

TRANSFER OF DEVELOPMENT RIGHTS AND RESTRICTION

This TRANSFER OF DEVELOPMENT RIGHTS (“Transfer”) and DECLARATION OF RESTRICTION (“Restriction”) is made as of this 12th day of October, 2016, by and between BENSON & EVAN REAL ESTATE, LLC a Massachusetts limited liability company with a principal place of business at 358 Great Road, Acton, Massachusetts 01720 (hereinafter referred to interchangeably as “B&E” and “Transferor”) and AHC, Inc., a Massachusetts corporation with a principal place of business at 342 Great Road, Acton, Massachusetts 01720 (hereinafter referred to interchangeably as “AHC” and “Transferee”).

BACKGROUND

WHEREAS, B&E owns certain property presently known and numbered 358 Great Road, Acton, Massachusetts, by way of a deed dated December 20, 2005 and recorded with the Middlesex South Registry of Deeds in Book 46693 page 187 and shown on the Acton Town Atlas map D-4 as Parcel 18 (“Sending Lot”) which property is presently used as office space and located in the Limited Business district as set forth in the Zoning By Law of the Town (“Sending District”).

WHEREAS, AHC owns four parcels of land in the Town presently known and numbered (i) 7 Great Road as described in a deed dated November 12, 2014, registered with the Land Court District for the Southern District of Middlesex County as Document No. 1685368, (ii) 9 Great Road as described in a deed dated November 12, 2014, registered with said Land Court Registry District as Document No. 1685367 and (iii) 19 and 29 Great Road as described in a deed dated July 28, 2011 recorded with said Registry in Book 57217 Page 330, all of which are shown on Acton Town Atlas Map G-5 as parcels 78, 80, 81 and 84 (hereinafter referred to interchangeably as “Receiving Lot” and “AHC Parcels”) which parcels are located in the East Acton Village (EAV) district as set forth in the Zoning By Law (“Receiving District”).

WHEREAS, AHC made application on or about December 14, 2015 to the Board of Selectmen of the Town of Acton (“Town”) for a special permit in connection with the site plan of AHC for a mixed use redevelopment of the four AHC Parcels and a Transfer of Development Rights (“TDR”) in connection therewith. The Town has granted the Special Permit, Decision #12/14/15-460 dated February 11, 2016 (“Special Permit”).

WHEREAS, the conditions of the Special Permit include without limitation that AHC (i) Prepare, and record deed restrictions on further development of the Sending Lot in accordance with the provisions of Section 5.4 of the Zoning By Law and (ii) Prepare and record a document that memorializes and quantifies the assembly of development rights at the Receiving Property.

WHEREAS, for good and valuable consideration to be paid by AHC to B&E, B&E has agreed to Transfer Development Rights to AHC resulting in certain restrictions on development of the Sending Lot as hereinafter set forth and permitting concessions in regard to the development of the Receiving Property.

NOW, THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, B&E and AHC hereby agree as follows:

