

City of Newburyport Planning Board
FORM C – APPLICATION FOR DEFINITIVE SUBDIVISION APPROVAL

To the Planning Board:

The undersigned hereby submits a Definitive Subdivision Plan and makes application for approval to the Newburyport Planning Board pursuant to MGL Chapter 41, Section 81-O.

Applicant: Evergreen Commons LLC
Mailing Address: c/o Mead, Talerman & Costa LLC
30 Green Street, Newburyport MA 01950
Phone: 978 463 7700

Site Address: 18 Boyd Dr & 5 Brown Ave.

Name of Proposed Subdivision: Evergreen Commons

Map and Lot(s): 110/20 and 111/13 Zoning District R-1 and R-2

Book and Page: 29288/376 & 35708/396 or Certificate of Title: _____

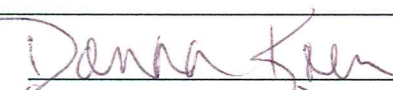
Easements and restrictions of record (describe and include deed references):

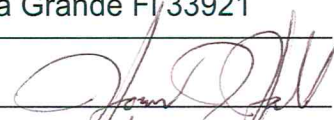
Preliminary Plan Submitted: ☒ Yes ☐ No If yes, plan approved on : ~~Denial~~ 3/1/17

Engineer: Design Consultants Inc.
Address: 68 Pleasant Street
Newburyport MA 01950
Phone: 978 358 7173

Owner's Name: DDJH LLC / Howard J. Hall
Address: 16 Boyd Dr., Newburyport and P.O. Box 424 Boca Grande FL 33921

Owner's Signature:


(DDJH LLC)
18 Boyd


Howard J. Hall
(Developer)
5 Brown

City of Newburyport Planning Board
Application for a SPECIAL PERMIT

Petitioner: Evergreen Commons LLC

Address: c/c Mead, Talerman & Costa LLC, 30 Green Street, Newburyport

Phone: 978 463 7700

Owner: DDJH LLC / Howard J. Hall

Address: 16 Boyd Dr., Newburyport and P.O. Box 424 Boca Grande FL 33921

Phone: _____ Years owned land: 7 and <1

Site Address: 18 Boyd Dr. and 5 Brown Ave

Assessor's Map and Lot(s): 110/20 and 111/13 Zoning District: R-1 and R-2

Book and Page #: 29288/376 & 35708/396 or Certificate of Title: _____

Ordinance section where relief is being requested:

- | | |
|--|---|
| <input type="checkbox"/> One residential structure per lot (VI.C) | <input type="checkbox"/> Courts and Lanes (XXIII) |
| <input type="checkbox"/> Floodplain (XIII) | <input type="checkbox"/> Waterfront West Overlay District (XXIV) |
| <input type="checkbox"/> Open Space Residential Development (XIV) | <input type="checkbox"/> Towle Complex Redevelopment Overlay District (XXV) |
| <input checked="" type="checkbox"/> Water Resource Protection District (XIX) | <input type="checkbox"/> Downtown Overlay District (XXVII) |
| <input type="checkbox"/> Federal Street Overlay District (XXII) | |

Describe the Special Permit request:

Construction of a subdivision which impacts sections XIX-I (6, 7 and 8) of the Zoning Ordinance.

Petitioner and Landowner signature(s):

Every application for a Special Permit shall be made on this form, which is the official form of the Planning Board. It shall be the responsibility of the petitioner to furnish all supporting documentation with this application. The dated copy of this application received by the City Clerk or Office of Planning and Development does not absolve the applicant from this responsibility. Failure to comply with application requirements as cited herein may result in the Planning Board dismissing the application as incomplete.

Signature of petitioner/owner: _____

Print name(s) here: _____

Donna Koen
Donna Koen
(DDJH LLC)
18 Boyd

Howard J. Hall
Howard J. Hall
(Developer)
5 Brown



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

www.mtclawyers.com

May 22, 2017

Via Registered Mail and
Hand Delivered
James McCarthy, Chair
City of Newburyport Planning Board
60 Pleasant Street
Newburyport MA 01950

RE: Application for Definitive Subdivision 18 Boyd Drive and 5 Brown Ave.
Application for Special Permit Water Resource Protection District
Assessor Records Map/Lot 110-20 and 111-13

Dear Chair and Members of the Board;

Reference is made to the above captioned matter and the Board's approval of the Open Space Residential Development ("OSRD") Special Permit issued on March 15, 2017. In that connection and pursuant to that approval, the Applicant submits herewith its Definitive Subdivision Application along with the requisite Water Resource Protection District Application. Attached please find the following documents:

1. Port Place by Evergreen Commons LLC Definitive Subdivision drawn by Design Consultants Inc., 68 Pleasant Street, Newburyport and dated May 22, 2017.
2. Stormwater Management Report by Design Consultants Inc., 68 Pleasant Street, Newburyport and dated May 22, 2017 including Operation and Maintenance Plan for Stormwater System.
3. Traffic Report dated August 2916, Revised September 15, 2016 by Design Consultants Inc., 68 Pleasant Street, Newburyport. (Please note this traffic report was submitted as part of the OSRD Special Permit process.
4. Environmental and Community Impact Analysis
5. Request to Veterans Office for Street Names
6. Response from City Assessor and E-911 Officer for Street Names
7. Draft Homeowners Association Trust Document.
8. Draft Conservation Restriction.
9. Draft Emergency Access Easement to City for Access to Infrastructure
10. Draft Access Easement for monitoring wells during and after construction.

Millis Office
730 Main Street, Suite 1F
Millis, MA 02054
Phone 508.376.8400

11. Open Space Program and Operation and Maintenance Plan for Open Space.
12. Draft Deed of land to be gifted to Water Department
13. Front Elevations of Architectural Design. Please note pursuant to the OSRD Special Permit, the other three elevations may be submitted during the definitive process.
14. Renderings of Entrances and interior section.
15. Definitive Plan Application and Requisite Filing Fee
16. Water Resource Protection District Special Permit and Requisite Filing Fee

Introduction

The Applicant submits its Definitive Plan pursuant to the approval of the OSRD SP which authorized a OSRD consisting of thirty-eight (38) lots on thirty-five and a half acres, (36.84 +/- acres) (the "Property"). The Property is located off of Boyd Drive and Brown Avenue and is currently operated as a golf course. The Brown Avenue lot is currently a single-family home. The Property lies within the R-1 and R-2 zoning district as well as the Water Resource Protection Overlay District ("WRPD") and is a Zone II designation for that purpose. The portion of the Property on which homes and roadways would be constructed includes 13.36 +/- acres and the remaining 22.816 +/- acres will be preserved for conservation and recreational uses – open to the public but owned and maintained by the home-owner's association.

Special Permit for Water Resource Protection District Zone II

The Applicant seeks to construct on a portion of the Property 38 single family homes serviced by public water and public sewer. Section XIX-E (6) of the NZO specifically allows residential uses in the WRPD subject to sections XIX-H, I, and J (prohibited uses) and section XIX-K (special permitted uses) (See Section XIX-E(6)). The proposed residential development is not a prohibited use, however, there are aspects of the proposed development which trigger a Special Permit under section XIX-I (6, 7¹ and 8) **Subparagraph 6 provides that:**

Any use that will render impervious more than five thousand (5,000) square feet of a residential lot or ten thousand (10,000) square feet of a nonresidential lot. A system for groundwater recharge shall be provided which does not degrade ground or surface water quality. For all nonresidential uses, recharge shall be by storm water infiltration basins or similar systems covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such infiltration basins and dry wells shall be preceded by oil, grease, and/or sediment traps to facilitate removal of contaminants. All recharge areas shall be regularly maintained in proper working order by the owner.

¹ Please note, the Applicant is proposing development on one lot (18 Boyd and 5 Brown will be one parcel combined when the construction takes place), as a result under subsection 7, since the average slope of the entire parcel is 9%, no finding under subsection 7 would apply. In an abundance of caution, however, the Applicant has also called out the one lot to be created in the subdivision where the slope exceeds 15% for the individual lot namely lot 25 where the slope is 19%. For that lot the Applicant has shown on the definitive plan a plan for site stabilization and control of erosion and sedimentation.

The total amount of impervious area for the Property will be 215,531 square feet. As set forth in the Stormwater Management Report including the Operation and Maintenance Plan for Stormwater and as shown on sheets Civ. 1-15 of the Plan Set. The system for groundwater recharge will not degrade either the surface or ground water quality as more fully supported by the Stormwater Management Report and therefore this criterion is met.

Subparagraph 7 provides that:

Residential construction upon a lot with an average slope exceeding fifteen (15) percent.
An acceptable plan for site stabilization and control of erosion and sedimentation shall be provided.

It is the position of the Applicant that this subparagraph is not triggered for a Special Permit as the proposed development is on one lot, as a result under subsection 7, since the average slope of the entire parcel is 9%, no finding under subsection 7 would apply. However, in an abundance of caution, the Applicant has also called out the one lot to be created in the subdivision where the slope exceeds 15% for the individual lot- namely lot 25 where the slope is 19%. For that lot the Applicant has shown on the definitive plan a plan for site stabilization and control of erosion and sedimentation as required is Subparagraph 7. The Applicant therefore meets this special permit criteria.

Subparagraph 8 provides that:

Any new stormwater runoff shall be set back from the receiving water a minimum of one hundred (100) feet, and shall include best management practices appropriate to the site. Existing and replacement discharges shall be set back from the receiving water when either the site stormwater drainage system is changed or the discharge is increased. The best management practices shall be designed so as to maximize infiltration and minimize erosion, and to mitigate water quality impacts, including those due to total suspended solids and oil and grease. This applies to stormwater runoff from all impervious surfaces, including roads and parking lots.

Please see sheets Civ. 1-15 of the Plan Set. Also, as noted for criteria 6 above, the Stormwater Management Report including the Operation and Maintenance Plan addresses this criterion. You will see on the plans that the stormwater runoff is set back from any receiving water at least one hundred (100) feet. The site has been designed using best management practices pursuant to MA DEP Stormwater Handbook Design Guidelines. The design is meant to maximize infiltration by infiltrating clean roof water and treated surface runoff through Bioretention Areas and Infiltration Swales and minimize erosion by collecting and controlling all stormwater runoff through a drainage system as indicated on sheets Civ. 1-15 of the drawings and the provided Stormwater Report and mitigate any impact on water quality by treating all stormwater runoff through a treatment train including deep sump catch basins, enhanced mechanical separator treatment units that discharge to Bioretention Cells or Constructed Stormwater Wetland.

Further as to the criteria set forth in section XIX-J (5) the following applies:

- a. The use of the Property will not include the storage of any of the listed prohibited items in quantities greater than those associated with normal household use.
- b. Given the response to item (a), criteria (b) does not apply.
- c. Pursuant to the OSRD SP the Applicant is providing monitoring wells on the Property. However, there are no locations on the Property and there are no activities on the Property which might provide a potential harm to down-gradient locations for surface water or groundwater. Notwithstanding same, the

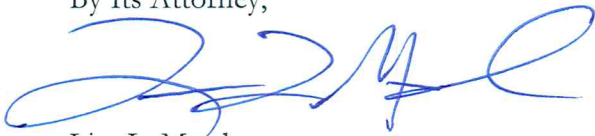
Applicant is bound by the requirements of the OSRD Special Permit relative to the care and maintenance of the roadways and lawn areas as well as the Open Space. As a result, criteria (c) is met.

Wherefore, given that the Applicant has met the specific criteria and conditions for the Special Permit in the WRPD, the Applicant respectfully requests approval of the WRPD Special Permit and approval of the Definitive Subdivision submitted pursuant to the OSRD Special Permit.

Finally, the Board of Health has requested that the Applicant make a payment toward the implementation of the final report which is to be submitted by the Applicant to the Department of Public Services pursuant to the third bullet on page 10 of the OSRD Special Permit decision. The Applicant agrees to provide \$10,000.00 along with the final report as requested by the Board of Health.

We look forward to presenting the plan to the Board.

Respectfully submitted,
Evergreen Commons LLC
By Its Attorney,



Lisa L. Mead

cc: Client
Board of Health
City Clerk

COTTAGE ADVISORS, LLC
487 GROTON RD.
WESTFORD, MA 01886

JEANNE D'ARC CREDIT UNION
53-8384/2113

3395
INTRA-DAY

DATE 5/11/17
AMOUNT \$550.00

PAY
TO THE
ORDER
OF

Five Hundred & fifty
City of Newburyport.

Port Place
Special Permit

003395 211383846 9997754438

VOID AFTER 90 DAYS
AUTHORIZED SIGNATURE

[Signature]

Security Features Included

Details on Back

COTTAGE ADVISORS, LLC
487 GROTON RD.
WESTFORD, MA 01886

JEANNE D'ARC CREDIT UNION
53-8384/2113

3394
FRADAMORF

PAY

TO THE
ORDER
OF

Ten thousand eight hundred & fifty
City of Newburyport

DATE

5/11/17

AMOUNT

\$10,850.00

VOID AFTER 90 DAYS

AUTHORIZED SIGNATURE

Port Place
Debitive/AM

⑈003394⑈ ⑆211383846⑆ 9997754438⑈

Security Features Included

Details on Back.

