - b. Number of parking garage staff working during the weekday evening peak hour and any events where inbound transit ridership may conflict with the weekday evening peak hour, e.g. Boston Red Sox games.
  - c. Locations and type of signage and staff posted strategically to direct people to available parking on Red Sox game days.
  - d. Incentives to reduce parking demand, such as renting parking spaces separately from rental of dwelling units so as to make extra parking available for use by



nonresidents, assigning priority parking for carpoolers, and setting aside spaces for car-sharing.

- e. Designate a Parking Manager who will respond to neighborhood concerns and enforce the Parking Management Plan, and whose contact information must be provided to the Commissioner of Public Works and the Director of Planning and Development.

66. Construction workers performing work on the Project shall not be permitted to park on the streets surrounding the Development Parcel.

#### **TRANSPORTATION CONDITIONS**

67. Prior to the issuance of the first building permit for vertical construction for any building other than the Parking Garage, the Petitioner shall submit a final Transportation Demand Management Plan (the "TDM Plan") to the Director of Planning and Development and the Commissioner of Public Works for review and approval. The final TDM Plan shall be consistent with the preliminary TDM Plan dated September 18, 2020 and on file with the City Clerk and the Planning and Development Department. The final TDM Plan shall include, but shall not be limited to, the following provisions:

- a. The fee structure of parking for the dwelling units.
- b. The identification of the Transportation Management Association and the on-site transportation coordinator, if applicable.
- c. The transportation subsidy along with transportation marketing services such as promotions and welcome packets that will be available in conjunction with the issuance of the first residential certificate of occupancy (temporary or final).
- d. A summary of efforts to establish a car-share service and/or bike share service on the Development Parcel.
- e. A parking layout plan, which shall identify the location of the parking spaces associated with the Inclusionary Units in accordance with Condition #28. Prior to the issuance of any building permit after a certificate of occupancy is issued for the parking garage, the Petitioner shall update the Final TDM Plan to include final as-built floor plans of the Parking Garage indicating which stalls are served by electric vehicle charging stations and which stalls are wired for future charging stations.

68. In accordance with Section 7.3.5.E.1.c of the Zoning Ordinance, the Petitioner is required to implement mitigation to reduce the trip counts if the actual total number of vehicle trips exceeds the weekday evening adjusted volume by more than 10%. It is agreed that 110% of

the weekday evening vehicle trips adjusted volume is 696 vehicle trips (the “Maximum Trip Count”).

69. Annual monitoring of vehicle trips generated by the Project to determine consistency between the Maximum Trip Count and the actual number of vehicle trips shall take place as follows:

- a. Annual Monitoring shall begin within twelve months after the issuance of certificates of occupancy (temporary or final) for 80% of the gross floor area of the Project. The commencement of annual monitoring may be deferred if in the opinion of the Director of Planning and Development and the Commissioner of Public Works it would be beneficial to commence such monitoring at a later date.
- b. Annual monitoring shall no longer be required upon the earlier of the third year after: (i) the Project reaches 85% occupancy based on the Project’s gross floor area; or (ii) the Project Completion Date, unless the Maximum Trip Count (or adjusted Maximum Trip Count) has been exceeded as set forth in Section 7.3.5 of the Zoning Ordinance. 85% occupancy based on the Project’s gross floor area or the Project Completion Date, whichever occurs earlier, is deemed full occupancy and final build out of the Project for purposes of Section 7.3.5 of the Zoning Ordinance.
- c. The Petitioner shall promptly notify the Director of Planning and Development in writing as soon as: (i) certificates of occupancy (temporary or final) have been issued for 80% of the gross floor area of the Project; and (ii) the Project reaches 85% occupancy based on the Project’s gross floor area. In addition, the Petitioner shall provide occupancy information to the Director of Planning and Development and/or the Commissioner of Public Works upon the request of either.
- d. The Monitoring counts shall be conducted on dates to be determined by the Director of Planning and Development
- e. Monitoring may be required to begin earlier and/or to be conducted more frequently than required by these conditions at the request of the Director of Planning and Development and the Commissioner of Public Works in accordance with Section 7.3.5.E.1.a of the Zoning Ordinance.

