

April 6, 2018

Amy E. Kwesell
akwesell@k-plaw.com

Ms. Tanya J. Reynolds, Clerk
Housing Appeals Committee
100 Cambridge Street, 3rd Floor
Boston, MA 02114

Re: In the Matter of Sherborn Board of Appeals and
The Fields at Sherborn, LLC
Housing Appeals Committee Case No. 2016-04

Dear Ms. Reynolds:

Enclosed for filing in the above-referenced case, please find a Joint Motion for Decision on Stipulation, along with a Certificate of Service.

Very truly yours,



Amy E. Kwesell

AEK/smm

Enc.

cc: Town Administrator
Assistant Town Administrator
✓ Zoning Board of Appeals
Paul J. Haverty, Esq.

623561/SHRB/0007

CERTIFICATE OF SERVICE

I, Amy E. Kwesell, hereby certify that on the below date, I served a copy of the foregoing Joint Motion for Decision on Stipulation, by first-class mail, postage prepaid, to the following counsel of record:

Paul J. Haverty, Esq.
Blatman, Bobrowski & Haverty, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742

Date: April 24 2018

A E Kwesell
Amy E. Kwesell

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING APPEALS COMMITTEE

Docket No. 16-04

THE FIELDS AT SHERBORN, LLC,

Appellant,

v.

SHERBORN BOARD OF APPEALS,

Appellee

JOINT MOTION FOR DECISION ON STIPULATION

On or about February 13, 2015, The Fields at Sherborn, LLC (the “Applicant”) applied to the Sherborn Board of Appeals (the “Board”) for a comprehensive permit seeking approval for the construction of thirty-six (36) attached condominium units in ten (10) structures on property located between 247 and 257 Washington Street, Sherborn, Massachusetts (the “Property”). During the course of the public hearing, the Applicant agreed to reduce the number of units to thirty-two (32) units in nine (9) structures (the “Project”).

On or about May 5, 2016, the Board filed its decision with the Sherborn Town Clerk, approving the Project, with conditions. The Applicant appealed to the Housing Appeals Committee (the “Committee”), claiming that a number of the conditions were improper and/or rendered the Project uneconomic.

The Parties have not aggressively pursued the appeal pending before the Committee, as separate appeals to the Land Court (regarding approval of the septic

system for the Project under Title 5) and to the Division of Administrative Law Appeals (of the Superseding Order of Conditions issued by the Department of Environmental Protection) were also pending.

The Parties have engaged in extensive settlement discussions, which have now resulted in an agreement between the Applicant and the Board. In order to effectuate this settlement, on April __, 2018, the parties file this Joint Motion for Decision on Stipulation, and a Stipulation with a proposed revised Comprehensive Permit as an exhibit.

The Parties respectfully request that the Committee accept the proposed Stipulation, and issue a Decision on Stipulation and Entry of Judgment directing the Board to file such decision on Stipulation and Entry of Judgment with the Sherborn Town Clerk within thirty (30) days, and also providing that failure to file such decision on Stipulation and Entry of Judgment within thirty (30) days will result in the Committee's Decision on Stipulation being deemed to be the modified Comprehensive Permit pursuant to G. L. c. 40B, § 23 and 760 CMR 56.07(6)(a).

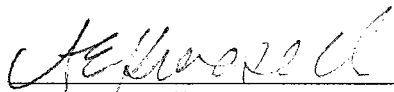
Respectfully submitted,

Appellant/Applicant
The Fields at Sherborn, LLC
By its attorneys,



Paul J. Haverty – BBO NO. 652359
Mark Bobrowski – BBO NO.
Christopher Alphen – BBO NO.
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Appellee
Sherborn Board of Appeals,
By its attorneys,

A handwritten signature in dark ink, appearing to read 'Amy Kwesell', is written over a horizontal line.

Amy Kwesell, BBO NO. 647182
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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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THE FIELDS AT SHERBORN, LLC,

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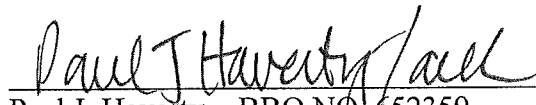
Appellee

STIPULATION

The parties hereby stipulate to the issuance of the comprehensive permit voted by the Sherborn Zoning Board of Appeals on April 5, 2018 to The Fields at Sherborn, LLC, and the filing of said permit with the Town Clerk of the Town of Sherborn. A copy of the Comprehensive Permit is attached hereto as Exhibit "A".

Respectfully submitted,

Appellant/Applicant
The Fields at Sherborn, LLC
By its attorneys,



Paul J. Haverty – BBO NO. 652359

Mark Bobrowski – BBO NO.

Christopher Alphen – BBO NO.

Blatman, Bobrowski & Haverty, LLC

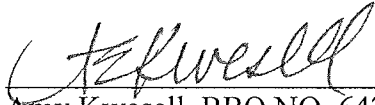
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Appellee
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**SHERBORN ZONING BOARD OF APPEALS
THE FIELDS AT SHERBORN
MODIFIED COMPREHENSIVE PERMIT**

I. THE PROJECT

- Property: The “Property” is located at 247A Washington Street (Route 16), Sherborn, Assessors Map 3, Lots 88B and 88C, and is shown on the Plan of Record.
- Plans of Record: Plans as revised and listed on the attached revised Exhibit A (also referred to as “Project Plans”, “Plan of Record” or “Modified Plan”). The Plan of Record indicates that the Property has a total area of 17.55 acres and is located in the Residential B Zoning District
- Owner: The Fields at Sherborn, LLC see Middlesex South District Registry of Deeds Book 65068, Page 314
- Applicant: The Fields at Sherborn, LLC
- Project Eligibility: On December 10, 2014, Massachusetts Housing Finance Agency (“MassHousing”) issued a project eligibility letter (“PEL”) to Trask, Inc. for 36 home ownership units under the New England Fund.
- Application: On February 13, 2015, The Fields at Sherborn, LLC (the “Applicant”) filed the Application for the Project with the Zoning Board of Appeals (the “ZBA” or the “Board”) and the Town Clerk. The term “Applicant” shall include the Applicant’s successors and assigns.
- Project: Subsequently, the Applicant modified the Application to 32 home ownership units.
- Public Hearing: The public hearing opened on March 12, 2015 and was continued on various dates. The public hearing closed on March 7, 2016.
The Applicant provided written extensions that extended the date to complete the public hearing through March 7, 2016, and to extend the time to render a decision to May 6, 2016.
- Board Members: Board member Alan B. Rubenstein attended all public hearing sessions, and members Paul Kerrissey and Ronald Steffek attended all public hearing sessions except for one, and filed the appropriate affidavits under G.L. c. 39, §23D. All three members attended all deliberative sessions of the Board. Associate member Richard S. Novak also attended all public hearing sessions but did not vote.
- Decision Date: On May 3, 2016, Board members Rubenstein, Kerrissey, and Steffek voted to: grant with conditions the Application, as set forth below.

The Applicant filed an initial pleading with the Housing Appeals Committee (HAC), appealing certain conditions set forth in the Permit, claiming that said conditions and waiver decisions render the project uneconomic, that said conditions and waiver decisions are inconsistent with local needs, and requesting that the HAC issue a comprehensive permit without the conditions and waiver decisions objected to by the Applicant. The Applicant also filed a notice of intent with the Sherborn Conservation Commission for the project; the notice of intent was denied by the Commission, and the Applicant appealed to the Department of Environmental Protection (DEP), and subsequently appealed to the Office of Administrative Dispute Resolution (OADR). The Applicant also filed an appeal of the Board of Health's denial of its application for a construction works disposal permit with the Land Court. On July 27, 2017, the Land Court annulled the Board of Health decision and ordered the issuance of the disposal works construction permit for the Project.

The HAC offers a mediation program for parties appearing before it, through the Massachusetts Office of Public Collaboration, and the Board and the Applicant agreed to engage in such mediation. A mediation session was held on August 15, 2016, at which representatives of the Board and the Applicant met with mediator Arthur Kreiger, in an attempt to resolve the issues in the HAC appeal. Following that meeting, representatives of the Board and Applicant have continued to discuss resolution of the pending dispute. As a result of these efforts, the Applicant and Board reached a settlement, which was filed with the Housing Appeals Committee with the request that the Housing Appeals Committee adopt this modified comprehensive permit as its decision in the pending appeal. The HAC approved the settlement, as a result of which, this modified comprehensive permit is issued.

II. JURISDICTIONAL REQUIREMENTS:

Under 760 CMR 56.04(1), to be eligible to submit an application to the Zoning Board of Appeals for a comprehensive permit, the Applicant and the Project shall satisfy the following requirements: (1) The Applicant shall be a public agency, a non-profit organization, or a limited dividend organization; (2) the Project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and (3) the Applicant shall control the Site. Pursuant to 760 CMR 56.04(1), compliance with these project eligibility requirements "shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant's qualifications in accordance with 760 CMR 56.04."

The December 10, 2014 Project Eligibility Letter from MassHousing under the Housing Starts Program and the NEF fulfills the requirement of 760 CMR 56.04(1).

III. FINDINGS OF FACT

1. All Town boards, commissions and departments were notified of the application and the public hearing. The ZBA received written comments from the Board of Health, Town Planner and the Conservation Commission. Members of these boards were in attendance from time to time throughout the public hearing and participated extensively together with numerous citizens and advisors to those citizens. The ZBA considered all of the comments and recommendations of the Town boards, commissions and departments and such citizens/advisors in rendering this Decision, and expresses its thanks for their valuable assistance throughout this process.
2. The ZBA retained Phil Paradis of BETA Group, Inc. for general civil engineering peer review, and its subcontractor Stephen W. Smith, P.E., P.HGW., L.S.P., of GeoHydroCycle, Inc. for hydrogeological peer review. As discussed in more detail below, the ZBA also received hydrogeological evidence and testimony from James H. Vernon, Ph.D, P.G., Senior Hydrogeologist at Nobis Engineering, Inc., and Scott Horsley, a hydrologist retained by certain neighbors and abutters to the Project.
3. The Project will occupy approximately six acres of a 17.55-acre parcel of land (Assessor Lots 88B and 88C) that is currently undeveloped and contains fields, forest and wetland areas. The Project will involve construction activity within the Natural Heritage and Endangered Species Program (NHESP) Priority and Estimated Mapped Habitat, and within the 100-foot buffer zone to Bordering Vegetated Wetlands.
4. The Property contains 17.55 acres, of which 10.66 are wetlands. The Property is located within an existing residential neighborhood, with preexisting single-family residential houses on all sides.
5. The Project consists of thirty-two single-family, attached residences in nine buildings as shown on the Project Plans. The Property is to remain a single lot subject to the provisions of the Massachusetts Condominium Law, M.G.L. c. 183A. The thirty-two residential units will be owned as condominium units.
6. The correct count of “bedrooms” shown on the Project Plans, and accordingly the correct project septic system design flows, for purposes of both 310 CMR 15.00 and the local Sherborn Board of Health Regulations (“BOH” Regulations”) was the subject of extensive discussion.
7. The units will be serviced by one on-site septic system. There will be two on site wells functioning as a public water system for the development. There will also be one irrigation well. See condition VI.A.1.
8. The Town of Sherborn does not have a public water supply or public sewerage system.
9. The geology of the Project Site and its vicinity is characterized by a sandy “overburden” layer of soils “probably at least 25’ deep” from the surface, followed by a bedrock layer consisting of “biotite granite of pre-Cambrian age.” Nobis Report, p. 4. Groundwater occurs in both fractured

bedrock and in the overburden, but the Project's proposed drinking water wells, and the wells of existing abutters and neighbors, are so-called "bedrock wells," meaning they pull water from the bedrock aquifer, and not from the overburden aquifer. The degree of hydraulic connectivity between the overburden and the bedrock is not known.

10. Under Title 5, no septic system serving new construction in areas where the use of both on-site septic systems and on-site drinking water wells "shall be designed to receive or shall receive more than 440 gallons per day, per acre, unless (i) an "aggregation plan" is proposed, through which the applicant places development restrictions on other "credit land" outside the project site itself, or (ii) an enhanced nitrogen removal system is proposed. See 310 CMR 15.214(2).

11. The Applicant contends that with a bedroom count of 76, its design flow falls just below the 440 gpd/acre limitation. The Applicant's calculation of the threshold assumes that the development parcel is 764,478 square feet. This is equivalent to 19.11 acres as defined by Title 5. This area yields a maximum design flow of 8,408.40 gallons per day pursuant to Title 5. If the design flow of the Project is calculated based upon 76 bedrooms, and all of the parcel is counted for the calculation, the Project would fall below the 8,408.40 gpd design flow cap under 310 CMR 15.214(2).

12. The Property includes bordering vegetated wetlands, bank, and their associated buffer zones, which are subject to protection under the Wetlands Protection Act and the Town's General Wetlands By-law. The Project borders a wetland system containing one certified vernal pool as well as vernal pool buffer.

13. The Project includes 84,245 square feet of activity within the 100 foot buffer zone to the wetlands, consisting of 55,576 square feet of permanent disturbance and 28,669 square feet of significant disturbance that the Conservation Commission deems permanent, but the Applicant deems temporary. Some of the work in the buffer zone will be as close as five feet to a resource area. More than 50% of the buffer zone bordering the wetlands adjacent to the project limit of work will be altered. The Applicant proposes the removal of 110 mature trees.

14. The Property drains to a Zone II associated with a public drinking water supply that services the neighboring town of Holliston.

15. The Property is entirely located within Priority Habitat of Rare Species and Estimated Habitat of Rare Wildlife as defined by the Massachusetts Natural Heritage and Endangered Species Program (NHESP). The Project limit of work is partially within an area mapped by NHESP as a BioMap2 Core Habitat, which identifies areas "most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems."

16. The Project proposes an overall increase of 2.2 acres of impervious surfaces, of which about 15,000-20,000 square feet is within the buffer zone, including buildings within 25 feet of the wetlands resources.

Additional findings of fact are contained below in Sections IV and V.

IV. BOARD ACTION RE: REQUESTED WAIVERS

A. Sherborn Wetlands Regulations

1. Section 10.1, quality of fill. The Applicant requested a waiver of the following:

The source of any fill will be made known in writing to a member of the Commission at least one week prior to placement at the site. All environmental reports and results of chemical testing of such fill will be filed with the Commission at this time. The Commission reserves the right to require specific additional chemical testing of fill by a third party, at the applicant's expense, prior to placement at the site.

The ZBA voted 3-0 to waive the requirement that the source of any fill be made known in writing to a member of the Commission at least one week prior to placement at the site, except with respect to “common fill”, a term which both the Board of Health and Applicant indicated was a familiar and usable term.

2. Section 3.4, 50 foot No Alter zone. The Applicant requested a waiver of the following:

It is presumed that significant adverse effects on the interests protected by the Sherborn By-Law result from any filling, dredging, building upon or other alteration within a resource area or within a minimum of 50 feet horizontally outward from the upland edge of a resource area, unless the applicant demonstrates by a preponderance of credible evidence that such significant adverse effect will not occur, and the Commission accepts and approves such evidence.

The Board voted 3-0 to adopt the recommendation of the Conservation Commission to waive Section 3.4 to the extent necessary for the Project, as set forth in the Modified Plan and subject to the conditions of this permit, including **Exhibit B**. It found, for the reasons stated by the Conservation Commission in its Denial of Order of Conditions and Findings of Fact dated November 17, 2015; the Memorandum from the Conservation Commission to the ZBA dated November 17, 2015; and the Commission’s memorandum to DEP dated January 12, 2016, that the local concerns of protecting the wetlands could not be mitigated by conditions, and that these local concerns outweighed the need for affordable housing. The Applicant and the Conservation Commission have since entered into an agreement for additional conditions and safeguards for the protection of the wetlands, dated March 15, 2018 and attached hereto as **Exhibit B**. As a condition of this comprehensive permit, the Applicant agrees to comply with the provisions of Exhibit B. The Board adopts the findings of the Conservation Commission in this regard.

Those local concerns include the fact that the resource areas on the Site are significant to protect the following interests: public and private water supplies, ground water, flood control, storm damage prevention, prevention of pollution, and wildlife habitat. The Commission found that the Project holds a high likelihood of altering the adjacent resource areas due to the extent, proximity, and proposed increase in grades and earthwork proposed within the buffer zone, particularly within the inner 50 feet of the buffer zone. The Project, due to the extensive

proposed alterations in the buffer zone within the inner 50 feet of the buffer zone, will have negative impacts on wildlife habitat, pollution attenuation, protection of ground water, and protection of the water supply. The Applicant presented no evidence to the contrary.

The Commission's memorandum to this Board dated November 17, 2015 explains that the proposed amount of construction and post-construction activities and the resulting land alterations in the buffer zone will cause significant adverse impacts to the adjacent resource area by decreasing the water quality and wildlife habitat benefits provided by the resource. The regulation, by providing a 50 foot no-disturb zone, provides additional protection for the wetlands resources beyond those found in the Wetlands Protection Act.