**REQUIRED
ASSESSORS CARDS AND DEEDS**

5 BROWN AVE**Location** 5 BROWN AVE**Mblu** 111/ 13/ / /**Owner** COX DORIS M**Assessment** \$333,500**PID** 7211**Building Count** 1**Current Value**

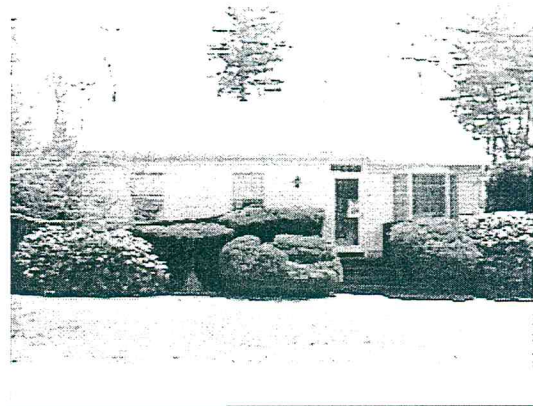
Assessment			
Valuation Year	Improvements	Land	Total
2017	\$109,600	\$223,900	\$333,500

Owner of Record**Owner** COX DORIS M**Sale Price** \$0**Co-Owner****Certificate****Address** 5 BROWN AVENUE
NEWBURYPORT, MA 01950**Book & Page** 5304/ 173**Sale Date** 09/23/1965**Ownership History**

Ownership History				
Owner	Sale Price	Certificate	Book & Page	Sale Date
COX DORIS M	\$0		5304/ 173	09/23/1965

Building Information**Building 1 : Section 1****Year Built:** 1963**Living Area:** 999

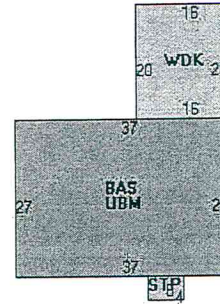
Building Attributes	
Field	Description
Style	Ranch
Model	Residential
Stories:	1 Story
Occupancy	1
Exterior Wall 1	Aluminum Sidng
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Flr 1	Carpet

Building Photo

(<http://images.vgsi.com/photos/NewburyportMAPotos//\00\11\92.jpg>)

Building Layout

Interior Flr 2	
Heat Fuel	Gas
Heat Type:	Forced Air-Duc
AC Type:	Central
Total Bedrooms:	3 Bedrooms
Total Bthrms:	1
Total Half Baths:	1
Total Xtra Fixtrs:	
Total Rooms:	5 Rooms
Bath Style:	Average
Kitchen Style:	Average



Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	999	999
STP	Stoop	24	0
UBM	Basement, Unfinished	999	0
WDK	Deck, Wood	320	0
		2,342	999

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Use Code 1010
Description SINGLE FAM
Zone R2

Land Line Valuation

Size (Acres) 0.42
Depth 0
Assessed Value \$223,900

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
SPL2	POOL-INGR VN/P			512 S.F.	\$8,200	1

Valuation History

Assessment			
Valuation Year	Improvements	Land	Total
2016	\$106,700	\$213,200	\$319,900

18 BOYD DR**Location** 18 BOYD DR**Mblu** 110/ 20/ / /**Owner** VITALE ETHEL M L/I**Assessment** \$1,076,400**PID** 7172**Building Count** 2**Current Value**

Assessment			
Valuation Year	Improvements	Land	Total
2017	\$565,400	\$511,000	\$1,076,400

Owner of Record

Owner VITALE ETHEL M L/I
Co-Owner DDJH LLC
Address C/O DONNA KOEN
 16 BOYD DR
 NEWBURYPORT, MA 01950

Sale Price \$0
Certificate
Book & Page 29288/0376
Sale Date 02/19/2010
Instrument 1F

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
VITALE ETHEL M L/I	\$0		29288/0376	1F	02/19/2010
VITALE ETHEL M L/I	\$0		29235/0045	1A	01/25/2010
VITALE ETHEL M TRUSTEE	\$0		24753/0321	1F	08/29/2005
VITALE ETHEL M	\$0		24182/0393	1G	04/15/2005
VITALE ETHEL M	\$0		14013/0080	1F	03/14/1997

Building Information**Building 1 : Section 1**

Year Built: 1990
Living Area: 560

Building Photo

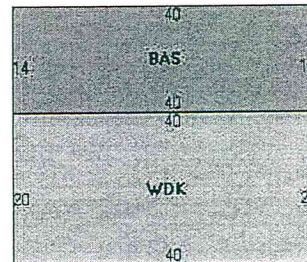
Building Attributes	
Field	Description
STYLE	Clubs/Lodges
MODEL	Commercial
Stories:	1
Occupancy	1
Exterior Wall 1	Pre-Fab Wood
Exterior Wall 2	

Roof Structure	Flat
Roof Cover	Tar & Gravel
Interior Wall 1	Plywood Panel
Interior Wall 2	
Interior Floor 1	Carpet
Interior Floor 2	
Heating Fuel	Electric
Heating Type	Hot Air-no Duc
AC Type	Heat Pump
Bldg Use	GOLF CRSE
Total Rooms	
Total Bedrms	00
Total Baths	0
1st Floor Use:	3800
Heat/AC	HEAT/AC PKGS
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	SUS-CEIL & WL
Rooms/Prtns	AVERAGE
Wall Height	8
% Comn Wall	0



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Building Layout



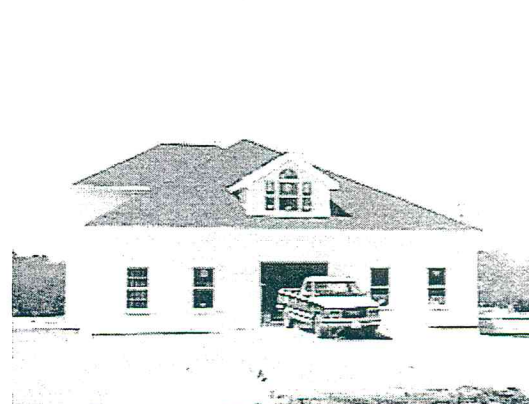
Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	560	560
WDK	Deck, Wood	800	0
		1,360	560

Building 2 : Section 1

Year Built: 2000
Living Area: 4,820

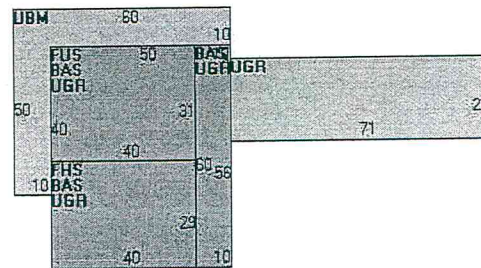
Building Attributes : Bldg 2 of 2	
Field	Description
STYLE	Clubs/Lodges
MODEL	Commercial
Stories:	2
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet

Building Photo



(<http://images.vgsi.com/photos/NewburyportMAPotos//\01\00\49\30.jpg>)

Interior Wall 2	
Interior Floor 1	Carpet
Interior Floor 2	
Heating Fuel	Coal or Wood
Heating Type	None
AC Type	None
Bldg Use	GOLF CRSE
Total Rooms	
Total Bedrms	00
Total Baths	0
1st Floor Use:	3800
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	NONE
Ceiling/Wall	NONE
Rooms/Prtns	AVERAGE
Wall Height	14
% Corn Wall	0

Building Layout

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	3,000	3,000
FUS	Upper Story, Finished	1,240	1,240
FHS	Half Story, Finished	1,160	580
UBM	Basement, Unfinished	1,000	0
UGR	Garage, Unfinished	4,562	0
		10,962	4,820

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land**Land Use**

Use Code 3800
Description GOLF CRSE
Zone R1

Land Line Valuation

Size (Acres) 36.76
Depth 0
Assessed Value \$511,000

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
HOLE	GOLF			9 UNITS	\$225,000	1
PAV1	PAVING-ASPHALT			11040 S.F.	\$19,000	2

Valuation History

Assessment			
Valuation Year	Improvements	Land	Total

2016	\$565,400	\$485,200	\$1,050,600
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SO.ESSEX #633 Bk:35708 Pg:396
02/28/2017 03:55 PM DEED Pg 1/2
eRecorded

MASSACHUSETTS EXCISE TAX
Southern Essex District ROD
Date: 02/28/2017 03:55 PM
ID: 1172095 Doc# 20170228006330
Fee: \$1,368.00 Cons: \$300,000.00

Quitclaim Deed

I, Dora MacLeod, Personal Representative of the Estate of Doris Cox, Essex Probate No. ES16P2937EA, of 26 Farrow Street, Winchester, MA 01890, in consideration of Three Hundred Two Thousand and 00/100 (\$300,000.00) Dollars paid **GRANT TO** Howard J. Hall, individually, of P.O. Box 424, Boca Grande, Florida 33921

With **QUITCLAIM COVENANTS**

The land with the buildings thereon and situated on Brown Avenue, formerly known as Magnolia Avenue, Newburyport, Essex County, Massachusetts, and shown as Lot 36 on a plan entitled "Fairview Acres, Newburyport, Mass." Charles H. Morse & Son, Engineers, Haverhill, Mass., Scale 1 inch = 40 feet, dated February 7, 1961, recorded in Plan Book 96, Plan 3, bounded and described as follows:

NORTHEASTERLY by Brown Avenue, formerly known as Magnolia Avenue, 100 feet;

SOUTHEASTERLY by Lot 35 as shown on said plan, 206.99 feet;

SOUTHEASTERLY by land of George P. and Marion S. Poor as shown on said plan, 100 feet; and

NORTHWESTERLY by Lot 37 as shown on said plan, 164.20 feet.

For Grantor's Title, see deed dated 09/22/1965 and recorded in the Southern Essex County Registry of Deeds at Book 5304, Page 173.

The Grantor named herein, do hereby voluntarily release and relinquish all rights of Homestead, if any, as set forth in Massachusetts General Laws, Chapter 188 and state that there are no other persons entitled to any Homestead right other than those executing this deed.

Executed as a sealed instrument this 24TH day of February, 2017.

Dora MacLeod

Dora MacLeod, Personal Representative
of the Estate of Doris Cox

Commonwealth of Massachusetts

Middlesex, ss.

On February 24, 2017, before me, the undersigned notary public, personally appeared Dora MacLeod, Personal Representative, as aforesaid, the above-named and proved to me through satisfactory evidence of identification being Massachusetts driver's license, to be the person whose name is signed on this document, and acknowledged to me that she signed it under the pains and penalties of perjury and voluntarily for its stated purpose and that the foregoing instrument is her free act and deed.

[Signature]
Notary Public:

My Commission Expires: 5/8/2020



RICHARD KALLMAN
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
May 8, 2020

QUITCLAIM DEED

Property Address: 18 Boyd Drive, Newburyport, MA

I, Donna A. Koen, of Newburyport, Essex County, Massachusetts, for consideration of less than One Hundred (\$100.00) Dollars hereby grant to DDJH LLC, a Massachusetts limited liability company, having an address of 16 Boyd Drive, Newburyport, Massachusetts 01950, *with quitclaim covenants*

The lot of land in Newburyport, Essex County, Massachusetts, being Lot 21 as shown on Plan entitled "Evergreen Estates & Company Club Definitive Subdivision Plan A Subdivision of Land in Newburyport, Massachusetts (Essex County) prepared for Ribot Realty Trust S. Francis Vitale, Tr. 54 Corning Street, Beverly, Mass., Scale 1"=100" July 23, 1985, Revised 9/23/85, prepared by BSC Engineering, 450 Summer Street, Boston, Mass., 02210". Said Plain being recorded in Plan Book 204, as Plan 30.

Said Lot 21 containing 36.766 acres according to said Plan.

Subject to and with the benefit of all easements, restrictions and agreement of record insofar as the same are now in force and applicable.

Subject to an easement granted to Massachusetts Electric Company dated June 27, 1986 and recorded with said Registry of Deeds at Book 8372, Page 284.

Subject to an easement to New England Telephone and Telegraph, dated July 16, 1986 and recorded with said Registry of Deeds at Book 8372, Page 373.

Subject to the Covenant with the Newburyport Planning Board dated November 26, 1985, and recorded in Book 8023, Page 115.

Subject to an Order of Conditions from the Newburyport Conversation Commission dated April 1, 1986 and recorded in Book 8187, Page 250.

Subject to the reservation of a life estate for the term of the natural life of Ethel M. Vitale.

Being the same premises conveyed to the grantor by deed of Ethel M. Vitale, Trustee, dated January 21, 2010 and recorded in the Essex South District Registry of Deeds in Book 29235, Page 45.

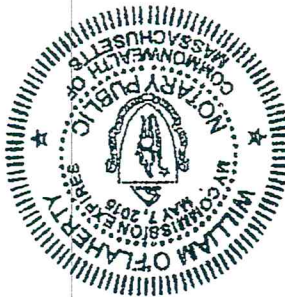
Title Examination not performed or requested.


WITNESS MY HAND AND SEAL this 12th day of February, 2010


Donna A. Koen

COMMONWEALTH OF MASSACHUSETTS

On this 12th day of February, 2010, before me, the undersigned notary public, personally appeared Donna A. Koen, proved to me through satisfactory evidence of identification, which was, driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.




