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February 27, 2018

Via Electronic Mail and
Hand Delivery

Bonnie Sontag, Chair
Planning Board
City of Newburyport
60 Pleasant Street
Newburyport MA 01950

RE: Evergreen Commons / Approval of Covenant

Dear Chair and Members of the Board;

Reference is made to the above captioned matter. In that connection, this letter shall serve as a request that the Board review and approve the security for the lot releases under the Subdivision Regulations and the Definitive Plan Decisions. I have attached a proposed covenant for that purpose. Please let me know if this is acceptable to the Board and following same, I will undertake to have it executed by the proper parties prior to your final execution.

I thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Lisa L. Mead', written in a cursive style.

Lisa L. Mead

cc: Client

Millis Office

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

COVENANT

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS the undersigned owns Lots 4 – 38 and the road noted thereon of the property upon which the “Plan” which was submitted with an application, dated May 23, 2017 to the Newburyport Planning Board (“Board”) for approval of a Definitive Plan of a certain subdivision bearing the name of Port Place Subdivision for Evergreen Commons LLC and Section XIV ‘OSRD’ Plan in Newburyport, Massachusetts”, plan dated June 2, 2017, and revised through January 9, 2018 and drawn by Design Consultants, Inc. (“Plan”) and has requested that the Board approve such plan and accept a Covenant securing same in accordance with Section 5.8 of the City of Newburyport Planning Board Rules and Regulations.

NOW THEREFORE, FOR THE CONSIDERATION of the Board’s approval of said Plan without requiring a performance bond, and in consideration of one dollar in hand paid, receipt of which is hereby acknowledged, the undersigned covenants and agrees with the City of Newburyport as follows:

1. The undersigned is the owner in fee simple absolute of Lots 4 – 38 and the road which is in said subdivision (“the Property”) and there are no mortgages of record or otherwise on any of the Property except for those described below and the present holders of said mortgages have assented to this Covenant prior to the execution by the undersigned. It is agreed that any subsequent mortgages shall be subordinate to this Covenant.
2. This Covenant shall only apply to Lots 4 – 38 of the Subdivision and shall in no way apply to the Open Space and Conservation Parcels or to Parcel “A”.
3. The undersigned will not sell any of Lots 4 – 38 until the construction of ways and the installation of municipal services necessary to adequately serve such lot have been completed in the manner specified in:
 - a. Application for Approval of a Definitive Plan for Port Place Subdivision for Evergreen Commons LLC for Hamilton Estates, dated May 23, 2017;
 - b. The Subdivision Control Law and the Planning Board's Rules and Regulations governing this subdivision;
 - c. The Definitive Subdivision Plan Approval for Port Place Subdivision for Evergreen Commons LLC (the “Approval”) and conditions of approval specified therein issued by the Planning Board on January 30, 2018 and filed with the City Clerk on January 30, 2018, a copy of which is annexed hereto as Exhibit A and recorded herewith;
 - d. The Plan as qualified by the Approval;

- e. The Open Space Residential Development Special Permit for 18 Boyd Drive and 5 Brown Avenue on March 15, 2017 and filed with the City Clerk on March 15, 2017, a copy of which is annexed hereto as Exhibit B and recorded herewith;

It is understood and agreed that lots 4 – 38 with the subdivision shall, respectively, be released from the foregoing conditions upon the recording of a certificate of performance executed by a majority of the Board and enumerating the specific lot so released.

4. This Covenant shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned, and shall constitute a covenant running with the land included in the subdivision and shall operate as restrictions upon said land.
5. The undersigned agrees that this contract shall be binding upon his/her heirs, executors, and administrators and particularly upon any grantees of the undersigned.
6. Nothing herein shall be deemed to prohibit a conveyance by a single deed subject to this Covenant of either the entire parcel of land shown on the Plan or of all lots not previously released by the Planning Board. Nothing herein shall prohibit the sale of Lot 5.
7. The undersigned agrees to record this Covenant with the Essex South Registry of Deeds forthwith. Reference to this Covenant shall be entered upon the definitive plan as approved.
8. Upon final completion of the construction of all ways and the installation of all municipal services as specified herein, on or before thirty-six (36) months from the date that the Plan is endorsed by the Planning Board, and as evidenced by a majority vote of the Planning Board, the Planning Board shall release this Covenant by an appropriate instrument, duly acknowledged. Failure to complete construction and installation within the time specified herein or such later date as may be specified by vote of the Planning Board with a written concurrence of the applicant shall result in automatic rescission of the approval of the Plan.
9. This Covenant shall take effect upon the endorsement of approval of the Plan by the Planning Board.
10. A deed of any part of the subdivision in violation of the Covenant shall be voidable by the grantee prior to the release of the Covenant, but not later than three (3) years from the date of such deed, as provided in G.L. c. 41, §81U.
11. There are no mortgages of record or otherwise on any of the land in the aforesaid subdivision except as described below, and the present holders of said mortgages have assented to this contract prior to its execution by the undersigned.

Mortgages: Lowell Five, 30 International Place, Tewksbury, MA
_____.

It is the intention of the undersigned, and it is hereby understood and agreed, that this contract shall constitute a covenant running with the land. Lots within the subdivision shall respectively be released from the foregoing conditions hereof upon the recording of a certificate of performance executed by a majority of said Planning Board which certificate shall enumerate the lots so released.

For title to the Property, see deed dated _____, recorded with said Registry in Book _____, Page _____.

IN WITNESS WHEREOF, the undersigned, applicant as aforesaid, does hereunto set his/her hand and seal this the _____ day of _____, 2018.

Evergreen Commons, LLC

THE COMMONWEALTH OF MASSACHUSETTS

Essex, ss. _____, 2018

Then personally appeared before me, _____, and proved to me through satisfactory evidence of identification, which is/was _____, to be the person whose name is signed hereinbefore, and acknowledged to me that he/she has signed herein voluntarily for its stated purpose and as the free act and deed of _____ before me:

Notary Public
My Commission Expires: _____

Assent by Mortgagee

The present holder of a mortgage upon the Property is Lowell Five of 30 International Place, Tewksbury, MA. The mortgage is dated March 6, 2018, and recorded with said Registry in Book _____, Page _____. By its signature below, the mortgagee agrees to hold the aforesaid mortgage subject to the covenants set forth herein and agrees that the covenants shall have the same status, force and effect as though executed and recorded

before the taking of the mortgages and further agrees that the mortgage shall be subordinate to the herein covenant.

Lowell Five

By:
Its:

Acceptance by Planning Board

We, the majority of the members of the Newburyport Planning Board, hereby accept and approve the foregoing Covenant.

City of Newburyport Planning Board
By Its Members

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared _____ and _____, proved to me through satisfactory evidence of identification, which was a driver's license, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared _____, _____, _____, _____ and _____, proved to me through satisfactory evidence of identification, which was a driver's license, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily as members of the Planning Board for its stated purpose.

Notary Public:
My Commission Expires