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2008 SEP 18 AM 8:55 PLANNING

COMMUNITY DEVELOPMENT TOWN CLERK-NATICK ZONING

CONSERVATION

FINDING AND DECISION

Re: Application of Chrysler Apartments, LLC
for a Comprehensive Permit (the "Application")
for the property consisting of approximately 6.48 +/- acres of land and known and
numbered as 5 Chrysler Road, Natick (the "Property")

Date: September 17, 2008

A. PROCEDURAL HISTORY

1. On or about June 12, 2007, Chrysler Apartments, LLC, a Delaware Limited Liability Company with a principal address of 19 Needham Street, Newton MA, 02461 (the "Applicant") applied for a Comprehensive Permit, pursuant to G.L. c. 40B, to construct a four hundred and four (404) unit apartment complex to be located in two eleven story buildings including 202 units each with associated infrastructure and improvements, including a parking garage consisting of 128,245.5 +/- square feet in four and one half (4 ½) stories and 372 parking spaces, together with an additional 246 parking spaces to be located throughout the Property (collectively, and as modified pursuant hereto, the "Project"). The Project received a Project Eligibility Letter from the Massachusetts Housing Partnership on May 29, 2007.
2. A duly advertised public hearing of the Natick Zoning Board of Appeals was opened on July 9, 2007, and continued to the following dates:

September 17, 2007
October 29, 2007
December 17, 2007
February 4, 2008
March 3, 2008

April 14, 2008
May 19, 2008
June 24, 2008
July 9, 2008

There was a balloon test and site visit on April 12, 2008.

3. The Public Hearing was terminated on July 9, 2008.
4. The documents and exhibits as set forth on Exhibit A were received and are hereby incorporated by reference in the decision.
5. The Applicant agreed in writing to allow the Board to make and file a decision on or before September 18, 2008.

B. FINDINGS

1. The Applicant is qualified to make the Application pursuant to 760 CMR 56.04 in that (a) it is a "limited dividend corporation" as that term is used in G.L. c.40B, s. 21 and 760 CMR 56.02; (b) it has a grant of preliminary funding approval by Massachusetts Housing Partnership's PRFP Program as evidenced by a site eligibility letter from the Massachusetts Housing Partnership dated May 29, 2007; and (c) it has "control of the site" as that term is used therein in that it owns the land or has control over the land pursuant to a deed dated January 14, 2008 by and between Gateside Natick LLC and GBR Chrysler Road Limited Liability Company ("Grantors") and Chrysler Apartments LLC ("Grantee") and recorded at the Middlesex South Registry of Deeds in Book 50592, Page 1.
2. The Town of Natick has not met the statutory minimum set forth in G.L. c. 40B, s. 20 or 760 CMR 56.03(3).
3. The Property is located in the Industrial II zoning district.
4. There will be no more than 407 apartment units of which there will be thirteen (13) studio units with an average living area of 650 +/- square feet, two hundred and four (204) one bedroom units with an average living area of 750 +/- square feet and one hundred ninety (190) two bedroom units with an average living area of 1,100 +/- square feet located in one ten (10) story building which will include 183 units and one eleven (11) story building which will include 224 units.
5. The Board retained the following consultants to assist in the review of the Application:
 - The BETA Group Inc, of Norwood, Massachusetts, to conduct the civil engineering peer review, inclusive of the stormwater management and

civil site issues, and traffic engineering peer review.

- Haley and Ward of Waltham, Massachusetts to conduct the water and sewer system engineering peer review.
- Community Opportunities Group, Inc., of Boston to conduct a community and school fiscal impact analysis.
- Michael Jacobs of MHJ Associates of Brookline to conduct a financial review.
- Michael P. Sinesi, AIA of Framingham, to perform a site design and architectural peer review.
- Steven G. Cosmos, Registered Landscape Architect, of Natick, Massachusetts to conduct a peer review of the Landscape plans.
- Blatman, Bobrowski & Mead, LLC of Newburyport, as special legal counsel to the Board.

Aspects of the Development were reviewed by the departments of the Town of Natick including but not limited to the engineering, police and fire departments.

6. The Board's traffic, engineering and architectural and landscaping consultants prepared detailed reports indicating that the Development would not endanger public health or safety or the environment, subject to the Decision and conditions set forth below.
7. As proposed, twenty-five percent (25%) of the dwelling units (the "Affordable Units") shall be reserved in perpetuity for rent to households earning no more than 80% of area median family income in the Boston, MA- NH Primary Metropolitan Statistical Area (PMSA), adjusted for household size. Maximum rents will be established based upon the methodology required by the Massachusetts Housing Partnership.
8. If developed in accordance with the Decision and conditions set forth herein, the proposed Development will be consistent with local needs.

C. DECISION

Pursuant to G.L. c.40B, the Zoning Board of Appeals of Natick, after a public hearing and findings of fact, hereby grants a Comprehensive Permit to the Applicant for the construction of no more than 407 apartment units of which there will be thirteen (13) studio units with an average living area of 650 +/- square feet, two hundred and four (204) one bedroom units with an average living area of 750 +/- square feet and one hundred ninety (190) two bedroom units with an average living area of 1,100 +/- square feet located in one ten (10) story building which will include no more than 183 units and one eleven (11) story building which will include no more than 224 units with associated infrastructure and improvements, including a parking garage consisting of a 128,245.5 +/- square feet in four and one half (4 ½) stories comprised of 372 spaces. An additional 225 parking spaces will be located throughout the site all as set forth on the Landscape

Plans attached in **Exhibit B-3**.

The term "Applicant" as set forth herein shall mean the Applicant, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Natick Board. Unless otherwise indicated herein, the Board may designate an agent or agents to review and recommend action on the matters set forth herein.