Notary Public: William O'Flaherty
My commission expires: 5/7/15

**REQUIRED
ROAD/STREET NAME PROCESS**



**Veterans Office
City of Newburyport
331 High Street
Newburyport, Massachusetts 01950**

Veterans Service Officer (VSO)
Kevin Hunt
331 High Street
veterans@cityofnewburyport.com

Phone (978) 462-2201
Fax (978) 462-2275

May 15, 2017

Dear Jim Goodwin,

I am in receipt of your letter requesting names for potential streets in your OSRD application with the City of Newburyport. Possible Newburyport veterans you could use are:

Captain George W. Duffy - Merchant Marine, World War II. A Newburyport resident who was a Prisoner of War with the Japanese and with the Germans.

James Gabaree - United States Army Ranger, World War II, first in at Normandy Beach, June 6, 1944. Wounded twice in that battle.

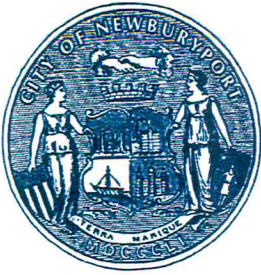
I would suggest getting permission from their respective families if you choose their names. I can assist with that, if needed.

I would suggest using the Newburyport Planning Office, if you require additional names.

Sincerely,

Kevin Hunt

Veterans Services Officer



CITY OF NEWBURYPORT

OFFICE OF THE ASSESSOR

JILL BRENNAN
CITY ASSESSOR

NEWBURYPORT CITY HALL

60 PLEASANT STREET

NEWBURYPORT, MA 01950

TEL: 978-465-4403

FAX: 978-462-8495

WWW.CITYOFNEWBURYPORT.COM

May 18, 2017

RE: Proposed new subdivision @ 18 Boyd Drive
Map 110 Lot 20

Attorney Mead,

You have requested notice from our office to assign a street name(s) and number to the proposed subdivision roadways at Evergreen Golf Course according to a plan submitted and also a letter from Kevin Hunt, Veterans Services Officer.

After meeting this morning with Patrolman Dani Sinclair, 911 coordinator for the City of Newburyport, it has been suggested that the street name will be Duffy for the whole subdivision with the exception of the small cul-de-sac area (lots 9, 10, 11, 12, 13, & 14). The roadway for these lots shall be named Gabaree.

When entering Duffy from Boyd Drive the address number will start on the left hand side of the roadway being assigned an odd number starting with # 1 and the right hand side of the roadway being assigned an even number starting with #2. This format of numbering will continue on both sides until the roadway exits onto Brown Avenue.

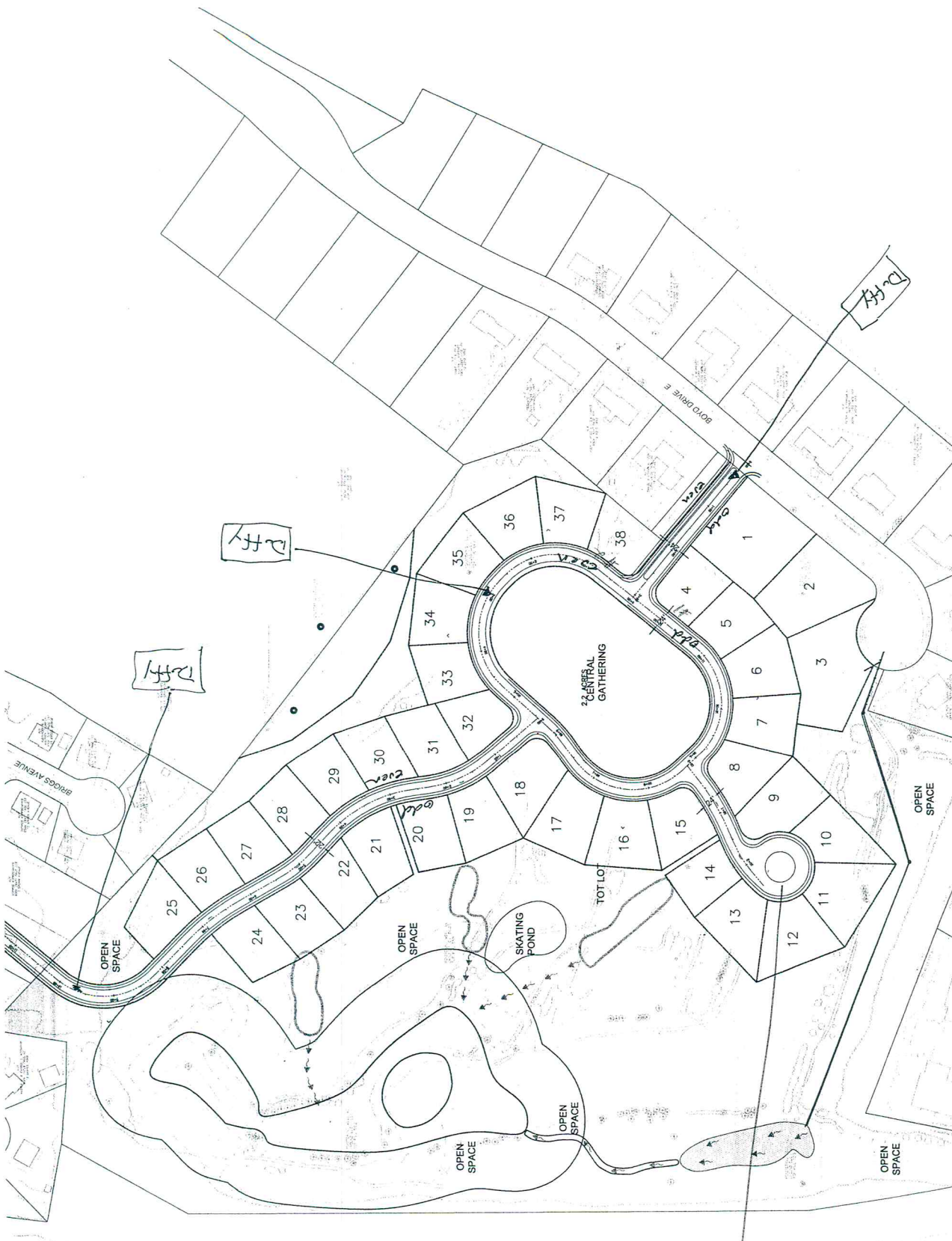
The extension names of the roadways (i.e. Road, Lane, Drive) will be left up to the petitioner and/or any other interested parties.

Attached please find a copy of the plan that was submitted to our office.

Please let me know if you have any questions or concerns.

Sincerely,

Jill Brennan
City Assessor



INTERSTATE 95
NORTH BOUND

INTERSTATE 95
NORTH BOUND

10,347 SQ. FT.

ENVIRONMENTAL IMPACT REPORT

**ENVIRONMENTAL AND COMMUNITY
IMPACT ANALYSIS FOR
EVERGREEN COMMONS
18 BOYD DRIVE & 5 BROWN AVE.
NEWBURYPORT, MASSACHUSETTS**

Prepared for:

Port Place
by
Evergreen Commons LLC
487 Groton Road, Suite A
Westford MA 01886

Prepared by:

Design Consultants Inc.
68 Pleasant Street
Newburyport, Massachusetts 01950
(978) 358-7173

May 22, 2017

1.0 OVERVIEW

In response to Section 5.6 of the *Rules and Regulations Governing the Subdivision of Land for the City of Newburyport* ("the Rules"), the following Environmental Impact Statement was prepared to be submitted with the Definitive Subdivision Application.

The proposed residential development consists of 38 new residences on the existing Evergreen Golf Course and 5 Brown Avenue with a total land area of 36.84 Acres. `

This homes within this project are located within the R1 Zoning district requiring 20,000-square-foot minimum lots. The new development creates 38 new lots on approximately 3,100 linear feet of new roadways. However, a special permit was granted under the Open Space Residential Design provisions of the Newburyport Zoning Ordinance preserving 22.8 Acres of land for open space. The project also includes a parcel of land on Brown Ave. which is within the R-2 zoning district and through which one of the access points is provided.

1.1 Natural Environment

Air and Noise Pollution

As with any construction project, there will be noise generated with the construction of the new road and building of the new homes. This site will require earthwork to construct the new roadways, most of which will be the portion of road connecting to Boyd Drive and Brown Avenue. This noise will be short-term, ending when roadway construction is finished which should be completed in four to six months. After the roadway is completed, the remaining construction noise will be minor and will be associated with the building of the homes and only for the excavation, foundation, and framing portion of the work. One major point is much of the abutting land either City Owned open space or the Route 95 right-of-way. The remaining residential areas are buffered by vegetated earthen berms. No blasting is expected with the proposed construction activities. The only potential for air pollution would be from dust associated with the construction of the new road. This will be monitored carefully and mitigated with a regular watering program to control dust. After the construction period there will no impact on air or noise pollution associated with normal residential areas with over 60% of the development designated as open space.

Water Pollution

The project is located within a Zone II wellhead protection area. This will require added water quality treatment measures including a 1" water quality volume for all paved areas. Currently the Boyd Drive drainage system discharges onto the property and does not meet the current DEP design standards. Included in this project, the stormwater treatment for Boyd Drive will be brought up to Current DEP treatment standards. We propose that the Boyd Drive stormwater flow be directed to a new Constructed Stormwater Wetland designed in accordance with the Massachusetts Stormwater Handbook published by the Massachusetts Department of Environmental Protection (DEP). The new subdivision will utilize Low Impact Design techniques designed in accordance with the Massachusetts Stormwater Handbook with the development divided up into five smaller drainage areas where the stormwater will be directed to Bioretention areas for final treatment prior

to discharging to the improved isolated wetland area. The clean stormwater runoff from the roofs of the new homes will be directed to underground infiltration chambers where it will be infiltrated back into the ground. The Paved areas will be directed bioretention areas and surface infiltration systems. These systems will be landscaped and visually appealing. Any paved surface runoff directed to infiltration areas will have a minimum of the 44% total suspended solids removal pretreatment as required in the DEP Stormwater Standards. These systems will be maintained by the new homeowners association with no maintenance responsibility to the Newburyport Department of Public Services. We have provided a detailed study of the impact of the new subdivision on the Newburyport Well located over 700' from the proposed development. A detailed stormwater analysis report is provided with this application for your review. A detailed water resources evaluation report has been completed for the property and can be provided upon request.

Also, much of the open space will include an improved wetland and expansive natural pollinator meadow. This change in land use from the current golf course fairway and greens to a naturally vegetated open space area provides a substantial benefit in regards to the Zone II watershed quality.

Land

The majority of the existing land proposed for development was originally used as a gravel pit creating a low flat area with relatively steep slopes surrounding the lot area. It is currently utilized as a 9 hole golf course. After advancing 13 deep hole tests and 8 test holes for the hydrological study it has been determined that there is a loam surface with underlying soils consisting of well drained sands and gravels. The roadway is graded to provide enough change in elevation to accommodate the surface drainage measures.

This low area is classified as Isolated Land Subject to Flooding meaning the water ponds at the bottom low areas during large storm events. Additionally, one of the low areas has been delineated is isolated wetland under the local Newburyport Wetland Regulations. The Conservation Commission issued an Order of Resource Area Delineation(ORAD) confirming the isolated wetland area and a peak ILSF flood elevation of 55.60 based upon 7 inches of rain per the MA DEP regulations. The project proposes to improve the Isolated Wetland area by expanding the area and excavating the bottom down to interface with the spring high ground water elevation of 49 as determined by numerous observations taken this April and May 2017 in the observation wells installed throughout the property. Organic soils will be added to the wetland to improve its ability to function as a wetland. The isolated wetland has relied in the past on stormwater for much of its hydrology. Lowering the elevation so the organic soils interface with groundwater during the spring will allow the system to function in a natural state. With the improved Isolated Wetland area and New Constructed Stormwater Wetland, the proposed ILSF flood elevation is lowered by over a foot to 54.35. This lower elevation accounts for the increased impervious surface with the proposed development and using 8.3 inches of rainfall, the 100 year rainfall amount from the Newburyport Wetland Regulations verses the 7 inch rainfall depth as defined the DEP regulations and used in the existing ORAD for the property.

Plants and Wildlife

The Massachusetts Natural Heritage Atlas does not indicate any “Estimated Habitat of Rare Wildlife and Certified Vernal Pools” or “Priority Sites of Rare Species and Exemplary Natural Communities” within or abutting the project site. The project site is currently occupied by a single family home and a 9 hole golf course. The project is abutted by medium to high-intensity development, with a forested area to the north and forested slope buffering Route 95 to the west. Due to its present use as a golf course, there is minimal diversity in the plant community in the upland areas of the site, with much of the site maintained as turf. The wetlands on site also function as stormwater features and have little to no natural buffer.

The proposed development includes 22.8 Acres of open space including the expanded and improved Isolated Wetland and a new expansive pollinator meadow and establishment of a native vegetated buffer to the improved wetland area. The expanded biodiversity in and around the wetland areas will provide food and shelter for various wildlife species, including small mammals and birds. In addition, the pollinator meadow will provide an important function, helping to offset the ongoing decline in pollinating species. The pollinator meadow will also serve as habitat for small mammals and various bird species. Increasing tree and shrub cover within the overall development (including the developed portions) will also provide added value for various species, providing nesting habitat for songbirds and perching habitat for raptors. This will provide new wildlife habitat and new diverse natural plant species replacing much of the current golf fairways and greens.

