

## MAINTENANCE AND COOPERATION AGREEMENT

107 State Street and 95-97 High Street, Newburyport MA

This Maintenance and Cooperation Agreement (“Agreement”) is entered into as of this 13<sup>th</sup> day of December, 2021 by THE CITY OF NEWBURYPORT, a Massachusetts municipal corporation (the “City”), and GLOBAL COMPANIES LLC, a Delaware limited liability company authorized to do business in Massachusetts and having an office at 800 South Street, Suite 500, Waltham, MA 02453 (“Global”). The City and Global are referred to collectively herein as the “Parties” and individually as a “Party.”

WHEREAS, Global owns the property located at 107 State Street and 95 High Street in Newburyport, MA, identified as Assessor Parcels 33-43 and 33-42, respectively (the “Property”);

WHEREAS, Global acquired the Property in 2010 from ExxonMobil Oil Corporation (“ExxonMobil”) pursuant to that certain Deed with Statutory Quitclaim Covenants, recorded on September 8, 2010, at the Essex South Registry of Deeds in Bk 29752, Page 587, which includes a “Deed Restriction and Covenant Against Residential Use” (collectively, the “2010 Deed Restriction”);

WHEREAS, pursuant to G.L. c. 139, §1, on October 25, 2021, November 29, 2021 and December 13, 2021, the Newburyport City Council held a public hearing to determine whether the Property is “a nuisance to the neighborhood, or dangerous;”

WHEREAS, prior to and during the City Council’s public hearing, Global implemented various maintenance measures and improvements at the Property aimed at addressing the concerns raised by City officials and residents, and Global articulated a commitment to ongoing, improved maintenance of the Property;

WHEREAS, during the City Council’s public hearing, residents and City Councillors articulated their strong preference that the Property be redeveloped for residential use, and Global represented that it was willing to work with ExxonMobil to pursue a modification of the 2010 Deed Restriction such that the Property could be sold and redeveloped for residential use;

WHEREAS, the Parties believe it is in their respective interests for the pending hearing process under G.L. c. 139, §1 to be concluded without issuance of a common nuisance order.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual promises as set forth herein, the parties agree as follows:

1. Global’s Commitments: During the Term of this Agreement (as defined below), and in addition to any other requirements that may apply by law, Global shall comply with the following requirements:

A. Maintenance of the Property:

- (1) Maintain the concrete planters at all curb cuts existing as of December 13, 2021, to prevent illegal vehicular entry and parking, with minor adjustment as required to comply with the Newburyport Fire Department's request for access to the building at the Property, including access by snow plows to maintain a cleared vehicular path to the building for Fire Department vehicles.
- (2) Maintain the "No Parking" signs existing as of December 13, 2021.
- (3) Secure the existing building against human trespass, weather, and animals.
- (4) Maintain the existing perimeter trees and six-foot high fences on the Property.
- (5) Comply forthwith with Newburyport Code Section 12-52 (Removal of snow and ice from sidewalks).
- (6) Maintain the grounds up to a commercially reasonable standard, including, without limitation, regular watering of plants in a manner appropriate for the specific plant species and continued maintenance of the existing pole sign.
- (7) Post a bond in the amount of ten-thousand dollars (\$10,000) with the City in case of failure: (a) to remove snow and ice in compliance with Newburyport Code Section 12-52 and as specified in this Agreement; and/or (b) to maintain the grounds up to a commercially reasonable standard as specified in this Agreement.

B. Efforts Related to Potential Residential Use of the Property:

- (1) Make commercially reasonable, good faith efforts to secure a modification of the 2010 Deed Restriction from ExxonMobil or an agreement from ExxonMobil to modify the 2010 Deed Restriction that would enable the sale and redevelopment of the property for residential use – with the goal of accomplishing this by May 31, 2022. The City acknowledges that there are limitations on Global's ability to control ExxonMobil's participation and timing in these efforts.
- (2) If and once Global secures a modification to the 2010 Deed Restriction or ExxonMobil's agreement to modify the 2010 Deed Restriction based on terms and with parameters that are acceptable to Global, actively market the Property for redevelopment for residential purposes – with the goal of executing a Purchase and Sale Agreement within 30 days after securing the ExxonMobil agreement and receiving an offer to purchase the Property on terms and conditions reasonably satisfactory to Global .

