



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 and agreed to subordinate their interests in this Property to the 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 or otherwise convey any of Lots 4 – 38 until all drainage systems, including but not limited to, retention and detention basins, shall be installed, water mains and water services to lot lines shall be installed, rough and finished grading shall be at proper grades and first of base course of bituminous concrete shall be installed, for the phase within which the Lot is located, in the manner specified in:
 - a. Application for Approval of a Definitive Plan for Port Place Subdivision for Evergreen Commons LLC for Evergreen Commons at Port Place, dated May 23, 2017;

Bay Drive Newburyport

- 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; and
- f. Special Permit Findings and Decision, Water Resource Protection District, for 18 Boyd Drive and 5 Brown Avenue issued on January 30, 2018, a copy of which is annexed hereto as Exhibit C. and recorded herewith.

Notwithstanding the foregoing, the undersigned may erect or place any permanent building on any such lot in any phase at the time there is physical access to the lot.

- 4. It is understood and agreed that lots 4 – 38 within 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.
- 5. 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.
- 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.
- 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

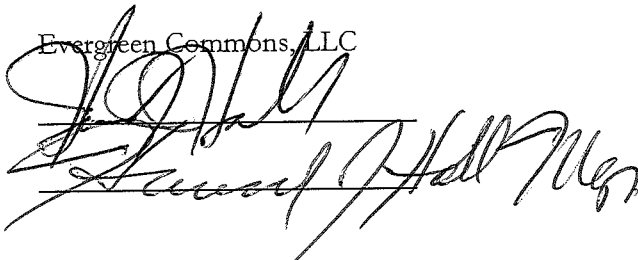
vote of the Planning Board with a written concurrence of the applicant shall result in automatic rescission of the approval of the Plan.

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.

For title to the Property, see deed dated MARCH 6, 2018, recorded with said Registry in Book 36573, Pages 88 AND 92. See Also plan at Plan Book 464 p. 53

IN WITNESS WHEREOF, the undersigned, applicant as aforesaid, does hereunto set his/her hand and seal this the 6TH day of MARCH, 2018.

Evergreen Commons, LLC



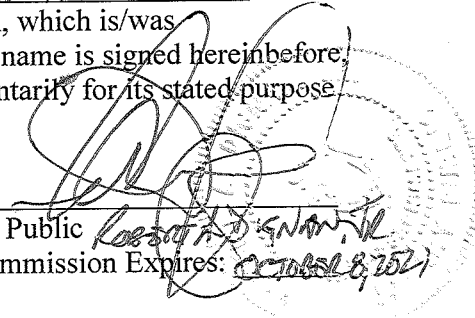
THE COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

MARCH 6, 2018

Then personally appeared before me, Hanna Tomlinson Hall, and proved to me through satisfactory evidence of identification, which is/was MAINE DRIVER'S LICENSE, 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 Evergreen Commons before me:


Notary Public Robert A. Dignan, Jr.
My Commission Expires: OCTOBER 8, 2021

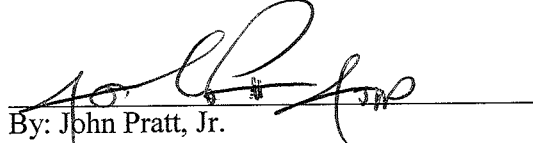


Assent by Mortgagee

The present holder of a mortgage upon the Property is The Lowell Five Cent Savings Bank of 30 International Place, Tewksbury, MA. The mortgage is dated March 6, 2018, and recorded with said Registry in Book 836573, Page 174 and 836573 P 182. 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.

The Lowell Five Cent Savings Bank


By: Donald A. Bedard
Its: Executive Vice President


By: John Pratt, Jr.
Its: Senior Vice President

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

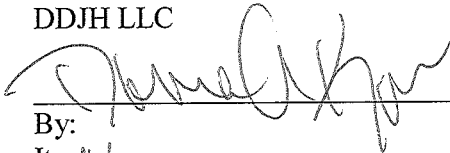
On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared _____ and _____, proved to me through satisfactory evidence of identification, which was a driver's license, to be the persons whose name is signed on the preceding or attached document, and acknowledged to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

Notary Public:
My Commission Expires

Assent by Mortgagee

The present holder of a mortgage upon the Property is DDJH LLC, a Massachusetts Limited Liability Company with an address of 16 Boyd Dr. Newburyport MA, 01950. The mortgage is dated March 6, 2018, and recorded with said Registry in Book 36573, Page 202. 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.

DDJH LLC



By:

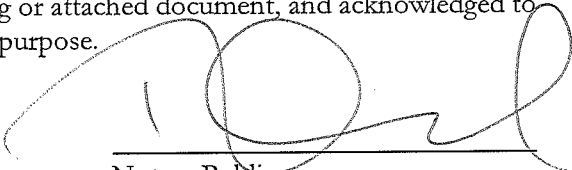
Its:

Manager
DONNA KUEN

COMMONWEALTH OF MASSACHUSETTS

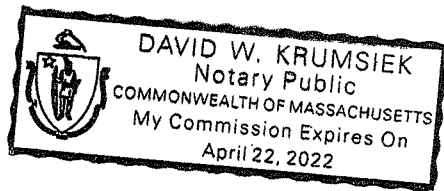
Essex, ss.

On this 6th day of March, 2018, before me, the undersigned notary public, personally appeared Donna A. Kuen 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



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

[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
[Signature]
[Signature]

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 21 day of March, 2018, before me, the undersigned notary public, personally appeared Bonnie Smiley, Leah McCasera, Doreen Walters, Andrew Shapiro, M. Verde, Tania Hartford and Anne Gardner, 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.

[Signature]

Notary Public:

My Commission Expires 6-22-2018

