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Special Permit  
And  
Site Plan Approval  
For  
Planned Unit Development  
131 Eliot Street  
Carrick Realty Trust, Applicant

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Pursuant to Section III Subsection J ("Central Avenue Planned Unit Development") of Chapter 10 of the General Bylaws known as the Zoning Bylaws and pursuant to Section VIII Subsection D ("Site Plan Approval") the Planning Board of Milton, duly constituted as special permit granting authority and as site plan approval granting authority, grants a special permit and site plan approval to Carrick Realty Trust ("Applicant") for the planned unit development described herein for premises described herein upon the terms and conditions specified herein. The planned unit development shall be constructed and thereafter maintained in accordance with the Special Permit and Site Plan Approval (hereafter referred as the "Special Permit") and with the plans and documents hereafter referenced as part of the Special Permit.

**A. The Site.** The site currently contains an unused ice cream factory (the Hendries Building) and includes a lot at 131 Eliot Street in the Business District containing 29,175 square feet and an adjacent lot in the Residence C district containing 6,350 square feet. The site also includes a lot at 0 Central Avenue owned by the Town of Milton containing 6,906 square feet and a lot of about 1,223 square feet also owned by the Town of Milton. The four combined parcels are hereafter referenced as the "Site". Applicant has an agreement with the Town regarding the Town's parcels giving Applicant an adequate interest in the site for purposes of the special permit.

**B. The Building.** The building to be authorized for construction on the Site is described in text and shown on the sheets, documents and plans which are attached hereto and incorporated into this Special Permit by reference. Insofar as the text of this special permit may conflict with, revise, or supplement what is shown or provided in or on a sheet, document, or plan, the text of this special permit shall control the matter.

**C. The Building Interior.**

- 1. Ground Floor.** The ground floor qualifies as a basement and the principal floor. Its height shall be eleven (11) feet. A significant part of this principal floor will lie below the average elevation of the building footprint subsequent to construction as shown on Attachment 16.1 (Revised Building Height Plan by Allen and Major, dated September 6, 2016). The Planning Board determines this qualifies as a basement. The layout of the ground floor shall be as shown on Attachment 3 entitled "Ground Floor Plan." The business area totals 3,850 square feet and shall be used exclusively for the business uses specified in Paragraph 2.a of the zoning. There shall be 38 parking spaces on the ground floor. The total area shall be 17,199 square feet.
- 2. First Floor.** The first floor shall have a height of 10 feet and shall be as shown on Attachment 4. There shall be two one-bedroom residential condominium units and three two-bedroom

residential condominium units. There shall be 28 parking spaces. The floor area of the first floor shall be 17,199 square feet.

3. Second and Third Floors. The second and third floors, each shall have a height of 10 feet and each shall contain 12 condominium units (2 one-bedroom units and 10 two-bedroom units) as shown on Attachment 5. The floor area of each floor shall be 17,199 square feet.
4. Fourth Floor. The fourth floor shall have a height of 10 feet and shall contain nine (9) two-bedroom condominium units as shown on Attachment 6. The floor area shall be 13,557 square feet. The fourth floor shall include the roof of the wing as shown on Attachment 6. That roof may contain a roof-top mechanical area which shall be surrounded by a five-foot high sound attenuation screen set back by at least fifteen (15) feet from the building's exterior walls and designed for a minimal visual effect. All original and future replacement equipment shall have high ratings for quiet operation as measured against alternative equipment at the time of installation; the screen wall shall buffer noise from the equipment. The equipment shall not rise more than five feet above the rooftop and shall be contained within the screen wall.
5. Roof Plan. The roof may contain a roof-top mechanical area shown on Attachment 7 which shall be surrounded by a 5 foot-high sound attenuation screen set back by at least 15 feet from the building's exterior walls and designed for a minimal visual effect. The mechanical area may contain equipment necessary for heating and cooling. All original and future replacement equipment shall have high ratings for quiet operation as measured against alternative equipment at the time of installation; the equipment shall not rise more than five feet above the rooftop and shall be contained within the screen wall which shall buffer noise from the equipment. An elevator penthouse outside of the screen wall as shown on the plans may rise no more than eight (8) feet above the rooftop and shall be designed for a minimal visual effect.
6. Construction Plans. The attachments referenced above are not construction plans. Construction plans shall be prepared prior to commencement of construction. Engineering requirements may require some minor reconfiguration of units, but the unit count, building dimensions and building design shall not substantially change. Any substantial change shall be subject to Planning Board approval. The Building Commissioner shall not approve construction plans which show any substantial deviation in unit configuration, unit count, building dimensions or building design as specified herein and/or shown on the attachments unless any such deviation has been approved by the Planning Board.
7. Construction Requirements. The interior of the units shall be sound isolated from each other and from the outside. The north walls, adjacent to the MBTA tracks shall be insulated with open cell foam insulation (or equivalent) to reduce the transmission of noise from trolley operations. The windows shall be energy efficient and sound reducing. Careful attention in construction shall be paid to the STC (sound transmission coefficient) and NRC (noise reduction coefficient) in order to control noise transmission between the units horizontally and vertically and from the outside.
8. Interior Finishes. Interior finishes shall be of high quality and durability comparable to other similar units in the market. The balconies shall be accessible.

