

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

November 8, 2021

THAT the City Council of the City of Newburyport hereby approve and authorize the acceptance of a perpetual Conservation Restriction (CR) between the City, acting through the Newburyport Conservation Commission ("Grantee"), and Evergreen Commons, LLC ("Grantor"), as owners of 22.816 acres of property in the City of Newburyport, being bounded and described in Exhibit A therein, said CR to be substantially in the form attached hereto; and

Further, that the Mayor of the City of Newburyport, the City Council President and City Clerk are hereby authorized to sign the subject Conservation Restriction as may be required, to act on behalf of the City and enter into any and all instruments, including acceptance of said Preservation Restriction in accordance with Massachusetts General Laws Chapter 184, and to take any other actions necessary to execute this acceptance and the associated Conservation Restriction accordingly.

Councillor Heather L. Shand

GRANTOR: Evergreen Commons, LLC
GRANTEE: City of Newburyport
ADDRESS OF PREMISES: 18 Boyd Drive and 5 Brown Avenue
FOR GRANTOR’S TITLE SEE: Essex South Registry of Deeds at Book 36573, pages 88 and 92.

CONSERVATION RESTRICTION

Evergreen Commons, LLC, of 487 Groton Road, Suite A, Westford, Middlesex County, Commonwealth of Massachusetts, 01886, a Limited Liability Corporation, being the sole owner of the below described Premises, and intending hereby to bind itself and its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, and in furtherance of the Newburyport Zoning Ordinance Section XIV-I (vii) (1), hereby grants, with QUITCLAIM COVENANTS to the City of Newburyport, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, at 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and its successors and permitted assigns (“Grantee”), for consideration of less than \$100.00 (one hundred dollars), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on a parcel of land in Newburyport consisting of approximately 22.816 acres, being bounded and described in Exhibit A, which exhibit is attached hereto and incorporated herein, and shown collectively as “Open Space 1,” “Open Space 2,” and “Open Space 3” on a plan of land entitled “Plan of Land in Newburyport, Massachusetts Surveyed For Evergreen Commons, LLC” prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May 22, 2017 and recorded in Plan Book 464, Page 53 in the Essex South Registry of Deeds, a reduced copy of which is attached hereto as Exhibit B and incorporated herein (the “Premises”).

The Grantor has previously hereto recorded in the Essex South Registry of Deeds at Book 36573 Page 163 a Declaration of Restriction (“Declaration”) which specifically contemplated and which by its terms is superseded by the execution and recording of this Conservation Restriction. The Declaration incorporates an Open Space Conservation Restriction Use Plan, dated December 18, 2017, which is recorded in the Essex South Registry of Deeds at Book 36573, Page 173 and which is attached hereto and incorporated as Exhibit C.

This Conservation Restriction shall supersede and replace the Declaration.

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 this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic, and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (“conservation values”).

This Conservation Restriction is required by the following permits:

- 1) Newburyport Planning Board, XIV OSRD Special Permit, File No. 2016-SP-03a, recorded in the Essex South Registry of Deeds at Book 36573, Page 94 (“OSRD Special Permit”), for an Open Space Residential Development;
- 2) Newburyport Planning Board, Definitive Subdivision Plan, File No. 2017-DEF-01, dated January 30, 2018 and recorded in the Essex South Registry of Deeds at Book 36573, Page 115, for a 38 lot subdivision (“Subdivision Approval”); and
- 3) Newburyport Planning Board, XIX Water Resource Protection District Special Permit, File No. 2017-SP-05, recorded in the Essex South Registry of Deeds at Book 36573, Page 128 (“Water Resource Protection District Special Permit”); and
- 4) Newburyport Conservation Commission Order of Conditions, DEP File Number 051-0973, dated February 6, 2018 and recorded in the Essex South Registry of Deeds at Book 36573, Page 141 (“Order”), allowing construction of a 38-home subdivision within a Zone II Wellhead Protection Area.

The three Open Space parcels comprising the Premises provide a range of conservation values (as further described below) that provide a general public benefit that will be protected by this Conservation Restriction.

