

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Legislative and Legal Affairs Committee

Date: September 17, 2018

Time: 6:30 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Agenda Items to be addressed:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 SEP 11 A 10:58

1. 08-27-2018 – **Order No. 18-1007363:** Communication from the Mayor regarding Home Rule Petition-Liquor License.
-Refer to Legislative and Legal Affairs Committee
2. 08-27-2018 – **Order No. 18-1007369:** Communication from City Solicitor, Donald Rider, regarding Benchmark's Deed of Ten Acres to the City of Marlborough.
-Refer to Legislative and Legal Affairs Committee
3. 08-27-2018 – **Order No. 16/17/18-1006443D-2:** Communication from Assistant City Solicitor, Cynthia Panagore Griffin, regarding Apex Center - Revised Open Space Plan & Revised Open Space Covenant and Restriction.
-Refer to Legislative and Legal Affairs Committee

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.



IN CITY COUNCIL

Marlborough, Mass., AUGUST 27, 2018

ORDERED:

That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

An act authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises.

SECTION 1. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Marlborough may grant 2 additional licenses for the sale of all alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138. A license granted pursuant to this act shall be subject to the conditions set by the said licensing authority and shall be subject to all of said chapter 138 except said section 17.

(b) The licensing authority of the said city shall not approve the transfer of a license granted pursuant to this act to any other person, partnership, corporation, limited liability company, organization or other entity or to any other location.

(c) If a license granted pursuant to this act is cancelled, revoked, or no longer in use at the location of original issuance, the license shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority of the said city and the said licensing authority may then grant the license to a new applicant at the same location under the same conditions as authorized in this act if the applicant files with the said licensing authority a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

SECTION 2. This act shall take effect upon its passage.

Be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE.**

ADOPTED

ORDER NO. 18-1007363



City of Marlborough

Office of the Mayor

20
Arthur G. Vigeant
MAYOR

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

Nicholas J. Milano
EXECUTIVE AIDE

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

2018 AUG 23 A 11:24

Patricia Bernard
EXECUTIVE SECRETARY

August 23, 2018

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Home Rule Petition – Liquor License

Honorable President Clancy and Councilors:

In December 2017, I submitted a home rule petition that would provide the City of Marlborough with two additional off-premises liquor licenses. After City Council approval in April 2018, it was filed by Representative Danielle Gregoire. Since then, the Legislature has held hearings on the home rule petition but has also made several changes to the original petition.

Due to the scope of the changes, the home rule petition must be resubmitted to City Council for approval. The major changes are:

- The Legislature reduced the number of additional off premises licenses from two to one
- The Legislature required that the petition identify Kennedy's Market on Maple Street by name. It is still the Licensing Board's decision whether to grant the licenses
- The Legislature required a two-year window by which Kennedy's Market may apply for the license. If the license is not granted within two years, the license will no longer be available in Marlborough

The original petition said that once a liquor license was issued to a company at a certain address, it could only be used at that address, even if the business closed. The Legislature has kept this provision in the home rule petition. In other words, this license is only available to businesses at this exact location on Maple Street.

As I noted in my original letter to you, the Licensing Board and I agree that Kennedy's Market is a good candidate for an off premises license, if they further develop their market.

I request your support of this home rule petition. The Legislature will not act on it any further until it is approved by the City Council. If you have any questions, please do not hesitate to contact me.

Sincerely,

Arthur Vigeant
Mayor

ORDERED:

That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

An Act authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises.

SECTION 1. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Marlborough may grant 1 additional license for the sale of all alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138 to Kennedy's Irish Pub Inc. d/b/a Kennedy's Market located at 247 Maple Street in the city of Marlborough. The license shall be subject to all of said chapter 138 except said section 17.

(b) The licensing authority shall not approve the transfer of the license granted pursuant to this act to any other location, but it may grant the license to a new applicant at the same location if the applicant files with the licensing authority a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

(c) If the license granted pursuant to this act is cancelled, revoked, or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority, which may then grant the license to a new applicant at the same location under the same conditions as specified in this act.

(d) The license granted pursuant to this act shall be issued within 2 years after the effective date of this act; provided, however, that if the license is originally granted within that time period, it may be granted to a new applicant pursuant to subsection (b) or (c) anytime thereafter.

SECTION 2. This act shall take effect upon its passage.