1. The Project shall be constructed in substantial conformance with the following plans:

Site Plans entitled "Plans to Accompany Comprehensive Permit Application for Chrysler Apartments, 5 Chrysler Rd. Natick, MA," sheets C0 through C6; dated June 6, 2007 last revised through March 27, 2008, by Kelly Engineering Group Inc. 0 Campanelli Drive Braintree, MA 02184, consisting of the following drawings:

Sheet C0	#5 Chrysler Rd., Natick, MA (Cover Sheet)	Dated 2/13/08
Sheet C1	Existing Conditions Plan	Dated 2/13/08
Sheet C2	Demolition and Erosion Control Plan	Last revised 3/27/08
Sheet C3	Layout and Zoning Plan	Dated 2/13/08
Sheet C4	Grading and Drainage Plan	Dated 2/13/08
Sheet C5	Utility Plan	Last revised 3/27/08
Sheet C6	Detail Sheet	Dated 2/13/08
Sheet C7	Detail Sheet	Last revised 3/27/08

attached hereto as **Exhibit B-1**

Architectural Plans entitled "Chrysler Apartments" by Russell Scott Steedle & Capone Architects, Inc. consisting of the following drawings:

A1.01 Building 1 - 1st Floor Plan (Progress Print dated 07-02-08)
A1.02 Building 1 - 2nd-5th Floor Plan (Progress Print dated 07-02-08)
A1.03 Building 1 - 6th-8th Floor Plan (Progress Print dated 07-02-08)
A1.04 Building 1 - 9th Floor Plan (Progress Print dated 07-02-08)
A1.05 Building 1 - 10th Floor and Roof Plan (Progress Print dated 07-02-08)
A1.06 Building 2 - 1st Floor Plan (Progress Print dated 07-02-08)
A1.07 Building 2 - 2nd-5th Floor Plan (Progress Print dated 07-02-08)
A1.08 Building 2 - 6th-9th Floor Plan (Progress Print dated 07-02-08)
A1.09 Building 2 - 10th Floor Plan (Progress Print dated 07-02-08)
A1.10 Building 2 - 11th Floor and Roof Plan (Progress Print dated 07-02-08)
A1/4 Unit Plans (dated 03-12-08, revised 06-05-08)

Elevation 1 - East Elevation, Building 1 (dated 06-25-08)
Elevation 2 - North Elevation, Building 1 (dated 06-25-08)
Elevation 3 - West Elevation, Building 1 (dated 06-25-08)

Elevation 4 - South Elevation, Building 1 (dated 06-25-08)
Elevation 5 - South Elevation, Building 2 (dated 06-25-08)
Elevation 6 - East Elevation, Building 2 (dated 06-25-08)
Elevation 7 - North Elevation, Building 2 (dated 06-25-08)
Elevation 8 - West Elevation, Building 2 (dated 06-25-08)

Reduced scale copies of these architectural drawings are attached hereto as **Exhibit B-2.**

Landscape Plans entitled "Chrysler Apartment Site Landscape Plans" including sheets L1 and L7, dated December 12, 2007 last revised June 3, 2008, by Hawk Design, Inc, Boston, MA, attached hereto as **Exhibit B-3.** It should be noted that in the event of conflict between those documents in **Exhibit B-1** as they regard the location of the buildings and parking spaces on the site, the Landscape Plans in **Exhibit B-3** shall control.

The Project authorized by this permit shall be limited to 407 apartment units of which there will be thirteen (13) studio units with an average living area of 650 +/- square feet, two hundred and four (204) one bedroom units with an average living area of 750 +/- square feet and one hundred ninety (190) two bedroom units with an average living area of 1,100 square feet located in one ten (10) story building which shall include no more than 183 units and one eleven (11) story building which shall include no more than 224 units (as more specifically set forth in **Exhibit C** dated June 16, 2008 the Unit Matrix) with associated infrastructure and improvements, including a parking garage consisting of a 128,245.5 +/- square feet in four and one half (4 ½) stories comprised of 372 spaces with 225 parking spaces located through out the site all of which is situated on 6.48 +/- acres which shall be located as shown on the Site Plans B-3.

Upon initial rent – out, and thereafter, the Affordable Units will be distributed evenly between the two buildings and within the one bedroom and two bedroom units. Not less than twenty-five percent or one hundred two (102) of the units shall be reserved for rental in perpetuity to households earning no more than eighty percent (80%) of Median Family Income for the Boston, MA NH PMSA, adjusted for household size and any other applicable eligibility requirements. The remaining three hundred five (305) units may be offered at market rate. The maximum allowable household size for the purpose of calculating maximum allowable rent levels shall be one person for a studio unit, 1.5 persons for a one bedroom unit and three (3) persons for a two bedroom unit. The Applicant will endeavor to maintain an even distribution upon future rentals.

Finance / Legal:

2. All Affordable Units shall remain affordable in perpetuity or the longest period allowed by law and shall contain a restriction that remains senior to any other lien

on the property. An affordable housing restriction, enforceable by the Town of Natick, requiring that the Affordable Units remain affordable in perpetuity, in the form approved by the Board's Counsel, shall be recorded and shall be senior to any liens on the Premises to protect the continued availability of and requirement for the Affordable Units in the event of any foreclosure, bankruptcy, refinancing or sale. In the event that there are prior liens upon the property they shall be subordinated to the affordable housing restriction and proof of same shall be provided to the Board. The Applicant shall not receive a building permit until evidence of the recording of such affordable housing restriction and its priority to other liens, has been provided to the Board.

3. The Affordable Units shall include 54 one bedroom units and 48 two bedroom units. Each of the affordable rents shall be established based upon the methodology required by the Massachusetts Housing Partnership. The monthly rent payment shall include normal utilities (heat, hot water, water, sewer, natural gas, and electricity). If any of the preceding listed utilities are paid directly by the tenant of an Affordable Unit, a reasonable allowance (as published by either the Natick Housing Authority or other DHCD-approved entity) shall be deducted from such Affordable Unit's rent.
4. In the initial round of rentals, and in subsequent rounds to the extent practicable, preference, ("Local Preference") for seventy percent of the Affordable Units shall be given to households who are either (a) Natick residents, which shall mean current residents of the Town of Natick; (b) members of the immediate family of the residents in (a) above, and (c) employees of the Town of Natick and any of its Departments, or Authorities, whether or not such employees shall be residents at the time of application for an affordable unit. Local Preference criteria shall be subject to applicable federal and state laws and guidelines, including applicable fair housing regulations.
5. The Applicant shall select any entity or person reasonably acceptable to both MHP and the Board, as the Lottery Agent to oversee the selection of the tenants for the Affordable Units. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery Plan to the Board for its approval. The Applicant shall bear all expense associated with the Lottery including the fee of the Lottery Agent.
6. Prior to the issuance of any foundation or building permit for any structure, the Applicant shall submit the final draft of a Regulatory Agreement, Lottery Agreement and Monitoring Agreement to the Board for approval, as to form, by its legal counsel. The parties shall thereafter execute the Agreement and the Applicant shall transmit same to the Project Administrator, MHP, or subsidizing agency. Such documents shall be consistent with the terms of this Comprehensive Permit and contain, at a minimum, the following terms:

a. The Affordable Units shall be restricted as affordable in perpetuity to households at 80% of the Boston, MA – NH PMSA Median Family Income as adjusted for household size;

b. The Monitoring Agent for this Project shall be the Massachusetts Housing Partnership or other entity approved by MHP and the Board.

c. The Regulatory Agreement shall be recorded prior to the issuance of a building permit.

