

APPENDIX D

Final Site Plan Approval  
by Town of Newburgh Planning Board

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## RESOLUTION OF APPROVAL

*FINAL*

**SITE PLAN**

**ARB**

**FOR**

**WILDER BALTER PARTNERS, INC. AND WB INTERCHANGE  
ASSOCIATES, LLC [THE MARKETPLACE]**

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### **Nature of Application**

Wilder Balter Partners, Inc. and WB Interchange Associates, LLC [The Marketplace] has applied for approval of a Site Plan permitting the use of the property identified herein for retail shopping center and for approval of architectural renderings by the Planning Board sitting as the Architectural Review Board.

### **Property Involved**

The property affected by this resolution is shown on the Tax Maps of the Town of Newburgh as parcel(s) 60-3-41.3, 60-3-41.4, 60-3-48, 60-3-49.1, 60-3-49.22, 71-4-8, 71-4-9, 71-4-10, 71-4-11, 71-4-12, 71-4-13, 71-4-14, 71-5-9, 71-5-15, 71-5-16, 97-1-13.3 and 97-1-20.3. The following parcels (the "DOT parcels") are also affected by this resolution: Map 746, parcels 1142 and 1143; and Map 747, parcels 1144 and 1145.

## Zoning District

The property affected by this resolution is located in the IB and R-3 zoning district of the Town of Newburgh.

## Plans

The final Site Plan and other materials considered by the Planning Board include the following:

1. Completed application form and Environmental Assessment Form.
2. A Draft and Final Environmental Impact Statement.
3. The SEQRA Findings Statement issued by the Planning Board.
4. Various memoranda and correspondence from the Planning Board's consultants.
5. Plans prepared for Wilder Balter Partners, Inc. and WB Interchange Associates, LLC [The Marketplace] as follows:

<i>Marketplace at Newburgh</i>			
<b>Document Submission Schedule</b>			
Site Plans			
Sheet	Name	Architect/Engineer/Consultant	Current Revision Date
	Cover Sheet	Divney Tung Schwalbe	May 8, 2008
MM-1	Mitigation Measures	Tim Miller Associates, Inc.	May 15, 2007
SP-1.0	Overall Site Plan	Divney Tung Schwalbe	May 8, 2008
SP-1.1	Layout Plan (Lifestyle Center, Buildings A and 1 and Rt. 300 Access)	Divney Tung Schwalbe	May 8, 2008
SP-1.2	Layout Plan (Buildings B, D, E, and 2)	Divney Tung Schwalbe	May 8, 2008
SP-1.3	Layout Plan (Rt. 52/I-84 Exit 8 Access)	Divney Tung Schwalbe	May 8, 2008
SP-1.4	Layout Plan (Buildings C and Rt. 52/Meadow Ave Access)	Divney Tung Schwalbe	May 8, 2008
SP-1.5	Demolition Plan	Divney Tung Schwalbe	December 6,

			2007
SP-1.6	Paving Plan	Divney Tung Schwalbe	September 10, 2007
SP-1.7	Truck Circulation Plan	Divney Tung Schwalbe	September 10, 2007
SP-1.8	Layout Plan (Brookside Avenue)	Divney Tung Schwalbe	April 2, 2008
SP-2.1	Grading & Utility Plan	Divney Tung Schwalbe	May 8, 2008
SP-2.2	Grading & Utility Plan	Divney Tung Schwalbe	May 8, 2008
SP-2.3	Grading & Utility Plan	Divney Tung Schwalbe	May 8, 2008
SP-2.4	Grading & Utility Plan	Divney Tung Schwalbe	May 8, 2008
SP-3.0	Roadway Profiles	Divney Tung Schwalbe	May 8, 2008
SP-3.1	Storm Profiles	Divney Tung Schwalbe	August 2, 2007
SP-3.2	Sewer Profiles	Divney Tung Schwalbe	August 2, 2007
SP-3.3	Water Profiles	Divney Tung Schwalbe	April 29, 2008
SP-3.4	Water Profiles	Divney Tung Schwalbe	April 29, 2008
SP-3.5	Water Profiles	Divney Tung Schwalbe	April 29, 2008
SP-3.6	Water Profiles	Divney Tung Schwalbe	April 29, 2008
SP-3.7	Water Profiles	Divney Tung Schwalbe	April 29, 2008
SP-3.8	Water Profiles	Divney Tung Schwalbe	April 29, 2008
SP-4.0	Landscape Plan	Tim Miller Associates, Inc.	May 8, 2008
SP-5.1	Storm & Sanitary Sewer Details	Divney Tung Schwalbe	May 8, 2008
SP-5.2	Site Details	Divney Tung Schwalbe	May 8, 2008
SP-5.3	Site Details	Divney Tung Schwalbe	May 8, 2008
SP-5.4	Water Main Details	Divney Tung Schwalbe	April 29, 2008
SP-5.5	Water Quality and Detention Basin Sections and Details	Divney Tung Schwalbe	August 2, 2007
SP-5.6	Water Quality and Detention Basin Outlet Control Devices	Divney Tung Schwalbe	August 2, 2007
SP-6.0	Erosion & Sediment Control Plan	Divney Tung Schwalbe	May 8, 2008
SP-6.1	Erosion Control Details	Divney Tung Schwalbe	May 8, 2008
SP-7.1	Lighting Plan (Sheet 1 of 6)	WLS Lighting Systems	January 14, 2008
SP-7.2	Lighting Plan (Sheet 2 of 6)	WLS Lighting Systems	January 14, 2008
SP-7.3	Lighting Plan (Sheet 3 of 6)	WLS Lighting Systems	January 14, 2008
SP-7.4	Lighting Plan (Sheet 4 of 6)	WLS Lighting Systems	January 14, 2008
SP-7.5	Lighting Plan (Sheet 5 of 6)	WLS Lighting Systems	January 14, 2008
SP-7.6	Lighting Plan (Sheet 6 of 6)	WLS Lighting Systems	January 14, 2008
SP-8.0	Traffic Signal Plan Road A and Road B	John Collins Engineers, P.C.	May 7, 2008
W-1	Boundary Survey & Wetland Map	The Chazen Companies	August 25, 2005
W-2	Boundary Survey & Wetland Map	The Chazen Companies	August 25, 2005
<i>Marketplace at Newburgh</i>			
Landscape Plans			
<b>Sheet</b>	<b>Name</b>	<b>Architect/Engineer/Consultant</b>	<b>Current Revision Date</b>
LA-D.1	Landscape Design	Tim Miller Associates, Inc.	May 8, 2008
LA-D.2	Landscape Design	Tim Miller Associates, Inc.	May 8, 2008
LA-D.3	Landscape Design	Tim Miller Associates, Inc.	May 8, 2008
LA-D.4	Landscape Design	Tim Miller Associates, Inc.	April 2, 2008