ADOPTED

In City Council
Order No. 18-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY

ATTEST:



IN CITY COUNCIL

Marlborough, Mass., APRIL 2, 2018

ORDERED:

That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

An act authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises.

SECTION 1.

- (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Marlborough may grant 2 additional licenses for the sale of all alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138. A license granted pursuant to this act shall be subject to the conditions set by the said licensing authority and shall be subject to all of said chapter 138 except said section 17.
- (b) The licensing authority of the said city shall not approve the transfer of a license granted pursuant to this act to any other person, partnership, corporation, limited liability company, organization or other entity or to any other location.
- (c) If a license granted pursuant to this act is cancelled, revoked, or no longer in use at the location of original issuance, the license shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority of the said city and the said licensing authority may then grant the license to a new applicant at the same location under the same conditions as authorized in this act if the applicant files with the said licensing authority a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

SECTION 2. This act shall take effect upon its passage.

Be and is herewith **APPROVED**.

ADOPTED

In City Council

Order No. 17/18-1007113B

Approved by Mayor

Arthur G. Vigeant

Date: April 6, 2018

A TRUE COPY

ATTEST:


City Clerk

HOUSE No. 4621

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 18, 2018.

The committee on Consumer Protection and Professional Licensure to whom was referred the joint petition (accompanied by bill, House, No. 4442) of Danielle W. Gregoire, James B. Eldridge and Carmine Gentile (with the approval of the mayor and city council) relative to authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises, reports recommending that the accompanying bill (House, No. 4621) ought to pass [Local Approval Received].

For the committee,

TACKEY CHAN.

HOUSE No. 4621

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the
2 licensing authority of the city of Marlborough may grant 1 additional license for the sale of all
3 alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138 to
4 Kennedy’s Irish Pub Inc. d/b/a Kennedy’s Market located at 247 Maple Street in the city of
5 Marlborough. The license shall be subject to all of said chapter 138 except said section 17.

6 (b) The licensing authority shall not approve the transfer of the license granted pursuant
7 to this act to any other location, but it may grant the license to a new applicant at the same
8 location if the applicant files with the licensing authority a letter from the department of revenue
9 and a letter from the department of unemployment assistance indicating that the license is in
10 good standing with those departments and that all applicable taxes, fees and contributions have
11 been paid.

12 (c) If the license granted pursuant to this act is cancelled, revoked, or no longer in use, it
13 shall be returned physically, with all of the legal rights, privileges and restrictions pertaining

14 thereto, to the licensing authority, which may then grant the license to a new applicant at the
15 same location under the same conditions as specified in this act. .

16 (d) The license granted pursuant to this act shall be issued within 2 years after the
17 effective date of this act; provided, however, that if the license is originally granted within that
18 time period, it may be granted to a new applicant pursuant to subsection (b) or (c) anytime
19 thereafter.

20 SECTION 2. This act shall take effect upon its passage.



IN CITY COUNCIL

Marlborough, Mass., AUGUST 27, 2018

ORDERED:

That having authorized the Mayor, pursuant to Order No. 17-1007003A-1, to convey to BSL Marlborough Development LLC ("Benchmark") the City's fee interest in a so-called Sewer Parcel concerning property located at 421 Bolton Street in Marlborough;

And having by that Order made that conveyance subject to, among other things, Benchmark's conveyance to the City of approximately 10 acres at the site, which acreage comprises the "Donated Land" described in condition no. 8 of the special permit granted to Benchmark in Order No. 17-1006816E;

NOW, THEREFORE, the City Council of the City of Marlborough hereby accepts Benchmark's executed and recorded deed of the Donated Land to the City for all municipal purposes. A copy of Benchmark's executed deed, as recorded, is attached hereto.

Be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE.**

ADOPTED

ORDER NO. 18-1007369

3 D

Record and return to:

Alan J. Schlesinger
Schlesinger and Buchbinder, LLP
1200 Walnut Street
Newton, MA 02461



Bk: 71472 Pg: 28 Doc: DEED
Page: 1 of 3 08/15/2018 10:16 AM

This space reserved for Recorder's use only

QUITCLAIM DEED

BSL MARLBOROUGH DEVELOPMENT LLC, a Massachusetts limited liability company with an address of 201 Jones Road, Third Floor West, Waltham, Massachusetts 02451 ("Grantor"), for good and valuable consideration paid of less than **ONE HUNDRED and 00/100 DOLLARS (\$100.00)**, grants to **THE CITY OF MARLBOROUGH**, a municipal corporation with a usual place of business at 140 Main Street, Marlborough, Massachusetts 01752 ("Grantee"), **WITH QUITCLAIM COVENANTS**,

That certain parcel of land in Marlborough, Massachusetts, shown as Lot 2 on a "Plan of Land BSL Marlborough Development LLC 421 Bolton Street" by Control Point Associates dated March 22, 2018, last revised June 4, 2018, recorded as Plan No. 470 of 2018. Said parcel of land is granted for all municipal purposes.