7. The Applicant shall bear all expenses associated with the service of the Monitoring Agent.
8. As a “Limited Dividend Organization,” the Applicant’s profit shall be limited in accordance with G.L. c. 40B §20 et seq., 760 CMR 56.00 et., and MHP’s limited dividend policies. The Applicant shall permit the Board, or its duly authorized representatives, upon reasonable notice to examine the Applicant’s records associated with this Project during normal business hours and shall, upon the Board’s request, explain the methods of keeping the records.
9. The exterior of the Affordable Units will be indistinguishable from the market rate units. The market rate units may include the following differences in interior build-out from the Affordable Units: (i) hardwood flooring in the living room instead of carpeting, (ii) stone kitchen countertops instead of formica, (iii) tile for the bathroom flooring instead of linoleum flooring, (iv) crown molding in the living room. All units shall include the following appliances at a minimum: dishwasher, microwave, washer, dryer, stove/oven and refrigerator.
10. The Applicant, its successors and assigns, shall be responsible for payment of all reasonable costs to review any documents in order to effectuate this Permit.
11. The Applicant, its successors and assigns, shall be responsible for payment of all reasonable costs to review any documents, including but not limited to engineering, legal and architectural in order to confirm compliance with this Permit.

Traffic:

12. The Applicant has submitted a traffic impact and access study (“TIAS”) for the Project. The Applicant shall undertake and complete two supplementary traffic monitoring studies (the “Supplementary Traffic Studies”) upon 30% occupancy and 90% occupancy of the Project. The Supplementary Traffic Studies shall be

commenced no later than 60 days following aforesaid occupancy levels. The Supplementary Traffic Studies will document:

- a. Actual trip generation and distribution vs. projected values from TIAS;
- b. Actual peak hour volumes at all study areas, as set forth in the TIAS, in Natick;
- c. Computed traffic analysis (using SYNCHRO) at all study areas in Natick; and
- d. The extent of any cut-thru traffic at Home Depot.

Following the submission of each Supplementary Traffic Study to the Board and its consultants, the Board with the assistance of its consultants will determine if any additional traffic mitigation is required. Upon a determination by the Board that additional traffic mitigation is required, the Applicant may be required to undertake the following mitigation:

- a. Signal timing/phasing modifications at the following intersections:
 - i) Chrysler Road / Speen Street
 - ii) Connector Road / Speen Street
 - iii) Mall Road / Speen Street
- b. Extension of the southbound left turn lane at Speen Street / Chrysler Road.
- c. Provide mitigation to improve any adverse traffic impacts identified in the Supplementary Traffic Studies, provided such impacts result from those conditions which were originally included in the scope of the TIAS.

If the Board determines that any of the aforementioned measures are required, the Applicant shall provide to the Board within 90 days following the Board's determination, the appropriate design, signal or other plans required to implement the mitigation for the Board's review and approval. All such mitigation shall be completed within six months of the approval by the Board of the design plans for implementation of the mitigation.

13. The Applicant shall undertake and implement and complete the following pedestrian improvements:
 - a. Prior to the issuance of the first certificate of occupancy, construction of a new sidewalk on the south side of Chrysler Road spanning from the east entrance driveway to the existing sidewalk along the northbound Speen Street approach at Chrysler Road.
 - b. The Applicant shall improve pedestrian access to and from the site by providing a new crossing, pedestrian crossing ramps and pedestrian signals on the south side of Chrysler Road / Speen Street intersection (opposite the "Tile Store" which is located at 323 Speen Street) for a more direct alignment with the proposed sidewalk on the south side of Chrysler Road. The existing pedestrian signals on the west side of the intersection

will be moved north to align with the existing crossing on the north side of the intersection. A crosswalk at each of the four approaches is critical for this intersection considering the additional pedestrians that will be generated as part of the Project. For location of new and realigned crossings, refer to MDM plan dated April 2008 (see attached plan as **Exhibit D**)

- c. Applicant will use its best efforts with the Town of Natick to obtain appropriate easements at the location opposite the Tile Store (south side of Chrysler Road / Speen Street intersection) to aid in the installation of pedestrian improvements described in part b above. Should the Applicant or the Town not obtain the requisite easements on or before the issuance of the certificate of occupancy for the second building, then prior to the issuance of the certificate of occupancy for the second building, the applicant shall pay to the Town the sum of \$ 10,400 to be held in escrow by the town for the purpose of constructing the cross walk as noted herein. Notwithstanding the obtainment of easements, the Applicant shall deliver to the Town full design plans for this crossing prior to the issuance of the certificate of occupancy for the first building.
 - d. Rake – so as to create a smooth grade along the Wonder Bread rail spur adjacent to the Cochituate Rail Trail, subject to receiving approval from the land owner which such approval the Applicant will make its best efforts to receive, to enhance and promote the pedestrian connection between the site and this area.
 - e. Except as noted herein, all of these mitigation improvements noted above in this paragraph 13 a-c shall be completed prior to occupancy of the first building completed.
14. The Applicant shall provide, prior to issuance of the first certificate of occupancy, additional signing and pavement markings (including 24” stop lines) at the Chrysler Road Home Depot main driveway. The Applicant shall also provide a double yellow centerline at the driveway to delineate the travel lanes. The Applicant shall also replace the existing stop sign at the driveway with a solar powered flasher and stop sign (detail attached as **Exhibit E**). These improvements shall be subject to approval of the Home Depot property owner, which approval shall be diligently pursued by the Applicant. In the event approval is withheld or unreasonably conditioned, the Applicant shall, after consultation with the Board, install the same or substantially similar improvements within the public right of way owned by the Town of Natick or in the event any such improvements cannot be located within the public right of way, the Applicant will make a payment of ten thousand dollars (\$10,000.00) to the Town of Natick.