The Commission further noted the special characteristics of the site that make the functioning of the wetlands especially important, warranting greater protection:

1. With regard to ground and surface water quality:
 - The local residential reliance on private wells for drinking water and the quality and quantity of water in the town, the neighborhood and the intensity on the site
 - The property and some of its wetlands are in the protective area (Zone II Potable Water Supply Aquifer Area) of a municipal water supply for Holliston
 - The wetlands, including an intermittent stream, are part of the impaired Charles River watershed for which various protections and improvements are required (such as phosphorous reduction);
 - The project will have a large source of septic system effluent containing nitrates and other contaminants of currently unknown concentration that will have an adverse effect on water quality.
2. With regard to wildlife habitat:
 - The property contains important vernal pool habitat;
 - The Property is entirely located within Priority Habitat of Rare Species and Estimated Habitat of Rare Wildlife as defined by the Massachusetts Natural Heritage and Endangered Species Program (NHESP).
 - The property is part of a BioMap2 Core Habitat, which pertains "to exemplary natural communities and intact ecosystems";
 - The project site is part of a large contiguous habitat and the project will diminish habitat value by contributing to fragmentation and edge effects, both major threats to habitat.

B. Sherborn Board of Health Regulations, Sewage Disposal

1. Section 7.0, system size and design.

Voted 3-0 that there is no need for a waiver, this system will be a pressure dosing system.

2. Section 7.1, leaching area size. The Applicant requested a waiver of the following:

All single-family dwellings shall be designed for a minimum of three bedrooms.

Voted 3-0 that the provision cited above is no more stringent than state requirements under Title 5 and therefore no waiver is needed.

3. Section 7.1, leaching area size. The Applicant requested a waiver of the portion of the regulation defining bedrooms as any room above the first floor or that open directly to a bathroom.

Voted 3-0 to grant the waiver, with the following condition:

The units will be subject to deed restriction providing that owners will not use or convert closets, loft space, or laundry rooms on second floor as bedrooms.

4. Section 7.2.3 The Applicant requested waiver of requirement that septic system tanks shall be designed as if a garbage grinder were installed.

Voted 3-0 that there is no need for a waiver, based on the following conditions which the Applicant assented to:

1. Installation or use of garbage grinders shall be prohibited in all units.
2. Prior to occupancy of each unit, Applicant will install a notice beneath all kitchen sinks, in a location and of a size to be seen by anyone considering installing a garbage grinder, that states that installation of garbage grinders is prohibited.
3. Applicant will install a filter to detect whether garbage grinders are being used.
4. All individual unit deeds and the Master Deed shall include a restriction stating that garbage grinders are prohibited, and that signage be posted under the sinks of each unit indicating same

5. Section 8.0 Vertical Grades and Clearance.

The Applicant requested waiver of Section 8.0.3, finished grade over disposal area shall not be more than two feet and not less than 12 inches from the top of the stone forming the distribution lines in the leaching field or from the inlet pipe of seepage pits.

Voted 3-0 to grant waiver to allow finished grade not greater than three feet in locations shown on the plans, subject to the condition that such surfaces not be irrigated; that it be seeded with field grass; and that the field grass be maintained.

6. Sections 10.1, 10.2, and 13.

Waivers of these Sections of the Board of Health Regulations are no longer needed due to changes in the Project Plans.

7. Section 13.01, Septic Tank Location.

Voted 3-0 to approve waiver to allow proposed septic tank to be located more than 50 feet from the structure it serves, so long as the septic tank, leaching area, and buildings are located in accordance with the Project Plans.

C. Sherborn Board of Health Domestic Water Supply Regulations

1. Section 6.0E – The Applicant requested waiver of requirement that domestic wells shall be located not less than 75 feet from any adjacent well.

Voted 3-0 to waive Section 6.0E to the extent of allowing 60 foot separation between wells as recommended by Board of Health.

2. Section 17.2 – Sampling/Quality

Voted 3-0 to grant waiver subject to following conditions:

3. Section 17.3 – Laboratory Tests

Voted 3-0 to grant waiver subject to following conditions:

4. Section 17.4 – Water Conditioning

Voted 3-0 to grant waiver subject to following conditions:

All of the Sherborn Board of Health Water Supply Waivers set forth in Section IV.C.1 to IV.C.4 above are expressly conditioned on the following: The Applicant must comply with all Department of Environmental Protection Private Well Guidelines. The Applicant must comply with the recommendations stated in Section 5 of the March 4, 2016 Nobis report, which are set forth in Section V.D of this Decision. The Applicant must comply with the Suggested Conditions of Comprehensive Permit that it submitted to the ZBA, p. 1, wells, which are set forth in Section V.C of this Decision.

D. Sherborn Zoning Bylaw

1. Section 1.5 – Definition of Height of Building or Structure.

Voted 3-0 to grant waiver.

Subject to following condition: the height of buildings shall not exceed 35 feet measured from the top of the concrete as shown on the Project Plans.

2. Section 3.2 – Use regulations. The Applicant requests a waiver to allow multi-family use.

Voted 3-0 to grant waiver to allow multi-family use.

3. Section 4.2 – Dimensional Requirements. Applicant requests waiver from setback requirement as it pertains to retaining walls.

Voted 2-1 to grant waiver as it pertains to retaining walls.

Subject to the following conditions: the Applicant will install a stone veneer on the retaining wall, and the wall will be built in accordance with standards set forth in the February 5, 2016 BETA report, number T5-2.

4. Section 4.2 – Dimensional Requirements. The Applicant requested waiver from setback requirement as it pertains to buildings and patios.

Voted 2-1 to grant waiver as it pertains to buildings and patios.

Subject to the following conditions: the setback for buildings shall be no less than 23 feet, and the setback for patios shall be no less than 16 feet.

5. Section 5.1.5 – Screening of Parking Areas. The Applicant requested a waiver of screening requirements.

Voted 3-0 to grant waiver subject to the following condition: landscaping shall be consistent with that shown on the Project Plans

6. Section 4.4. To the extent the Applicant requested a waiver of the matters arising out of the August 2012 Planning Board special permit recorded at Middlesex South District Registry of Deeds at Book 60250, page 4, the associated plan recorded as Plan 743 of 2012, and the deed at Book 60250, Page 16, (of which the Applicant took title with actual notice) , (1) the waiver of the Special Permit Condition is granted to the extent, and only to the extent of the Board's authority under G.L. c. 40B, §20 (as interpreted by judicial authority to date) by which it has the same power to issue permits or approvals as any local board or official who would otherwise act with respect to this application; and (2) to the extent that the requested waiver of the Special Permit Condition would rescind, amend, waive or otherwise modify a recorded restriction on title, (the existence of which the Applicant disputes), the Board does not have authority to so modify recorded restrictions, and therefore the above waiver shall not be interpreted as approving a modification of a recorded restriction, to the extent such restriction exists.

The ZBA carefully considered each waiver requested by the Applicant, evaluating all the evidence and argument presented by the Applicant, peer reviewers, town officials, and others. It is the intention of the ZBA to grant only those specific waivers granted above. Any additional waiver(s) that may be needed must be requested from the ZBA as a modification of this permit.

V. GENERAL MITIGATION CONDITIONS

A. Mitigation conditions

The Board found that the Project presents the following Local Concerns and that the Local Concerns require the following mitigating conditions and, therefore, the conditions set forth below are hereby imposed for the protection of public health:

1. Sewage disposal/impact on wells

One of the overriding concerns regarding this application was the potential that sewage effluent could cause contamination of the wells on the Property, or wells on neighboring properties. In particular, whether the sewage disposal system proposed for the Property will result in nitrate levels in any of the private wells on the Property or on neighboring properties to exceed the DEP drinking water standard of a maximum of 10 mg/l total nitrogen and 10mg/l of nitrate nitrogen. As noted by the Massachusetts Appeals Court in Reynolds v. Zoning Board of Appeals of Stow, Mass. App. Ct. (2015), maintaining clean groundwater servicing local private wells is an “important local health issue”, and evidence that one or more private wells “will have elevated nitrogen levels and there is no public water source in the area and no proposal to provide ...clean water, it is unreasonable to conclude that the local need for affordable housing outweighs the health concerns...” This issue was closely examined during the course of the hearing, and the Board makes additional findings of fact on this matter as set forth in its discussion below.

A number of factors need to be considered in attempting to determine the expected nitrate levels at the private wells. The first is the total number of bedrooms proposed for the project. The Applicant states that there is a total of 76 bedrooms provided in the 32 housing units. Assuming this number of bedrooms is correct, under Title 5, the design flow for each bedroom is 110 gallons per day; thus the total for the Project based on 76 bedrooms would be 8360 gallons per day.

A review of the plans for the proposed town houses reveals that the designs include lofts, laundry rooms, studies, basements, and other areas that potentially could be used as bedrooms. There was a great deal of discussion and evidence as to whether some of the units in fact had additional rooms that should be considered as bedrooms under Title 5 and/or the Sherborn Board of Health regulations. If the total number of bedrooms on the Property in fact exceeds 76, the resulting increase in the design flow for the septic system would exceed 8360 gpd. As noted in the Findings of Fact, any increase in the number of bedrooms, and hence the design flow, would result in the Project exceeding the 440 gallons per day, per acre, limit under 310 CMR 15.214(2), requiring either: (i) an “aggregation plan”, through which the Applicant places development restrictions on other “credit land” outside the project site itself, or (ii) an enhanced nitrogen removal system. See 310 CMR 15.214(2). Further, increased number of bedrooms impacts the calculation of nitrogen loading for the Project, further increasing the risk of contamination of wells either on-site or off-site.

In addition to the number of bedrooms, the analysis of whether the septic system could impact the wells included a review of projected ground water flow direction and slope of the water table on the Property, to establish the area of influence (AOI).

The Town hired Nobis Engineering (Dr. Vernon) to perform an independent hydrogeologic study of the proposed development. Dr. Vernon presented his findings in a comprehensive report dated March 4, 2016. Dr. Vernon concluded that overburden groundwater flow on the site is generally southward, toward the wetlands located in southern portion of the property. Nobis p. 8. Based on photolineament and observations of outcrop in the area, Dr. Vernon determined that an east/west flow was the most likely for groundwater flow in fractured bedrock in the area. Nobis p. 11. Nobis further calculated the AOI's for Title 5 concentration calculations and flow lines from the proposed septic disposal system to sensitive receptors, including wells and wetlands, in the overburden groundwater. Nobis' task was made more difficult by a lack of information from the Applicant, changes to the plans, and Applicant's refusal to allow Nobis representatives on the Property. As a result of the initial findings, well J was re-located on the Property.

Groundwater occurs in both fractured bedrock and in the overburden, but the Project's proposed drinking water wells, and the wells of existing abutters and neighbors, are so-called "bedrock wells," meaning they pull water from the bedrock aquifer, and not from the overburden aquifer. The degree of hydraulic connectivity between the overburden and the bedrock is not known. As a result, determining the expected nitrate concentrations in the drinking water wells post-construction was a difficult task. However, at the ZBA public hearing, Dr. Vernon stated that under low seasonal groundwater conditions, there is a greater than 50% probability that nitrogen concentrations at one or more on-site wells will exceed the DEP drinking water standard of 10mg/l.

The Town's peer reviewer, BETA, noted the following concerns justifying the imposition of additional conditions to protect the public health: Sherborn has no public water supply or sewerage treatment and relies on on-site systems; the Project represents a maximum build-out of the Property; 40% of the Property is mapped as wetlands resource areas; the Property varies in elevation 45 feet more or less; a portion of the Property is within an approved wellhead protection zone (Zone II); a portion of the Property is located within a FEMA mapped 100 year flood plain; and the entire site is located within a NHESP mapped estimated habitat area for rare wildlife.

An expert hired by a group of neighbors, Dr. Scott Horsley, calculated a predicted nitrogen concentration at the protective radius (100') around the well on the abutting Ham property, using the "mass balance" analysis methodology proscribed by MassDEP in its *Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading*. Mr. Horsley concluded that the Nitrogen concentration in the overburden in the location of the Ham well protective area would be 31 mg/l, more than three times the maximum concentration for public safety under the state's drinking water laws.

The DEP defines "public water system" as follows:

a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year ...The Department may presume that a system is a public water system as defined herein based on the average number of persons using a facility served by the system or on the number of bedrooms in a residential home or facility. The Department reserves the right to evaluate and determine whether two or more wells located on commonly owned property, that individually may serve less than 25 people, but collectively serve more

than 25 people for more than 60 days of the year should not be regulated as a public water system, taking into account the risk to public health. 310 CMR 22.02.

The Board finds that there is a significant risk to the public health, based on the above, and that DEP therefore ought to determine that the proposed system of on-site wells constitutes a public water system.

Due to the importance of protecting the drinking water wells both on the Property and on abutting properties, the Board finds that the number of bedrooms on the Property must be maintained at 76, to protect the health of the occupants of the Project and neighboring properties. Accordingly, the following conditions are imposed:

- A. The Master Deed shall include a limit of 76 bedrooms for the Project. Each condominium unit deed shall prohibit the creation of any additional room(s) that could serve as bedrooms. In addition, the condominium unit deeds shall provide that basements cannot be finished or additional walls constructed in basements or elsewhere in any unit, other than as set forth in the submitted Project Plans already on file with the Zoning Board of Appeals as listed in Exhibit A, which would increase the bedroom count under either 310 CMR 15.00 or Sherborn Board of Health regulations. The number of bedrooms for each condominium unit shall be stated in the condominium unit deed and shall not be exceeded. The Master Deed shall also provide that no increase in the total number of bedrooms for the Condominium shall be allowed without the consent of 100% of unit owners and all first mortgagees, and the consent of the Board of Health. Further requirements are set forth in Condition V.B.3.

B. The following conditions are imposed as recommended by BETA in its letter of February 5, 2016:

Omitted.

2. W5: Draw down calculations shall be provided if results of monitoring during well test pumping show significant alteration of groundwater elevations.
3. W7: The Board may require a mass balance analysis should the results of well testing reveal a change to groundwater characteristics and AOI such that the wells may be impacted.

C. The following conditions were submitted by and agreed to by the Applicant and are incorporated into the Board's decision:

1. Applicant shall provide the Town with all reports, pumping test data, drawdown data for all wells pumped or monitored, DEP submittals, and DEP responses associated with the public water system ("PWS") testing and permitting process, and all testing and sampling results of the PWS which are provided to DEP.

2. Omitted

3. Applicant has agreed to and will install three overburden monitoring wells at locations and standards recommended by Nobis in its March 4, 2016 report, Sections 5.1, 5.3, and 5.4, and to monitor these wells as recommended in the Nobis report.

D. The following conditions are imposed as recommended by Nobis in its report of March 4, 2016:

1. 5.0.1: The Applicant shall submit the well construction logs of the on-site monitoring wells to the Board, including the depths of the wells, intakes, the type of intake, and whether or not the well has been developed or checked for responsiveness to water level changes in the aquifer.

2. Omitted.

3. 5.0.3: Applicant has agreed to and will install three new permanent overburden monitoring wells at the following locations: (1) immediately south (downgradient) of the proposed leachfields; (2) south, and farther down gradient from the first well, but not as far south as the "Impacted Wetland"; the well should be in an area agreed to be within a likely AOI for the proposed septic system; and (3) immediately northwest (upgradient) of proposed well F.

4. 5.0.4: The three monitoring wells should be drilled (not placed in a back-filled test pit). They should be constructed with wire-wrapped steel or PVC slotted well screen and steel or PVC riser pipe. If PVC is used, the wells should have a protective, outer steel casing with at least two feet of stickup and a sanitary concrete seal at its base. The screen depth should be selected, in the field, by an experienced hydrogeologist working with the well driller. The top of the screen should be set two or more feet below the water table, if possible, and the well screen should be a minimum of two to five feet long (5 feet preferred). The well should be developed following drilling until water pumped from the well is clear. The town of Sherborn has the option to observe the entire process, and if the Applicant does not have a consultant experienced with monitoring well installation, the Applicant shall allow the town's hydrogeologic consultant to oversee the process. These three wells will be used during the pumping test and as permanent monitoring wells. Therefore, the wells need to be suitable for both water level measurement and for sampling.

5. 5.0.5: Prior to the pumping test, the Applicant shall submit a pumping test plan for the Town to review and approve, which will address the following elements:

-
- How will the three wells described above be monitored for water levels?
- Which neighboring wells will the Applicant monitor if the neighbors grant permission?
- How will the Applicant assure that bacteria and other contaminants are not introduced into the neighbors' wells during monitoring?

- What is the contingency plan if two or more of the new bedrock wells interfere with each other? What if a response is observed in one of the neighbors' wells that is monitored during the test? What if one of the three new overburden monitoring wells described above shows a response?
- Will the Applicant sample the new wells for any constituents beyond those normally required for new wells in Sherborn?

6. As agreed to by the Applicant, the owners of 247 and/or 257 Washington Street may tie into the PWS on the Property in the event that the well water at 247 and/or 257 Washington Street is shown by testing to contain 8 mg/l or more of total nitrogen or nitrates, or to contain levels of any substance that is at or above the DEP drinking water standard. The cost for the tie-in shall be borne by the condominium association, but the owner(s) of 247 and/or 257 Washington Street, as applicable, shall thereafter be responsible for their proportionate share of the expenses of the PWS and for water usage.

VI. CONDITIONS

The grant of this comprehensive permit hereunder is dependent upon compliance with all of the conditions set forth above and upon the following additional terms and conditions.