Grantor entity is not classified as a corporation for federal income tax purposes for the current taxable year.

Being a portion of the premises conveyed to Grantor in that certain deed from Richard C. Cochrane and Jill E. Cochrane dated August 3, 2018 recorded herewith.

[SIGNATURE PAGE FOLLOWS]

Please return to: Natalie E. Robb
Fidelity National Title Ins. Co.
133 Federal Street, 3rd Floor
Boston, MA 02110 15-0148

Property address: Land off of Bolton Street and Poirier Drive, Marlborough, Massachusetts

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed effective as of the 14th day of August, 2018.

BSL MARLBOROUGH
DEVELOPMENT LLC,
a Massachusetts limited liability company

By: Sarah J. Laffey
Name: Sarah J. Laffey
Title: VP and Assistant Secretary

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 8th day of August, 2018, before me, the undersigned notary public, Sarah Laffey, Manager of BSL Marlborough Development LLC, personally appeared, proved to me through satisfactory evidence of identification, which was Drivers License, 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 the voluntary act of BSL Marlborough Development LLC.

Linda Marrone
Notary Public

Printed Name: Linda marrone

My Commission Expires: 127 | 2023



LINDA P MARRONE
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
January 27, 2023

[Seal]

ACCEPTED this 14th day of AUGUST, 2018.

CITY OF MARLBOROUGH

By: [Signature]
Name: Arthur G. Vigeant
Title: Mayor, City of Marlborough

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

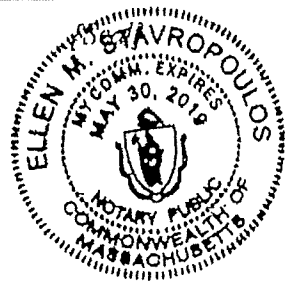
On this 9th day of August, 2018, before me, the undersigned notary public, Arthur G. Vigeant, in his capacity as Mayor of the City of Marlborough, personally appeared, proved to me through satisfactory evidence of identification, which was Personal Knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as the voluntary act of the City of Marlborough.

[Signature]

Notary Public

Printed Name: Ellen M. Stavropoulos

My Commission Expires: May 30, 2019



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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 AUG 17 P 1:43



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
PARALEGAL

August 17, 2018

Edward J. Clancy
President
Marlborough City Council

RE: Benchmark's Deed of Ten Acres to the City of Marlborough

Dear President Clancy and Members:

You will recall having approved last September an order (Order No. 17-1007003A-1) that, among other actions, authorized the Mayor to convey to BSL Marlborough Development LLC ("Benchmark") the City's fee interest in a so-called Sewer Parcel concerning property located at 421 Bolton Street. In turn, that Order made that conveyance subject to, among other things, Benchmark's conveyance to the City of approximately 10 acres at the site. That acreage comprises the "Donated Land" described in condition no. 8 of the special permit granted to Benchmark last September (Order No. 17-1006816E).

Earlier this week, the closing on the property at 421 Bolton Street took place. As a part of that closing, Benchmark executed the deed conveying the Donated Land to the City. A copy of Benchmark's recorded deed is enclosed for your reference. Also enclosed for your consideration and approval is a proposed order accepting the executed and recorded deed for all municipal purposes.

Please let me know if you have any questions or concerns on the above. Thank you for your attention to this matter.

Very truly yours,

Donald V. Rider, Jr.
City Solicitor

Enclosure

cc: Mayor
DPW Commissioner

ORDERED:

Having authorized the Mayor, pursuant to Order No. 17-1007003A-1, to convey to BSL Marlborough Development LLC ("Benchmark") the City's fee interest in a so-called Sewer Parcel concerning property located at 421 Bolton Street in Marlborough;

And having by that Order made that conveyance subject to, among other things, Benchmark's conveyance to the City of approximately 10 acres at the site, which acreage comprises the "Donated Land" described in condition no. 8 of the special permit granted to Benchmark in Order No. 17-1006816E;

NOW, THEREFORE, the City Council of the City of Marlborough hereby accepts Benchmark's executed and recorded deed of the Donated Land to the City for all municipal purposes. A copy of Benchmark's executed deed, as recorded, is attached hereto.