LA-D.5	Landscape Design	Tim Miller Associates, Inc.	May 8, 2008
LA-D.6	Landscape Details	Tim Miller Associates, Inc.	May 8, 2008
LA-D.7	Landscape Details	Tim Miller Associates, Inc.	May 8, 2008
WM-1	Wetland Impacts & Mitigation Areas	Tim Miller Associates, Inc.	May 9, 2008
WM-2	Wetland Mitigation	Tim Miller Associates, Inc.	May 9, 2008
WM-3	Wetland Mitigation	Tim Miller Associates, Inc.	May 9, 2008
<i>Marketplace at Newburgh</i>			
Architectural Plans			
Sheet	Name	Architect/Engineer/Consultant	Current Revision Date
PF-1	Proposed Major Retailer's Façade	MSA Collaborative	December 6, 2007
PF-2	Proposed Landscape/Sidewalk Plan-Major Retailers	MSA Collaborative	December 6, 2007
PF-3	Proposed Best Buy Elevations	MSA Collaborative	January 10, 2008
PF-4	Proposed JC Penney Elevations	MSA Collaborative	January 10, 2008
PF-5	Proposed Costco Elevations	MSA Collaborative	January 10, 2008
PF-6	Proposed Elevations	MSA Collaborative	December 6, 2007
SW-1	Proposed Typical Sidewalk Plan	MSA Collaborative	May 8, 2008
SW-2	Proposed Village Green Sidewalk Plan	MSA Collaborative	May 8, 2008
SW-3	Proposed Site Signage Plan	MSA Collaborative	May 8, 2008
SW-4	Proposed Signage Elevations Village Center	MSA Collaborative	May 8, 2008
SW-5	Material Selection Elevations	MSA Collaborative	May 8, 2008

## History

### DATE OF APPLICATION

The application was filed with the Planning Board on July 15, 2004.

### PUBLIC HEARING

A simultaneous SEQRA/Site Plan public hearing on this application was convened on June 1, 2006 and closed on June 29, 2006.

## SEQRA

On October 14, 2004, a full Environmental Assessment Form (EAF) application for the proposed Project (initially referred to as Crossroads at Newburgh), was submitted to the Town of Newburgh Planning Board (the "Planning Board," the "Board"). The Planning Board determined that the proposed activity was a Type I action and the Board established itself as lead agency on December 9, 2004. Subsequently, the Applicant prepared and submitted an Environmental Impact Statement ("EIS") for the Project.

On February 10, 2005, in cooperation with all other involved agencies and interested parties and subsequent to a public scoping meeting held on January 13, 2005, the Planning Board adopted a final scoping document designating the potentially significant environmental impacts to be addressed in the Draft Environmental Impact Statement ("DEIS") for the Project. The accepted scope outlining the information to be covered in the DEIS is provided in Appendix A of the DEIS. The DEIS was originally submitted to the Town of Newburgh on November 23, 2005.

Based upon comments received from the Lead Agency, the applicant submitted a revised DEIS to the Planning Board on January 3, 2006; additional revisions were made and the DEIS submitted again on April 4, 2006. On May 4, 2006, the Planning Board accepted the DEIS as complete with respect to its scope, content and adequacy and issued a Notice of DEIS Completion and Notice of Public Hearing and caused the DEIS to be filed with all involved agencies. The Planning Board conducted a Public Hearing on the DEIS on June 1, 2006. This hearing was continued on June 29, 2006, and the open public comment period was extended to July 31, 2006.

In response to the comments to the DEIS, the applicant modified the proposed project and Site Plan by incorporating elements of several of the alternatives discussed in the DEIS.

A Final Environmental Impact Statement ("FEIS"), including project revisions and a response to all substantive comments, was prepared and accepted

by the Board as complete on March 15, 2007. A Notice of Completion and the FEIS was filed with all involved agencies on March 15, 2007.

A SEQRA Findings Statement was thereafter issued and was filed with all involved agencies on May 3, 2007. Amended SEQRA Findings were issued on March 6, 2008 and on June 19, 2008.

### **GML 239 Referral**

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

### **Findings**

The Planning Board has determined that approval of the Site Plan will substantially serve the public convenience, safety and welfare; and will not otherwise be unduly detrimental to the public health, safety, comfort convenience or welfare, subject to compliance in full with conditions hereinafter imposed pursuant to Section 185-57 (H).