Water Supply

The proposed new 37 homes (The home on 5 Brown Ave. to be demolished) will add 16,280 gallons per day of water and sewer flow based upon 310 CMR 15.203. This is about 200% of the actual flow with a true impact to the City of Newburyport water and sewer systems of 8,140 gallons per day. There is currently a 1,700 linear feet of dead ended water main servicing Boyd Drive. This is an undesirable with respect to water quality. The project proposes a network of water mains that will loop back to Brown Avenue. By doing this, Boyd Drive will now be a looped water system improving the existing water quality which is preferable water system design.

Sewer

The project proposes a new gravity system to service the 38 homes which will be connected to a new pump station. The pump station will replace the existing station and service the 20 homes on Boyd Drive. The new pump station will service a total of 58 homes. The pumps in the new pump station will be sized to reduce the flow rate being pumped to the receiving gravity sewer system. The developer is currently coordinating the design of the new pump station with the City of Newburyport Department of Services Sewer Division.

1.2 Manmade Environment

Existing Neighborhood Land Use

The proposed development is consistent with the surrounding homes located in this R1 Zoning district. The proposed lots are similar to other residential lots near the project site.

Zoning

Consistent with section XIV of the Newburyport Zoning Ordinance (“OSRD”) the proposed development maximizes the amount of preserved open space and protects local resources while not impacting the number of units permitted by a conventional plan. The Proposed Development has received an OSRD Special Permit and is therefore in conformance with the OSRD zoning requirements.

Specifically, the land within the project site resides within the R1 zoning district with lot areas of 20,000 square feet and minimum lot frontage of 125 feet. As provided in the OSRD approval the development provides 10,000 square foot minimum lots with at least 50% minimum setbacks as is required in the underlying district – All front yard setbacks are a minimum of 15 feet and side yards are a minimum of 10 feet as required.

Further, as required in the OSRD, at least 60% of the total lot area is Open Space and will include a restriction assuring the open space in perpetuity. The Open Space is specifically designed to be suitable for and protected and maintained for wildlife habitat, conservation, outdoor education, passive and active recreation. The Open Space is programed as shown on the site plans and includes the requisite long term operation and maintenance plan.

1.3 Public Services

Schools

Children from homes in the new development may attend the Newburyport School System. They would drive to school or drive, bike or rode the bus to school.

Value of Detached Single Family Dwelling¹	No of Bedroom	Nursery/Preschool to Grade 5	Grade 6 - 12
\$402,116 +			
	1	.0231	.016

¹ Listokin, D., Voicu, I., Dolphin, W., & Camp, M. (2006, August). New Jersey Demographic Multipliers: The profile of the occupants of residential and nonresidential development. New Brunswick, NJ: Center for Urban Policy Research, Rutgers, The State University of New Jersey. As cited in “The Costs and Hidden Benefits of new Housing Developments in Massachusetts” Public Policy Center, UMass Dartmouth, Michael D. Goodman, Ph.D, Elise Korejwa, MPP, MS, Jason Wright, MPP candidate, 2016

	2	.117	.0962
	3	.2974	.2816
	4	.4410	.4504

The proposed development is estimated to have no one bedroom homes, 3 two bedroom homes, 28 three bedroom homes and 7 four bedroom homes. As a result, it is estimated that at full build out – a three year estimated period, there will likely be 12.062 school age children in the subdivision.

Police

There will be no impact on the Newburyport Police Department. The new roadways will provide access to the proposed single-family homes and design in accordance with city design standards.

Fire

The Fire Stations that services this property are located at the corner of State and Greenleaf Streets, and Storey Avenue approximately 1.6 mile from the property. The roadway is designed to accommodate Newburyport fire apparatus.

Recreation

The proposed development offers both active and passive recreational opportunities. The proposed development includes over 5,700 linear feet of bike and walking paths which connect to the City multi-use path which runs adjacent and parallel to Interstate 95. Additionally, there is a play ground including appropriate equipment for younger children. Importantly, there is a _two (2) acre Community Gathering place designed specifically to allow for active “pick-up” athletic games. This space is complimented by a passive area with a pergola and fire pit to allow members of the community to gather. In the rear of the site the pond area includes an observation station to allow for passive enjoyment of wildlife including birding.

The recreation and open space areas will be open to the public and are designed to allow and welcome not only the residents of the proposed development but also residents of the public at large.

Solid Waste

All trees removed for the project will be cut and removed from site, with the smaller branches chipped and trucked off site. All stumps will be removed, chipped and hauled off site. No stumps or branched will be burned or buried on site. All solid waste generated by construction operations will be removed promptly by the contractor in compliance with all local and state regulations.

Solid waste generated by the 38 homes will be serviced by the city's municipal waste removal services.

Traffic

A Traffic Impact Study was completed to analyze the expected impact on the surrounding traffic network by the proposed redevelopment of the site at 18 Boyd Drive in Newburyport, Massachusetts. There is an existing golf course on site, which will be redeveloped to be a residential complex with 38 single-family dwelling units.

In terms of safety, it was determined that there are no existing issues that need to be addressed as part of this study. The most recently available four years of crash data from MassDOT, 2011 to 2014, were reviewed for all four study intersections. None of the intersections were found to have a crash rate above the District 4 or statewide average. Additionally, the locations of the proposed site driveways, the intersection of Ferry Road and Boyd Drive, and the intersection of Ferry Road and Laurel Road were analyzed for safe intersection sight distance. It was determined that all locations provide sufficient sight distance based on AASHTO standards.

Capacity analyses were carried out for the four study intersections, Spofford Street and Ferry Road, Ferry Road and Boyd Drive, Ferry Road and Elmira Avenue, and Ferry Road and Laurel Road for 2016 Existing, 2023 No-Build, and 2023 Build conditions. The originally proposed 43-unit redevelopment was expected to generate 39 vehicle trips during the AM peak hour, 48 trips during the PM peak hour, and 470 trips on a typical weekday. The development is now proposed at 38 lots and therefore the trips will be less.

Additionally, although the existing golf course at the project location (that will be removed) currently remains open for most of the year, vehicle trip credit for the golf course was not taken to remain conservative. Moreover, although motor vehicle trips drop dramatically during the non-summer months (the counts, which were taken in June and August, are 7.46% and 21.2% above the annual average, respectively), there were no seasonal adjustments made, also to remain conservative.

The capacity analyses show that no movements degrade in LOS going from the No-Build to Build scenarios. The impact of the project on traffic conditions is reflected in the lack of change between the No-Build and Build scenarios. Based on the trip generation and capacity analyses carried out, the proposed redevelopment of the site at 18 Boyd Drive will have no detrimental impact on surrounding traffic networks.

In summation, this traffic study, through extensive research and data collection, determined that there will be no degradation of the level of service at any of the study intersections. Additionally, the crash and site distance analysis indicates that there are no existing safety issues and the proposed project will not create any safety issues.

1.4 Planning

The proposed development has been designed in accordance with the OSRD regulations. This a preferred development method providing over 60% of the development area as public open space. This project provided many public open space amenities including over a mile, 5,700 linear feet, of walking trails, 2 acre central grassed play area and community gathering place, tot lot, an improved vegetated isolated wetland area providing enhanced biodiversity and new wildlife habitat. The new project roadway has been designed to fully comply with the Newburyport Subdivision regulations other than the waivers included in the reduced impacts of the OSRD design. The lots conform to the reduced setback allowed under the OSRD approval providing a minimum of 10,000 SF lots, 15 foot front set back and 10 foot sides and rear setbacks.

REQUIRED DRAFT
HOME OWNERS ASSOCIATION TRUST

PORT PLACE SUBDIVISION HOMEOWNERS ASSOCIATION DECLARATION OF TRUST

THIS DECLARATION OF TRUST is made on this ____ day of ____, 2017, by Evergreen Commons LLC, 487 Groton Road, Suite A, Westford, MA 01886 (referred to hereinafter as the “Declarant” or the “Trustee” or “Trustees”, which term and any pronoun referring thereto shall be deemed to include his or their successors in trust hereunder and to mean the Trustee or the Trustees for the time being hereunder, wherever the context so permits) owner of the property located at 18 Boyd Drive and 5 Brown Avenue, Newburyport known as the Port Place by Evergreen Commons Definitive Subdivision said definitive plan being recorded in Plan Book ____, Plan ____ on ____, 2017 in the Essex South Registry of Deeds (the “Subdivision” or the “Plan”) by deeds dated ____, 2017 and recorded in said registry at Book ____ Page ____ and dated ____, 2017 and recorded in said registry at Book ____ Page ____, respectively.

ARTICLE I - Name of Trust

The Trust hereby created shall be known as the **Port Place Homeowners Association Trust** (the “Trust” or “Association”).

ARTICLE II - The Trust and Its Purposes

2.1 General Purposes. All of the rights and powers in, to and with respect to the land and the Common Areas and Facilities (defined below) of the Port Place by Evergreen Commons Subdivision and any and all other rights and powers conferred upon or exercisable by the Trust, and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants, with right of survivorship, as Trustees of this Trust, BUT IN TRUST NEVERTHELESS, to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the owners of record from time to time (the “Owners,” “Lot Owners” or “beneficiaries”) of the lots shown as on the Subdivision as “Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, Lot 13, Lot 14, Lot 15, Lot 16, Lot 17, Lot 18, Lot 19, Lot 20, Lot 21, Lot 22, Lot 23, Lot 24, Lot 25, Lot 26, Lot 27, Lot 28, Lot 29, Lot 30, Lot 31, Lot 32, Lot 33, Lot 34, Lot 35, Lot 36, Lot 37, Lot 38” (singly, a “Lot,” and, collectively, the “Lots”). All Lots contain single family dwellings or may accommodate a single family dwelling. Additionally there are the Open Space parcels consisting of 22.816 acres shown on the Plan which shall be known as the “Common Area”. There are also roads and infrastructure within those roads such as water, sewer and storm drains which shall be referred to as the “Common Infrastructure”.

The purpose of the Association is to take responsibility, in perpetuity, for the upkeep, maintenance, and repair of the Common Area. The Common Area is to serve as Open Space and Recreational Space for the Association and shall be open to the public.

It is hereby expressly declared that a Trust, and not a Partnership, has been hereby created and that the Lot Owners are beneficiaries and not partners or associates or any other relation

whatever among themselves with respect to the trust property and that they hold no relation to the Trustees other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder.

ARTICLE III - The Trustees

3.1 Initial Board; Subsequent Trustees; Number of Trustees. The initial Trustee shall be **Evergreen Commons LLC** (hereinafter called the "Initial Trustee"). The Initial Trustee shall serve as sole Trustee up until the earlier of (i) Five (5) years from the date this Declaration is recorded with the Registry, and (ii) when the Declarant has conveyed 75% of the Lots, or such earlier time as the Declarant may determine, in its sole discretion, by giving written notice thereof to all then Lot Owners (the "Initial Term"). The Declarant may also remove and replace the Initial Trustee at any time and for any reason during the Initial Term. Notwithstanding any other term or provision of this Trust to the contrary, the Lot Owners shall have no power or right to remove the Initial Trustee or to appoint any additional or successor Trustees until the expiration of the Initial Term as set forth above.

The Original Trustee shall resign on the expiration of the Initial Term and the Lot Owners shall elect a Board of Trustees of the Trust consisting of at least three (3) persons and no more than five (5) persons. In the event there are three members, the initial three members shall be elected, one for a three year term, one for a two year term and one for a one year term. Should five (5) members be elected, three shall be elected to a three year term, one for a two year term and one for a one year term. The persons so elected shall be owners of Lots elected by the Owners holding at least fifty one percent (51%) of the beneficial interest of the Trust. Appropriate notices of the withdrawal of the prior Trustee(s) and the identity of the new Trustee(s) shall be recorded with the Registry. The terms of office of the Trustees so elected shall be two (2) year(s), with the first term beginning on the expiration of the Initial Term.

At each annual meeting of the Trust following the expiration of the Initial Term, there shall be elected as Trustees hereunder such number of persons as shall be necessary to fill all vacancies then occurring in the office of Trustee hereof by virtue of expiration of terms of office, resignation or otherwise.

If for any reason any vacancy in the office of Trustee shall continue for more than sixty (60) days after the occurrence of such vacancy and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Trustee hereunder or any Lot Owner and upon notice to all Trustees and to such other, if any, parties in interest to whom the court may direct that notice be given. The foregoing provisions of this Section to the contrary notwithstanding, despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees shall continue to exercise and discharge all of the powers, discretion and duties hereby conferred or imposed upon the Trustees.

3.2 Actions by Trustees. In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred (a) each Trustee shall have one (1)

vote, and (b) the Trustees may act by a majority vote at any duly called meeting at which a quorum and a quorum shall consist of a majority of the Trustees. The Trustees may also act without a meeting if a written assent thereto is signed by the Trustees then in office. Any matter as to which the Trustees then in office shall be unable to decide by a majority vote shall be referred to and decided by arbitration in accordance with the then rules of American Arbitration Association.

3.3 Resignation and Removal of Trustees. Any Trustee may resign by notice in writing given to each of his co-Trustees and by recording with said Registry of Deeds or filing with said Registry District, as the case may be, at any time an instrument in writing signed and acknowledged by him.

A Trustee may be removed from office with or without cause by a vote of Lot Owners holding at least sixty percent (60%) of the beneficial interest of the Trust. A certificate signed by a majority of the Lot Owners, when recorded in the Registry of Deeds, shall be conclusive evidence of the action taken at such meeting.