ADOPTED
In City Council
Order No. 18-100

Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

3 D

Record and return to:

Alan J. Schlesinger
Schlesinger and Buchbinder, LLP
1200 Walnut Street
Newton, MA 02461



2018 00124288
Bk: 71472 Pg: 28 Doc: DEED
Page: 1 of 3 08/15/2018 10:18 AM

This space reserved for Recorder's use only

QUITCLAIM DEED

BSL MARLBOROUGH DEVELOPMENT LLC, a Massachusetts limited liability company with an address of 201 Jones Road, Third Floor West, Waltham, Massachusetts 02451 ("Grantor"), for good and valuable consideration paid of less than **ONE HUNDRED and 00/100 DOLLARS (\$100.00)**, grants to **THE CITY OF MARLBOROUGH**, a municipal corporation with a usual place of business at 140 Main Street, Marlborough, Massachusetts 01752 ("Grantee"), **WITH QUITCLAIM COVENANTS**,

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Being a portion of the premises conveyed to Grantor in that certain deed from Richard C. Cochrane and Jill E. Cochrane dated August 3, 2018 recorded herewith.

[SIGNATURE PAGE FOLLOWS]

Please return to: Natalie E. Robb
Fidelity National Title Ins. Co.
133 Federal Street, 3rd Floor
Boston, MA 02110 15-0148

Property address: Land off of Bolton Street and Poirier Drive, Marlborough, Massachusetts

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed effective as of the 14th day of August, 2018.

**BSL MARLBOROUGH
DEVELOPMENT LLC,**
a Massachusetts limited liability company

By: Sarah J. Laffey
Name: Sarah J. Laffey
Title: VP and Assistant Secretary

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 8th day of August, 2018, before me, the undersigned notary public, Sarah Laffey, Manager of BSL Marlborough Development LLC, personally appeared, proved to me through satisfactory evidence of identification, which was Drivers License, 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 the voluntary act of BSL Marlborough Development LLC.

Linda Marrone
Notary Public

Printed Name: Linda marrone

My Commission Expires: 1/27/2023



LINDA P MARRONE
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
January 27, 2023

[Seal]

ACCEPTED this 14th day of August, 2018.

CITY OF MARLBOROUGH

By: *Arthur G. Vigeant*
Name: Arthur G. Vigeant
Title: Mayor, City of Marlborough

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

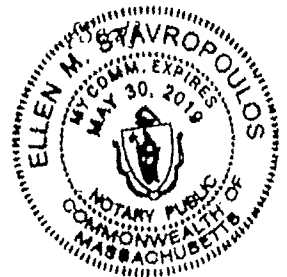
On this 9th day of August, 2018, before me, the undersigned notary public, Arthur G. Vigeant, in his capacity as Mayor of the City of Marlborough, personally appeared, proved to me through satisfactory evidence of identification, which was Personal Knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as the voluntary act of the City of Marlborough.

Ellen M. Stavropoulos

Notary Public

Printed Name: *Ellen M. Stavropoulos*

My Commission Expires: *May 30, 2019*





IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

ORDERED:

PAGE 1

That the following Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Apex Center – Revised Open Space Plan & Revised Open Space Covenant and Restriction, be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE.**

ADOPTED

ORDER NO. 16/17/18-1006443D-2



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 2

ORDERED:

OPEN SPACE COVENANT AND RESTRICTION

This OPEN SPACE COVENANT AND RESTRICTION (hereinafter, the “Covenant”) is entered into this ____ day of _____ 2018 by Walker Realty LLC, a Massachusetts limited liability corporation with a usual address of 4 Lan Drive, Westford, MA 01886 and Marlboro Hospitality, LLC, a Massachusetts limited liability company with a usual address of 4 Lan Drive, Westford, MA 01886, their respective successors as fee owners of the hereinafter described Restricted Land (hereinafter, collectively, the “Covenanting Party”) with the City of Marlborough, a municipal corporation with an address of 140 Main Street, Marlborough, MA 01752 (hereinafter, the “Benefitted Party”).