1. B&E hereby transfers to AHC the rights of B&E to develop Net Floor Area (as defined in the Zoning Bylaw, hereinafter "Floor Area") of 12,000 square feet of the Sending Lot for the purpose of permitting AHC to increase the development density of the Receiving Lot pursuant to Section 5.4 of the Zoning By-Law and Section 3.1 of the Special Permit ("Transfer").
2. The Sending Lot currently has available Floor Area of 14,806 square feet for development by right as set forth in the Table of Standard Dimensional Regulations in Section 5 of the By Law ("TSDR"). As a result of the Transfer, the Sending Lot will henceforth be restricted to redevelop no more than an additional 2,826 square feet of FloorArea.
3. The Receiving Lot currently has available Floor Area of 21,297 square feet by right as set forth in the TSDR. As a result of the Transfer and the application of Historic Preservation Bonus pursuant to Sections 5.5b.2.2.(a) and (b), respectively and Section 3.1 of the Special Permit, the Receiving Lot will have 43,835 square feet of Floor Area available for the development of the Receiving Lot pursuant to the Special Permit.
4. B&E hereby permanently restricts the Sending Lot to the limitation that further development of the Sending Lot will increase the net floor area by any more than 2,826 square feet of Floor Area and covenants that the Town has the right to enforce this restriction in perpetuity.
5. AHC hereby agrees that it shall comply strictly with the terms of the Special Permit including without limitation the requirements for approval of actions by AHC pursuant to Sections 3.1, 3.2 and 4 of the Special Permit, respectively.
6. By its reservation of the rights of the Town to enforce this Restriction, the Parties agree and acknowledge that the Town does not undertake any liability or obligation relating to the condition of the Sending Lot or the Receiving Lot, including with respect to compliance with hazardous materials or other environmental laws and regulations. The Parties further agree that any election by the Town as to the nature and timing of its actions pursuant to its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
7. The burdens of this Restriction shall run with the Sending Lot.
8. This Restriction may not be amended without the approval of the Town evidenced by a written instrument recorded in the Registry.
9. The Parties agree that the Town may, following prior written notice to either or both of the Parties, institute suits to enjoin any violation of the terms of this Restriction, of the Special Permit, and of the Zoning Bylaw as it pertains to this Restriction and the Special Permit, by *ex parte*, temporary, preliminary or permanent injunction, including without limitation prohibitory and/or mandatory injunctive relief, and to require the restoration of the Sending Lot to the condition to which it is limited by this Restriction. In the event any civil action is commenced and that either or both of the Parties are found to have

violated any the conditions of this Restriction or the Special Permit, the party or parties that are found to have committed such violation shall reimburse the Town for any costs or expenses incurred in connection with the Town's enforcement of the term of this Restriction, including without limitation all reasonable court costs, and attorney, architectural, engineering and expert witness fees.

10. B&E and AHC at the time of execution and delivery of this Transfer of Development Rights and Restriction, have good and marketable title to the Sending Lot and Receiving Lot, respectively, free and clear of any lien or encumbrance except those matters set forth on Exhibit A attached hereto. B&E and AHC represent and warrant that they have obtained the consent of all existing mortgagees of Sending Lot and Receiving Lot, respectively, as to the execution and recording of this Transfer of Development Rights and Restriction and to the terms and conditions hereof and the subordination of all existing mortgages to this Restriction. Any amendment of this Restriction will require a subordination of any mortgages, assignments, financing statements or other liens, documents or encumbrances voluntarily granted by B&E and/or AHC ("Collateral Documents") to secure any obligations by B&E and/or AHC to any of holders of Collateral Documents of record at the time of any amendment to this Restriction. AHC shall record this instrument in the Middlesex South Registry of Deeds and register it with the Land Court District for Southern Middlesex County.
11. The interpretation and performance of this Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
12. Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to effect the purpose of this Restriction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid. Furthermore, this Restriction represents the implementation in part of the Special Permit. Accordingly, construction and interpretation of this agreement shall be consistent with the Special Permit and the Zoning Bylaw under which it was granted.
13. If any provision of this Restriction shall to any extent be held invalid, the remainder shall not be affected
14. This instrument sets forth the entire agreement with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Restriction, all of which are merged herein.
15. The captions in this instrument have been inserted solely for convenience of reference. They are not a part of this instrument and shall have no effect upon construction or interpretation.
16. This Restriction may be executed in counterparts that shall constitute a single agreement whether or not all signatures appear on a single copy hereof.

17. Subject to the limitations set forth herein, this Restriction shall run with the title of the Sending Lot and the Receiving Lot and be binding on the successors and assigns of B&E and AHC.

Executed as a sealed instrument as of the date first set forth above.

AHC, INC.