## 70. Monitoring Methodology

- a. Monitoring shall be done by a qualified traffic engineering firm, to be hired and overseen by the Department of Planning and Development and to be paid for by the Petitioner (the “Qualified Traffic Engineering Firm”). Monitoring shall count the actual number of weekday peak hour, Saturday peak hour, and weekday daily

vehicle trips to and from the Project at all access points studied in the Transportation Impact and Access Study, dated December 2019 (the "TIAS"). The City's Qualified Traffic Engineering Firm in consultation with the Petitioner, shall design a methodology to count the number of vehicle trips associated with the transit station as well as the number of vehicle trips that cut-through the Development Parcel, and these trips shall be deducted from the total number of vehicle trips during the weekday evening peak hour.

- b. The Petitioner shall provide data from the MBTA's portion of the Parking Garage and the Petitioner's portion of the Parking Garage to ensure an accurate count of MBTA trips and to ensure vehicles associated with the Project that are parking in the MBTA's portion of the Parking Garage are counted as project trips.
- c. For any monitoring occurrence, the Maximum Trip Count of 696 trips shall be adjusted to reflect current occupancy levels of all buildings, subject to reasonable allowances for internal capture and mode split and consideration of the current mix of uses and construction on the Development Parcel as determined by the Director of Planning and Development in consultation with the City's Qualified Traffic Engineering Firm.

71. If, based on the above annual monitoring, the actual number of vehicle trips to and from the Project, less the vehicle trips associated with the transit station and cut-through vehicle trips, summed over the points of access, exceeds the Maximum Trip Count (or the proportionally adjusted Maximum Trip Count) during the weekday evening peak hour, the Petitioner shall implement additional mitigation measures necessary to reduce the vehicle trips below that number.

- a. All additional mitigation measures, and the financial expenditures for such measures, shall be reviewed and approved by the Director of Planning and Development and the Commissioner of Public Works, and implementation of the measures must commence within six months of notification that the Maximum Trip Count was exceeded. Such mitigation measures may include, but shall not be limited to, the following:
  - i. Increasing the cost of parking associated with the dwelling units and/or the cost of daily non-MBTA parking.
  - ii. Increasing the transit reimbursement or expanding its availability beyond the dwelling units
  - iii. Working with the office use to encourage telecommuting.
  - iv. Establishing a shuttle service to other points of interest.

- b. The Petitioner is required to expend up to \$1,000,000.00 in implementing such mitigation measures, as approved by the Director of Planning and Development, in the event such measures are required in accordance with this Condition. To secure performance of this obligation, the Petitioner agrees to and shall embody this financial commitment in a contractual agreement with the City to be entered into prior to the issuance of the first building permit for a residential building in the Project, which agreement shall allow for the remedy of specific performance.
  - c. The Petitioner shall submit to the Director of Planning and Development an annual certified financial accounting of the cost of all mitigation measures undertaken in accordance with this Condition.
  - d. Notwithstanding the \$1,000,000 expenditure in this provision, the Petitioner remains obligated to reduce the trip generation to the Maximum Trip Count or less within 12 months of when mitigation begins as required by this Special Permit and Section 7.3.5.E.1.c. of the Zoning Ordinance. Failure to comply with the Maximum Trip Count for two (2) consecutive monitoring periods will constitute a violation of this Special Permit/Site Plan Approval.
72. The Director of Planning and Development or the Commissioner of Public Works may require additional monitoring of trip counts after the Petitioner's monitoring obligations have ceased if the Director reasonably determines that there has been a degradation from the level of service of transportation to or from the Project.
73. Within sixty (60) days of the Project reaching 85% occupancy based on the Project's gross floor area, the Petitioner shall establish and operate a shuttle serving the Development Parcel and the Auburndale Commuter Rail Station. The 12-15 seat shuttle shall run for no less than six months, making six trips per day, Monday through Friday, and must be open to the public at no cost during that six-month period. Thereafter, if the Petitioner continues to operate the shuttle, the Petitioner may charge for its use. The Petitioner shall keep ridership records which shall be provided to the Director of Planning and Development and the Commissioner of Public Works upon request.
74. Within one year of the Project reaching 85% occupancy based on the Project's gross floor area, the Petitioner shall complete a survey(s) of residents, employees, patrons, and transit users regarding their transportation choices in accordance with the preliminary Transportation Demand Management Plan. The result of such survey(s) and any analysis conducted by the Petitioner shall be submitted to the Director of Planning and Development and the Commissioner of Public Works.