#### **D. The Building Exterior.**

1. Building Appearance. The appearance of the exterior of the building when viewed from across Central Avenue and Eliot Street shall be as shown on Attachment 8 (the east façade); when viewed from across the tracks as shown on Attachment 9 (the north façade); and when viewed from Eliot Street as shown on Attachment 10 (the south façade). The appearance of the west façade shall be a carry-over of the south façade. There shall be prominent display windows on the ground floor of the Central Avenue façade on either side of the vehicle entrance of similar design to the entrances to the businesses on the ground level. Although these attachments are not construction plans, they accurately reflect the appearance, scale and proportions of the façade. Construction plans shall not change the appearance of the façade or alter the scale and proportions of the façade and its elements, including but not limited to windows, doors, porches, dormers, cornices, mansards, and projecting bays, all of which shall be constructed as shown. Any substantial change shall require approval of the Planning Board.
2. Base. The building shall have a brick base. Openings in the brick walls adjoining parking areas along the trolley tracks shall have decorative in-fill grates so as to allow air to the interior parking spaces. The openings for the grates shall be capped by eight (8) inch stone or simulated stone headers and will be under the windows and bays. The appearance of the brick base along Central Avenue and wrapping the corner of Eliot Street adjacent to the courtyard shall include the display windows and doors and shall present an attractive appearance. The brick base shall be no more than one floor tall in any area. There shall be a horizontal zone for signage (sign band) above display windows and entrances. Such sign band shall be a minimum of 18 inches and a maximum of 30" in height. As the grade rises the brick base shall be relocated from the ground floor to the first floor. The brick in the brick base shall be Redland Brick KF Extruded: Rustic 30 or architectural brick of equal quality, texture and color.

There shall be visibility into active spaces such that the area inside the commercial space within four feet from the surface of the window glass viewed from the adjacent sidewalk or courtyard. The storefront frame and glazing shall be set back from the face of the brick. The glass shall be transparent without tint. No more than 25% of the glass should be covered or obscured at any time unless the commercial space is vacant or under construction. Solid security grates at commercial storefronts are prohibited. If open grate security grates are to be employed, they shall be installed on the interior. Brick openings shall include a cast stone lintel and sill.

3. Upper Floors. Above the brick base there shall be a 2 or 3 story intermediate element comprising the bulk of the building. Above the intermediate element shall be a substantial cornice and mansard with projecting bay windows (all shown in the attachments). The intermediate element may be sheathed in HardieBoard or other similar clapboard siding of equal quality and appearance. The cornices, window and door casings, and horizontal and vertical bandings shown on the attachments shall be strong architectural features which are prominently visible. Their width and length shall be as shown on the attachments. Corner boards at the clapboard siding, fascia boards and crown molding shall be suitable to the mansard roof and gutter detail in scale and proportion. Windows at residential areas shall be 2

over 2 operable double-hung. The height of the windows shall be a minimum of 5 feet and the proportion of an individual window unit shall be more vertical than horizontal. Two individual units ganged together shall maintain a vertical proportion overall. There shall be doors opening onto balconies and porches. Window and door casings within the clapboard siding shall be proportional and project beyond the adjacent siding to create a shadow line. The railings of the porches shall be composed of a material comparable to the trim material. Natural finish pressure treated wood is prohibited. Precise colors and materials shall be discussed at a materials conference between Applicant and the Planning Board.

4. **Facades.** All facades of the building shall contain similar architectural elements and shall have similar appearances, avoiding any front, side or back distinction. The architectural elements surrounding and setting off windows and doors shall be as shown.

E. **Building Placement.** The main building has been sited on the site away from residential areas on Eliot Street so as to provide a small park as shown on Attachment 2 and Attachment 11, Sheet C-2. A wing containing most of the commercial space is closer to Eliot Street but separated by a courtyard. At least three benches, each seating at least two people, shall be provided along the Central Avenue sidewalk and at least two in the courtyard at the entrance to the commercial space. Rules may be made and enforced to prevent loitering or use of the benches on more than a short-term basis. Loitering on the pathway along the main entrance to the building should be discouraged, but the pathway and the area outside the commercial space are intended for public use while the commercial space is open. The main building shall be set back from the side line of the Central Avenue sidewalk with a setback of 10 feet at the narrowest point so as to provide a wide pedestrian passageway from the square to the trolley stop, the bicycle path and the Neponset River Bridge. Bicycle racks for at least twelve bicycles shall be provided in the area nearest the tracks. The existing sidewalk area belonging to the Town shall be repaired or reconstructed so as to be in good condition and may be landscaped with the consent and in accordance with the design direction of the Town. The Applicant or the Condo Association, as applicable, shall maintain areas for the public clean, free of debris, snow and ice, and in good condition. At the west side of the site a 6-foot tall fence shall be erected along the common lot line with the neighboring residential property. Rhododendrons, evergreen shrubs and trees and their installation shall be offered to the neighboring landowner for installation on the landowner's land in a reasonable landscape design for partial screening of the west side of the fence. On the east side of the fence there shall be a landscaped driveway and parking area. Attachment 11 shows the fence, driveway, parking and landscaping and a schedule of plantings for these planting areas. Attachment 11 also shows landscaping along Eliot Street and Central Avenue. Portions of the Applicant's planting area may be used for the deposit of plowed snow during winter months so long as plantings are properly protected.

F. **Lighting.** Applicant shall provide lighting as follows: The lighting plan (Attachment 12) is revised and supplemented as follows: There shall be up to three historic lantern light fixtures (to match existing street lights) along Eliot Street, one in the courtyard, and one in the Eliot Street green area and with four (4) 12 foot high Midsquare 11 luminaires (or equivalent designated at the materials conference) positioned at equal distances from each other along the open parking area. The Central Avenue frontage has existing street lights, which shall be supplemented by two additional historic lantern light fixtures along the passageway, the

location to be determined so as to provide maximum light effectiveness and designated at the materials conference. Balcony lights shall be wall mounted with light directed downwards within the balcony area. All lights shall be positioned so as to prevent light overspill into nearby residential areas; shall be compatible with building design in scale and style.