A. Regulatory Conditions.

1. The total number of units that may be constructed at the Premises shall be limited to 32 condominium units, with a maximum of 76 bedrooms, substantially as shown on the Plan of Record, as amended by the plans set forth in the revised Exhibit A, attached hereto herein referred to as the Modified Plan. The Modified Plan shows, among other things, the elimination of the proposed ten private wells, one for each building, and instead provides for the installation of two wells to supply potable water for the entire 32 units as a Public Water System (PWS), which will require a permit from the Department of Environmental Protection (DEP). The use of the Public Water System as shown on the Modified Plan, and the elimination of the ten private wells, is required as a condition of this permit. The Applicant shall provide the Board with a copy of the June 6, 2017 report from Northeast Geoscience, Inc. within five days of the issuance of this modified comprehensive permit.
2. As a condition of any approval hereunder, at least 25% of the dwelling units shall be and shall remain affordable and shall be marketed and leased to eligible households whose annual income may not exceed 80% of area median income, adjusted for household sized, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"); and, subject to approval by DHCD, the Affordable Units shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD.

The Applicant shall notify the ZBA and the Town Administrator when building permits are issued for Affordable Units and cooperate with the preparation of request forms to add the

Affordable Units to the Town's SHI. The Applicant shall notify the ZBA and the Town Administrator when occupancy permits are issued for the Affordable Units and cooperate with the preparation of request forms to add the units to the Town's SHI permanently. The Affordable Units shall permanently remain affordable units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

A springing affordable restriction and regulatory agreement shall be signed with the Town and recorded at the Registry of Deeds as set forth below.

3. The Affordable Units shall be dispersed throughout the Project as designated by the Applicant by agreement with the subsidizing agency. The Affordable Units and the market rate units shall be constructed on substantially the same schedule. The Affordable Units shall not be readily identifiable as such and shall be equally distributed among the units.
4. The Applicant shall execute a Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. The Affordable Units shall be identified before building permits are sought and the Affordable Units shall not be segregated from the market rate units. If the Project is approved to be phased, then 25% of the units in each such phase shall consist of affordable units.
5. The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board, the Applicant and their counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex South Registry of Deeds against eight units of the Property (the "Town Regulatory Agreement Affordable Units") prior to issuance of any building permit for the Project and signed by all necessary parties, including all mortgagees and lien holders of record.

The Town Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Town Regulatory Agreement Affordable Units shall remain affordable so long as the Project does not conform to local zoning; (iii) shall require that the Town Regulatory Agreement Affordable Units shall be affordable and owned by low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; and (iv) shall restrict or limit the dividend or profit of the Applicant only if and as required under G.L. c. 40B and 760 CMR 56.00, et seq., and no independent limitation on dividends or profits is imposed hereunder

The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Town Regulatory Agreement Affordable Units and shall be enforceable by the Town and shall require that the Town Regulatory Agreement Affordable Units shall remain affordable units in perpetuity, meaning, specifically, for so

long as the Project does not conform to the Town Zoning Bylaws or for the longest period allowed by law, whichever period is longer.

6. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency and may take any steps allowed under G.L. c.40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.
7. When the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee.
8. To the extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, with respect to at least 70% of the affordable units, the Applicant shall provide a preference category for Sherborn residents, and their parents and children, who have resided in Sherborn within two years immediately preceding their application for housing, and for employees of the Town of Sherborn in the initial sales of the units.

This preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency

The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.

The Applicant shall submit to the Board a report on marketing activity at the Project during the initial lease-up of the Project demonstrating compliance with the local preference requirement pursuant to the plan approved by the subsidizing agency as set forth below.

The Board acknowledges that the Town will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof.

The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within sixty days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or DHCD, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

9. The Applicant shall develop a marketing plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements as imposed by federal or state regulation and shall conform with the local preference requirement set forth above.
10. If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.
11. Profits from the Project in excess of those allowed under applicable law and regulations shall be utilized as provided in the regulatory agreement with the Subsidizing Agency and as required and provided for under G.L. c.40B and 760 CMR 56.00.
12. The Applicant shall provide the ZBA with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes.
13. The Town, by and through the ZBA or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
14. Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Official and the ZBA.

B. Project Specific Conditions

1. The ZBA notes that the Applicant provided only preliminary Plans of Record for the revised Project and the Board agreed to accept preliminary plans for purposes of approval of a comprehensive permit for the Project, with the express condition and agreement by the Applicant that, following any such approval of the comprehensive permit, the Applicant shall prepare and submit to the Board and its peer review engineer, the final detailed plans for review and approval by the Board using the process set forth below, each time that one or more set of final plans is provided by the Applicant.

The final plans to be submitted shall include, but shall not be limited to, final drainage plans, with drainage calculations, utilities, parking, lighting, landscaping, roadway improvements, sidewalk improvements, grading, septic systems, and wells.

The final design submittal and peer review process shall take place after the comprehensive permit is approved and shall require a submission of the relevant final

design and plans to the ZBA for peer review, at the Applicant's expense, and a vote by the ZBA that the plans are consistent with the terms and conditions of this comprehensive permit and consistent with accepted engineering practices, which review process shall take place, not at a public hearing, but during a duly posted public meeting during which the ZBA may take information and evidence from the Applicant, the peer review engineer and interested members of the public.

The Applicant shall provide the materials to the ZBA and its peer review engineer and the ZBA's peer review engineer shall review the materials for completeness and to determine the cost of the peer review.

The peer review engineer shall provide its report on completeness and the cost of review to the ZBA and the ZBA shall provide that report to the Applicant. The ZBA shall vote to determine whether the materials are complete.

Once the materials are complete and the peer review funds are in place, the ZBA shall have 45 days to obtain the necessary peer review and determine whether the final design submittals and plans conform to the conditions set forth in the comprehensive permit.

If the ZBA votes to determine that deficiencies exist in the submittal and plans, the ZBA shall notify the Applicant of the deficiencies and the Applicant shall have an opportunity to cure the deficiencies and the Applicant and the ZBA may mutually agree to extend the 45 day period for review to cure the deficiencies.

If the deficiencies are not timely cured, then the ZBA may vote to determine that the relevant conditions of the comprehensive permit have not been satisfied and the Applicant may avail itself of any avenue of appeal that may exist or may take further action to make additional submissions to the ZBA and its peer review consultant, to try to obtain the approval required by this condition, so long as this comprehensive permit has not lapsed and so long as the Applicant pays the reasonable fees of the peer review consultant.

The Applicant, before performing any work on Town-owned property shall provide evidence to the Building Inspector of the necessary permission from the Town before proceeding.

2. No construction activity shall occur on the Project, and no building permit shall be issued, until the Applicant shall have:
 - a. Executed and recorded the standard form Regulatory Agreement as proscribed by the Subsidizing Agency, and provided evidence of same to the ZBA and the Building Inspector. The Regulatory Agreement shall be subject to review, as to form and consistency with this Decision, by Town Counsel prior to execution.

- b. Obtained an Order of Conditions from the Sherborn Conservation Commission or DEP permitting the construction of the Project, and any appeals have been finally adjudicated.
- c. Obtained a Disposal Works Construction Permit under Title 5 of the State Environmental Code, and any appeals have been finally adjudicated.
- d. Obtained National Pollutant Discharge Elimination System ("NPDES") storm water permit for the Project, if applicable.
- e. Submitted to the ZBA and the Building Inspector a Construction Management Plan (CMP), as well as a Construction Management Schedule (CMS), that generally conforms to industry standard practice and addresses all construction-related conditions specifically set forth in this Decision. Additional copies of the proposed CMP shall be provided to the Planning Board, Board of Health, Conservation Commission, DPS, Fire Chief and Police Chief.
- f. Provide to the Building Inspector a final Stormwater Pollution and Prevention Plan to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system, all in conformance with the requirements of the Conservation Commission during the Order of Conditions process.
- g. Provide procedures that outline the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito born diseases to the residents of the Project and nearby residents.

3. The Applicant shall grant to the Town a "Grant of Title 5 Bedroom Count Deed Restriction" in the form provided by the Department of Environmental Protection, Bureau of Resource Protection, Wastewater Management, as modified and attached hereto as **Exhibit C**, limiting the number of bedrooms on the Property to 76, which restriction shall be recorded at the Middlesex South Registry of Deeds superior to any mortgages on the Property. This Deed Restriction shall be so recorded prior to the issuance of any building permit for the Project. The Condominium Master Deed shall also include a restriction limiting the total number of bedrooms allowed on the Property to 76 bedrooms. In addition, the Applicant has provided the Board a list setting forth the number of bedrooms in each unit of the Project, which is attached hereto as **Exhibit D**. Each individual condominium unit deed shall contain a restriction, setting forth in boldface type of at least 20% larger font than the remainder of the deed, limiting the number of bedrooms in such condominium unit to the number set forth in said list, so that the total number of bedrooms for the 32 units shall be limited to 76. The form of the restriction for the individual condominium units must be submitted to the Board and approved by it prior to each individual condominium unit deed being executed.

4. Omitted.
5. The Applicant has not proposed phasing of the Project. If the Applicant desires to phase the project, it must return to the Board with a specific phasing plan, which shall be reviewed in accordance with 760 CMR 56.05(11). Unless a phasing plan is approved, once construction of the Project commences, it shall continue uninterrupted until completed.
6. All imported earth fill material shall consist of solid, sound mineral aggregate consisting of hydrologic soils group "A"(sand, loam sand) and/or hydrologic soils group "B" (sandy loam, loam) soils. All imported earth fill material shall be free from deleterious, organic, elastic or foreign matter. The material shall be used to achieve satisfactory compaction into a stabilized soil structure.
7. No portion of any building or structure shall be placed any closer than within 50 feet of any wetland area without advance approval by the Zoning Board of Appeals of a modification to the Plan of Record and this permit.
8. Except as shown on the Modified Plan and as approved by the Superseding Order of Conditions issued by the Massachusetts Department of Environmental Protection File 283-0366 as approved by the Sherborn Conservation Commission, allowing minor grading within fifty feet of the wetlands, no disturbance of any land at the Property shall take place within fifty feet of any wetland. The Applicant and the Conservation Commission have entered into an agreement for additional conditions and safeguards for the protection of the wetlands, dated March 15, 2018 and attached hereto as **Exhibit B**. As a condition of this comprehensive permit, the Applicant agrees to comply with the provisions of Exhibit B. Furthermore, any future proposal for disturbance of land within 25 feet of any wetland other than as presently shown on the Plan shall require advance approval by the Board and a modification of the Plan of Record and this Comprehensive Permit and the modified Plan of Record shall indicate explicitly depict the exact limits of any such disturbance.
9. There shall be a Condominium Association and the necessary documents to establish the Condominium Association shall be provided to the Board for its review and approval before the first occupancy permit is issued, including the Master Deed, Condominium Trust, form of deed for individual condominium units, documents for the control and maintenance of each well, exclusive control and maintenance easements for each well and the budget.
10. The Condominium Association shall be responsible for owning and maintaining and repairing and replacing the roadway and drainage systems and recreational areas.
11. The Condominium Association shall be in place and recorded against the Property before any unit is sold.

12. The roadway and stormwater control system shall remain private and shall be maintained by the Condominium Association.
13. A school bus stop shall be provided on the Property if requested by the school department, and if so requested, the location shall be determined by the school department.
14. The Applicant agrees to comply with comment U-2 in BETA's October 30, 2015 letter regarding water storage for fire fighting purposes.
15. The Applicant agrees that the use of sodium chloride, and the application of any chemical (e.g. pesticides, fertilizers, etc.), shall be prohibited within the first 50 feet of the buffer zone. Fertilizer use on portions of the Property that are not within the jurisdiction of the Wetlands Protection Act (which jurisdictional areas include the 100 foot buffer zone) will be limited to slow-release organic nitrogen fertilizer. No fertilizer applications will take place within such jurisdictional areas. Only natural organic pesticides will be used beyond the first 50 feet of the buffer zone.
16. The Master Deed shall specifically reference the O & M Manual, and shall bind the condominium association to arrange for regular inspection, maintenance and repair of the storm water management system by a qualified contractor to ensure its effectiveness for as long as the Project is in existence.
17. The Condominium Association shall include funds in its annual budget to conduct all routine repair and maintenance of the storm water management system in accordance with the O & M Manual, and shall provide annual funding to create a savings reserve so as to provide for the timely replacement of failed system components.
18. The Applicant and the Condominium Association, as may be applicable, shall submit an annual report to the Building Commissioner in which a qualified contractor certifies that it has timely performed all inspection, maintenance and repair called for by the O & M Manual. Such report shall be filed no later than January 15th of each year.
19. To the extent the Conservation Commission determines to conduct a natural resources study of the Property, which may include a pre-construction survey of baseline conditions within the wetlands resource areas, as well as an annual survey of the status of the wetlands for up to five years after construction, the Applicant and Condominium Association agree to grant reasonable access to the Conservation Commission or its agent, upon adequate notice.

C. General Conditions

1. The Applicant shall comply with all local by-laws, rules and regulations of the Town of Sherborn and its boards, officers and commissions, unless expressly waived hereunder.

2. The Project shall conform to all applicable state and federal laws, codes, regulations, and standards including, but not limited to, the following:
 - (a) Massachusetts Building, Plumbing, and Electrical Codes;
 - (b) The Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and the associated Regulations 310 CMR 10.00;
 - (c) Massachusetts Department of Environmental Protection Title 5 Regulations;
 - (d) U.S. Army Corps of Engineers, Regulatory Program under Section 404 of the Clean Waters Act; and
 - (e) Massachusetts Stormwater Management Regulations.
3. There shall be no exterior construction activity on the Premises before 7:00 a.m., or after 7:00 p.m., Monday through Friday and before 8:00 a.m. or after 5:00 p.m. on Saturday. There shall be no construction on the Premises on the following days unless a special approval for such work has been issued by the Police Department: Sundays or the following legal holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas. The Applicant agrees that the hours of operation shall be enforceable by the police department.
4. All utilities within the Premises shall be installed underground.
5. The interior and exterior of all buildings and structures shall be constructed substantially as represented in the Application, as revised, and on the Plan of Record.
6. All utility work and other roadwork within any public right of way shall be performed and conducted in conformance with the regulations of the Town, including requirements for street opening permits. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with current engineering and construction standards. Final design of storm water management system shall comply with Department of Environmental Protection regulations.
7. All structures and site improvements within the Project site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, sewer and water infrastructure and the Applicant and then the Condominium Association shall bear the cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
8. The Applicant shall submit final fire alarm/sprinkler plans to the Fire Chief for review and approval. Full sprinklering of the units and the garages in conformance with the then applicable state building code shall be provided.
9. The Applicant shall equip each unit with water saving plumbing fixtures in every bathroom, kitchen, and laundry area, and all underground water pipes shall have water tight joints.
10. All infrastructure (utilities, roads, and stormwater management system, sewer and water) shall be constructed as shown on the Plan of Record, prior to issuance of a building permit to

frame the first building, excluding the tie-ins for individual units until an occupancy permit is sought for the unit. The road may be to binder course until after all building is completed, provided that proper surety is provided to secure the work when the first occupancy permit is issued.

11. No storm water pond or other water collection area to be constructed by the Applicant as part of the Project shall hold water for more than 72 hours, to prevent the breeding of mosquitos. The Applicant shall implement any necessary mosquito control measures to protect residents of the Project and nearby residents in the event that water collects for longer than 72 hours.
12. The Project shall comply with all requirements of the Operations and Maintenance Plans submitted to the Board, and any approved under an Order of Conditions.
13. Road salt shall not be used for vehicular areas.
14. Dumping of landscape debris, including leaves, grass clippings and brush, within 50 feet of any wetland shall be and is expressly prohibited.
15. The areas that are shown as undeveloped on the Plans shall remain as a permanent open space buffer zone. The Applicant shall prepare and submit to the Board a plan showing the boundaries of the permanent open space, and a restrictive covenant shall be provided to the Town to allow the Town to permanently enforce the requirement that said area remain as permanent open space. Such open space buffer zone shall allow an access road and wells if needed for the construction of a public water supply to serve the Project. Any area of the Premises that is subject to a conservation restriction held by the Natural Heritage and Endangered Species Program shall not be subject to the restrictive covenant provided to the Town under this Condition.

D. Construction and Bonding

1. The Applicant shall provide the Board with authority to enter the Property during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses and work boot requirements), with prior notice to determine conformance with this Decision.
2. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. A consulting engineer shall be used. All fees for Board consultants including fees incurred prior to the date of this decision shall be paid by the Applicant within 30 days of the receipt by the Applicant of the consultant's bill for services. Any outstanding fees owed for consulting services incurred by the Board before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is

30 days overdue.

3. The Applicant shall abide by orders issued by the Building Inspector in conformance with applicable law in conjunction with construction of the Project, subject to the Applicant's rights of appeal under applicable law.
4. No area within 50 feet of any wetland shall be used for stockpiling of earth or construction materials, for storage or overnight parking of construction vehicles and equipment, refueling and maintenance of construction vehicles or equipment, or for storage of diesel fuel or hazardous materials.
5. Prior to construction, physical barriers as required under the tree protection provisions of the construction documents shall be installed along the limit of clearing line. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction. Adjacent public streets shall be swept as needed to remove sediment and debris. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.
6. With respect to the work to be done by Applicant on private ways within the Property, no certificates of occupancy, shall be issued by the Town until the Applicant has fully completed all site drainage and utility work appurtenant to any portions of the site for which an occupancy permit is to be issued and has installed a binder course of pavement on driveways and parking areas within the Property.
Prior to the issuance of the first certificate of occupancy, a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, shall be provided to the Town, in an amount to be determined by the Town Department of Public Services in an amount sufficient to ensure the completion of the top coat of paving. Requests to reduce the surety may be submitted as the work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the satisfactory completion of the work in question as voted by majority vote of the Board of Appeals. In the event of a default, the Town shall have the right to seize the funds and keep them and the right to use the funds, but not the obligation to do so, to appropriate the funds and expend them to do the work. The Town may elect to keep the funds until such time as the work is done and then return the funds. The Town shall have the right to require that the surety amount shall be increased even after work has been released, if the work that was released falls into disrepair or needs to be redone. If proper surety is not in place, no further permits shall be issued until the surety is provided.
7. Landscaping and lighting shall be as shown on the Project Plans To the extent that landscaping for the Project is not completed prior to the issuance of the first certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that

shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.