75. One year after the Project reaches 85% occupancy based on the Project's gross floor area, and annually thereafter for two additional years, the Petitioner shall submit a TDM monitoring plan to the Director of Planning and Development. Such report shall include but shall not be limited to: the number of transportation reimbursements issued, car share and bike share usage data, and parking utilization data for the dwelling units, office use, and the hotel use. After the three-year reporting period, such information shall be available upon reasonable request by the Director of Planning and Development for an additional ten years.
76. The Petitioner will encourage additional shuttle services to the Development Parcel provided they are complementary to the MBTA and operations of the Project.

#### **POST-CONSTRUCTION STUDIES**

77. The Petitioner, at its sole cost, shall conduct a post-occupancy water and sewer assessment on the first and second anniversary of the Project reaching 85% occupancy based on the Project's gross floor area . The post-occupancy assessments shall be based upon the actual water usage as indicated in the total of the four (4) quarterly bills issued prior to the measurement date for all Project buildings. In the event that the annual water usage from the Project exceeds 79,961 gallons per day (29,185,765 gallons per year), which amount shall be proportionally adjusted to reflect current occupancy levels, by greater than 10% during any of the two measurements, the Petitioner shall notify the Director of Planning and Development and the Commissioner of Public Works of the mitigation measures being implemented to reduce the water usage and sewage generation from the project. The Director of Planning and Development and the Commissioner of Public Works shall require a bond or other security, including but not limited to a contractual agreement with the City, to secure performance of such mitigation measures. Mitigation measures may include, but shall not be limited to:
- a. Conducting a water system audit to verify that there are no leaks resulting in excess water use and making any necessary repairs.
  - b. Providing educational information to the owners and tenants of the Project for smart water usage.
  - c. Using more efficient and upgraded fixtures.

Following completion of such additional mitigation measures, the Petitioner shall continue to annually assess the water usage and sewage generation for the Project as set forth above until such assessments demonstrate for five (5) consecutive years that the annual flow rates have not exceeded projections by more than 10%. These post-occupancy assessments and any mitigation measures implemented shall be deemed satisfaction of all post-construction water and sewer studies and mitigation under Section 7.3.5.D.2 of the Zoning Ordinance.

78. The Petitioner, at its sole cost, shall conduct a post-occupancy stormwater assessment on the first and second anniversary of the Project reaching 85% occupancy based on the Project's gross floor area. Such assessment shall be in the form of a report submitted by a Professional Engineer detailing any flow from the subsurface stormwater management system (P101) into the City's 60-inch drainpipe within Runaway Brook over the course of the year. Such report shall use an established weather station, selected by the Commissioner of Public Works, to measure rain events and should provide an opinion certifying whether P101 is functioning as designed. Such report shall be provided to the Department of Public Works and the Department of Planning and Development. If after one year in service, the report indicates that P101 is not functioning as designed, as determined by the Commissioner of Public Works, the Petitioner shall meet with the Commissioner of Public Works and the Director of Planning and Development to implement mitigation measures to reduce flow from P101 into the City's drainpipe. The Director of Planning and Development and the Commissioner of Public Works shall require a bond or other security, including but not limited to a contractual agreement with the City, to secure performance of such mitigation measures. Mitigation measures may include, but shall not be limited to:

- a. Inspecting the system and water quality units for excessive scouring, sedimentation or other damage.
- b. Performing additional cleaning/flushing or repairs of the system to enable the system to continue to function as designed.

Following completion of such additional mitigation measures, the Petitioner shall continue to annually assess the stormwater overflow into the City's drainpipe for the Project as set forth above until such assessments demonstrate for five (5) consecutive years that the annual flow is consistent with the annual rainfall. These post-occupancy assessments and any mitigation measures implemented shall be deemed satisfaction of all post-construction stormwater studies and mitigation under Section 7.3.5.D.2 of the Zoning Ordinance.