**G. Drainage, Utilities and Landscaping.** Drainage, utilities and landscaping shall be constructed and maintained in accordance with a plan encompassing twelve sheets dated January 10, 2017 with certain revisions on January 23, 2017 prepared by Allen & Major Associates Inc. (Attachment 11).

Sheet ABB-1 Abbreviations and Notes

Sheet ABB-2 Abbreviations and Notes

Sheet C-1 Erosion Control Plan

Sheet C-2 Layout, Materials & Landscape Plan

Sheet C-3 Grading and Drainage Plan

Sheet C-4 Utilities Plan

Sheet D-1 Details

Sheet D-2 Details

Sheet D-3 Details

Sheet D-4 Details

Sheet D-5 Details

Sheet D-6 Details

Sheet entitled Existing Site Plan and Conditions prepared by Anderson Surveys dated Aug. 7, 2009, as revised February 27, 2012

The plan has been approved by the Town Engineer in a letter dated January 26, 2017 with certain provisions regarding the Operations and Maintenance Plan (OMP) and a drain to be installed in Central Avenue. A copy of the letter is attached as Attachment 18. These provisos are adopted: The OMP shall be revised as required; the drain shall be private to be operated and maintained by the Condominium Association. Construction of this drain is a condition of this Special Permit, and all costs of installing and constructing the drain shall be borne by Applicant.

Further requirements for the drainage, utilities, and landscaping by the Conservation Commission shall be incorporated into the terms, conditions and requirements imposed hereunder. A Stormwater Operation and Maintenance plan dated January 10, 2017, as it shall have been thereafter amended, imposes additional terms, conditions, and requirements which are incorporated into this Special Permit.

**H. Signs.** Signs shall be subject to the rules, regulations and guidelines for signs in the business district.

**I. Number of Units.** Pursuant to Section III. J Paragraph 2.c the base number of housing units is one unit per 1,000 square feet of qualifying lot area. The qualifying lot area is 37,304 square feet. When rounded to the nearest whole number, the permissible housing unit count is 37. A bonus of up to 30% is available for additional units on account of streetscape improvements

for public use in the areas adjacent to the street. There are 38 proposed residential housing units. The Planning Board finds that the streetscape improvements including the Central Avenue sidewalk area providing a passageway and convenient access to the MBTA trolley stop, the bicycle path and the Neponset River Bridge and provision of benches and bicycle parking as provided herein are streetscape improvements warranting a bonus of the requested one additional unit.

**J. Floor Area.**

1. **Requirements.** Section III J.4.b provides that a building in a planned unit development, exclusive of areas used exclusively for parking, shall not have a floor area ratio (FAR) in excess of 1.5 times the area of the lot in the business district. The area of the lot in the business district is 37,304 square feet and, when multiplied by 1.5, the base permissible floor area exclusive of parking areas, is 55,956 square feet. Ground floor square footage, of the new building, exclusive of parking area, is 3,850 square feet as shown on Attachment 3; first floor square footage exclusive of parking is 7,238 square feet as shown on Attachment 4; second and third floor square footage is 17,199 per floor or a total of 34,398 square feet as shown on Attachment 5; fourth floor square footage is 13,557 as shown on Attachment 6. The total square footage of the proposed building, exclusive of parking areas, is 59,043 square feet, 3,097 square feet more than the base permissible floor area.
2. **Bonus of Additional Floor Area.** In the case where the floor area of a proposed building exceeds the base permissible floor area, the zoning permits the Planning Board to award a bonus of up to 15% in permissible floor area if the development will preserve, if feasible, or replace in kind one or more significant natural features on the site or provide one or more other significant amenities to the public
3. **Green Space.** Currently, the site is largely filled by an unused, deteriorated ice cream factory. However, along the Eliot Street side there are several significant areas of natural growth, including trees, shrubs, saplings and grasses, which, when observed from the street give a pleasant view of open green space in what is otherwise quite a congested area. This area is currently unmaintained and overgrown. The proposed project will expand the view of open green space along Eliot Street and increase the amount of open space visible and in some cases usable by the public. The Eliot Street green area and landscaped courtyard and the landscaped parking lot on the west will provide a pleasant, open view.
4. **Determination of Amenities.** The Planning Board finds that the provision of usable green space on Site will improve upon what currently exists and is adequate replacement in kind. The views of this green space from Eliot Street will be a public amenity. The public shall have the ability to access this green space during daylight hours, and such access will be a public amenity. The provision of 19 parking spaces to be available to the public patronizing businesses in the Central Avenue business district between the hours of 9:00 a.m. and 6:00 p.m. as herein provided will be a very significant public amenity and one which could not easily be duplicated in the business district. The zoning in Paragraph 4.6 specifically references provision of such parking as a significant public amenity. The stormwater impact of the property is substantially improved. This is a public amenity of this development. The removal of the current blighted

and condemned building on town land to be torn down and replaced with a higher and better and brought on to the town's tax roles at the sole cost and expense of the Applicant is another significant town amenity. Finally, the Condominium Association in its discretion with the consent of the Town may permit the outside parking area to be used on weekend mornings from 8AM to 11AM for public assembly, public markets, etcetera subject to all local requirements and such conditions as the Condominium Association may impose.

5. Award of Bonus. The Planning Board finds that the development will provide significant amenities to the public and that accordingly the Board awards a bonus of no more than 5,000 square feet of additional floor area pursuant to Section III, J.4.b.