The conservation values include the following:

- Open Space Protection. The protection of the Premises contributes to the protection of the scenic and natural character of the City of Newburyport and will enhance the open-space value of these and nearby lands. The Premises is located near existing trail networks and provides a destination for residents utilizing those trails. Open Space 1 contains extensive open space for passive recreation, including trails that both loop and connect through the Premises, connecting the Brown Avenue neighborhood to the north with the Boyd Drive neighborhood to the south.
- Flood Plain Protection. Portions of Open Space 1 are considered Isolated Land Subject to Flooding, containing flood waters generated on site and in surrounding catchment areas composed of residential city streets. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- Protection of Wildlife Habitat. The Premises consists of pollinator meadow habitat. Pollinator habitat is of increasing importance to a healthy and biologically diverse ecosystem. Additionally, the Premises contains approximately 2 acres of isolated wetland consisting of open marsh habitat, which is frequented by waterfowl.
- Public Access. Public access to the Premises will be allowed for recreational activities. The Premises includes trails which, once a planned connection is completed, will provide access to the Garrison Trail, a multi-use trail in the City of Newburyport that connects to a broader coastal trail network.

- Water Quality Protection.
 - Wellhead Protection. The Premises is located within the Zone 2 of a Wellhead Protection Area, as designated by the Massachusetts Department of Environmental Protection.
 - Stormwater Wetlands Protection. Open Space 1 includes a large stormwater wetland that treats municipal stormwater from a drainage system that enters through Boyd Drive and five additional rain gardens that treat stormwater from Duffy Drive and Gabaree Court. The isolated wetland provides further water quality protection. Open Space 2 and Open Space 3 further contribute to the protection of groundwater quality by preserving open space within the aquifer.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth in Paragraph II.B 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 courts, landing strips or pads, greenhouses, mobile homes, swimming pools, fences, asphalt, concrete or other forms of impervious pavement, billboards or other advertising displays, antennae or dishes, utility poles, towers, conduits, lines, solar panels or solar arrays, storage tanks, or any other temporary or permanent building, structure, facility, or improvement;
- (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 making topographical changes to the area;
- (3) Placing, filling, storing or dumping 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, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever;

- (4) Cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation;
- (5) Subdivision or conveyance of a part or portion of the Premises;
- (6) Using any portion of the Premises hereafter 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) Using, 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 fence posts on the Premises;
- (11) Using herbicides, fungicides, and pesticides;
- (12) Hunting and trapping except as may be permitted by the Grantee for ecosystem protection, preservation of flood storage capacity, and management purposes;
- (13) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

B. Reserved Rights and Exceptions to Otherwise Prohibited Acts and Uses

Notwithstanding the Prohibited Acts and Uses described in Paragraph II.A, the Grantor reserves the right to conduct or expressly permit in writing, except as provided in Paragraph IV, the following acts and uses on the Premises, but only if such acts or uses do not materially impair the conservation values or purposes of this Conservation Restriction:

- (1) Vegetation management. In accordance with best management practices, 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;
- (2) Required Property Maintenance. Maintenance of the Premises in accordance with the Operations and Maintenance Plan dated May 7, 2017, last revised April 14th, 2021 as approved by the Order, attached hereto as Exhibit D. Such maintenance shall be consistent with the Open Space Maintenance requirements of the OSRD Special Permit.