The Planning Board has further determined, in its capacity as Architectural Review Board, that—on a conceptual basis—the renderings submitted and approved on December 20, 2007 and on May 1, 2008 are architecturally appropriate and blend into the existing character of the neighborhood. Said renderings are hereby approved. A copy of said renderings, signed by the Chair simultaneously with this resolution are on file in the Building Inspector's office. As noted below, however, no building permit shall be issued for any building (including those for which the Planning Board has already seen elevations) until the applicant has returned and received final ARB approval from the board.

### **Resolution of Approval**

NOW, THEREFORE, THE PLANNING BOARD RESOLVES to approve this

final Site Plan as said proposal is depicted on the plans identified above and to grant ARB approval, all upon the conditions outlined below, and the Chairperson (or his designee) is authorized to sign the plans upon satisfaction of those conditions below noted to be conditions precedent to such signing.

### **Specific Conditions**

#### *CONDITIONS TO BE SATISFIED BEFORE PLANS ARE SIGNED*

1. The plans shall not be signed until receipt of a letter from Garling Associates certifying that the deficiencies in the plans noted in its memo of June 11, 2008 have been satisfactorily remedied.
2. The plans shall not be signed until receipt of a letter from Karen Arent, the Town of Newburgh Landscaping Consultant, certifying that the plan note regarding installation of the sound barrier fencing has been amended in a fashion consistent with the direction given by the planning board during its meeting of June 19, 2008.
3. The plans shall not be signed until the applicant presents proof that it has delivered to the town attorney two copies of the Private Utility System Access Agreement, each signed by the applicant.
4. The plans shall not be signed until the applicant presents proof that it has delivered to the town attorney two copies of the Roadway Relocation Memorandum of Understanding, each signed by the applicant.

#### *Other Agency Approvals*

5. This approval is subject to delivery of written approval by the

New York State Department of Environmental Conservation of:  
(1) SPDES General Permit No. GP-0-08-001, (2) Water Quality Certificate prior to signing of the plans. Should on-site rock processing exceed the one hundred twenty-five (150) tons per hour, then an air discharge permit will be required.

6. This approval is subject to and conditioned upon the applicant delivering to the Planning Board the written approval of the Orange County Department of Health [water extensions] prior to signing of the plans.
7. This approval is subject to the approval of the Town of Newburgh Engineer of the sewer main and water main design plans as well as of the stormwater management and erosion control plan, which approval was granted by memorandum dated May 21, 2008.
8. This approval is subject to the approval of the Town of Newburgh Water Department of the water main design plans, the water connection plans, and the fire hydrant location (Fire Inspector), which approvals were granted by correspondence dated April 15, 2008 and April 17, 2008.
9. This approval is subject to the terms of the sewer flow acceptance letter issued by the City of Newburgh dated December 6, 2007.

Financial Security

10. Financial security shall be posted as required by town code or as modified by a developer's agreement with the town board.

Landscape Security & Inspection Fee

11. Pursuant to 185-57 (L), together with 163-9 (B) [incorporated

therein by reference], as well as 185-50 (D), this approval shall be subject to the applicant posting, with the Town Clerk, a performance security, in an amount to be fixed by the town board upon recommendation of the town's landscape consultant in order to secure timely completion and appropriate maintenance of the landscaping improvements depicted on the plans, satisfactory to the Town Board, Town Engineer and Town Attorney as to form, sufficiency, manner of execution and surety. The bond shall recite that all improvements secured thereby shall be completed within three year(s) of this approval and maintained for a period of two years thereafter. The Town's Landscape Architect, is hereby authorized to periodically inspect the site in order to insure compliance with this condition. A separate inspection fee in an amount in accordance with Section 104-2 (A)(8) shall be submitted and deposited in an escrow account to cover the cost of the Town's Landscape Architect services. The applicant shall be required to pay the required landscaping performance security and inspection fee to the town before the plans are signed or any building permits are issued.

12. The applicant shall also be required, as conditions of the individualized building-specific future amended site plan an ARB approvals to post, in addition to the security now required, additional performance securities, in amounts to be fixed by the town board upon recommendation of the town's landscape consultant, in order to secure timely completion and appropriate maintenance of the landscaping improvements depicted on such future building-specific plans, satisfactory to the Town Board, Town Engineer and Town Attorney as to form, sufficiency, manner of execution and surety. The bond shall recite that all improvements secured thereby shall be completed within three year(s) of this approval and maintained for a period

of two years thereafter. The Town's Landscape Architect, is hereby authorized to periodically inspect the site in order to insure compliance with this condition. A separate inspection fee in an amount in accordance with Section 104-2 (A)(8) shall be submitted and deposited in an escrow account to cover the cost of the Town's Landscape Architect services. The applicant shall be required to pay the required landscaping security and inspection fee to the town before the individual site plans are signed or any building permits for such buildings are issued.

Stormwater Management Security & Inspection Fee

13. Prior to the signing of plans, the applicant shall deliver a performance security to the Town Clerk, pursuant to Section 157-10 (B) of the Code of Ordinances of the Town of Newburgh, in order to guarantee to the town that the applicant will faithfully cause to be constructed and completed the required public stormwater improvements shown on the plans. The performance security shall be in an amount set by the Town Board (upon recommendation of the Town Engineer) and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of three (3) years shall be set forth in the document of surety within which required improvements must be completed. An inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be paid to the Town prior to signing of the plans. A separate inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be submitted and deposited in an escrow account to cover the cost of the Town's periodic inspection of the erosion control measures to be implemented by the applicant. In addition, the applicant shall be required to deposit a restoration security in an amount sufficient to enable the town to return

the site to a safe, stable and secure condition in the event the developer fails to do so after due notice.