By: *Hassan Khaledi*
Name: HASSAN KHALEDI
Title: Treasurer

By: *Cynthia B. First*
Name: CYNTHIA B. FIRST
Title: Secretary

BENSON & EVAN REAL ESTATE, LLC

By: *Thomas E. Buckborough*
Name: THOMAS BUCKBOROUGH
Title: Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 18 day of October, 2016, before me, the undersigned notary public, personally appeared **Thomas Buckborough** proved to me through satisfactory evidence of identification, which was (driver's license () passport () employee ID Card () other _____, to be the person(s) whose name(s) are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as **Manager** of Benson & Evans, LLC.

Kelsie L. Breashears

Notary public: March 11, 2022
My commission expires:

KELSIE L. BREASHEARS

Notary Public

Commonwealth of Massachusetts

My Commission Expires

March 11, 2022

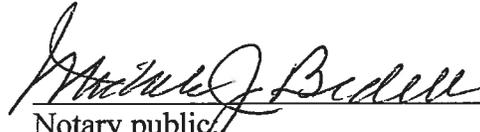


COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 12th day of Oct., 2016, before me, the undersigned notary public, personally appeared **Hassan Khaledi** proved to me through satisfactory evidence of identification, which was () driver's license () passport () employee ID Card () other _____, to be the person(s) whose name(s) are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as **Treasurer** of AHC, Inc.

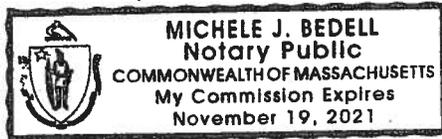


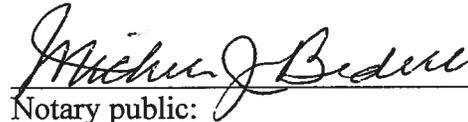

Notary public:
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 12th day of Oct., 2016, before me, the undersigned notary public, personally appeared **Cynthia B. First** proved to me through satisfactory evidence of identification, which was () driver's license () passport () employee ID Card () other _____, to be the person(s) whose name(s) are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as **Secretary** of AHC, Inc.




Notary public:
My commission expires:

Approval of Selectmen

We, the undersigned, being a majority of the Town of Acton Board of Selectmen, hereby certify that at a meeting duly held on _____ day of _____, 2016, the Board voted to accept the foregoing Restriction.

TOWN OF ACTON
By its Board of Selectmen

Peter Berry, Chairman

Janet Adachi, Vice-Chair

Frances Osman, Clerk

Katie Green

Chingsung Chang

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____, 2016, before me, the undersigned Notary Public, personally appeared
proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, and that he/she/they has/have authority to sign as a/the Member(s) of the Board of Selectmen of the Town of Acton, before me.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____, 2016, before me, the undersigned Notary Public, personally appeared
proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, and that he/she/they has/have authority to sign as a/the Member(s) of the Board of Selectmen of the Town of Acton, before me.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____, 2016, before me, the undersigned Notary Public, personally appeared
proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, and that he/she/they has/have authority to sign as a/the Member(s) of the Board of Selectmen of the Town of Acton, before me.

Notary Public
My Commission Expires:

Exhibit A

Permitted Encumbrances with Consent and Subordination

7 & 9 Great Road

ENTERPRISE BANK AND TRUST COMPANY mortgage in the original principal amount of \$1,364,320.00 dated November 12, 2014, recorded with the Middlesex South Registry District of the Land Court as Document #1685369 and noted on Certificate of Title #258095 (together with the Assignments of Rents registered as Document # 1685370).

Variance dated June 9, 1988 to permit use of premises as mixed residential and office (business) uses recorded with Middlesex South Registry District of the Land Court as Document No. 777920.

19 & 29 Great Road

ENTERPRISE BANK AND TRUST COMPANY mortgage in the original principal amount of \$1,364,320.00 dated November 12, 2014, recorded with the Middlesex South District Registry of Deeds in Book 64499 page 121 (together with the Assignments of Rents recorded in Book 64499 page 134).

358 Great Road

Taking and layout of Great Road by the Commonwealth of Massachusetts recorded with the Middlesex South District Registry of Deeds in Book 6511 page 313.