79. The Petitioner shall pay the reasonable fees of any consultants/peer reviews as necessary for the Director of Planning or the Commissioner of Public Works to review and analyze the post-construction studies required by Conditions #77 and #78.

80. The Post-Construction Studies set forth in this section may be required earlier if requested by the Director of Planning and Development and the Commissioner of Public Works if there appears to be a degradation in the level of service of water, stormwater or sewer facilities.

#### **OTHER/ONGOING CONDITIONS**

81. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.



82. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project. The Petitioner must offer a recycling program to all residential and commercial tenants.
83. The Petitioner is responsible for maintaining all internal roadways, sidewalks, berms, and curbing, ensuring they are clean, well-kept and in good and safe working order.
84. The Petitioner shall be responsible for keeping the internal roadways and sidewalks clear of snow to ensure safe and reliable access to and from all buildings at all times.
85. The Petitioner shall submit a final Comprehensive Signage Program to the Urban Design Commission (UDC) for review and approval prior to the issuance of any sign permit for the Project. The final Comprehensive Signage Program, and all future tenant signage, shall be consistent with the preliminary Signage Plan, dated September 23, 2020, submitted to and approved by the City Council in accordance with Section 7.3.5.B.7 of the Zoning Ordinance.

**CONDITIONS PRECEDENT TO THE ISSUANCE OF DEMOLITION PERMITS**

86. No building permit for demolition (also known as a “demolition permit”) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
  - a. Submitted a demolition management plan for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, Commissioner of Health and Human Services, in accordance with Condition #37.
  - b. Submitted a Stormwater Pollution Prevention Plan for review and approval by the City Engineer in accordance with Condition #40.
  - c. Submitted a final Community Engagement Plan for review and approval by the Director of Planning and Development in accordance with Condition #45.

**CONDITIONS PRECEDENT TO THE ISSUANCE OF BUILDING PERMITS**

87. No building permit (other than a demolition permit) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
  - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.

- b. Within 60 days after issuance of the first building permit issued by the City, submitted a copy of its executed amended lease with the MBTA to the Department of Planning and Development and the Law Department and/or provided its permission for the MBTA to produce the document to the City.
- c. Complied with all applicable sections of the Design Review and Plan Consistency procedures set forth in Conditions #8 through 12 for the specific building(s) subject to such building permit, and obtained a written statement from the Planning and Development Department that confirms the final building permit plans and facade elevations are consistent with the Special Permit Plan Set and Design Guidelines approved in Conditions #1 and 2.
- d. Submitted the required documentation concerning the Interchange Improvements to the Commissioner of Public Works, Director of Planning and Development, and Commissioner of Inspectional Services in accordance with Condition #13(a).
- e. Submitted final engineered plans for the Grove Street Improvements for review and approval by the Public Facilities Committee and docketed a petition with Traffic Council in accordance with Condition #14(c).
- f. Submitted the portion of the I/I payment required in accordance with Condition #15.
- g. Submitted the portion of the Mitigation Fund payment required in accordance with Condition #16.
- h. Submitted the portion of the Williams School payment required in accordance with Condition #17.
- i. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer, as well as supplemental updates for the specific buildings subject to each building permit sought, in accordance with Condition #38.
- j. Submitted final engineering, utility, and drainage plans, and an "O&M Plan for review and approval by the City Engineer in accordance with Condition #39.
- k. Submitted final engineering plans for the specific building(s) subject to such building permit for review and approval by the City Engineer.