Water Main Extension Security & Inspection Fee

14. Prior to the signing of plans or issuance of a building permit, the applicant shall deliver a performance security to the Town Clerk, pursuant to Sections 179-32 (l) and 163-9 of the Code of Ordinances of the Town of Newburgh, in order to guarantee to the town that the applicant will faithfully cause to be constructed and completed the required water system improvements. The performance security shall be in an amount set by the Town Board (upon recommendation of the Town Engineer) and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. It shall be in an amount sufficient to cover the entire cost of the water system as shown on the approved plans. An inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be paid to the Town prior to signing of the plans.

Sewer Main Extension Security & Inspection Fee

15. Prior to the signing of plans or issuance of a building permit, the applicant shall deliver a performance security to the Town Clerk, pursuant to Section 163-9 of the Code of Ordinances of the Town of Newburgh, in order to guarantee to the town that the applicant will faithfully cause to be constructed and completed the required sewer main extension improvements. The performance security shall be in an amount set by the Town Board (upon recommendation of the Town Engineer) and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. It shall be in an amount sufficient to cover the entire cost of the sewer main

extension as shown on the approved plans. An inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be paid to the Town prior to signing of the plans.

Town Road Security & Inspection Fee

16. Prior to the signing of the plans or issuance of a building permit, the applicant shall deliver a performance security to the Town Clerk, pursuant to Section 161-41 (B) of the Code of Ordinances of the Town of Newburgh, in order to guarantee to the town that the applicant will faithfully cause to be constructed and completed within a reasonable term the roads proposed to be offered to the town (together with all related improvements [161-41 (A)]) and convey the required lands and improvements to the town free and clear of encumbrances. The security shall be in an amount set by the Town Board and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. An inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be paid to the Town prior to signing of the plans.

Offers of Dedication

17. Before signing of the final plat or plans, the applicant shall deliver appropriate offer(s) of dedication, in duplicate, executed and acknowledged by the owner of the property affected, in form suitable for filing in the Orange County Clerk's Office and the Town Clerk's Office for all such lands as are shown on the plans to be so offered. The offer shall include a metes and bounds description of said parcel(s). The documents shall be in form suitable for recording and shall be satisfactory to the Town Attorney.

Code Enforcement

18. A Simplified Town-Owner Pact Agreement executed by the owner and developer, appointing it [and its successors in interest] as the agent for arranging and ensuring compliance with all site plan (and subdivision) requirements and maintenance issues] in form satisfactory to the Town Attorney shall be submitted before the plans are signed.

CONDITIONS TO BE SATISFIED BEFORE BUILDING PERMITS

19. No building permit for any structure shall be issued until the applicant has delivered proof that the conveyance of the DOT parcel to it by the New York State Department of Transportation has been accomplished.
20. This approval is subject to all of the terms and conditions of the permit to be issued by the Army Corps of Engineers, which permit will authorize the limited activities in the areas of the wetlands delineation as shown on the plans. No building permits will be issued until that permit is obtained.

Implementation of SEQRA Findings

21. In order to ensure that all mitigation measures contained within the Findings are performed, the applicant shall deliver an undertaking or other agreement satisfactory to the Town of Newburgh (as a condition of this final approval) in which the applicant undertakes full and satisfactory performance of all mitigation measures contained in the Findings. No building permits will be issued and no construction may commence until a satisfactory undertaking has been received by the town. That undertaking shall address, at the very least, the following:

- The hiring of an on-site inspector or inspectors, at the developer's expense, who will monitor the construction process, report to the Town, and deal with any complaints from the public. It is anticipated that this will be a full time job for the initial stages of construction (particularly with respect to the monitoring required by the SPDES permit) and then be scaled back until completion.
- The establishment of a final well monitoring protocol and remediation plan satisfactory to the Town and the posting of performance security (re: potential damage to neighboring wells caused by blasting activities on site). The obligation shall include payment of a hydrogeologist to make binding determinations as to causation and appropriate corrective action.
- The establishment of a landscape installation and maintenance plan satisfactory to the Town [shown on the landscape plans hereby approved as LA-D.6] and posting of performance security for same.
- Installation, at developer's expense, of pedestrian crosswalks and signals at intersections of the project access roads with Rt. 300 and Rt. 52, as well as "traffic calming measures" along Powder Mill Road in the vicinity of Algonquin and Cronomer Parks, *if required by the Town Board and approved by the NYSDOT.*
- The performance of all of the proposed offsite improvements such as the access intersection improvements, road widening, turn lane installations, traffic signalizations, etc. (and posting of performance security).
- Establishment of an agreement regarding developer's offer to participate in a "fair-share" contribution towards future improvements at the intersection of Rt. 300 and Rt. 52.
- Establishment of a Traffic management Plan, including a reimbursement agreement and performance security in the event use of the Town's police force is necessary for traffic control during extraordinary peak traffic events.

