

## PURCHASE AND SALE AGREEMENT

1. Information and Definitions.

(a) DATE OF AGREEMENT: June 18, 2019

(b) PREMISES: All that land owned by the H.D.Y.L.T.A. Realty Trust described in a deed from Cape Shore Properties, Inc., dated March 2, 1999, recorded with the Barnstable County Registry of Deeds in Book 12103, Page 109, including any and all aquaculture and beach rights, said property shown on a "Plan of Land Showing a Division of Land at Indian Neck Wellfleet, MA Prepared for H.D.Y.L.T.A. Realty Trust," dated June 14, 2011, prepared by Outermost Land Survey, Inc., recorded with the Barnstable County Registry of Deeds in Plan Book 650, Pages 37 through 40 (4 sheets), excluding that registered land shown on Land Court Plan 26390A and those properties conveyed in a Release Deed recorded with the Barnstable County Registry of Deeds in Book 31747, Page 138 and a Release Deed recorded with the Barnstable County Registry of Deeds in Book 31469, Page 179, together with an easement and right of way for pedestrian and vehicular traffic from a public way to the Premises.

(c) SELLER: **Todd Mindrebo, Trustee of the H.D.Y.L.T.A. Realty Trust**, under Declaration of Trust dated January 28, 1998, recorded with the Barnstable County Registry of Deeds in Book 12103, Page 104

Seller's Attorney: Edward S. Englander, Esq., Englander & Chicoine, P.C., 44 School Street, Suite 800, Boston, MA 02108

Phone: (617) 723-7440 Fax: (617) 723-8849

E-Mail: EEnglander@ec-attorneys.com

(d) BUYER: **Town of Wellfleet**

Address: 300 Main Street, Wellfleet, MA 02667

Buyer's Attorney: Katharine Lord Klein, Esq., KP Law, P.C., 101 Arch Street, 12<sup>th</sup> Floor, Boston, MA 02110

Phone: (617) 556-0007 Fax: (617) 654-1735

E-Mail: kklein@k-plaw.com

(e) PURCHASE PRICE: The total purchase price for the Premises is Two Million and 00/100 (\$2,000,000.00) Dollars, which shall be paid at the time of delivery of the deed by municipal treasurer's check, attorney's IOLTA check, or wire transfer, at BUYER's election.

(f) CLOSING DATE: The deed shall be delivered (the "Closing"), on the day that is thirty (30) days from the date on which BUYER's contingencies, as provided in Section 15, below, have been satisfied, unless said day is a weekend or holiday, in which case the Closing Date will be the next business day, at the offices of Town Counsel, KP Law, P.C., 101 Arch Street, 12<sup>th</sup> Floor, Boston, Massachusetts, unless otherwise agreed to by the parties through their counsel or unless agreed to in writing by the parties. It is agreed that time is of the essence of this Agreement. BUYER shall notify the SELLER or SELLER's counsel fourteen (14) days in advance of the proposed Closing Date. In no event will the closing be later than September 20, 2019 at 10:00 a.m. at the Barnstable County Registry of Deeds, unless otherwise agreed at an alternate location and time. **TIME BEING OF THE ESSENCE FOR ALL DATES AND DEADLINES IN THIS AGREEMENT.**

(g) TITLE: Quitclaim Deed

2. Covenant. SELLER agrees to sell and BUYER agrees to buy the Premises upon the terms hereinafter set forth.

3. Premises. The Premises consists of the land, aquaculture and beach rights described in the deed to the Seller, together with an easement and right of way from a public way, for pedestrian and vehicular traffic, to the Premises. The SELLER's rights in Indian Neck are seaward from the high mean water mark and are not registered land.

4. Title Deed. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to BUYER, or to the assignee or nominee designated by BUYER by written notice to SELLER at least seven (7) calendar days before the deed is to be delivered as

herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of this Agreement; and
- (d) Easements, restrictions and reservations of record, if any, including the rights of the public to fish, fowl and navigate (the so-called Colonial Ordinances) provided the same do not interfere with use of and access to the Premises for aquaculture purposes and propagation beds.

5. Deed; Plan. SELLER shall prepare the deed. BUYER shall cause a survey plan (NGVD) to be prepared, satisfactory to BUYER, as provided in Subsection 15(c).

6. Registered Title. None of the land being sold is registered land. In addition to the foregoing, if the title to said Premises is registered, said deed shall be in a form sufficient to entitle BUYER to a Certificate of Title of said Premises, and SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

7. Possession and Control of Premises. Full possession of said Premises, subject only to the rights of persons currently using the flats as of the date of this Agreement, is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they now are, and (b) not in violation of building and zoning laws, and (c) in compliance with provisions of any instrument referred to in Section 4 hereof. BUYER shall be entitled to inspect said Premises personally prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Agreement.

8. Extension to Perfect Title or Make Premises Conform. If SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of thirty (30) calendar days. Reasonable efforts shall not obligate the Seller to expend in excess of \$2,500.00, exclusive of tax liens, voluntary encumbrances and other liens payable by SELLER. Buyer to provide Seller with notice of any defects in title within sixty (60) days from the date of this Agreement.

9. Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then

any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease, except those that survive the delivery of the deed or the termination of the Agreement, and this Agreement shall be void without recourse to the parties hereto.

10. Buyer's Election to Accept Title. BUYER shall have the election, at either the original or any extended time for performance, to accept such title as SELLER can deliver to the said Premises in their then condition and to pay therefore the purchase price, without deduction, in which case SELLER shall convey such title.

11. Acceptance of Deed. The acceptance of a deed by BUYER, or its assignee or nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to survive the delivery of said deed.

12. Use of Money to Clear Title. To enable SELLER to make conveyance as herein provided, SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, if an institutional mortgage, within a reasonable time thereafter in accordance with customary Massachusetts conveyancing practices.

13. Adjustments. Taxes for the then-current fiscal year shall be apportioned as follows: if taxes are outstanding as of the closing date, taxes will be apportioned as of the closing date in accordance with G.L. c. 59, §72A; if, however, SELLER has paid taxes through and past the closing date, such payments shall not be refunded, it being acknowledged that BUYER has no funds to refund SELLER for such taxes paid and BUYER, being tax exempt, has no obligation to pay taxes upon acquisition of the Premises. If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year.

14. Brokers. BUYER and SELLER each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. BUYER and SELLER agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this Section shall survive delivery of the deed.

15. Buyer's Contingencies. BUYER's performance hereunder is, at BUYER's option, expressly subject to the following conditions:

- (a) BUYER shall have complied with the provisions of G.L. c. 30B (the Uniform Procurement Act) for acquisition of real property. For acquisition of real property determined to be unique, thirty (30) days shall have elapsed

since the date of publication of BUYER's determination of uniqueness in the Central Register, without objection. BUYER agrees to diligently pursue full compliance with said statute;

- (b) BUYER receiving a donation of One Million and 00/100 (\$1,000,000.00) Dollars that shall be applied to the Purchase Price, which donation shall be secured within thirty (30) days of the date of this Agreement;
- (c) BUYER preparing, and being satisfied with, a survey plan (NGVD) of the Premises, said survey plan to have received endorsement of the Wellfleet Planning Board for an "Approval Not Required" (ANR) plan or approval of a subdivision plan, showing the Premises, demarcating the perimeter of the Premises and the individual propagation beds, and including the easement and right of way to be acquired by the Town, said plan to have received endorsement or approval within sixty (60) days of the date of this Agreement;
- (d) SELLER shall have complied with the disclosure provisions of G.L. c. 7C, §38; SELLER hereby agrees to execute a "Disclosure Statement for Transaction with a Public Agency Concerning Real Property" certificate as required by G.L. c. 7C, §38; and
- (e) SELLER and BUYER complying with any other requirements of the Massachusetts General or Special Laws relative to the acquisition of property by BUYER.

16. Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

- (a) no rights of any kind belonging to any person or entity encroaches upon or under the Premises from other premises, with the exception of rights of the public under the Colonial Ordinances;
- (b) title to the Premises is insurable, for the benefit of BUYER, by a title insurance company acceptable to BUYER, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use;
- (c) all structures and improvements and all means of access to the Premises shall not encroach upon or under any property not within the lot lines of the Premises; and
- (d) the Premises have access to a public way, duly laid out or accepted as such by the municipality in which the Premises are located.

17. Affidavits, etc. SELLER shall provide (a) Affidavits and indemnities with respect to due authority, parties in possession and mechanic's liens to induce BUYER's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters; (b) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, SELLER's United States taxpayer identification number, that SELLER is not a foreign person, and SELLER's address (the "1445 Affidavit"); (c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Service and stating SELLER is not subject to back up withholding; and (d) Such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by BUYER and/or the BUYER's title insurance company to complete the transaction described in this Agreement.

18. Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association of Massachusetts at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

19. Representations and Warranties. SELLER represents, to the best of SELLER's knowledge and belief, to BUYER, effective as of the date of this Agreement and also effective as of the date of closing (subject to any subsequent notice from SELLER as hereinafter set forth), that:

- (a) SELLER has not granted any options, rights of first refusal, or other contracts which give any other party a right to purchase or acquire any interest in the Premises;
- (b) SELLER has not entered into leases, licenses, or other occupancy agreements (whether written or oral) in effect with respect to any part of the Premises;
- (c) SELLER has no actual knowledge of any pending lawsuit or proceeding that might in any material way impact adversely on SELLER's ability to perform on the Closing Date;
- (d) To the best of SELLER's knowledge, SELLER's execution of this Agreement does not violate any other contracts, agreements, or any other arrangements of any nature whatsoever that SELLER has with third parties
- (e) SELLER has not received any written notice of any release of any hazardous materials or oil on, from or near the Premises (as used in this Agreement, the terms "release," "hazardous materials" and "oil" shall have the meaning given to them in M.G.L. c. 21E);