Reference is made to the following facts which set forth the background to this Covenant:

- A. The Covenanting Party is the fee owner of certain property located off Boston Post Road West, Marlborough, Massachusetts known as Lots 11, 12, and 13A as shown on a plan entitled “Subdivision Plan of Land in Marlborough, Massachusetts” prepared by VHB Inc., dated May 4, 2017, revised through June 14, 2017 and recorded at Middlesex County South Registry of Deeds at Plan Book 2017, Plan 574, (the “Property”), said Restricted Land being a portion thereof.
- B. Pursuant to Section 650-35 of the City of Marlborough Zoning Ordinance, the Property is located within the Hospitality and Mixed Use Overlay District (hereinafter, the “HRMUOD”).
- C. Pursuant to the provisions of Section 650-35 of the City of Marlborough Zoning Ordinance, the Marlborough City Council approved a Development Agreement, which is recorded with the Middlesex South Registry of Deeds in Book 68164, Page 152, for the development of the Property as permitted in the HRMUOD.
- D. Pursuant to paragraph 20 of said Development Agreement, the Covenanting Party is required as a condition of site plan approval to grant to the Benefitted Party a perpetual easement for an additional non-disturbance area to be left as undevelopable Open Space (hereinafter, the “Restricted Land”) at the Property (hereinafter, the “Covenant Requirement”).



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 3

ORDERED:

- E. In connection with site plan approval, pursuant to the Development Agreement the Covenating Party desires to restrict 638,500 square feet or 14.6 acres of land, more or less, more particularly described on the plan entitled "Open Space Exhibit, For: Apex Center, 240 Boston Post Road W, Marlborough, MA," dated 3/21/8 and designated as Exhibit A attached hereto and incorporated herein as the Restricted Land consisting of open space left substantially in its natural state as undevelopable open space in accordance with the terms of this Covenant and in fulfillment of the Covenant Requirement.

NOW THEREFORE for good and valuable consideration, which is acknowledged, the undersigned hereby COVENANTS with the City of Marlborough, acting by and through its Mayor, duly authorized by the Marlborough City Council, as follows:

I. COVENATING PARTY:

Walker Realty LLC, a Massachusetts limited liability corporation, and Marlborough Hospitality LLC, are the fee owners of the Restricted Land.

II. PURPOSES:

The purposes of this Open Space Covenant and Restriction (hereinafter, this "Covenant") are for the perpetual conservation and preservation of open space, passive recreation, to assure that the Restricted Land will be retained, in perpetuity, in its natural, scenic, wetlands and wooded condition.

III. PROHIBITED AND PERMITTED ACTS AND USES:

- A. Prohibited Acts and Uses: Subject to the exceptions set forth hereinafter, the Covenating Party will not perform or permit the following acts and uses which are expressly prohibited on, above, and below the Restricted Land:



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 4

ORDERED:

1. Constructing or placing any buildings, constructing or placing parking, roadways or walkways or other structures or pads from asphalt, stone, synthetic or concrete or other materials, fences, signs, billboards or other advertising displays, antennas, utility poles, towers, cabinets, telecommunications equipment of any kind, conduits, lines or other temporary or permanent structures, facilities or accessory uses whatsoever, including portions thereof, on, below, or above the Restricted Land;
2. Mining, excavating, dredging or removing from the Restricted Land soil, loam, peat, gravel, sand, rock or other mineral resources or natural deposits;
3. Placing, filling, storing or dumping on the Restricted Land of soil, refuse, trash, vehicle bodies or parts, rubbish, chemicals, debris, junk, waste or other objects, substances or materials whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
5. The stockpiling and composting of stumps, trees, shrubs, grasses, brush limbs or similar materials and snow;
6. Any uses or acts which would impair or be detrimental to the public walking trail easements recorded with the Middlesex County South Registry of Deeds in Book 70162, Page 310 and Book 70162, Page 318, and to the sewer easement, recorded with the Middlesex County South Registry of Deeds in Book 70162, Page 327;
7. Activities detrimental to drainage, flood control, water conservation, wildlife habitat, erosion control or soil conservation;
8. Hunting, trapping and fishing;
9. Any other use of the Restricted Land or activity adverse to conservation or which would materially impair the character of the land as open space left substantially in its natural state, unless necessary for protection of the land as such land left substantially in its natural state; and
10. Use of motorized vehicles including but not limited to trucks, cars, all-terrain vehicles, dirt bikes, motorcycles, campers, trailers and snowmobiles.



