

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Legislative and Legal Affairs Committee

Date: March 4, 2019

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

2019 FEB 14 A 11:47

1. 01-28-2019 – **Order No. 16/17/18/19-1006443D-5:** the City of Marlborough does hereby approve, and accept the gift thereof, the Open Space Covenant and Restriction for the perpetual conservation and preservation of open space, passive recreation, and assurance that the subject land will be retained in perpetuity in its natural, scenic, wetlands and wooded conditions in accordance with the terms of said Open Space Covenant and Restriction, concerning that certain land designated and labeled as “Open Space” on a plan entitled “Open Space Exhibit, for Apex Center, 240 Boston Post Road West, Marlborough, MA, Marlborough, Massachusetts, Prepared for Walker Realty, LLC, 4 Lan Drive, Westford, MA, Scale 1" = 200”, dated March 21, 2018, prepared by Hancock Associates, 315 Elm Street, Marlborough, MA 01752”, said Plan to be recorded as Exhibit A to the Open Space Covenant and Restriction, and this Order to be recorded as Exhibit B to the Open Space Covenant and Restriction, with the Middlesex County South Registry of Deeds.
-Refer to Legislative and Legal Affairs Committee
2. 02-11-2019 – **Order No. 19-1007547:** Communication from the Mayor, regarding Amendment to Senior Citizen Property Tax Work Off Program, to increase number of allowed participants.
-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., _____ JANUARY 28, 2019

ORDERED:

That the City of Marlborough does hereby approve, and accept the gift thereof, the Open Space Covenant and Restriction for the perpetual conservation and preservation of open space, passive recreation, and assurance that the subject land will be retained in perpetuity in its natural, scenic, wetlands and wooded conditions in accordance with the terms of said Open Space Covenant and Restriction, concerning that certain land designated and labeled as "Open Space" on a plan entitled "Open Space Exhibit, for Apex Center, 240 Boston Post Road West, Marlborough, MA, Marlborough, Massachusetts, Prepared for Walker Realty, LLC, 4 Lan Drive, Westford, MA, Scale 1' = 200", dated March 21, 2018, prepared by Hancock Associates, 315 Elm Street, Marlborough, MA 01752", said Plan to be recorded as Exhibit A to the Open Space Covenant and Restriction, and this Order to be recorded as Exhibit B to the Open Space Covenant and Restriction, with the Middlesex County South Registry of Deeds, be and is herewith refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE.**

ADOPTED

ORDER NO. 16/17/18/19-1006443D-5

WALKER REALTY LLC

15
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 JAN -9 A 8:25

January 8, 2019

Councilor Edward Clancy, President Marlborough City Council
City Hall
Marlborough, MA 01752

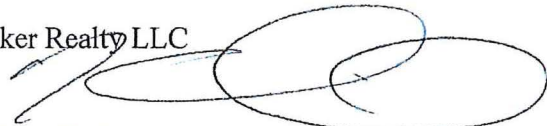
Re: Apex Center- Open Space Covenant

Dear Councilor Clancy and Councilors:

In accordance with paragraph 20 of that certain Development Agreement dated July 25, 2016 (hereinafter the "Development Agreement") by and between Walker Realty LLC (hereinafter the "Applicant") and the City of Marlborough, attached please find the proposed Open Space Covenant (hereinafter the "Covenant") along with a proposed Order to Approve the Open Space Covenant. A previous version of the Covenant was approved as to form by the City Council on or around October 25, 2018. That version of the Covenant contained language prohibiting snow storage within the Open Space area. At the time that language was added, the Applicant objected to its inclusion based upon the following grounds: 1) the Applicant was preparing a snow management plan in consultation with the Conservation Commission and this plan would govern snow storage for the entire project, therefore obviating the need for the snow storage prohibition in the Covenant; 2) the snow management/snow storage plan proposed to the Conservation Commission conflicted with, or potentially conflicted with, the final Open Space area, thereby creating a contradiction between the two documents; and 3) the Development Agreement contemplated that the Open Space area would be an area protected from future development and disturbance. Snow storage is neither development nor disturbance and accordingly, the prohibition was apparently beyond the intended scope of the Covenant. The purpose of this filing is to remove the prohibition of snow storage from the proposed Covenant. In addition, in reviewing the previously approved Covenant form, the Applicant noted that the Covenant was missing a required party. Namely, 11 Apex LLC is the fee owner of certain land subject to the Covenant and must be made a party to the same. For ease of reference, the Applicant is submitting both a clean version of the revised Covenant as well as a redlined version showing the changes from the previously approved Covenant form. Thank you for your attention to this matter. Please do not hesitate to contact me directly with any questions.