#### **K. Set-backs and Set-back Exceptions.**

1. Set-back Requirement. Section III.J Paragraph 4.e requires that third and fourth stories of a building façade adjacent to a street be set back from the second story sufficiently so as to maintain a scale appropriate to nearby residential areas. The Planning Board may grant an exception to this requirement upon a finding that the entire building is set back from a particular lot line so as to meaningfully reduce the appearance of the bulk in the building.
2. South Side. The Planning Board finds that on the south side of the building along Eliot Street the main portion of the main building is set back by more than 50 feet, meaningfully reducing the appearance of bulk in the building. The mansard on the third story wing, as shown on Attachment 10, helps maintain a scale appropriate to the 2 ½ story buildings on Eliot Street.
3. West Side. The Planning Board finds that the four stories above grade on the west side of the building are relatively narrow (63.5 feet) and more than 100 feet from the abutting three story neighbor and are set back sufficiently to meaningfully reduce the appearance of bulk in the building. In addition, this façade is not adjacent to a street, and the set-back provision in Paragraph 4.e is inapplicable.
4. North Side. The Planning Board finds that the basement and four stories on the north (trackside) side of the building have no direct residential neighbors. This façade of the building overlooks the trolley tracks, the Neponset River, a parking lot and a cluster of commercial shops, a convenience store and a gas station on the Boston side of the river. Spaces between the bay windows and balconies above the third floor as well as the mansard on the fourth floor provide appropriate setbacks for the north side. Since this façade is not adjacent to a street the set-back provision of Paragraph 4.e is inapplicable.
5. East Side. The Planning Board finds that the front (east side) of the main building which is 63.5 feet wide and rises four stories above the ground (basement) floor warrants an exception to the requirement for a set back of the third and fourth stories. Initially the building was designed to be sited about 5.5-6.5 feet from the Central Avenue sidewalk. By moving the entire building 4.5 feet to the west (rather than simply setting back the third and fourth stories of the building) the streetscape will be significantly improved with better public space. By setting back the entire building (including the three story wing) there will be a meaningful reduction in the appearance of bulk in the building. In addition, the scale of this façade is not

inappropriate to nearby residential neighbors with a view of the façade. This façade (the east face of the building) overlooks one story commercial properties and a two story commercial building beyond which rises the iconic 150 foot tall smokestack of the former Walter Baker Chocolate factory. Beyond the smokestack stands the multistory complex of factory buildings now converted to housing. The nearest residential buildings with a view of this façade are the four story apartment building at 36 Central Avenue and several two family dwellings next to which is a 27-unit apartment building at 36-50 Eliot Street with four stories. The building at 36-50 Eliot Street is on a hill and rises to an elevation of 114 feet, thirty feet higher than the top elevation of Applicant's building. The Board finds that the mansard on the fourth story achieves a further reduction of the appearance of bulk. The relative narrowness of the main building (63.5) feet on this façade also reduces the appearance of bulk. An exception under Paragraph 4.e is warranted and is granted for the building authorized by this special permit.

6. Uninterrupted Rises. Among the design standards in Section III.J.5 is a standard (b) which requires that building walls shall not rise in an uninterrupted vertical plane more than 25 feet. The Planning Board can grant an exception to this standard upon a finding that a greater uninterrupted rise is architecturally appropriate and does not cause an unacceptable appearance of bulk. This provision is somewhat duplicative of Section III.J Paragraph 4.e. For the reasons set out in the previous paragraph, the Planning Board grants an exception finding that the building design is architecturally appropriate and that areas of uninterrupted rise of more than 25 feet do not cause an unacceptable appearance of bulk.

## **L. Traffic.**

1. Traffic Study. Applicant has submitted a "Traffic Impact Assessment" dated December 2011, a "Technical Memorandum" dated February 8, 2012 and a "Technical Memorandum" dated August 17, 2013. Applicant has also submitted a Traffic Technical Memorandum by Gillon Associates dated June 19, 2014.
2. Existing Traffic. It is clear that Eliot Street and Central Avenue carry high volumes of traffic and that there is a shortage of parking in the Central Avenue business district. Applicant's development will add to the volume of traffic somewhat, but will also provide 88 new parking spaces.
3. Future Traffic. Applicant's design provides a thoughtful approach to traffic issues. The Central Avenue entrance/exit for the ground level parking area in the building will also be the access for deliveries. The existing loading zone on Central Avenue shall be used for trucks, which make deliveries, move the furniture of residents, remove trash, and provide other services. In addition, provisions may be made for such purposes in the ground floor garage areas. The Eliot Street entrance/exit is adequately removed from the Eliot Street/Central Avenue intersection so as to permit stacking of vehicles on Eliot Street at peak hours without blocking the entrance/exit for traffic entering the development from the west. There will be an adequate off-street area for any cars waiting to exit without blocking Eliot Street. Since the first floor interior parking, of which the doors will open and close for each entering or exiting vehicle, is adjacent to the outside parking area, possible queues on Eliot Street for cars wishing to enter the interior parking will be avoided. Applicant and its successors shall make reasonable and enforceable

rules to require that trucks providing services and making deliveries shall use the loading zone and the Central Avenue entrance/exit. With such rules the potential problem of parked trucks blocking Eliot Street will be avoided. Applicant notes that the Board of Appeals has issued a comprehensive permit for a portion of the Site which would serve a higher volume of traffic on Eliot Street than the additional traffic produced under this permit. Under the comprehensive permit no additional traffic control measures are required.

4. **Traffic Provisions are Adequate.** Applicant recognizes that there are serious traffic issues in the area of the Central Avenue business district but has taken reasonable and appropriate steps to design a development which does not compound adverse traffic effects. Further, the applicant's traffic study overstates the likely number of trips generated by the site as it measures for 8,340 square feet of commercial uses while this application only proposes 3,850 square feet of commercial uses. The potential traffic issues arising from the development are reasonably managed and the development design makes reasonable provisions for the traffic which will be generated.