RECEIVED

MAR 29 2016

TOWN CLERK
ACTON

Special Permit #12/14/15-460
7-29 Great Road
February 11, 2016



TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6611
Fax (978) 929-6350
bos@acton-ma.gov
www.acton-ma.gov

Board of Selectmen

DECISION
#12/14/15-460

7-29 Great Road (First Village)

Special Permits for

1. Site Plan (Zoning Bylaw, s. 10.4)
2. a) Transfer of Development Rights (TDR – Zoning Bylaw, s. 5.4)
b) Variable Density Options in EAV District (Zoning Bylaw, s. 5.5B.2.2)

February 11, 2016

GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of AHC, Inc. of 342 Great Road, Acton, MA 01720 (hereinafter the Applicant) for properties located at

- I. 7-29 Great Road in Acton owned by the applicant, shown on the Acton Town Atlas; map G-5 as parcels 78, 80, 81, and 84 (hereinafter the Site); and
- II. 358 Great Road in Acton owned by Benson & Evan Real Estate LLC of the same address, shown on the Acton Town Atlas map D-4 as parcel 18.

This Decision is in response to an application for special permits as listed above, submitted to the Board on December 14, 2015, pursuant to the Acton Zoning Bylaw (hereinafter the Bylaw) and the applicable Special Permit Rules and Regulations (hereinafter the Rules). The Board held the public hearing on February 11, 2016. Board members Katie Green (Chair), Peter J. Berry (Vice Chair), Janet K. Adachi (Clerk), Frances J. Osman, and Chingsung Chang were present throughout the hearing. The minutes of the hearing and submissions on which this

decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 An Application binder entitled "Site Plan Special Permit Application & Special Permit Application Under Zoning Sections 5.4 and 5.5B.2.2", compiled by Stamski and McNary, Inc., dated 12/10/15, containing the following:
 - Application cover letters;
 - Application forms;
 - Project Narrative;
 - Existing conditions plans for 358 Great Road;
 - Abutters list;
 - Use description;
 - List of other permits and variances;
 - Record Plan;
 - Drainage Calculations;
 - Water Balance Calculations;
 - Earth Removal Calculations;
 - Plan entitled "Site Plan for 7, 9, 19 & 29 Great Road, Acton, Massachusetts" (First Village Site Plan), dated December 10, 2015 last revised 3/3/16, prepared by Stamski and McNary, Inc., consisting of 7 sheets (including landscape plan L-1);
 - Building floor & elevation plans by Mahoney Architects, dated 12/21/12, 14 sheets;
 - Lighting Plan by Omni-Lite, Inc., 1 sheet;
 - Sternberg Lighting light installation specifications, 2 pages (undated);
 - Traffic Study.
- 1.2 Application Supplements received at the public hearing:
 - First Village Site Plan, Layout Plan on aerial photo, dated 12/10, 2015.
 - Front Elevation Composite renderings, undated, sheet 1 (separate for Great Road front view and houses front view) and sheet 2 (both views overlaid).
- 1.3 Interdepartmental communication was received from:
 - Planning Department, dated 2/3/16;
 - Historical Commission, William Klauer, e-mail dated 2/3/16;
 - Engineering Department, dated 1/5/16;
 - Design Review Board, dated 2/3/16;
 - Acton Water Supply District, dated 12/11/15.
- 1.4 Other correspondence and materials:
 - Stephen P. Steinberg, project support letter dated 2/11/16.