15. The Applicant shall complete the aforementioned improvements in accordance with the Plans dated August 2008. Exhibit F.
16. Prior to the issuance of the first building permit, the Applicant shall provide to the Board a bond or deposit in the amount of **\$135,000** to secure the completion of said improvements and/or studies set forth in paragraphs 12 through 15 above not including the \$10,400.00 escrow amount in 13(b) above (the "Traffic Performance Bond"). Should the Applicant fail to complete said measures within thirty days of the respective time frames noted above, the Town may, without further notice to the Applicant, complete said studies and/or mitigation on Applicant's behalf, and pay for the cost of such studies or mitigation by drawing against the Traffic Performance Bond. Should the Traffic Performance Bond be insufficient to complete same, and should the Applicant fail to pay the Town within thirty days of notice of the amounts due over and above the security amount, then the Applicant agrees that the Town may in addition to exercising any other rights it may have at law or in equity file a lien on the Premises for any amounts expended in excess of the security amount. The Applicant shall be responsible for interest on all outstanding amounts due and for any fees or costs, including attorneys fees associated with collecting same. Within sixty (60) days of completion of the improvements contemplated hereunder, either by the Town or the Applicant, any amounts remaining, if any, shall be returned to the Applicant. At the Applicant's request, the Traffic Performance Bond shall be released to the Applicant in increments as each portion of the studies and mitigation work is completed, so that at all times the amount of the bond or deposit is equal to the reasonably estimated cost of the uncompleted mitigation work. A schedule of such estimated costs is attached as Exhibit G.

In addition to the Traffic Performance Bond, the applicant shall provide the Town the amount of \$12,000 to be held in escrow in order to pay for the services of BETA to review the completed Supplemental Traffic Studies and to inspect the resulting traffic improvements, if any. All unused escrow funds for the payment of BETA shall be returned to the Applicant.

Civil

17. The Applicant has proposed, and the Board hereby requires that the following aspects of this Development shall, to the extent same are located on the Property or on other privately-owned property pursuant to an easement, be and shall forever remain private, and that the Town shall not have, now or ever, any legal responsibility for the operation and maintenance of same:
- a. All roadways, sidewalks and parking areas
 - b. Storm water conveyance and management facilities, including at a minimum all catch basins; detention basins and appurtenant equipment
 - c. Snow plowing

- d. Landscaping and landscape maintenance
- e. Trash removal and recycling
- f. Street lighting
- g. All on-site water distribution systems
- h. All on-site sewage conveyance systems including any and all sewer pump stations

The facilities set forth above shall be maintained in perpetuity by the Applicant.

18. Prior to the issuance of the first Certificate of Occupancy for each building, the Applicant shall provide to the Natick Engineering Department draft "as-built" plans for the water, sewer, and storm drainage systems serving such building for the Town's review and comments. These plans shall be submitted in both electronic (CAD format) and paper format (2 copies). Electronic format shall be in a computer aided design (CAD) format that is compatible with that of Natick's Department of Public Works. Prior to the time when the Project reaches 50% occupancy, the Applicant shall provide to the Natick Engineering Department final "as-built" plans for the water, sewer, and storm drainage systems for the Project. These plans shall be submitted to the Town in both electronic and paper format. The applicant should contact the Engineering Department in advance of the draft submission of these plans to determine what requirements and information is needed to complete these as-built drawings.

19. Prior to issuance of the Project's first Certificate of Occupancy, the Applicant shall submit to the Board for the Board's review and approval the Operations and Maintenance (O&M) Plans noted in subsequent sections of this decision prepared by a Professional, Civil Environmental or Sanitary Engineer (P.E.) licensed in the Commonwealth of Massachusetts. Said O&M Plans shall address the long-term operation and maintenance of the Project's storm drainage system, water system and wastewater/sewer system.

The Applicant shall work with the appropriate town departments to ensure that these O&M Plans meet with the Board and the Town's approval prior to being finalized. Once the O&M Plans are completed, a covenant between the Board and the Applicant shall be executed and recorded at the Middlesex South County Registry of Deeds. This covenant should include not only references to the Operations and Maintenance Plan listed above (which will be on file with the appropriate department(s)) but also emergency access for repairs, access easements required for these repairs and town cost recovery provisions. Said easement shall provide that the Town shall have access to the systems in the event that the Applicant fails to maintain same in a manner consistent with this permit, the Town of Natick Rules and Regulations and related by-laws or the Laws of the Commonwealth of Massachusetts. Said covenants and/or easements shall include at a minimum language which provides that in the event that the Applicant fails to reimburse the Town for such repairs, the Applicant agrees that in addition to any other remedies available to it at law or in equity Town may place a lien against the premises, the Applicant and its assets. Further that in the event the Town must employ collection of said funds, the Applicant will be responsible for interest, costs and attorneys fees

associated with said collection. The Applicant shall provide a covenant, in a form acceptable to the Town securing care and maintenance of said systems. Such easements may be included in the Covenant referenced herein. The easement and covenant shall be reviewed by Counsel to the Board as well as Town officials prior to approval by the Board.

20. Prior to the installation of the storm water management system, of which the preliminary design has been approved, the final design plans shall be approved by the Board or its agent. Revisions made to the storm water management system design plans, which were approved under this decision, shall fully conform to all state and federal requirements and policies and to all Natick construction standards and by-laws.