#### **M. Parking.**

1. **Requirements.** The parking requirements for the development are as follows: 15 business use parking spaces shall be provided for the business use (one space for each 250 square feet of area in a total area of 3,850 square feet). For the 6 one-bedroom units, 6 spaces (1 per unit) shall be provided. For the 32 two-bedroom units, 48 spaces (1.5 per unit) shall be provided. In addition, there shall be 18 parking spaces (1/3 of the number of residential use spaces) available exclusively for residents, their guests, and their service providers between the hours of 6:00 p.m. and 9:00 a.m. The total number of required spaces is 87; 88 spaces are provided. No restaurant uses shall be allowed under this special permit. Any restaurant use will require modification to this special permit and an analysis of traffic impacts and parking adequacy.
2. **Parking Areas.** There shall be 38 parking spaces on the ground floor of the building and 28 parking spaces on the first floor as shown on the attachments. There shall also be 22 outside spaces in the area to the west of the building as shown on Attachment 2 and Attachment 11. The minimum width of the driveway/aisle in the outside parking area shall be 20 feet. Parking spaces shall measure no less than 8 ½ feet by no less than 19 feet. Accessible parking spaces shall meet requirements of Architectural Access Board 521 CMR.
3. **Shared Parking.** Nineteen of the residential use spaces in the outside parking areas shall be reserved for parking by residents of the development, their guests and service providers between the hours of 6:00 p.m. and 9:00 a.m. in accordance with reasonable rules and regulations controlling their use. Between the hours of 9:00 a.m. and 6:00 p.m. these spaces shall be available to the public patronizing businesses in the Central Avenue Business District. These 19 spaces shall be available for public use during this time period in increments not to exceed a total of two hours per day in either lot for any vehicle. Commuter use shall not be permitted. The condominium association shall make appropriate rules and regulations to ensure compliance with these requirements. The Condominium Association may require the display of parking permits by residents and their guests for these spaces between 6:00 p.m. and 9:00 a.m.

4. Parking Control. A towing program for removal of non-compliant vehicles at the expense of their drivers shall be authorized and implemented by the condominium association for non-compliance with posted rules for the use of the outside parking lot. The police department may ticket non-compliant vehicles in the outside parking lot. Parking on the site shall include the legally requisite number of parking spaces reserved for individuals with disabilities. Reasonable precautionary measures for the electronic opening and closing of garage doors or gates may be specified by the Police Chief provided that unreasonably loud warning sounds shall not be used. In winter months snow shall not be accumulated on site so as to prevent use of any of the parking spaces. Any snow or snow removal damage to landscaping during the winter months shall be promptly repaired by the condominium association in early spring. The association may make reasonable rules and regulations for residents to move their vehicles and to take other reasonable steps to insure efficient snow and ice removal and for proper maintenance and management of the parking areas.
5. Business Use Parking. Of the 15 business use parking spaces, 3 shall be in the outside parking area. The other 12 spaces shall be within the building on the first floor and shall include the 6 spaces nearest the entrance/exit to the driveway through the outdoor parking area. The door or gate to the first floor spaces shall be positioned behind these 6 business use spaces so that use of these 6 spaces does not require passage through the door or gate.

#### **N. Landscaping.**

1. Landscaping Plans. The landscaping of the Eliot Street courtyard and green space (the area bounded by the main building, the wing, the outside parking area and Eliot Street) shall be as shown on the Landscape Plan (Attachment 2 and Sheets C-2 and C-3 of Attachment 11). The landscaping of the passageway from Eliot Street to the trolley station shall be as shown on Attachment 2 and Sheets C-2 and C-3 of Attachment 11. Use of Low Impact Design in the implementation of landscaping is strongly encouraged.
2. Landscaped Areas. The buffer area surrounding the outside parking areas shall be landscaped as shown on Attachment 2 and Attachment 11. The outside parking area shall be enclosed on the north by a six (6) foot high wrought iron fence and on the south by a 3 foot high ornamental wrought iron fence between 8 inch square granite posts as shown on Attachment 2. Fence specifications shall be discussed at the materials conference to be held prior to the commencement of construction between Applicant and the Planning Board. Use of Low Impact Design in the implementation of landscaping is strongly encouraged.
3. Maintenance and Rules for Use. There shall be an irrigation system in all landscaped areas sufficient to deliver adequate water to plantings. The condominium association shall be responsible for keeping the plantings watered, properly maintained in good condition and the entire area free from litter. The condominium association shall replace any plantings shown on the landscape plans which are dead or diseased or which fail to thrive. Public access to the Eliot Street green space during daylight hours shall be subject to reasonable rules and regulations which prevent loitering and uncivil behavior. Public consumption of food outside on the Site (apart from that served in a possible restaurant) may be restricted by the

condominium association to the Central Avenue passageway from Eliot Street to the trolley station. Use of Low Impact Design in the implementation of landscaping is strongly encouraged.

**O. Security Cameras.** There shall be at least three (3) security cameras, one for the passageway along Central Avenue, one for the Eliot Street green space and one for the outside parking lot. The Applicant shall consult with the Milton Police with respect to exact locations and coordination with the police on use of these cameras. The cameras shall make a video record of the areas which they survey for a time span recommended by the police or as may be usual in the industry. The Applicant and thereafter, upon formation, the condominium association shall have the obligation to keep the security cameras operational at all times.