- l. Obtained an Order of Conditions from the Newton Conservation Commission if any proposed work set forth in the building permit is subject to the jurisdiction of the Conservation Commission in accordance with Condition #47.
- m. Submitted a final site plan and final circulation plan of the specific building(s) subject to such building permit for review by the Fire Department in accordance with Condition #53.
- n. Submitted to the City Engineer for review and approval documentation from the applicable electric utility company confirming that sufficient electrical power is available for the specific building(s) subject to such building permit in accordance with Condition #54.
- o. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services, and the Liaison Committee, a copy of the Release Abatement Plan submitted to the Department of Environmental Protection in accordance with Condition #56.
- p. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development for the specific building(s) subject to such building permit, indicating which points each building intends to realize in order to demonstrate LEED certifiability in accordance with Conditions #57-58 for the specific building(s) subject to such building permit.
- q. For the portions of the residential buildings that will obtain Passive House certification in accordance with Condition #59, submitted: (i) the credentials of the Passive House rater/verifier who will perform testing and verification, (ii) a letter of intent stating that the Passive House rater/verifier has been hired to complete the on-site verification process, (iii) the credentials of the certified Passive House consultant who has provided design, planning, and consulting services, and (iv) a Passive House narrative and/or checklist prepared and certified by the certified passive house consultant to the Director of Planning and Development, indicating standards that will be achieved.
- r. Submitted copies of the Passive House feasibility studies and carbon analysis reports to the Director of Planning and Development in accordance with Conditions #60-61, and conferred with the Director of Planning and Development concerning additional sustainability strategies in accordance with Condition #63.
- s. Entered into a contractual agreement with the City embodying its TDM financial commitment and the City's enforcement rights in accordance with Condition #71(b).

- t. To the extent applicable, received approval from the Planning Board for the removal of trees or stone walls within the layout of a designated scenic road in connection with the Grove Street Improvements in accordance with Revised Ordinances, § 22-5.
  - u. Obtained a certification from the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs indicating that the Final Environmental Impact Report for the Project adequately and properly complies with the Massachusetts Environmental Policy Act.
  - v. Submitted to the Newton Health Commissioner and the City Engineer copies of the M.G.L. c. 21E environmental site investigation report covering the area subject to such building permit.
  - w. Submitted to the Director of Planning and Development and the Tree Warden for their approval a final landscape plan for landscaping associated with the specific building(s) subject to such building permit including, but not limited, to the size and type of all trees, shrubs, and other plantings.
  - x. Complied with all applicable tree preservation provisions in accordance with Chapter 21 of the Revised Ordinance.
88. No building permit for vertical construction shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
- a. If applicable, submitted an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with Conditions #23 and #28, and §5.11.8 of the Zoning Ordinance.
  - b. Submitted a final roof mapping plan for the specific building(s) subject to such building permit for review and approval by the Director of Planning and Development in accordance with Condition #62(d).
  - c. Submitted a photometric plan for review and approval by the Director of Planning and Development and Commissioner of Public Works in accordance with Condition #55.
  - d. Submitted a Transportation Demand Management Plan for review and approval by the Director of Planning and Development in accordance with Condition #67.

**CONDITIONS PRECEDENT TO THE ISSUANCE OF CERTIFICATES OF OCCUPANCY**

89. No certificate of occupancy(temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:

- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and engineer certifying compliance with Conditions #1 and 2.
- b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division, final as-built survey plans in digital format for the portion of the Project for which a certificate of occupancy is requested.
- c. Substantially completed (i.e., a final inspection has been completed by MassDOT) construction of the Interchange Improvements and provided evidence of MassDOT's approval of the improvements in accordance with Condition #13(d).
- d. Submitted an executed easement agreement for public access and use of the portion of the pedestrian and bicycle infrastructure along the Project's Grove Street frontage, and an executed license agreement concerning maintenance of such infrastructure in accordance with Condition #14(d).
- e. Submitted the portion of the I&I payment required in accordance with Condition #15.
- f. Submitted the portion of the Mitigation Fund payment required in accordance with Condition #16.
- g. Submitted the portion of the Williams School payment required in accordance with Condition #17.
- h. Submitted evidence of payment of the Two Bridges DCR Payment to the Director of Planning and Development in accordance with Condition #18(a).
- i. If applicable, submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restrictions in accordance with Conditions #24-25.
- j. If applicable, provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.