Very truly yours,

Walker Realty LLC



Kevin S. Eriksen, Esq.

ORDERED:

That the City of Marlborough does hereby approve, and accept the gift thereof, the Open Space Covenant and Restriction for the perpetual conservation and preservation of open space, passive recreation, and assurance that the subject land will be retained in perpetuity in its natural, scenic, wetlands and wooded conditions in accordance with the terms of said Open Space Covenant and Restriction, concerning that certain land designated and labeled as "Open Space" on a plan entitled "Open Space Exhibit, for Apex Center, 240 Boston Post Road West, Marlborough, MA, Marlborough, Massachusetts, Prepared for Walker Realty, LLC, 4 Lan Drive, Westford, MA, Scale 1' = 200", dated March 21, 2018, prepared by Hancock Associates, 315 Elm Street, Marlborough, MA 01752", said Plan to be recorded as Exhibit A to the Open Space Covenant and Restriction, and this Order to be recorded as Exhibit B to the Open Space Covenant and Restriction, with the Middlesex County South Registry of Deeds.

ADOPTED

In City Council

Order No. 16/17/18-1006443WW

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:

OPEN SPACE COVENANT AND RESTRICTION

This OPEN SPACE COVENANT AND RESTRICTION (hereinafter, the "Covenant") is entered into this ____ day of _____ 2019 by Walker Realty LLC, a Massachusetts limited liability corporation with a usual address of 4 Lan Drive, Westford, MA 01886, Marlboro Hospitality, LLC, a Massachusetts limited liability company with a usual address of 4 Lan Drive, Westford, MA 01886, and 11 Apex, 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").
- E. In connection with site plan approval, pursuant to the Development Agreement the Covenanting 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 3/21/18 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. COVENANTING PARTY:

Walker Realty LLC, a Massachusetts limited liability company, Marlborough Hospitality LLC, a Massachusetts limited liability company and 11 Apex LLC, a Massachusetts limited liability company, 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, and 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 Covenanting Party will not perform or permit the following acts and uses which are expressly prohibited on, above, and below the Restricted Land:

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;
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.

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 biotic 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;
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 stonewalls, 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.

- 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 acknowledged 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 a 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.
- 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.

- K. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

- L. The Covenanting Party and the Benefitted Party intend that the covenants and restrictions arising hereunder take effect on the day and year this Restriction is recorded in the official records of the Middlesex County South Registry of Deeds, after all signatures have been affixed hereto. This document and any exhibits thereto shall be recorded in a timely manner by the Benefitting Party, at its sole expense, upon execution by all parties.

Witness our hands and seals this ____ day of _____, 2019.

THE REST OF THIS PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.

FOR THE COVENANTING PARTY:

WALKER REALTY LLC

Robert Walker, Manager

FOR THE BENEFITTED PARTY:

THE CITY OF MARLBOROUGH
By and through its duly authorized Mayor:

Arthur G. Vigeant, Mayor
In his official capacity

MARLBOROUGH HOSPITALITY LLC

Robert Walker, Manager

11 APEX LLC

Robert Walker, Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Robert A. Walker, Manager, proved to me through satisfactory evidence of identification, which was Personal Knowledge to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