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 5

ORDERED:

B. Exceptions to Otherwise Prohibited Acts and Uses: Notwithstanding anything to the contrary contained in Paragraph A. above, the following acts and uses are permitted:

1. The maintenance and modification of vegetation, excavation, dredging, removal of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposits on the Restricted Land for conservation, habitat management or scientific purposes;
2. Construction, reconstruction, modification, inspection, maintenance, repair and use of easements of record, drainage facilities, wastewater facilities and other utilities and rights of way, if any, to service the Property, of which the Restricted Land is a part, and/or to service any other land outside of the Property which is Benefitted by these appurtenances, together with any and all rights and easements of record necessary and desirable to effectuate the foregoing;
3. Drainage from adjoining land;
4. The erection and maintenance of signs identifying ownership of the Restricted Land, its status as land subject to an Open Space Covenant and Restriction, the restrictions on the use of the Restricted Land, the identity of areas of interest, natural features or other characteristics of the Restricted Land, and the aforementioned public walking trail easements recorded with the Middlesex County South Registry of Deeds;
5. With the prior approval of the Tree Warden of the City of Marlborough, the removal of hazardous, downed, dead or dying trees or tree limbs, although some deadfall may remain as den trees and to otherwise support wildlife; the de minimus cutting and removal of shrubs and other vegetation, the planting of native trees, shrubs and other vegetation, and the removal of debris or trash for normal maintenance of the Restricted Land in a natural condition and to prevent threat of injury or damage to persons or property;
6. Measures designed to restore native biotioc communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare and or endangered species including selective planting of native trees, shrubs and plant species, and removal of non-native and invasive plant species;
7. The placing of fences and benches that do not interfere with the purposes of this Covenant;



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 6

ORDERED:

8. Trapping to control nuisance wildlife species pursuant to M.G.L. c. 131, § 80A;
9. The maintenance, removal or replacement of utilities, underground structures, good drainage, soil conservation or to other permissible uses of the Restricted Land;
10. On the aforementioned public walking trails only, the use of the Restricted Land by the public for passive recreational activities such as walking, snowshoeing, biking, cross-country skiing, nature study, bird watching, and the like;
11. The repair, maintenance, and reconstruction of the walking trails and the sewer easement, and appurtenances thereto, in conformance with the recorded walking trail easements and sewer easement, recorded at the Middlesex County South Registry of Deeds as provided herein, including but not limited to upgrading the surface of the walking trails, and as reasonably necessary such fences, bridges, gates, and stone walls, if any, as may be located on the Restricted Land; and
12. Motorized vehicles necessary for public safety (e.g., fire, police, ambulance and other government officials) in carrying out their lawful duties or as necessary in furtherance of any use permitted under this Section III (B).

IV. MAINTENANCE AND STEWARDSHIP OF THE RESTRICTED LAND

The Benefitted Party, its agents and assigns, may enter upon the Restricted Land at reasonable times and with reasonable advanced written notice to monitor the Covenanting Party's compliance with this Covenant and to otherwise enforce the terms thereof, provided, however, that the Benefitted Party shall provide reasonable notice of entry to the Covenanting Party.

V. MISCELLANEOUS

- A. The burdens of this Covenant shall run with the Restricted Land in perpetuity and shall be enforceable against the Covenanting Party and the successors and assigns of the Covenanting Party holding any interest in the Restricted Land, provided however, Covenanting Party and each successive owner of the Restricted Land (or portion(s) thereof) shall be liable only for those matters arising during the respective party's ownership of the Restricted Land (or portion(s) thereof) and only to the extent of its ownership of the Restricted Land (or portion(s) thereof). Nothing contained in this Covenant shall be construed to entitle the Benefitted Party to bring any action against the Covenanting Party for any injury or change in the Restricted Land resulting from causes beyond the Covenanting Party's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Covenanting Party under emergencies, conditions to abate, prevent or mitigate significant injury to the Restricted Land from such causes.