- (3) Signs. The erection, maintenance and replacement of signs by the Grantor with respect to ownership, boundaries, trails, natural features, flora and fauna, regulations governing public use and the protected conservation values;
- (4) Minor Educational and Recreational Structures. With prior written notice to and written approval by the Grantee, the construction, maintenance, repair, and replacement of “Minor Structures” for use by the public for educational and recreational purposes, including but not limited to the structures and other improvements shown on Exhibit C, including the playground structure, water feature, interpretive signs, exhibits, benches, and the patio, pergola, and fire pit in the Central Green (Open Space 3) (collectively “Minor Structures”);
- (5) Recreational and Educational Activities. Walking, hiking, horseback riding, 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. Limited to the area depicted on Exhibit C as the Central Green (Open Space 3), organized or pick-up recreational and athletic activities, such as soccer games, ultimate frisbee, and other team sports events.
- (6) Special Events. Limited to the area depicted on Exhibit C as the Central Green (Open Space 3), and with prior written notice to and written approval by the Grantee, special events including concerts, gatherings, and formal organized activities such as dances, weddings, and the like;
- (7) Composting. With prior written notice to and written approval by the Grantee, stockpiling and composting of stumps, trees brush limbs and similar biodegradable materials originating on the Premises, in locations where the presence of such materials will not materially impair the conservation values;
- (8) Permit Compliance. Activities necessary to comply with the Order, the Subdivision Approval, the OSRD Special Permit, and the Water Resource Protection District Special Permit;
- (9) Trails, Stone Walls, and Gates. The construction, maintenance, and marking of trails for pedestrian and emergency vehicle use, provided that the Grantor shall provide written notice to the Grantee prior to initiating any new trail construction. The maintenance and repair of existing stone walls on the Premises, and the placement, maintenance, repair, and replacement of gates to control unauthorized access to the Premises.
- (10) Wildlife Habitat Management and Improvement. With prior written notice to and written approval by Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species;
- (11) 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).

- (12) Stormwater Control Facilities. The maintenance of the stormwater facilities located on the Premises in accordance with the approved Stormwater Management Operation and Maintenance Plan approved as part of the OSRD Special Permit, the Subdivision Approval, the Water Resource Protection District Special Permit, and the Order, including the use of heavy equipment such as a backhoe and dump truck;
- (13) Flood Storage Maintenance or Improvements. With prior written notice to and written approval by the Grantee, activities designed to maintain or improve existing flood storage capacity;
- (14) Environmental Restoration or Improvement Projects. With prior written notice to and written approval by the Grantee, 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;
- (15) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of nuisance species, all in a manner that minimizes damage to surrounding, non-target species and preserves water quality. No activities under this subsection may be conducted unless, prior to initiating any such activities, the Grantor shall provide written notice to the Grantee for its review and receive written approval therefor. Activities authorized under this subsection may include the use of herbicides or other chemicals, provided that Grantor shall provide additional written notice, at the same time as notice is provided to Grantee, to the City of Newburyport Water and Sewer Commission for its review and to the City of Newburyport Department of Public Services, Water Division, for its review and written approval by the Water Superintendent, and that no such activities shall occur without approval by the Water Superintendent;
- (16) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in Section 1 of Chapter 61 of the Massachusetts General Laws, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (Chapter 132 of the Massachusetts General Laws, or its successor) and carried out pursuant to a Forest Management Plan.

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Management Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Forest Management Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the “Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans” and such statutes, regulations and directions in effect at the time of the approval of said Forest Management Plan. The Forest Management Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater

quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Forest Management Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester.

- (17) Motorized Vehicles. The use of motorized vehicles for the following purposes:
- a. Access to the Premises by fire, police, ambulance, or other government officials in carrying out their official duties;
 - b. As necessary for activities related to the Grantor's maintenance and upkeep of the Premises; and
 - c. As necessary for persons with mobility impairments
- (18) Other. Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Premises.

C. Permits, Regulations, Laws

The exercise of any right reserved by Grantor under Paragraph II(B) shall be in compliance with the Order, the Special Permit, zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

D. Monuments and Signage

The Grantor and its successors and assigns shall maintain in good condition any bounds, monuments, markers, and signs shown on Exhibit B, demarcating the boundaries of the Premises, and shall repair and or replace said monuments and signage on an as needed basis.

E. Notice and Approval

1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be

unreasonably withheld but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

2. Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction. This Paragraph II(E)(2) shall not apply to Paragraph II(B)(18), in which case the failure of Grantee to respond in writing within 60 days shall be deemed to constitute denial of the request as submitted.