- k. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the market-rate units within such building. If the Inclusionary Units are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed within such building. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
- l. Filed with the City Clerk, the Department of Inspectional Services and Department of Planning and Development a statement by the City Engineer certifying that the infrastructure related to the building that is subject to the certificate of occupancy has been constructed to the standards of the City of Newton Engineering Department.
- m. Recorded the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with Condition #39.
- n. Completed all landscaping and open space consistent with the Special Permit Plan Set, the Design Guidelines, and the Landscaping and Open Space Phasing Plan related to the portion of the Project for which a certificate of occupancy is requested in accordance with Conditions #34-35, or posted a bond in accordance with Condition #94.
- o. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
- p. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that: (i) all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements for "Group 1" units; a minimum of 5% of the dwelling units conform with MAAB requirements for "group 2A" units; and (iii) stating the number of additional "Group 2A" units, if any, above the 5% minimum in the building, in accordance with Condition #48.
- q. Filed with the Department of Inspectional Services and the Department of Planning and Development a letter of compliance prepared by a professional engineer certifying that all sidewalks and handicapped ramps constructed as part of the



building for which the certificate of occupancy is requested are ADA compliant in accordance with Condition #50.

- r. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground within the portions of the Project for which a certificate of occupancy is requested to the extent required by Condition #52.
  - s. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for LEED certifiability of the subject buildings have been satisfied in accordance with Conditions #57-58.
  - t. For a temporary certificate of occupancy for the residential portions of the three buildings that will meet Passive House certification, filed with the Department of Inspectional Services and the Department of Planning and Development an updated Passive House narrative and/or checklist prepared and certified by a certified Passive House consultant to the Director of Planning and Development, indicating the measures that have been completed for the building for which a temporary certificate of occupancy is requested in accordance with Condition #59. For a final certificate of occupancy for the residential portions of the three buildings that will meet Passive House certification, filed with the Department of Inspectional Services and the Department of Planning and Development (i) an affidavit signed by the certified Passive House consultant certifying that the pre-construction commissioning process requirements for Passive House have been met and that the post-construction commissioning process requirements will be met, (ii) the final testing and verification report completed by the Passive House rater/verifier, (iii) the credentials of the certified Passive House consultant, and (iv) an affidavit signed by that professional stating that he/she has reviewed all relevant documents and to the best of his/her knowledge, the documents provided indicate that such portions of the building was built to achieve Passive House certification.
  - u. Submitted a Parking Management Plan for review and approval by the Director of Planning and Development and Commissioner of Public Works in accordance with Condition #65.
90. No certificate of occupancy (temporary or final) for either Buildings 5 or 6 shall be issued by the City until the Petitioner has substantially completed the Grove Street Improvements, and such improvements are fully operational from a traffic management perspective, in accordance with Condition #14(e).
91. No certificate of occupancy (temporary or final) for the 285th dwelling unit in the Project shall be issued by the City until the Petitioner has either received all necessary approvals for the Trail Design and Construction in accordance with Condition #18(b) or submitted the Trails Payment to the City in accordance with Condition #18(g) or (h).

92. Prior to the issuance of a certificate of occupancy (temporary or final) for the tenth building constructed in the Project or prior to the Project Completion Date, whichever is sooner, the Petitioner shall have completed the Trail Design and Construction Work in accordance with Condition #18(d) and submitted evidence of payment of \$50,000.00 to Newton Conservators, Inc. in accordance with Condition #18(f), but only in the event such work is undertaken by the Petitioner.
93. No certificate of occupancy (temporary or final) for the final dwelling unit in the Project shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and until the Petitioner has:
  - a. Submitted to the Director of Planning and Development evidence that any damage to public ways and public property caused by construction vehicles has been repaired in accordance with Condition #44.
94. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy or final certificates of occupancy for all or portions of the buildings prior to installation of landscaping, open space, or exterior hardscape improvements associated with each such building as set forth in the Landscaping and Open Space Phasing Plan, provided that the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development and the Commissioner of Public Works, concludes that the request is commercially reasonable and the level of completion of the improvements is sufficient to permit temporary occupancy of the buildings without harm to public safety or convenience. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the City Solicitor's Office in an amount not less than 135% of the value of the remaining improvements associated with such building to ensure their completion.