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 7

ORDERED:

- B. The rights hereby granted shall include the right to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations. The Covenanting Party covenants and agrees to reimburse the Benefitted Party all reasonable costs and expenses (including reasonable attorney's fees) incurred in enforcing this Covenant or in taking reasonable measures to remedy, correct, or abate any violation thereof, provided that a violation of this Covenant is acknowledge by the Covenanting Party to have occurred or determined by a court of competent jurisdiction to have occurred.
- C. Any election by the Benefitted Party as to the manner and timing of its right to enforce this covenant and restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be waiver of such rights.
- D. This Covenant may be amended to permit additional uses permitted within open space land in the City of Marlborough by the recording of an instrument executed by the Covenanting Party and the Benefitted Party, with approval of the Marlborough City Council and the Mayor of the City of Marlborough.
- E. This Covenanting Party and the Benefitted Party, on their own behalf and on behalf of their successors and assigns, agree and represent as follows: (i) pursuant to M.G.L. c. 184, § 23, the foregoing Covenant is a gift for the public purpose of preservation of land in its natural state with rights of public access thereto as provided in the above-referenced walking trail easements; and (ii) pursuant to M.G.L. c. 184, § 26, the foregoing Covenant is a restriction held by a governmental body, which shall be duly recorded and indexed in the grantor index on the registry of deeds or registered in the registry of deeds in the registry district of the land court for the county or district wherein the land lies so as to affect its title, and which describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries. Accordingly, the foregoing Covenant shall remain in effect in perpetuity, and shall not be subject to the limitation on the period of a covenant of unlimited duration set forth in M.G.L. c 184, § 23 on the periods of its enforceability set forth in M.G.L. c. 184, § 27.



IN CITY COUNCIL

Marlborough, Mass., _____ AUGUST 27, 2018

PAGE 8

ORDERED:

- F. The Benefitted Party is authorized to record or file notices or instruments, if any, appropriate to assuring the perpetual enforceability of this Covenant. Without limiting any of the foregoing, the Covenanting Party its successors and assigns agree to execute any such reasonable instruments within a commercially reasonable period of time after written request of the Benefitted Party.
- G. The foregoing is not intended to constitute a conservation restriction under M.G.L. c. 184, §§ 31 and 32.
- H. The foregoing Covenant is not intended to be a disposition of land or easement and is not intended to be subject to the provisions of Article 97 of the Constitution of the Commonwealth. Further, by acceptance hereof, the Benefitted Party hereby specifically contractually agrees with the Covenanting Party, in consideration for the grant of this Covenant, to retain the right to release or modify the terms of this Covenant without being subject to the provisions of Article 97 of the Constitution of the Commonwealth.
- I. By Order of the Marlborough City Council, attached hereto as Exhibit B, this Covenant has been approved, and the gift thereof accepted, by the Marlborough City Council in accordance with paragraph 20 of the Development Agreement, which paragraph concerns the recording of a perpetual easement for an additional non-disturbance area at the Property to be left as undevelopable Open Space.
- J. This Covenant shall be and is binding upon the grantee's or successors in title to the Covenanting Party, which agrees to incorporate by reference the terms of this Open Space Covenant and Restriction in any deed or other legal instrument by which it divests itself of any interest in all or any portion of the Restricted Land, it being the express intention and understanding and agreement that this covenant shall constitute a covenant running with the land. Without limitation, the Covenanting Party, on its own behalf and on behalf of its successors and assigns, waives and relinquishes any right to assert that the Covenant does not constitute a gift to a governmental body for a public purpose.

The Marlborough City Council shall be the Benefitted Party under this Covenant until the City Council transfers, if at all, said status as Benefitted Party to the Conservation Commission of the City of Marlborough, after which the Conservation Commission shall be the Benefitted Party under this Covenant until the City Council transfers said status as Benefitted Party under this Covenant, if at all, to itself or to another department, board or commission of the City of Marlborough.



IN CITY COUNCIL

Marlborough, Mass., AUGUST 27, 2018

PAGE 10

ORDERED:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Arthur G. Vigeant, proved to me through satisfactory evidence of identification, which was _____ (source of identification) to be the person whose name is signed on the preceding/attached document in his official capacity as the Mayor of the City of Marlborough, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires

EXHIBIT A



IN CITY COUNCIL

Marlborough, Mass., AUGUST 27, 2018

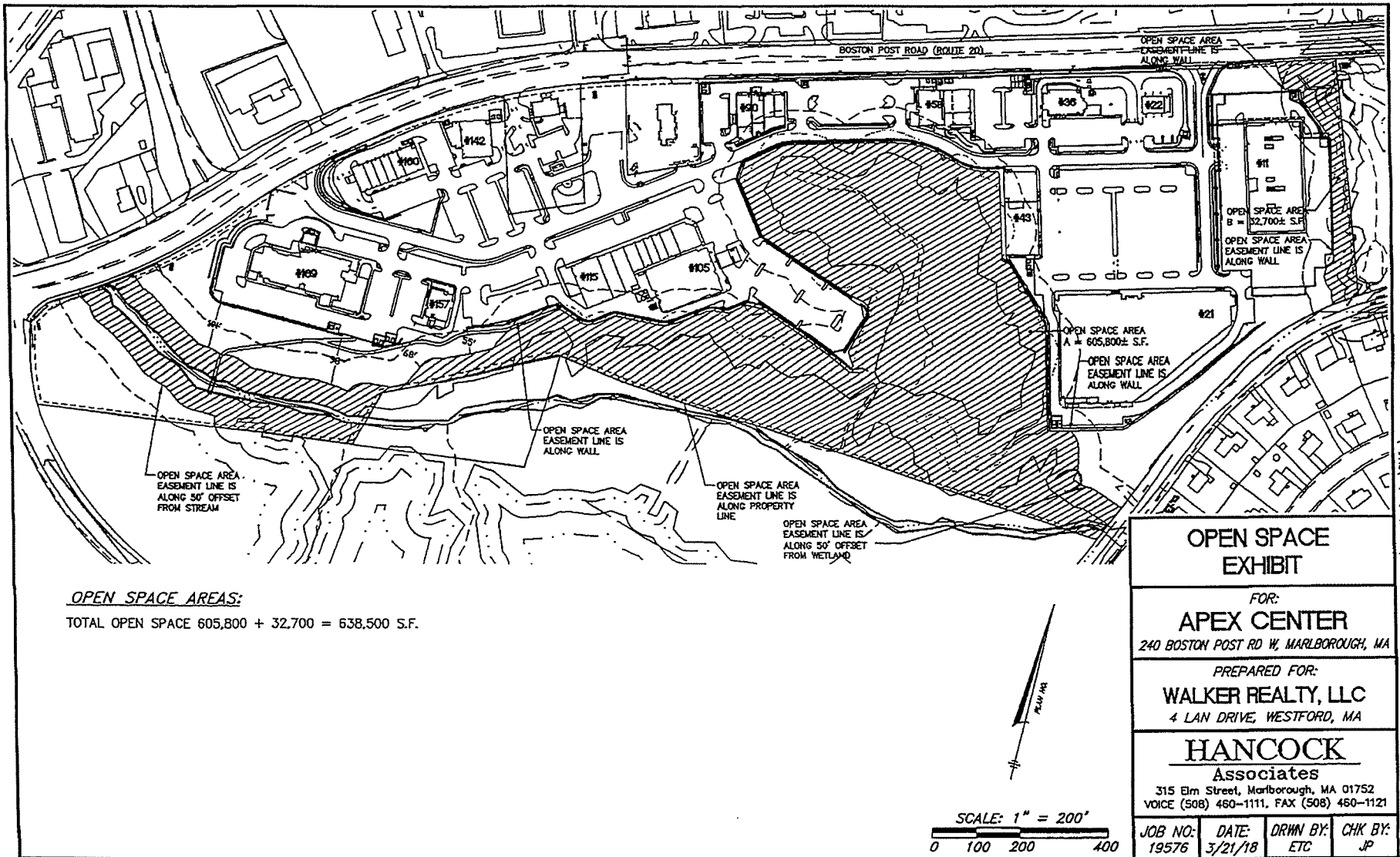
PAGE 11

ORDERED:

EXHIBIT B

ADOPTED

ORDER NO. 16/17/18-1006443D-2



OPEN SPACE EXHIBIT			
FOR:			
APEX CENTER			
240 BOSTON POST RD W, MARLBOROUGH, MA			
PREPARED FOR:			
WALKER REALTY, LLC			
4 LAN DRIVE, WESTFORD, MA			
HANCOCK Associates			
315 Elm Street, Marlborough, MA 01752			
VOICE (508) 460-1111. FAX (508) 460-1121			
JOB NO:	DATE:	DRWN BY:	CHK BY:
19576	3/21/18	ETC	JP

PATH: W:\V\1\19576\19576-Ryan-Boston Feil Re-Submittal Production Drawings\046.dwg