III. LEGAL REMEDIES OF THE GRANTEE

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 their condition prior to the time of the injury complained of (it being agreed that the Grantee 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 Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee 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 the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

B. Non-Waiver

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

C. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph II(B)(5) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph II(B)(5). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

- A.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any

applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

- B. Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.
- C. Grantor/Grantee Cooperation Regarding Public Action. 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 the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & 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 holding any interest in the Premises.
- B. Execution of Instruments. The Grantee 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 itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Property, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts

General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their 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. 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 Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON-MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or

entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Essex South Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Essex South Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party 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: Evergreen Commons, LLC
487 Groton Road, Suite A
Westford, MA 01886

To Grantee: City of Newburyport
Attn: Conservation Commission
60 Pleasant Street
Newburyport, MA 01950

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. 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 effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any 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 of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

- A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and 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, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.
- C. Non-Exclusive Construction Easement. This Conservation Restriction does not affect the rights conveyed to the City of Newburyport in a Non-Exclusive Construction Easement recorded in the Essex South Registry of Deeds immediately prior hereto.
- D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor
Grantee Acceptance
Approval by City Council and Mayor
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises
Exhibit B: Reduced Copy of Plan of the Premises
Exhibit C: Open Space Conservation Restriction Plan of the Premises
Exhibit D: Operations and Maintenance Plan

WITNESS my hand and seal this ____ day of _____, 2021,

Evergreen Commons, LLC
by its Managers

Howard Johnstone Hall, Manager

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared Howard Johnstone Hall, Manager of Evergreen Commons, LLC, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of Evergreen Commons, LLC.

Notary Public
My Commission Expires:

**ACCEPTANCE OF GRANT BY CITY OF NEWBURYPORT CONSERVATION
COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the City of Newburyport, Massachusetts, hereby certify that at a public meeting duly held on _____, 2021, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Evergreen Commons, LLC pursuant to Section 8C of Chapter 40 and Section 32 of Chapter 184 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

NEWBURYPORT CONSERVATION
COMMISSION:

_____	_____
_____	_____
_____	_____
_____	_____

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY MAYOR OF CITY OF NEWBURYPORT

The undersigned, Mayor of the City of Newburyport, Massachusetts, hereby approve the foregoing Conservation Restriction from Evergreen Commons, LLC, to the City of Newburyport, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

By: _____

Donna Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared, Donna Holaday, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY CITY COUNCIL OF CITY OF NEWBURYPORT

We, the undersigned, being a majority of the City Council of the City of Newburyport, Massachusetts, hereby certify that at a public meeting duly held on _____, 2021, the City Council voted to approve the foregoing Conservation Restriction from Evergreen Commons, LLC, to the City of Newburyport, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

NEWBURYPORT CITY COUNCIL:

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared, _____

_____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Evergreen Commons, LLC to the City of Newburyport, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2021

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

Open Space Parcel 1

Beginning at a point on the sideline of Boyd Drive as shown on Plan Book 464 Plan 53, thence;

By Boyd Drive on a curve turning to the left with an arc length of 20.10', with a radius of 63.00' to land N/F Blanchette, thence;

N 68°49'26" W a distance of 76.30' by land N/F Blanchette, thence;

S 18°25'35" W a distance of 246.76' by N/F Blanchette to land N/F Advance Investment Properties, thence;

N 68°48'36" W a distance of 664.87' by land N/F Advance Investment Properties and land N/F The Village at Newburyport Condominium, thence;

S 11°41'16" W a distance of 394.52' by land N/F The Village at Newburyport Condominium to the sideline of the State Highway Layout for US Route 95 Northbound, thence;

By the state highway layout with a curve turning to the right with an arc length of 493.17', with a radius of 5239.49', thence;

N 00°05'52" W a distance of 1082.42' by the state highway layout, thence;

N 29°23'05" E a distance of 250.76' by the state highway layout to land N/F Hall, thence;

S 85°52'10" E a distance of 106.16' by land N/F Hall to land N/F McCarthy, thence;

S 89°03'30" E a distance of 71.35' by land N/F McCarthy, thence;

N 08°59'40" E a distance of 139.73' by land N/F McCarthy to land N/F Walsh, thence;