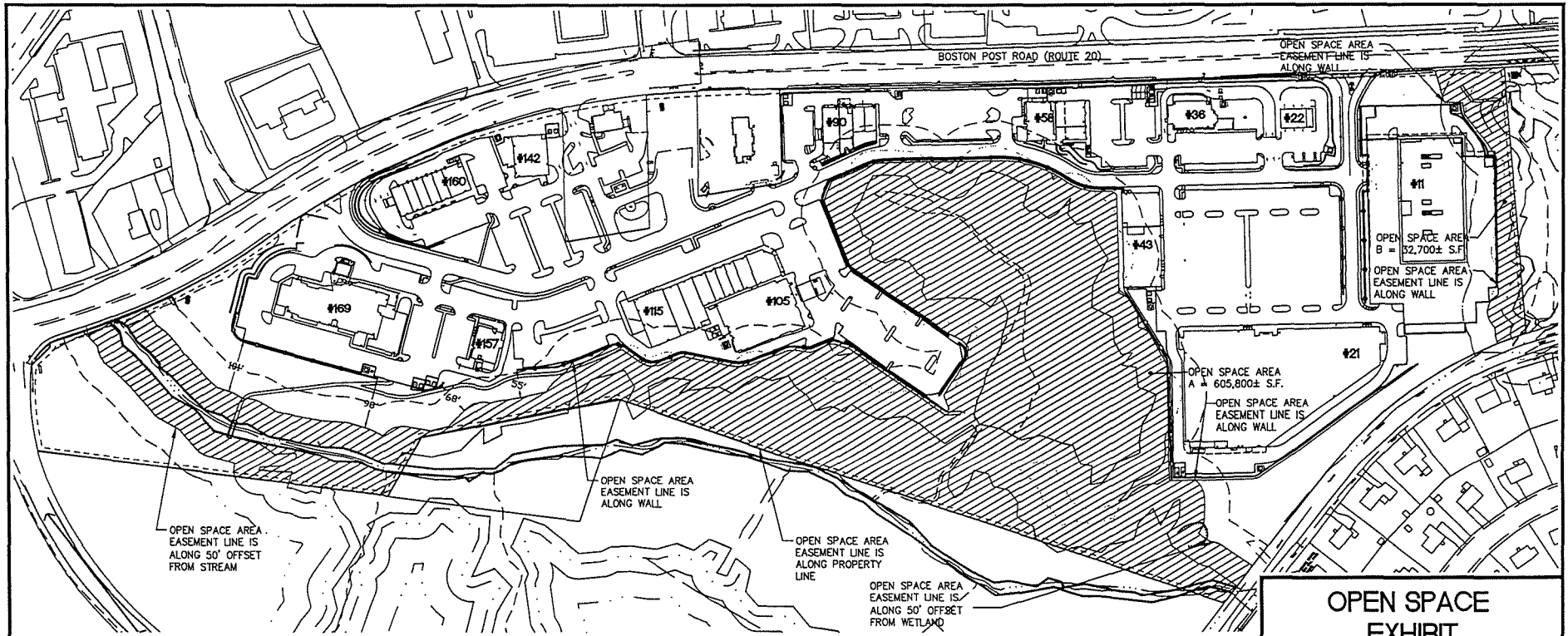
Middlesex, ss.

On this ____ day of _____, 2019, 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

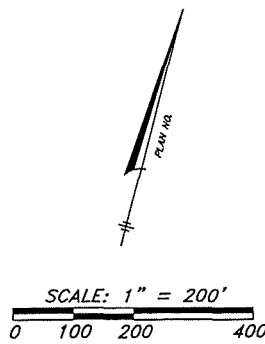
EXHIBIT A

EXHIBIT B



OPEN SPACE AREAS:

TOTAL OPEN SPACE 605,800 + 32,700 = 638,500 S.F.



| | | | |
|-------------------------------------------------------------------------------------------------------------------|------------------|-----------------|---------------|
| 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: 19576 | DATE: 3/21/18 | DRWN BY: ETC | CHK BY: JP |

PATH: H:\Work\19576\19576-Ryan-Boston Post Rd-Marlboro\Production Drawings\Bldgns

OPEN SPACE COVENANT AND RESTRICTION

This OPEN SPACE COVENANT AND RESTRICTION (hereinafter, the "Covenant") is entered into this ____ day of _____ 20198 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, and 11 Apex, 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").
- E. In connection with site plan approval, pursuant to the Development Agreement the Covenanting 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 3/21/18 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. COVENANTING PARTY:

Walker Realty LLC, a Massachusetts limited liability ~~company~~~~operation~~, and Marlborough Hospitality LLC, a Massachusetts limited liability company and 11 Apex LLC, a Massachusetts limited liability company, 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, and 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 Covenanting Party will not perform or permit the following acts and uses which are expressly prohibited on, above, and below the Restricted Land:

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.
- 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 biotic 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;
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 stonewalls, 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.

- 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 acknowledged 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 a 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.
- 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.

K. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

L. The Covenanting Party and the Benefitted Party intend that the covenants and restrictions arising hereunder take effect on the day and year this Restriction is recorded in the official records of the Middlesex County South Registry of Deeds, after all signatures have been affixed hereto. This document and any exhibits thereto shall be recorded in a timely manner by the Benefitting Party, at its sole expense, upon execution by all parties.

Witness our hands and seals this ____ day of _____, 20198.

THE REST OF THIS PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.

FOR THE COVENANTING PARTY:

FOR THE BENEFITTED PARTY:

WALKER REALTY LLC

THE CITY OF MARLBOROUGH
By and through its duly authorized Mayor:

Robert Walker, Manager

Arthur G. Vigeant, Mayor
In his official capacity

MARLBOROUGH HOSPITALITY LLC

Robert Walker, Manager

11 APEX LLC

Robert Walker, Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 20182019, before me, the undersigned notary public, personally appeared Robert A. Walker, Manager, proved to me through satisfactory evidence of identification, which was Personal Knowledge to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, ~~2018~~2019, 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

EXHIBIT B

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IN CITY COUNCIL

Marlborough, Mass., _____ FEBRUARY 11, 2019

ORDERED:

That the Amendment to Senior Citizen Property Tax Work Off Program, to increase number of allowed participants, be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE.**

ADOPTED

ORDER NO. 19-1007547
X 12-1004062A



City of Marlborough
Office of the Mayor

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

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Arthur G. Vigeant
MAYOR
Nicholas J. Milano
EXECUTIVE AIDE
Patricia Bernard
EXECUTIVE SECRETARY

February 7, 2019

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

Re: Senior Citizen Property Tax Work Off Program

LIV

Honorable President Clancy and Councilors:

Please find enclosed for your review an order to amend the City Council order that created the Senior Citizen Property Tax Work Off Program. This program has been a success in recent years, with numerous seniors taking advantage of the property tax credit by working in various City departments.

Due to its popularity and being beneficial both for our seniors and for City services, I am requesting that we increase the cap on the program from 25 positions to 30 positions. We may not use all 30 positions each fiscal year, but this would give us additional flexibility in case we have increased need and an increased number of interested residents.

Another change we are submitting is to replace the income requirements with the income requirements for the senior citizen circuit breaker tax credit, which is annually calculated by the Department of Revenue. This will allow the income limits to grow over time alongside inflation and will tie it to a metric that many senior citizens are already familiar with.

In addition, since sections K, L, and M of the original City Council Order have not been done consistently, I am requesting that we delete these sections as well. Any information the City Council would like about the program will be furnished upon request.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosures

ORDERED:

That the City Council of the City of Marlborough hereby amends City Council Order No. 12-1004062A, as follows:

1. By deleting provision f) in its entirety and inserting in place thereof the following:

The applicant seeking the reduction must have annual gross income, as calculated by the Department of Revenue, that qualifies for the senior circuit breaker tax credit in the calendar year prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligations.

2. By deleting provision i) in its entirety and inserting in place thereof the following:

If the number of eligible applicants for this program exceeds the number of available positions in a given fiscal year, a lottery shall be held to determine placement. From time to time, eligible applicants who possess unique skills or talents that would aid municipal operations may be placed in positions upon direct approval of the Mayor. The number of annual participants will not exceed 30 (fractional volunteers can be combined to equal one participant) without prior City Council approval.

3. By deleting provisions k), l) and m) in their entirety.

4. By re-numbering provision n) as provision k).

ADOPTED
In City Council
Order No. 19-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:



IN CITY COUNCIL

JULY 23, 2012

Marlborough, Mass., _____ PAGE 1

ORDERED:

Suspension of the rules requested – granted

THAT the City Council for the City of Marlborough hereby accepts the provisions of M.G.L. c. 59, § 5K, which authorizes the City to establish a program for persons over the age of sixty (60) to volunteer their services to the City in exchange for a reduction, not to exceed \$1,000.00 in a given tax year, in the real property tax obligations of such persons;

AND, FURTHER, THAT, pursuant to M.G.L. c. 59, § 5K, the City Council for the City of Marlborough hereby adopts the following provisions regarding the implementation of this program:

- a) The program is to begin in Fiscal Year (tax year) 2013;
- b) The individual applying to participate in the program must have attained the age of sixty (60) years prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligation;
- c) The applicant seeking the reduction must have resided in the City for at least five (5) consecutive calendar years prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligation;
- d) The property as to which the tax reduction is sought must be owned by, or serve as the primary residence of, the applicant seeking the reduction. Qualified rental properties must be owner-occupied;
- e) The property as to which the tax reduction is sought shall be eligible for only one (1) abatement per tax year, no matter how many individuals may be the record owners of that property;
- f) The applicant seeking the reduction must have an annual gross income less than \$52,000 if a single filer, less than \$65,000 if filing as Head of Household, or less than \$78,000 if filing married or jointly, for the calendar year prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligations;
- g) No individual is eligible to seek a reduction in his or her real property tax obligations if, for the tax year he or she would otherwise be eligible, he or she is employed by the City of Marlborough on either a full-time or part-time basis;
- h) All individuals will be required to disclose any potential or perceived conflicts of interest on their application, including but not limited to, residing in the same residence or household with a full or part-time City employee, and working for a business or entity that performs contractual services for the City;



IN CITY COUNCIL

JULY 23, 2012

Marlborough, Mass., _____ PAGE 2

ORDERED:

- i) If the number of eligible applicants for this program exceeds the number of available positions in a given fiscal year, a lottery shall be held to determine placement. From time to time, eligible applicants who possess unique skills or talents that would aid municipal operations may be placed in positions upon direct approval of the Mayor. The number of annual participants will not exceed 25 (fractional volunteers can be combined to equal one participant) without prior City Council approval;
- j) The Council on Aging, in cooperation with the Assessor's Office and the Personnel Department of the City, shall have the responsibility to maintain a record for each applicant participating in the program, including but not limited to records for the number of hours of service volunteered by each applicant and the total amount by which his or her real property tax obligation has been reduced on his or her tax bill. A copy of such records shall be provided to the applicant prior to the issuance of his or her actual tax bill;
- k) The Mayor's office will approve and authorize the placement of all program participants and the corresponding departments in which they are placed, and shall make such authorizations known to the City Council within 30 days of placement;
- l) Prior to the end of each fiscal year, the Mayor's office shall furnish an annual report and summary of this program to the City Council;
- m) During the annual Tax Classification process, the Mayor shall forward a request to the City Council to fund the program through the Overlay Account; and
- n) No provisions of this order shall be changed unless approved by the Mayor and City Council.

Yea: 11- Nay: 0

Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Oram & Robey

ADOPTED

In City Council

Order No. 12-1004062A

Approved by Mayor

Arthur G. Vigeant

Date: July 26, 2012

A TRUE COPY

ATTEST:

City Clerk

Senior Circuit Breaker Tax Credit

Certain seniors who own or rent residential property as their principal residence are eligible for a refundable tax credit. Find out if you qualify.

What to know

As a senior citizen, you may be eligible to claim a refundable credit on your personal state income tax return. The Circuit Breaker tax credit is based on the actual real estate taxes paid on the Massachusetts residential property you own or rent and occupy as your principal residence.

The maximum credit amount for tax year 2018 is \$1,100. If the credit you're owed exceeds the amount of the total tax payable for the year, you'll be refunded the additional amount of the credit without interest.

Visit: **[TIR 18-10: Annual Update of Real Estate Tax Credit for Certain Persons Age 65 and Older](#)**

Attend a **[Senior Circuit Breaker Credit information session](#)**.

Another great resource is the **[Senior Circuit Breaker Tax Credit Video Tutorial](#)**.

Who is eligible

- You must be a Massachusetts resident or part-year resident.
- You must be 65 or older by December 31.
- You must file a Massachusetts personal income tax return.
- You must own or rent residential property in Massachusetts and occupy it as your primary residence.
- For tax year 2018, your total Massachusetts income doesn't exceed:
 - \$58,000 for a single individual who is not the head of a household.
 - \$73,000 for a head of household.
 - \$88,000 for married couples filing a joint return.
- If you are a homeowner, your Massachusetts property tax payments, together with half of your water and sewer expense, must exceed 10% of your total Massachusetts income for the tax year.
- If you are a renter, 25% of your annual Massachusetts rent must exceed 10% of your total Massachusetts income for the tax year.