In addition, the Applicant shall provide surety sufficient to loam and seed any disturbed areas which are yet to be developed as per the plans.

Project surety shall be held by the Town Treasurer until the Treasurer is notified by the Board to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.

8. Prior to the issuance of any building permit, the Site and Engineering Plans, finalized as necessary to comply with this Decision, shall be signed and sealed by a Massachusetts Professional Engineer and, as appropriate, a Registered Land Surveyor and a Massachusetts Registered Landscape Architect and filed with the Board and the Building Inspector, and shall include the following:
 - (a) Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;
 - (b) Stormwater Pollution and Prevention Plan (SWPPP) notes that address mitigation of sedimentation and erosion, including details relating to any temporary drainage basins;
 - (c) Letter from the Project architect confirming that the Project complies with Architectural Access Board (AAB) Regulations; and
 - (d) Details of any temporary construction signs.
9. A surety instrument, that shall not expire until it is satisfactorily replaced or released, in an amount to be determined by the ZBA in consultation with Town boards and officials and other consultants shall be given to the Town by the Applicant prior to starting any activity authorized by this approval ("Authorized Activity") within a public way, on Town property or in any Town easement to ensure the proper and timely completion of all such work that shall be held by the Town Treasurer until the Treasurer is notified by the ZBA to release the surety.

Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The surety retained shall be based on the work remaining.
10. Prior to starting any Authorized Activity, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Conservation Agent,

and DPS Director or representatives to review this approval.

11. Prior to starting any Authorized Activity, the Applicant shall provide to the Building Inspector:
 - (a) the company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site;
 - (b) a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid;
 - (c) certification from the Applicant that all required federal, state and local licenses and permits have been obtained;
 - (d) proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work;
 - (e) proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel; and
 - (f) at least 48 hour written notice. If activity on site ceases for longer than one month, 48 hour written notice prior to restarting work.
12. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.
13. Blasting, if any shall be performed in a manner approved by the Fire Department and Building Department so as to prevent injury or property damage to the residents of the Town and proper evidence of insurance shall be provided to the Building Inspector before blasting begins.
14. Within ninety days of completion of the Authorized Activities, the Applicant shall submit to the Board two sets of as-built plans for all infrastructure improvements and, if applicable, evidence of compliance with this comprehensive permit and any other permits required for the construction of the improvements contemplated by this comprehensive permit. The site engineer of record shall provide a written description of any material deviations from the Building Permit plans.

The Board, in consultation with the peer review engineering consultant, shall approve the as-built Plans when determined to be in compliance.

15. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practice, as the same may, from time to time, change.

16. A plan to implement adequate erosion and sedimentation control measures in compliance with the Order of Conditions for the Project shall be submitted by the Applicant to the Building Inspector for approval that such measures comply with the Order of Conditions, prior to the start of any Authorized Activity. Said measures shall be maintained throughout the Project and until all disturbed areas have been permanently stabilized with either an adequate vegetative or asphalt cover in accordance with the Plans of Record.
17. A Massachusetts Registered Professional Engineer hired by the Applicant shall observe soil conditions in the subsurface stormwater disposal area and shall relocate or modify the design of the facility if impervious soils or bedrock are present within the limits of the excavation and if the two-foot separation from seasonal high groundwater cannot be achieved and the Town shall be notified of the inspection and be allowed to have a qualified inspector present at the Applicant's expense.
18. During construction, the location of any and every stormwater disposal area shall be protected to prevent compaction by heavy equipment and to prevent contamination of the area with soils and material that may reduce infiltration rates for the existing soils.
19. The Applicant and the Condominium Association shall be permanently responsible for the following at the Project:
 - (a) all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Approved Plans or alternate locations acceptable to the Fire Chief. In the event that snow impairs roadways such that the travel area is less than eighteen feet wide, and all designated snow removal locations have been exhausted, at the direction of the Fire Chief, the Applicant shall cause snow to be transported from the Project to an off-site location for the legal disposal thereof;
 - (b) all site maintenance and establishing a regular schedule for site maintenance;
 - (c) repairing and maintaining all on-site roadways, including drainage structures and utilities therein;
 - (d) conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
 - (e) maintaining all easements shown on the Plans; and
 - (f) site lighting
20. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of the locations for mail boxes and parcel areas.
21. Prior to commencing Authorized Activity, the Applicant's final construction plans shall provide that the construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads and the Applicant shall install aprons at entry points and provide for dust control in the form of sweeping and spraying of water whenever necessary.

22. No stumps or construction debris shall be buried or disposed of at the Property.
23. The Applicant shall use all reasonable means to minimize inconvenience to residents in the general area, during construction.
24. This permit is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b) or any successor regulation.
25. Any changes to the Project after issuance of this permit shall be reviewed and approved by the Board in accordance with 760 CMR 56.05 (11) or any successor regulation.
26. Building construction may begin simultaneously with the commencement of construction of the infrastructure, but no occupancy permit shall issue unless and until all of the infrastructure necessary for the occupancy permit shall be fully permitted and completed and have any necessary final sign offs.

VII. LAPSE

Any comprehensive permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless the comprehensive permit is duly recorded before the three year period elapses and unless construction on the Project has commenced within such period. In addition, construction in accordance with this comprehensive permit shall be completed within three years of the commencement of construction. The Applicant may apply to the Board for reasonable extensions of these deadlines for good cause, but shall do so before any lapse occurs.

This comprehensive permit shall not be valid until it is duly recorded with the Registry of Deeds and evidence of such recording is provided to the Building Inspector and the Board. Any modification of this comprehensive permit shall be subject to 760 CMR 56 or any successor regulation thereto.

On April 27, 2016, the Board voted to authorize the Chairman, Alan B. Rubenstein, to sign the original decision on behalf of the Board. On April 9, 2018, the Board voted to authorize the Chairman, Richard S. Novak, to sign this decision on behalf of the Board.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by M.G.L. c. 40A, § 17 or M.G.L. c. 40B, §20 et seq., as applicable.

SHERBORN ZONING BOARD OF APPEALS

By: Richard S. Novak, Chairman

Filed with Town Clerk on: _____

Sent to Applicant, certified mail, on: _____

Notices to interested parties mailed on: _____

552227v4/SHRB/0007

EXHIBIT A

Exhibit A₁ December 20th, 2017

The Fields At Sherborn Final Plan Submittal Dates

PLAN	DESCRIPTION	FINAL REVISION DATE
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Bruce Saluk & Associates
220 Boylston Street
Marlborough, MA 01752

CO	Cover Sheet	December 15 nd , 2017
EX	Existing Conditions	June 8 th , 2015
C1	Layout Plan	December 15 nd , 2017
C2	Grading Plan	December 15 nd , 2017
C3	Drainage & utility plan	December 15 nd , 2017
C4	Sewer & Water Plan	December 15 nd , 2017
C5	Detail Sheet	September 11 th , 2017
C6	Detail Sheet	February 16 th , 2016
C7	Detail Sheet	December 15 th , 2017
SDS-1	Septic System Layout	February 25 th , 2016
SDS-2	Proposed Septic System	February 25 th , 2016
SDS-3	Proposed Septic System	December 28 th , 2015

Hawk Design, Inc.
P.O. Box 1309
Sandwich, MA 02563

Landscape plan	Overall Conceptual Landscape Plan	November 6 th , 2017
Landscape plan	Typical 3&4 unit Conceptual Landscape Plan	August 21 st , 2017
L3	Irrigation Limits Plan	January 26 th , 2017
L4	Landscape elevations	January 26 th , 2017

Creative Land & Water Engineering
P.O. Box 584
Southborough, MA 01772

GW1	Groundwater contours –Seasonal High& Low	February 28 th , 2017
GW2	Groundwater contours – Seasonal High	February 28 th , 2017
GW3	Groundwater contours – Seasonal Low	February 28 th , 2017
GW4	Groundwater contours – Seasonal low 2	February 28 th , 2017
SAOI	Septic Area of Impact	February 28 th , 2017

PLAN	DESCRIPTION	FINAL REVISION DATE
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Trask Development
337 Turnpike Road, Suite 201
Southborough, MA 01772

Reeves Design Associates
79 Highland Street
Marlborough, MA 01752

Plans/ Information packet Labeled...

THE FIELDS AT SHERBORN

Unit Plans

Description (pg. 1-2)	<i>Description of Units and Buildings</i>	December 18 th , 2017
3-Plex Elevation (pg.3)	<i>Front elevation of Buildings A,B,D,E,G & I</i>	December 18 th , 2017
3-Plex 1st floor (pg.5)	<i>First floor plan of buildings A,B,D,E,G & I</i>	December 18 th , 2017
3-Plex 2nd floor (pg. 6)	<i>second floor plan for buildings A,B,D,E,G & I</i>	December 18 th , 2017
2-plex Elevation (pg.4)	<i>Front elevation of building F</i>	December 18 th , 2017
6-plex Elevation (pg. 9)	<i>Front elevation of buildings C&H</i>	December 18 th , 2017
6-plex 1 st floor(pg.10)	<i>first floor plan of buildings C&H</i>	December 18 nd , 2017
6-plex 2 nd floor(pg.11)	<i>second floor plan of building C&H</i>	December 18 th , 2017
"The Everett" unit (pg.7)	<i>Unit plan w/ 2 & 3 bedroom options</i>	December 18 th , 2017
"The Kendall" unit (pg.8)	<i>Unit plan w/ 2& 3 bedroom options</i>	December 18 th , 2017
"The Quincy" unit (pg.12)	<i>Unit plan for buildings C&H</i>	December 18 th , 2017
Unit Breakdown (pg.13)	<i>Unit schedule with bedroom allocation, construction phasing & predetermined affordable units</i>	December 4 th , 2017

EXHIBIT B

AGREEMENT

This Agreement ("Agreement") is entered into this 15th day of March, 2018, by and between Ben Stevens, of The Fields at Sherborn LLC and Trask, Inc., a Massachusetts company with a usual place of business at 337 Turnpike Road, Southborough, MA 01772 ("Applicant"), and the Town of Sherborn, a Massachusetts municipal corporation, acting through its Conservation Commission, with an address of 19 Washington Street, Sherborn, MA 01770.

WHEREAS a Notice of Intent was filed by the Applicant on July 13, 2014. The project proposes the construction of a chapter 40B condominium, with 36 units, associated parking, on-site septic system, walkways, driveways, landscaping and stormwater management systems (the "Project") at 247A Washington Street in Sherborn (the "Property").

WHEREAS the Property currently consists of approximately 17.55 acres of land partially developed with two small barns and a small shed and contains approximately 10.56 acres of upland and 6.99 acres of Bordering Vegetated Wetlands ("BVW"). The Property in its entirety is located within Priority Habitat of Rare Species and Estimated Habitat of Rare Wildlife as defined by the Massachusetts Natural Heritage and Endangered Species Program ("NHESP") and the Project limit of work is partially within an area mapped by NHESP as a Biomap2 Core Habitat. Additionally, the Property drains to a Wellhead Protection Area (Zone II) associated with a public drinking water supply well that services the neighboring town of Holliston. Areas subject to regulation are Bordering Vegetated Wetlands, Inland Bank and their associated buffer zones. Additionally, the Project requires work within NHESP Priority and Estimated mapped habitat and within the 100 foot buffer zone to BVW. The areas in which work is proposed are significant to the following interests of the Act: Public Water Supply, Private Water Supply, Groundwater Supply, Prevention of Pollution, Flood Control, Protection of Wildlife Habitat and Storm Damage Prevention.

WHEREAS, on November 17, 2015, the Commission issued an Order of Conditions ("OOC") denying the Project. On August 12, 2016, the Massachusetts Department of Environmental Protection ("MassDEP") issued a Superseding Order of Conditions ("SOC") allowing the Project. The Commission filed a Notice of Appeal and Request for Adjudicatory Hearing on August 26, 2016 challenging the SOC.

WHEREAS the Applicant, the Commission and MassDEP have entered into a Settlement Agreement and MassDEP has issued a Final SOC, the Applicant and the Commission now enter into a separate and binding Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the of the mutual promises set forth below, and for good and valuable consideration, the undersigned agrees with the Town of Sherborn Conservation Commission as follows:

Administrative

- 1) The undersigned represents and covenants that the undersigned is the owner in fee simple of all the land included in the aforesaid subdivision and that there are no mortgages of record or otherwise of any of said land.
- 2) All work shall conform with the following plans, reports, guidelines and special conditions:
 - a) "The Fields at Sherborn, Washington Street Sherborn, MA" final revision date September 11, 2017 prepared by Bruce Saluk & Assoc, Inc. stamped by Bruce M. Saluk, P.L.S., No. 32375, which includes the Landscape Plan, dated August 21, 2017.

- b) "Storm Water Management Report (Addendum #5), final revision date of September 2017
 - c) Long Term Pollution Prevention, Operation and Maintenance Plan, final revision date of September 18, 2017
 - d) Letter dated August 15, 2017 from The Natural Heritage and Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (NHESP).
 - e) "The Fields at Sherborn - Planting and Stabilization Guidelines (herein "Planting Guidelines"), September 19, 2017.
- 3) This Agreement serves in conjunction with a Superseding Order of Conditions (SOC) issued by the Massachusetts Department of Environmental Protection ("MassDEP") pursuant to a Settlement Agreement entered into by Ben Stevens, Trask, Inc., (the "Applicant"), Town of Sherborn Conservation Commission (the "Commission" or "SCC"), and MassDEP in OADR Docket No. WET-2016-020, DEP File No. 283-0366. All work shall conform to the plan and documentation referenced in Condition #1 above unless otherwise specified in this Agreement. Any conflict between this Agreement and the SOC will not relieve the Applicant of the requirements of this Agreement.
- 4) A copy of this Agreement as well as the plans and reports referenced in Condition #1 shall be available on site while activities regulated by this Agreement are being performed. In addition, this Agreement shall be included in all construction contracts, subcontracts, and specifications dealing with the work proposed and shall supersede any conflicting contract requirements. The Applicant shall ensure that all contractors, subcontractors and other personnel performing the permitted work are fully aware of this Agreement's terms and conditions. Nothing in this paragraph shall limit or restrict the liability of the Applicant for violations of this Agreement.
- 5) No work shall commence on-site until this Agreement and the SOC have been recorded with the Registry of Deeds and the Commission has been formally notified in writing.
- 6) This Agreement shall apply to any successor or assigns in interest of control and any other party engaging in activity on the property identified in the Notice of Intent.
- 7) Any proposed or executed change in the plans proposed under the Notice of Intent and approved under the SOC and this Agreement shall require the Applicant to enter into an amendment to this Agreement or file a new Notice of Intent with the Commission or to inquire of the Commission in writing whether the change is substantial enough to require a new filing. Any errors in the plans or information submitted by the Applicant shall be considered changes and the above procedures shall be followed.
- 8) Members and agents of the Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Agreement, and may require the submittal of any data deemed necessary by the Commission for the evaluation.
- 9) The term "Applicant" as used in this Agreement shall refer to the owner, any successor in interest, title or successor in control of the property referenced in the Notice of Intent, supporting documents and this Agreement. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that takes place prior to issuance of the Release.
- 10) With respect to all conditions, the "Commission" shall include an Agent of the Commission, which may be a Commission Member, the Conservation Agent, or a person specifically hired by the Commission to administer and enforce this Agreement, except where action by the Commission acting as a body is required by law.

- 11) The owners of the project and their successors in title agree that the Agreement does not in itself impose upon the Town of Sherborn (the Town) any responsibility to maintain the proposed drainage system and that the Town of Sherborn shall not be liable for any damage in the event of failure. By acceptance of this Agreement, the owners agree to hold harmless the Town of Sherborn and its residents for any damages attributable to alterations undertaken on this property pursuant to the project, this Agreement, and/or the SOC. This Agreement does not imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of water damage. ***This condition shall apply in perpetuity.***
- 12) No filling of Wetland Resource Areas, or any other wetland resource protected by state laws is authorized by this Agreement.
- 13) It is the responsibility of the Applicant to procure and comply with all other applicable federal, state and local permits, approvals, and guidelines associated with the project. A copy of the filed NPDES permit with approval shall be submitted to the Commission prior to the commencement of work. These regulations, guidelines, and permits may include but are not necessarily limited to the following:
 - EPA Phase II Stormwater Regulations and NPDES Permit

Erosion Control and Monitoring

- 14) Prior to any work, erosion control barriers shall be placed as shown on the plan referenced in paragraph #1. Erosion and sediment controls shall remain in place until such time as the Commission approves their removal, erosion and sediment controls shall be installed in accordance with drawings titled "The Fields at Sherborn, Washington Street Sherborn, MA", dated December 8, 2014 with a final revision date of September 11, 2017 and shall consist of double staked straw bales, which are free of invasive seed stock with silt fence, compost filter socks or an alternative approved by the SCC.
- 15) Additional erosion control supplies will be kept on site for use to replace and/or repair barriers that are damaged or become degraded. Stockpiled erosion controls will be protected from the elements while stored.
- 16) It shall be the responsibility of the Applicant and his successors to conduct monitoring, maintenance, and repair of erosion control measures, as well as to take any other additional measures necessary to control erosion from the site such that wetland impacts do not occur. The erosion control measures designated on the site plans and described in this Agreement and the SOC shall be considered a minimum standard for compliance. In addition, it shall be the responsibility of the Applicant to take whatever measures are necessary to prevent any form of wetland impacts not approved within this Agreement.
- 17) Erosion controls and limit of work lines shall be installed as proposed on the approved plan with minimal disturbance to vegetation. Where possible, erosion controls should go *around* trees, shrubs, and other vegetation.