S 46°27'13" E a distance of 110.00' by land N/F Walsh, thence;

N 28°59'50" E a distance of 164.19' by land N/F Walsh to Brown Avenue, thence;

S 72°20'35" E a distance of 13.24' by Brown Avenue to Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 24.19', with a radius of 15.00', thence;

S 20°03'16" W a distance of 14.25' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 44.49', with a radius of 130.00', thence;

S 39°39'49" W a distance of 101.34' by Duffy Drive, thence;

S 39°39'49" W a distance of 31.82' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the left with an arc length of 216.29', with a radius of 145.00', thence;

S 45°48'05" E a distance of 81.32', thence;

By Duffy Drive with a curve turning to the right with an arc length of 24.87', with a radius of 380.00' to lot 24, thence;

S 51°07'13" W a distance of 109.47' by lot 24, thence;

S 32°54'55" E a distance of 81.02' by lot 24 to lot 23, thence;

S 30°11'08" E a distance of 92.60' by lot 23 to lot 22, thence;

S 39°41'51" E a distance of 95.22' by lot 22 to lot 21, thence;

S 40°03'10" E a distance of 80.56' by lot 21, thence;

N 67°26'28" E a distance of 112.57' by lot 21 to Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 10.01', with a radius of 230.00' to Lot 20, thence;

S 67°26'28" W a distance of 113.59' by lot 20, thence;

S 12°44'42" E a distance of 90.52' by lot 20 to lot 19, thence;

S 17°00'28" E a distance of 107.68' by lot 19 to lot 17, thence;

S 16°31'50" W a distance of 115.13' by lot 17, thence;

S 73°30'41" E a distance of 108.71' by lot 17 to Duffy Drive, thence;

By Duffy Drive with a curve turning to the left with an arc length of 10.01', with a radius of 145.00' to lot 16, thence;

N 73°30'41" W a distance of 108.37' by lot 16, thence;

S 16°49'54" W a distance of 134.10' by lot 16 to lot 14, thence;

S 57°01'55" W a distance of 110.54' by lot 14 to lot 13, thence;
S 33°21'31" W a distance of 149.83' by lot 13 to lot 12, thence;
S 20°58'58" E a distance of 170.24' by lot 12 to lot 11, thence;
S 74°47'49" E a distance of 167.04' by lot 11 to lot 10, thence;
N 48°50'58" E a distance of 145.95' by lot 10 to lot 9, thence;
N 12°29'22" E a distance of 99.99' by lot 9 to lot 8, thence;
S 69°20'18" E a distance of 100.32' by lots 8 and lot 7 to lot 3, thence;
S 10°31'16" W a distance of 79.87' by lot 3, thence;
S 65°20'06" E a distance of 128.02' by lot 3 to the point of beginning.
Having an area of 827,454 square feet, 18.997 acres.

Open Space Parcel 2

Beginning at a point on the sideline of Brown Avenue and Duffy Drive as shown on Plan Book 464 Plan 53, thence;

S 72°20'35" E a distance of 16.70' by Brown Avenue to land N/F Asprogiannis, thence;

S 29°20'30" W a distance of 208.98' by land N/F Asprogiannis, thence;

S 46°27'13" E a distance of 142.70' by land N/F Asprogiannis and land N/F of Chambers, thence;

S 45°30'50" E a distance of 214.28' by land N/F of Chambers and land N/F of Matthews to land N/F City of Newburyport, thence;

S 52°16'58" E a distance of 74.75' by land N/F City of Newburyport to parcel A, thence;

S 19°45'53" E a distance of 99.28' by parcel A, thence;

S 36°15'48" E a distance of 131.24' by parcel A, thence;

S 54°58'06" E a distance of 114.71' by parcel A, thence;

S 72°21'16" E a distance of 114.64' by parcel A, thence;

S 84°10'08" E a distance of 84.94' by parcel A to land N/F City of Newburyport, thence;