#### Groundwater Protection

22. Concerns were expressed during the public hearing that the proposed site blasting might potentially impact the nearby resi-

dences as well as existing water supply wells in the area. The applicant will be held responsible for any impacts to wells of homeowners that participate in the well protection protocol outlined below. If well yields or quality are impacted from the construction and development of the Marketplace, it will be the responsibility of the applicant to mitigate this impact. Potential impacts to off-site groundwater wells is viewed as being highly unlikely, based on past experiences in the region. Nonetheless, should such impacts occur, potential mitigation measures could include the provision of trucked-in water, the deepening of existing wells, drilling of new wells, repair or improvement of existing well casings or connection to the existing municipal system. Any such measures will be coordinated with the Town of Newburgh and the Orange County Department of Health, and implemented at no cost to the affected party. The applicant will include this representation in its undertaking and will provide a performance guarantee (upon recommendation of the Town Engineer) as required by the Town Board. The details of implementation of the plan, i.e., pre-construction monitoring of those wells belonging to residents that might be interested in this program, duration of the agreement, and which of the alternative mitigation measures might be most suitable on an individual basis, will be developed with the Town Engineer as construction proceeds. The duration of well monitoring shall extend for a period of not less than three months after all blasting has ceased. The protocol contemplated hereunder will include at least the following provisions:

- Identification of those wells belonging to residents that might be affected by construction blasting activities;
- Notification to the owners of those properties identified as to the existence and outline of the remediation offered under the protocol

(the notification shall be approved in advance by the town and shall include the name and telephone number of the individual designated by the town as the contact person for receiving complaints);

- Pre-construction studies of the wells of all property owners agreeing to be covered by the protocol [Wells within 500 feet of areas of proposed blasting will be located and surveyed (size, location, depth), if they are not buried, with permission of property owners];
- Installation (for those property owners opting in) of data loggers in the wells to ascertain pre-blasting, blasting and post blasting operating conditions. [Data loggers measures the static water level in the well and is the best evidence of potential geologic changes that would affect increasing or decreasing flows into the wells]. The information from the data loggers will be downloaded weekly by a hydrogeologist and the results will be provided to the town on a weekly basis.
- The Developer's contract with its blasting contractor shall specify maximum peak particle velocity permitted at the property line. [Maintaining peak particle velocity at under 2 inches per second, has been found by Federal Agencies, to provide ample protection to structures as a result of blast vibration]. Seismographs will be set up at the property line to monitor blasting vibration and the results of seismograph data will be submitted to the town engineer and retained hydrogeologist on a weekly basis.
- Before blasting begins the Developer shall have potable water trucks on call or, if necessary, the means to make an emergency connection to the town fire hydrant on Fern Avenue either of which may then be utilized for emergency connections of any neighboring well determined to have been adversely affected by blasting activities.
- A well driller will be on-call during periods of blasting that occurs within 500 feet of the residential property line of the Marketplace site. In the event of a well failure, the well driller will initially tie the failed well into the on-call potable water trucks or, if necessary, to

the town fire hydrant on Fern Avenue. This will provide a water supply within 4 to 6 hours of any impact. The well driller will then pull the pump on the affected well and drill the well deeper, or alternatively drill a new well on the affected property and tie it into the residential home, at no cost to the residential well owner.

- In the event that an acceptable water supply cannot be found on-site, the Developer will develop an alternative water supply offsite with appropriate easements and extensions to the affected property owner. If this option is non-workable the Developer will pay for the costs to extend town water to the affected site. A bond will be placed with the town covering the costs of that extension.
- Appropriate and acceptable durational limitations for performance and bonding shall be included in the approved protocol.

#### ARB

23. Architectural plans for public architectural features (e.g., bandstand, flagpole) and all public landscape areas of the lifestyle center shall be finalized during review of the ARB application submitted for the first building in the lifestyle center.

#### CONDITIONS REQUIRING ONGOING COMPLIANCE

24. All mitigation measures proposed within the EIS or announced within the SEQRA Findings Statements issued by this board are hereby made conditions of this approval as if those mitigation measures were set forth herein at length.
25. This approval is subject to compliance at all times with the conditions of permits issued by the Town of Newburgh Code Compliance Department, including blasting permits, demolition permits and a flood development permit (see also, below).

Phasing

26. As shown on drawing SP 6.0, the applicant must install approximately 900 linear feet of 10-foot high sound barrier fencing behind proposed Building D and the easterly half of Building C during Phase 3 of construction, with construction of the balance of that barrier fence behind Building C taking place during Phase 6 of construction.

ARB

27. As set forth in the SEQRA Findings Statement, architectural development of the site must follow a unified theme in accordance with guidelines that establish a basic level of architectural variety, compatible scale, pedestrian access and mitigation of negative visual impacts. All architectural development shall be in accordance with approved conceptual architectural plans, plans [SW-1 – SW-5 and PF-1 – PF-6]. The entire site must be designed as a pedestrian-oriented environment and will include pedestrian amenities such as benches. The lifestyle center will feature decorative sidewalks internal to the complex and various pedestrian amenities including café tables and chairs, benches, etc. The appearance and proposed architectural design of the lifestyle center will provide a sense of proportion to the larger individual stores that mitigates the overwhelming visual impact that would otherwise be presented by a “big box” shopping center of this size. Its sense of “downtown” character also provides a focus, a sense of scale and a public amenity that is pleasing and that greatly limits the visual impact that would result were there no lifestyle center component to the project. Specific site plan elements, including conformance with the architectural guidelines, signage, pedestrian circulation, awning details and street furniture, will be reviewed

by the Planning Board as part of the amended site plan and ARB review of individual buildings.

28. Final architectural approval for each building is hereby reserved until detailed plans are received that show all required building-specific elements including (but not limited to) elevation views of all four sides of the building with all materials shown, proposed colors of all materials, sizes of building elements, signage in accordance with site plan and the comprehensive sign plan Mechanical and air conditioner compressor units and screening of these units must be illustrated (screening can include the setting of the units back far enough from the roof wall to be out of public view). A plan view of each building must be presented for final architectural approval including streetscape design that shows pavement patterns and planting spaces. Planting plans for each building must be submitted with plant lists that specify botanical and common names, quantities and sizes of each proposed plant.
  