Exhibits 1.1 and 1.2 are hereinafter referred to as the Plan.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concluded that:

- 2.1 The Applicant requested:

- a) A site plan special permit under Bylaw section 10.4 for property at 7-29 Great Road in the East Acton Village (EAV) zoning district.
- The applicant proposes a mixed-use redevelopment on four adjacent parcels with a combined area of +/-2.44 acres.
 - The project would comprise over 8,000 sq. ft. of commercial space (retail & office) and 14 dwelling units.
 - The proposed uses are allowed by right.
 - The Plan shows existing and new buildings, residential and commercial, at and near the Great Road frontage with parking in the rear and side of these buildings.
 - Behind that, the Plan shows a small residential neighborhood with ten single-family homes.
 - There would be two driveways; reduced from three existing driveways.
 - Various non-historic buildings would be razed.
 - The existing sidewalk would be integrated with on-site pedestrian amenities and a pedestrian plaza. The proposed provision of an improved and extended sidewalk along the Site frontage is sufficient and adequate under the standards of the Bylaw.
 - The Plan shows 43 vehicle parking spaces, including garage spaces, and three bicycle parking spaces.
 - The proposed landscaping appears richly appointed with shade, street, and ornamental trees, shrubs and ground covers; and hardscape as walkways, pocket park, and pedestrian plaza.
- b) A combined special permit:
- i. Under Bylaw section 5.4 for the Transfer of Developments (TDR) from an off-Site location at 358 Great Road near Skyline Drive located in the Limited Business (LB) district to the EAV Site.
 - Section 5.4 establishes TDR sending and receiving districts. The off-Site location is in the sending district, the EAV Site is in the receiving district. The proposed 12,000 sq. ft. Net Floor Area TDR is eligible for special permit consideration under section 5.4.
 - No development or change is proposed for the off-site location.
 - The development rights on the property in off-Site location would be reduced by 12,000 sq. ft. of Net Floor Area. After the TDR, it would retain 2,826 sq. ft. of surplus developable Net Floor Area subject to the sending district standards of ZBL subsection 5.4.6.2.
 - This off-Site property must be deed restricted accordingly.
 - After the TDR, the development rights on the EAV Site would be increased by the same 12,000 sq. ft. to a maximum Net Floor Area of 33,297 sq. ft. and a Floor Area Ratio (FAR) of 0.31.
 - With the TDR applied, the development on the EAV Site is subject to meeting two tests related to the mix of residential and non-residential uses on the Site, before applying the Historic Preservation bonus (below):

- Under the test formula of Bylaw section 5.4.4.2 the FAR on the EAV Site resulting from the TDR cannot exceed 0.36. The Plan meets this test.
 - Under the test of Bylaw section 5.4.7 neither the residential nor the non-residential Net Floor Area can be less than 25%. As proposed in the Plan, the Site's residential Net Floor Area would only be 24.4%. The remedy is a shift of 206 sq. ft. of Net Floor Area from residential to non-residential use.
- ii. Under Bylaw section 5.5B.2.2 for additional density at the EAV Site with a Historic Preservation bonus (5.5B.2.2 subsection b)) to be applied in addition to the TDR pursuant to 5.5B.2.2 subsection a) i.
 - The plan shows the in-situ preservation and reuse of two historic buildings at 19 and 29 Great Road. Another historic building at 7 Great Road would be moved and reused at a different location on the Site. The three buildings are on the Acton Cultural Resources List. The application contains architectural drawing for the preserved historic buildings. The Bylaw requires more detailed specifications for the preservation work to be undertaken and the Historical Commission's favorable recommendation of the proposed preservation work.
 - Section 5.5B.2.2.b) provides for a Net Floor Area bonus up to an equivalent of a Floor Area Ratio (FAR) 0.10. Based on the Site's dimensions the maximum available bonus under this section is 10,648 sq. ft. The Applicant proposes using 10,538 sq. ft.
 - iii. The proposed total Net Floor Area of 43,835 sq. ft. on the Site includes use of the TDR and the Historic Preservation bonus and would result in a 0.41 FAR. Bylaw section 5.5B.2.2 allows a maximum 0.50 FAR including all available bonuses. The Plan for the Site meets this test.
 - iv. The assembly of additional development rights on the Site through TDR and the Historic Preservation should be memorialized in a document of permanent record for future reference.
- 2.2 The Plan appears to meet dimensional requirements of the Bylaw for setbacks, open space, building height, and vehicle parking, including the consideration of pre-existing non-conforming location of buildings that are slated for in-situ preservation.
 - 2.3 Connections to adjacent properties, including provision for future connections, appear impractical and unnecessary in this location.
 - 2.4 The proposed development Site is in the Groundwater Protection Overlay District Zone 3; certain design standards apply to drainage and recharge of storm water. The site is unconstrained by flood plain or wetlands.
 - 2.5 Design Review Board comments suggest thinning out the residential density in the project or aggregating single residential units into larger multi-unit buildings. The Site is in the EAV zoning district that was the subject of a 2004 specific area plan (The East Acton Village Plan). Town Meeting adopted the zoning recommendations from that plan including provisions for density increases through TDR, preservation of historic buildings, and other means. First Village, the proposed Site development, is the first project in the EAV District that would implement the East Acton Village Plan's zoning recommendations as adopted. The Applicant's presentation at the public hearing provided acceptable and logical explanations, based on economic considerations and building and site design considerations, that support the residential density and single-family design layout of the buildings in the rear as presented on the Plan.