S 52°16'58" E a distance of 140.21' by land N/F City of Newburyport to land N/F Bailly, thence;
S 17°46'08" E a distance of 142.47' by land N/F Bailly to land N/F Soares, thence;
S 40°07'14" W a distance of 146.53' by land N/F Soares and land N/F Koen to lot 37, thence;
N 14°03'02" E a distance of 125.94' by lot 37 to lot 36, thence;
N 26°35'46" W a distance of 141.04' by lot 36 to lot 35, thence;
N 51°49'21" W a distance of 132.67' by lot 35 to lot 34, thence;
N 84°50'09" W a distance of 125.67' by lot 34 to lot 33, thence;
S 77°49'24" W a distance of 109.95' by lot 33 to lot 31, thence;
N 15°33'20" W a distance of 71.89 by lot 31 to lot 30, thence;
N 18°17'20" W a distance of 98.49' by lot 30 to lot 29, thence;
N 34°49'19" W a distance of 98.43' by lot 29 to lot 28, thence;
N 42°37'44" W a distance of 88.94' by lot 28 to lot 27, thence;
N 32°51'28" W a distance of 88.52' by lot 27 to lot 26, thence;
N 32°56'37" W a distance of 93.79' by lot 26 to lot 25, thence;
N 61°35'20" W a distance of 130.27' by lot 25, thence;
S 46°52'35" W a distance of 76.25' by lot 25 to Duffy Drive, thence;
N 45°48'05" W a distance of 18.32' by Duffy Drive, thence;
By Duffy Drive with a curve turning to the right with an arc length of 156.62', with a radius of 105.00', thence;
N 39°39'49" E a distance of 29.11' by Duffy Drive, thence;
N 39°39'49" E a distance of 104.06' by Duffy Drive, thence;
By Duffy Drive with a curve turning to the left with an arc length of 58.18', with a radius of 170.00', thence;
N 20°03'16" E a distance of 17.18' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 22.93', with a radius of 15.00' to the point of beginning;

Having an area of 77,410 square feet, 1.777 acres.

Open Space Parcel 3

Beginning at a point on the sideline of Duffy Drive opposite the tee from Boyd Drive as shown on Plan Book 464 Plan 53, thence;

S 38°44'07" W a distance of 136.66' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 178.63', with a radius of 105.00', thence;

N 43°47'26" W a distance of 41.11' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 181.78', with a radius of 105.00', thence;

N 55°24'01" E a distance of 34.08' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the left with an arc length of 50.15', with a radius of 220.00', thence;

N 42°20'22" E a distance of 102.19' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 168.44', with a radius of 105.00', thence;

S 45°44'50" E a distance of 11.61' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 154.82', with a radius of 105.00', thence;

S 38°44'07" W a distance of 74.64' to the point of beginning.

Having an area of 88,941 sf, 2.042 acres.

EXHIBIT B

Reduced Copy of Plan of Premises (see attached)

For official full size plan see South Essex Registry of Deeds Plan Book 464 Page 53

52
466 (6/2018)

PLAN BOOK NO. PLAN 5
 TITLE: PORT PLACE
 DATE: 2/16/18
 DRAWN BY: J. BOGARD
 CHECKED BY: J. BOGARD
 REGISTERED PROFESSIONAL ENGINEER
 MASS. REG. NO. 10111

RESERVED FOR REGISTER USE ONLY

NOTES

THE PURPOSE OF THIS PLAN IS TO SHOW THE PRELIMINARY LOT LAYOUT FOR A DEFINITIVE SUBDIVISION OFF BOYD DRIVE AND LAUREL ROAD IN NEWBURYPORT, MASSACHUSETTS. IT IS THE RESULT OF AERIAL MAPPING PERFORMED IN 2013 BASED ON 2013 PLANTS AS SHOWN BY AN ACTUAL ON THE GROUND SURVEY PERFORMED BETWEEN NOVEMBER 2013 AND SEPTEMBER 2014 AND ROADWAY AND LOT LAYOUT BY DESIGN CONSULTANTS, INC. IN SEPTEMBER 2016.