Pre-Construction

- 18) Emergency Contacts – The Applicant shall provide to the Commission the identity and 24-hour contact information for one or more persons who will act as emergency contacts in the event of an environmental problem that occurs outside of normal working hours. The Applicant shall be responsible for insuring that adequate, round-the-clock coverage including holidays, vacations, weekends, etc. is provided by an adequate number of persons so that a qualified person is always available, and that appropriate contact information has been provided to the Commission. The emergency contact person(s) shall have the authority to expend resources, including necessary manpower, materials, and required subcontracted services, to alleviate any environmental problems at the site in short order. The Applicant

shall be responsible for promptly notifying the Commission of any change in the identity or contact information for the Emergency Contact persons.

- 19) Prior to the commencement of any activity on this site other than the marking of locations for erosion controls and limits of work, there shall be a PRE-CONSTRUCTION MEETING between the project supervisor, the Environmental Monitor ("EM"), the contractor responsible for the work, and a member of the Commission or its Agent to ensure that the requirements of this Agreement are understood. The staked erosion control line shall be adjusted, if necessary, during the pre-construction meeting to comply with the approved plans. The Applicant shall contact the Commission office at 508.651.7863 at least two (2) weeks prior to any activity to arrange for the pre-construction meeting. Promptly after the Pre-Construction Meeting, all erosion controls and limits of work lines shall be installed along the approved and staked line. No clearing of vegetation, including trees, or disturbance of soil shall occur prior to the Pre-Construction Meeting within jurisdictional areas. Minimal disturbance of shrubs and herbaceous plants shall be allowed prior to the Pre-Construction Meeting if required to stake the approved erosion control and limit of work lines where required within jurisdictional areas.
- 20) Any changes proposed to the plants to be installed in the buffer zone shall be native to the New England region and not listed on the Massachusetts Prohibited Plant List and the USDA Invasive Plant Database at the time of planting. At least two weeks prior to the preconstruction meeting, a final list of all plant species shall be submitted to the Commission for its approval. The Landscape Plan shall be revised to include the approved modifications to the plant list.
- 21) Promptly after installation of erosion controls, the Commission shall be contacted to conduct a follow-up inspection to ensure that erosion controls and limits of work lines have been properly installed. No work shall be conducted in any jurisdictional area of the site until the Commission or its Agent has inspected and approved of the installation of the erosion controls.
- 22) Prior to any work on site, the proposed limit of work shall be clearly marked with stakes or flags and shall be confirmed by the Commission. Wherever the limit of work is located within wetland Buffer Zone, said limit of work shall, in addition to all required erosion control barriers, include a continuous line of 4-foot-tall, highly visible orange snow fencing. Such fencing shall be checked and replaced as necessary and shall be maintained until all construction is complete. Workers shall be informed that no use of machinery, storage of machinery or materials, stockpiling of soil, or construction activity is to occur beyond this line at any time.
- 23) Prior to commencement of construction on site, all Wetland Resources shown on plan shall be flagged with surveyor's tape numbered to correspond to the wetland delineation on the approved plans and shall remain in place during construction and until issuance of the Release by the Commission. Any wetland flags that are missing shall be replaced and numbered. The GPS points for the wetland delineation will be provided to the Commission. The Commission shall be notified when this has been accomplished and the Agent shall be given the opportunity to inspect the flagging.
- 24) Prior to commencing any work on the site, the Applicant shall submit the following to the Commission:
 - a) A set of photographs depicting the project site in pre-construction condition.
 - b) A project/construction-sequencing plan
 - c) A statement signed by the Applicant, owner of the property and all persons responsible for the construction of the project that such individuals understand the terms and

conditions as specified in the SOC and this Agreement and that such persons agree to comply with the provisions of this Agreement and the SOC.

- 25) Prior to the commencement of construction, the Commission and/or its representatives shall be granted access to the jurisdictional areas on site in order to establish a baseline of scientific data regarding the conditions and functions of wetland resources (and Buffer Zones). See special condition 43, Natural Resources Study.

Construction

- 26) All equipment stored or used within jurisdiction shall be inspected regularly for leaks. Any leaking hydraulic or other fluid lines, cylinders, containers of any kind, or any other components shall be repaired immediately. Equipment for fuel storage and refueling operations shall be located in an upland area greater than 100 feet from the Bordering Vegetated Wetland.
- 27) No trash dumpsters will be allowed within 100 feet of a wetland resource area. Notwithstanding the foregoing, temporary trash dumpsters may be located within the buffer zone during construction if within the limit of work on the plans. All waste products, refuse, debris, grubbed stumps, slash, excavate, construction materials, etc. shall be contained and ultimately legally deposited at an appropriate off-site facility and shall not be incorporated in any manner into the project site. These materials shall not be stored within the 100-foot buffer zone.
- 28) Dewatering activities shall be monitored at least daily to ensure that sediment laden water is not discharged toward the wetland resource areas. No discharge of water is allowed directly or indirectly into an area subject to jurisdiction of the Wetlands Protection Act. If emergency dewatering requirements arise, the Applicant shall submit a contingency plan to the Commission for approval, which provides for the pumped water to be contained in a settling basin, to adequately reduce turbidity prior to discharge into a resource area of Buffer Zone. Additional monitoring requirements may be imposed on any such discharge approved, to ensure adequacy of the sediment removal measures.
- 29) Soil disturbance within jurisdiction will be kept to a minimum and disturbed areas will be stabilized as soon as possible with a native vegetative cover. Once begun, grading and construction shall move uninterrupted to completion to avoid erosion and siltation of the wetlands.
- 30) If soils piles within jurisdictional areas are left disturbed for longer than two months, a temporary cover of rye or other grass shall be established to prevent erosion and sedimentation. If the season is not appropriate for plant growth, exposed surfaces shall be stabilized by other appropriate erosion control measures, firmly anchored, to prevent soils from being washed away by rain or flooding.
- 31) Within two weeks of completion of construction on any given jurisdictional portion of the project, all disturbed areas in the completed portion of the site shall be stabilized with rapidly growing vegetative cover. Four inches of weed-free organic topsoil, followed by two inches of weed-free organic compost shall be applied to avoid further disturbance to and compaction of existing soils. Immediately following this, depending on the time of year, a rapidly germinating mix of warm season or cool season grasses and forbs seeds shall be applied by hydro-seeding. Consult with New England Wetland Plants, Inc. (www.newp.com) or New England Wildflower Society (www.newfs.org) for optimal seed mix for the site and time of year. Vegetative cover and/or erosion blanketing shall be visually checked for effectiveness of the cover after every rain storm. Continued maintenance of this area in a manner which assures permanent stabilization and precludes any soil erosion shall be the responsibility of

the Applicant and/or the successor Condominium Association. This condition will not expire with the issuance of a Release and ***shall apply in perpetuity.***

- 32) The site will be monitored for a minimum period of two years or until such time as a Release is issued to ensure the site remains stable.
- 33) Tree cutting will not exceed the limits included in the "The Fields at Sherborn, Washington Street Sherborn, MA" with a final revision date of September 11, 2017. 12 to 15 ft. tall snags shall remain following cutting of the following two trees in the Buffer Zone: a 30-inch pine behind Unit 10 and a 12-inch maple behind Unit 22.
- 34) The limit of post-construction work or landscaped area shall be permanently demarcated via the installation of activity barrier fence as shown on the "The Fields at Sherborn, Washington Street Sherborn, MA Landscaping Plan". Signage shall be installed along the activity barrier fencing: "Wetland Protection Area - No Cutting No Dumping" showing Sherborn Conservation Commission beneath in smaller font. ***This condition shall apply in perpetuity.***
- 35) Successful compliance with the Landscape Plan and the Planting Guidelines will be determined by the Commission after the approved planting has been completed and two full growing seasons have passed. The growing season is defined as the time period between the last frost in the spring and first frost in the fall, and typically spans from March/May to September/November in Massachusetts. With all other conditions of spacing, density and species selection met, success will be determined if 75% plant survival, or better, has been achieved. Landscaping will be completed in accordance with the Landscaping Plan (with restoration/mitigation) and the Planting Guidelines as referenced under paragraph#1. Final planting choices, placement and density in the mitigation and restoration areas will be approved by the Commission.
- 36) The source of any fill will be made known in writing to the Commission. Prior to any fill being brought onto the property for use within jurisdictional areas, the Commission requires that all fill be tested using the conditions and parameters listed in MassDEP Policy # COMM 97-001. The fill for use within jurisdictional areas must meet the requirements for fill below the RCS-1/GW-1 Reportable Concentrations of the Massachusetts Contingency Plan (MCP). This testing shall be required for each change of source, annually, and/or if there are observational differences documented by the on-site personnel and/or the Commission Agent throughout the life of this project. Also, a summary of the data must be provided to the Commission in a letter prepared by a Qualified Environmental Professional with an opinion as to whether the fill meets the requirements for fill below the RCS-1/GW-1 Reportable Concentrations of the MCP. The fill must also be consistent with the MassDEP Similar Soils Provision Guidance (WSC#13-500), and must be consistent with the anti-degradation policy of MCP. The Commission reserves the right to require specific additional chemical testing of fill by a third party, at the Applicant's expense, prior to placement at the site.

Stormwater Management System (All conditions in this section shall remain in perpetuity)

- 37) All construction and post-construction stormwater management shall be conducted in accordance with the plans and specifications approved by this Agreement including final plans, stormwater management system operation and maintenance plan/documents, Stormwater Pollution Prevention Plan, and the Department of Environmental Protection Stormwater Management Policy.

Post-Construction

- 38) If the completed work differs from that in the original plans and/or conditions listed in this Agreement, a report must be submitted to the Commission prior to requesting a Release specifying how the work differs. Any Release shall specify any approved deviations from the original Agreement.
- 39) Snow storage areas shall be clearly marked on site and all snow removal operators shall be made aware of approved locations on site for storage. Excess snow shall be removed from the site and disposed of in accordance with applicable regulations. At no time, may snow be placed over locations on the site where there is porous pavement or stone pavers and within 100' of any wetland resource or the wetland resource itself. ***This condition shall apply in perpetuity.***
- 40) No sodium chloride (NaCl or rock salt) shall be used for de-icing on the site. ***This condition shall apply in perpetuity.***
- 41) Upon completion of the project and the passing of two growing seasons, the Applicant shall submit the following to the Commission:
- (1) A letter from a Registered Professional Engineer or certified wetlands specialist certifying compliance of the property with this Agreement, and detailing any deviations that exist, and their potential for adverse impact on wetland resource areas and buffer zones. Said certification shall also include a statement that the work is in "substantial compliance" with Parts I and II of this Agreement.
 - (2) Post-construction photographs demonstrating compliance with this Agreement, including established vegetation where required.
 - (3) An "As-Built" plan signed and stamped by a Registered Professional Engineer or Land Surveyor showing post-construction conditions within all areas under the jurisdiction of the Commission by the Massachusetts Wetlands Protection Act and the Sherborn Wetlands Protection By-Law. This plan shall include at a minimum:
 - (a) All wetland resource area boundaries with associated Buffer Zones and regulatory setback areas taken from the plan(s) approved in the SOC and this Agreement;
 - (b) Distance(s) from any structures constructed under this Agreement and the SOC to wetland resource areas and buffer zones: the term "structures" shall include, but not be limited to, all buildings, septic systems components, wells, utility lines, fences, retaining walls, and roads/driveways.
 - (c) A line delineating the limit of work performed- "work" includes any filling, excavating and/or disturbance of soils or vegetation under this Agreement and the SOC.

Perpetual Conditions:

- 42) In addition to the conditions described below, conditions that appear in other sections of this Agreement **that** shall also apply in perpetuity are noted as such.
- 43) Natural Resources Study - Reasonable access, at least once annually, from Applicant and/or the homeowner/condominium association to the project site, including areas on the property outside the limit of work, shall be granted to the Commission and its representatives for the purpose of gathering periodic, scientific data regarding post-construction/ongoing project conditions of wetland resources and their buffer zones.
- 44) All conditions noted in this Agreement and the SOC as continuing in perpetuity, listed under this section, or noted in a specific condition, shall survive the expiration of this Agreement and the SOC, shall continue in force beyond any Release and/or the Certificate of Compliance, in perpetuity, shall be so noted on the Release and/or Certificate of Compliance, and shall be referred to in the Master Deed and all future deeds to this property.

- 45) Stabilized slopes shall be maintained as designed and constructed by the property owner of record, whether "bio-engineered" or mechanically-stabilized slopes.
- 46) After completion of work, the Applicant shall take all necessary measures to permanently protect and preserve the limit of the native meadow area approved in this Agreement and the SOC, to ensure no inadvertent encroachment into the native meadow area, wetland, or buffer zone. The Applicant shall instruct all agents to explain the permanent nature of the boundary wall at the native meadow area limit to buyers/lessees/landscapers and all persons taking over the property from the Applicant.
- 47) Dumping Prohibited: There shall be no burning or dumping of leaves, grass clippings, brush, or other debris in or into the wetland, buffer zone, or any component of the Stormwater Management System.
- 48) Additional Alteration Prohibited: There shall be no additional alterations of areas under jurisdiction without the required review and permit(s) under state and local wetlands protection laws and regulations.
- 49) The Applicant shall have the Long-Term Pollution Prevention, Operations and Maintenance Plan by Bruce Saluk, final revision date of September 18, 2017, the Conditions in Perpetuity after a Release has been recorded pursuant to this Agreement and after the SOC has received a Certificate of Compliance, and the SWPPP made part of the Homeowner/Condominium Association Bylaws. The owner(s) and their successors shall follow all requirements of the Long-Term Pollution Prevention, Operations and Maintenance Plan and the SWPPP.
- 50) The "owners" ("owners" of the BMP's shall be the person(s), trust, corporation, etc. or their successors that have title to the land on which the BMP resides or until title of the land is transferred to a Homeowner/Condominium Association) shall provide a legal instrument that establishes the terms of the legal responsibility for the operation and maintenance of the stormwater BMPs. In the event that the stormwater BMPs will be operated and maintained by an entity – whether private, municipality, state agency or person - other than the owner of the units upon which the stormwater management facilities are located, the owner shall provide a plan and easement deed that provide the right of access for the entity to be able to perform all said operations and maintenance functions as required under the Long Term Pollution Prevention, Operations and Maintenance Plan, the SWPPP, and all Conditions in perpetuity as prescribed under this Agreement and the SOC.

[signature page follows]

Witness the execution hereof under seal this 22 day of MARCH, 2018.

APPLICANT

Trask, Inc. / The Fields & Sherborn LLC

By: [Signature]

Name: BENJAMIN T STEVENS

Title: President / MANAGER

COMMONWEALTH OF MASSACHUSETTS

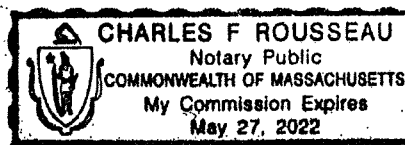
MIDDLESEX, ss.

On this 22ND day of MARCH, 2018, before me, the undersigned notary public, personally appeared the above named BENJAMIN T STEVENS PRESIDENT of Trask, Inc., as aforesaid, who proved to me through satisfactory evidence of identification, which was AND MANAGER OF THE FIELDS AT SHERBORN LLC MA DRIVERS LICENSE to be the person whose name is signed on the above signature line of the attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of Trask, Inc.

Charles F Rousseau

Notary Public CHARLES F ROUSSEAU

My Commission Expires: MAY 27 2022



Witness the execution hereof under seal this 9 day of Apr 1, 2018.

APPLICANT

Trask, Inc.

By: 

Name: Benjamin Steven

Title: Pres

COMMONWEALTH OF MASSACHUSETTS

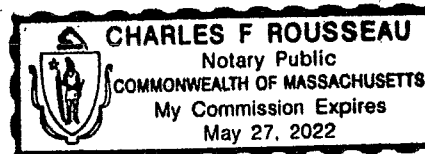
Middleton, ss.

On this 9 day of Apr 1, 2018, before me, the undersigned notary public, personally appeared the above named Benjamin Steven, Pres of Trask, Inc., as aforesaid, who proved to me through satisfactory evidence of identification, which was known to me, to be the person whose name is signed on the above signature line of the attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of Trask, Inc.

Charles F Rousseau

Notary Public

My Commission Expires: MAY 27 2022



Witness the execution hereof under seal this 9 day of April, 2018.