21A. The Applicant's preliminary analysis provided information to establish that there is sufficient area available on the site such that the final design of the stormdrain collection system and the stormwater detention/retention basins can be completed to meet the criteria set forth in subsections (a) through (j) below. The Board acknowledges that the Applicant will make final refinements to the storm drainage system in order to make said system compatible with the Project modifications described in and permitted by this Decision. Prior to the issuance of a building permit, the Board's Consultants and the Town Engineer shall review such final construction plans for the storm drainage system to ensure to assure that they comply with this decision and the following standards and criteria:

- a. Final design documents shall depict all site improvements including the stormdrain collection system and the stormwater detention/retention basins in sufficient detail to allow their construction.
- b. The final design plans should be accompanied by a final Hydrologic Analysis that details the pre and post development site hydrology and details the hydraulics of the stormwater collection system and the detention/retention basin outlet control devices and emergency spillways.
- c. Basins and overall system should be designed to provide for treatment of the first flush of runoff in accord with DEP policies. As a minimum 80 percent of suspended solids should be removed.
- d. Pre and post development recharge rates should be based in accordance with DEP policies. In order to meet this requirement, to the extent practicable roof water should be recharged in drywells located in the vicinity of the building(s) which they serve.
- e. The final design of the overall stormwater management system should fully conform to all applicable DEP requirements and policies and to all Natick Conservation Commission by-laws and regulations (except to the extent that strict compliance with such by-laws and regulations has been waived by this Decision).

f. For any detention basins with cuts or for which the Applicant is taking infiltration credits, the engineer should document soils and groundwater conditions at each required stormwater retention/detention basin with respect to permeability and depth to groundwater. The bottom of the basin should be a minimum of 2 feet above spring high groundwater and permeability of the basins considered in maintaining predevelopment rates of discharge. One test pit or boring should be provided for each 5,000 sq. ft. of basin area.

g. The final *Hydrologic Analysis and Storm Drain Design Report* should identify points of existing concentrated flow at the analysis boundary. Post development rates of discharge should not exceed pre-development rates of discharge for the 2, 10, 25, and 100-year frequency storm events at each of these analysis points.

h. For each catchment area, the calculations and accompanying watershed plans should document soil types, flow paths, topography, vegetative cover and limits of clearing. Times of concentration should be documented by flow paths and type of flow based upon surface materials and slopes. The preliminary calculations do not provide sufficient distinction between predevelopment and post development times of concentration.

i. Pipe capacity calculations should be provided that indicate the adequacy of each reach of stormdrain to accommodate the design storm without surcharging. Calculations should detail slopes, Manning's "n", pipe diameters, etc. Use of the 15-year design storm event is recommended for all components of the storm drain collection system. Stormwater basins and major crossings should be designed to accommodate the 100-year frequency storm event. All basins should have emergency spillways not dependent upon structures to convey overflows. All buildings should be protected from flooding for the 100-year frequency storm event and should provide fail-safe overland flow not dependent upon drainage structures.

j. Down gradient structures and roadways should be protected from flooding and ponding for the 100-year frequency storm event. Similarly there should be no increased rate of discharge to the properties adjacent to the site under all storm events up to and including the 100-year frequency storm event.

21B. Occupancy and use of the site shall be governed by a Stormwater Maintenance and Operation and Maintenance Plan conforming to current DEP guidelines and policies. As a minimum, the *Operations And Maintenance Plan* shall provide for the following:

- i. annual inspection of all components of the drainage and stormwater management systems by a registered professional engineer who shall file reports with the Board of Appeals and the Department of Public Works.
- ii. inspection of catch basins and separators twice per year, and cleaning at least once each year.
- iii. sweeping all parking lots once per quarter and monthly during winter conditions.

iv, minimization of the use of pesticides, herbicides, and fertilizers to the extent practicable and should only be applied by experienced and if applicable licensed personnel in accordance with manufacturer's recommendations.

v. Designation of persons responsible to contain inadvertent spills and a 24/7 emergency response number to be used by the residents in case of inadvertent spills.

21C. Upon completion of the stormwater infrastructure, the Applicant shall submit a report (including certified as-built construction plans) from a Registered Professional Engineer (P.E.) or Registered Professional Land Surveyor (PLS), licensed in the Commonwealth of Massachusetts, certifying that all Stormwater Management devices and approved changes and modifications have been completed in accordance with the conditions of this Permit. Any discrepancies must be noted in a cover letter to the Board and resolved prior to the issuance of the last certificate of occupancy.

Water

22. Prior to approval of the water system by the Town of Natick and prior to activation of the water system, the Applicant shall provide an O&M Plan as required in paragraph 19 above for the domestic water distribution system, in compliance with the State Building Code and the policies of the Town of Natick Public Works and Fire Department and which shall then be subject to the approval of the Board. In addition the Applicant shall include the following criteria and/or items in the design and implementation plan:

- a. Occupancy and use of the site should be governed by an Operation and Maintenance Plan for the domestic water system and fire sprinkler water booster system, if booster system is necessary. As a minimum, the *Operations and Maintenance Plan* should provide for annual inspection of all components of the fire sprinkler water booster system by a experienced service company, approved by the Natick Water Superintendent, experienced in the type of service work required to maintain the pumping equipment, who should file reports with the Board and the Natick Department of Public Works.
- b. The plan should also provide for operation of gate valves and hydrant valves once per year and leak detection study of the entire system once per year per DEP requirements. Plan shall include provisions for immediate repair of leaks detected and reporting of the leak volume to the Natick Water Department. The plan should designate persons responsible to complete system repairs on the water booster station equipment.
- c. All residents should be provided with a 24/7 emergency response number to be used in case of water system failure. The Applicant may enter a contract with the Town of Natick for the performance of the leak detection study.
- d. In the event that the Applicant fails to maintain the domestic water distribution system in accordance with such guidelines for operation and maintenance, the Town may make emergency repairs to the system at the sole expense of the Applicant.

- e. The Operation & Maintenance Plan hereunder and the easement referred to in paragraph 28 below shall be reviewed and approved by the Board or its designee prior to the issuance of the first Certificate of Occupancy.

23. Prior to the installation of the domestic water distribution system final design plans shall be approved by the Board or its agent. The preliminary analysis provided information to establish that there is sufficient water pressure available to the site such that the domestic water distribution system can be designed to meet all State and local requirements as they relate to domestic water systems. Accordingly, approval of the final design is contingent upon these conditions:

- a. All components of the domestic water distribution system shall be designed by Professional Engineers (P.E.) licensed in the Commonwealth of Massachusetts.
- b. Final design documents for the water booster system shall depict all components for the system including, but not limited to, pipe, water gate valves and associated controls in sufficient detail to allow a review and approval to be completed.
- c. Revisions made to the domestic water system design plans, which were approved under this decision shall be in accordance with the DEP guidelines for water system extensions and the Town of Natick construction standards for minimum pipe size, valve spacing, hydrant spacing and hydrant location.
- d. Final design of the fire sprinkler system water booster system shall fully conform to all DEP requirements and policies of the Natick Building Department and Natick Fire Department.
- e. If a booster pump is necessary, the water booster pump design calculations should be submitted with design plans that indicate the pump and motor sizes, electrical load calculations, pump head, control equipment flow and pressure ranges.