3.4 Bond By Trustees. No Trustee shall be required to furnish any surety on his Bond.

3.5 Compensation of Trustees. No Trustee shall receive compensation for his services hereunder, but shall be entitled to reimbursement for all reasonable and necessary expenses paid or incurred in connection with his/her services as Trustee.

3.6 No Liability if in Good Faith. No Trustee shall be personally liable or accountable or be deprived of compensation by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees to have possession of the Trust books or property, or by reason of honest errors of judgment, mistakes of fact or law, the existence of any personal or adverse interest, or by reason of anything except his own willful malfeasance and default.

3.7 Self-Dealing. No Trustee shall be disqualified by his/her office from contracting or dealing with the Trustees, or with one or more of the Lot Owners as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee shall be in any way interested be avoided, nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, provided the Trustee shall act in good faith and shall disclose the nature of his interest in writing before any such dealing, contract or arrangement is entered into.

3.8 Indemnity. To the maximum extent permitted by applicable law, the Trustees and each of them shall be entitled to indemnity out of the trust property against any liability incurred by them or any of them in the execution of their duties hereof, including, without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties, and fines.

3.9 Duty of Trustee. The purpose of this Trust and the principal duty of the Trustees shall be to maintain and preserve in good repair and condition the Common Areas of the Trust.

ARTICLE IV - Beneficiaries and Beneficial Interest

4.1 Beneficial Interest. The beneficiaries shall be the Owners of the Lots shown on the Plan. The Owners of each Lot shall each have a one-thirty-eighth (1/38) interest in the Common Area and Facilities and other Trust property, and be entitled to one-thirty-eighth (1/38) vote each. Such interests shall be stated in the deed for each Lot. The beneficial interest of each Lot Owner in the Common Area and other Trust property shall be inseparable from ownership of the Lot and may not be conveyed, transferred or in any way alienated or separated from said Lot and shall be deemed appurtenant to each Lot. A person shall become a beneficiary automatically upon becoming a Lot Owner and shall cease to be a beneficiary automatically upon ceasing to be such an owner.

4.2 Persons to Vote as Unit Owners. Whenever any of said Lots is owned of record by more than one person, the several owners of such Lot shall (a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, act as Trustee, and otherwise exercise the rights appertaining to such Lot hereunder; and (b) notify the Trustee of such designation by a notice in writing signed by all the record owners of such Lot. Any such designation shall take effect upon receipt by the Trustee of such notice, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustee may designate any one of such owners for such purposes or disqualify all of such owners from voting until a notice of designation is received from such owners in the required form. The forgoing notwithstanding, the obligation to pay any assessment or other charge imposed by the Trustees against a Lot shall be joint and several amongst the Lot Owners and their respective estates.

ARTICLE V - Bylaws

The provisions of this ARTICLE V shall constitute the Bylaws of this Trust to wit:

5.1 Powers of the Trustees. For the purpose of carrying out the terms of this Trust, the Trustees shall have all powers and duties necessary for administration of the Common Areas and Facilities and other Trust property, including without limitation the following obligations, powers and duties which may be exercised by the Trustee without any action or consent by the Lot Owners and which shall continue after the termination of the Trust for the purpose of disposing of the Trust property and until final disposition thereof:

(i) to maintain, repair, improve, develop or preserve the Trust property, real or personal, including, without limitation, the Common Areas and Facilities;

(ii) to open bank accounts in the name of the Trust or Trustee and to appoint Trustees or other delegates to draw on such accounts;

(iii) to borrow money in the name of the Trust and to give security for the repayment of the same;

(iv) to adopt, amend and rescind reasonable rules and regulations governing the details of the operation, use and maintenance of the Common Areas and Facilities and any other Trust property;

(iv) to make contracts and other agreements in the name of this Trust which the Trustees deem convenient to the performance of its duties, including any contract for the operation and maintenance of the Common Area and Facilities;

(v) to bring suit in the name of the Trust and to compromise or submit to arbitration any claim or matter and to meet any and all legal obligations with respect to the Trust;

(vi) to buy, sell, convey, mortgage, pledge, lease, rent, hypothecate or otherwise dispose of or encumber any property, real, personal and/or otherwise upon the determination by the Trustees that such action is in furtherance of the Trust purposes;

(vii) to accept, convey, swap and grant easements, permanent and temporary, licenses and other lesser interests in real property for the installation, maintenance, repair and replacement of utilities, drainage structures and rights incidental thereto and also to grant easements;

(viii) to hire, retain and/or employ individuals, professional or non-professional, to assist the Trustees in their administration of this Trust and to assist in carrying out its terms and intent;

(ix) to exercise any other powers which may be necessary or desirable for carrying out the terms of the Trust or which the Trustees may have under any present or future statute, regulation or rule of law or which may be required of the Trustee as title holder of the personal and real property of the Trust; and to execute and deliver all appropriate instruments in connection therewith; and

(x) to enforce the obligations of the Lot Owners and doing anything and everything else necessary and proper for the sound management of the Association.

(xi) Notwithstanding anything herein to the contrary, the Initial Trustee may, convey, grant easements in, or otherwise transfer or reconfigure the Common Area to reduce or increase the size thereof, so long as the Initial Trustee provides notice of its action to the Unit Owner within a reasonable period of time following its actions.

(xii) to do all of the forgoing in full compliance with the Special Permit issued by the City of Newburyport Planning Board on March 15, 2017, and recorded at Book ____

and Page ____ in the Essex South Registry of Deeds, the Subdivision Approval issued by the City of Newburyport on _____, 2017, and recorded at Book ____ and Page ____ in the Essex South Registry of Deeds the Special Permit for the Water Resource Protection District on _____, 2017 and recorded at Book ____ and Page ____ in the Essex South Registry of Deeds and the Orders of Conditions issued by the City of Newburyport Conservation Commission on _____, 2017, and recorded at Book ____ and Page ____ in the Essex South Registry of Deeds.

5.2 Authority to Assess. The Trustees, in order to maintain the Common Areas and Common Infrastructure and to carry out the purposes of the Trust as set forth in Sections 2.1 and 3.9, shall make assessments upon the Lot Owners for the common expenses of the Association. Such assessments, and the total budget and expenditures of the Trust, shall expressly include any and all expense and charges related to the operation, maintenance, repair and replacement of the Common Areas and Common Infrastructure. There shall be an initial contribution of \$____.00 to be paid into the Trust at the time each Lot is conveyed from the Declarant.

The Declarant has established initial accounts in the following amounts and for the following purposes: a. Open Space Maintenance Fund: \$5,000.00. b. Stormwater Management Systems Maintenance Fund: \$6,000.00 and c. Landscaping & Lawn Maintenance Fund. \$3,000.00.

At the closing of the initial sale of each lot, the Buyer shall be required to pay two months of Home Owners Association Fees as assessed by the Declarant. One month shall be paid to the Declarant to reimburse the Declarant for the initial account funding in the immediately preceding paragraph and one month shall be paid into the fund reserve account.

Each Lot Owner, by accepting a deed to any Lot, covenants to pay to the Trust any assessments established by the Trust, including any initial contribution and annual or monthly contributions. One-thirty-eighth (1/38) of the cost of maintaining the Common Areas and Facilities including Common Infrastructure shall be borne by the owner of each Lot in the subdivision. The recording of a statement by the Trustees indicating a Lot Owner's name, the location of the property and the Lot Owner's title reference shall be sufficient to give the Trustees a lien against the property described in an amount equal to the charges set forth in the statement. Any person relying on a statement signed and acknowledged by a Trustee and duly recorded in the Registry as to the amount of any outstanding charge or the fact there is no outstanding charge shall be fully protected. Each such assessment, together with such interest thereon and costs of collection, shall also be the personal obligation of the Lot Owner.

At least thirty (30) days prior to the commencement of each fiscal year of the Trust, the Trustees shall estimate the common expenses expected to be incurred during such fiscal year, together with reasonable provision for reserves, and shall determine the assessment to be made for that fiscal year. The Trustees shall promptly furnish copies of the budget and render statements to the Lot Owners for the respective shares of such assessment, and each Lot Owner thereafter shall pay such amount in full within sixty (60) days after the notice from the Trustees. The Trustees shall not be obligated to render monthly assessments. In the event that the Trustees shall determine that an assessment so made is less than the common expenses actually incurred,

or reasonably expected to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment(s) and render statements therefore in the manner aforesaid, and such statements shall be payable and shall take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for common expenses.

The amount of each statement for regular or supplemental assessments, together with interest thereon, if not paid when due, together with all costs and expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid common expenses and assessments, delinquent fees, charges, penalties and interest charged to a delinquent Lot Owner, shall constitute a lien on the Lot. Such amount shall also constitute a personal debt of the Owner who is the owner of such Lot on the date of the assessment by the Trustees. The Trustees shall take prompt action to collect any common expenses and assessments due from any Lot Owner that remain unpaid for more than thirty (30) days from the due date thereof. If the common expenses and/or assessment is not paid within said thirty (30) day-period, the amount of the unpaid common expenses and/or assessment shall bear interest from the date due at the highest rate allowed by law, and the Trustees may, seven (7) days after giving written notice to an institutional mortgagee, if any, holding a mortgage covering the Lot in question, bring an action at law against the Owner to collect amounts due or bring an action to foreclose the lien against such Lot and the improvements thereon. There shall be added to the amount of such common expense and/or assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest as provided above and reasonable attorney's fees together with the costs of the action and any other collection costs.

In the event the Trustee fails to maintain any portion of the Trust Property in reasonable order and condition, in accordance with the terms and conditions at forth in the Open Space Residential Subdivision Special Permit dated March 15, 2017 or the Definitive Subdivision Approval dated ____, 2017 or the Water Resource Protection District Special Permit dated ____, 2017, the City of Newburyport by and through _____ may serve written notice of such failure upon the Trustee or Lot Owners and shall include a demand for correction within a reasonable time period of the delivery of such notice and shall state the date, time and place of a hearing thereof which shall be held within thirty (30) days of the notice. If the deficiencies are not corrected or the City's demand modified, the City, acting through _____, may, but shall not be required to, enter upon the Trust Property and maintain the same for a period of up to one (1) year. Before the expiration of one (1) year, a second public hearing shall be held by _____, at which time the Trustee or the Lot Owners shall show cause why such maintenance should not continue for a succeeding year. If the _____ determines that the need for the City maintenance no longer exists, the City shall cease to maintain the Trust Property. Reasonable costs incurred by the City shall be assessed against the Trust and/or the Lot Owners and shall become a lien on all lots which may be collected and enforced by any remedy available under the law, unless paid within thirty (30) days. The City by and through _____ shall have the right to enforce this provision.

5.3 Meetings of Lot Owners. There shall be an annual meeting of the Lot Owners on the first Monday of March in each year at 7:30P.M. at such reasonable place and time as may be designated by the Board of Trustee by notice given to all Lot Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Lot Owners may be called at any time by the Board of Trustees and shall be called by them upon the written request of Lot Owners entitled to more than fifty percent (50%) of the beneficial interest hereunder. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Board of Trustees to the Lot Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the Lot Owners, the Board of Trustees shall submit reports of the management and finances of the Trust. Whenever at any meeting the Board of Trustees proposes to submit to the Lot Owners any matter with respect to which approval of or action by such owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter.

Every notice to any Owner required under the provisions hereof, or which may be deemed by the Trustee necessary or desirable in connection with the business of the Trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to said Owner by leaving such notice with him at his residence or by mailing it, postage prepaid, and addressed to such Owner at his address as it appears upon the records of the Trustees, at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

5.4 Meeting of Board of Trustees. The Board of Trustees shall meet annually on the first Thursday in December. Other meeting may be called by any Trustee and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least four (4) days before such meeting to each member of the Board of Trustees.

ARTICLE VI - Rights and Obligations of Third Parties Dealing with the Trustees

6.1 Dealing With Trustees. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry of Deeds need inquire further as to the persons who are then Trustees hereunder. The receipts of the Trustees for monies or things paid or delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same. No person from whom the Trustees or any one or more of them shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees purporting to be done in pursuance of any of the provisions or powers herein contained.

6.2 Recourse Against Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee or against any beneficiary either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the trust property for payment under such contract or claim or for the payment of any debt, damage, judgment or decree or of any money that may otherwise become due or payable to them from the Trustees so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefore.

6.3 Instruments Subject to Trust Terms. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or any two or more of them or by any agent or employee of the Trustees shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express references shall have been made to this instrument.

6.4 Certifications by Trustees for Recording. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded or filed and any other certificate signed or sworn to by said Trustees or any two or more of them which it may be deemed desirable to record or file may be recorded or filed, as the case may be, with the Registry and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the trust property or any beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded or filed with said Registry. Any certificate signed by the Trustees in office at the time setting forth as facts any matter affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded or filed with said Registry shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by the Trustees hereunder or, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by the Trustees or any one or more of them, as the case may be, shall, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

ARTICLE VII - Amendments and Termination

7.1 Amendment of Trust. The Trustees, with the consent in writing of a eighty percent (80%) of the Lot Owners, may at any time and from time to time, amend, alter, add to or change this Declaration of Trust in any manner, provided however, that no such amendment, alteration, addition or change that would (a) render this Trust contrary to or inconsistent with any

requirements or provisions of applicable law or any permit or approval issued by a board or officer of the City of Newburyport, or (b) alter, amend or revoke the obligations of the Trustees as set forth in Sections 2.1 and 3.9 hereof.