OWNERSHIP INFORMATION USED IN THE PREPARATION OF THIS PLAN WAS OBTAINED FROM THE CLIENT AND THE CITY OF NEWBURYPORT ASSESSOR'S OFFICE IN NOVEMBER 2016.

ALL PLUM AND DEED REFERENCES REFER TO THE SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS.

UTILITIES SHOWN HEREON ARE BASED ON RECORD PLANS OBTAINED FROM THE RESPECTIVE UTILITY OWNERS WHEREAS ARE BASED ON ACTUAL FIELD MEASUREMENTS.

THE LOCUS PROPERTY IS LOCATED IN ZONE X AREA OF MINIMAL FLOODING, AS GRAPHICALLY SHOWN ON FEMA FLOOD INSURANCE RATE MAP (FIRM) 25000C0018 WITH AN EFFECTIVE DATE OF 07/24/2012. THE FLOOD ZONE DETERMINATION WAS MADE BY GRAPHIC PLOTTING ONLY AND NO FIELD SURVEYING WAS COMPLETED TO MAKE THIS DETERMINATION.

SEE COVER SHEET FOR LIST OF WARNERS REQUIRED.

I CERTIFY THAT THE SURVEY PERFORMED TO PREPARE THIS PLAN CONFORMED TO THE PROCEDURAL AND TECHNICAL STANDARDS FOR AN ON-THE-GROUND CASUALTY SURVEY IN ACCORDANCE WITH COMMONWEALTH OF MASSACHUSETTS 250 CMR SECTION 8.01 AND THAT THE CERTIFICATION SHOWN HEREON IS INTENDED TO MEET REQUIREMENTS OF DEED REQUIREMENTS AND IS NOT A CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN.

I CERTIFY THAT THIS PLAN WAS PREPARED IN CONFORMANCE WITH THE RULES FOR RECORDS ADOPTED BY THE REGISTER OF DEEDS.

FILE # 2/16/18

EVERETT J. CHAMBERLAIN, P.L.L.C.
 MASS REGISTRATION NO. 47383

LOCAL TITLE INFORMATION

18 BOYD DRIVE, "EVERGREEN COMMONS"

OWNER: EGM LLC

DEED REFERENCE: BOOK 29288 PAGE 376

ASSESSORS: MAP 110 PARCEL 30

5 BROWN AVENUE

OWNER: HOWARD J. HALL

DEED REFERENCE: BOOK 23708 PAGE 306

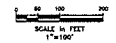
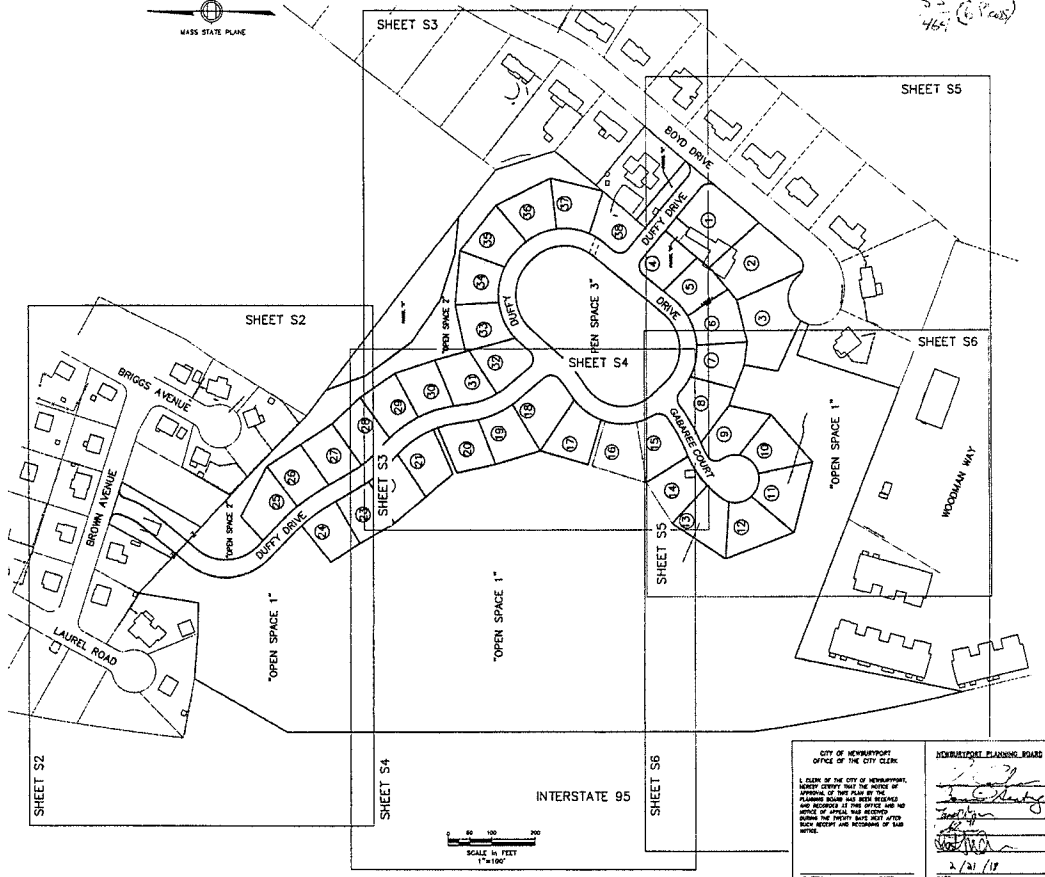
ASSESSORS: MAP 111 PARCEL 117