APPLICANT

The Fields of Sherborn LLC

By: [Signature]

Name: Benjamin Stevens

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

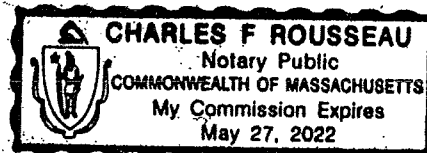
Middlesex County, ss.

On this 9th day of April 2018, before me, the undersigned notary public, personally appeared the above named Benjamin T Stevens, Manager of The Fields of Sherborn LLC., as aforesaid, who proved to me through satisfactory evidence of identification, who is known to me, to be the person whose name is signed on the above signature line of the attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of The Fields of Sherborn LLC

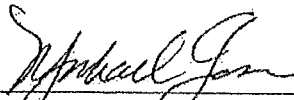
Charles F Rousseau

Notary Public

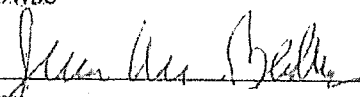
My Commission Expires: MAY 27 2022

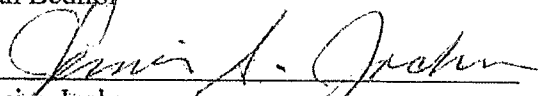


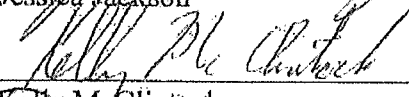
TOWN OF SHERBORN CONSERVATION COMMISSION

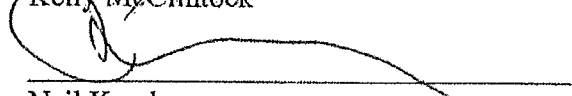

Michael Lesser, Chair

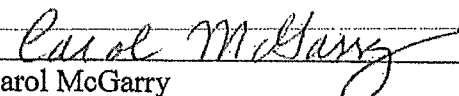
Alex P. Dowse


Jean Bedno


Jessica Jackson


Kelly McClintock

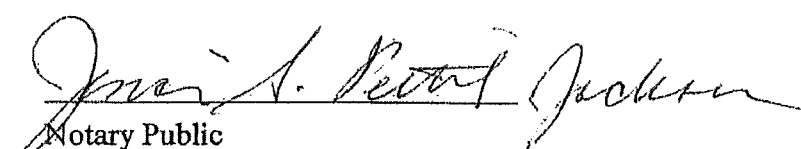

Neil Kessler


Carol McGarry

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 15th day of March, 2018, before me, the undersigned notary public, personally appeared Michael Lesser, member of the Sherborn Conservation Commission, proved to me through satisfactory evidence of identification, which was a MA driver's license to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Sherborn Conservation Commission.


Notary Public

My Commission Expires: 11/16/2018

605323/SHRB/0007

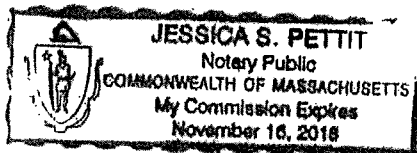


EXHIBIT C

Return to:
Department of Environmental Protection
Bureau of Resource Protection, Wastewater Management
{Applicable Regional Office or Boston Office address}

GRANT OF TITLE 5 BEDROOM COUNT DEED RESTRICTION

This Grant of Title 5 Bedroom Count Deed Restriction is made as of this ____ day of April, 2018, by The Fields at Sherborn LLC ("Grantor") of Southborough, Worcester County, MA pursuant to M.G.L. c. 21A, §13 and 310 CMR 15.000 (collectively, "Title 5").

WITNESSETH

WHEREAS, Grantor, being the owner in fee simple of those certain parcels of land located in Sherborn, Middlesex County, Massachusetts, pursuant to a deed from Margaret Trum Golibersuch, Bernard Michael Trum, and John M. Trum, Trustees of the Mary Margaret 1996 Revocable Trust A/K/A The Mary Margaret Trum 1996 Revocable Trust to Grantor, dated February 26, 2015 and recorded with Middlesex County Registry of Deeds in Book 65068, Page 314, said parcels of land being more particularly bounded and described in Exhibit A, attached hereto and made a part hereof, and being shown as Lot 2 on a plan entitled, "Plan of Land, Sherborn and Holliston, Massachusetts", dated July 9, 2012, and Lot 3R on a "Plan of Land, Sherborn and Holliston, Massachusetts, dated July 3, 2013 both prepared by GLM engineering, recorded with Middlesex County Registry of Deeds as Plan No. 661 of 2013 and Plan No.743, in Plan Book 2012

WHEREAS, Grantor desires to restrict the number of bedrooms, as the term bedroom is defined at 310 CMR 15.002 ("Bedroom"), through the granting of this Title 5 Bedroom Count Deed Restriction;

NOW, THEREFORE, Grantor does hereby GRANT to the Town of Sherborn of a municipal corporation located in Middlesex County, having a mailing address of 19 Washington Street, Sherborn, Massachusetts, and acting by and through its Board of Health ("Local Approving Authority"), for nominal and non-monetary consideration, the sufficiency and receipt of which are hereby acknowledged, with QUITCLAIM COVENANTS, a TITLE 5 BEDROOM COUNT DEED RESTRICTION ("Restriction") in, on, upon, through, over and under the Property.

Said Restriction operates to restrict the Property as follows:

1. Restriction. Grantor hereby restricts the total number of Bedrooms in, on, upon, through, over and under the Property to seventy-six Bedrooms, such that at no time shall there exist more than seventy-six Bedrooms in, on, upon, through, over and under said Property.

2. Severability. Grantor hereby agrees that, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:
- (i) That such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or
 - (ii) That any such provision, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included herein.

In either case, the remaining provisions of this instrument shall remain in full force and effect.

3. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Restriction could result in the following:
- (i) upon determination by a court of competent jurisdiction, in the issuance of criminal and civil penalties, and/or equitable remedies, including, but not limited to, injunctive relief, such injunctive relief could include the issuance of an order to modify or remove any improvements constructed upon the Property in violation of the terms of this Restriction; and
 - (ii) in the initiation of an enforcement action and/or assessment of penalties by the Local Approving Authority and/or the Massachusetts Department of Environmental Protection, a duly constituted agency with a principal office located at One Winter Street, Boston, MA 02108 (DEP), to enforce the terms of this Restriction pursuant to Title 5; M.G.L. c.111, §§ 2C, 17, 31, 122, 123, 125, 127A-O, inclusive, and 129; and M.G.L. c. 83, §11.
4. Provisions to Run with the Land. The rights, liabilities, agreements and obligations created under this Restriction shall run with the Property and any portion thereof for the term of this Restriction. Grantor hereby covenants for itself and its successors and assigns, to stand seized and to hold title to the Property and any portion thereof subject to this Restriction.

The rights granted to the Local Approving Authority, its successors and assigns, do not provide, however, that a violation of this Restriction shall result in a forfeiture or reversion of Grantor's title to the Property.

5. Concurrence Presumed. It is agreed that:
- (i) Grantor and all parties claiming by, through, or under Grantor agree to and shall be subject to the provisions of this Restriction; and

- (ii) Grantor and all parties claiming by, through, or under Grantor, and their respective agents, contractors, sub-contractors and employees, agree that the Restriction herein established shall be adhered to and shall not be violated, and that their respective interests in the Property shall be subject to the provisions herein set forth.
6. Incorporation into Deeds, Mortgages, Leases, and Instruments of Transfer. Grantor hereby agrees to incorporate this Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, condominium master deeds, condominium trusts, condominium by-laws, occupancy agreements or any other instrument of transfer by which an interest and/or a right to use the Property, or any portion thereof, is conveyed.
7. Recordation. Grantor shall record and/or register this Restriction with the appropriate Registry of Deeds and/or Land Registration Office within 30 days of receiving the approved Restriction from the Local Approving Authority. Grantor shall file with the Local Approving Authority and the DEP a certified Registry copy of this Restriction as recorded and/or registered within 30 days of its date of recordation and/or registration.
8. Amendment and Release. This Restriction may be amended only upon the approval and acceptance of such amendment by the Local Approving Authority. Release of this Restriction shall be granted by the Local Approving Authority upon (i) Grantor's request of such release; and (ii) the Property being connected to a municipal sewer system and the septic system serving the Property being abandoned in accordance with 310 CMR 15.354. Any such amendment or release shall be recorded and/or registered with the appropriate Registry of Deeds and/or Land Registration Office and a certified Registry copy of said amendment or release shall be filed with the Local Approving Authority and the DEP within 30 days of its date of recordation and/or registration.
9. Term. This Restriction shall run in perpetuity and is intended to conform to M.G.L. c.184, §26, as amended.
10. Rights Reserved. This Restriction is granted to the Local Approving Authority. It is expressly agreed that acceptance of this Restriction by the Local Approving Authority shall not operate to bar, diminish, or in any way affect any legal or equitable right of the Local Approving Authority or of DEP to issue any future order with respect to the Property or in any way affect any other claim, action, suit, cause of action, or demand which the Local Approving Authority or DEP may have with respect thereto. Nor shall acceptance of the Restriction serve to impose any obligations, liabilities, or any other duties upon the Local Approving Authority.

11. Effective Date. This Restriction shall become effective upon its recordation and/or registration with the appropriate Registry of Deeds and/or Land Registration Office.

WITNESS the execution hereof under seal this____ day of April, 2018

The Fields at Sherborn, LLC
By Benjamin T. Stevens
Manager

COMMONWEALTH OF MASSACHUSETTS

_____,ss _____, 20____

Then personally appeared the above-named Benjamin T. Stevens as Manager of The Fields at Sherborn and acknowledged the foregoing instrument to be his free act and deed as Manager of The Fields at Sherborn before me.

Notary Public:
My commission expires:

Approved and Accepted By:

Date: _____

Town of Sherborn Board of Health

603314

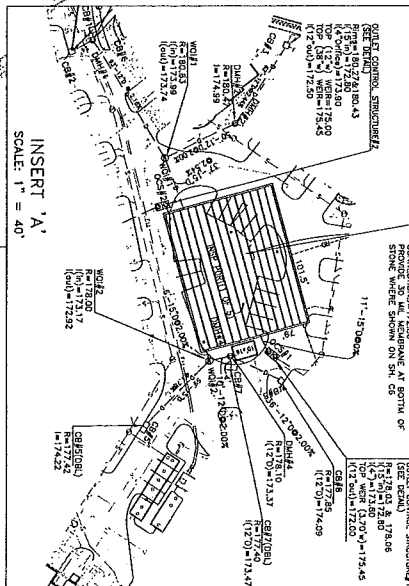
EXHIBIT D

THE FIELDS AT SHERBORN

Unit Plans

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Plans, buildings C & H.....	9-12
Phasing breakdown and unit schedule.....	13



Downloaded from <http://ajphaphysiol.physiology.org/> at University of California, San Diego on June 11, 2015

PREPARED BY:
BRUCE SALUK & ASSOC., INC.
CIVIL ENGINEERS & LAND SURVEYORS
576 BOSTON POST ROAD EAST
MARLBOROUGH, MA 01752

SCALE: 1" = 40'

10	12/15/12	UTILITY, WATER, DRAIN & SEWER EXITS	PSD
8	9/1/12	DRAINAGE REVISIONS	RAIS
6	2/16/18	REMOVED RT & MOVED WELLS	RAIS
7	1/28/18	R1 - WELLS F.T. - C	RAIS
8	12/23/15	WMS COUNTY, MS, SD, DRAINAGE, MISC	RAIS
3	10/15/15	BOH PLAN UPDATE	RAIS
4	6/24/15	STORMWATER SYSTEM	RAIS
1	1/28/15	RETAINING WALLS	RAIS
2	6/30/13	REVISED	RAIS
NO.	DATE	DESCRIPTION	BY

The Fields at Sherborn

Unit/Building Description

December 18th, 2017

The site will contain a total of nine buildings, each consisting of either 2, 3 or 6 units per building. Each unit will have front loaded garage door and entrance door; 12 units will have one car garage and 20 will have a 2 car garage. The site will contain parking for up to 118 cars, either in garages or in driveways behind garages, along with 14 spaces restricted as guest parking.

The project has private septic system approved for 76 bedrooms. 12 units will have three bedrooms, and the balance (20) will have two bedrooms. The number of 3 bedroom units will be shared by both affordable units (25% of 12; or 3 units) and market units, 9 units total.

The buildings are to have decorative exterior siding, raised panel columns, 35 year architectural black roofs, with gutters, overhangs, and extended eaves. All decking will be Trex or similar style decking, all raised decks and porches will be wrapped in Azek or similar; no pressure treated framing will be exposed. All garage doors will be decorative carriage style with dark hardware, all windows will be Andersen brand or similar, with decorative grills and exterior trims. There will be no difference in exterior materials used for any units, affordable or market.

Units 7-15, and 19-32 will be walk out units with door and windows to exterior grade. These units will have raised rear decks in styles detailed above.

Units 1-6 and 16-18 will have flat rear yards with concrete paver patios at grade.

The affordable units are slated to be units 2, 5, 9, 10, 14, 26, 27, 31 of which units 2, 5, 14 are the 3 bedroom, affordable units.

There are three different styles of units, ranging from 1800 sf- 2400 sf; the unit names and details are the following:

The Quincy:

1770 sf; 1 car garage, 2 bedrooms (these are the units in six unit building) Project total: 12

The Kendall:

2175 sf; 2 car garage, 2 or 3 bedrooms; these are the middle units in the tri plexes: 6 total

The Everett:

2530 sf; 2 car garage, 2 or 3 bedrooms; these are the end units in the tri and duplexes: 14 total

All market units will have the ability with deed restriction or condo designation for a finished basement consisting of an open playroom, and a potential ½ bath (no shower or tub) Finished basements are optional, and are not available on the affordable units.

All market units will have oak flooring throughout the first floor, kitchens will be selected from builder's lines, all appliances will be stainless steel and tops to be granite. All baths will be tile floors, and second floor will be carpet.

Master bathrooms will be tile floor with tile showers and double vanities

if finished (market units only), the basement will be carpeted with hardwood stairs. Basement baths (if finished) will be ½ baths with vanity, sink, and toilet.

Affordable units will also be hardwood flooring for first floor; with carpeted stairs and bedrooms. All baths will be tile with acrylic tub/showers or just shower units.

Numbers of bathrooms/laundry room is unchanged from affordable and market units; level of finish in market units will be higher.

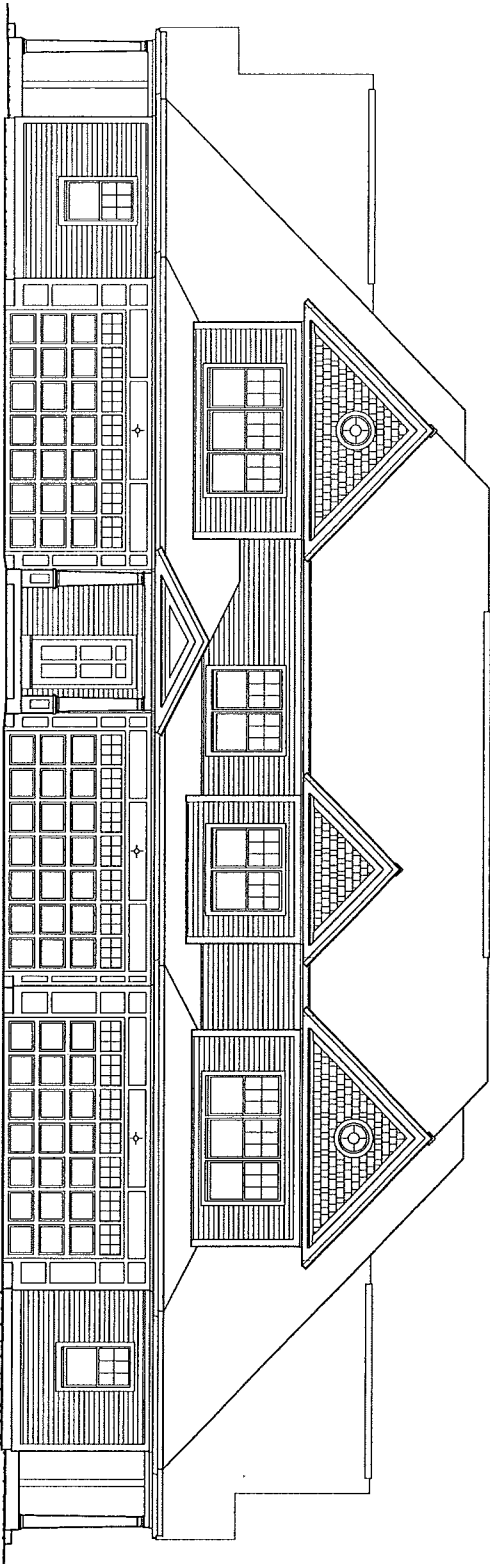
Market units will have optional gas fireplaces, affordable units will not

Interior systems shall be gas fired heating with air conditioning, gas hot water systems, and 100 amp electric panels. There is no difference between market and affordable units for all operational systems.

All units will meet existing stretch energy code requirements and all applicable building code requirements. Depending on final fire suppression code requirements, it is assumed that each unit will have a NFPA Chapter 13d fire suppression system, with individual water storage systems as needed, this system design is subject to final approval by the Sherborn Building Inspector and Sherborn Fire Department.

Depending on final water supply source, and assuming a Public Water System is approved by MaDEP; then each unit will be metered for water use and fees will be collected by Condo Association for water and sewer usage; fees from water and sewer will be earmarked for the long term maintenance of both the septic system and the water supply system.