- (f) SELLER has not received any written notice from any governmental authority or agency having jurisdiction over the Premises of any environmental contamination, or the existence of any hazardous materials at the Premises in violation of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601, et seq. (CERCLA), or any similar federal, state or local statute, rule or regulation;
- (g) SELLER has provided BUYER with copies of any and all court filings and decisions in its possession, or reasonably acquired by SELLER, with respect to the Premises and the property immediately abutting the Premises, related to the ownership in or status of the title to the Premises;
- (h) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against or contemplated by SELLER; and
- (i) To SELLER's knowledge, (i) SELLER is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"), and (ii) neither SELLER, nor any beneficial owner of SELLER, is (A) listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"), (B) a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders, or (C) owned or controlled by, or acts for or on behalf of, any person on the Lists or any other person who has been determined by competent authority to be subject to the prohibitions contained in the Orders. In the event SELLER obtains knowledge that SELLER or any of its beneficial owners becomes listed on the Lists, then (x) SELLER shall immediately notify BUYER in writing, and (y) SELLER shall have ten (10) business days to remove such party from any interest in SELLER or BUYER may terminate this Agreement upon written notice to SELLER, whereupon neither party shall have any further obligation hereunder except for those obligations which expressly survive a termination of this Agreement.

SELLER will not cause nor, to the best of SELLER's ability, permit any action to be taken which would cause any of SELLER's representations and warranties to be false as of closing, and in any event shall notify BUYER promptly of any change in these representations and warranties. SELLER has no knowledge or information of any facts or circumstances which would materially and adversely affect the BUYER's use or

operation of the Premises for aquaculture purposes. SELLER shall confirm these representations and warranties at closing.

20. Title Review. BUYER, at BUYER's sole cost and expense, will review SELLER's title to the Premises. BUYER's performance hereunder is conditional upon BUYER being reasonably satisfied with SELLER's title to the Premises and BUYER obtaining a "clean" owner's title insurance policy, subject only to such exceptions as are reasonably acceptable to BUYER. In the event BUYER has objections to the title to the Premises and notifies SELLER of the same in writing, SELLER shall use reasonable efforts to cure such title defects to BUYER's satisfaction, at SELLER's cost. BUYER's performance is further contingent upon a final title rundown.

21. Inspection Rights. BUYER or BUYER's agent(s) shall have the right, upon at least twenty-four (24) hours prior notice to SELLER, which notice may be oral notice, to enter the Premises from time to time at BUYER's own risk for the purposes of conducting surveys, inspections, and tests, including environmental site assessments. BUYER, to the extent permitted by law, agrees to indemnify, defend and hold harmless the SELLER from any and all costs (including reasonable attorneys' fees), damages and claims for damage to property or persons directly caused by the BUYER or BUYER's agent(s) being on the Premises. BUYER shall restore the Premises to substantially the same condition as prior to such entry if the closing does not occur. This provision specifically survives the delivery of the deed or the termination of the Agreement.

22. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) upon electronically confirmed receipt of facsimile delivery, to the party's attorney at the addresses set forth in Section 1.

23. Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. All documents and funds are to be delivered in escrow subject to prompt rundown of title and recording.

24. Condition of Premises at Closing. SELLER agrees to deliver the Premises at the time of delivery of SELLER's deed in a condition substantially similar to its condition at the time of the signing of this Agreement.

25. Casualty, Condemnation. Notwithstanding anything herein to the contrary, in the event of damage to or destruction of the Premises by fire, vandalism or other casualty, or in the event of a taking of all or part of the Premises by eminent domain by any entity other than BUYER, then at BUYER's sole option, this Agreement may be terminated, without recourse, provided that any provisions stated herein to survive termination shall so survive.



26. Liability of Trustee, Shareholder, Fiduciary, etc. If SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder, with the exception of the right of first refusal under Section 32 hereof.

27. Extensions. BUYER and SELLER hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

28. Errors. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within sixty (60) days of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.

29. Taking. BUYER will acquire title to the Premises by eminent domain. SELLER hereby waives any right to claim additional damages in excess of the Purchase Price. Upon BUYER's request, SELLER shall execute a Waiver of Damages and Appraisal and shall deliver it to BUYER at the closing. BUYER shall be responsible for preparing the Order of Taking. SELLER acknowledges that BUYER shall have the right to deduct from the Purchase Price any real estate taxes, amounts that are to be paid to mortgagees from closing proceeds, and such other fees and charges that are customarily apportioned between a buyer and seller as of the Closing Date.

30. Construction of Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both SELLER and BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several.

31. Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

[Signature Page Follows]

18<sup>th</sup> In Witness Whereof, the parties hereto sign this Agreement under seal as of this day of June, 2019.

SELLER:  
H.D.Y.L.T.A. REALTY TRUST

By: Todd E Mindrebo  
Todd Mindrebo, Trustee

BUYER:  
TOWN OF WELLFLEET,  
By its Selectboard

\_\_\_\_\_  
Janet Reinhert, Chair

\_\_\_\_\_  
Helen Miranda Wilson, Vice-Chair

\_\_\_\_\_  
Justina Carlson, Clerk

\_\_\_\_\_  
Kathleen Bacon

\_\_\_\_\_  
Michael DeVasto

H.D.Y.L.T.A. REALTY TRUST  
BENEFICIARIES

Todd E Mindrebo

Robert P. McCallum

William J. ...

Julie Burt