- 2.6 The Board has received comments from various Town departments, which are listed in Exhibit 1.3 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.7 The Plan as amended herein is appropriate for the Site; consistent with the Master Plan; in harmony with the purpose and intent of the Bylaw, specifically Section 10.4; and complies in all respects to the applicable requirements of the Bylaw, and Site Plan Special Permit Rules. They enhance the purpose and intent of the Bylaw; are in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhoods; and will therefore not be detrimental or injurious to the neighborhood.
- 2.8 The increased density through TDR supports a sense of community, through a concentration of a variety of uses; is compatible with surrounding uses; facilitates the development of a viable village center, that provides convenient and attractive commercial and personal services for its residents and for the residents of Acton's neighborhoods; encourages compact development in the EAV district, reinforcing Acton's traditional pattern of development; discourages excessive development in the Great Road corridor outside of the EAV district, so as to reduce traffic congestion and minimize the need for public spending on infrastructure expansion; helps conserve public funds by concentrating development in areas where public infrastructure and services may be most efficiently provided; balances long-term tax revenue reductions in areas planned for limited development with long-term revenue increases in areas planned for concentrated development; and accomplishes the aforesaid objectives in a manner in which landowners are compensated for reductions in long-term development potential, through transfers with other landowners who benefit from increases in development potential.

3 BOARD ACTION

Therefore, the Board voted unanimously on February 11, 2016 to GRANT the requested Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions and limitations.

3.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit for this Project or any portion thereof, nor shall any construction activity approved hereunder begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO. Where approvals are required from persons, boards, commissions, or agencies other than the ZEO, the Applicant shall be responsible for providing evidence of such approvals to the ZEO.

- 3.1.1 Prepare, and record at the Registry of Deeds or Land Court, the deed restrictions on further development on the off-Site location at 358 Great Road in accordance with the requirements of Bylaw section 5.4. The restriction shall be subject to approval by the Acton Planning Department.
- 3.1.2 Shift Net Floor Area from residential to non-residential in an amount sufficient to meet the Bylaw standard set forth in section 5.4.7.
- 3.1.3 Prepare, and record at the Registry of Deeds or Land Court, a document that memorializes and quantifies the assembly of development rights at the Site with

references to the pertinent section of the Bylaw. The document shall be subject to approval by the Acton Planning Department.