All units shall be sold as part of the condominium association, and unit descriptions shall be detailed (including final bedroom count) within each phase of the master deed. Restrictions as required by the Sherborn Board of Health, Sherborn Conservation Commission, and the Comprehensive Permit (along with all required regulatory agreements) shall be detailed in final Condominium Documents.



UNIT "A-1"

The Everett

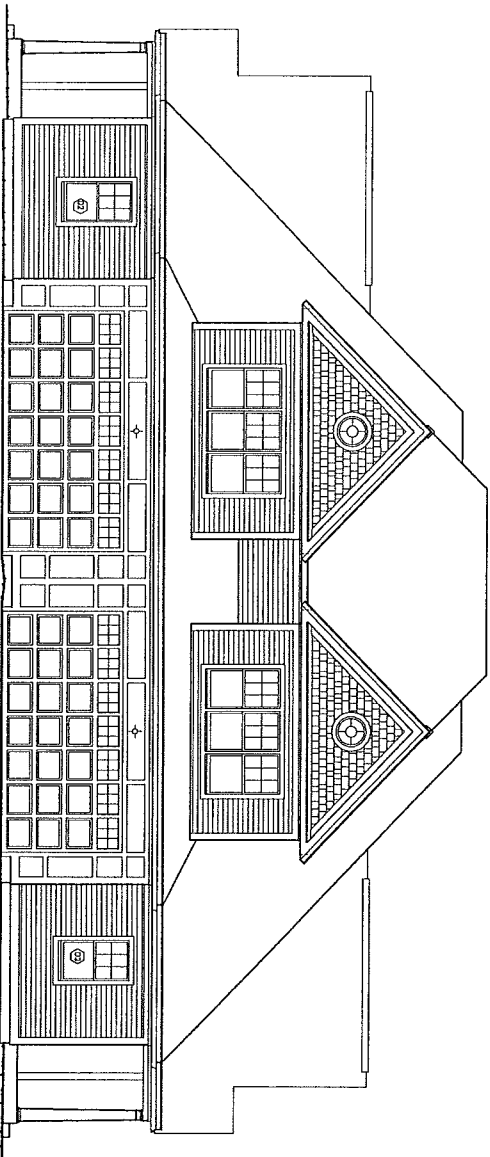
UNIT "B-2"

The Kendall

UNIT "A-1" Rev

The Everett

FRONT ELEVATION
THE FIELDS - TOWNHOMES - Schem. Design
Reeves Design Associates 8/22/2017
BUILDING 1 - 3-PLEX
Plan for buildings A, B, D, E, G & I



UNIT "A-1"

UNIT "A-2" Rev

The Everett

The Everett

FRONT ELEVATION

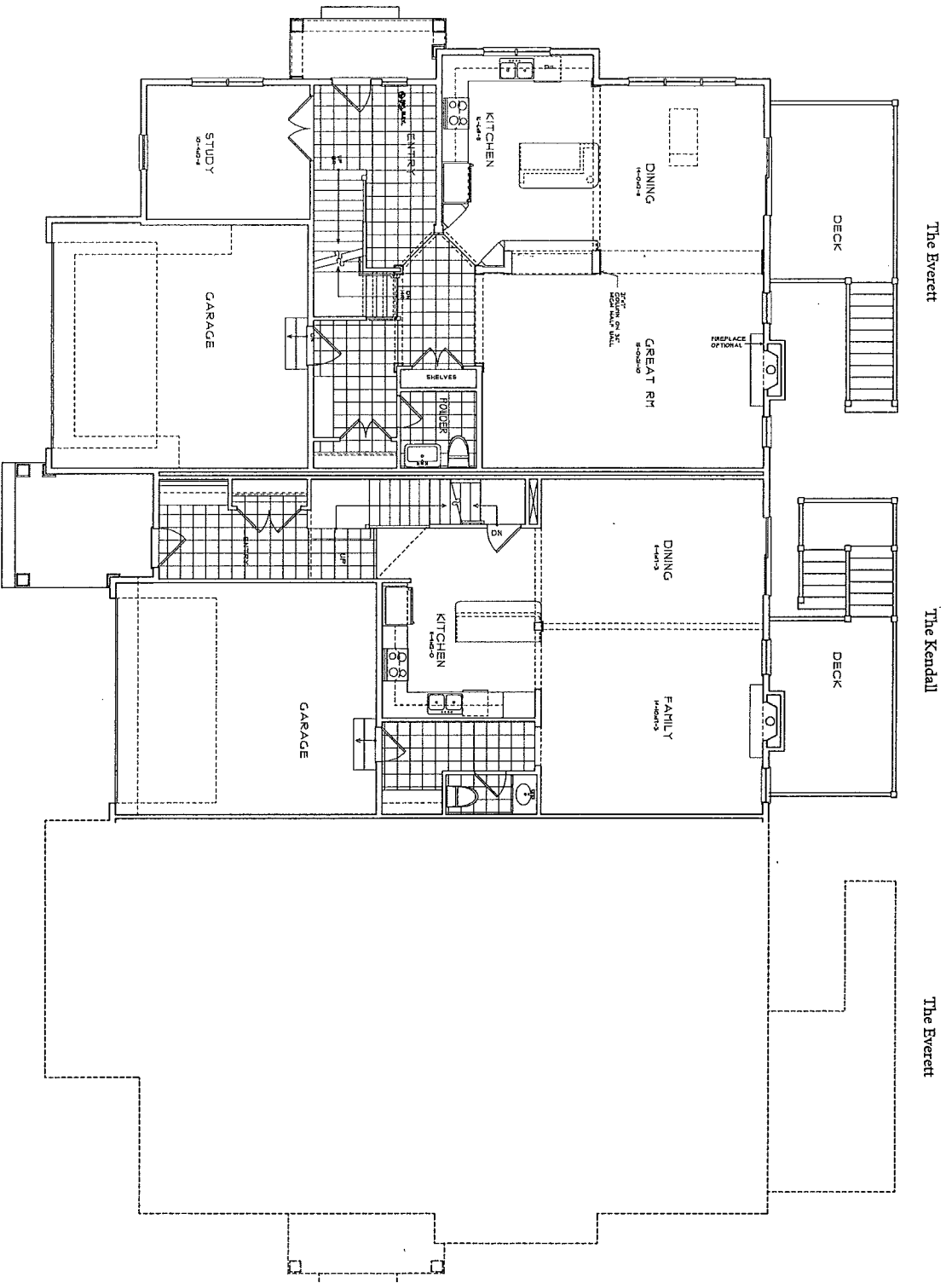
THE FIELDS - TOWNHOMES - Schem. Design

Reeves Design Associates

BUILDING 1 - 2-PLEX

8/26/2017

Plan for building F



UNIT "A-1"

UNIT "B-2"

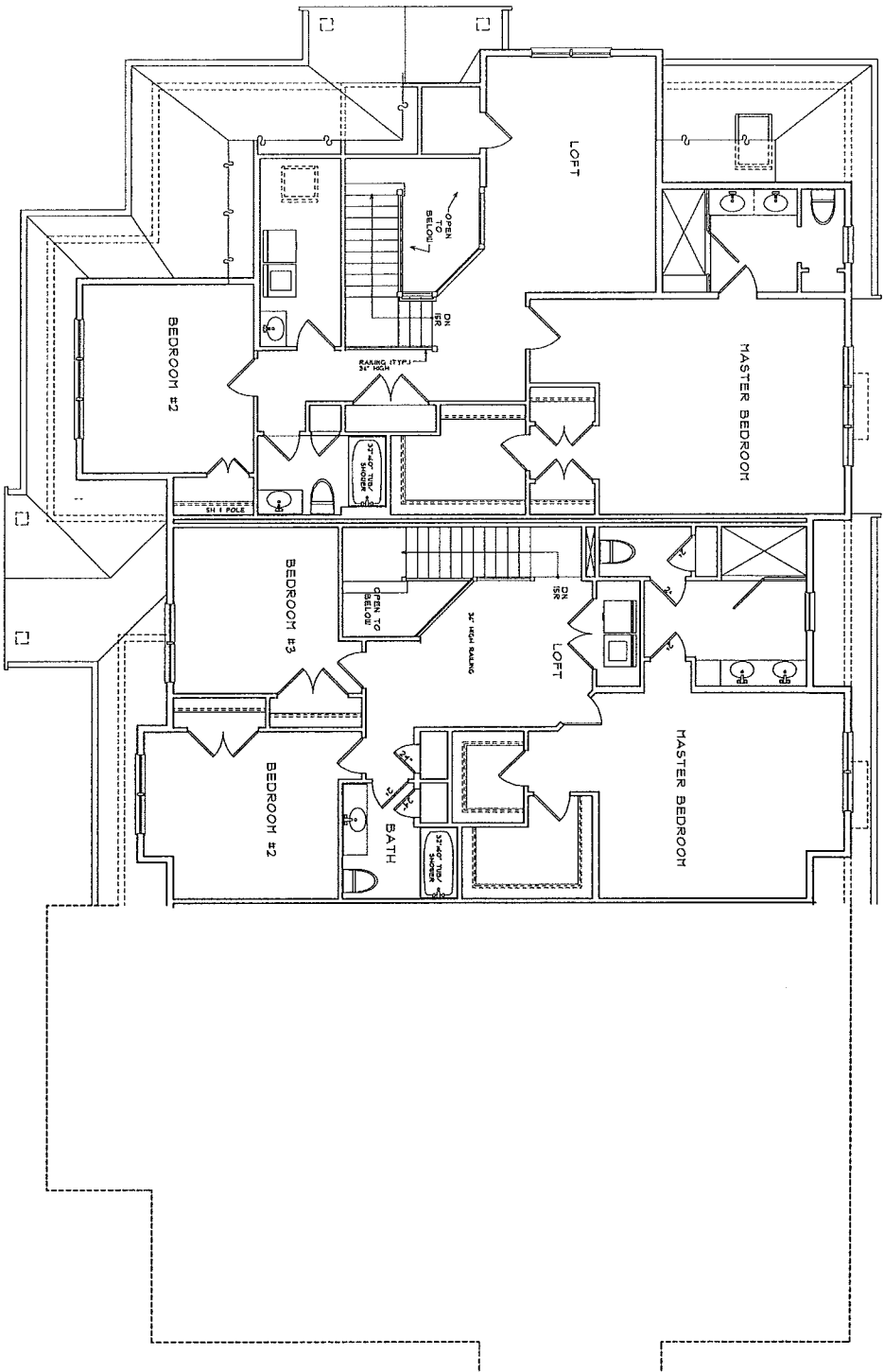
UNIT "A-1" Rev

FIRST FLOOR
THE FIELDS - TOWNHOMES - Schem. Design
Reavas Design Associates
Plans for buildings A, B, D, E, G & I
08-09-17

The Everett
Two bedroom version

The Kendall
Three bedroom version

The Everett



UNIT "A-1"

UNIT "B-2"

UNIT "A-1" Rev

UPPER FLOOR

THE FIELDS - TOWNHOMES -- Schem. Design

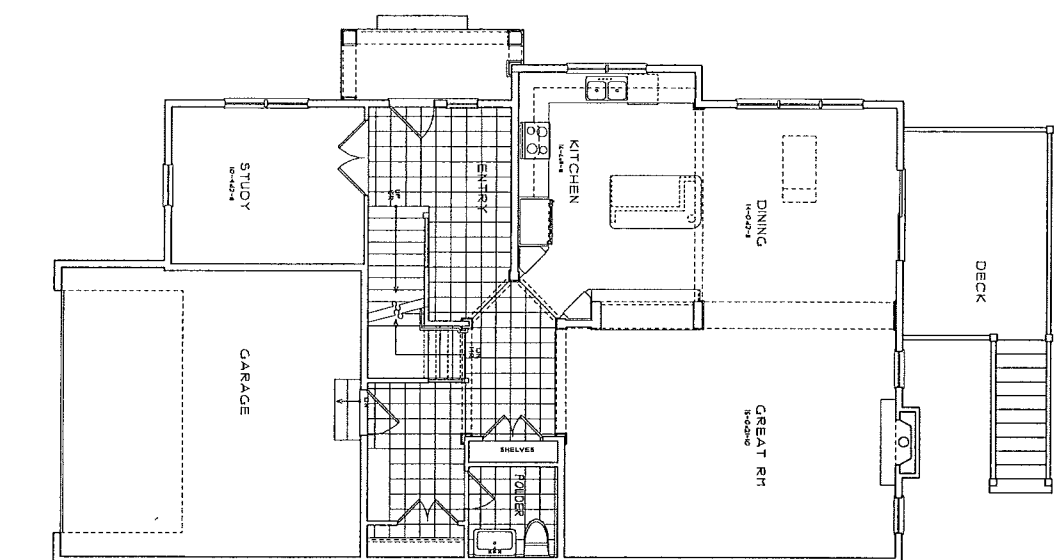
Reeves Design Associates

Plans for buildings A, B, D, E, G & I

08-22-11

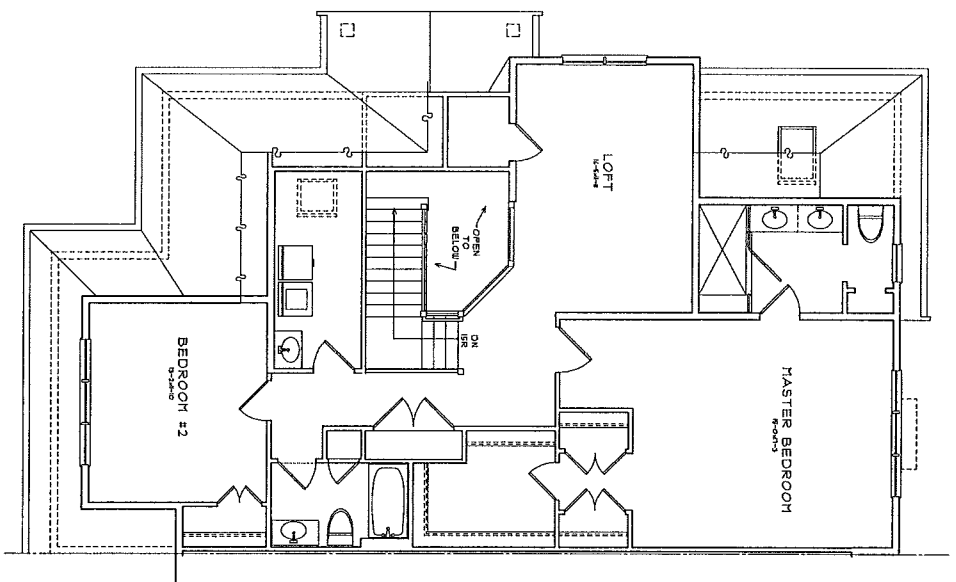
THE EVERETT

Two bedroom version

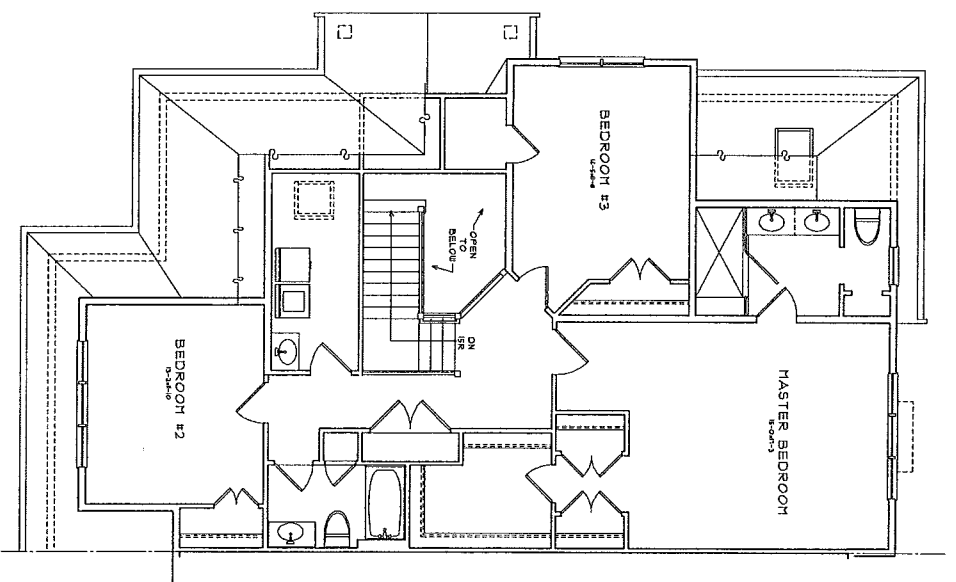


MAIN FLOOR
12TH F2

Three bedroom version



UPPER FLOOR
"A-1" - 2BR/LOFT
1250 F12

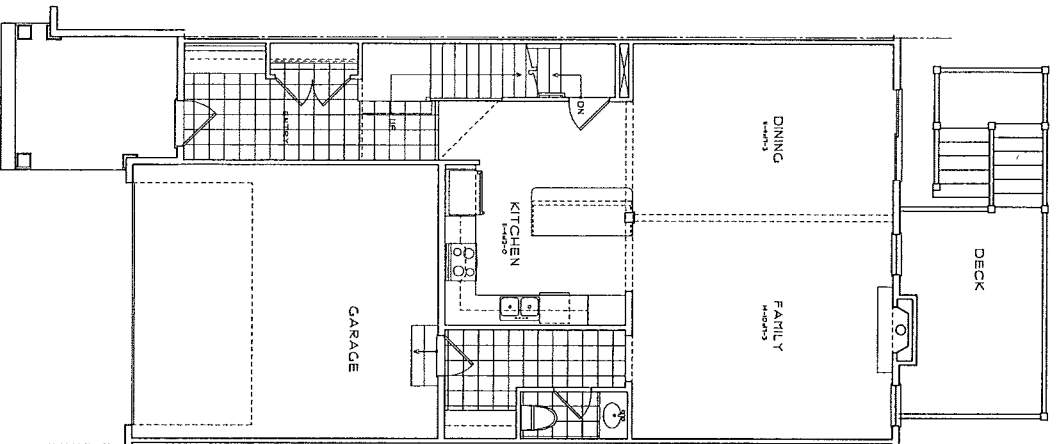


UPPER FLOOR
"A-2" - 3BR
1250 F12

UNIT TYPE "A"
THE FIELDS - TOWNHOMES - Schem. Design
Reeves Design Associates
08-21-17