**P. Building Height.** The zoning (section III.J.4.d) provides that the building not exceed a height of more than 45 feet above the average elevation of the building footprint prior to construction. Applicant has produced a plan (Attachment 16 and 16.1) showing the average mean grade to be at an elevation of 30.16 feet. The proposed building has 4 ten-foot high floors and 1 eleven-foot high floor for a total height of 51 feet but, since the site slopes, the floor of the ground floor is at an elevation of 23.5 feet. The 51 foot high building thus reaches an elevation of 74.5 feet. An elevation of 45 feet above the elevation of the average mean grade (30.16 feet) is 75.16 feet. Hence the building top elevation (74.5 feet) complies with the zoning. Protrusions of up to eight (8) feet above the roofline are permissible. Applicant has provided for mechanical equipment up to five (5) feet high and for an elevator shaft housing up to eight (8) feet high. Section III J Paragraph4d provides that such protrusions do not affect building height.

**Q. Basement/Ground Floor.** The zoning for the business district (Section V.E.1) provides that the term "story" shall not include "a basement." If a significant part of the principal floor of a building lies below the average elevation of the building footprint subsequent to construction, the Board may determine this principal floor to be a basement. As shown on Attachment 16.1, the ground floor of the proposed building at the Central Avenue ground level is the principal floor and cuts into the hillside so that a significant part will be below the average elevation of the building footprint subsequent to construction. Accordingly, the Planning Board determines it to be a basement.

**R. Business Use Area.** Section III.J. Paragraph 4.a requires that the business use area shall be no less than 3,750 square feet and no less than 20% of the area of the principal floor. The principal floor contains 17,199 square feet of which 20% is 3,440 square feet. The business use area on the ground floor (basement) level is 3,850 square feet as shown on Attachment 3. The zoning requirement for business use is therefore satisfied. The courtyard between the business use and Eliot Street satisfies the zoning requirement for a public amenity. The business use area shall be used exclusively for permissible business uses as provided in the zoning. At least 50% of the square footage of the business use area shall be marketed by Applicant for retail or restaurant use or uses. If, after using commercially reasonable efforts to market the space to retailers and restaurants, all or part of the space so marketed has not been leased or sold within 6 months following substantial completion of the building, the Applicant may seek permission from the Planning Board to market the space for any permissible business use.

## **S. Affordable Housing.**

1. **Four Affordable Units.** Four units shall be low or moderate income housing units (“affordable units”) as defined in G.L.c. 40B Section 20 and pertinent regulations of the Massachusetts Department of Housing and Community Development (DHCD). Each affordable unit shall have a deeded parking space. A perpetual deed restriction shall restrict sale and resale of these units to households of which the annual income at the time of sale or resale is less than 80% of area median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development for the Boston metropolitan area. These households shall also be subject to such reasonable asset restrictions at the time of sale or resale as applicable program rules or regulations may require. Occupancy of an affordable housing unit shall be restricted to the household to which it has been sold provided that changes in household composition permissible under applicable program rules or as approved by the monitoring agent, shall be permitted. Insofar as permissible there shall be a Milton resident preference and a Milton employee preference given in the selection of buyers. The four affordable units shall be marketed at the same time as the market rate units.
2. **SHI Eligibility.** Each affordable unit shall qualify for inclusion and shall be included on the Subsidized Housing Inventory (SHI). It shall be the Applicant’s obligation and responsibility to secure approval from DHCD for inclusion of the unit on the SHI. The Town shall cooperate in order for applicant to secure efficient approval.
3. **Regulatory Agreement.** The affordable units shall be subject to a regulatory agreement which shall specify the requisite qualifications of the buyers of the affordable units and the manner by which buyers will be selected; the regulatory agreement shall also contain provisions for effective monitoring and enforcement of a deed restriction, including qualification and selection of buyers on sale and resale. The regulatory agreement shall provide for a lottery to select the initial buyers; the maximum permissible Milton resident preference and a Milton employee preference shall be given. The regulatory agreement in effect for affordable units at 36 Central Avenue may be used as a model if all affected parties so agree.

The regulatory agreement shall be signed by the Applicant, by the monitoring agent who will be in charge of buyer-selection, monitoring and enforcement, and by the Town pursuant to authorization from the Board of Selectmen. In addition the regulatory agreement may be signed by a state or federal subsidizing agency. The deed restriction ensuring affordability on sale and resale shall be enforceable by the Town, any subsidizing agency and the monitoring agent. The deed restriction and regulatory agreement shall specify the manner of determination of the price on resale, including, insofar as permissible and reasonable, payment of a fee from the proceeds of sale and resale in order to compensate the monitoring agent. The fee shall not exceed the amount permissible under any applicable program rules.

4. **Monitoring Agent.** A qualified entity shall serve as monitoring agent. Reasonable provision shall be made for its duties and compensation as monitoring agent. Applicant and the Town shall do the necessary for preparation of a regulatory agreement setting out the material terms and conditions. The Applicant and the Town shall also do the necessary for preparation of a

suitable deed restriction which ensures perpetual affordability on sale and resale, which restricts occupancy of the unit to the household to the head(s) of which it has been sold and which gives the monitoring agent appropriate powers to select qualified buyers on resale, to enforce the restriction, and to collect any applicable fee on resale of the unit.

5. **Fees and Taxes.** Whether or not the affordable units are certified Local Action Units under the Local Initiative Program the provisions in LIP with respect to the amount of condominium fees which can properly be charged shall apply to the affordable units. Real estate taxes shall be assessed, using a valuation of what would be the resale price of a unit on the relevant date.