- 3.1.4 Submit in electronic form a set of plans (site, architectural, landscaping, lighting, and details) revised pursuant to this decision and stamped with the pertinent professional certifications.
- 3.1.5 For the three historic buildings proposed for preservation, provide
 - A detailed historic preservation plans with architectural drawings, building materials, cost estimates, and feasibility/risk analysis.
 - A favorable recommendation from the Acton Historical Commission for the proposed preservation work. The Applicant shall request such recommendation in writing from the Commission, and such request shall include the Site Plan and the information listed in the previous bulleted paragraph. In the absence of the Commission's recommendation after one month from the date of the request or any extension granted by the Applicant, the ZEO shall assume a favorable recommendation from the Historical Commission.
- 3.1.6 Submit a legible lighting plan shall showing locations of luminaires, luminaire types, detailed lumens on the ground measurements, and site power usage by activity area. Include a statement certifying that as designed the lighting plan complies with section 10.6 of the Bylaw. If using LED luminaires, specifications for LED light powers shall be adjusted to achieve site lighting levels that do not exceed the Bylaw standards assuming use of incandescent, halogen, metal halide, or high-pressure sodium lights; and a conversion table shall be included.
- 3.1.7 Show a bicycle parking facility detail in compliance with section 6.3.7.3 of the Bylaw.
- 3.1.8 To the extent permissible under applicable Americans With Disabilities Act and Massachusetts Architectural Access Board regulations for access for persons with disabilities, show additional walking connections between the lower front portion and the higher rear portion of the site.
- 3.1.9 After consultation with the Design Review Board, add an enlarged detail plan for the pedestrian plaza layout with plantings, hardscape elements, amenities and fixtures.
- 3.1.10 Show street names and numbers as assigned by the Acton Engineering Department and a street sign as applicable.
- 3.1.11 Determine the approximate seasonal high groundwater elevation for the Site and document that all proposed drainage facilities will function as intended when groundwater is at the seasonal high.
- 3.1.12 Correct the discrepancies between the plans and calculations regarding some of the subsurface detention ponds. For Subsurface area 1, the bottom of the structure/invert is 135.50 on the plan and 136.00 in the calculations. For Subsurface area 3, the bottom of the stone/encasement is 126.71 on the plan, 129.00 in the calculations and the bottom of the structure/invert is 127.71 on the plan and 130.00 in the calculations.
- 3.1.13 Provide Figure 1 referenced in the Water Balance calculations.
- 3.1.14 The Applicant shall modify the Plan as needed, to comply in all respects with the Bylaw.

3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to the following conditions shall render these Special Permits null and void, without force and effect, and shall constitute grounds for the revocation of these Special Permits, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with these Special Permits using any and all powers available to it under the law.

- 3.2.1 Great Road is a State highway. A MassDOT access permit will be required for this project. Send a copy of the access permit to the Engineering Department immediately upon receipt.
- 3.2.2 Prior to the issuance of the last certificate of occupancy on the Site, submit an as-built plan stamped and certified by a Massachusetts Licensed Surveyor and a Professional Engineer showing the buildings, pavement, drainage, utilities, etc. and certifying that the Site development has been completed in accordance with the approved Plan and that all features required on the Site by the approved Plan and this Decision have been field inspected and conform with the approved design; any non-conforming features shall be clearly noted.
- 3.2.3 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.2.4 All construction activity on the property relating to these Special Permits shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.2.5 This Decision, and the documents and restrictions that memorialize the development rights in the Site and on the off-Site parcel, shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of any building permit and certificate of occupancy.

4 LIMITATIONS

The authority granted to the Applicant under these Special Permits is limited as follows:

- 4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 4.2 These Special Permits apply only to the Site and off-site location identified in this Decision and to the proposed uses and activities shown and noted in the Plan.
- 4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 These Special Permits shall lapse if substantial use thereof has not commenced within two years of the filing date of this Decision with the Town Clerk, except for good cause, or if construction under these Special Permits is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards

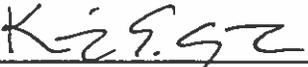
completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 2 years. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to these Special Permits and to require any appropriate modifications of the Plan.

4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of these Special Permits with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.

5 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Board of Selectmen



Katie Green, Chair

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner
Design Review Board

Building Commissioner
Engineering Administrator
Conservation Administrator
Police Chief
Historical Commission
Concord Water Department

Health Director
Municipal Properties Director
Town Manager
Acton Water District
Assistant Assessor