29. No building permit shall be issued authorizing construction of structures inconsistent with the architectural renderings submitted to, and approved by, the Architectural Review Board as part of such future approvals, nor shall any certificate of occupancy be issued for any structures constructed except in conformance with such renderings. The Town's designated Landscape Architect shall review the building plans when submitted to the Building Department in order to insure compliance with the approved architectural renderings. The Town's designated Landscape Architect shall also inspect the work before a certificate of occupancy is issued to insure compliance with the approved architectural renderings.

Other Agency Approvals

30. The New York State Department of Transportation granted conceptual approval of the various state highway connections on January 7, 2008 and issued a work permit on March 13, 2008 [Permit # 8-07-1045]. This approval is conditioned upon compliance with the terms and conditions of those approvals.
31. All conditions attached to grants of variance issued by the Town of Newburgh Zoning Board of Appeals on May 22, 2008 and March 27, 2008 (copies attached hereto) are made a part of this approval and this approval is subject to the same as if those conditions were set forth herein at length.
32. A roundabout is proposed at the intersection of NYS Route 52 and Meadow Avenue/Powder Mill Road. This intersection improvement will be performed independent of the site access connection. If the site access road cannot be built concurrent with the roundabout, not more than 700,000 square feet of retail space may be built using the accesses to the site from Union Avenue and Route 52 at Fifth Avenue and a site plan amendment must be filed. Approval of this amendment is required before commencing with a two-access, 700,000 SF site development.

Signs

33. Approval of the signs shown on the plans shall not become final until sign permits are issued (with the advice of the town's designated landscape architect) by the Code Compliance Department.
34. Hours of illumination of all proposed signs shall be in conformance with all Town Code requirements.

35. Signage contributes significantly to the visual character of the site and community. During building-specific amended site plan and architectural review, all signs must conformed to the previously approved cohesive signage plan. All signage shall be in accordance with signage plans and guidelines [SW-1 – SW-5]. Each proposed store and monument signs must include the type and color, the maximum height and width, and square footage of proposed signage, all of which must conform to the cohesive plan. Each individual building-specific amended site plan and ARB submission shall include a chart that allocates maximum square footage of signage for each store, as well as any entranceway signs. Architectural drawings shall show the area where signage can be installed.

Landscaping Installation & Maintenance

36. All landscaping at entrances to the facility and along entrance drives and all screen planting must be installed before the first certificate of occupancy is issued for any building. All landscaping within parking areas and along drives to the parking area of each building requesting a certificate of occupancy must be satisfactorily installed before a certificate of occupancy will be issued for that building. If weather does not permit completion of landscaping before certificates of occupancies are issued, landscaping must be installed during the next growing season and before any further certificates of occupancy are issued during that growing season.

37. Turf and planting areas shall be maintained in accordance with a Comprehensive Maintenance Plan, including watering, mowing, fertilizing, pruning, mulching and other activities as necessary to maintain these areas in living and healthy condition, seasonal planting of annuals, and semiannual replacement of

trees and other planted vegetation that do not survive. All plants shall be trimmed and pruned, grassed areas mowed, mulched areas re-mulched as required with all dead trees, shrubs, bushes and the like replaced promptly. All barren areas shall be reseeded. The Owner and/or Site Manager shall retain the services of a professional landscaper to maintain all landscaped areas as approved on the site plan. The Comprehensive Maintenance Plan is part of the landscape plans hereby approved [LA-D. 6].

Parking Lot Maintenance

38. The applicant shall be required, at all times, to comply with the Shopping Center Parking Area Maintenance Standards of Article I [Section 131-1 to 131-5] of the Code of Ordinances of the Town of Newburgh and this approval is subject to, and conditioned upon compliance with same as if those performance standards were set forth herein at length.

VTL Enforcement Authorization

39. The applicant has, pursuant to New York State Vehicle and Traffic Law Section 1660-a, specifically and irrevocably authorize Town of Newburgh Police and Parking Enforcement personnel to enter the project site for purposes of enforcing parking and other Vehicle and Traffic Law violations on site.

Traffic

40. Completion of all traffic improvements (both on-site and off-site) shown on the site plan, DEIS, FEIS and SEQRA Findings is hereby made a condition of final approval.
41. The intersection of NYS Route 52 and NYS Route 300 has been identified as an existing constrained intersection. Im-

provements will be required at this intersection regardless of the proposed development. The Developer has agreed to make a fair-share contribution towards correcting these deficiencies as follows: In order to assist the Town in urging the NYS DOT to improve the intersection, the applicant has agreed, not later than one year after issuance of the first building permit for the project, to contribute toward a follow-up traffic study (to be conducted by the town's traffic engineer) and to contribute toward preparation of design and construction plans for the needed intersection improvements and to contribute toward the cost of such improvements, provided that its total contribution (cost of the study and construction drawings plus the contribution toward the cost of improvements) does not exceed the total sum of \$50,000. This offer and agreement is hereby made a condition of this approval.