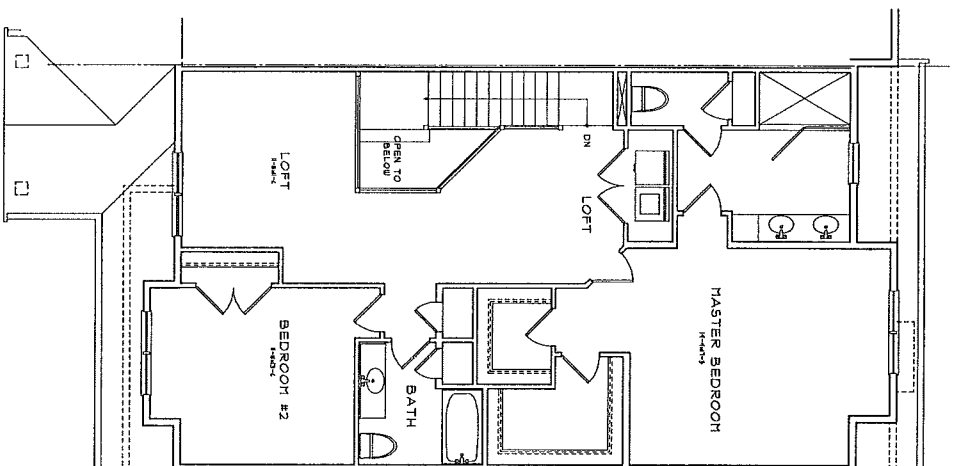
THE KENDALL

Two bedroom version

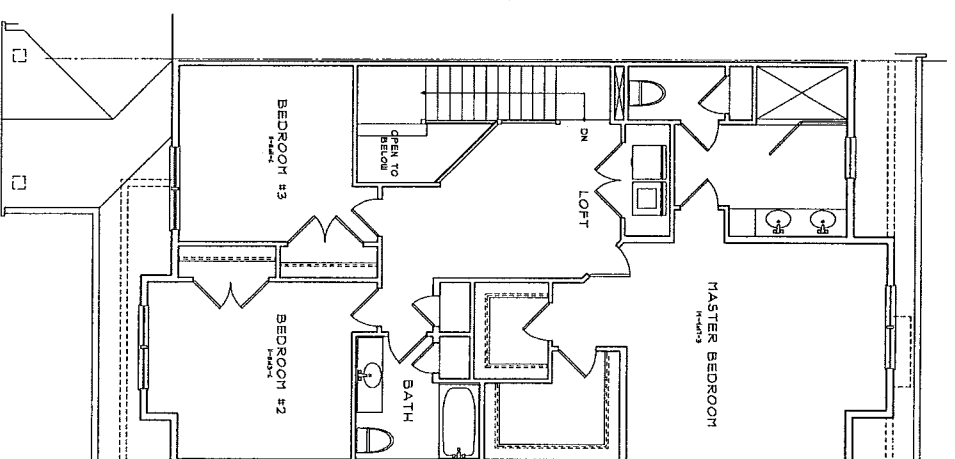


MAIN FLOOR
9'15" T12

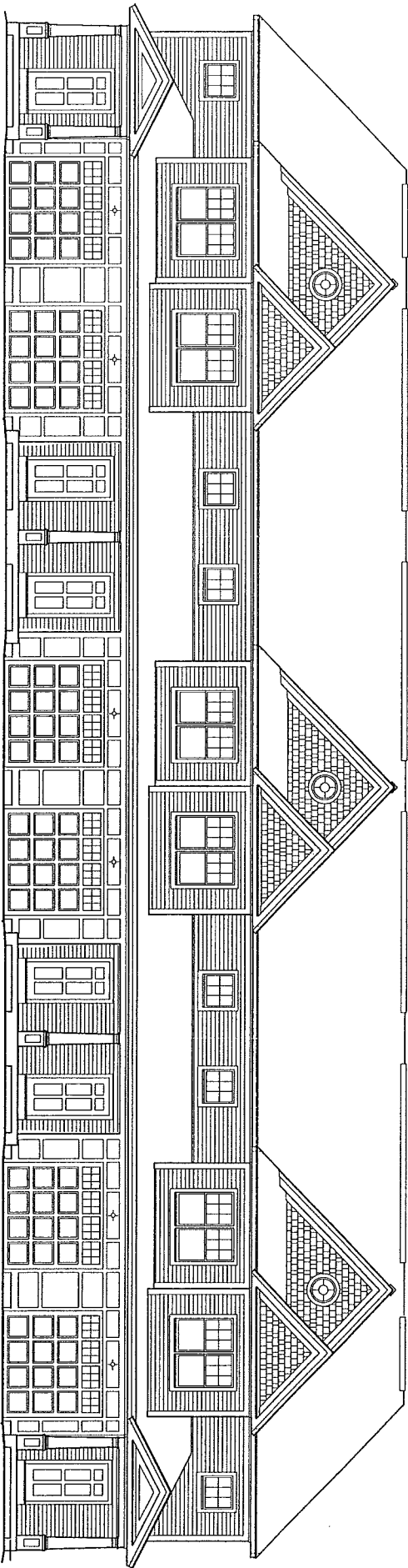
Three bedroom version



UPPER FLOOR
"B-1" - 2BR/LOFT
11'9" T12



UPPER FLOOR
"B-2" - 3BR
11'9" T12



UNIT "C-1"

The Quincy

UNIT "C-1" Rev

The Quincy

UNIT "C-1"

The Quincy

UNIT "C-1" Rev

The Quincy

UNIT "C-1"

The Quincy

UNIT "C-1" Rev

The Quincy

FRONT ELEVATION

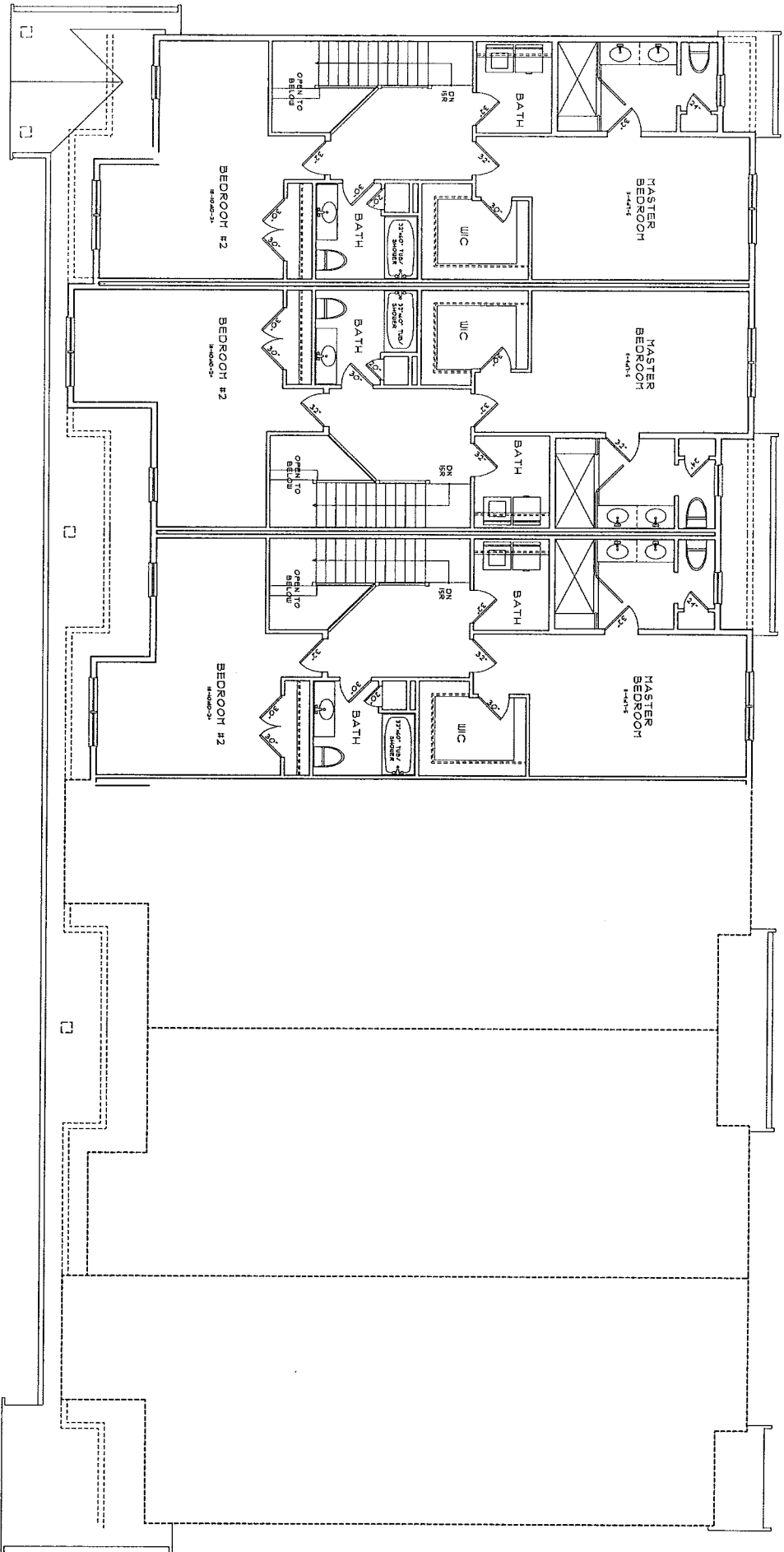
THE FIELDS - TOWNHOMES - Schem. Design

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BUILDING 3 - 6-PLEX

8/25/2011

Plan for buildings C&H



UNIT "C-1" Rev
The Quincy

UNIT "C-1" Rev
The Quincy

UNIT "C-1" Rev
The Quincy

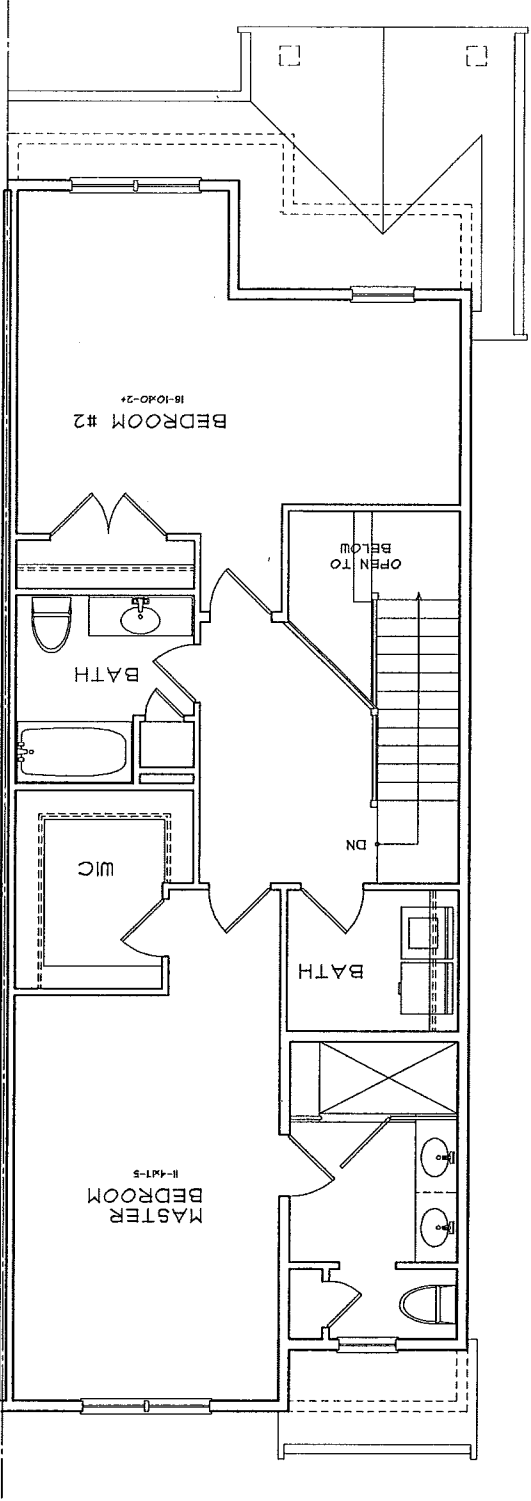
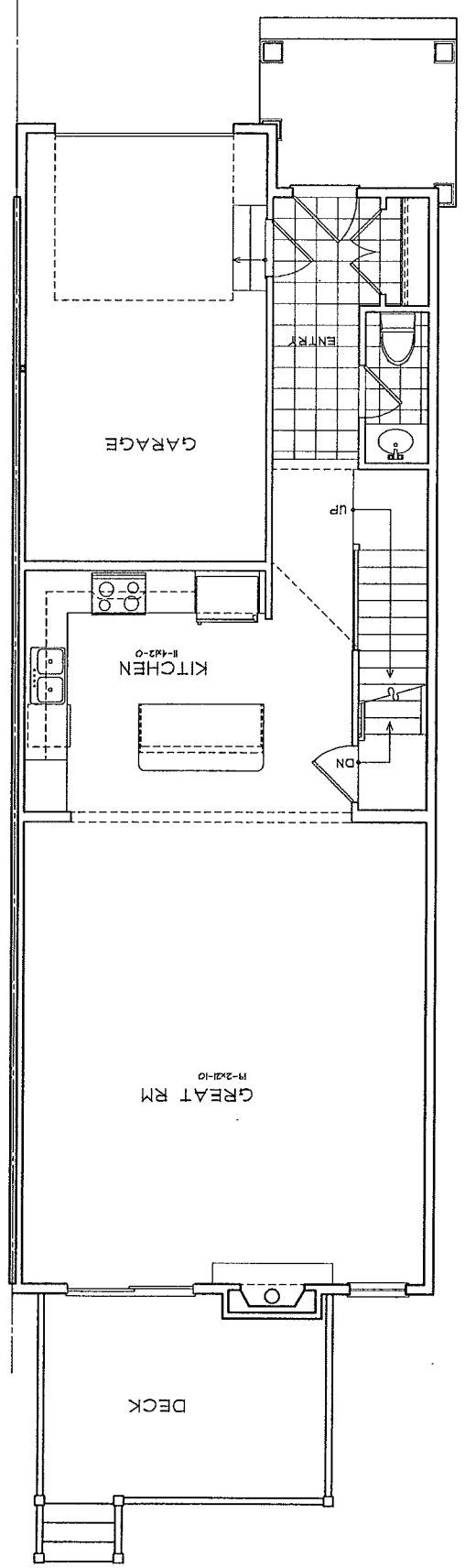
UNIT "C-1" Rev
The Quincy

UNIT "C-1" Rev
The Quincy

UNIT "C-1" Rev
The Quincy

THE FIELDS - TOWNHOMES - Schem. Design
Revas Design Associates

THE QUINCY



UNIT TYPE "C"
THE FIELDS - TOWNHOMES - Schem. Design

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08-26-17

The Fields At Sherborn: Unit break down: December 4, 2017

Unit Number	Affordable	Name	Beds	Construction sequence	Building
1	market	The Everett	2	3	a
2	affordable	The Kendall	3	3	a
3	market	The Everett	3	3	a
4	market	The Everett	2	3	b
5	affordable	The Kendall	3	3	b
6	market	The Everett	3	3	b
7	market	The Quincy (e)	2	2	c
8	market	The Quincy	2	2	c
9	Affordable	The Quincy	2	2	c
10	Affordable	The Quincy	2	2	c
11	market	The Quincy	2	2	c
12	market	The Quincy (e)	2	2	c
13	market	The Everett	3	2	d
14	Affordable	The Kendall	3	2	d
15	market	The Everett	2	2	d
16	market	The Everett	2	2	e
17	market	The Kendall	3	2	e
18	market	The Everett	3	2	e
19	market	The Everett	3	1	f
20	market	The Everett	2	1	f
21	market	The Everett	2	1	g
22	market	The Kendall	3	1	g
23	market	The Everett	3	1	g
24	market	The Quincy (e)	2	1	h
25	market	The Quincy	2	1	h
26	Affordable	The Quincy	2	1	h
27	Affordable	The Quincy	2	1	h
28	market	The Quincy	2	1	h
29	market	The Quincy (e)	2	1	h
30	market	The Everett	3	1	i
31	Affordable	The Kendall	2	1	i
32	market	The Everett	2	1	i

Total bedrooms 76

KEY	
Model Units	
Phase 1	
Phase 2	
Phase 3	