24. The Applicant shall implement water conservation measures for the care and maintenance of the landscaped areas.

Wastewater

25. Prior to the installation of the wastewater collection system, final design plans shall be approved by the Board or its agent. Additionally, the Applicant shall provide an O&M Plan for the Sewer System as required in paragraph 19 above. The final design plan shall at a minimum meet the following criteria:

- a. Revisions made to the wastewater collection system design plans which were approved under this decision shall fully conform to all DEP requirements and policies and to all Natick construction standards and by-

laws (except to the extent such local requirements have been waived by this Decision).

- b. Massachusetts Water Resource Authority's Municipal Permit issued to the Town (the "MWRA Permit") mandates that any sewer discharges from the Natick sewer system to the MWRA sewer system shall not exceed a maximum limit of 0.3 mg/l of dissolved sulfide. Therefore as a condition on the approval of this permit the Town of Natick shall reserve its rights to require the owners of this private sewer pump station, the Applicant, to test for sulfides, sulfates and BOD consistent with the MWRA Permit. In the event that the MWRA or the Town determines that it would be in the best interest of the Town to require chemical treatment or other means of reducing sulfides in the waste-water collection system the Town may require the applicant to install chemical treatment or other means for reducing the formation of sulfides in the applicant's wastewater collection system. This requirement can be implemented anytime after the system is operating at 75% capacity. If the Project's wastewater system is not operating at 75% capacity within five years (5) after the operation of the first component of the Project's wastewater system, then the Town may require interim chemical testing to determine if the Project's system is causing sulfides to form above the MWRA's sulfide limit. The Town reserves the right to implement this requirement if test results indicate there are elevated levels of sulfates and BOD (the two major constituents required for the formation of sulfides) in the Project's wastewater.
- c. The Applicant's operation and maintenance plan of the wastewater collection system shall include (i) annual inspection of all components of the wastewater collection system and (ii) weekly inspections of the wastewater pumping station and chemical feed station (if applicable) by a service company experienced in this type of work, approved by the Board and the Natick Sewer Superintendent. The annual inspection reports shall be filed with the Board and the Department of Public Works. The gravity sewer structures including manholes and gravity sewer pipes shall be cleaned as necessary or as required by the Town after the annual inspection. All residents of the Development should be provided with a 24/7 emergency response number to be used in case of a system failure including but not limited to sewage surcharges and wastewater pumping station failures.
- d. The wastewater collection and discharge system shall not be constructed until the Applicant receives a signed DEP Sewer Extension Permit and all other applicable permits.

26. The Applicant is discharging its sewer in the manner as set forth on the Site Plans in Exhibit B-1. The Applicant, subject to the Town's review and approval of the contractor and materials as well as inspection during construction, shall complete the point repair, estimated at fifteen (15) linear feet, to eliminate the sag prior to SMH E, and install a cure in place liner in sewer manhole segments SMH A to SMH F. The sewer main noted herein is approximately 845 +/- linear feet and is identified on Sheet 2 as Attachment B in

the Sewer Analysis Report attached hereto as **Exhibit H**. The Applicant shall complete the aforesaid prior to the issuance of the first certificate of occupancy. The Applicant shall provide or cause to be provided any and all easements necessary to the Town to review and or enter and maintain said systems should the Applicant fail to do so.

27. The Applicant is discharging wastewater to the Town of Natick Wastewater Collection system and to ensure that extraneous material and grease is ground up into small particles that will be easily received and discharged by the Prime Park Pump station pumps an influent grinder is required. The Applicant shall pay the Town prior to the issuance of any building permit, the amount of \$91,200 for the Town to purchase and install an influent grinder in the Town of Natick Prime Park Sewage Pump Station wet well inlet pipe. The timing of this condition is such that the Town can accomplish this modification prior to the issuance of the first certificate of occupancy.

28. Prior to the issuance of the first certificate of occupancy, the Applicant shall provide to the Town an access easement for the water, sewer and stormwater systems as required in paragraph 19 above.

General Civil

29. The Applicant shall notify the Town that it is prepared for a preconstruction conference with Town departments which shall be held prior to the commencement of construction. For the purposes of this decision, "commencement of construction" shall occur when any site preparation has been initiated. The contractor shall request such a conference at least one week prior to commencing construction by contacting the Board in writing. The conference shall be held no sooner than 72 hours prior to commencement of construction and no later than 24 hours prior to commencement of construction. At the conference, a schedule of inspections shall be agreed upon by the Applicant, the Board and other municipal officials and boards.

30. The Applicant shall construct the building and units using water conservation construction standards in accordance with the state building code.

31. The Applicant shall use the methods and practices associated with LEED standards listed in the table entitled Summary of LEED Design Objectives dated March 10, 2008 and attached hereto as **Exhibit I** in the design and construction of the civil aspects of the site.

32. The Applicant shall be responsible for all permits and fees as required under the Town of Natick Rules, Regulations, By-Laws, and orders, including but not limited to Sewer Entrance Fee for sewer infiltration and inflow removal, at a MassDEP required removal rate of 4 gallons of extraneous flow (Infiltration/Inflow) to every 1 gallon of proposed wastewater addition. The calculated fee for this Project is \$776,100 (597 bedrooms x \$1,300/bedroom). The amount hereunder shall be paid no later than prior to the issuance of the first certificate of occupancy.

33. The Applicant shall request and use its best efforts to obtain permission from the Department of Conservation and Recreation of the Commonwealth of Massachusetts to plant and/or improve and treat the existing edge of white pine trees along the old railroad right of way and Lake Cochituate adjacent to the Chrysler Road cul de sac in a manner as set forth on the letter dated April 29, 2008 which are both attached here as **Exhibit J**. If such permission is granted, then the Applicant shall plant or improve the white pine trees on or before the issuance of the first certificate of occupancy. If permission is withheld or unreasonably conditioned in the opinion of the Board, then the Applicant shall pay to the Town account the sum of \$5,000.00 for the treatment and care of said trees. Such payment shall be made on or before the issuance of the first certificate of occupancy.