**T. Determination of Compliance with Standards for Grant of Special Permit and Imposition of Conditions.** Section III, Subsection J, Paragraph 10 of the Zoning Bylaws refers to the standards set out in Section IX, which are to be employed by the Planning Board in determining an application for a special permit for planned unit development and site plan approval. The applicant is required to show that, in addition to meeting the specific requirements of Subsection J, the special permit may be issued without substantial detriment to the public good and without substantial derogation from the intent and purpose of the bylaw, taking into account appropriate conditions and limitations necessary for the legitimate use of property in the neighborhood and the health and safety of the public. The Planning Board determines that these standards, together with the specific requirements imposed by the zoning in Subsection J, will be met if there is compliance with the requirements set out herein, including the following additional conditions. The continued validity of the Special Permit requires continued compliance with all the requirements and conditions contained herein and the following additional conditions:

1. **Permit Compliance.** There shall be strict compliance with the requirements and conditions of this Special Permit. All development shall be in accordance with this Special Permit. All buildings, infrastructure, roadways, walkways, plantings, landscaping and all other items herein specified or shown on the attachments shall be constructed and maintained as specified in this Special Permit and as shown on the attachments. No construction shall deviate from the attachments and this Special Permit. The Building Commissioner shall withhold occupancy permits for the final 25% of the units until the building has been substantially completed.
2. **Additional Compliance.** There shall be compliance with any Order of Conditions granted by the Conservation Commission and any specifications for water, sewer, drainage and electric plans reasonably required by the Milton Department of Public Works. The Planning Board shall be notified of all such changes in the requirements and conditions of this Special Permit required by the DPW and they shall be shown on the as-built plans which Applicant shall submit to the Planning Board upon completion of the development. The as-built plans shall show the development as built in all material detail. The Applicant shall remain responsible for all construction required by this permit until the as-built plans have been submitted.
3. **Maintenance of Site.** All areas of the site including the building exterior, landscaping, plants, seating, lighting, railings, fencing and other features shall be constructed by the Applicant at its own expense. Thereafter, all areas including the building exterior, landscaping, plants, seating, lighting, railings, fencing, and other features shall be maintained in good condition,

free and clear of litter, graffiti and debris, by the Applicant at its own expense in perpetuity, including the cost of electricity and the cost of water for watering, and provision of convenient water sources. Clearance of ice and snow from the driveway, sidewalks and parking areas shall be the responsibility of the Applicant. Upon formation of a Condominium Association the responsibilities of the Applicant with respect to all these duties, including maintenance, shall become the responsibilities of the Condominium Association and shall be legally enforceable as such. At such time the responsibility of Applicant shall cease.

4. **Dumpster, Refuse and Garbage Disposal, and Recycling.** Containers for Refuse and Garbage disposal shall be in carts located in the trash room shown on Attachment 3. The carts shall be fully enclosed state-of-the-art models. There shall be carts for recyclables provided in the same area. Access to the trash room shall be restricted to residents and commercial tenants or owners, pursuant to rules established by the Condominium Association. The trash room shall be kept clean and free of refuse or garbage outside the carts and free from insects or vermin in accordance with all applicable rules and regulations and directives from the Milton Board of Health. Trash and garbage shall be securely bagged prior to deposit in the trash cart. Collections shall be made as needed but not less than twice a week and in no event shall collections and any separate recyclable collections occur less frequently than necessary to ensure that the carts do not reach capacity. In no event shall trash, refuse or garbage be deposited outside the carts. The trash room shall not be the source of noxious odors and immediate, effective measures shall be taken by the Condominium Association in the event of any such odors or of the presence of insects or vermin.

#### **U. Condominium Provisions**

1. **Association of Condominium Owners.** The business units and the residential dwelling units shall be condominium units, and there shall be an association of the owners of these condominium units ("Condominium Association"). Each owner shall be a member of the association and shall be obliged to pay a proportionate share of the expenses of the association. A reasonable division of financial responsibility shall be made between residential owners and owners of business use areas. Until formation of the Condominium Association and until 50% of the units are sold, the Applicant shall be legally liable for prompt performance of the duties and responsibilities herein specified. Upon formation of the Condominium Association, the Condominium Association shall assume responsibility for performance of these duties and responsibilities and shall be legally liable therefor.
2. **Condominium Documents.** Condominium documents establishing the Condominium Association and its rights and responsibilities shall be submitted to and subject to approval of the Planning Board. The condominium documents shall impose an unconditional legal obligation for each owner to be a member of the association and to pay a proportionate share of the expenses of the association, including the costs of meeting the requirements and performing all duties and obligations imposed on the Applicant and/or the Condominium Association by this Special Permit. The condominium documents shall further require that more than half of the residential units be owner occupied at any one time; that residential parking spaces may only be used by owners in or residents of the building. The Condominium Association shall have an unconditional obligation to meet and pay for these duties, obligations

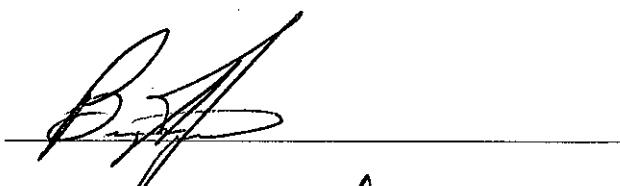
and responsibilities. The Town shall be entitled to enforce any duty, requirement or obligation in this Special Permit, not only against the Condominium Association, but also against the owners if the Condominium Association is not reasonably able to meet the requirement or satisfy the duty, requirement or obligation. In the event that the Town is obliged to bring suit to secure compliance by the association with the duties, requirements or obligations of this Special Permit, the association shall reimburse all costs of suit, including the Town's attorney's fees. The owners shall be obliged to provide such reimbursement if the Condominium Association shall fail to do so. The condominium documents shall provide for the foregoing.