42. In addition, the applicant shall deposit with the Town the sum of \$30,000, which the Town shall use to implement a traffic monitoring program that will monitor site traffic generation at each of the site access roads in order to verify that actual project generated traffic volumes and distributions are consistent with the EIS projections. The payment of said deposit shall be secured by a letter of credit in form acceptable to the Attorney for the Town issued by a licensed New York State bank and shall be made on or before the date of issuance of the first certificate of occupancy for the first building to be completed on site. If, for example, it is found that more project generated traffic is using a particular access point than previously anticipated, it may be necessary to re-evaluate those approved mitigation measures such as signal timing, lane configuration and directional signage as they specifically relate to the project site. If this analysis reveals inadequacies in the present mitigation plan, alternative

or additional mitigation measures may be necessary in order to adjust actual project generated traffic volumes and distributions to bring the same into conformance with EIS projections. This program shall include the following, but may be modified if necessary as the project progresses:

- Check existing traffic volumes and distributions after the opening of approximately 400,000 SF, and after the opening of approximately every 225,000 SF after that, and concluding no sooner than a year after the entire project is complete and open.
- Record hourly traffic volumes on each site driveway and turning movement counts during the PM and Saturday peak hours.
- Determine the existing trip generation rate of the open and operating square-footage and driveway distributions and compare with the EIS projected traffic volumes or the ITE equivalent trip generation for the operating square-footage, recognizing that a 10% variation in site generated traffic at any particular site entrance shall be considered reasonable and shall not require additional study or mitigation.
- Determine the adequacy of the proposed geometric improvements compared to the actual trip generation and distributions.
- Recommend alternative or additional mitigation measures if deemed necessary. Any alternative or additional mitigation measure shall be instituted on-site unless it is determined that on-site mitigation is not possible. In no event shall any mitigation required hereunder cause the applicant to construct on or off site traffic improvements greater than what is necessary to address the excess traffic actually generated from the Project or to bring project traffic distributions back to those levels projected in the EIS.
- Summarize the monitoring program results and provide the report to the Town, NYSDOT, Thruway Authority, and applicant.

43. To address concerns expressed during the public hearing regarding potential traffic problems during the holiday season, the applicant has proposed a traffic management plan. As part of the traffic management plan, the Applicant will work with the Town of Newburgh on an ongoing basis to provide traffic management such as alternate route signing, temporary restriction of certain turning movements and if necessary coordination

with the Town of Newburgh Police Department. The Marketplace will also consider using off-duty Town of Newburgh police officers for traffic control during peak shopping seasons. Periodic emergency management meetings will be held before and after peak events to discuss performance and possible improvements to the plan. If the Traffic management Plan coordinated with the Town Board requires the occasional use of Town Police, the management company for the Marketplace will be responsible for compensating the Town. The initial draft of the traffic management plan shall be in place before issuance of the first certificate of occupancy for any store in the project.

Future Modifications

44. The SEQRA Findings and this final approval are applicable to both the Project plans and all alternatives as set forth in the SEQRA process. The project as proposed is proposed to be built as a single phase project. The Planning Board acknowledges that retail users have varying needs as market conditions change and consumer buying habits change. In this regard, minor modifications that may be requested for the site plan in the future are not likely to require further SEQRA review, within the limits of applicable and prevailing law, so long as these modifications:

- do not result in any more building square footage or impervious surfaces on the site than that amount reviewed in these proceedings;
- do not permit any use on the site other than those allowed by current zoning and reviewed during these proceedings; and

- do not decrease buffers from outside property lines or increase the disturbance envelope of the grading plan reviewed herein; and
- do not reduce the number of access points below the 3 currently proposed; and
- do not reduce the size of the Lifestyle Center component of the project below 100,000 square feet.

45. While it is recognized that the precise assignment of leasable floor area of the lifestyle center will be a function of the competitive marketplace, the Developer has pledged that the lifestyle center shall be comprised of not less than 100,000 square feet of area (unless amended approval is granted by the Planning Board as noted below).

46. In order to preserve the community character and the sense of buffering and scale essential to an acceptable visual presentation, the Developer shall not build more than 450,000 square feet of non lifestyle center space until it completes at least 100,000 square feet of the lifestyle center portion of the project (including all public amenities related to each building as approved) unless an amended approval is obtained from the Planning Board. Any application for an amended approval must include measures that will, on both an interim and permanent basis, suitably address and substitute for the community character and visual presentation features that flow from the lifestyle center component of the project. It is understood by the Developer that "big box" retail space will not likely be an acceptable substitute. Any substitute shall provide the same or similar community and public amenities as does the lifestyle center, e.g., a park or community center. Specifically, these

guidelines offer recommendations to review boards to encourage:

- the articulation of long facades to reduce scale and provide visual interest, thereby mitigating the potential for uniform, impersonal appearance;
- provision of architectural features, patterns and detail at pedestrian level to reduce massive aesthetic effects and recognize local character;
- varying roof lines to add interest to and reduce the scale of large buildings, in a manner consistent with adjoining neighborhoods; and
- use of color and textures in a manner that is aesthetically pleasing and compatible with materials and colors in the adjoining neighborhood.

47. In addition to these guidelines, landscaping along facades of the big box retail stores is required to soften the visual impact of these stores. Facades with entrance points must be of substantial width to enable interesting pedestrian amenities and paths and should be approximately 20' wide with at least 40% of this area landscaped. Facades that do not have entrance points but face public views should have landscaping space that is at least 10' wide.