34. The Applicant shall pay to the Board of Selectmen the sum of One Million Seven Hundred Fifty Thousand and NO/100's Dollars (\$1,750,000.00) as mitigation for the Project's impacts on West Natick in particular, but not limited to, the West Natick Fire Station, the Cole Center, the rail trail, and the Speen Street /Route 135 intersection. The Board of Selectmen may apportion the funds as they determine appropriate and necessary, but it is the Board's intention that no less than \$1,000,000.00 shall be used to offset the costs of land acquisition, design and reconstruction of the West Natick Fire Station as mitigation for the impacts of this Project. Said funds shall be paid to the Town prior to the issuance of the first certificate of occupancy. Applicant shall not be responsible for apportionment of funds by the Board of Selectmen, and shall not be deemed to be in non-compliance with this Permit if funds are apportioned for other uses.

35. The Applicant shall mitigate any impacts whatsoever caused by the construction of the buildings contemplated hereunder on the use of the cell tower receptors and receivers currently located on the Home Depot Property which are used by the Town of Natick Fire and Police Departments. Accordingly, the Applicant shall install on the roof top of the first building completed, as soon as practicable but in any event no later than immediately after topping of the first building the equipment as noted in **Exhibit K** and in a manner prescribed by the Police and Fire Departments or their assigns.

36. Prior to the issuance of any building or foundation permit and construction, the Applicant shall prepare a set of Final Detailed Design Site Plans which shall include the following:

- a. Lighting Plan, which shall include non glare, non-spill over lighting and shall be done in conformance with the light fixture policy of the Town of Natick.
- b. Landscaping and planting plan which to the extent possible, shall meet the requirements of the By-laws, be drawn by a certified Landscape Architect and shall include but not be limited to, species, location and sizes of plantings. All proposed plantings shall exclude any plants listed on the New England Horticultural Society's list of Invasive Species. Implementation of the Landscaping Plan shall be part of the construction schedule.
- c. Detailed grading and drainage plan.
- d. Final utilities plan.

- e. Final signage plan.
- f. Final building and construction plans for each Area of Work, prior to the first building permit to be issued for that Area of Work.
- g. Final blasting plans including requisite neighbor notification.
- h. Final plan regarding removal and replacement of material from the site, namely topsoil and rock or gravel.

Said documents shall be approved by the Board to confirm that they include final working drawings and specifications prepared in accordance with what was approved by the Board as noted herein and prepared in accordance with standard engineering practices that fully incorporate all requirements of the Conditions of Approval as set forth herein. The working drawings shall be endorsed by the Board within 60 days of their filing by the Applicant, and prior to inception of construction. The Applicant shall pay reasonable peer review fees to facilitate review of the Final Detailed Design Site Plans by the Board's professional engineer prior to endorsement. The Town of Natick Building Commissioner will be treating this construction as Controlled Construction under the State Building Code and said work shall be governed thereby. The Applicant shall provide to both the Building Department and the DPW a full set of Final Detailed Design Site Plans in both paper and electronic format. Electronic Format shall be in a computer aided design (CAD) format that is compatible with that of Natick's Department of Public Works.

37. Prior to the issuance of a building permit for a particular area of work, the Applicant shall obtain requisite approvals from agencies and authorities having jurisdiction over said work and shall submit written copies to the Board of permits and licenses necessary for the construction of that area of work including but not limited to the following:

- a. Proof that a general application under the general NPDES Permit has been submitted to the EPA for construction activities disturbing more than one acre
- b. DEP Water and Sewer extension permit¹
- c. Railroad crossing license
- d. Street opening permit
- e. Building demolition permits
- f. Town of Natick Water and Sewer permits

38. If the Applicant shall prepare a hazardous substances (21E Report) for the Property, the Applicant shall furnish copies to the Board and to the Natick Board of Health. Any required project design modifications or use limitations shall be incorporated subject to approval by the Board.

39. Temporary or permanent signage and sign illumination shall conform to the Town of Natick By-Laws, Rules and Regulations.

¹ Notwithstanding anything to the contrary herein, the DEP extension permits may be provided prior to the issuance of the first Certificate of Occupancy.

40. The construction process shall conform to requirements of the following:
- a. Applicant may perform work in any or all Areas at any time, including but not limited to the stockpiling and processing topsoil and rock material and the balancing of earthwork cuts and fills. Applicant shall at all times comply with all applicable regulations for erosion and sedimentation control, including compliance with the National Pollutant Discharge Elimination System (NPDES) general permit for construction activities, and including stabilization of all inactive Areas.
 - b. During construction the Applicant shall comply with all local, state, and federal regulations regarding noise, vibration, dust and use, and interference with blocking town roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents in the general area. Except for extenuating circumstances, construction shall not commence any weekday, including Saturday, before 7:00 a.m. and continue beyond 7:00 p.m. and shall not be allowed on Sunday or any legal holiday. Additionally, construction vehicles and/or equipment shall not be started or operated prior to or after the times stated herein. Notice of this requirement shall be posted on a construction sign on site in plain view to all workers and contractors and the general public along with a contact phone number to report offences.
 - c. During construction the applicant shall comply with a plan to remove debris and dirt from the wheels of vehicles leaving the site.
 - d. The Applicant shall submit to the Board and the Board's engineer for its review and approval prior to the issuance of a building permit, a diesel emission control plan (the "Control Plan") focused on reducing or eliminating air pollution from diesel engines. The Control Plan shall include but not be limited to the use of combination of requirements such as : on site use of Low Sulfur or Ultra Low Sulfur diesel fuel, retrofitting diesel engine equipment with emission controls, requiring diesel vehicles to meet the 2007 or 2012 federal emission standards for heavy-duty highway diesel engines and vehicles and a plan to comply with the anti idling provisions of the state and federal requirements to control unnecessary idling of all on-site motor vehicle. Once approved by the Board, the Applicant shall implement the plan and report emission reductions to the Board upon completion of the work.
41. The Applicant is required to comply with all applicable and pertinent regulations of the American with Disabilities Act and the Massachusetts Building Code.
42. The Applicant shall provide erosion control monitoring and engineering oversight throughout the Project as required by the Applicants NPDES permit.
43. The Applicant shall install bike racks for at least ten bikes at or near the entrances to each of the buildings such that the racks are sheltered from the elements.