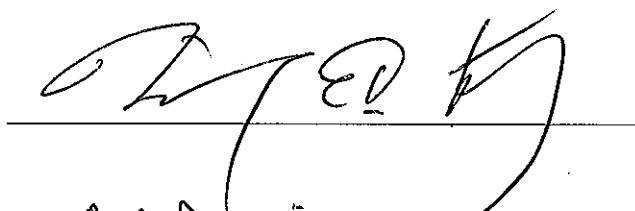
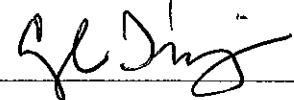
- V. Demolition Plan.** The Conservation Commission has issued an order of conditions respecting the demolition. The MBTA will require measures to minimize as much as possible impact to the MBTA station and MBTA operations. Demolition of the existing building on site must be done with care, and industry-standard best practices must be implemented to prevent adverse consequences from dust, construction debris, truck and other construction traffic, noise, vermin, rodents, and any unsafe or unsanitary conditions.
- W. Construction Management Plan and Time for Construction.** Construction of the new building on-site must be done with care, and industry-standard best practices must be followed to ensure that inconveniences to residents and businesses, noisy work outside of specified daytime hours, construction traffic, disruption of traffic and of street parking for customers of businesses in the Central Avenue Business District are minimized insofar as reasonably possible. A construction management plan shall be modeled on the construction management plan used for the construction of 36 Central Avenue, and the plan shall be discussed by the Applicant with the Planning Board prior to construction to ensure that all material issues are reasonably addressed. If the plan for 36 Central is not available, the plan for 50 Eliot Street shall be used as a model. The terms of the construction management plan shall be commercially reasonable, and compliance shall not require unreasonable actions to be taken. Construction shall be commenced within two years from the date when this Special Permit becomes final and shall be substantially completed within four years from that date.
- X. Assignment.** This Special Permit may be assigned by the Applicant to a qualified assignee with experience in constructing and completing quality multi-family and commercial development.
- Y. Amendment.** This Special Permit and Site Plan Approval may be amended by the Planning Board upon application of the Applicant or its assignee during construction and thereafter upon application by the Applicant or the Condominium Association. Applications for substantial amendment should be subject to the usual requirement for notice, including advertising and a hearing.
- Z. Recording.** This Special Permit and Site Plan Approval, including the attachments, shall be recorded with the Norfolk County Registry of Deeds by the Applicant at its own expense within thirty days from the date when it becomes final and a copy of the recorded document with recording information shall be provided to the Town Planner. There shall be a marginal reference in the deed of the Applicant to this Special Permit and Site Plan Approval. There

shall be a marginal reference in this Special Permit and Site Plan Approval to the attachments which shall be recorded herewith.

Executed at Milton Massachusetts this 2 day of February 2017, pursuant to a vote by the Board on the same date with five votes in favor and none opposed.

Planning Board of Milton

  
Alexander Hutesides

  
D. T. E. H.  
  
G. L. Ding

## **List of Documents Attached to Decision**

- 01.1** Existing Conditions Plan, Anderson Surveys, dated August 7, 2009, revised March 7, 2016
- 01.2** Roof Collapse Plan, Anderson Surveys, dated August 9, 2012
- 02** Landscape Plan, Allen & Major Associates, dated August 7, 2016
- 03** Ground Floor Plan, Daniel Architects, dated June 8, 2009, revised June 2, 2010
- 04** First Floor Plan, Daniel Architects, dated June 8, 2009, revised June 2, 2010
- 05** Second and Third Floor Plan, Daniel Architects, dated June 8, 2009, revised June 2, 2010
- 06** Fourth Floor Plan, Daniel Architects, dated June 8, 2009, revised June 2, 2010
- 07** Roof Plan, Daniel Architects, dated June 8, 2009, revised June 2, 2010
- 08** Perspective Across Central Ave
- 09** Perspective Across Tracks
- 10** Perspective from Eliot Street
- 11** Drainage, Utility, and Landscape Plan, Allen & Major Associates, dated January 10, 2017, revised January 23, 2017
  - Sheet ABB-1 Abbreviations and Notes
  - Sheet ABB-2 Abbreviations and Notes
  - Sheet C-1 Erosion Control Plan
  - Sheet C-2 Layout, Materials & Landscape Plan
  - Sheet C-3 Grading and Drainage Plan
  - Sheet C-4 Utilities Plan
  - Sheet D-1 Details
  - Sheet D-2 Details
  - Sheet D-3 Details
  - Sheet D-4 Details
  - Sheet D-5 Details
  - Sheet D-6 Details
- Sheet entitled Existing Site Plan and Conditions prepared by Anderson Surveys dated Aug. 7, 2009, as revised February 27, 2012
- 12** Lighting Plan, William Fleming Associates, dated July 1, 2010, revised December 8, 2011
- 13** Utility Plan, Decelle Burke & Associates, dated July 1, 2010, revised September 23, 2010
- 14** Construction Detail 1, Decelle Burke & Associates, dated July 1, 2010, revised September 23, 2010
- 15** Construction Detail 2, Decelle Burke & Associates, dated July 1, 2010, revised September 23, 2010
- 16** Building Height Plan, Allen & Major Associates, dated August 2, 2016
- 16.1** Revised Building Height Plan, Allen & Major Associates, dated September 6, 2016
- 17** Shadow Study, Decelle Burke & Associates, dated December 21
- 18** Milton Town Engineer Letter, January 26, 2017
- 19** Ornamental Fence Specification Sheet, Ameristar Montage Majestic 2/3-Rail