#### Outdoor Storage

48. The applicant, and all of its tenants, shall be required, at all times, to comply with the commercial performance standards of Section 185-30. [Outdoor Storage] of the Code of Ordinances of the Town of Newburgh and this approval is subject to, and

conditioned upon satisfaction of same as if those performance standards were set forth herein at length. Screening as shown on the plans shall be maintained at all times. Further, outdoor storage of motor vehicles, trailers, building supplies, raw materials, finished products or machinery and equipment is prohibited, except in accordance with the following:

- (1) Such use shall be an accessory use and shall be located on the same lot as the use to which it is accessory.
- (2) Such materials or products shall not be stored within the front yard and shall not be closer than 10 feet to any side or rear lot line or 50 feet from a side or rear lot line adjacent to a resident district or lot in residential use.
- (3) All outdoor storage areas shall be appropriately screened with landscaping so as to provide an opaque sight barrier at least eight feet in height. In no case shall materials be stored so as to exceed the height of the sight barrier.
- (4) No storage area shall occupy more than 30% of the required side or rear yard.
- (5) No material may be stored in such a storage facility that is flammable, combustible, explosive, reactive, corrosive or toxic to humans as defined and quantified in United State Environmental Protection Agency regulations under 40 CFR 116.

49. All outdoor display of merchandise shall be subject to the following restrictions:

- All garden center materials for sale must be contained within retail structures or within fenced in garden centers shown on the approved site plan. Any seasonal sales or temporary display in front of retail structures, or along walkways in front of the retail structures or

outside fenced areas shall conform to the following:

- All sales are to take place inside the store or fenced garden center; no sales registers or exchange of money outside.
  - All walkways must remain passable by two-way pedestrian traffic.
- Except for the holiday sales events specified on the plans, outdoor display and sales shall only occur between March 15<sup>th</sup> and July 31<sup>st</sup> of each year.

#### Outdoor Fixtures & Amenities

50. This site plan approval allows construction of only that which is shown on the plans identified above. No outdoor amenities or accessory structures or outdoor fixtures—including but not limited to exterior walls, mechanical units, dumpsters, etc.—may be constructed, placed or erected except as shown on the approved site plan. Architectural drawings shall carry a certification that what is shown thereon is fully consistent with the approved site plan.

#### Flood Plain Development Permit

51. All development (as defined in Sec. 109-4(B) of the Code) and all construction shall be consistent with the plans submitted and in full compliance with Chapter 109 of the Code. No development shall be commenced within the area of special flood hazard without first obtaining a development permit from the Code Compliance Supervisor in accordance with Sec. 109-11 or variance in accordance with Sec. 109-16,17. No occupation or use of any structures shall be permitted until a certificate of compliance has been issued [Sec. 109-12(H)(1)]. A certificate of compliance shall also be issued for all other development occurring

within the designated flood hazard area upon completion of such work [Sec. 109-12(H)(2)]. Failure to obtain such certificates shall be grounds for revocation of this approval.

### **General Conditions**

This approval is conditioned upon the applicant submitting all necessary copies of the plans to be signed, including mylars when required, to the Town of Newburgh Building Department. A full set of the plans to be signed shall simultaneously be submitted to Garling Associates. The plans shall not be signed until Garling Associates has reported to the Chair that all conditions of this resolution required to be satisfied before the plans can be signed have, in fact, been satisfied.

This approval is further conditioned upon the applicant delivering (prior to signing of the plans) proof, in writing, that all fees—engineering, planning, legal and otherwise—in regard to this project have been fully paid. The applicant shall also be required to deliver proof that all required Public Improvement, Erosion Control and Landscaping inspection fees and escrow have been deposited with the Town. The plans shall not be signed until proof, satisfactory to the Chair, has been presented showing that all fees have been paid and escrow deposits made.

Approval of the final site plan shall, pursuant to Section 185-58 (E) of the Zoning Ordinance, be valid for two years from the date this resolution is filed in the office of the Town Clerk, after which time this approval shall be null and void unless a building permit has been issued. If no building permit has been issued within that time, the plan must be resubmitted to the Planning Board for approval.

A FAILURE to comply with the general condition immediately above in a timely manner shall result, without further action, in a lapsing of this approval.

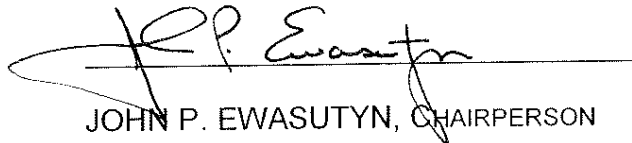
Conceptual ARB [May 1, 2008]

In Favor   5     Against   0     Vacant   1     Absent   1  

Final Site Plan

In Favor   4     Against   0     Vacant   1     Absent   2  

Dated: June 19, 2008

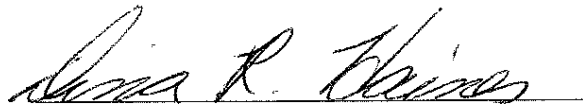
A handwritten signature in black ink, appearing to read "J.P. Ewasutyn", is written over a horizontal line.

JOHN P. EWASUTYN, CHAIRPERSON  
TOWN OF NEWBURGH PLANNING BOARD

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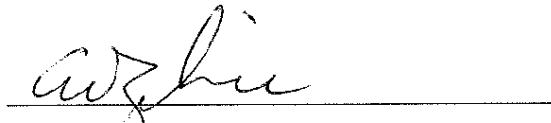
STATE OF NEW YORK )  
 )ss:  
COUNTY OF ORANGE )

I, DINA R. HAINES, Secretary to the Planning Board of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Planning Board, said resulting from a vote having been taken by the Planning Board at meetings of said Board held on May 1, 2008 and on June 19, 2008.



DINA R. HAINES, SECRETARY  
TOWN OF NEWBURGH PLANNING BOARD

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Resolution was filed in the Office of the Town Clerk on 6-27-08.



ANDREW J. ZARUTSKIE, CLERK  
TOWN OF NEWBURGH