Copyright 2017 Winter GEC, LLC
 Copyright 2017 Design Consultants, Inc. DC PROJ. NO. 2018-063

Design Consultants, Inc.
 Consulting Engineers and Surveyors

130 WOODLEY AVENUE
 NEWBURYPORT, MA 01850
 978-778-3300

69 PLEASANT STREET
 NEWBURYPORT, MA 01850
 978-354-7112



CITY OF NEWBURYPORT
 OFFICE OF THE CITY CLERK

NEWBURYPORT PLANNING BOARD

I, CLERK OF THE CITY OF NEWBURYPORT, HAVE REVIEWED THIS PLAN BY APPROVING OF THIS PLAN BY SIGNING HEREON AND HAVE RECORDED AND RECORDED IN THIS OFFICE AND NO OTHER RECORDS OF THIS PLAN HAVE BEEN RECORDED IN THIS OFFICE. THE CITY OF NEWBURYPORT HAS RECEIVED AND RECEIVES THE RECORDS AND RECORDS OF THIS PLAN.

CLERK: _____ DATE: 2/16/18

Winter GEC, LLC
 34 WINTER STREET
 NEWBURYPORT, MA 01850
 978-270-8626

NO.	DATE	BY	REVISIONS
1	1/16/18	JCB	CONSERVATION COMMISSION PLANS
2	1/16/18	JCB	CHANGES PER REVIEW COMMENTS
3	2/16/18	JCB	REVIEW COMMENTS

FIELD: JCB
 CALC: JCB
 CHECKED: JCB
 APPROVED: JCB

LOT LAYOUT KEY PLAN

PORT PLACE
 18 BOYD DRIVE & 5 BROWN AVENUE

PLAN OF LAND IN
 NEWBURYPORT, MASSACHUSETTS
 SURVEYED FOR
 EVERGREEN COMMONS, LLC

PROJECT NO. 18001
 DATE: MAY 22, 2017

SHEET NO. **S1**
 1 OF 8

EXHIBIT C - Open Space Conservation Restriction Plan
L0 OM plan 4-14-21 RENDERED

EXHIBIT D – Operations and Maintenance Plan (see attached)

	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 & CULTIVATED
	NE Wetmix, 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	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, maintenance 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
	Wildlife, flood storage, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Visual
USE	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 Recreation	Visual enjoyment Recreation Group & family activities

NOTE MAINTAIN TRANSITIONAL MEADOW AREA AT SAME TIME AS POLLINATOR MEADOW. NOTE IN ALL AREAS MOW AROUND SHRUBS AND TREES. REVISED 4-16-21