7.2 Termination of Trust. No termination shall be permitted unless an alternative means of discharging the Trust's obligations under Sections 2.1 and 3.9 has been approved by the Owners.

ARTICLE VIII NOTICE OF WATER RESOURCE PROTECTION DISTRICT AND LIMITATIONS OF USE OF LOTS AND COMMON AREAS

8.1 Notice: The subject property is located above the City of Newburyport's public water supply (an underground aquifer). See Homeowners Association documents, Covenants and Restrictions, as well as the original OSRD Special Permit decision (on record at the Registry of Deeds) for additional information on uses and activities regulated or expressly prohibited in order to protect the public water supply. All activities of the homeowners shall be conducted in a manner which respects and protects the water resource protection district and public water supply.

8.2 Prohibited Uses: The Subdivision is located within the Zone II of the Water Resource Protection District. The following uses are prohibited in Zone II:

8.2.1. Individual sewage disposal systems that are designed and located in accordance with 310 CMR 15.000 to receive more than one hundred ten (110) gallons of sewage per quarter acre under one ownership per day, or four hundred forty (440) gallons of sewage on any acre under one ownership per day, whichever is greater, except the replacement or repair of an existing system that will not result in design capacity above the original design.

8.2.2. Storage of animal manure unless covered or contained so as to prevent the generation and escape of contaminated runoff or leachate.

8.2.3. Earth removal, consisting of the removal of soil, loam, sand, gravel or any other earth material (including mining activities) to within six (6) feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works.

8.2.4. Facilities that generate, treat, store, or dispose of hazardous waste subject to M.G.L.A. c. 21C and 310 CMR 30.00, except the following:

a. Waste oil retention facilities required by M.G.L.A. c. 21C, § 52A.

b. Water remediation treatment works approved under 314 CMR 5.00.

8.2.5. Treatment works that are subject to 314 CMR 5.00, including privately owned sewage treatment facilities, except the following:

a. Replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works.

- b. Replacement of existing subsurface sewage disposal system(s) with waste treatment works that will not result in a design capacity greater than the design capacity of the existing sewage disposal system(s).
 - c. Treatment works designed for the treatment of contaminated surface water and groundwater, approved by the Massachusetts Department of Environmental Protection.
- 8.2.6. Industrial and commercial uses which discharge process wastewater on site.
- 8.2.7. Alteration of any bordering vegetated wetland.
- 8.2.8. Incinerators.
- 8.2.9. Storage of liquid petroleum products, except the following:
- a. Normal household use, outdoor maintenance, and heating of a structure.
 - b. Waste oil retention facilities required by statute, rule, or regulation.
 - c. Emergency generators required by state regulations.
 - d. Treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters.
- Provided that such storage, listed in items a. through d. above, is in freestanding containers within buildings or above ground with secondary containment adequate to contain a spill the size of one hundred ten (110) percent [of] the container's total storage capacity.
- 8.2.10. Commercial repair, servicing, washing, and rebuilding of vehicles, boats, and other large motorized equipment other than for normal household or farming activities.
- 8.2.11. Storage of commercial fertilizers, as defined in M.G.L.A. c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

ARTICLE IX - Improvements, Care and Maintenance of Common Areas and Lawns

9.1 Landscaping Changes: Prior to any changes to the initial landscaping on each lot the Owner shall be required to present a plan to the Trustees and receive approval of all proposed changes from the Trustees. Said proposal shall be in writing. The Trustees shall have 21 days to review the plan and meet with the Owner as needed. At the end of 21 days, in the event the Trustees do not respond to the Owner, the Owner may proceed with the proposed revisions to the landscaping, so long as all proposed revisions are undertaken in conformance with this document. In the event the Trustees require changes to the plan; the changes shall be incorporated prior to any changes being undertaken by the Owner.

9.2 Single Landscaping and Lawn Care Professional and Use of Chemicals: Notwithstanding any other provision herein to the contrary, the Homeowners Association shall hire a single licensed landscaping and lawn care professional to establish a single program to maintain lawn and other vegetation on each Lot and any Common Area. Any contract with the lawn care professional shall require that each year, on or before February 15, the designated landscaping and lawn care professional shall submit a written copy of the proposed maintenance program to the City of Newburyport DPS, Water Division for review. The DPS Water Division may require modifications

to the proposed maintenance program for the purposes of protecting the City's public water supply, including but not limited to limitations on the type and quantity of any lawn and landscape care products (including but not limited to herbicides, pesticides, fungicides and/or other chemicals/substances). Application of any such products shall be prohibited for the subsequent year until the DPS Water Division has approved the proposed maintenance program, which approval shall not be unreasonably withheld and may be reasonably revised as necessary. The Proposed Maintenance program shall include a signed letter of commitment that the landscaping and lawn care professional agrees to abide in every respect with the approved maintenance program.

9.3 Maintenance of Driveways and Roadway Infrastructure: The Homeowner's Association shall be responsible for ongoing maintenance of the roadways (including plowing), street lights, and street trees – Common Infrastructure - until such time as the proposed ways are accepted by the City of Newburyport.

No salting may be undertaken on roadways or driveways within the Subdivision without prior written approval from the City of Newburyport DPS Water Division.

Each year, on or before September 15, until City acceptance of the proposed ways, the Homeowners Association or its designated consultant/contractor shall submit a written copy of the proposed snow and ice maintenance program to the DPS, Water Division for review and approval and which is consistent with the DPS standard practices for snow plowing and street treatment within Zone II areas. The DPS Water Division may require modifications to the proposed maintenance program for the purposes of protecting the City's public water supply, including but not limited to limitations on the type and quantity of any chemicals/substances to be applied so long as any limitations are consistent with the DPS standard practices for snow plowing and street treatment within Zone II areas. Application of any chemicals/substances shall be prohibited for the subsequent year until the DPS Water Division has approved the proposed maintenance program (revised as necessary) and a signed letter of commitment has been provided to the DPS Water Division that the Homeowners Association or its designated consultant/contractor agrees to abide in every respect with the approved maintenance program

9.4 Maintenance of Drainage System: The Homeowner's Association shall be responsible for hiring a licensed professional to keep the storm drainage system in a clean and well-functioning condition as approved by the City of Newburyport Planning Board and as set forth in the Definitive Subdivision Plan, and shall do nothing that would alter the drainage patterns or characteristics as indicated on approved Subdivision Plans. Upon acceptance of the proposed roadways by the City of Newburyport, the Homeowners Association responsibility shall be limited to those drainage systems and areas outside of the accepted layout (Right of Way).

ARTICLE X - Miscellaneous

10.1 Trustees' Books, Records. Books, accounts and records of the Trustees shall be open to inspection by any one or more of the Trustees and the Lot Owners at all reasonable times. The Trustees shall as soon as reasonably possible after the close of each fiscal year, submit to the Lot

Owners a report of the operations of the Trustees for such year, which report shall include financial statements in such summary form and only in such detail as the Trustees shall deem proper. Any person who has been furnished such report and shall have failed to object thereto by notice in writing to the Trustees given by registered mail within a period of one (1) month of the date of such notice shall be deemed to have assented thereto.

10.2 Signing of Checks. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the trust may be signed by any Trustee, or by any person or persons, to whom such power may at any time or from time to time be delegated. Notwithstanding the above, any check exceeding \$1,000.00 must be signed by two Trustees if the Trust at that time has two Trustees.

10.3 Fiscal Year. The fiscal year of the Trust shall be the year ending with the 31 day of July or such other date as may from time to time be determined by the Trustees.

10.4 Binding Effect. The rights and obligations herein created and confirmed shall inure to and be binding upon the respective parties, their successors, heirs, representatives and assigns.

10.5 Construction. In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, shall include both the plural and singular; words denoting males include females; and words denoting persons include individuals, entities and quasi-entities, trusts and corporations; unless a contrary intention is to be inferred from or is required by the subject matter or context. The marginal and sectional captions and headings are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.

10.6 Governing Law. All of the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts in general.

10.7 Invalidity. The invalidity of any provision or part of such provision hereof shall not impair or affect in any manner the remainder hereof or the remainder of such provision or such part of such provision.

10.8 Waiver. No restriction, condition, obligation or provision contained herein (including, but not limited to, the Bylaws hereof) shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number or frequency of violations or breaches thereof that may occur.

IN WITNESS WHEREOF, **Evergreen Commons LLC, Trustee** has signed this Port Place by Evergreen Commons Homeowners Declaration of Trust as of the day and year first above written.

Evergreen Commons LLC
By Its Manager

, Trustee

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared _____, Trustee who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

(Official Signature and Seal of Notary)

**REQUIRED DRAFT
CONSERVATION RESTRICTION**

CONSERVATION RESTRICTION

18 BOYD DRIVE, NEWBURYPORT, MASSACHUSETTS

Evergreen Commons LLC, 487 Groton Road, Suite A, Westford, Commonwealth of Massachusetts, a Massachusetts Limited Liability Corporation ("Grantor") being the sole owner of the premises shown as the "Open Space" areas on a plan entitled "Port Place by Evergreen Commons LLC", prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May __, 2017 and recorded in Plan Book __, Page __ in the Essex South Registry of Deeds consisting of 22.816 acres more or less (the "Premises") and intending hereby to bind itself and its successors and assigns (hereinafter referred to collectively as the "Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws of Massachusetts, and in furtherance of the Newburyport Zoning Ordinance Section XIV-I(vii)(3) hereby grants, with Quitclaim Covenants, to the City of Newburyport, ("City") a municipal commission duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950, and its successors and permitted assigns (hereinafter referred to as the "City"), in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on the Premises, said parcel being bounded and described in Exhibit A hereto, and shown as "Open Space" on a Definitive Subdivision Plan (included herewith as Exhibit B) entitled "Port Place by Evergreen Commons LLC Definitive Subdivision Plan" prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May __, 2017 and recorded in Plan Book __, Page __ in the Essex South Registry of Deeds.

This Grant of Conservation Restriction is required by the Special Permit Findings & Decision, Open Space Residential Development (OSRD) issued by the Newburyport Planning Board on March 15, 2017 and the Definitive Subdivision Plan Approval issued by the Newburyport Planning Board on __, 2017.

I. Purposes

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of the Conservation Restriction is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic and undeveloped condition and for the preservation of its natural landscape and for recreational purposes, and to prevent any use of the Premises that would significantly impair or interfere with the conservation and recreational values of the Premises.

The public benefits resulting from conservation and preservation of the Premises include, without limitation:

- A. Protection of Scenic Resources. The Premises comprise part of a highly scenic landscape with natural features; primarily meadows with stands of evergreen and deciduous trees and shrubs that promote wildlife habitat and ecological diversity, including both wetland and upland ecosystems.

B. Protection and preservation of flood storage capacity.

C. Protection of Wildlife Habitats. Conservation of the Premises will protect habitat used by a variety of wildlife Further it will protect valuable open space located in a Zone II water resource protection district.

Commented [LM1]: While the current condition does not provide great wildlife habitat – the proposed changes and improvements to the open space will.

D. Protection of Recreational Resources. Conservation of the Premises will preserve the public's use and enjoyment of the Premises for passive recreation including bike and walking paths which provide a connection to the _____ River Bike and Walking Trail and for active recreation namely the Central Gathering Place which includes a 88,941 square foot area created for use of pick-up athletic games and use and enjoyment by people of all ages.

E. Furtherance of Government Policy, Newburyport. Protection of the Premises is consistent with the City of Newburyport's approval of the Premises as part of the Open Space Residential Development, which requires a portion of the development to be restricted as Open Space.

This Conservation Restriction will provide permanent protection of the conservation and recreational values of the Premises. The conservation values of the Premises and the public benefits of this Conservation Restriction are described in more detail in a Baseline Documentation Report to be kept on file at the offices of the City and incorporated herein by this reference.

II. Binding Effect, Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses

A. Binding Effect

The Grantor covenants that the Premises will at all times be held, used, and conveyed subject to and not used in violation of the following restrictions that shall run with the Premises in perpetuity. In any event, at the expiration of twenty-nine (29) years, the Grantor does hereby grant to the City the right to file an extension of this Restriction pursuant to the powers and assignment set forth in section V(B) below, for any additional amount of time the City determines is in the best interest of the City to so file.