General:

44. The Applicant shall promptly pay the reasonable fee of the consulting engineer and the Board's legal counsel for review of the plans or documents described herein for the purpose of determining compliance with this Permit. The Board requires the establishment of an escrow account to assure such payment, with an initial deposit of \$10,000.00. Said deposit to be replenished upon reasonable notice. Failure to replenish same within a reasonable period of time will be cause for the issuance of a cease and desist order. Inspections during the construction phase shall be conducted, at the expense of the Applicant, in accordance with the Rules and Regulations of the Planning Board, where applicable. The Board may appoint an agent or agents to conduct such inspections. Any excess funds remaining the escrow account following all required reviews hereunder shall be returned to the Applicant.

45. The Applicant is required to comply with all applicable state building and fire codes in the construction and design of the Project.

46. Any order of the Department of Environmental Protection (DEP), if applicable, regarding this property, shall be made a part of this comprehensive permit. If there is any inconsistency between the plans of record for this permit and the plans as may be approved by the DEP or any other agency or board the Applicant shall submit an amended plan to the Board for approval. Said amended plan shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable. Any changes in the plans shall be governed in accordance with 760 CMR 56.05(11).

47. Upon submission to the Town of its Affidavit of Building Permit Fee Calculation, the Applicant shall provide to the Town the sum of \$5,000.00 to be placed in escrow to be used by the Town to audit the Applicants building permit application and final costs of construction as represented in the Affidavit. Any funds not used hereunder shall be returned to the Applicant within thirty days following completion of the audit.

48. The Applicant shall pay to the Board all outstanding amounts due to the Board's peer review consultants which were incurred during the Application review process, within twenty (20) days of the filing of this decision with the Town Clerk. Failure to do so shall result in the revocation of this permit.

49. The Applicant has requested, and the Board of Appeals has granted, the waivers from local rules set forth on **Exhibit L**, attached hereto and incorporated herein. To the extent that the approved plans noted above shows additional waivers at specific locations not expressly set forth above, these waivers are also granted. To the extent the plans are silent on a particular issue; the appropriate Town's By-Laws shall apply. In the event the Applicant or the Board's consulting engineer determines, in the final design of the Project, that additional waivers, not shown on the plans are required, the Applicant shall be required to obtain such additional waivers after written request to the Board. The

Board may grant such additional waivers in accordance with applicable rules and regulations.

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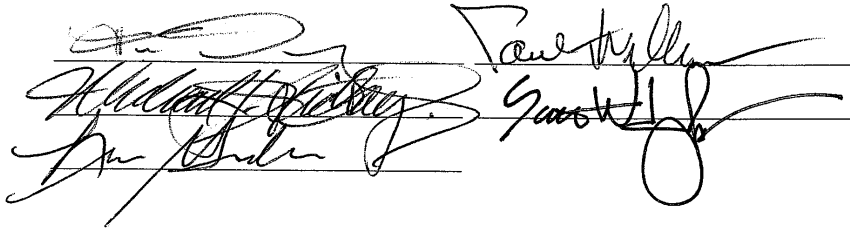
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RECORD OF VOTE

The following members of the Board vote to grant a comprehensive permit subject to the above-stated terms:



Handwritten signatures of board members in support of the permit, including names like Paul Kelly and others, written over horizontal lines.

The following members of the Board are in opposition to the grant of the comprehensive permit:

Filed with the Town Clerk on Sept 18, 2008.

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TOWN CLERK-NATICK

WAIVERS

1. Use restriction of Section III-A.2 of the Zoning By-Law (multi-family use and accessory garage prohibited in Industrial II zoning district).
2. Front setback requirements of Section IV-B of the Zoning By-Law (closet building will be approximately 20 feet from the front lot line, rather than the 85 feet required).
3. Side and rear setback requirements of Section IV-B of the Zoning By-Law (closest structures will be approximately 65 feet from the side lot line and 2 feet from the rear lot line, rather than the otherwise applicable requirements based on building height).
4. Height requirement of Section IV-B of the Zoning By-Law (approximately 104 feet to the top plane of the roof of the 11-story building, and 120 to the highest point of the building mechanical systems, rather than the 80 feet maximum allowed).
5. The maximum distance of a parking space from the residence it serves as set forth in Section V-D.3(b) of the Zoning By-Law (some parking stalls may be further than the 300 feet maximum distance allowed).
6. Landscaped buffer requirement of Section V-D.16 of the Zoning By-Law (an approximately 20 foot landscaped buffer will be provided along the adjacent right-of-way, rather than the 50-foot landscaped buffer required).
7. Prohibition on storage of petroleum within the Aquifer Protection Overlay District, as set forth in Section III-A.5.5(b), to the extent such prohibition would be interpreted to prohibit the storage of motor vehicles within an enclosed parking garage.
8. If and to the extent applicable, the requirement set forth in Section III.A.5.6(d), stating that any project located in the Aquifer Protection District on a lot proposed to be more than 20 percent impervious must obtain a special permit, and requiring that water be recharged to the aquifer. In this case, the Project will implement the stormwater system improvements shown on the Project Plans.
9. Prohibition on shared driveways for residential structures as set forth in Section IV-A.6 of the Zoning By-Law (multiple primary residential structures and accessory garage will share driveways and drive aisles as shown on the Project Plans).

10. The requirement set forth in the Stormwater Management and Erosion Control By-Law (the "Stormwater By-Law") requiring that projects disturbing an area of 40,000 square feet or more of land area must submit an application to the Conservation Commission and obtain a land disturbance permit.

11. The requirements set forth in Sections 8, 9 and 10 of the Stormwater By-Law requiring that projects subject to a land disturbance permit must also prepare, submit and implement an Erosion and Sedimentation Control Plan, a Stormwater Management Plan, and an Operation and Maintenance (O&M) Plan. The Project instead will implement the erosion controls and constructing the stormwater facilities as specified on the Project Plans, and upon the issuance of a building permit, will implement the O&M Plan submitted to the Board.

12. Except as noted in this decision, the requirement in Section 12 of the Stormwater By-Law stating that the recipient of a land disturbance permit may be required to post a bond, letter of credit or other surety.

13. The requirements in Sections 11 and 15 of the Stormwater By-law stating that the Conservation Commission and its agent will have responsibility for pre-construction meetings, on-site inspections, and other general construction oversight, including the issuance of a final certificate of completion.

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