- (3) If and once a Purchase and Sale Agreement with a residential developer is executed, cooperate in good faith with the developer and City officials to facilitate the proposed redevelopment of the Property for residential use – with the goal of having the developer, within 45 days after expiration of any initial due diligence period identified in the Purchase and Sale Agreement for purposes of the developer’s title, survey or environmental investigations (“Due Diligence Period”), submit proposed preliminary development plans to (a) the City’s Planning Department staff for their review and comment, (b) any local permitting boards expected to be involved in permitting the proposed project and (c) the City Council or a designated subcommittee if a zoning change is required for the proposed development. The development plans shall, at a minimum, include a site plan depicting building footprints, access drives, parking areas, vegetated areas and building footprints with number of units specified). The City acknowledges that the developer and its consultant team will be responsible for the design and permitting associated with any residential development and Global’s participation will be limited to supporting those efforts as the Property owner, and that the City shall have no obligations as to cost other than necessary staff time.
- (4) Cooperate in good faith with the developer and City officials to facilitate permitting of the proposed residential development – with the aim of securing all necessary permits and conveying title to the Property within 4 months of expiration of any Due Diligence Period (the Parties’ goal being to achieve this milestone by December 15, 2022, subject to delays related to the permitting review and approval process. Notwithstanding anything in this Paragraph 1(B)(4) to the contrary, the Parties have not agreed upon details of such proposed residential development, such as the number of dwelling units, building height, lot coverage, and accessory parking.

C. Communications with City Officials:

- (1) File a written report with the City Clerk monthly regarding the status of its efforts under Paragraph 1(B) of this Agreement until such time as a Purchase and Sale Agreement is executed.
  - (2) Participate in regular discussions and/or meetings with City officials (representatives to be designated by the City) at a frequency reasonably requested by the City.
2. City’s Commitments: During the Term of this Agreement (as defined below), the City shall (a) actively cooperate in good faith with Global with respect to the subject matter of this Agreement and Global’s efforts to comply with the requirements and milestones provided above, (b) promptly communicate any compliance-related concerns to Global and (c) undertake active, good-faith efforts to facilitate expeditious redevelopment of the

Property for residential use, including consideration of the potential expansion of the adjoining R3 zoning district to encompass the Property.

3. Effective Date: This Agreement shall be effective only if and when (1) it is fully executed by all parties and (2) the Newburyport City Council has concluded the pending G.L. c. 139, §1 process by a final written decision filed with the City Clerk concluding that a common nuisance order is not warranted, or by otherwise terminating the process without issuing a common nuisance order. Global acknowledges that such a decision does not preclude the City Council from commencing a new G.L. c. 139, §1 process at some future date.
4. Term: This Agreement and the obligations set forth in this Agreement shall be binding on the Parties for an initial term of one (1) year from the Effective Date, at which time this Agreement shall terminate unless extended by mutual agreement of the Parties in writing – subject to the early termination rights provided below.
5. Enforcement, Other Applicable Laws and Early Termination Rights:
  - A. This Agreement shall be governed by the laws of the Commonwealth and enforceable in Essex County Superior Court. Any party required to enforce this agreement through litigation shall be awarded its reasonable attorney’s fees and the costs associated with seeking enforcement hereof in the event the party seeking enforcement prevails and is adjudged to have been aggrieved by a breach hereof.
  - B. Nothing in this Agreement shall limit any other enforcement rights the City may have with respect to the Property or excuse Global from complying with all other local, state and federal laws and requirements applicable to its ownership and/or operation of the Property.
  - C. Each Party may, in its reasonable discretion, terminate this Agreement immediately upon written notice to the other Party if any of the efforts related to potential residential use of the Property fail to occur within the good-faith deadlines specified under Paragraph 1(B) of this Agreement. Notwithstanding the foregoing, such deadlines do not otherwise operate as enforceable covenants under this Agreement, meaning that each Party’s remedy for the violation is limited to this Paragraph 5(C).
  - D. Global may also terminate this Agreement immediately upon written notice to the City if the Newburyport City Council commences another hearing under G.L. c. 139, §1 related to the Property.

- 6. Authority: The Parties represent and warrant that they have executed this Agreement by persons authorized to bind them to its terms.

IN WITNESS WHEREOF, the parties have executed and acknowledged this Agreement as of the date first above written.

**GLOBAL COMPANIES LLC**

By: \_\_\_\_\_  
 Name:  
 Title:

**CITY OF NEWBURYPORT**

By: \_\_\_\_\_  
 Hon. Donna D. Holaday, Mayor

As authorized by the City Council on December 13, 2021

By: \_\_\_\_\_  
 Council-President Jared J. Eigerman