B. Prohibited Acts and Uses

Subject to the exceptions set forth in paragraph C below, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited in, on, under, and over the Premises:

1. Constructing or placing or allowing to remain any temporary or permanent building, structure, facility, or improvement including but not limited to tennis court, landing strip or pad, greenhouse, mobile home, swimming pool, skating rink, fences, asphalt concrete or other forms of impervious pavement, billboard or other advertising display, antenna or dish, utility pole, tower, conduit, line or other temporary or permanent structure or facility or improvement on, above or under the area noted as the Open Space of the Premises;
2. Mining, excavating, dredging, cutting, destroying, or removing from any portion of the Premises or bodies of water thereon, of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
3. Installing underground storage tanks;
4. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, yard wastes such as lawn clippings, leaves, branches (other than those naturally deposited in the area), vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever;
5. Cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation;
6. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises, and no portion of the Premises may hereafter be used towards building or development requirements on this or any other parcel;
7. Conducting activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, archaeological conservation, plants, or wildlife habitat;
8. Using the Premises for residential, commercial, or industrial purposes;
9. Except vehicles necessary for emergencies, maintenance or the disabled, the use, parking or storage of motorized vehicles including motorcycles, mopeds, all-terrain vehicles, recreational vehicles, trail bikes or snowmobiles;
10. The disruption, removal or destruction of the stone walls or granite posts on the Premises;
11. Using herbicides and pesticides, or using other chemical or mechanical means that may have an adverse impact upon the plant life or wildlife within the restricted area, except as may be permitted, in writing, by the City for the control of noxious or invasive species and only if it will not impair the water quality or adjacent vegetation;

12. Hunting and trapping except as may be permitted by the City under special circumstances for ecosystem protection, preservation of flood storage capacity and management purposes;
13. Conducting any other use of the Premises or activity which, in the reasonable opinion of the City, is or may become inconsistent with the intent and purpose of this Conservation Restriction, that is the preservation and protection of the Premises in their natural and scenic condition, or which would materially impair its conservation and historic interests, unless necessary for the protection of the conservation and historical interests that are the subject of this Restriction.

C. Exceptions to Otherwise Prohibited Acts and Uses

Notwithstanding any of the Prohibited Acts and Uses in subparagraph B above, the following acts and uses are permitted to the Grantor, but only if such acts or uses do not materially impair the purpose of this Conservation Restriction or other significant conservation interests and where applicable if such acts and uses have been expressly permitted by the City in writing as set forth below:

1. Forestry and Vegetation Removal. In accordance with best management practices, (a) selective pruning and cutting of trees and other vegetation to control or remove hazards, invasive species, or damage caused by disease, insects or fire, or to preserve the present condition of the Premises; and (b) following notice to the City, the cutting of trees for any non-commercial purpose in accordance with a plan, prepared by an appropriate natural resources professional and approved by the City, that is designed to protect the conservation values of the Premises, including without limitation, wildlife habitat, water quality and scenic values. The Conservation Area may be mowed in a manner which will encourage use thereof in order to provide access over, around and through the area and which is done in accordance with the Operation and Maintenance Plan of the Open Space for the homes at Port Place by Evergreen Commons LLC and further so long as said maintenance is consistent with the annual plan Approved by the Department of Public Services as set forth in that Certain Special Permit dated March 15, 2017 and recorded in Book __ Page __ in the Essex South Registry of Deeds.
2. Signs. The erection, maintenance and replacement of signs by the Grantor with respect to ownership, boundaries, regulations governing public use, trails, natural features, flora and fauna, and the protected conservation values.
3. Minor Educational and Recreational Structures. The construction, maintenance, repair and replacement of minor structures for use by the public for educational and passive recreational purposes, including but not limited to interpretive signs, exhibits and benches. Said structures shall be designed and located so as not to have a material deleterious impact on the conservation purposes (including scenic values) of this Conservation Restriction.

4. Recreational and Educational Activities. Walking, hiking, skiing, horseback riding, bicycling, nature study and other non-motorized outdoor recreational and educational activities that do not materially alter the landscape, nor degrade environmental quality, nor involve commercial recreational use. Nature study and educational activities by Grantor's and City's instructors and their invitees which do not involve commercial use. On the area shown as the Central Gathering Place organized recreational activities, pick-up recreational and athletic activities and other use including concerts, gatherings, and formal organized activities such as dances, weddings and the like may occur.
5. Composting. The stockpiling and composting of stumps, tree and brush limbs and similar biodegradable materials originating on the Premises in locations where the presence of such materials will not have a deleterious impact on the purposes (including scenic values) of this Conservation Restriction.
6. Permit Compliance: Activities necessary to comply with any applicable Order of Conditions or Special Permits.
7. Trails and stone walls. The construction, maintenance and marking of trails for pedestrian and emergency vehicle use. The maintenance and repair of existing stone walls on the Premises, and the erecting of gates to control unauthorized access to the Premises.
8. Wildlife Habitat Management and Improvement. With prior written notice to and approval by City, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species.
9. Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
10. Agricultural Fields. Use of the Premises in accordance with generally accepted agricultural practices.
11. Use of vehicles for land management. The use of tractors, back hoes, brush hogs, mowers, skidders, dump trucks or other land and forestry management vehicles appropriate for the purpose of maintaining existing trails, conservation values, and topography as necessary for any of the reserved rights herein, in accordance with accepted forestry management practices; carrying out the specifications of a state approved forestry management plan; or promoting habitat for indigenous wildlife.

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12. Flood Storage Maintenance or Improvements. Activities designed to maintain or improve existing floor storage capacity may be allowed following review and approval by the City.
 13. Environmental Restoration or Improvement Projects: All acts and uses which are necessary to restore any environmental damage or degradation and/or improve the Premises to more fully align with the purposes hereunder.
 14. Permitted Acts and Uses. All acts and uses not prohibited by subparagraphs B and C, and not otherwise permitted herein, are permissible so long as they do not materially impair the conservation and historic values of this Conservation Restriction and are not expressly prohibited by the management plan in effect for the Premises, provided written approval is obtained from the City.

The exercise of any right reserved or permitted by the Grantor under this paragraph C shall be in compliance with the then-current Zoning Ordinance of the City of Newburyport, the Wetlands Protection Act (General Laws Chapter 131, Section 40), and all other applicable federal, state and local laws and regulations. The inclusion of any reserved or permitted right in this paragraph C requiring a permit from a public agency does not imply that the City or the Commonwealth takes any position on whether such permit should be issued.

III. Legal Remedies of the City

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the occurrence of the violation (it being agreed that the City will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the City for the enforcement of this Conservation Restriction. Notwithstanding the foregoing, prior to exercising the rights hereunder, the City shall first notify the Grantor in writing of any alleged violations and the Grantor shall have ten (10) business days to rectify same ("Cure Period"). Failing the restoration or cessation of the alleged violation within the Cure Period, then the City shall be entitled to seek legal and injunctive relief as noted herein.

City agrees to cooperate with Grantor for a reasonable period of time of up to ten (10) additional business days after the expiration of the first ten (10) business days referenced above, which time may be extended by City in their sole discretion, prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions, provides City with a plan to remedy the violations, and City determines there is no ongoing diminution of the conservation and historic preservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to City all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

In the event of a dispute over the boundaries of this Restriction, Grantor shall be responsible for a survey and placement of boundary markers.

Nothing herein shall preclude the Grantor's and City's right to pursue other parties for damage to the Premises caused by vandalism, trespass, or other violations of this Restriction.

B. City Disclaimer of Liability

By the City's acceptance of this Conservation Restriction, the City does not undertake any liability or obligation relating to the condition of the Premises not caused by City or its agents.

C. Non-Waiver

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the City. Any election by the City as to the manner and timing of the City's right to enforce this Conservation Restriction or otherwise exercise the City's rights hereunder shall not be deemed or construed to be a waiver of such rights.

D. Acts Beyond Grantor's Control

Nothing contained in the Conservation Restriction shall be construed to entitle City to bring any actions against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm and earth movement, acts of encroachment or vandalism, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Premises resulting from such causes. As soon as possible thereafter, the Grantor shall notify the City of any action which has been taken. Grantor and City agree that in the event of such an occurrence they will cooperate in restoring the Premises, if desirable and feasible.

IV. Access

The Conservation Restriction hereby conveyed grant to City and to the public generally, the right to enter upon the Premises so long as the City and the public use the Premises in conformance herewith. For avoidance of doubt, the Grantor further grants to City and to the general public the right to enter and/or leave the Premises, to pass and repass on the Premises for purposes of walking and other passive outdoor recreational activities all as set forth in section II.C not involving the use of motorized vehicles.

However, and notwithstanding the foregoing, in the event of an emergency or should the Grantor undertake to perform maintenance or other activities which could pose harm or the possibility of harm to the Public, then the Grantor shall have the right at any time, and from time to time, to temporarily bar access during time periods when emergency or potentially harmful activities are being conducted and except in the case of an emergency, advance notice is provided to the City and access is barred only for the time and to the minimum area necessary to prevent the possibility of harm to the Public. The provisions of Massachusetts General Laws Chapter 21, Section 17C, as same may be from time to time amended, shall be applicable to any use of the Premises by the public.

V. Assignability

A. Running of the Burden

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor while holding any interest in the Premises.

B. Execution of Instruments

The City is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor on behalf of the Grantor and the Grantor's successors and assigns appoints the City as the Grantor's attorney-in-fact to execute, acknowledge and deliver any such instruments on the Grantor's behalf. Without limiting the foregoing, the Grantor and the Grantor's successors and assigns agree to execute any such instruments upon request.

C. Running of the Benefit

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the City, except in the following instances and subject to the Grantor's approval:

1. as a condition of any assignment, the City shall require that the purpose of this Conservation Restriction continues to be carried out; and
2. the person or entity to whom the City intends to assign the Conservation Restriction, at the time of assignment, shall qualify under Section 170(h) of the Internal Revenue Code of 1986, as amended or any successor statute, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws, as amended or any successor statute, as an eligible donee to receive this Conservation Restriction directly; and
3. any assignment shall be in compliance with the provisions required by Article XCVII (97) of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VI. Extinguishment

- A. Court Proceedings. If circumstances arise in the future that render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction.
- B. Condemnation. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by Grantor shall first be paid out of any recovered proceeds. The remaining proceeds shall be distributed between Grantor and the Grantee in shares equal in proportion to the aforementioned ratio (though if a less-than-fee interest is so taken, the proceeds shall be equitably allocated according to the nature of the interest taken).

VII. Subsequent Transfers

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which the Grantor divests any interest in all or a portion of the Premises. The Grantor shall notify the City in writing if the Grantor conveys the Premises or any part thereof or interest therein (including a lease) within 21 days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction.

The Grantor shall not be liable for violations occurring after transfer of its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Following said transfer, any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. Estoppel Certificates

Upon request by the Grantor, the City shall within twenty-one (21) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. Effective Date

This Conservation Restriction shall be effective when the Grantor and the City have executed the Conservation Restriction; the administrative approvals, have been obtained; and the Conservation Restriction has been recorded in the Essex South District Registry of Deeds.

X. Notices

Any notice, demand, request, consent, approval, or communication that either the Grantor or the City desires or is required to give to the other shall be in writing and either served personally or sent by first-class mail, postage pre-paid, addressed as follows:

To Grantor: _____

To City: _____

City Hall
60 Pleasant Street
Newburyport, MA 01950

or such other address as either the Grantor or the City from time to time shall designate by written notice to the other or that which is easily ascertainable.

XI. General Provisions

A. Controlling Law

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effectuate the purpose of this Conservation Restriction and the policy and purpose of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement between the Grantor and the City with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

E. Pre-existing rights of the Public

Approval of this Conservation Restriction pursuant to M.G.L Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises. Any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

F. No Merger

No transfer of Grantor's or City's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or City shall cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called "doctrine of merger."

G. Enforcement Authority of the Attorney General

Grantor and City hereby recognize the authority of the Massachusetts Attorney General pursuant to M.G.L. c.12, §§ 3, 7 and 11D to, among other things, prevent or remedy damage to the environment and to prosecute information or other processes against persons who intrude on the land, rights or property of the Commonwealth of Massachusetts (hereafter "Commonwealth"), or commit or erect a nuisance thereon. The Parties also recognize the interests of the Commonwealth in approving, enforcing and supporting conservation and other restrictions and the benefits to the public conferred by such restrictions acquired pursuant to M.G.L. c. 184, §§ 23 and 25 – 32. Accordingly, the Parties hereby consent to the Attorney General's enforcing the provisions of this restriction pursuant to M.G.L. c. 12, §§ 3, 7 and 11D, and M.G.L. c. 184, §§ 23 and 25 – 32. Such enforcement may include, among other things, the right to commence or intervene in any legal proceeding in order to secure the rights of the holder of a conservation restriction and the Commonwealth conferred under M.G.L. c 184, §§ 23, 25 – 32; the right to remedy past damage or prevent future damage to the environment as a result of actions or inactions on the part of an owner of land upon which a conservation or other restriction has been recorded; and the right to appeal any decision in any legal proceeding taken by any party that may affect the state interest and public benefit conferred by a restriction created pursuant to M.G.L. c.184, §§ 23, 25 - 32.

XII. Recordation

The City shall record this instrument in timely fashion in the Essex South District Registry of Deeds.

WITNESS my hand and seal this _____ day of _____, _____.

Evergreen Commons LLC

City of Newburyport

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared _____ and proved to me through satisfactory evidence of identification, which was/were personal knowledge to be the person(s) whose name(s) is/are signed on the preceding or attached documents, and acknowledged to me that he or she signed it voluntarily as the Manager of Evergreen Commons LLC for its stated purpose.

Signature of Notary Public

Printed name of Notary Public

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared Donna D. Holaday and proved to me through satisfactory evidence of identification, which was/were personal knowledge to be the person(s) whose name(s) is/are signed on the preceding or attached documents, and acknowledged to me that he or she signed it voluntarily as the Mayor for the City of Newburyport for its stated purpose.

Signature of Notary Public

Printed name of Notary Public

My Commission Expires (date)

ACCEPTANCE OF GRANT BY NEWBURYPORT CONSERVATION COMMISSION

I, the undersigned, being the Chairman of the Newburyport Conservation Commission, hereby certify that at a meeting duly held on _____, the Conservation Commission voted to accept the foregoing Conservation Restriction pursuant to Massachusetts General Laws, Chapter 40, Section 8C, and agree to be bound by its terms and further authorized my execution hereof.

Newburyport Conservation Commission
BY: Joseph Teixeira

Its: Chairman

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared Joseph Teixeira and proved to me through satisfactory evidence of identification, which was/were _____
_____ to be the person(s) whose name(s) is/are signed on the preceding or attached documents, and acknowledged to me that he or she signed it voluntarily for its stated purpose as the Chairman of the Newburyport Conservation Commission.

Signature of Notary Public

Printed name of Notary Public

My Commission Expires (date)

(Place Notary seal or stamp above.)

APPROVAL OF GRANT BY THE CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of the City of Newburyport, Essex County, Massachusetts, hereby certify that at a meeting duly held on _____, the Conservation Commission voted to approve the foregoing Conservation Restriction pursuant to Massachusetts General Laws, Chapter 40, Section 8C.

[illegible]



EXHIBIT A
METES AND BOUNDS DESCRIPTION OF THE PREMISES



EXHIBIT B
PLAN OF LAND



EXHIBIT C
CONSERVATION COMMISSION VOTE



REQUIRED DRAFT EASEMENTS

EASEMENT AGREEMENT

Evergreen Commons LLC, a Massachusetts limited liability corporation, having an address of 487 Groton Road, Suite A, Westford, Massachusetts 01867 (the “Grantor”), for nominal consideration of less than One Hundred and 00/100 Dollars (<\$100.00)

Grants to

The City of Newburyport, a municipal corporation, having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Department of Public Services Water Division (the “Grantee”),

The perpetual right and easement to enter upon land of the grantor shown as Open Space 18.997 Acres \pm (the “Open Space Area”) as shown upon plan entitled “Plan of Land in Newburyport, Mass. Surveyed for Evergreen Commons LLC”, dated May 2, 2017, prepared by Design Consultants, Inc., Consulting Engineers and Surveyors, 120 Middlesex Avenue, Somerville, MA 02145, for the purpose of accessing any and all monitoring wells within said Open Space Area as designated upon said Plan, for the purpose of monitoring groundwater quality during and after construction of the Port Place by Evergreen Commons LLC subdivision (the “Subdivision”). Said Plan is recorded with Southern Essex District Registry of Deeds in Plan Book ____, Plan ____.

The Grantor further grants to the Grantee the perpetual right and easement to use all private roadways of the Subdivision for said access.

In return for the perpetual easements granted herein the Grantee agrees that any area disturbed by Grantee’s exercise of its rights herein will be restored, as near as possible to its original condition, at the Grantee’s expense, and the Grantee further agrees to the extent permitted by law, indemnify and hold harmless the Grantor, its successors and/or assigns for any action of Grantee pursuant to the exercise of its rights hereunder. The Grantee further agrees to provide the Grantor, its successors and/or assigns, an annual Certificate of Insurance naming the Grantor, its successors and/or assigns as a loss payee thereon.

For Grantor's title, see deed recorded with Southern Essex District Registry of Deeds in Book _____, Page ____.

Executed as a sealed instrument this ____ day of _____, 2017.

Evergreen Commons LLC

By:
Its:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of June, 2017, before me, the undersigned notary, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Evergreen Commons LLC.

Notary Public

My Commission Expires:

EASEMENT AGREEMENT

Evergreen Commons LLC, a Massachusetts limited liability corporation, having an address of 487 Groton Road, Suite A, Westford, Massachusetts 01867 (the “Grantor”), for nominal consideration of less than One Hundred and 00/100 Dollars (<\$100.00)

Grants to

The City of Newburyport, a municipal corporation, having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Department of Public Services (the “Grantee”),

The perpetual right and easement to enter upon land of the grantor as shown upon plan entitled “Plan of Land in Newburyport, Mass. Surveyed for Evergreen Commons LLC”, dated May 2, 2017, prepared by Design Consultants, Inc., Consulting Engineers and Surveyors, 120 Middlesex Avenue, Somerville, MA 02145, for the purpose of emergency access to any and all stormwater facilities and private ways both during and after construction within the subdivision known as Port Place by Evergreen Commons LLC subdivision (the “Subdivision”). Said Plan is recorded with Southern Essex District Registry of Deeds in Plan Book ____, Plan ____.

In return for the perpetual easements granted herein the Grantee agrees that any area disturbed by Grantee’s exercise of its rights herein will be restored, as near as possible to its original condition, at the Grantee’s expense, and the Grantee further agrees to the extent permitted by law, indemnify and hold harmless the Grantor, its successors and/or assigns for any action of Grantee pursuant to the exercise of its rights hereunder. The Grantee further agrees to provide the Grantor, its successors and/or assigns, an annual Certificate of Insurance naming the Grantor, its successors and/or assigns as a loss payee thereon.

For Grantor’s title, see deed recorded with Southern Essex District Registry of Deeds in Book ____, Page ____.

Executed as a sealed instrument this ____ day of _____, 2017.

Evergreen Commons LLC

By:
Its:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of June, 2017, before me, the undersigned notary, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Evergreen Commons LLC.

Notary Public

My Commission Expires:

OPEN SPACE
OPERATION AND MAINTENANCE PLAN
PORT PLACE BY EVERGREEN COMMONS
LLC

May 19, 2017

Prepared By: Kimberly Turner, KDTurner Design, Landscape Architecture
 Thomas Hughes, BS, MA, Hughes Environmental Consulting

AREA 1 WETLAND		AREA 2 RESTORATION		AREA 3 STORMWATER		AREA 4 POLLINATOR MEADOW		AREA 5 OPEN/MANAGED LAWN		AREA 6 MANICURED AND BUFFER AREAS	
PLANT MATERIAL	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE & CULTIVATED	
	NE Wetmrix, native shrubs and trees	NE Roadside Matrix Upland Seed Mix, NE Conservation/Wildlife Mix, shrubs and trees	NE Roadside Matrix Upland Seed Mix	Showy NE Native Wildflower or equivalent seed mix	Fescue blend	Lawn, trees, evergreens, ornamentals					
ACCESS	NONE	PUBLIC	PUBLIC	PUBLIC	PUBLIC	PUBLIC	PRIVATE				
MANAGEMENT	ANNUAL	BI-ANNUAL	SEE STORMWATER O&M	ANNUAL	BI-WEEKLY	WEEKLY & AS NEEDED					
	Inspect annually. Maintenance limited to restoration and plant health, including invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Inspect spring and fall. Maintenance limited to plant health, including invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Limited to functional issues and plant health, including measures in Stormwater O&M manual, including invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Inspect spring and fall, maintance limited to maintaining meadow health. After establishment, mowing annually in the spring and invasive removal or reseeding efforts. See the separate protocol for meadow seeding and initial mowing guidelines. Herbicides to be used only in accordance with a City approved plan.	Bi-weekly mowing during the growing season. Best management practices including organic lawn fertilizer and organic controls. Overseeding in spring and fall as needed. Invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Weekly mowing of lawn areas during the growing season. Regular application of organic lawn fertilizer. Required maintenance of vegetation including organic controls. Pruning as needed.					
RESOURCE VALUE	NATURAL RESOURCE	NATURAL RESOURCE	STORMWATER	NATURAL RESOURCE	NATURAL RESOURCE	NATURAL RESOURCE	NATURAL RESOURCE				
	Wildlife, flood storage, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Visual				
USE	PASSIVE	PASSIVE	PASSIVE	PASSIVE	PASSIVE	PASSIVE AND ACTIVE	PASSIVE AND ACTIVE				
	Visual enjoyment Nature study	Visual enjoyment Nature study	Visual enjoyment Nature study Water quality	Visual enjoyment Nature study	Visual enjoyment Nature study	Visual enjoyment Nature study Recreation	Visual enjoyment Recreation	Visual enjoyment Recreation Group & family activities			



HUGHES ENVIRONMENTAL CONSULTING

44 MERRIMAC STREET, NEWBURYPORT, MA 01950
PHONE 978.465.5400 • FAX 978.465.8100
EMAIL THUGHES@HUGHESENVIR.COM

18 MAIN STREET, CONCORD, MA 01742
PHONE/FAX 978.369.2100

The following guidance should be used in establishing the pollinator area. It is important that the methods described be followed to maximize the successful establishment of the meadow area. The result will be a low maintenance meadow with high value to wildlife and pollinators.

Apply a cover crop with the pollinator seed mix.

A cover crop seed to be added based on time of year. For a cover crop use either grain oats (1 Jan to 31 Aug) or grain rye (1 Sep to 31 Dec).

The cover crop is necessary to stabilize soil to protect against erosion. Natives in the seed mix are relatively slow establishing. Growth and stubble from cover crops helps to control erosion until the natives have grown sufficiently to do so on their own. Note that in addition, cover crops serve as an “experimental control” for a planting a meadow. If they grow, usually a site will support a meadow. If they do not, then conditions need to be evaluated and adjusted before a successful meadow can be established.

Applying the seed

Tips When Broadcasting Native Seed Mixes:

1. Humans are predisposed to planting 100 lbs of seed per acre. With natives this would be too much. To fool your brain, mix your seed mix and cover crop with kitty litter (non-scented cheap clay litter). Add the number of pounds per acre needed for native seed plus the rate of application for the cover per acre and subtract from 100. Add this amount of litter in pounds to the seed per acre. This will give you a mix that can be comfortably applied at 100 lbs/acre.
2. Divide mix in half and make two passes. The first beginning in the southwest corner, and proceeding on a south to north, west to east weave. The second would begin in the northeast corner of the field and proceed on an east to west, north to south weave. This will ensure a uniform distribution of seed.
3. When over seeding you can use a lighter amount of kitty litter.

Post Planting Maintenance 1st Growing Season:

1. When growth in a meadow reaches 18 to 24 inches, trim it to 8 inches. This typically must be done no less than one time, and sometimes three times in the first growing season. Trimming below 4 inches will kill your native seedlings. No trimming should occur after mid-September.
2. Spot spray or hand pull problem weeds. Be particularly careful to kill perennial broadleaf species, vines and any invasive woody species. This is best done prior to mid-July. Any herbicide use must be approved by the City prior to use.

Post Planting Maintenance 2nd and Subsequent Growing Seasons:

1. Trim the meadow to 2 inches prior to new growth exceeding 4 inches in the spring.
2. Spot spray or hand pull problem weeds (Any herbicide use must be approved by the City prior to use.). This is best done prior to mid-July.

REQUIRED DRAFT DEEDS

QUITCLAIM DEED

Evergreen Commons LLC, a Massachusetts limited liability corporation, having an address of 487 Groton Road, Suite A, Westford, Massachusetts 01867 (the “Grantor”), for nominal consideration of less than One Hundred and 00/100 Dollars (<\$100.00)

Grants to

The City of Newburyport, a municipal corporation, having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Department of Public Services Water Division,

with QUITCLAIM COVENANTS

The land in Newburyport, Essex County, Massachusetts shown as Parcel A on a plan of land entitled “Plan of Land in Newburyport, Mass. Surveyed for Evergreen Commons LLC”, dated May 2, 2017, prepared by Design Consultants, Inc., Consulting Engineers and Surveyors, 120 Middlesex Avenue, Somerville, MA 02145, and recorded with Southern Essex District Registry of Deeds in Plan Book ____, Plan _____. Said Parcel A contains 29,776 square feet, more or less, according to said Plan.

Being a portion of the premises conveyed the Grantor by deed recorded with Southern Essex District Registry of Deeds in Book _____, Page _____.

Executed as a sealed instrument this ____ day of _____, 2017.

Evergreen Commons LLC

By:
Its: Manager

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of June, 2017, before me, the undersigned notary, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Evergreen Commons LLC.

Notary Public

My Commission Expires:

QUITCLAIM DEED

Evergreen Commons LLC, 487 Groton Road, Suite A, Westford, Commonwealth of Massachusetts, a Massachusetts Limited Liability Corporation (“Grantor”)

for nominal consideration paid, the receipt of which is hereby acknowledged, grant to:

Port Place Homeowners Association, 18 Boyd Drive, Newburyport, Commonwealth of Massachusetts u/d/t dated _____, 2017 and recorded in the Essex South Registry of Deeds in Book __ and Page __ (“Grantee”)

With **Quitclaim Covenants**

The premises shown as the “Open Space” area on a plan entitled “Port Place by Evergreen Commons LLC”, prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May __, 2017 and recorded in Plan Book ____, Page ____ in the Essex South Registry of Deeds consisting of 22.816 acres more or less (the “Premises”).

Being a portion of the same premises conveyed to me by deed dated _____, 2017 and recorded with the Southern Essex District Registry of Deeds at Book _____ and Page _____ and by deed dated _____, 2017 and recorded with the Southern Essex District Registry of Deeds at Book ____ and Page ____.

Said Premises Subject to the Conservation Restriction recorded herewith.

Witness my hand and seals this ____ day of _____, 2017:

, Manager

Commonwealth of Massachusetts

Essex, ss

On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were driver's licenses, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Manager of the Evergreen Commons LLC.

Notary Public:
My Commission Expires: