



## Wellfleet Selectboard

### **Note: Start Time of 6pm**

The Wellfleet Selectboard will hold a public meeting on **Tuesday, March 9, 2021, at 6:00 p.m.** **This meeting will be held via Zoom Video Conference** in accordance with the temporary suspension and enhancement of the Open Meeting Law requirements by Governor Baker. Instructions for a Zoom video conference meeting which also allows phone dial-in are given below:

1. Watch a livestream on Wellfleet's YouTube Channel located at the following link:  
[www.youtube.com/c/wellfleettownmedia](http://www.youtube.com/c/wellfleettownmedia).
2. Join the meeting hosted in Zoom by using the following link:  
<https://zoom.us/j/98788085014?pwd=VjN4bGtBaml4YmtGQjNiZEFUVk1QZz09>
3. Audio, video, chat, and screen sharing functions will be disabled during the public session. Request to participate by using the "raise hand" function. **Meeting ID: 987 8808 5014 | Passcode: 063835**
  - a. Raise hand in smartphone app – touch bottom of your screen and select "more" - hit "raise hand" button
  - b. Raise hand on computer – hit "participants" button on bottom of screen – hit "raise hand" button on bottom of participants panel
  - c. Please make sure you properly identify yourself before speaking, rename yourself by selecting the participants button and choosing "more" (or by holding down on your name on a smartphone app) and selecting "rename" - full, legal names only.
  - d. Please join the meeting on time.
4. You may also listen to the meeting by calling in on a phone to +1 929 205 6099 and enter **Meeting ID: 987 8808 5014 | Passcode: 063835** Landline callers can participate by **dialing \*9 to raise their hand**.
5. You may submit questions and comments to the Town using the following email:  
[executive.assistant@wellfleet-ma.gov](mailto:executive.assistant@wellfleet-ma.gov) Comments made during the meeting via e-mail will be sent to Selectboard members AFTER the meeting.
6. Meeting materials are attached to this agenda, available online at [Wellfleet-ma.gov](http://Wellfleet-ma.gov). It is recommended that phone participants access materials in advance of the meeting.
7. **Please follow the following general instructions:**
  - a. Keep your phone muted at all times when not talking; no one is allowed to unmute themselves during the meeting.
    - i. Selectboard meetings are NOT interactive. If public comments are allowed that's all, comments only, not questions.
    - ii. If the Chair is allowing comments during the meeting the number of comments will be limited and may be **no longer than one minute**.
  - b. Do not use speakerphone; do not use Bluetooth devices; mute all background noise.
  - c. Please do not speak until the Chair asks for public comments or questions and you have been recognized by the moderator and unmuted.
  - d. After the business section is complete no public comments are permitted. Future agenda items are from the Selectboard, no one else.
8. It is anticipated that the meeting will be recorded by the Town. Anyone else desiring to record the meeting may do so only after notifying the chair and may not interfere with the conduct of the meeting in doing so.

### **I. Announcements, Open Session and Public Comments**

**Note:** Public comments must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.

- II. COVID-19 Updates and Recommendations**
  - A. Discussion on summer employees and the expectations of them – Selectboard Member Wilson
- III. Public Hearings**
  - A. Discuss and Vote on a new fee schedule at the Wellfleet Marina – William Sullivan, Harbormaster
- IV. Board/Committee Appointments and Updates**
  - A. Disclosure of Appearance of Conflict of Interest – Olga Kahn, Planning Board
  - B. Appointment of Al Mueller to the Zoning Board of Appeals – Principal Clerk
  - C. Appointment of Elisabeth Salén to the Local Housing Partnership – Principal Clerk
- V. Business**
  - A. 2021 ATM Article Bond Issuance – Town Administrator Broadbent/Miriam Spencer/Heather Michaud
  - B. Selectboard to decide to recommend or not recommend school renovation project – Chair DeVasto
  - C. Herring River Restoration/High Toss Road Approved Article – Town Administrator Broadbent/Carole Ridley
  - D. Spring Tax Insert – Wellfleet Cable Advisory Committee
  - E. Opening and Closing of Herring River – Shellfish Constable Civetta
  - F. Lt. Island Bridge Repairs – Mark Vincent/Jay Norton
  - G. Approval of final RFP for the 95 Lawrence Project – 95 Lawrence Road Task Force
  - H. Establishing a real property transfer fee for the Town of Wellfleet – Selectboard Member Wilson
  - I. Approval of a Warrant Article for Town Meeting to exempt the Town of Wellfleet from Prevailing Wages on small project – Selectboard Member Curley
- VI. Selectboard Reports**
- VII. Town Administrator's Report**
- VIII. Topics for Future Discussion**
  - A. All restaurants and businesses that plan to change seating for the upcoming season do need to get permission from Fire, Police, and Health. Make sure the policy that was written last year hasn't expired.
  - B. Public Safety Concerns at Cahoon Hollow Beach
  - C. Schedule a time for the Wastewater committee to come before the selectboard
  - D. Advertise in paper for Beach Rules and Regulations for Public Hearing at the March 23<sup>rd</sup> Selectboard Meeting
  - E. Discussion on the Management of Beach Parking Lots during the summer, White Crest in particular
  - F. United States Department of Commerce looking for Selectboard comments
  - G. Town Administrator Broadbent 6 month review - Selectboard
- IX. Correspondence and Vacancy Reports**
- X. Minutes**
  - A. February 23, 2021
- XI. Adjournment**



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

II

### COVID-19 UPDATES AND RECOMMENDATIONS

<b>REQUESTED BY:</b>	<b>Wellfleet Health Agent Lemos/Selectboard Chair DeVasto</b>
<b>DESIRED ACTION:</b>	<b>To give an update on the virus and vaccines that may be available</b>
<b>PROPOSED MOTION:</b>	No action required
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

III

### PUBLIC HEARING - A

<b>REQUESTED BY:</b>	<b>Principal Clerk</b>
<b>DESIRED ACTION:</b>	<b>To approve the new fee schedule at the marina</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve The Wellfleet Marina's updated fee schedule as listed in the selectboard packet dated March 4, 2021</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



**TOWN OF WELLFLEET  
PUBLIC NOTICE**

Notice is hereby given that the Wellfleet Board of Selectmen will hold a virtual public hearing on Tuesday, March 9, 2021 at 6:00 p.m. to discuss and vote on a new fee schedule at the Marina. Copies of the new fees will be available in the 3/9/21 Selectmen packet.

**WELLFLEET BOARD OF SELECTMEN**



**TOWN OF WELFLEET MARINA**  
**300 MAIN STREET**  
**WELFLEET, MASSACHUSETTS 02667**  
**508-349-0320**

email: [marina@wellfleet-ma.gov](mailto:marina@wellfleet-ma.gov)  
<http://www.wellfleet-ma.gov/harbormaster-marina>



March 4, 2021

Dear members of the Selectboard,

The Harbormaster department would like to propose a fee increase for The Wellfleet Marina. As you may or may not know we have not increased our fees in several years, which has left the Marina Enterprise Fund lagging to keep up with the repairs and maintenance that is very much needed. We have worked with the Marina Advisory Committee to come up with a three-year plan to slowly increase our fees so as to not place extra strain on the lessees. What is proposed in the Fee Schedules for the 2021, 2022, and 2023 boating season is 3,5, and 7% increase. We felt it in everyone's best interest to start with the Massachusetts Cost-Of-Living Adjustment set for 2020. I am also proposing to not include the increase on the commercial slips listed as such in the Fee Schedule, for the season of 2021, which will enable the Commercial Slip holders to financially prepare for the same increases in the season of 2022 as the rest of the Schedule.

Respectfully,

William Sullivan  
Wellfleet Harbormaster

## Town of Wellfleet Marina 2020 Fee Schedule

DESCRIPTION	TAXPAYER	NON-TAXPAYER
CONCRETE FLOATS	A	1,672.00 2,295.00
	B	1,839.00 2,463.00
	C	1,672.00 2,295.00
	D	2,006.00 2,631.00
	E	2,173.00 2,790.00
OUTBOARD SLIPS		1,184.00 1,672.00
SKIFF TIE UP		350.00 450.00
FINGER PIER/SOUTH BULKHEAD		2,006.00 2,631.00
L-PIER/MOSQUITO DOCK COMMERCIAL	\$40/ft	\$50/ft
ACE MOORING TAGS	219.00	263.00
WATERWAYS MOORING TAGS	72.00	98.00
DINGHY TIE UP	328.00	328.00
TRANSIENT DOCKAGE	55/NIGHT + 2/FT>30'	
	\$2/night or \$11/week	for electricity
TRANSIENT MOORING	39.00/DAY + \$2/FT>30FT	
OFF SEASON DOCKAGE	\$22.00/NT \$131/WK	
OFF SEASON MOORING	\$6.00/NT \$33/WK	
F/V, FLOATS & RAFTS DOCKAGE	\$40/NIGHT	\$40/NIGHT
DAILY LAUNCH RAMP FEE	10/DAY	
SEASONAL LAUNCH RAMP FEE	200.00/SEASON	
COMMERCIAL LAUNCH (SEASONAL)	820.00/Commercial Operation	
SLIP WAITING LIST	11.00	
MOORING WAITING LIST	11.00	
OVERNIGHT/ EVENT PARKING	20.00/OVERNIGHT	1500/SEASONAL
F/V UNLOADING	55.00	
OFF SEASON (COMM F/V>25')		
<i>April 1- May 15<sup>th</sup> October 15<sup>th</sup>-December 1</i>	250.00	
OFF SEASON (COMM F/V<25')		
<i>April 1- May 15<sup>th</sup> October 15<sup>th</sup>-December 1</i>	150.00	
WINTER DOCKAGE (COMM F/V>25')		
<i>December 1-April 1</i>	750.00	
WINTER DOCKAGE (COMM F/V<25')		
<i>December 1-April 1</i>	500.00	
WINTER STORAGE	1,500.00	
ESCROW	1,500.00	

## TOWN OF WELLFLEET MARINA 2021 FEE SCHEDULE

DESCRIPTION	TAXPAYER	NON-TAXPAYER
A ≤ 25	\$ 1,723.00	\$ 2,364.00
B ≤ 35	\$ 1,895.00	\$ 2,537.00
C ≤ 30	\$ 1,723.00	\$ 2,364.00
D ≤ 40	\$ 2,067.00	\$ 2,710.00
E ≤ 45	\$ 2,239.00	\$ 2,874.00
OUTBOARD SLIPS ≤ 20	\$ 1,220.00	\$ 1,723.00
BOW TIE UP ≤ 16	\$ 360.00	\$ 464.00
ACE MOORINGS	\$ 226.00	\$ 271.00
WATERWAYS MOORINGS	\$ 75.00	\$ 101.00
DINGHY TIE UP	\$ 328.00	\$ 328.00
TRANSIENT DOCKAGE	\$57/ NIGHT + \$2/FT>30'	\$3 NT/ \$12 WK ELECTRICITY
TRANSIENT MOORING	\$41/NIGHT +\$2/FT>30'	
OFF SEASON DOCKAGE	\$23/NIGHT \$135/WEEK	\$3 NT/ \$12 WK ELECTRICITY
OFFSEASON MOORING	\$7/ NIGHT \$34/WEEK	
LAUNCH RAMP FEE	\$10 PER LAUNCH	
SEASONAL LAUNCH RAMP FEE	\$200/ SEASON	
COMMERCIAL LAUNCH	\$820/ COMMERCIAL OPERATION	
LUNCH DOCKAGE/MOORING	\$20/ 2HR +\$10/HR ADDITIONAL	
OVERNIGHT/ EVENT PARKING	\$25/ NIGHT	\$1500 SEASONAL
SLIP WAITING LIST	\$20/ YEARLY	
MOORING WAITING LIST	\$20/ YEARLY	
<b>COMMERCIAL</b>		
SOUTH BULKHEAD	\$ 2,006.00	\$ 2,631.00
L-PIER/ MOSQUITO DOCK	\$40/FOOT	\$50/FOOT
F/V, FLOATS & RAFTS	\$40/NIGHT	\$40/NIGHT
F/V UNLOADING	\$55	
OFFSEASON F/V >25' 4/1-5/15, 10/15-12/1	\$ 250.00	
OFFSEASON F/V <25' 4/1-5/15, 10/15-12/1	\$ 150.00	
WINTER DOCKAGE F/V >25' 12/1-4/1	\$ 750.00	
WINTER DOCKAGE F/V <25' 12/1-4/1	\$ 500.00	
WINTER STORAGE	\$ 1,500.00	
ESCROW	\$ 1,500.00	

# TOWN OF WELLFLEET MARINA 2022 FEE SCHEDULE

DESCRIPTION	TAXPAYER	NON-TAXPAYER
A ≤ 25	\$ 1,810.00	\$ 2,483.00
B ≤ 35	\$ 1,990.00	\$ 2,664.00
C ≤ 30	\$ 1,810.00	\$ 2,483.00
D ≤ 40	\$ 2,171.00	\$ 2,846.00
E ≤ 45	\$ 2,351.00	\$ 3,018.00
OUTBOARD SLIPS ≤ 20	\$ 1,281.00	\$ 1,810.00
BOW TIE UP ≤ 16	\$ 378.00	\$ 488.00
ACE MOORINGS	\$ 238.00	\$ 285.00
WATERWAYS MOORINGS	\$ 79.00	\$ 107.00
DINGHY TIE UP	\$ 328.00	\$ 328.00
TRANSIENT DOCKAGE	\$60/ NIGHT + \$2/FT>30'	\$4 NT/ \$16 WK ELECTRICITY
TRANSIENT MOORING	\$44/NIGHT +\$2/FT>30'	
OFF SEASON DOCKAGE	\$25/NIGHT \$142/WEEK	\$4 NT/ \$16 WK ELECTRICITY
OFFSEASON MOORING	\$8/ NIGHT \$36/WEEK	
LAUNCH RAMP FEE	\$10 PER LAUNCH	
SEASONAL LAUNCH RAMP FEE	\$200/ SEASON	
COMMERCIAL LAUNCH	\$820/ COMMERCIAL OPERATION	
LUNCH DOCKAGE/MOORING	\$20/ 2HR +\$10/HR ADDITIONAL	
OVERNIGHT/ EVENT PARKING	\$25/ NIGHT	\$1500 SEASONAL
SLIP WAITING LIST	\$20/ YEARLY	
MOORING WAITING LIST	\$20/ YEARLY	
<b>COMMERCIAL</b>		
SOUTH BULKHEAD	\$ 2,107.00	\$ 2,763.00
L-PIER/ MOSQUITO DOCK	\$42/FOOT	\$53/FOOT
F/V, FLOATS & RAFTS	\$42/NIGHT	\$42/NIGHT
F/V UNLOADING	\$ 55.00	
OFFSEASON F/V >25' 4/1-5/15, 10/15-12/1	\$ 250.00	
OFFSEASON F/V <25' 4/1-5/15, 10/15-12/1	\$ 150.00	
WINTER DOCKAGE F/V >25' 12/1-4/1	\$ 750.00	
WINTER DOCKAGE F/V <25' 12/1-4/1	\$ 500.00	
WINTER STORAGE	\$ 1,500.00	
ESCROW	\$ 1,500.00	

## TOWN OF WELFLEET MARINA 2023 FEE SCHEDULE

DESCRIPTION	TAXPAYER	NON-TAXPAYER
A ≤ 25	\$ 1,937.00	\$ 2,657.00
B ≤ 35	\$ 2,130.00	\$ 2,851.00
C ≤ 30	\$ 1,937.00	\$ 2,657.00
D ≤ 40	\$ 2,323.00	\$ 3,046.00
E ≤ 45	\$ 2,516.00	\$ 3,230.00
OUTBOARD SLIPS ≤ 20	\$ 1,371.00	\$ 1,937.00
BOW TIE UP ≤ 16	\$ 405.00	\$ 523.00
ACE MOORINGS	\$ 255.00	\$ 305.00
WATERWAYS MOORINGS	\$ 85.00	\$ 115.00
DINGHY TIE UP	\$ 328.00	\$ 328.00
TRANSIENT DOCKAGE	\$65/ NIGHT + \$2/FT>30'	\$5 NT/ \$20 WK ELECTRICITY
TRANSIENT MOORING	\$47/NIGHT +\$2/FT>30'	
OFF SEASON DOCKAGE	\$27/NIGHT \$152/WEEK	\$5 NT/ \$20 WK ELECTRICITY
OFFSEASON MOORING	\$9/ NIGHT \$39/WEEK	
LAUNCH RAMP FEE	\$10 PER LAUNCH	
SEASONAL LAUNCH RAMP FEE	\$200/ SEASON	
COMMERCIAL LAUNCH	\$820/ COMMERCIAL OPERATION	
LUNCH DOCKAGE/MOORING	\$20/ 2HR +\$10/HR ADDITIONAL	
OVERNIGHT/ EVENT PARKING	\$25/ NIGHT	\$1500 SEASONAL
SLIP WAITING LIST	\$20/ YEARLY	
MOORING WAITING LIST	\$20/ YEARLY	
<b>COMMERCIAL</b>		
SOUTH BULKHEAD	\$ 2,255.00	\$ 2,957.00
L-PIER/ MOSQUITO DOCK	\$45/FOOT	\$57/FOOT
F/V, FLOATS & RAFTS	\$45/NIGHT	\$45/NIGHT
F/V UNLOADING	\$ 55.00	
OFFSEASON F/V >25' 4/1-5/15, 10/15-12/1	\$ 250.00	
OFFSEASON F/V <25' 4/1-5/15, 10/15-12/1	\$ 150.00	
WINTER DOCKAGE F/V >25' 12/1-4/1	\$ 750.00	
WINTER DOCKAGE F/V <25' 12/1-4/1	\$ 500.00	
WINTER STORAGE	\$ 1,500.00	
ESCROW	\$ 1,500.00	





## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

IV

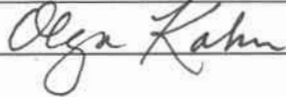
### BOARD/COMMITTEE APPOINTMENTS & UPDATES

A

<b>REQUESTED BY:</b>	Principal Clerk
<b>DESIRED ACTION:</b>	Disclosure of Financial Conflict of Interest
<b>PROPOSED MOTION:</b>	I move that the Selectboard has determined that the financial interest of Olga Kahn is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from her as a member of the Wellfleet Planning Board. This disclosure is dated February 19, 2021
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST  
AND DETERMINATION BY APPOINTING AUTHORITY  
AS REQUIRED BY G. L. c. 268A, § 19**

	<b>MUNICIPAL EMPLOYEE INFORMATION</b>
Name:	
Title or Position:	PLANNING BOARD MEMBER
Municipal Agency:	
Agency Address:	
Office Phone:	
Office E-mail:	
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
	<b>PARTICULAR MATTER</b>
Particular matter  E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter.  A PROPOSED BYLAW ON ACCESSORY DWELLING UNITS (ADUs).
Your required participation in the particular matter:  E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter.  DRAFTING A BYLAW ON ADUs AND DELIBERATING OVER WHETHER TO RECOMMEND TO TOWN MEETING
	<b>FINANCIAL INTEREST IN THE PARTICULAR MATTER</b>

<b>Write an X by all that apply.</b>	<input checked="" type="checkbox"/> I have a financial interest in the matter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.
<b>Financial interest in the matter</b>	Please explain the financial interest and include a dollar amount if you know it.  RENT RECEIVED FOR AFFORDABLE A.D.U. ON MY PROPERTY, AMOUNTING TO ABOUT \$13,000./YR.
<b>Employee signature:</b>	
<b>Date:</b>	2-19-21

#### DETERMINATION BY APPOINTING OFFICIAL

APPOINTING AUTHORITY INFORMATION	
<b>Name of Appointing Authority:</b>	
<b>Title or Position:</b>	
<b>Agency/Department:</b>	
<b>Agency Address:</b>	
<b>Office Phone:</b>	
<b>Office E-mail</b>	
DETERMINATION	
<b>Determination by appointing authority:</b>	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

Appointing Authority signature:	
Date:	
Comment:	

**Attach additional pages if necessary.**

**The appointing authority shall keep this Disclosure and Determination as a public record.**

**Form revised February, 2012**



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

IV

### BOARD/COMMITTEE APPOINTMENTS & UPDATES

<b>REQUESTED BY:</b>	<b>Principal Clerk</b>
<b>DESIRED ACTION:</b>	<b>To approve Al Mueller as a new member to the Zoning Board of Appeals</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve to appointment of Al Mueller to the Zoning Board of Appeals</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



**TOWN OF WELLFLEET**  
**APPLICATION FOR TOWN BOARDS & COMMITTEES MEMBERSHIP**

Wellfleet depends on its citizens to carry out many of our government's activities. Your community needs your help. *Please volunteer.*

FILL OUT THE FORM BELOW and mail it to:

Wellfleet Selectmen's Office, Town Hall, 300 Main Street, Wellfleet, MA 02667

☐ Name Al Mueller Date 01 MARCH 2021

Mailing Address \_\_\_\_\_

Phone (Home) \_\_\_\_\_ (cell) 508 888 8882

E-mail \_\_\_\_\_

☐ Please describe briefly any work experience, including volunteer service, that you feel would be useful to the Town: \_\_\_\_\_

I AM CURRENTLY A MEMBER OF THE  
WELLFLEET CULTURAL COUNCIL

☐ Please add any other information that you think may be useful, including education or other formal training, specialized courses, professional licenses or certifications, etc.: \_\_\_\_\_

- MASTER OF ARTS DEGREE

- 32 YEARS OF FEDERAL GOVT SERVICE

☐ Committees/Boards of Interest: 1) Zoning BOARD of Appeals  
2) \_\_\_\_\_  
3) \_\_\_\_\_





## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

# IV

## BOARDS/COMMITTEE APPOINTMENTS & UPDATES

<b>REQUESTED BY:</b>	<b>Principal Clerk</b>
<b>DESIRED ACTION:</b>	<b>To Approve Elisabeth Salén as a new member of the Local Housing Partnership</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the appointment of Elisabeth Salen to the Local Housing Partnership</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



**TOWN OF WELLFLEET**  
**APPLICATION FOR TOWN BOARDS & COMMITTEES MEMBERSHIP**

Wellfleet depends on its citizens to carry out many of our government's activities. Your community needs your help. *Please volunteer.*

FILL OUT THE FORM BELOW and mail it to:  
Wellfleet Selectmen's Office, Town Hall, 300 Main Street, Wellfleet, MA 02667

☐ Name Elisabeth Ann Salen Date 03-14-2021

Mailing Address 111 1st St  
Wellfleet MA 02667

Phone (Home) 781-326-5111 (cell) 781-326-5111

E-mail elisabeth@salen.com

☐ Please describe briefly any work experience, including volunteer service, that you feel would be useful to the Town: I am a shellfisherman in town, me

and my husband have our own grant and are  
raising two sons, 4 and 6 years old. Our  
experience with finding local and affordable housing  
in this town is something I hope can be useful.

☐ Please add any other information that you think may be useful, including education or other formal training, specialized courses, professional licenses or certifications, etc.:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Committees/Boards of Interest: 1) Local housing Partnership  
2) \_\_\_\_\_  
3) \_\_\_\_\_



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - A

<b>REQUESTED BY:</b>	<b>Town Accountant, Town Treasurer, Town Administrator</b>
<b>DESIRED ACTION:</b>	<b>To accept and approve the 2021 Bond Issued Votes</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the 2021 Bond Issued Votes as provided in the selectboard packet dated March 9, 2021</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

## VOTE OF THE SELECTBOARD

I, the Clerk of the Selectboard of the Town of Wellfleet, Massachusetts (the "Town"), certify that at a meeting of the board held March 9, 2021, of which meeting all members of the board were duly notified and at which a quorum was present, the following votes were unanimously passed, all of which appear upon the official record of the board in my custody:

Further Voted: that the sale of the \$8,500,000 General Obligation Municipal Purpose Loan of 2021 Bonds (Unlimited Tax) of the Town dated March 15, 2021 (the "Bonds"), to Piper Sandler & Co. at the price of \$9,314,054.53 and accrued interest, if any, is hereby approved and confirmed. The Bonds shall be payable on March 15 of the years and in the principal amounts and bear interest at the respective rates, as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2022	\$475,000	5.00%	2032	\$405,000	2.00%
2023	475,000	5.00	2033	405,000	2.00
2024	475,000	5.00	2034	405,000	2.00
2025	465,000	5.00	2035	405,000	2.00
2026	465,000	5.00	2036	405,000	2.00
2027	425,000	5.00	2037	405,000	2.00
2028	425,000	5.00	2038	405,000	2.00
2029	415,000	5.00	2039	405,000	2.00
2030	415,000	2.00	2040	405,000	2.00
2031	415,000	2.00	2041	405,000	2.00

Further Voted: that in connection with the marketing and sale of the Bonds, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated February 23, 2021, and a final Official Statement dated March 2, 2021 (the "Official Statement"), each in such form as may be approved by the Town Treasurer, be and hereby are ratified, confirmed, approved and adopted.

Further Voted: that the Bonds shall be subject to redemption, at the option of the Town, upon such terms and conditions as are set forth in the Official Statement.

Further Voted: that the Town Treasurer and the Selectboard be, and hereby are, authorized to execute and deliver a continuing disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the Town, which undertaking shall be incorporated by reference in the Bonds for the benefit of the holders of the Bonds from time to time.

Further Voted: that we authorize and direct the Town Treasurer to establish post issuance federal tax compliance procedures and continuing disclosure procedures in such forms as the Town Treasurer and bond counsel deem sufficient, or if such procedures are

currently in place, to review and update said procedures, in order to monitor and maintain the tax-exempt status of the Bonds and to comply with relevant securities laws.

Further Voted: that any certificates or documents relating to the Bonds (collectively, the “Documents”), may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document; delivery of an executed counterpart of a signature page to a Document by electronic mail in a “.pdf” file or by other electronic transmission shall be as effective as delivery of a manually executed counterpart signature page to such Document; and electronic signatures on any of the Documents shall be deemed original signatures for the purposes of the Documents and all matters relating thereto, having the same legal effect as original signatures.

Further Voted: that each member of the Selectboard, the Town Clerk and the Town Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes.

I further certify that the votes were taken at a meeting open to the public, that no vote was taken by secret ballot, that a notice stating the place, date, time and agenda for the meeting (which agenda included the adoption of the above votes) was filed with the Town Clerk and a copy thereof posted in a manner conspicuously visible to the public at all hours in or on the municipal building that the office of the Town Clerk is located or, if applicable, in accordance with an alternative method of notice prescribed or approved by the Attorney General as set forth

*[remainder of this page intentionally left blank; signature page follows.]*

in 940 CMR 29.03(2)(b), at least 48 hours, not including Saturdays, Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decision in connection with the sale of the Bonds were taken in executive session, all in accordance with G.L. c.30A, §§18-25, as amended, further suspended, supplemented or modified by the Executive Order of the Governor of The Commonwealth of Massachusetts Suspending Certain Provisions of the Open Meeting Law, Chapter 30A, §20 dated March 12, 2020.

Dated: March 9, 2021

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Clerk of the Selectboard





## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - B

<b>REQUESTED BY:</b>	<b>Selectboard Chair DeVasto</b>
<b>DESIRED ACTION:</b>	<b>To discuss and recommend or not recommend the Nauset School Renovation Project</b>
<b>PROPOSED MOTION:</b>	TBD
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - C

<b>REQUESTED BY:</b>	<b>Town Administrator Broadbent/Attorney Carole Ridley</b>
<b>DESIRED ACTION:</b>	<b>High Toss Road Acceptance for Herring River Restoration Project</b>
<b>PROPOSED MOTION:</b>	TBD
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

## **SECTION VI: UNCLASSIFIED ARTICLES**

### **ARTICLE 30: High Toss Road**

To see if the Town will vote to accept as a town way the road known as High Toss Road, between Pole Dike Road and Duck Harbor Road, as heretofore laid out by the Selectboard and shown on a plan entitled "Plan of Land, High Toss Road," dated April 6, 2020, prepared by Outermost Land Survey, Inc., and on file with the Town Clerk, and to authorize the Selectboard to acquire on behalf of the Town by

23

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gift, purchase, or eminent domain an easement to use High Toss Road, as herein described, for all purposes for which public ways are used in the Town of Wellfleet, and drainage, utility, access, and/or other easements related thereto, or do or act anything thereon.

***Majority vote required.***

**Selectboard:** Recommends 5-0.

**SUMMARY:** This Article authorizes the Town to secure title to High Toss Road between Pole Dike Road and Duck Harbor Road. The Town has maintained this section of road for years, but does not have clear title to the land.

What we are looking for is for the Selectboard to vote to put this on the warrant, and to make sure that the public notice steps needed for this article are undertaken by the Town.

I would reiterate what I put in my email to you yesterday, which could be shared with the Selectboard:

This article was included in the 2020 Annual Town Meeting warrant, but was indefinitely postponed on advice of Town Counsel (KP Law) due to insufficient public notice. The article is needed to clarify ownership of High Toss Road in anticipation of work proposed as part of Phase 1 of the Herring River Restoration Project. The article was developed based on research provided by KP Law, and in consultation with the Herring River Restoration Project technical team and Cape Cod National Seashore.

In addition to getting this article back on the warrant, it will be important to confirm with KP Law what the necessary public notice steps are that the Town needs to take in order for this article to be voted on at Town Meeting.

- Carole Ridley  
Ridley & Associates, Inc



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - D

<b>REQUESTED BY:</b>	<b>Wellfleet Cable Advisory Committee</b>
<b>DESIRED ACTION:</b>	<b>To approve the presented insert for the spring taxes</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the tax insert informing Wellfleet Residents of their eligibility for Comcast coverage</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

With the recent signing of the new Comcast lease agreement, some Wellfleet residents may be newly eligible for Comcast coverage. The minimum density requirements are now 15 dwelling units per aerial mile and 20 dwelling units per underground mile. If you currently are not covered by Comcast and you think you may be eligible based on your neighborhood density, or you would like assistance in finding out your eligibility, please send an email to [mia.baumgarten@wellfleet-ma.gov](mailto:mia.baumgarten@wellfleet-ma.gov) or contact Town Hall at 508-349-0300.





## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - E

<b>REQUESTED BY:</b>	<b>Shellfish Constable Nancy Civetta</b>
<b>DESIRED ACTION:</b>	<b>Opening and Closing of Herring River</b>
<b>PROPOSED MOTION:</b>	<b>I move to open the Herring River as of a half hour before sunrise on Monday March 15, 2021 and to close it one half hour after sunset on Tuesday March 15, 2021, as directed by the Massachusetts Division of Marine Fisheries</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - F

<b>REQUESTED BY:</b>	<b>DPW Department Head Mark Vincent and Assistant Jay Norton</b>
<b>DESIRED ACTION:</b>	<b>Lt. Island Bridge Repairs</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the bid from Aetna Bridge Company for the Lt. Island Bridge Repair Project</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

## Rebekah Eldridge

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**From:** Mark Vincent  
**Sent:** Monday, March 1, 2021 10:03 AM  
**To:** Maria Broadbent; Rebekah Eldridge  
**Cc:** Jay Norton  
**Subject:** Lt Island Bridge repairs

Maria, We have collected bids for various repairs on the Lt. Island Bridge. Aetna Bridge Company was low bidder at \$258,000. Their references came back favorable. There is approximately \$234,000 in available funding but the remaining funds can be taken out of Highways 422 or through Chap. 90 project request. There is a six to eight week lead time to order materials so we need to move quickly on this, so that the majority of the work can be completed this spring. Coastal Engineering will be assembling the contracts for your approval and the selectman's signature. I would like to have it on their next agenda. (early if possible).

If there are any follow up questions, please refer to Jay as I will be out of town for the next couple days.

Thanks, Mark

# CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Town of Wellfleet, Massachusetts (Owner) and \_\_\_\_\_ (Contractor).

Owner and Contractor hereby agree as follows:

## ARTICLE 1 - THE WORK

### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents. Work does not include items identified in the Contract Documents as "Alternate 1".
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents, with the exception of items specified or indicated as "Alternate 1". The Project is generally described as follows:
  1. **Lieutenant Island Bridge Preservation Project** which includes **replacement of worn or deteriorated components, installation of materials to protect against future deterioration, and installation of materials for improved performance.**
  2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located **on Lieutenant Island Road over Loagy Bay Creek.**

## ARTICLE 2 - CONTRACT DOCUMENTS

### 2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.

- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

#### 2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
  - 1. This Contract.
  - 2. Performance bond.
  - 3. Payment bond.
  - 4. Specifications listed in the Table of Contents.
  - 5. Drawings as listed on the Table of Contents.
  - 6. Addenda.
  - 7. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Work Change Directives (EJCDC C-940).
    - b. Change Orders (EJCDC C-941).
    - c. Field Orders.

### ARTICLE 3 - ENGINEER

#### 3.01 Engineer

- A. The Engineer for this Project is **Coastal Engineering Company, Inc.**

### ARTICLE 4 - CONTRACT TIMES

#### 4.01 Contract Times

- A. The Work will be substantially completed on or before December 22, 2021 and completed and ready for final payment on or before December 31, 2021.

Work will be allowed at the project site after contract signing until Friday May 21, 2021, and Work will be allowed at the project side from Tuesday October 12 (the day after Columbus Day) to December 31, 2021.

The Contractor is not allowed to work at the site, and is not allowed to have materials or equipment stored at the site, from May 22, 2021 to October 11, 2021. During this period of time, the bridge and project site shall be clean, and shall be open and safe for public use.

#### 4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$250 for each day that expires after the Contract Time for full completion and ready for final payment.

#### 4.03 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

#### 4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

### ARTICLE 5 - CONTRACT PRICE

#### 5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents, the lump sum amount of \$ \_\_\_\_\_ for all Work.

### ARTICLE 6 - BONDS AND INSURANCE

#### 6.01 Bonds

- A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.

## 6.02 Insurance

A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the requirements of the Contract Documents, including but not limited to the following:

1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

a. Workers' Compensation:

State:	<u>Statutory</u>
Employer's Liability:	
Bodily Injury, each Accident	\$ <u>500,000</u>
Bodily Injury By Disease, each Employee	\$ <u>500,000</u>
Bodily Injury/Disease Aggregate	\$ <u>500,000</u>

b. Commercial General Liability:

General Aggregate	\$ <u>3,000,000</u>
Products - Completed Operations Aggregate	\$ <u>3,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

c. Automobile Liability herein:

Bodily Injury:	
Each Person	\$ <u>1,000,000</u>
Each Accident	\$ <u>1,000,000</u>
Property Damage:	
Each Accident	\$ <u>1,000,000</u>

d. Contractor's Pollution Liability:

Each Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>

B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.

C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
  - 1. Products and completed operations coverage maintained for three years after final payment;
  - 2. Blanket contractual liability coverage to the extent permitted by law;
  - 3. Broad form property damage coverage; and
  - 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
  - 1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  - 2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the



Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.

- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.

#### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

#### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

#### 7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

#### 7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

**7.08 Record Documents**

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

**7.09 Safety and Protection**

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

#### 7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other

than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Owner's Responsibilities**

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## **ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION**

### **9.01 Engineer's Status**

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **11.01 Differing Conditions Process**

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. After receipt of written notice, Engineer will promptly:
  - 1. Review the subsurface or physical condition in question;
  - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
  - 3. Determine whether the condition falls within the differing site condition as stated herein;
  - 4. Obtain any pertinent cost or schedule information from Contractor;
  - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
  - 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 Tests and Inspections**

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

### **13.02 Defective Work**

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR**

### **14.01 Progress Payments**

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

### **14.02 Applications for Payments:**

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of

the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

**14.03 Retainage**

- A. The Owner shall retain 5% of each progress payment until the Work is substantially complete.

**14.04 Review of Applications**

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

**14.05 Contractor's Warranty of Title**

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

**14.06 Substantial Completion**

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

**14.07 Final Inspection**

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion



thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### **14.08 Final Payment**

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

#### **14.09 Waiver of Claims**

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

### **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

#### **15.01 Owner May Suspend Work**

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

#### **15.02 Owner May Terminate for Cause**

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.

- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

#### 15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

## **ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS**

### **16.01 Contractor Representations**

#### **A. Contractor makes the following representations when entering into this Contract:**

1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
  - a. The cost, progress, and performance of the Work;
  - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  - c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Cumulative Remedies**

- #### **A.**
- The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are

otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

**17.02 Limitation of Damages**

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

**17.03 No Waiver**

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

**17.04 Survival of Obligations**

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

**17.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

**17.06 Controlling Law**

- A. This Contract is to be governed by the law of the state in which the Project is located.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
(where applicable)

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)*

**SECTION 00 62 00**

**CONSTRUCTION PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_

\_\_\_\_\_ a \_\_\_\_\_  
(Name of Contractor) (Corporation, Partnership, Joint Venture or  
Individual)

hereinafter called "Principal" and \_\_\_\_\_ of \_\_\_\_\_,  
(Surety)

State of \_\_\_\_\_ hereinafter called the "Surety" and licensed by the State  
(City and State)

Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held  
and firmly bound to **the Town of Wellfleet, Massachusetts**, hereinafter called "Owner", in the penal sum  
of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and  
truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and  
severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a  
certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the  
construction described as follows:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,  
subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the  
work provided for in such contract, and any authorized extension or modification thereof, including all  
amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and  
tools, consumed or used in connection with the construction of such work, and all insurance premiums on  
said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this  
obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees  
that no change, extension of time, alteration or addition to the terms of the contract or to the work to be  
performed thereunder or the specifications accompanying the same shall in any way affect its obligation  
on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition  
to the terms of this contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_ ( ) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

_____	By	_____ Surety
		_____ (Attorney-in-Fact)
		_____ (Address-Zip Code)
_____ Witness as to Surety	(SEAL)	
_____		
_____ (Address-Zip Code)		

NOTE:      Date of Bond must not be prior to date of Contract.    If Contractor is a Partnership, all partners should execute Bond.

**SECTION 00 60 00**

**CONSTRUCTION PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_  
(Name of Contractor)

a \_\_\_\_\_ hereinafter called "Principal" and  
(Corporation, Partnership, Joint Venture or Individual)

\_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_  
(Surety) (City & State)

\_\_\_\_\_ hereinafter called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to **Town of Wellfleet, Massachusetts**, hereinafter called "Owner", in the penal sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Construction Contract"), for the construction described as follows: \_\_\_\_\_

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of the Construction Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under the Construction Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the Surety's obligation under this Bond shall arise after (1) the Owner has declared the Principal in default of the Construction Contract or any provision thereof or (2) has declared that the Principal has failed, or is otherwise unable or unwilling, to execute the work consistent with, and in conformance to, the Construction Contract (collectively referred to as a "Contractor Default"). The determination of a Contractor Default shall be made solely by the Owner. The Owner need not terminate the Construction Contract to declare a Contractor Default or to invoke its rights under this Bond.



When the Surety's obligation under this Bond arises, the Surety, at its sole expense and at the consent and election of the Owner, shall promptly take one of the following steps: (1) arrange for the Principal to perform and complete the work of the Construction Contract; (2) arrange for a contractor other than the Principal to perform and complete the work of the Construction Contract; (3) reimburse the Owner, in a manner and at such time as the Owner shall decide, for all costs and expenses incurred by the Owner in performing and completing the work of the Construction Contract. Surety will keep Owner reasonably informed of the progress, status and results of any investigation of any claim of the Owner.

If the Surety does not proceed as provided in this Bond with due diligence and all deliberate speed, the Surety shall be deemed to be in default of this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.

After the Surety's obligation under this Bond arises, the Surety is obligated, to the limit of the amounts of this Bond, for (1) the correction of defective work and completion of the Construction Contract; (2) additional design, professional services, and legal costs, including attorneys' fees, resulting from the Contractor Default or from the default of the Surety under this Bond; (3) any additional work beyond the Construction Contract made necessary by the Contractor Default or default of the Surety under this Bond; (4) indemnification obligation of the Principal, if any, as provided in the Construction Contract; and (5) liquidated damages as provided in the Construction Contract, or if none are so specified, actual and foreseeable consequential damages resulting from the Contractor Default or default of the Surety under this Bond.

Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction in the Commonwealth of Massachusetts.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ ( ) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

_____	By	_____
(Principal Secretary)		Principal
		_____
		_____
		_____
		(Address-Zip Code)

\_\_\_\_\_  
Witness as to Principal (SEAL)  
\_\_\_\_\_  
\_\_\_\_\_  
(Address-Zip Code)

ATTEST:

_____	By	_____
		Surety
		(Attorney-in-Fact)
		_____
		_____
		(Address-Zip Code)

\_\_\_\_\_  
Witness as to Surety (SEAL)  
\_\_\_\_\_  
\_\_\_\_\_  
(Address-Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

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## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - G

<b>REQUESTED BY:</b>	<b>95 Lawrence Road Task Force</b>
<b>DESIRED ACTION:</b>	<b>To Approve the final RFP for the 95 Lawrence Road Project</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the final RFP for the 95 Lawrence Road Project dated February 19, 2021</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

# 95 Lawrence Road Rental Homes – Update

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## A COMMUNITY RESPONSE TO WELLFLEET’S ECONOMIC AND ENVIRONMENTAL CHALLENGES

### BACKGROUND

- Because of our seasonal economy, Wellfleet has a critical shortage of both year-round rental housing and units affordable to essential workers, including town employees. These are the people all Wellfleet residents depend upon for home repairs, retail services, health care, public safety, etc. This has also contributed to the low number of young families living in Wellfleet.
- In response to this crisis, Wellfleet’s 2018 town meeting voted *unanimously* to offer the last large parcel of town-owned land – 6 acres of the 9-acre site at 95 Lawrence Road across from the elementary school – to a developer that agrees to construct affordable rental housing that satisfies a set of Select Board-approved standards. To make the project affordable the town will lease the site for \$1 per year.
- The town formed a task force with representatives of the School Committee, Planning Board, Housing Authority, Water Commissioners, Building Needs Committee, Wellfleet Seasonal Residents Association, the Local Housing Partnership, and the Select Board to draft a request for proposals (RFP) that the town will issue to potential developers of the site. The Commonwealth’s quasi-public Massachusetts Housing Partnership provided technical assistance, including funding for feasibility and engineering studies. The town expects to issue the RFP this spring and hopes construction will begin in 2023.
- The Lawrence Road Task Force held a well-attended community forum in January 2020 to describe the site and plans for its development and to collect input on what residents want incorporated into the RFP.
- Once the town chooses a developer and that company prepares detailed plans, members of the Wellfleet community will have an opportunity to weigh-in on the plan during the zoning and related public permitting processes.

### THE PROPOSAL

- The developer can build up to 46 housing units. At least 50% of the units must be affordable to households with income that is below 80% of the area median income. However, the proposed RFP is expected to explain that the town is more likely to select a developer that will deliver 85% of the units below that income level. Furthermore, the town is seeking households with income between 30% and 120% of the area median. (Even 120% cannot afford market rate rents in Wellfleet).
- The proposed RFP is anticipated to include illustrated design guidelines to ensure the buildings reflect and are compatible with the existing architecture and style of the Wellfleet community. The goal is for the development to look like it belongs in Wellfleet.
- The development is to include buildings of various sizes and the landscaping is to be consistent with Wellfleet’s character.

### *NEIGHBORHOOD IMPACT*

- The town is seeking that all access to the property will be on Lawrence Road.
- The site plan must:
  - ⇒ be sensitive to neighborhood and adjacent properties.
  - ⇒ include exterior lighting that minimizes the impact on neighbors and the night sky.
  - ⇒ use the natural topography as much as feasible.
  - ⇒ keep natural buffer with surrounding residential neighbors.
  - ⇒ maintain and enhance natural vegetation along Long Pond Road.

### *ENVIRONMENTAL IMPACT*

- The town's decision to build affordable housing at the Lawrence Road site helps solve two of Wellfleet's worrisome infrastructure problems.
  - ⇒ As a result of the town's decision to build affordable housing on Lawrence Road, the Commonwealth made a \$2.5 million grant which, along with other funding from the town, will pay for a water main to supply the planned housing development and resolve a long-standing problem with the town's water system, enabling it to be in compliance with state regulations.
  - ⇒ Wastewater generated by the Lawrence Road housing would ordinarily add to the nitrogen flowing into Duck Creek and the harbor. However, planning for the housing prompted the town to explore alternatives. By replacing the less efficient wastewater systems currently serving the school, and fire and police stations and connecting them to an advanced sewage treatment and wastewater disposal system for the housing, Wellfleet can reduce the nitrogen in Duck Creek and the expense through a costs-sharing arrangement with the developer.

### *TIMELINE*

**August 2018** Town receives a grant from the Massachusetts Housing Partnership (MHP) to conduct a site feasibility study of 95 Lawrence Road. The study conducted by Coastal Engineering Co. determined the site had the capacity to support a development of 90 bedrooms.

**April 22, 2019** Article 42 on the Annual Town Meeting warrant passed unanimously authorizing a long-term lease of six acres at 95 Lawrence Road for affordable housing

**May 28, 2019** Town Administrator forms the 95 Lawrence Road Task Force and appoints representatives from eight town departments, boards and organizations to develop the town's solicitation for a developer for the site.

**June 21, 2019** First of 18 public meetings of the 95 Lawrence Road Task Force to develop a Request for Proposal for a developer. Technical support provided free of charge to the Task Force throughout the process by the Massachusetts Housing Partnership (MHP).

**January 6, 2020** The 95 Lawrence Road Task Force hosted a well-attended Community Engagement Forum at the senior center

**January 9, 2020** The Town is awarded a \$100,000 Housing Choice Grant to study upgrading the water system to meet regulatory requirements for the housing at 95 Lawrence Road and the Town.

**February 18, 2020** The Town is awarded a \$30,000 grant from the Cape Cod Commission to study alternative wastewater systems for 95 Lawrence Road

**May 5, 2020** Select Board held a public meeting to review the draft RFP and design guidelines

**September 12, 2020** Article 10 on the Annual Town Meeting warrant authorized up to \$3.8 million in backup borrowing to upgrade the water system to meet regulatory requirements and supply water to 95 Lawrence Road.

**September 22, 2020** Select Board approves RFP pending addition of information from the wastewater study

**November 19, 2020** Commonwealth of Massachusetts awards a \$2.5 million MassWorks grant to Wellfleet to upgrade the water system.

#### *USEFUL LINKS*

To subscribe to the Wellfleet Housing Authority's [newsletter](#), go to its website:

[wellfleetaffordablehousing.org](http://wellfleetaffordablehousing.org)

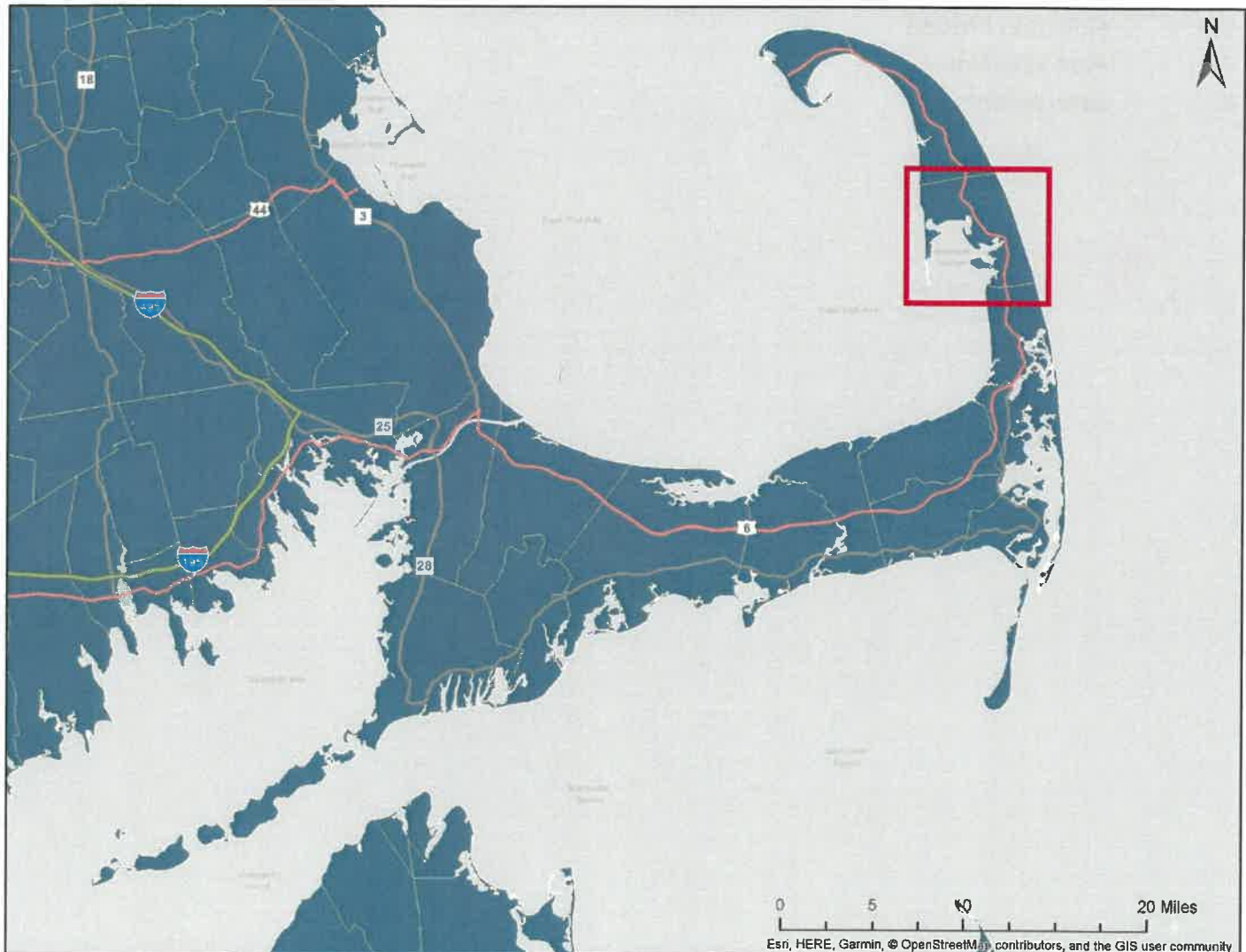
To receive notifications of meetings regarding 95 Lawrence Road Task Force, send a request via email to [wellfleetaffordablehousing@gmail.com](mailto:wellfleetaffordablehousing@gmail.com).

**Town of Wellfleet**  
**300 Main Street**  
**Wellfleet, MA 02667**



## Request for Proposals

To select a developer to design, construct, operate and manage no more than 46 units of affordable rental units on 6 acres of land at 95 Lawrence Road.



### Important Dates

Pre-Proposal Meeting/Site Tour:  
**April 14, 2021 at 11:00 a.m.**

Proposal Submission Deadline:  
**June 15, 2021 at 2:00 p.m.**



# Table of Contents

I.	Invitation to Bid
II.	Proposal Submission and Selection Process
III.	Site Tour and Briefing
IV.	Development Objectives
V.	Property Description
VI.	Proposal Submission Requirements
VII.	Developer Selection Criteria
VIII.	Selection Process
IX.	Post Selection
X.	Attachments

## **I. Invitation to Bid**

The Town of Wellfleet ("Town"), through its Chief Procurement Officer, is seeking proposals from qualified developers for the development of not more than 46 units of affordable rental housing on 6 acres of an approximately 9.6 acre parcel of land owned by the Town, located at 95 Lawrence Road in Wellfleet.

The Town acquired the land through a tax taking in 1938, by a Treasurer's deed recorded in 1944 with the Barnstable County Registry of Deeds in Book 622, Page 391. The Town voted at the 2019 Annual Town Meeting (Article 42) to make the land available for affordable, community rental housing. (See Attachment C for deed and warrant article)

The Town intends to enter into a Land Development Agreement and lease the 6 acre portion of the property to the developer through a 99 year ground lease, with affordability restrictions. The developer will be responsible for the design, construction, development and operation of the affordable units at the property.

The purpose of this RFP is to select a developer with demonstrated experience and capacity to carry out a development project that best addresses the needs and goals of the community as described in this RFP. The most advantageous proposal, from a responsive and responsible proposer, taking into consideration all evaluation criteria set forth in the RFP, will be selected.

## **II. Proposal Submission and Selection Process**

The Town has determined that the award of this contract is subject to the Uniform Procurement Act. M.G.L. c. 30B. The provisions of M.G.L. c. 30B are incorporated herein by reference.

Applicants shall submit on or before **2:00 p.m., June 15, 2021**, a clearly marked original proposal plus seven copies, including an electronic copy on a flash drive, to:

***Maria Broadbent, Town Administrator  
Town of Wellfleet  
300 Main Street  
Wellfleet, MA 02667***

Faxed or electronically mailed proposals will be deemed non-responsive and will not be accepted.

Proposals submitted after the submission deadline will not be accepted. In order to be considered a complete submission, proposals should be marked **"Lawrence Road Housing Proposal"** and must include all required documents completed and signed by a duly authorized signatory, including the following:

1. Cover page labeled Lawrence Road Housing Proposal to Town of Wellfleet for the development of rental family housing, specifying: (1) the development entity, (2) primary contact person, and (3) all contact information.
2. One clearly marked original, in a three-ring binder, and 7 copies of the proposal with required attachments.
3. An electronic version of the complete proposal submission on a flash drive.

**The Town reserves the right to reject any or all proposals or to cancel this Request for Proposals if that is deemed to be in the best interest of the Town.**

### **Inquiries on RFP**

All inquiries should be made via e-mail and directed to: Maria Broadbent, Town Administrator at [maria.broadbent@wellfleet-ma.gov](mailto:maria.broadbent@wellfleet-ma.gov) no later than **May 12, 2021**. Inquiries should have a subject line entitled: *Lawrence Road Housing RFP Inquiry*. Any inquiries after such date will not be accepted. All inquiries for which a response is provided, together with the responses, will be shared with all proposers who have provided their contact information.

### **Proposers' Responsibility for due diligence**

Proposers should undertake their own reviews and analyses concerning physical conditions, environmental conditions, applicable zoning, required permits and approvals, and other development and legal considerations.

### **Additional Notes**

Proposals will be opened publicly at **2:00 p.m.** on **June 15, 2021**. A Proposer may correct, modify or withdraw a proposal by written notice received prior to the time set for the submission of proposals, but not thereafter. Each responsive proposal will be evaluated first for compliance with the threshold (minimum) criteria and, if it meets those criteria, then evaluated according to the criteria set forth in Attachment **A** 'Comparative Evaluation Criteria'.

The Town makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP. This RFP, including all attachments, is made subject to errors, omissions, and withdrawal without prior notice, and different interpretations of laws and regulations. The Proposer assumes all risk in connection with the use of the information and releases the Town from any liability in connection with the use of the information provided by the Town. Further, the Town makes no representation or warranty with respect to the property, including without limitation, the value, quality or character of the property or its fitness or suitability for any particular use and/or the physical and environmental condition of the property. The property will be leased in "AS-IS" condition.

Each Proposer shall undertake its own review and analysis (due diligence) concerning the physical and environmental condition of the property, applicable zoning and other land use laws, required permits and approvals, and other development, ownership and legal considerations pertaining to the property and the use of the property, and shall be responsible for applying for and obtaining any and all permits and approvals necessary or convenient for the Proposer's use. All costs and expenses of leasing and developing the property, including, without limitation, the costs of permitting and improvements, shall be the sole responsibility of the successful proposer.

### **III. Site Tour and Briefing**

Interested Proposers are encouraged to attend a voluntary on-site briefing session at **11:00 a.m. on April 14, 2021 at 95 Lawrence Road**. The site visit is not mandatory; however all proposers must familiarize themselves with the property by undertaking an independent review and analysis of physical conditions, regulatory constraints, required permit and approvals, and other legal considerations.

### **IV. Development Objectives**

The Town is seeking a developer to build no more than 46 community rental housing units on the site. The development should be designed for a variety of households (individuals of all ages, families with children, persons with disabilities) and reflect a mix of affordability levels. The Town of Wellfleet Housing Needs

Assessment and Action Plan that was approved at the 2018 Annual Town Meeting can be found on the Town of Wellfleet website at the following address:

[https://www.wellfleet-ma.gov/sites/g/files/vyhlif5166/f/file/file/wellfleet\\_housing\\_plan\\_final.pdf](https://www.wellfleet-ma.gov/sites/g/files/vyhlif5166/f/file/file/wellfleet_housing_plan_final.pdf)

The Executive Summary of the Plan is provided as Attachment D.

The Town would like to see a mix of residential building types. The bedroom mix should be based on the site's capacity, good site planning and landscaping considerations, and the market and financial feasibility of an affordable rental project at this location.

Ideally, the Town would like site access from Lawrence Road. Along Long Pond Road, the Town would like the natural vegetation maintained and enhanced to serve as a natural buffer.

The development will be subject to a 99 year Ground Lease and a Land Development Agreement (See examples of each in Attachment G) in forms that are acceptable to the Town.

### **Affordability**

At a minimum, there shall be at least 50% of the units affordable to households at or below 80% AMI. The Town prefers 85% of the units to be affordable to households below 80% and that affordability will range between 30% AMI to 120% AMI, assuming 120% is below market rate (See Evaluation Criteria at Attachment A for details). The proposer should include a clear analysis as to the levels of affordability proposed and the reasoning behind the proposed unit and income mix. The Town is seeking affordability by design (e.g. energy efficient utilities and maintenance) in addition to affordability by restriction. All affordable units must meet the requirements for inclusion in the Department of Housing and Community Development's (DHCD) Subsidized Housing Inventory (SHI).

The developer shall enter into a Regulatory Agreement with DHCD and the Town on terms acceptable to the parties and shall, at the Town's request, grant the Town a separate leasehold affordable housing restriction on terms acceptable to the Town and be in form and substance acceptable to DHCD

### **Sale or Transfer**

Until the project has been substantially completed, the developer shall not convey or transfer the property or any portion thereof or assign or otherwise transfer the ground lease or its interest therein to any person or entity other than the rental of individual units.

### **Unit Types**

The development should reflect the needs of Wellfleet and provide housing for a range of household sizes as noted in the Town's Needs Assessment, Attachment E. For this reason, the Town is interested in a variety of residential building types as well as "universally accessible" design. At least 10% of the units shall contain three or more bedrooms to satisfy the State's family housing policy. Unit layouts should emphasize efficiency. Kitchens should be sized based on the bedroom composition of the unit.

### **Building Design and Aesthetics**

The Town has provided design guidelines (Attachment D). The development's architecture should reflect and be compatible with the existing architecture and style of the Wellfleet community. The goal is for the development to look like it belongs in Wellfleet. The Town of Wellfleet encourages the following:

- Multiple buildings, which can be of various sizes
- Landscaping in keeping with Wellfleet's character
- Outdoor common and recreation areas
- Ample storage for residents
- Onsite laundry facilities
- Parking should be scattered as much as possible
- Areas for outdoor trash and recycling receptacles
- Sensitivity to neighborhood and adjacent properties

### **Energy Efficiency**

The Town is looking for proposals that include building and site designs that reduce the tenants' energy, water usage and cost, and limit the project's environmental impact.

Proposals that meet Passive House, LEED or other energy efficiency standards are preferred. Proposers are encouraged to reach out to Cape Light Compact regarding their Passive House and other energy efficiency rebate programs.

Details regarding sustainable design features should be incorporated into the proposal.

### **Site**

The property is located at 95 Lawrence Road in Wellfleet, and is identified as Assessor's Map 13, Lot 2. It contains approximately 9.6 acres, of which approximately 6 acres will be leased to the successful proposer.

The site has Town water and will need private septic.

The site has frontage on both Lawrence Road and Long Pond Road. The Town anticipates two access points, both on Lawrence Road - one for the building(s) sited behind the ball field and another access point for the small piece of land at the corner of Long Pond Road and Lawrence Road. (See conceptual site designs Attachment H)

An existing one-story wood frame building with a concrete foundation on the smaller portion of the site, at the corner of Long Pond Road and Lawrence Road, is vacant. The Town will require the developer to include its demolition in its proposed plan and to include the demolition cost in the sources and uses statement submitted to financing sources.

The Town prefers lower density buildings near the two Town roads that abut the property (Long Pond Road and Lawrence Road) with the vegetation along Long Pond Road enhanced to serve as a natural buffer. Although the water tower easement breaks up the two sites, as shown in Attachment B, the Town expects the developer to provide a walkway connecting the two sites.

## **Project Permitting**

The property is zoned Residential 1. Proposals should include a description of the permitting process that the developer plans to use. Due to the existing zoning, however, the Town anticipates permitting will be through M.G.L. Chapter 40B (Comprehensive Permit).

## **Rental Management**

The successful respondent's development team must include a qualified and experienced property management firm, or, if not identified at the time of submission, a description of the process for procuring such a firm and the performance standards to be met by the property management firm. It is expected that there will be on-site management and 24-hour emergency maintenance service.

## **V. Property Description**

The site is relatively flat and, excluding the easements for the ball field and water tower, covered in forest. It is bordered by residences and the Wellfleet Elementary School. The Wellfleet Fire Department and the Wellfleet Police Department headquarters are also located nearby on Lawrence Road.

## **Deed**

Please see Attachment C for the Treasurer's Deed.

## **Zoning**

The property is currently zoned Residential 1, however, it is expected that the development will be permitted through M.G.L. Chapter 40B.

## **Utilities**

- Water: Public
- Electric: Eversource or Cape Light Compact

## **Sewage Disposal**

### **Background**

Bidders shall be required to connect the project into the future decentralized sewer district that is in the planning stages and will be completed by the Town. As this area of the Duck Creek Watershed in Wellfleet has been determined to be nitrogen impaired, the Town has identified this project as a possible means of net nitrogen reduction from the watershed. To accomplish this, the Town intends to utilize this public/private partnership to collaboratively develop a decentralized sewer district in this section of Town. As the first step in this process, the Town commissioned a study of available wastewater nitrogen reduction technologies, which analyzed their costs, benefits and projected nitrogen reduction benefits associated with various development and wastewater collection treatment alternatives. The report included cost alternatives and schematic layouts of possible treatment systems that might be used for this decentralized wastewater district. The full report, entitled "Residential Development Wastewater System Evaluation 95 Lawrence Road Development" includes detailed cost analyses and schematic layout figures and can be downloaded from the Town's website at the following link [final 95 lawrence road-residential development wastewater evaluation-2020-12-30.pdf](https://www.wellfleet-ma.gov/files/2020/12/final_95_lawrence_road-residential_development_wastewater_evaluation-2020-12-30.pdf) ([wellfleet-ma.gov](https://www.wellfleet-ma.gov)).

Based upon the assessment of the nitrogen reduction cost per kilogram of nitrogen removed of the various options considered, the Town has determined that creating a decentralized sewer district, which will serve the affordable housing at 95 Lawrence Road, the adjacent municipal parcels and the surrounding private residential parcels, is preferred. As such, bidders for the development of the 95 Lawrence Road Affordable Housing Project shall agree to enter into a cost sharing arrangement with the Town that allows for the development of the site while providing capital resources necessary to assist the Town with constructing the decentralized sewer district infrastructure.

#### General Project Description

The proposed sewer district will be completed in two phases. Phase I will include the design and permitting of the full tertiary level wastewater treatment facility (WWTF) and effluent disposal system and construction of the wastewater infrastructure necessary to collect and treat the sewage generated from the proposed affordable housing project and the adjacent elementary school, fire station and police headquarters. Phase II, which is not part of the housing development project, will include the expansion of the treatment system components to their full design capacity and construction of the surrounding sewage collection system, which will then allow for the connection of nearby private residential properties into the sewer district.

#### Town Responsibilities

As noted, the Town intends to create a sewer district to service the proposed 95 Lawrence Road development. This sewer district will ultimately provide advanced sewage treatment and wastewater disposal for the 95 Lawrence Road housing development, the adjacent municipal parcels and the private residences in the neighborhood surrounding the project site. In order to proceed with the affordable housing project on the 95 Lawrence Road Parcel, the Town will complete Phase I of the sewer district, as described herein, and will issue a “will-serve” sewer commitment to the chosen 95 Lawrence Road Developer within two years of executing the development agreement.

#### Developer Responsibilities

The Developer shall commit to funding their percentage of the capital costs associated with the construction of Phase I of the sewer project as described herein and shall agree to connect to the sewer district and pay all associated user and capital fees as determined by the Town for their proportional use of the system. Capital cost funding shall be based upon the estimated percentage of the construction cost as described below. User costs shall be based upon actual costs associated with the operation, maintenance, upkeep and improvement of the sewer district infrastructure, portioned in accordance with the water-use associated with each connected user.

In addition to the requisite funding commitment by the Developer to the Town for wastewater infrastructure, the Developer shall agree to partner with the Town in identifying, writing, applying and securing grant funds for the wastewater infrastructure required for the project. Several grant opportunities (such as MassWorks Grants), are regularly made available to fund infrastructure that supports environmental water quality remediation as well as the development of affordable housing. As the development of this sewer district will directly benefit both areas for Wellfleet, seeking and securing grants for this work will be a priority of the Town and Bidders should demonstrate past success in grant applications and awards on similar projects, as part of their qualifications package.

### Capital Cost Determination

The capital cost contribution attributed to the development of the 95 Lawrence Road site shall be based upon a percentage of the overall wastewater infrastructure costs of the planned sewer district. As shown in Tables 13 of the aforementioned evaluation report, the lowest estimated cost to design, permit and install an Innovative/Alternative (I/A) septic system (including contingencies) that would serve just the 95 Lawrence Road development was \$764,324.00. In contrast, the cost associated with the design, permitting and construction of the tertiary level treatment system for the entire sewer district, minus the surrounding sewage collection system and its associated contingency and design costs, would be \$1,748,300.00. As noted, this estimate does not include the Phase II cost to design or construct the collection system associated with the surrounding residential parcels, as the Town shall secure funding to complete those tasks separate from Phase I of the project.

Based upon these estimates, the cost to complete a stand-alone I/A septic system at the 95 Lawrence Road site would be approximately 44% of the cost for the full Phase I treatment facility and effluent disposal system. Using this methodology, the Town has determined that the successful bidder shall commit to funding 44% of the actual Phase I costs of the wastewater treatment facility project (as defined herein), once the total project costs are finalized.

If, in the event that the Town does not fulfill its contractual commitments to provide a sewer “will serve” letter to the Developer within two years of the date of execution of the agreement, the Developer will have the right to commission the design, permitting and construction of a stand-alone I/A treatment system that will use the Best Available I/A Technologies that can meet all required MassDEP water quality discharge standards for this Watershed section of Cape Cod Bay. If this clause in the contract is enacted, the Developer shall not be required to connect to any planned or future sewer district, until such time as a sewer connection was made available AND the I/A system in use was deemed to be in failure per definitions of a failed onsite septic system in accordance with 310 CMR 15.000.



# Site Context

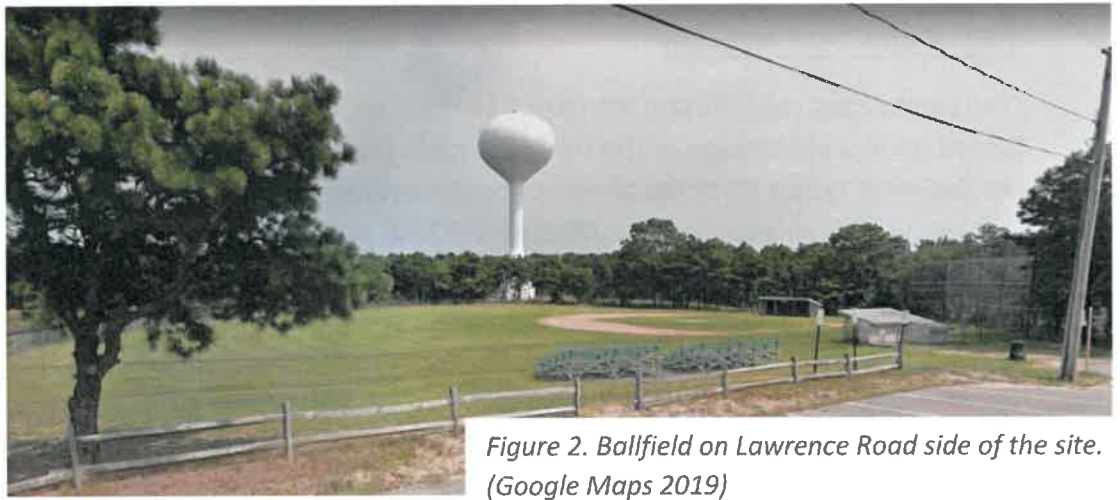


Figure 2. Ballfield on Lawrence Road side of the site.  
(Google Maps 2019)



Figure 3. Elementary School across from site on Lawrence Road  
(Google Maps 2019)

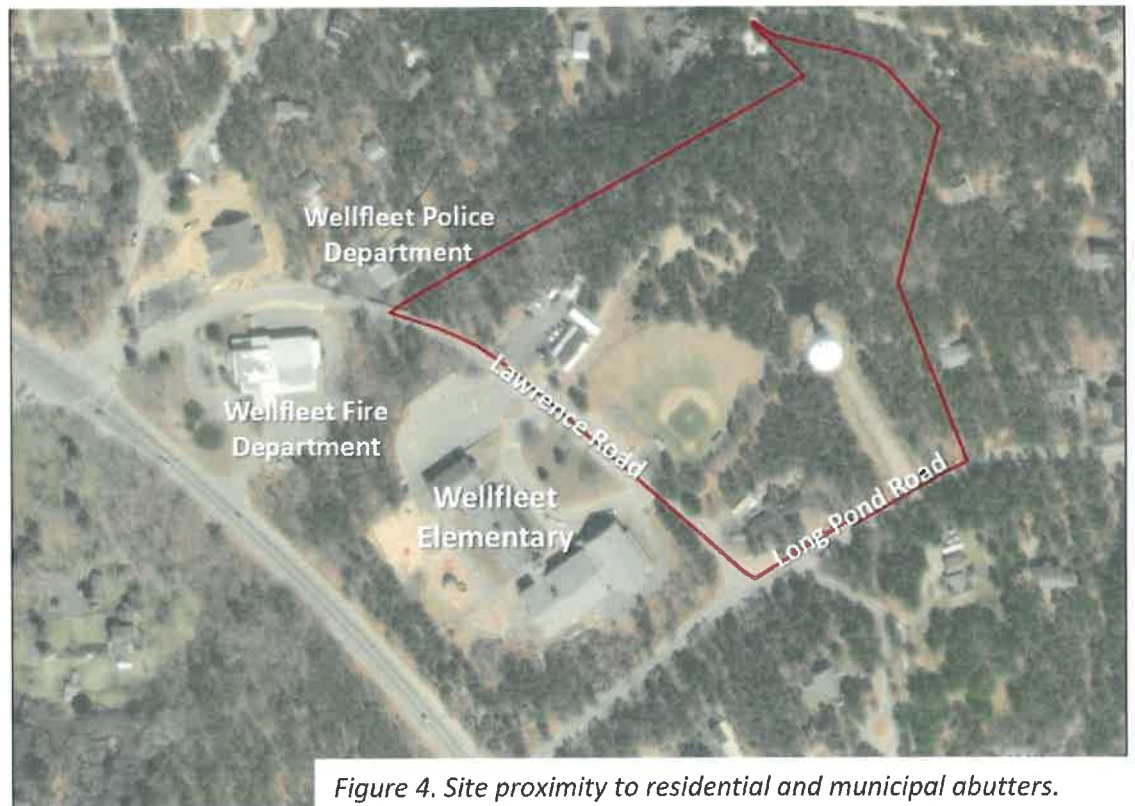


Figure 4. Site proximity to residential and municipal abutters.

## VI. Proposal Submission Requirements

### The Development Team

The proposal must include a description of the development team, the individuals and organizations to be involved in the development, **including the project manager**, and the experience of these parties. The development team may include, without limitation, the developer, property manager, architect, contractor, engineers, consultants, lenders and investors. Proposals must include:

- The name, address, e-mail address, and telephone number of the proposer; the name of any representative authorized to act on his/her behalf, and the name, title and contact information for the individual designated by the developer to receive all correspondence from the Town and its agents.
- The names and primary responsibilities of each individual on the development team.
- If the proposer is not an individual doing business under their own name, a description of the firm and legal form and status of the organization (e.g., whether a for-profit, not-for-profit, a general or limited partnership, a corporation, LLC, LLP) and the jurisdictions in which it is registered to do business. If the proposer is a non-profit entity, please include a list of the organization's Board of Directors and areas of expertise they represent.
- The ownership structure of the entity to enter into the ground lease and development agreement with the Town and its relationship to any investors, lenders and guarantors of debt, if any.
- Identification of all principals, partners, co-venturers or sub-developers participating in the transaction, and the nature and share of participants' ownership in the project.
- Identification of the person designated to be the property manager if the property developer will also be the property manager. If this is not the case, state the legal and financial relationship between the entities and describe the process for securing property management services and criteria and minimal qualifications it will use in selecting the property management firm.
- Identification of the development team, such as architects, engineers, landscape designers, contractor, and development consultants. In addition, provide background information, including firm qualifications and resumes for principals and employees expected to be assigned to the project.
- A summary of the developer's and the development team's experience, both collectively and individually, with similar projects. Particular attention should be given to demonstrate experience with **projects of a similar scale and complexity, site conditions, permitting issues, design and financing**, as well as location. Proposers should demonstrate the ability to perform as proposed and to complete the project in a competent and timely manner, including the ability to pursue and carry out design, permitting, financing, construction, and marketing/unit absorption.
- A list of all projects in progress or planned with details of their current status.

### Format

Proposers should use the following format to submit the information required (above):

- For referenced projects: project name, location, project type, number of residential units, project scope, start date, projected and actual completion date, total development costs, development team, key personnel, and current status.
- Narrative on why the Proposer's experience is relevant to the Lawrence Road housing project
- Description of the organizational structure of the development team and a plan for the maintenance of effective communications between the Town and the development team during all phases of the project.
- Information regarding any legal or administrative actions past, pending or threatened that could relate to the conduct of the Proposer, its principals or any affiliates.

- Confirmation that no local, state or federal taxes are due and outstanding for the development team or any constituent thereof.
- Provision of third-party references for 3 completed projects including one affordable housing project. Provide contact names, title and current telephone numbers, who can provide information to the Town concerning the Proposer's experience with similar projects.

### **Development Concept**

The proposal must include a detailed description of the development concept for the property and its improvements, including but not limited to:

- Number and size of units (square footage and number of bedrooms) and affordability levels. Include narrative as to why/how the mix of bedrooms, sizes and affordability was determined to ensure project financial feasibility and appropriateness for the marketplace.
- Preliminary site design.
- Discussion of the physical plan and architectural character of the project and the various programmatic and physical elements of the development, including energy savings and green design elements of the buildings and site design.
- Construction staging plan and discussion of construction impacts how the project will be managed to limit impact on neighbors and especially the school, in particular with respect to noise and traffic during the construction period.
- Project financing – provide a sources and uses pro forma (see comparative evaluation criteria), and describe previous experience in securing such funding. Describe in detail what, if any, local, state or federal subsidy money will be sought to create affordability and the timeline for securing those sources.
- Projected 10 year operating budget
- Letters of interest from both construction and permanent lenders (mentioned in the comparative evaluation criteria)

### **Conceptual Design Drawings**

The proposal must include 11 x 17 plans including:

- Site plan that describes parking layout and numbers of parking spaces and building footprints
- Landscape plan with sufficient detail on how the plan addresses limiting the project impact on surrounding areas and the users of those areas
- Floor plans
- Elevations with material indications
- Typical unit plans
- Color Rendering

### **Management Plan**

Please provide a management plan that includes the following:

- Description of the target market (e.g. pricing and the strategy for marketing and lottery process).
- In addition, if the Proposer is including a property manager as part of the team, all relevant information as outlined under 'The Development Team', above, including details of any projects where the Proposer and Manager have previously worked together.
- Lottery for affordable units: To ensure a fair and equitable selection process for the affordable units, a lottery shall be conducted for all of the affordable units. Proposals may include a lottery agent as part of the development team. A marketing/lottery plan shall be required as part of the approval of the units for inclusion on the Subsidized Housing Inventory prior to issuance of a building permit. For the proposal, the Proposer shall indicate any other lotteries they have been involved in, their role and the outcomes.
- Experience with Low Income Housing Tax Credits if proposed as a funding source



- Experience with project-based rental assistance, Section 8, 811, and/or MRVP if proposing such subsidies.

The Proposer and/or their property manager must demonstrate:

- A clear understanding of fair housing requirements/laws
- A clear understanding of the local preference opportunities and requirements, and how the lottery will address any local preference.
- Ability and commitment to utilize appropriate stated standards to determine program and unit eligibility – i.e., qualified tenants.
- Clear criteria for tenant selection and a fair and unbiased selection process.
- Competency for selecting properly qualified tenants.
- Ability and commitment to maintain all necessary reports and certifications required under state and federal law.

### **Implementation Plan and Timeline**

The proposed development should be completed within 3 years of the execution of the Land Development Agreement. Extensions may be granted at the discretion of the Select Board. The proposal must include a description of how the development concept will be implemented, including, but not limited to:

- Detailed development schedule for all elements of the plan including key milestones, financing benchmarks, zoning approvals and compliance, and projected completion/occupancy timeframes.
- Outline of the required land use, environmental, operation, and other governmental or regulatory approvals, including zoning, development and environmental permits. The proposer should provide a schedule for securing approvals as part of the proposal. The Proposer should note what zoning variances, special permits or modifications, if any, are required as part of the development plan.

## **VII. Developer Selection Criteria**

All proposals submitted by the due date will be evaluated for conformance with the below stated minimum criteria. Those proposals that meet the minimum criteria will then be evaluated by the comparative criteria described below. Proposers may be invited to present their proposal to the review committee. The presentation will not be scored.

### **Minimum threshold criteria**

The following are minimum criteria for Proposal consideration. Proposals that do not clearly and fully convey compliance with these minimum criteria will not be considered.

- Complete conformance with all Submission Requirements (Sec. VI)
- Proposer must have a minimum of 5 years' experience in housing development
- A successful track record of similar projects with at least 3 references
- Availability to begin work towards permitting within 60 days of executing the Land Development Agreement and show sufficient staff resources and availability to perform required services
- Complete required forms found in Attachments J, K & L: Certificate of non-collusion, tax compliance, disclosure of beneficial interests form as required by M.G.L. c. 7C, Section 38 (formerly M.G.L. c. 7, Section 40J)

## Comparative Evaluation Criteria

Projects meeting the minimum threshold criteria above will then be judged and scored based on the Comparative Evaluation Criteria further explained and outlined in Attachment A.

## Proposal Submission Terms and Requirements

- A. The Town reserves the right to reject any and all proposals in whole or in part, and to waive minor informalities, when at its sole discretion is deemed to be in the best interests of the Town and to the extent permitted by law.
- B. Proposals that meet all quality requirements shall be evaluated based on responsiveness to the criteria, terms and conditions contained in this RFP and its attachments. Failure to follow the instructions, meet the criteria, or agree to the terms and conditions contained in this RFP may be cause for rejection of the proposal as non-responsive.
- C. All proposals shall be submitted to the Town, as and where set forth above, on or before the proposal deadline. Proposals and unsolicited amendments to proposals received by the Town after the proposal deadline will not be considered, and requests for extensions of time will not be granted. Proposers who mail proposals should allow sufficient time for receipt by the Town by the proposal deadline. Proposals received after the proposal deadline will be returned to the Proposer unopened.
- D. All proposals shall be signed in ink by the Proposer. If the Proposer is a corporation, the authority of the individual signing shall be endorsed upon, or attached to, the proposal and certified by the clerk of the corporation.
- E. All proposals submitted shall be binding upon the Proposer for a minimum period of one hundred twenty (120) calendar days following the opening of proposals.
- F. Proposals submitted to the Town shall be securely kept and shall remain unopened until the proposal deadline and the opening of proposals.
- G. Proposals once submitted may, upon request of the Proposer prior to the proposal deadline, be withdrawn or amended. If amended, resubmission of the proposal shall comply with all requirements of this RFP.
- H. Negligence on the part of the Proposer in preparing the proposal confers no right of withdrawal after the proposal deadline. The Town does not assume any responsibility for errors, omissions, or misinterpretations which may have resulted in whole or in part from the use of incomplete proposal documents. Any Proposer finding an ambiguity, inconsistency, or error shall promptly notify the Town.
- I. If it becomes necessary to revise any part of this RFP or if additional data are necessary to enable an exact interpretation of provisions, such addenda will be provided to all Proposers who have requested this RFP and provided their contact information. No addenda will be issued within the immediate three (3) business day period prior to the proposal deadline.
- J. By submitting a proposal in response to this RFP, the Proposer shall be deemed to have certified that no officer, agent, or employee of the Town has a direct or substantial financial interest in the procurement, that the proposal is submitted in good faith and exclusively on Proposer's own behalf, without fraud, collusion or connection of any kind with any other Proposer for the same work or with any undisclosed party.
- K. Proposers may add additional stipulations or otherwise qualify their proposals, but the Town shall retain the sole right to judge the importance of any such stipulation or qualification. If the Town determines that the

stipulation or qualification is not in its best interest and/or is materially unacceptable, and if the Proposer does not clearly indicate this to be an alternative for consideration, then the Town reserves the right to reject such proposal.

- L. Selection of a Proposer's proposal will not create any rights on the Proposer's part, including, without limitation, rights of enforcement, equity or reimbursement, until the Land Development Agreement and all related documents are fully executed.
- M. It is understood, agreed upon and made a part hereof, and shall be a part of the Land Development Agreement, that the Agreement entered into between the Town and the Proposer shall not be assigned or assignable by way of sub-contract or otherwise, unless or until the Town shall have first assented thereto in writing.
- N. The Town reserves the right to modify any specifications and submission requirements associated with the proposal and the scope of the project.

### **VIII. Selection Process**

The evaluation committee, consisting of the Lawrence Rd. Task Force, will review and evaluate all proposals that have been received by the submission deadline based on the criteria outlined herein. Evaluation of the proposals will be based on the information provided in the Proposers' submissions in accordance with the submission requirements of this RFP and any interviews, references, and additional information requested and/or gathered by the Town. The Town or its designee(s) will select the developer it determines has presented the most advantageous proposal. ***The Town reserves the right to select the most advantageous proposal that best meets the needs of the community. This may not be the proposal that achieves the highest score.***

The Town will notify all Proposers in writing of its decision.

The Town reserves the right to disqualify any proposal or response due to insufficient supporting or explanatory information, or to request additional supporting information. The Town may request additional information of one or more Proposers relative to a proposal or qualifications. Questions shall be in writing with the expectation of a written response within a specified time. Proposers may also be invited to appear before the evaluation committee. Failure to comply with any such request will result in rejection of the proposal at issue.

The Town reserves the right to reject any or all proposals or to cancel this Request for Proposals at any time if doing so is in the best interest of the Town.

### **IX. Post Selection**

#### **Land Development Agreement**

It is the intent of the Town to enter into a Land Development Agreement with the selected proposer within 90 days of selection and then to lease the land with deed restrictions after certain benchmarks have been met. The Land Development Agreement will be finalized after the selection process. A draft Land Development Agreement can be found at Attachment D.

## **Chapter 30B Real Property Developments to Promote Public Purpose Requirements**

The name of the selected Proposer and the amount of the transaction will be submitted for publication in the state's *Central Register*.

If the Town determines that the public purpose of the project is best met by leasing the property for less than fair market value, the Town will post a notice in the state's Central Register explaining the reasons for this decision and disclosing the difference between the property value and the price to be received. This notice will be published before the Town enters into any agreement with the selected developer.

- X. Attachments**
  - A. Comparative Evaluation Criteria**
  - B. Locus Map**
  - C. Treasurer's Deed & Town Meeting Votes**
  - D. 95 Lawrence Road Project Design Guidelines**
  - E. Executive Summary of Housing Needs Assessment and Action Plan**
  - F. Preliminary Site Feasibility report**
  - G. Draft Land Development Agreement & Draft Ground Lease**
  - H. Conceptual Site Design**
  - I. Wastewater Comparative Report**
  - J. Certificate of Non-Collusion**
  - K. Tax Compliance Certificate**
  - L. Disclosure of Beneficial Interest**



**ATTACHMENT A**  
**Comparative Evaluation Criteria: Lawrence Road, Wellfleet**

	Unacceptable	Advantageous	Highly Advantageous
<b>Developer Experience &amp; Capacity (Team)</b>			
<ul style="list-style-type: none"> <li>• Demonstrated experience in and capability for designing, permitting, developing and managing similar residential projects.</li> <li>• Outcome of comparable projects</li> <li>• Experience with site septic system issues</li> <li>• Property management experience with similar projects</li> <li>• The quality of the team's reputation and references, particularly in terms of its regulatory track record and ability to complete projects as proposed</li> <li>• Success in marketing approach, including affirmative fair housing marketing plans and lottery, meeting State requirements</li> </ul>	Development team members have only minimal experience in the development of projects with similar scope – including legal, design, development, financing, and management experience with rental housing.	Development team members have significant experience in the development of projects of similar scope – including legal, design, financing, affordable housing management. Significant experience (2 or more projects) including with private septic. Energy efficient buildings part of standard approach.	Development team members have significant experience in the development of projects of similar scope – including legal, design, financing, affordable housing management. Extensive experience (4 or more projects) including with private septic. Energy efficient design is their standard approach to design and development.
<b>Affordability</b>			
Proposal meets a range of incomes. At a minimum 50% units must be restricted to households at or below 80% AMI	Less than 50% affordable to 80% AMI.	At least 70% affordable to 80% AMI with some targeted at or below 50%.	At least 85% affordable to 80% AMI or below with the affordability ranging from 30% to 120% AMI.

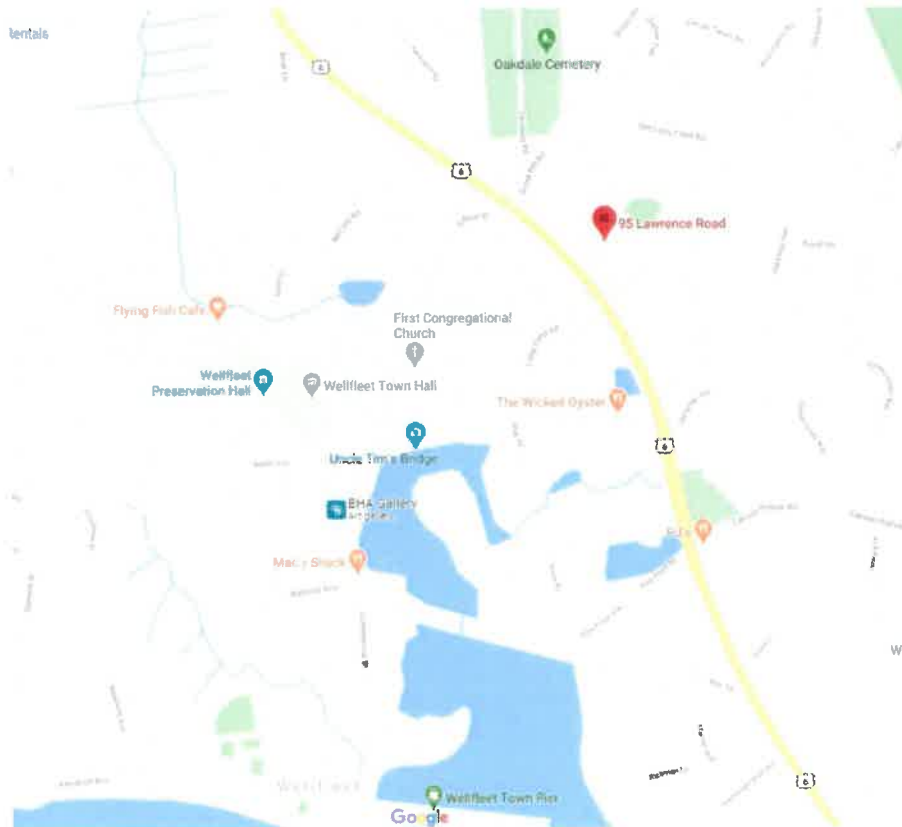
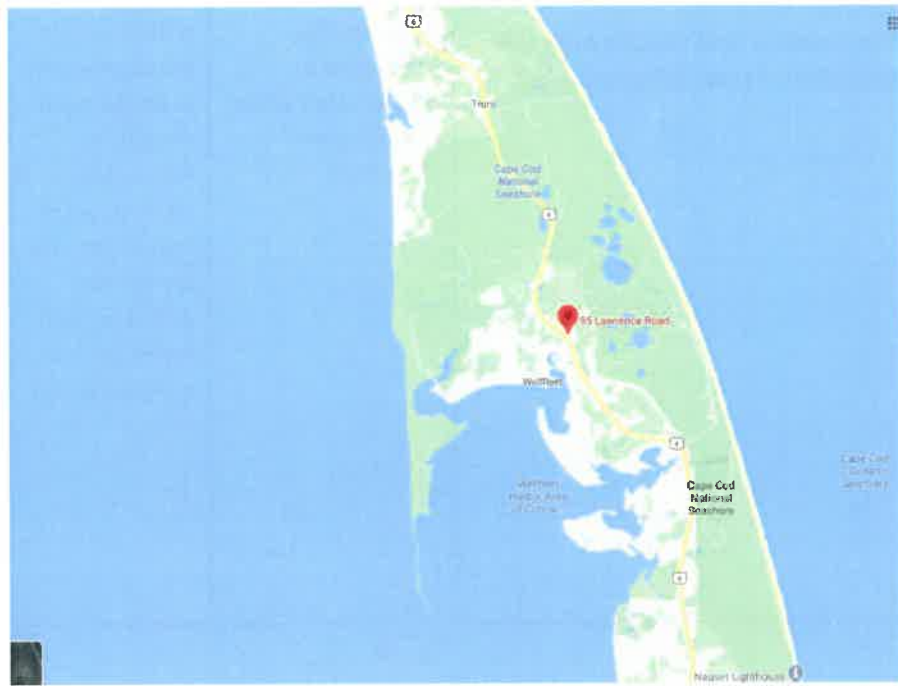
<b>Site Design</b> <ul style="list-style-type: none"> <li>• Thoughtful and efficient site design using the natural topography of the site as much as feasible</li> <li>• Provides a walkway between the two areas of the development</li> <li>• Efficient, safe internal traffic flow</li> <li>• Underground utilities</li> <li>• Exterior lighting – minimal impact to neighbors and night sky</li> <li>• Landscape plan including within parking area includes native plantings and, when feasible, enhances rather than replaces existing vegetation</li> <li>• Designated area for snow</li> <li>• Adequate parking for residents and visitors</li> <li>• Two access points on Lawrence Road</li> <li>• Keep natural buffer to surrounding residential neighbors</li> <li>• Respects adjacent properties</li> <li>• Provides outdoor community gathering space</li> <li>• Include bike racks</li> </ul>	<p>Proposal fails to meet the majority of the RFP criteria for site design.</p>	<p>The proposal meets some or all of the RFP site design criteria with thoughtful building siting, safe, efficient traffic flow, and natural buffers to surrounding neighborhoods.</p>	<p>Proposal meets or exceeds all of criteria</p>
<b>Infrastructure and Green Design</b> <ul style="list-style-type: none"> <li>• Proposer has included 44% of the cost of Phase I of the wastewater system as described in the Wastewater Report and Section V. Property Description, Sewage Disposal of this RFP</li> <li>• Underground utilities</li> <li>• Storm water management uses standards of low impact development</li> <li>• Buildings are located for maximum solar potential</li> <li>• Roof construction is “solar ready” (designed to support solar panels)</li> <li>• Meets green design standards for LEED, Passive House, or other comparable programs</li> <li>• Provide charging station(s) for EVs</li> </ul>	<p>Proposal fails to meet the sewage disposal requirements and/or a majority of the other RFP criteria for infrastructure and green design</p>	<p>The proposal meets the sewage disposal requirement and some of the other RFP infrastructure and green design criteria</p>	<p>Proposal meets the sewage disposal requirement and meets or exceeds all of the other criteria</p>

Building Design			
<ul style="list-style-type: none"> <li>• Reflects the design guidelines in Attachment D</li> <li>• Exterior is of high quality, while remaining compatible with local architectural design</li> <li>• Creative design that is cost effective and high quality</li> <li>• Interior design and layouts meet a variety of household sizes and mobility needs</li> <li>• Finishes support durability and low-maintenance for tenant</li> <li>• Construction maximizes soundproofing between units</li> <li>• Height dimensions consistent with the Residential 1 District.</li> <li>• Provides community space for residents, preferably with kitchen facilities</li> <li>• Includes office space for management</li> <li>• Provides storage space, either in basements or sheds</li> <li>• Prefer individual exterior space (patios or balconies)</li> </ul>	<p>Design appears incongruous with local designs, interior layout does not meet a variety of household types and mobility needs, and does not comply with a majority of the RFP criteria</p>	<p>Design reflects or complements local designs, layout provides for a variety of household types and mobility needs, Complies with a majority of the RFP criteria and preferences</p>	<p>Design proposal articulates a creative development vision that is a cost-effective, energy efficient, attractive design that reflects and/or complements the local vernacular, and provides a variety of household types and mobility needs. Complies with all of the RFP criteria and preferences</p>
Financial Feasibility			
<ul style="list-style-type: none"> <li>• Adequacy of proposed budgets (development and operating)</li> <li>• Appropriateness of rents in relation to the market</li> <li>• Track record of securing proposed financing</li> </ul>	<p>Proposals does not demonstrate an understanding of development costs and operating budgets for affordable housing and/or does not have a successful record of securing financing.</p>	<p>Proposal contains realistic development and operating budgets and evidence of success in securing necessary financing.</p>	<p>Proposal contains realistic development and operating budgets and evidence of a high degree of success in securing necessary financing and other sources of funding.</p>

References, Site Visits, and Interviews			
<ul style="list-style-type: none"> <li>• A minimum of three references including references from all projects undertaken in the last 10 years</li> <li>• The evaluation committee may choose to visit proposers' completed projects</li> <li>• The evaluation committee will require proposers present their proposals. Presentations will not be scored.</li> </ul>	<p>Did not provide minimum of 3 references not met, or references were poor and/or inadequate. Properties visited were in poor condition.</p>	<p>Strong references reflecting projects came in on time and within budget, good property management structure. Properties visited were in good condition, site layout was efficient, and buildings were well designed.</p>	<p>Strong references reflecting timely completion, excellent budget control, excellent property management structure and professionalism of developer. Properties visited were in great condition, site layout building design, and landscaping excellent, and use of energy efficient and durable materials.</p>

## ATTACHMENT B

### Locus Map





# ATTACHMENT C Treasurer's Deed

THIS DEED NOT VALID UNLESS RECORDED IN THE PROPER REGISTRY OF DEEDS WITHIN 60 DAYS AFTER THE SALE

FORM 475

TREASURER'S DEED TO MUNICIPALITY  
LAND OF LOW VALUE

622

391

THE COMMONWEALTH OF MASSACHUSETTS

Town of Wellfleet  
NAME OF CITY OR TOWN

OFFICE OF THE TREASURER

I, B. Kilton Kemp, Treasurer of the City of Wellfleet

pursuant to the provisions of General Laws, Chapter 60, Section 79 and 80, hereby grant to said city the parcel parcels of land described in the instrument of taking or tax collector's deed to which reference is made in the following schedule:

NAME OF PERSON ASSIGNED IN THE YEAR OF THE TAX FOR WHICH THE LAND WAS TAKEN OR SOLD	INSTRUMENT OF TAKING OR TAX TITLE DEED				NAMES OF INTERESTED PERSONS SERVED BY REGISTERED MAIL WITH NOTICE OF SALE UNDER CHAPTER 60, SECTION 80 A
	RECORDED	REGISTERED			
LOCATION OF PARCEL	Book	Page	Document No.	Certificate Title No.	
Dexter L. Patterson					
Grent Woods Field 30 A.	496	224			Addie C. Pattison
Thomas H. Palmer					Thomas H. Palmer
Enker's Field 4 3/4 A.	521	173			Jack Dranetz
Marguerite Pyle					
Lots 419-434 Inc. White Great	522	356			Marguerite Pyle

ATTACH SCHEDULE IF MORE SPACE IS NEEDED. STATE NUMBER OF SCHEDULES ATTACHED 6

The land hereby granted was included in an affidavit made by Henry F. Long, Commissioner of Corporations and Taxation, recorded on December 1, 1944, in the Barnstable County Registry of Deeds, Registry District, Book 520, Page 469, Document No.         , Certificate of Title No.         , relative to the value of certain parcels of land taken or purchased by said city for non-payment of taxes and to the validity of the tax titles held thereon; and was offered for sale at public auction on December 19, 1944, in accordance with a notice of sale posted on December 4, 1944, in the Wellfleet Town Hall (SPECIFY PLACE WHERE NOTICE WAS POSTED)

(Strike out Paragraph A. or B. as the Circumstances Require)

(A) No bid was made at the time and place appointed for the sale or at any adjournment thereof and the said city therefore became the purchaser at an adjournment of said sale on Dec. 20, 1944.  
(B) The purchaser failed to pay the amount bid by him at the original time and place appointed for the sale; an adjournment of said sale on         , 1944, within ten days thereafter, wherefore the sale became void and the said city became the purchaser.

Executed as a sealed instrument this twentieth day of December, 1944.

B. Kilton Kemp, Treasurer of the City of Wellfleet

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, December 20, 1944

Then personally appeared the above-named B. Kilton Kemp and acknowledged the foregoing instrument to be his free act and deed as Treasurer as aforesaid, before me.

My commission expires April 6, 1945

Lawrence J. Davis  
Notary Public - Justice of the Peace

THIS FORM APPROVED BY HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION.

Webb & Warren Inc. Publishers Boston Form 1197

*(See Notice of Filing  
Partition to Wellfleet  
Filed in Court 1907  
Page 439 & 440 Palmer)*

*BOOK 520 PAGE 469*

*BOOK 4717 PAGE 253*

622

392

Name of Person Assessed in the Year of the Tax for which the Land was Taken or Sold	Instrument of Taking or Tax Title Deed Recorded	Page	Names of Interested Persons Served by Re- gistered Mail with Notice of Sale under Chapter 80, Section 30A
Location of Parcel			

Elizabeth B. Nash Lot 120 Wellfleet Harbor	521	369	Elizabeth B. Nash
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Elizabeth B. Nash Lot 235 Wellfleet Harbor	524	179	Elizabeth B. Nash
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Elizabeth B. Nash Lot 234 Wellfleet Harbor	521	367	Elizabeth B. Nash
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Elizabeth B. Nash Lot 270 Wellfleet Harbor	524	177	Elizabeth B. Nash
---	-----	-----	-------------------

Elizabeth B. Nash Lot 273 Wellfleet Harbor	521	365	Elizabeth B. Nash
---	-----	-----	-------------------

Elizabeth B. Nash Lot 277 Wellfleet Harbor	524	175	Elizabeth B. Nash
---	-----	-----	-------------------

Elizabeth B. Nash Lot 356 Wellfleet Harbor	521	362	Elizabeth B. Nash
---	-----	-----	-------------------

Elizabeth B. Nash Lot 339 Wellfleet Harbor	524	172	Elizabeth B. Nash
---	-----	-----	-------------------

Elizabeth B. Nash Lot 331 Wellfleet Harbor	521	360	Elizabeth B. Nash
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Elizabeth B. Nash Lot 771 Wellfleet Harbor	524	170	Elizabeth B. Nash
---	-----	-----	-------------------

Nigel Smith Cook Land S. 451, P. 411	544	241	Nigel Smith
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James T. Baldwin Lot A, Block 9, Pleasant Point	574	278	James T. Baldwin
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James T. Baldwin Lot B, Block 9, Pleasant Point	574	279	James T. Baldwin
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James T. Baldwin Lot 44, Block A, Alker Plan	574	280	James T. Baldwin
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Helen M. Bassett Lot 22, Blk. 20, Sec. 2, Well- fleet By The Sea	574	290	Helen M. Bassett
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Helen M. Bassett Lot 13, Blk. 20, Sec. 2, Wellfleet By The Sea	574	291	Helen M. Bassett
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Fred S. Bell Woodland S. 361, P. 182	572	439	Fred W. Bell
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Clarence L. Burch et al Land, Duck Pond	531	232	Jerome P. Fogwell Clarence L. Burch
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Clarence L. Burch et al Land, Duck Pond	531	233	Jerome P. Fogwell Clarence L. Burch
--	-----	-----	--

Clarence L. Burch et al Land, Gull Pond	531	233	Jerome P. Fogwell Clarence L. Burch
--	-----	-----	--

See Notice of Filing  
Petition in P.C.  
Book 1286, pages 45.



Name of Person Assessed in the Assessment of Taking  
Year of the Tax for which the Tax Title Deed  
Land was Taken or Sold

Names of Interested Persons  
Served by Registered Mail  
With Notice of Sale under  
Chapter 10, Section 30A

622

393

Location of Parcel	Book	Page	
Clarence L. Burch et al Land, Long Road	251	251	Jerome F. Fogwell Clarence L. Burch
Clarence L. Burch et al Paine Land 10 A.	372	437	Jerome F. Fogwell Clarence L. Burch
Amy J. Burgess Lot 19, Blk. 3, Sec. 1, Wellfleet by the Sea	374	260	Amy J. Burgess
George A. Clisbee et al Lot 13, Blk. 14, Sec. 2 Wellfleet by the Sea	374	303	George A. Clisbee and Nottie S. Clisbee
George A. Clisbee et al Lot 13, Blk. 14, Sec. 1 Wellfleet by the Sea	374	304	George A. Clisbee and Nottie S. Clisbee
Mabel G. Drake et al Lot 13, Blk. 17, Sec. 1 Wellfleet by the Sea	374	300	Mabel G. Drake and Bertha A. Drake
Mabel G. Drake et al Lot 13, Blk. 17, Sec. 1 Wellfleet by the Sea	374	302	M. M. G. Drake Mabel G. Drake Bertha A. Drake
Bertrude A. Elder Lot 13, Blk. 14, Sec. 1 Wellfleet by the Sea	374	301	Bertrude A. Elder
Leonard I. French Lot 13, Blk. 13, Sec. 1 Wellfleet by the Sea	374	300	Leonard I. French
Alice S. Hogan Lot 13, Blk. 13, Sec. 1 Wellfleet by the Sea	374	298	Alice Hogan
Alice S. Hogan Lot 13, Blk. 13, Sec. 1 Wellfleet by the Sea	374	294	Alice Hogan
Bertrude March Lot 3, Blk. 8, Sec. 2 Wellfleet by the Sea	374	336	Bertrude March
Bertrude March Lot 3, Blk. 8, Sec. 1 Wellfleet by the Sea	374	338	Bertrude March
Mary I. MacReady Lot 13, Blk. 13, Sec. 1 Wellfleet by the Sea	374	340	Mary I. MacReady
Mary I. MacReady Lot 13, Blk. 13, Sec. 1 Wellfleet by the Sea	374	339	Mary I. MacReady
Mary I. MacReady Lot 13, Blk. 13, Sec. 1 Wellfleet by the Sea	374	338	Mary I. MacReady
Charles L. Needham Lot 1, Blk. 13, Lighthouse Island	374	313	Charles L. Needham and Lillian Needham

See Final Deed  
in Bk 1451  
Pg 436

Name of person Assessed in the Year or the Tax for Which the Land was Taken or Sold	Instrument of Filing or Tax Title Deed Recorded	Names of Interested persons served by registered Mail with notice of sale under Chapter 10, section 100.
Location of parcel	Book Page	
Clara A. Pausch Lot 3, Blk. 9, Sec. 1 Wellfleet By The Sea	574 352	Clara A. Pausch
Clara A. Pausch Lot 4, Blk. 9, Sec. 1 Wellfleet By The Sea	574 351	Clara A. Pausch
Clara Pausch Lot 5, Blk. 10, Sec. 1 Wellfleet By The Sea	574 353	Clara A. Pausch
Mary F. Quirk Lot 29, Blk. 14, Sec. 2A Wellfleet By The Sea	574 330	Mary F. Quirk
Mary F. Quirk Lot 30, Blk. 14, Sec. 2A Wellfleet By The Sea	574 329	Mary F. Quirk
Wright Redd Lot 25, Blk. 30, Sec. 1 Wellfleet By The Sea	574 327	Wright Redd
Charles W. Robinson Lot 12, Blk. 20, Sec. 1 Wellfleet By The Sea	574 325	Charles W. Robinson
Wilhelmina E. Small et al Lot 144 Indian Neck Heights	574 282	E. Wilhelmina Small and Lottie B. Wentworth
Wilhelmina E. Small et al Lot 147 Indian Neck Heights	574 283	E. Wilhelmina Small and Lottie B. Wentworth
Abraham E. Snow Lot 1, Blk. 21, Lieutenant's Island	574 316	Abraham E. Snow
Susan E. Carpenter Lot 1, Blk. 10, Sec. 1 Wellfleet By The Sea	585 151	Susan E. Carpenter and John Tringley
Margaret C. Cobb Lot 8, Blk. 39, Sec. 1 Wellfleet By The Sea	585 152	Margaret C. Cobb
George A. Ditmar Lot 10, Blk. 44, Lieutenant's Island	585 160	George A. Ditmar
Caleb F. Eddy Lot 19, Blk. 1, Pleasant Point	585 161	Caleb F. Eddy
Anna A. Fitzpatrick Lot 13, Blk. 10, Sec. 1 Wellfleet By The Sea	585 163	Anna A. Fitzpatrick
Anna A. Fitzpatrick Lot 18, Blk. 10, Sec. 1 Wellfleet By The Sea	585 164	Anna A. Fitzpatrick
Agnes Fitzpatrick Lot 31, Blk. 2, Sec. 1 Wellfleet By The Sea	585 165	Agnes Fitzpatrick

Name of Person Assessed in the Year of the Tax for which the Land was taken or sold

Instrument of Taking or Tax title Deed recorded

Names of Interested Persons Served by Registered Mail with Notice of Sale under Chapter 80, section 80A

622

395

Location of Parcel	Book	Page	
Agnes Fitzpatrick Lot 32, Blk. 2, Sec. 1 Wellfleet By The Sea	585	186	Agnes Fitzpatrick
William H. Glazier Lot 13, Blk. D, Ocean Plan B	585	167	William H. Glazier
William H. Glazier Lot 19, Blk. D, Ocean Plan B	585	168	William H. Glazier
Hester S. Greene Lot 11, Blk. B, Sec. 1 Wellfleet By The Sea	585	174	Hester S. Green
Samuel D. Heath Lot 11, Blk. 48, Lieutenant's Island	585	139	Samuel D. Heath
Samuel D. Heath Lot 13, Blk. 13, Lieutenant's Island	585	188	Samuel D. Heath
J. W. Houston Lot 224 Wellfleet Harbor	585	184	James W. Houston
J. W. Houston Lot 377 Wellfleet Harbor	585	187	James W. Houston
Bessie C. Jones Lot 13, Blk. 20, Sec. 1 Wellfleet By The Sea	585	191	Bessie C. Jones
Bessie C. Jones Lot 19, Blk. 20, Sec. 1 Wellfleet By The Sea	585	192	Bessie C. Jones
Martina Judd Lot 11, Blk. 30, Sec. 1 Wellfleet By The Sea	585	193	Martina Judd
Grozier Latimer Lot 9, Blk. 45, Lieutenant's Island	585	194	Grozier Latimer
Elisba A. Rich West side King's Highway	585	195	Elisba A. Rich
Robert C. Rush Lot 3, Blk. 6, Sec. 2 Wellfleet By The Sea	585	197	Robert C. Rush
Robert C. Rush Lot 4, Blk. 6, Sec. 2 Wellfleet By The Sea	585	198	Robert C. Rush
Hanna Twomey Lot 7, Blk. 10, Sec. 2 Wellfleet By The Sea	585	201	Hannah E. Twomey
Patrick Twomey et al Lot 8, Blk. 10, Sec. 2 Wellfleet By The Sea	585	202	Patrick Twomey and Julia Twomey
Clayton Vanwert Lot 1, Blk. 10, Sec. 1 Wellfleet By The Sea	585	203	Clayton Vanwert

See Notice of Filing  
Petition in L.C.  
Book 128 7/29/98

See Notice of Filing  
Petition in L.C.  
Book 128 6/29/95

See Notice of Filing  
Petition in L.C.  
Book 128 6/29/95

See Notice of Filing  
Petition in L.C.  
Book 128 7/29/98

See Notice of Filing  
Petition in L.C.  
Book 128 7/29/98

622

396

Name of Person Assessed in the Year of the Tax for Which the Land was Taken or Sold	Instrument of Taking or Tax Title Deed Recorded	Book	Page	Names of Interested Persons Served by Registered Mail with Notice of Sale under Chapter 60, Section 60A
Location of Parcel				
Charles F. Wright Lot 3, Blk. 16, Sec. 1 Wellfleet By The Sea		585	205	Charles G. Wright
James W. Barrett Lot 23, Blk. 18, Sec. 2 Wellfleet By The Sea		598	316	James W. Barrett
Mary Bergin Lot 20, Blk. 19, Sec. 2 Wellfleet By The Sea		598	314	Mary Bergin
Mary Bergin Lot 21, Blk. 19, Sec. 2 Wellfleet By The Sea		598	315	Mary Bergin
Elma M. Clark Lot 23, Blk. 14, Sec. 2 Wellfleet By The Sea		598	321	Elma M. Clark
Elma M. Clark Lot 27, Blk. 14, Sec. 2 Wellfleet By The Sea		598	320	Elma M. Clark
Clarence E. Coe et al Lot 15, blk. 3, Sec. 2A Wellfleet By The Sea		598	319	Clarence E. Coe and Agnes M. Coe
Clarence E. Coe et al Lot 16, Blk. 3, Sec. 2A Wellfleet By The Sea		598	318	Clarence E. Coe and Agnes M. Coe
Davidina Flagg Lot 9, Blk. 36, Sec. 1 Wellfleet By The Sea		598	323	Davidina Flagg
Marion L. Ford Lot 20, blk. 10, Sec. 2 Wellfleet By The Sea		598	326	Marion L. Ford
Marion L. Ford Lot 21, blk. 10, Sec. 2 Wellfleet By The Sea		598	327	Marion L. Ford
Margaret S. Hill Lot 1, Cannon's Hollow		598	329	Margaret S. Hill
Grace Kennedy Lot 4, Blk. 31, Sec. 1 Wellfleet By The Sea		598	331	Grace Kennedy
Delia E. Kingsley Lot 22, blk. 10, Sec. 2 Wellfleet By The Sea		598	333	Delia E. Kingsley
Delia E. Kingsley Lot 23, Blk. 10, Sec. 2 Wellfleet By The Sea		598	332	Delia E. Kingsley
Delia E. Kingsley Lot 38, blk. 14, Sec. 2 Wellfleet By The Sea		598	334	Delia E. Kingsley
Thomas McMurray et al Lots 111-122 Sea View		598	335	Thomas McMurray and Mary D. McMurray

See Notice of Filing  
Petition in S.C.  
Book 1287, page 986.

See Notice of Filing  
Petition in S.C.  
Book 1287, page 986.

See Notice of Filing  
Petition in S.C.  
Book 1287, page 986.

See Notice of Filing  
Petition in S.C.  
Book 1287, page 986.

See Notice of Filing  
Petition in S.C.  
Book 1287, page 986.

Name of person assessed in the instrument of taking or tax collector's deed to which reference is made in the following schedule:  
 Year of the tax for which the land was taken or sold  
 Name of person assessed in the instrument of taking or tax collector's deed to which reference is made in the following schedule:  
 Year of the tax for which the land was taken or sold

622

397

Location of parcel	Book	Page	Name of interested persons served by registered mail with notice of sale under Chapter 60, Section 30A
Ewin S. Prescott Lot 3, Blk. 31, Sec. 1 Wellfleet By The Sea	595	337	Ewin S. Prescott
Ewin S. Prescott Lot 3, Blk. 31, Sec. 1 Wellfleet By The Sea	596	338	Ewin S. Prescott
Ewin S. Prescott Lot 10, Blk. 31, Sec. 1 Wellfleet By The Sea	597	339	Ewin S. Prescott
Ewin S. Prescott Lot 11, Blk. 31, Sec. 1 Wellfleet By The Sea	598	340	Ewin S. Prescott
Elizabeth A. Roper Lot 3, Blk. 10, Sec. 2 Wellfleet By The Sea	599	341	Elizabeth A. Roper
Elizabeth A. Roper Lot 3, Blk. 41, Sec. 1 Wellfleet By The Sea	600	342	Elizabeth A. Roper
Elizabeth Tetmore Lot 34, Blk. 11, Sec. 2 Wellfleet By The Sea	601	343	Elizabeth Tetmore
Isabel Lear, Lot 35, Blk. 12, Sec. 2 Wellfleet By The Sea	602	344	Isabel Lear,

See Petition of Filing  
 Petition in L.E.  
 Book 1287, page 986.

Barnstable, ss., Received December 27, 1944, and is recorded.

THIS DEED NOT VALID UNLESS RECORDED IN THE PROPER REGISTRY OF DEEDS WITHIN 60 DAYS AFTER THE SALE

FORM 475

TREASURER'S DEED TO MUNICIPALITY  
 LAND OF LOW VALUE

THE COMMONWEALTH OF MASSACHUSETTS

TOWN OF BARNSTABLE  
 NAME OF CITY OR TOWN

OFFICE OF THE TREASURER

I, WILLIAM H. SWIFT, Treasurer of the City of Barnstable

pursuant to the provisions of General Laws, Chapter 60, Sections 79 and 80, hereby grant to said town the parcel  
 of land described in the instrument of taking or tax collector's deed to which reference is made in the following  
 schedule:

NAME OF PERSON ASSESSED IN THE YEAR OF THE  
 TAX FOR WHICH THE LAND WAS TAKEN OR SOLD  
 LOCATION OF PARCEL

INSTRUMENT OF TAKING  
 OR TAX TITLE DEED  
 RECORDED  
 Book Page Document No. Certificate of Title No.

NAMES OF INTERESTED PERSONS SERVED  
 BY REGISTERED MAIL WITH NOTICE OF  
 SALE UNDER CHAPTER 60, SECTION 30A

# Lawrence Road Design Guidelines



A guide to support the architectural and site layout design process of 95 Lawrence Road in the Town of Wellfleet.

April 2020



# CONTENTS

## I. Architecture Guidelines

- Maintain the New England Feel ..... 1
- Building Types ..... 2
- Building Forms ..... 2
  - Roofs*
  - Windows*
  - Window Placement*
  - Doors*
  - Porches*
- Materials ..... 6
  - Siding*
  - Roofs*
  - Color Palette*
- Creative Mix of New England and Modern Architecture ..... 7

## II. Site Landscape Character Guidelines

- Public Open Space ..... 10
- Semi-Private Space ..... 11
- Private Space ..... 11
- Parking Area ..... 13
- Buffer Zone ..... 13



## I. ARCHITECTURE GUIDELINES

These guidelines address the architectural design within the Lawrence Road housing site with the goal of encouraging new building that relates to the history and culture of Wellfleet and will create a coordinated, contemporary environment.

The guidelines present “inspirations” and models for the new community and encourage fresh interpretations of traditional building forms.

### MAINTAIN THE NEW ENGLAND FEELING

Architectural buildings in rural New England typically have a simple overall shape. Traditionally, these buildings had steeply pitched roofs due to New England weather and building traditions. The basic forms were typically enlarged or expanded with attached structures and sheds. These simple forms were then modified with additive elements such as dormers, porches, overhangs, windows and doors that were placed for practical purposes. However, the simple, underlying form remains clearly understandable. It is the intention of these guidelines to encourage a clustering of simple forms that is reminiscent of this pattern.





## **BUILDING TYPES**

A townhouse-style organization can be expressed as separated units within an overall building. Porches, bays, and dormers can be used to distinguish individual units and break up the extended volume in each structure.

## **BUILDING FORMS**

### **1. Roofs**

The dominance of the roof is one of the key architectural ideas and should be employed in the design of residences at Lawrence Road. A collection of roof forms that will achieve variety and individuality, The look of the New England village include gable, intersecting gable, clipped gable, and the traditional salt box. The variety in roof form is typical to the New England town.

### **Gables**

The majority of the roof forms on the buildings may be pitched as shed or gable forms. If gable, the pitch should be no less than 6:12 and no more than 12:12, with or without intersecting gable roof forms. A range of pitches between 6:12 to 12:12 can be utilized throughout the development.

### **Dormers**

Dormers are familiar New England structures. Adding dormers, along with other structures to the roofs is a useful technique to articulate potentially repetitious roof patterns and make individual homes more recognizable from a distance. The palette of dormer types includes gable, hipped and shed.



These special, visually lightweight structures are appropriate places to introduce contemporary design approaches in some locations.

These features are sub-elements of the dominant forms of traditional New England structures. They maybe be used to subdivide larger and more repetitious building, and make them more familiar and memorable

## 2. Windows

The classical building style may be characterized by window placement that is pragmatic and includes symmetrical and occasionally asymmetrical compositions. Symmetrical compositions are normally found along principal façades or facing public spaces. Irregular window placement may be required to suit interior needs and is frequently found along side or back elevations



The following window types should be used for the majority of windows in the residences: operable, wooden or vinyl-clad double-hung windows with equal sized single sashes, single-pane below, multi-pane above, banded and grouped windows and recessed windows.

Strips of three or more windows, commonly called banded windows, may be an effective way to enliven the rigidity and repetition of regularly spaced single windows and to bring large amounts of light and ventilation to the interiors.



## 3. Window Placement

Irregular and asymmetrical placement of windows with façade compositions may be an effective means of achieving an informal character for the development and may be done when appropriate.

Asymmetrical window placement should be used to lend distinction to individual units within a larger building

#### 4. Doors

The doors are seen in the context of the porch, the steps, and the approach to the house. This entry sequence might occur under porch roofs supported with columns.

Single wood doors of panel and glass composition should be used with either a solid piece of wood with simple divided lights above with a wooden panel below or a single wood panel. Simplicity, typical of rural villages, should be pursued.





## 5. Porches

Porches supported by columns, porches on two sides of the house, and end wall porches are all recommended as typical devices for bringing the interior life of the homes outside. These structures should be used wherever appropriate.



### Porch Columns

Porch supports should be unadorned wooden posts, tapered columns, or simple columns.





## **MATERIALS**

### **1. Siding**

The primary siding materials should be wood shingles or horizontal clapboard siding.

### **2. Roofs**

Pitch roofs should be covered with asphalt or similar shingles

### **3. Color Palette**

Weathered medium earth tones in brown, gray, moss green, and tan comprise the color palette for siding and shingles. It should be achieved with semi-transparent stains. Earth tones, white, and black are the recommended paint accent color. Weathered tones of brighter hues: red, blue, green, yellow, turquoise can be used very selectively on doors.

The color palette for masonry material and concrete is intentionally kept natural in order to contrast and thereby enhance the distinctive characteristics and weathered hues and textures in the wood color palette.



## CREATIVE MIX OF NEW ENGLAND AND MODERN DESIGN

The appropriate mix of modern design and classic New England elements is encouraged for the Lawrence Road site. Wellfleet and the Cape have a proud history of modern design integrated into the New England village character and the Town encourages elements of the modern design at the site.



The following pages include photos from around Wellfleet that illustrate the integration of modern design and New England feel that is common throughout the town. The photos include images from the Cape Cod Modern House Trust, the Wellfleet Audubon, and Deck 2—rental condos situated in Wellfleet. Each photo represents a modern interpretation of traditional New England elements.

## PORCH COLUMNS



## WINDOWS





## DORMERS



## PITCHED ROOFS





## II. SITE LANDSCAPE CHARACTER GUIDELINES

### PUBLIC OPEN SPACE

The public open space within the housing site will serve a variety of purposes and the landscaping of the space must be adapted to the purpose and characteristics of the location.

In general, the open space should draw from traditional New England common space models that provide an informed, picturesque setting with organizing elements such as walkways, trees, and surrounding buildings.



The character of the common “green” should consist of a broad lawn area, limited low plantings in clusters to provide focal points, and trees located to provide rhythm, interest, and seasonal color. Pedestrian circulation should reflect “desire lines” established by walking patterns that are likely to emerge. Plant materials should be native or particularly well suited to the local environment.

The planting of shade trees of appropriate species, caliper, and spacing is strongly encouraged in the open public spaces of the site. The intent of shade trees is to minimize the adverse impact of the entry drive on the housing, while preserving views and creating spatial volumes on the “green”.

Tree location and spacing should be coordinated with building sites, pavement, and utilities that might interfere with the development of the tree canopy and root system. Shade trees should be planted at least 6 feet from the edge of the pavement.

Recommended tree shade species: disease resistant American Elm, London Plane, Red Oak, Red Maple, Zelkova, and American Sweet Gum.

## SEMI-PRIVATE SPACE

Some planting of woody ornamental shrubs should be provided between the public sidewalk and the front porch or façade of the building. The planting should form the framework of a front garden and provide residents with an opportunity for individual self-expression.



## PRIVATE SPACE

In general, a greater variety of plant materials should be allowed within the private spaces behind the homes. Plantings and the use of fences and walks are encouraged to provide a sense of privacy and layering within the community and to accommodate grade change. Consideration should be given to materials that will provide significant seasonal variation in color and character.



The ability to establish small garden areas in designated locations for residents should be encouraged to provide community activity and variety of expression that distinguishes a vital community.





## OTHER EXAMPLES OF SEMI-PRIVATE AND PRIVATE SPACE





## **PARKING AREAS**

The parking areas should be convenient for residents and have plantings that help break up the paved field, but which do not interfere with view lines or orientation, so that users can find their destinations with ease. Clustering trees in planting areas can provide a more interesting landscape with visual variety, avoiding the formality of regular spaces trees.

## **BUFFER ZONES**

Shade trees planted at intervals adjacent to the Lawrence Road site, in parking, and at backs of public sidewalks can visually separate residential buildings from the road and each other. Buffer planting should be arranged in informal groupings with occasional interruptions. Straight rows of screen trees planted at the property line should be avoided.



# **TOWN OF WELFLEET**

## **Housing Needs Assessment and Action Plan**

### **Executive Summary**



#### **Prepared by the Wellfleet Housing Authority and Wellfleet Housing Partnership**

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**October 2017**

# TOWN OF WELFLEET

## Housing Needs Assessment and Action Plan

### Executive Summary

The Wellfleet Housing Needs Assessment and Action Plan provides updated information on demographic, economic and housing characteristics and trends and further recommends strategies for the Town to implement to meet local housing goals and fulfill a vision for a safe and healthy community in which a wide range of individuals and families can call home. This Plan also meets all requirements under the state's Housing Production Plan Guidelines that are meant to provide greater local control over housing development.

#### DEMOGRAPHIC PROFILE

Key findings from this Housing Needs Assessment include the following **demographic changes**:

##### *Population Growth*

Between 1990 and 2010, Wellfleet's net population increased by 10% to 2,750 residents compared to 20% and 76% increases in total housing units and seasonal units, respectively, during the same period. Clearly the seasonal and occasional housing markets have fueled new development.

Population projections estimate declines in the year-round population from 2,750 residents in 2010 to 2,675 or 2,421 residents by 2030 according to Metropolitan Area Planning Council (MAPC) and State Data Center calculations, respectively. It is important to emphasize that projections are not always borne out in fact, but at a minimum the trend toward seasonality of the population is expected to continue.

##### *Age Distribution*

All age categories below 45 years have experienced population losses while all those above involved considerable gains. For example, those between the ages of 25 and 34 declined by 49% between 1990 and 2015. Children under 18 decreased by 13% while those 65 years or older increased by 113%. In fact, Wellfleet's seniors are not only growing in number but are living longer and becoming frailer and therefore more reliant on the community's network of services.

Those in the 25 to 44 age range, raising their own families and establishing community roots, decreased by 62% between 1990 and 2015.

These population changes are much more extreme than for the Cape as a whole and state. While children comprised about 14% of Wellfleet's population in 2015, they were 16% and 21% of the county and state populations, respectively, while seniors were 34% of all residents in Wellfleet but 27% in the county and 15% statewide.

These demographic shifts are expected to continue with those below the age of 20 decreasing by 30% between 2010 and 2030 and those 65 years or older increasing by 74% to comprise 48% of all residents according to MAPC figures. State Data Center estimates are less extreme with projected decreases in those up to age 19 of 11% and a 46% increase in seniors to represent 44% of the total population.

### ***Households***

The number of households increased by 37% between 1990 and 2010, higher than the net population growth of 25% and reflecting growing numbers of smaller households and an aging population. Average household size was 1.99 persons in Wellfleet compared to 2.24 and 2.53 persons for the county and state, respectively.

**25% of all households had heads 65 years of age or older who were living alone** based on 2015 census estimates.

## **ECONOMIC PROFILE**

There have also been considerable **economic changes** including:

### ***Income Distribution and Poverty***

The 2015 census estimates suggest a median household income of \$45,735, down from \$66,109 in 2010, running counter to increasing income levels in other Cape communities with the exception of Truro and Provincetown. Such a substantial decrease is questionable however. It is interesting to note that almost 26% of Wellfleet residents in the labor market were self-employed.

**28% of households earned more than \$100,000 in 2010, while 17% had incomes below \$25,000. In 2010.**

**Substantial income disparities are clear from the median income of homeowner and renter households of \$53,611 and \$22,045, respectively, in 2015.** These income levels are based on the Town's year-round residents, not the occasional residents who occupy 63% of the housing stock and likely have significantly higher incomes to compete in the housing market.

**The median income of senior households at \$43,675 is lower than the county's at \$47,464.**

**Poverty increased from 4.2% in 2010 to 11.7%** according to 2015 census estimates, higher than the county at 8.7% but comparable to the state at 11.6%. **The 4.2% level of poverty in the 2010 census data may be more accurate however, given the 2015 census estimates steep declines in income levels.**

### ***Employment***

As a resort community, Wellfleet experiences **seasonal shifts in its labor force**. For example, the unemployment rate was 12.1% as of February 2017, up from 8.5% for 2016 as a whole. The seasonality of the job market also has some workers living on limited incomes during the winter.

**The average weekly wage of \$756 for those who work in Wellfleet translates into an annual income of about \$39,500** and reflects the concentration of jobs in the lower-paying service sector that supports local tourism.

**A key question arises regarding the community's capacity to meet the service needs of its residents and in fact the expanding needs of its seniors.**

Projected decreases in younger adults will continue to erode the workforce and require older workers to fill in on lower-paying retail and service jobs and employees to come from places further and further away.

### ***Special Needs***

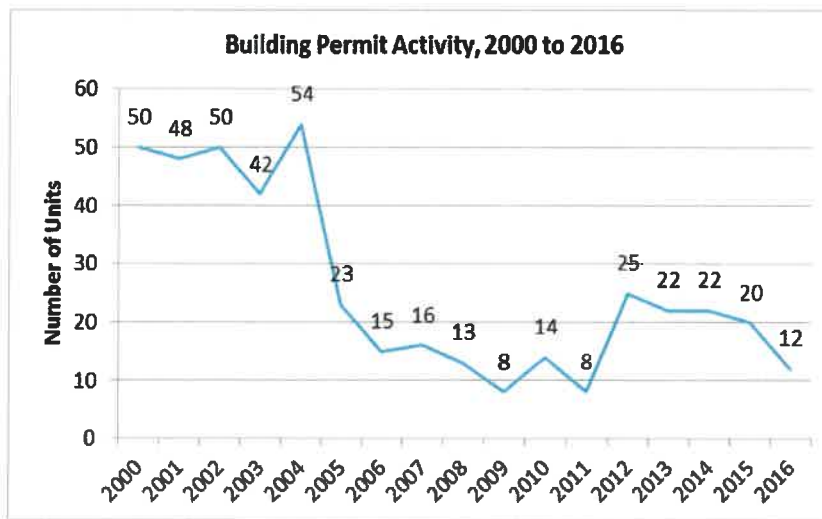
**16.1% of residents claimed some type of disability**, much higher than county and state levels of 13.4% and 11.5%, respectively.



Also, 26% of those 65 years of age or older indicated they had some type of disability, which will likely increase as this population continues to age.

## HOUSING PROFILE

Wellfleet has also experienced the following **major shifts in housing characteristics and trends**:



### *Housing Growth*

**Residential building activity has slowed down** with the average annual number of permits for new single-family residential units between 2011 and 2016 of 16 units compared to 49 between 2000 and 2004.

The average per unit valuation was \$201,106 between 2000 and 2004 and then increased to \$377,095 between 2011 and 2016.

A total of 14 units were built in small multi-family properties

between 2012 and 2013. The surge in unit numbers included in the above figure largely reflects these multi-family units.

**There has been a significant amount of teardown activity** where typically smaller older homes are demolished and replaced by somewhat larger and more modern ones, involving half of new residential permits in 2016. This would imply that net new housing growth is less than what is being reported in the census and building permit data.

**Increases in seasonal or occasional units** from 1,566 units in 1990 to 2,824 by 2015, representing an 80% increase, more than double the 37% growth rate for the year-round housing stock. Seasonal or second homes comprised 63% of all housing units according to 2015 census estimates.

There has been a loss of year-round rentals, declining by 42 units or by 13.5% during the 1990 to 2015 period, likely related to the conversion to owner-occupancy and/or seasonal or occasional use.

### *Housing Market Conditions*

**Wellfleet is experiencing very tight market conditions with vacancy rates of zero percent** for both owner-occupied and renter-occupied properties according to 2015 census estimates. Realtors indicate that there was little inventory available in all price ranges during the spring when there is usually a surge of units coming on to the market. Homes are selling quickly when priced appropriately.

In 2000 there were 287 units or 36% of the owner-occupied, year-round housing stock valued below \$200,000. This relatively affordable housing dwindled to 104 units or 8% as of 2015. On the other hand, those higher-end properties of \$500,000 or more involved about 10% of the housing stock in 2000, increasing to 48% of all owner-occupied, year-round units as of 2015.



The single-family home market was at its peak in 2004 when the median house price was \$650,000. Home values fluctuated considerably after that, declining to a low of \$460,000 in 2015 and up a bit to \$468,000 in 2016.

**There is little remaining affordability in Wellfleet's single-family inventory but considerable affordability in the condominium market with 4.5% and 62.5% of units valued below \$300,000, respectively. Most condos are seasonal however.**

Real estate agents confirm that they typically see very few year-round or winter rental listings. The rental market in Wellfleet is complicated by decreasing numbers of these units in the context of seasonal shifts. Given the limited supply of year-round rentals, housing costs are high and it is difficult to find a two-bedroom year-round market rental for less than \$1,400. Additionally, property owners can earn more in renting their homes for only a short period of time in the summer than renting year-round. Owners also want to be able to use their homes off and on during the year. Another constraint to year-round rentals is the income of year-round residents that puts going rents to no more than the \$1,400 to \$1,600 range.

### ***Affordability Gaps***

**The gap between median household income and the median single-family house price has widened. The median income earning household could likely afford a single-family home of about \$185,000 based on 95% financing. The affordability gap is about \$310,000 - the difference between the price of the median priced single-family home (\$468,000) and what a median income household (\$45,735) can afford (\$185,000).<sup>1</sup>**

**For those earning at 80% of area median income limit (\$61,150 for a family of three), this gap is \$217,500, the difference between the maximum they could afford of approximately \$250,500 and the median single-family house price of \$468,000.**

There is also an affordability gap for condos as the median condo price of \$232,000, as of the end of 2016 from The Warren Group's Banker & Tradesman, would require an income of about \$65,721, which is more than Wellfleet's median household income of \$45,735 and the HUD area median income for Barnstable County of \$61,150 for a household of three.<sup>2</sup> **The gap would be \$83,000, the difference between the median condo price (\$232,000) and what a median income earning household could likely afford (\$149,000).**

**According to Assessor's data, only 18 homes or 0.6% of all *single-family homes* were affordable to households earning below the town's median income (\$45,735) based on 2015 census estimates.**

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<sup>1</sup> Figures based on 95% financing, interest of 5.0%, 30-year term, annual property tax rate of \$6.83 per thousand, \$250 monthly condo fee, and insurance costs of \$4 per \$1,000 for condominiums and \$6 per thousand for single-family homes. The calculations are also based on the purchaser spending no more than 30% of gross income on mortgage (principal and interest), taxes and insurance. It is also assumes that the purchaser would be eligible for a subsidized mortgage program such as the ONE Mortgage Program or a MassHousing mortgage that would not require Private Mortgage Insurance.

<sup>2</sup> Figures based on 95% financing, interest of 5.0%, 30-year term, annual property tax rate of \$6.83 per thousand, \$250 monthly condo fee, insurance costs of \$4 per \$1,000 for condominiums, and the purchaser spending no more than 30% of gross income on mortgage (principal and interest), taxes and insurance. It is also assumes that the purchaser would be eligible for a subsidized mortgage program such as the ONE Mortgage Program on a MassHousing mortgage that would not require private mortgage insurance.

A lower-priced market rental of \$1,400 for a two-bedroom unit would require an income of about \$64,000 (assuming \$200 in average utility bills and not paying more than 30% of income on housing costs). On the other hand, the median income earning renter (\$22,045 based on 2015 census estimates) could afford a rent of only about \$351 under the same assumptions. Consequently, the affordability gap would be more than \$1,000, the difference between the market rental and what a median-income earning renter could afford. It is consequently not surprising that so many renters are paying far too much for their housing.

It is important to note that landlords often require first and last month's rent and a security deposit on monthly rentals, also creating **substantial up-front cash requirements for renters**.

### **Cost Burdens**

A HUD report indicates that of the 1,682 year-round households included in this analysis, 718 or 43% were reported with cost burdens as they were paying more than 30% of their income on housing costs.

**494 households or 43% of households earning at or below 80% AMI were spending more than half of their income on housing costs.**

Moreover, of these households **414 or 25% were spending more than half of their income on housing.**

**There were 809 households, or 48% of all households, who were earning at or below 80% AMI. Of these, 728 households or about 90% were experiencing cost burdens.**

**Almost one-third of Wellfleet's renter households are 62 years of age or older, 86% with cost burdens, while two-thirds of owner households were in this age range, 29% with cost burdens.**

There were 568 renter households spending too much of their income on their existing housing. Reviewing the proportionate need of seniors, families, and single individuals, seniors comprise about 44% of those with cost burdens, families make-up about 21%, and non-elderly/non-family individuals 35%.

There were also 513 owner households spending too much of their income on their housing and about half of these households were seniors with families at 18% and non-elderly/non-family individuals 31%.

### **Subsidized Housing Inventory (SHI)**

Wellfleet has 34 units in its Subsidized Housing Inventory (as of August 17, 2016), 13 (38.2%) of which are rental, 15 (44.0%) that involve homeownership units, and the remaining 7 (20.6%) through a Housing Rehab Loan Program. These units count towards the state's 10% state affordability goal with Wellfleet currently at 2.2%. Another 53 affordable units are in the development pipeline that will bring the percentage to 3.4%.

**A combination of information on demographic shifts, cost burdens, affordability gaps, and the community's housing mix suggest the following targeted housing goals:**

- 60 affordable units over 10 years
- 75% or 45 units projected as affordable rentals
  - 50% of rentals or 22 units for seniors and single persons/one-bedroom units
  - 40% or 18 units for small families/two-bedroom units
  - 10% or 5 units for large families/at least three-bedrooms
- 25% or 15 units projected as affordable ownership units
  - 20% or 3 units for seniors and single persons/one-bedroom units

40% or 6 units for small families/two-bedroom units  
40% or 6 units for large families/at least three-bedroom units

- Handicapped accessibility and/or supportive services in at least 10% of all affordable units created in family housing and 20% of all units in affordable senior/single-person housing

### **SUMMARY OF HOUSING PRODUCTION GOALS**

The state administers the Housing Production Program that enables cities and towns to adopt an affordable housing plan that demonstrates production of .50% over one year or 1.0% over two-years of its year-round housing stock eligible for inclusion in the Subsidized Housing Inventory (SHI). If this is accomplished in any calendar year, the town will have 12 months or 24 months, respectively, when it will have the likely ability to deny Chapter 40B comprehensive permit applications that it deems do not meet local needs.<sup>3</sup> Wellfleet would have to produce at least eight (8) affordable units annually to meet these annual production goals.

The state's subsidizing agencies have entered into an Interagency Agreement that provides more guidance to localities concerning housing opportunities for families with children and are now requiring that at least 10% of the units in affordable production developments that are funded, assisted or approved by a state housing agency have three (3) or more bedrooms with some exceptions (e.g., age-restricted housing, assisted living, supportive housing for individuals, SRO's. etc.).

### **SUMMARY OF HOUSING STRATEGIES**

The strategies summarized below are based on previous plans, the Housing Needs Assessment, local housing goals, local housing surveys and other community input (the May 27, 2017 Community-wide Housing Workshop in particular), and the experience of comparable communities in the area and throughout the Commonwealth. Some of the strategies reflect a continuation of efforts that have already proven effective in promoting affordable housing in Wellfleet. The strategies are grouped according to the type of action proposed – Building Local Capacity, Zoning, as well as Housing Development and Assistance – and categorized according to priority as those to be implemented within Years 1 and 2, those within Years 3 to 5, and longer term approaches. The strategies also reflect state requirements that ask communities to address a number of major categories of strategies to the greatest extent applicable.<sup>4</sup>

*It is also important to note that these strategies are presented as a package for the Town to consider, prioritize, and process, each through the appropriate regulatory channels.*

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<sup>3</sup> If a community has achieved certification within 15 days of the opening of the local hearing for the comprehensive permit, the ZBA shall provide written notice to the applicant, with a copy to DHCD, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the applicant wishes to challenge the ZBA's assertion, it must do so by providing written notice to DHCD, with a copy to the ZBA, within 15 days of its receipt of the ZBA's notice, including any documentation to support its position. DHCD shall review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The ZBA shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent local needs, provided, however, that any failure of the DHCD to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

<sup>4</sup> Massachusetts General Law Chapter 40B, 760 CMR 56.03.4.

### ***Capacity Building Strategies***

Specific actions to help build local capacity to address local housing needs are listed below. While these strategies do not directly produce affordable units, they provide the necessary support to implement a proactive housing agenda and build local support for new affordable housing initiatives.

- ***Continue to conduct ongoing community outreach and education***  
The Town will continue to engage the community in discussions on affordable housing to present information on the issue needed to dispel myths and negative stereotypes and to help galvanize local support, political and financial, for new housing initiatives.
- ***Hire a part-time Housing Coordinator***  
The Town will consider bringing on the necessary expertise to provide ongoing support to effectively coordinate the implementation of various components of the Housing Plan. The recently-introduced Cape Community Housing Partnership has surfaced the prospect of establishing a regional collaboration of communities to share the expertise of housing professionals which might be explored.
- ***Provide sustainable funding sources and incentives***  
While Wellfleet is fortunate to have CPA funding and an Affordable Housing Trust Fund to support affordable housing, additional resources are needed to address the range of local needs and meet production goals. The Town recently approved a real estate transfer tax and room occupancy tax to create potential new funding for some amount of affordable housing but state legislative approval is still required. This Plan also includes other potential resources for consideration as investments or incentives for affordable housing production and preservation.

### ***Zoning Strategies***

Greater flexibility will be needed in the Town's Zoning By-law and new tools will be required to capture more affordable units and better guide new development to "smarter" locations.

- ***Better promote affordable accessory dwelling units (AADU's)***  
The Town has made the promotion of affordable accessory dwelling units a priority since 2004 as such units represent effective and well-supported options for increasing community housing opportunities without resorting to new housing units. The Housing Plan recommends a number of provisions to better promote AADU's in the community.
- ***Amend inclusionary zoning***  
Another potential zoning change would be to adopt inclusionary zoning with mandates of integrating affordable housing into new development coupled with incentives that include density bonuses and a formula for providing cash in-lieu of units that can be invested in other Town housing activities.
- ***Integrate affordable housing into the Cluster Residential Development Bylaw***  
The Town will investigate amending its zoning to provide mandates and incentives for including affordable housing in its Cluster Residential Development by-law that promotes a smarter way of developing land besides the traditional subdivision and suburban sprawl.



- *Allow more diverse housing types in more areas*  
The Town should consider where somewhat denser housing development might be added, scrutinizing its zoning districts for opportunities to weave more diverse housing types, including multi-family housing, into neighborhoods.
- *Allow year-round use of condominiums*  
Since cottage colonies contain units that are comparable to condominiums and may offer some smaller and more affordable housing alternatives, the Town might consider creating greater flexibility in the zoning by-laws to enable these units to be converted to year-round use and to create other condos for year-round occupancy. At this point only one unit can be available for year-round occupancy in each existing colony.

### ***Housing Development Strategies***

To implement this Housing Plan, the Town will need to continue partnering with developers, non-profit and for profit, in the creation of additional affordable units as well as funding local housing initiatives.

- *Continue to partner with developers on privately owned sites*  
Continuing to work cooperatively with private developers, non-profit and for profit, has been a major thrust of Wellfleet's housing efforts and is a major component of this Housing Production Plan. With incentives created in the Zoning By-law to promote affordable housing and with the availability of the local and state "friendly 40B" options, the Town will continue to partner with developers to guide new development that incorporates affordable units and smart growth principles.
- *Continue to fund local housing programs*  
The Town should continue working with Bailey Boyd Associates and CDP on the funding and administration of the Housing Rehabilitation Program, also continuing to fund the BuyDown and Rental Assistance Programs, potentially tweaking program requirements as appropriate.
- *Continue to make suitable publicly-owned property available for affordable housing*  
While Town-owned property is limited, the Town should convey suitable, surplus publicly-owned properties to selected developers through a Request for Proposals (RFP) process that requires a significant amount of affordable housing.
- *Develop a Regional/Lower Cape housing development strategy*  
There are regional precedents for providing housing units and services, and the Town should continue to actively engage in the regional initiatives that are emerging as part of the Cape Community Housing Partnership and further discuss and invest in regional solutions to the Lower Cape's housing challenges.
- *Develop seasonal workforce housing*  
Cape Cod has experienced summer labor shortages for decades. Efforts to modify zoning are needed to enable employers to build housing for seasonal workers. As suggested at the May 2017 Housing Workshop, the Town should pursue creative ways of providing seasonal workforce housing in appropriate locations and under reasonable conditions. Seasonal worker housing might also provide an opportunity for the Lower Cape communities to work together in support of such development.

Table I-1 provides a summary of these housing strategies.

**Table I-1: Summary of Housing Strategies**

Strategies	Years 1-2	Years 3-5	Year 5+	# Affordable Units	Responsible Parties***
<b>A. Capacity Building Strategies</b>					
1. Continue to conduct ongoing community outreach	X			*	LHP, WHA + other sponsors
2. Hire a Part-time Housing Coordinator	X			*	BOS with LHP + WHA support
3. Provide sustainable funding sources and incentives for affordable housing	X			*	BOS with LHP + WHA support
<b>B. Zoning Strategies</b>					
1. Better promote AADU's	X			*	PB with LHP + WHA support
2. Adopt inclusionary zoning		X		*	PB with LHP + WHA support
3. Integrate affordable housing in the Cluster Residential Development bylaw		X		*	PB with LHP + WHA support
4. Allow more diverse housing types in more areas		X		*	PB with LHP + WHA support
5. Allow year-round use of condos			X	*	PB with LHP + WHA support
<b>C. Development and Assistance Strategies</b>					
1. Continue to partner with developers on private properties	X			6	PB/ZBA with LHP + WHA support

2. Continue to fund local programs	X			13	BOS/CPC with LHP + WHA support
3. Continue to make suitable public property available for affordable housing	X			26	BOS with LHP + WHA support
4. Develop a regional/Lower Cape housing development strategy		X		**	BOS with LHP + WHA support
5. Develop seasonal workforce housing			X	*	BOS with LHP + WHA support

*\*Indicates actions for which units are counted under housing development strategies, have an indirect impact on production, do not add to the Subsidized Housing Inventory, or cannot be counted toward production goals.*

*\*\* Units can only potentially be counted if located in Wellfleet.*

**\*\*\*Abbreviations**

Board of Selectmen = BOS

Local Housing Partnership = LHP

Wellfleet Housing Authority = WHA

Planning Board = PB

CPC = Community Preservation Committee

Zoning Board of Appeals = ZBA



November 30, 2018

Project No. C19156.00

Massachusetts Housing Partnership  
Attn: Laura F. Shufelt  
Assistant Director of Community Service  
160 Federal Street  
Boston, MA 02110  
VIA EMAIL: lshufelt@mhp.net

Re: Development Feasibility Assessment  
95 Lawrence Road, Wellfleet, MA

Dear Ms. Shufelt:

Coastal Engineering Company has completed our initial Town of Wellfleet Development Feasibility Assessment. This summary is a report on initial development feasibility and constraints including Natural Heritage Endangered Species, wetlands, and utility and access assessment for the site at 95 Lawrence Road, Wellfleet, MA. The subject property is more particularly shown on a hand annotated sketch identifying conceptual areas 1, 2 and 3 as provided by Mass Housing Partnership (attached to this report). The investigation focused on site constraints such as endangered species, septic capacity of the land, and availability of town water. In preparation of this report, Coastal Engineering Company interviewed selected Town of Wellfleet staff, reviewed research from Town of Wellfleet and other sources, and consulted with a representative of Mass DEP. A summary of the data compiled and research obtained, as well as a compilation of opinions and conclusions are provided below.

#### **Site Description:**

The subject areas are contained within the main 9.26 acre town parcel. Areas 1 and 2 on the conceptual sketch, are bordered on the east by Long Pond Road, on the south by Lawrence Road, on the west by an existing baseball field, and on the north by the access roadway to the existing water tower. Area 3 borders the existing water tank, Long Pond Road, and residential property on the southeast; remaining area of the main parcel surrounds the northern border; Lawrence Road and the existing baseball field comprise the remaining borders to the southwest and south, respectively.

Areas 1 and 2 are developed with a building that was formerly used as the Council on Aging (COA) facility, with a driveway/parking area, and septic system. Area 3 is primarily forested land with some cleared or disturbed area. Some of the disturbed area remains as a result of a former temporary police facility and parking area. An underground tight-tank that served the temporary police facility may still exist within area 3, but has been filled and abandoned in place. Areas 1, 2 and 3 are upland areas that immediately abut other upland on all sides.

#### **Site Evaluation**

For purposes of this evaluation, Areas 1 and 2 will be grouped as one potential development area, and Area 3 as a separate potential development area.



#### **Utility and Access Assessment**

Area 1 and 2 have frontage on both Lawrence Road and Long Pond Road, both being public ways. An existing driveway to Area 1 and 2 connects from Long Pond Road. Area 3 also has frontage on both Lawrence Road and Long Pond Road. Utility poles with overhead services exist along Long Pond Road and Lawrence Road, and have served the existing former COA building at this location. An existing water main is located between the existing water tank and Lawrence Road, and continues within Lawrence Road westerly. We have confirmed with Town staff that municipal water services will be available to the town parcel development area. Additionally, the existing layout of Areas 1, 2, and 3 provide access to a public way. Natural gas service is not available at this location.

#### **Land Capacity to Support Bedrooms (i.e. Septic Capacity of the Land)**

The subject areas 1, 2, and 3 (the three targeted leased areas) are part of the larger existing 9.26 acre Town of Wellfleet parcel. In our opinion, these areas would be considered as part of a single facility under 310CMR 15.00 (Title 5). The principle component in assessing the land capacity to support a specific number of bedrooms is that the facility would be served by the municipal water system. Based on our review of Title 5 and consultations with the Wellfleet Health Agent and Massachusetts Department of Environmental Protection (MassDEP), the facility is not subject to the nitrogen loading limitations under Title 5. Therefore, the facility could support up to 90 bedrooms under Title 5. An amount greater than 90 bedrooms would require the installation of a waste water treatment plant permitted and installed under the provisions of a MassDEP Groundwater Discharge Permit.

#### **Conditions**

Our review of MassGIS data, Town of Wellfleet research, and a cursory site inspection indicates the following: There are no known wetlands within the subject area that affect potential development. The subject areas are not within mapped estimated or primary habitat areas under the Natural Heritage and Endangered Species Program (NHESP). There are no state-listed vernal pools within the subject areas.

#### **Summary**

The information and opinions contained in this report are based on a cursory evaluation of available resources and are not based on any field tests or engineering design. Actual field testing of soils, land surveying, and site development engineering and evaluation would be necessary elements to properly assess future development options.

A critical component to the intensity of use of the subject area, as it relates to the number of potential bedrooms, is the ability to provide municipal water to serve any future development on the subject facility. The Title 5 threshold, as it relates to the 90 bedrooms identified above, translates to 9,900 gallons per day for the estimated daily wastewater effluent discharge (i.e. 90 bedrooms x 110 gallons per day per bedroom per Title 5 flow criteria). The 90 bedroom count can be split in any variety of allotments between Areas 1 and 2, and Area 3. Any site coverage, geometric, and/or logistical limitations, regulatory or otherwise, would also apply.

Please contact me, if you have any questions or require further information.

Sincerely,

COASTAL ENGINEERING CO., INC.



Bradford P. Malo  
Senior Project Manager

BPM/sms

Enclosure (Hand Annotated Sketch from MHP)

**GROUND LEASE**

**Between**

**THE TOWN OF WELLFLEET**

**And**

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**Dated as of** \_\_\_\_\_

## GROUND LEASE

This Ground Lease (this “**Lease**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the **Town of Wellfleet** (the “**Town**”), a body politic and corporate of the Commonwealth of Massachusetts, having an address of Wellfleet Town Hall, 300 Main Street, Wellfleet, MA 02667, and \_\_\_\_\_ (“**Tenant**”), a Massachusetts corporation/limited liability company, having an address of \_\_\_\_\_.

## **BACKGROUND**

WHEREAS, the Town is the owner of a 6-acre parcel of land, more or less, which is a portion of a 9.6 acre property located at 95 Lawrence Road, Wellfleet, Massachusetts, more or less, and described in a Treasurer’s Deed recorded with the Barnstable County Registry of Deeds (the “Registry”) in Book \_\_\_\_\_, Page \_\_\_\_\_ (the “**Land**”), which is shown more particularly on the plan attached hereto as Exhibit A and incorporated herein;

WHEREAS, on \_\_\_\_\_, 2021, the Town issued a Request for Proposals (the “**RFP**”), incorporated herein by reference and a copy of which is on file with the Wellfleet Town Clerk, soliciting proposals for the development, construction and operation of no more than forty-six (46) affordable housing units on the Land (the “**Property**”);

WHEREAS, \_\_\_\_\_ (the “**Developer**”) submitted a proposal in response to the RFP (the “**Proposal**”), incorporated herein by reference and a copy of which is on file with the Town Clerk, proposing to develop, construct, operate, and maintain on the Property \_\_\_\_\_ (\_\_\_\_) residential dwellings and to rent the dwellings to low and moderate income households (the “**Project**”);

WHEREAS, the Town accepted the Proposal;

WHEREAS, the Town and the Developer entered into a Land Development Agreement dated \_\_\_\_\_, 2021 (the “**LDA**”), incorporated herein by reference and a copy of which is on file with the Town Clerk, that stated the conditions that must be satisfied before the Town would lease the Property and set forth the basic terms regarding the development of the Property;

WHEREAS, the Developer is required under the LDA to obtain permits and financing necessary to undertake the Project;

WHEREAS, the Developer has formed the Tenant for the purpose of entering into this Lease with the Town, all as provided in the LDA;

WHEREAS, pursuant to the LDA, the Developer obtained a Comprehensive Permit from the Wellfleet Zoning Board of Appeals \_\_\_\_\_ (as amended from time to time as permitted herein, the “**Comprehensive Permit**”), pursuant to which Tenant will construct the Project, all as set forth in the Comprehensive Permit;

WHEREAS, Tenant has obtained a construction loan for the Project from \_\_\_\_\_ (the "**Construction Loan**"), which Construction Loan is presently secured by a first priority leasehold mortgage on the Premises (defined in Section 1.1) (the "**Construction Mortgage**");

WHEREAS, Tenant has obtained a commitment for a permanent loan of \$ \_\_\_\_\_ (the "**Permanent Loan**") for the Project from the \_\_\_\_\_ ("**Permanent Lender**"), which Permanent Loan shall be secured by a first priority leasehold mortgage on the Premises (the "**Senior Permanent Mortgage**", and has entered into a Regulatory Agreement with the Department of Housing and Community Development ("**DHCD**") and the Town, recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "**Regulatory Agreement**");

WHEREAS, the Tenant has obtained commitments for subordinate loans from various lenders which loans shall be secured by a leasehold mortgage on the Premises junior to the Senior Permanent Mortgage pursuant to the terms of a master subordination agreement to be recorded with said Deeds, therewith;

WHEREAS, the Town and Tenant wish to enter into this Lease to set forth the terms and conditions under which Tenant will develop, construct and operate the Project substantially in accordance with the RFP, the Proposal, the LDA, the Restriction (defined in Section 8.6), and this Lease (collectively, the "**Project Documents**").

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

## ARTICLE 1 - PREMISES

1.1 Lease of Premises. The Town, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases and demises to Tenant, and Tenant hereby leases from the Town, for the Term (defined in Section 2.1), upon the terms and conditions set forth herein, the following described premises (collectively, the "**Leased Premises**");

The Property and any and all improvements thereon, together with any and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Property or the use or occupancy of or access to the Property, whether or not of record, subject to the terms of this Lease.

1.2 Premises. The Leased Premises and any and all improvements constructed or placed on the Leased Premises from the date of this Lease (the "**Improvements**") are referred to, collectively, as the "**Premises.**"

1.3 Condition of the Premises. Tenant acknowledges that it has leased the Premises after a full and complete examination thereof and finds the Premises satisfactory for its intended

use and, notwithstanding the foregoing, accepts the Premises in its "AS IS" condition, in the condition and state the Premises are in as of the Commencement Date (as defined herein), without any representation or warranty, express or implied, by the Town except for those representations, covenants and agreements stated expressly in this Lease, if any. Landlord is not required to, and shall not, furnish any services or facilities or to make any repairs or alterations in or to the Premises, unless otherwise required by a government authority and except as otherwise required in this Ground Lease.

1.3 Town's Access Rights. The Town shall have the right, upon reasonable prior notice to Tenant, consisting of not less than 48 hours' notice (except in the event of an emergency, in which case notice shall be given as soon as reasonably practicable), the Town shall have the right to access and enter upon the Premises from time to time and at any time during the Term of this Lease, for the purposes of inspecting the Premises, reviewing Tenant's compliance with the provisions hereof and of all applicable laws, rules, regulations, statutes, by-laws, court decisions and orders and requirements of all public authorities, and exercising any other rights reserved to the Town by this Lease. The Town shall not unreasonably interfere with the use of the Premises by Tenant and other entitled thereto. The Town will repair any damage caused by the Town to the Premises or to Tenant's other property arising out of such entry.

1.6 Quiet Enjoyment. The Town covenants and agrees with Tenant that, so long as no Event of Default (defined in Section 14.1) has occurred under this Lease, the Tenant shall and may, at all times during the term of this Lease, peaceably and quietly have, hold and enjoy the Premises and all rights, appurtenances and privileges belonging or in any way appertaining thereto without hindrance or molestation, provided that the Town and its authorized agents may enter upon and examine the Premises as provided herein.

## ARTICLE 2 - TERM

2.1 Term. The Premises are hereby leased unto Tenant and its successors and assigns for a term of ninety-nine (99) years (the "**Term**"), commencing on \_\_\_\_\_ (the "**Commencement Date**") and ending on \_\_\_\_\_ (unless earlier terminated in accordance with the provisions hereof, the "**Termination Date**").

## ARTICLE 3 - TENANT'S IMPROVEMENTS

3.1 Initial Improvements. (a) Tenant shall construct \_\_\_\_\_ (\_\_\_\_) residential units on the Premises and any and all other improvements shown on and described in the plans and specifications attached to the Comprehensive Permit (collectively, the "**Initial Improvements**"), which are incorporated herein by reference and a copy of which are on file with the Town Clerk (the "**Design Plans**"), with such construction commencing within sixty (60) days of the Commencement Date (as the same may be extended in accordance with Section 3.1(b), the "**Construction Start Date**"). The construction of the Initial Improvements shall comply with the Comprehensive Permit, as the same may be amended from time to time, except that in no event shall the number of affordable units be reduced, and, further, no material changes shall be made to any other provision of the Comprehensive Permit that relates to this Lease unless the same has been expressly approved in writing by the Wellfleet Selectboard

before Tenant submits an application to the Wellfleet Zoning Board of Appeals for a modification of the Comprehensive Permit (any or all of the foregoing, a “**Material Modification**”). Tenant shall construct the Initial Improvements using commercially diligent efforts in material accordance with the Final Plans (defined in Section 3.3) and in accordance with the Schedule of Performance set forth below. For purposes of this Lease, construction of the Initial Improvements shall be deemed to have “**commenced**” upon the commencement of actual physical work (including, without limitation, site work) on the Premises pursuant to a full, unconditional building permit for the construction of the Initial Improvements, and “**Final Completion**” of the Initial Improvements will be deemed to have occurred upon the issuance of the final permanent certificate of occupancy for the Initial Improvements (the “**Final Completion Date**”). The Initial Improvements shall reach Final Completion within two (2) years of the Construction Start Date (the “**Schedule of Performance**”).

(b) Notwithstanding the foregoing, if the commencement of the Initial Improvements is prevented or delayed beyond the Construction Start Date or the construction is interrupted after its commencement because of strikes, lockouts, labor troubles, inability to procure materials, power failures, riots, insurrection, war, appeals or litigation relating to any required permits or licenses necessary to construct and use the Initial Improvements for the Permitted Uses (defined in Section 8.1), or other causes beyond Tenant’s reasonable control (provided, however, that lack of funds shall not be deemed such a cause) (collectively, “**Force Majeure**”), then the commencement of the Initial Improvements and/or the completion of the Initial Improvements shall be reasonably extended for the period of the delay.

3.3 Approval and Delivery of Final Plans. On or before the commencement of construction of the Initial Improvements, Tenant shall submit to the Town, for purposes of obtaining a building permit, final construction drawings for the Initial Improvements, which shall be substantially similar to the Schematic Design Plans (the final revised construction drawings so submitted to the Town are hereinafter referred to as the “**Final Plans**”). The issuance of a building permit or permits shall be deemed to constitute the approval of the Final Plans with respect to the permitted building or buildings by the Town for all purposes, unless the Final Plans differ materially from the Schematic Plans, in which case Tenant must also submit the Final Plans to the Board of Selectmen for approval at least sixty (60) days prior to the commencement of construction, such approval not to be unreasonably withheld.

3.4 Required Permits. Tenant shall obtain any and all permits, approvals and licenses from governmental authorities required for construction and use of the Initial Improvements (“**Required Permits**”), and for any other alterations, removals, installations, additions, changes, replacements or improvements now or hereafter made to the Premises (collectively with the Initial Improvements, “**Tenant Work**”), and shall, upon written request, provide the Town with a copy of each. Tenant may occupy all or part of the Premises under temporary or conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining permanent certificates of occupancy for the Initial Improvements or other similar licenses or permits required to permit the Premises to be used and occupied for the Permitted Uses.

(b) The Town agrees to reasonably cooperate with Tenant in executing any and all applications and other documents which may be necessary at any time to obtain or maintain any

Required Permits, all at Tenant's sole cost, but Tenant acknowledges that the Town has no control over and cannot guarantee that permits required from municipal boards or officers within its statutory or regulatory authority will be granted or fees waived.

3.5 Ownership. At all times during the Term of this Lease, the Improvements and any equipment thereon shall be owned by Tenant, and Tenant alone shall be entitled to tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. Upon the expiration or earlier termination of this Lease, Tenant shall have the right, but not the obligation, to remove the Improvements from the Premises. If Tenant elects not to remove the Improvements, and subject to the rights of the Permitted Mortgagees (defined in Section 13.2) and the rights of tenants in possession of residential units under leases with the Tenant or its agent(s), upon the expiration or earlier termination of this Lease, title to the Improvements shall immediately vest in the Town and shall be surrendered at that time in accordance with Section 15.1 below.

3.6 Manner of Construction; Cost of Initial Improvements. Tenant shall construct all Tenant Work in a good and workmanlike manner, in compliance with all Legal Requirements and good engineering and construction practices. The Initial Improvements shall be constructed in material compliance with the Final Plans and in strict compliance with the Required Permits. Tenant shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by Tenant Work, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Tenant shall pay (or cause to be paid) all costs and expenses associated with any Tenant Work and shall defend, indemnify and hold the Town Parties (defined in Section 7.13) harmless from and against any and all claims, damages, losses, penalties, costs, expenses, demands, fees and/or liabilities (including without limitation reasonable legal fees) (collectively, "**Claims**") attributable to Tenant Work.

3.7 Liens. If any mechanic's, laborer's or materialman's lien shall at any time during the Term be filed against the Premises, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming under Tenant, Tenant shall, within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Town may, but shall not be obligated to, discharge or secure the same, and any amount so paid by the Town and all costs and expenses incurred by the Town in connection therewith, shall be paid by Tenant within thirty (30) days from the presentment of invoices therefor.

3.8 No Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent to payment or request of the Town, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

3.9 As-Built Drawings. Within ninety (90) days after Final Completion of the Initial Improvements or the completion of any other Improvements on the Premises, Tenant shall prepare at its expense and deliver to the Town one complete, legible and reproducible full-sized set of as-built plans showing the Initial Improvements or such other Improvements, as the case may be, together with a certified survey plan.

3.10 Inspection of Improvements. The Town's representatives may enter upon the Premises from time to time on reasonable notice to Tenant for the purpose of inspecting the Improvements being constructed by Tenant, and such entry shall not be construed to be a violation of Tenant's right to exclusive possession of the Premises. At final completion of any of the Initial Improvements, and other major structural Improvements, the Town shall have the right to inspect the work to determine material conformity with the Final Plans or other approved plans and specifications, as the case may be, and may direct Tenant to perform such additional work as may be necessary to materially conform with said Final Plans or other plans.

#### ARTICLE 4 - RENT

4.1 Base Rent. Commencing on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Town annual base rent ("**Base Rent**") in the amount of \_\_\_\_\_ Dollar (\$\_\_\_\_\_) per year.

4.2 Additional Rent. In addition, Tenant shall pay any fee, charge or other amounts required to be paid by Tenant to the Town (or to others under Section 5 hereof) under this Lease as additional rent ("**Additional Rent**"). Base Rent and Additional Rent (collectively, "**Rent**") shall be paid without counterclaim, notice, demand, abatement or offset at the Town's address set out in Section 18.2.

4.3 Late Payments. Any payment of Rent due to the Town hereunder not paid when due shall bear interest at a rate of ten percent (10%) per annum (the "**Default Rate**") for each month or fraction thereof from the due date until paid in full at the Default Rate.

4.4 Triple Net Lease. Except as stated otherwise, Tenant acknowledges and agrees that this is an absolute triple net lease, and that all costs, expenses and obligations of any kind relating to the Premises, including without limitation all construction, alterations, maintenance, repairs, restoration, reconstruction and replacements as hereinafter provided, which may arise or become due during the Term hereof, shall be paid by Tenant at Tenant's sole cost and expense. All payments of Rent shall be absolutely net to the Town so that this Lease shall yield to the Town the Rent herein specified in each year during the Term of this Lease free of any taxes, assessments, charges, fees, impositions or deductions of any kind charged, assessed or imposed on or against the Premises, for which Tenant shall bear the sole responsibility. The Town shall not be expected or required to pay any such charge, assessment or imposition, or furnish any services to the Premises or be under any obligation or liability hereunder.

#### ARTICLE 5- TAXES AND UTILITIES

5.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all of the



following, if applicable: real estate and other taxes, assessments, special use or assessment district taxes, water and sewer charges, charges for meters, excises, levies, license and permit fees and all other governmental charges of any kind and nature which during the Term may be assessed, levied, imposed upon or become due with respect to, or become a lien on the Premises or the leasehold, and payments in lieu of such taxes, assessments, charges or fees, whether such charges are made directly to Tenant or through or in the name of the Town. All such charges shall be referred to herein as “**Impositions**.” Tenant shall have the right to contest or object to the amount or validity of any Imposition but shall not withhold payment of any Imposition while any such contest or objection is pending. Tenant, upon request of the Town, shall furnish to the Town within thirty (30) days of the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to the Town, evidencing payment thereof.

5.2 Utilities. Tenant shall be responsible, at its sole cost and expense, for installing and providing utilities to serve the Premises. Tenant shall pay, or shall cause to be paid, directly to the utility provider, all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of the Town (“**Utility Charges**”). Tenant covenants and agrees to hold the Town harmless from any costs, fees and/or charges incurred in connection herewith, and to pay on demand any and all costs incurred by the Town for utilities and similar services. The Town makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Improvements.

5.3 Personal Property. Tenant shall pay promptly when due all taxes which may be imposed upon any and all personal property (including fixtures taxed as personal property) in, on or within the Premises directly to the assessing party.

## **ARTICLE 6 - REPAIRS AND MAINTENANCE**

6.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises (including all Improvements) and all privately owned roadways, sidewalks, curbs, landscaped areas, fences and entranceways adjoining the same, and shall keep the same in good, safe and clean order and condition, (except for reasonable wear and tear and damage from a Taking (defined in Section 11.1 below) or from fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder), and shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen in order to keep the Premises in the condition required hereunder throughout the Term. Without limitation, Tenant shall keep the driveways and privately-owned sidewalks shown on Exhibit B in good order and condition. Tenant shall keep the Premises free of accumulations of dirt and rubbish, and shall use all reasonable precautions to prevent waste, damage or injury to the Premises.

6.2 No Obligation of the Town. Except as otherwise expressly provided herein, the Town shall in no event be required to maintain or repair or to make any alterations, restoration, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

## **ARTICLE 7 - INSURANCE AND INDEMNITY**

7.1 Property Insurance. Tenant shall, at its sole expense, obtain and keep in force during the Term of this Lease "all-risk" property insurance coverage insurance on the Initial Improvements and other Improvements, including, but not limited to, machinery and boilers, naming Tenant as the insured, and otherwise in the customary form for property insurance coverage of buildings of similar character in the Barnstable County area, naming the Town as an additional insured. The amount of such insurance shall not be less than one hundred percent (100%) of the full replacement value of the Initial Improvements and other Improvements, as determined from time to time.

7.2 Builder's Risk. During the period of any Tenant Work, Tenant shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Town may reasonably require.

7.3 Liability Insurance. Throughout the Term of this Lease, Tenant shall maintain, for the benefit of the Town and Tenant, and naming the Town as an additional insured, the following insurance: (i) general liability insurance, written on an occurrence basis, with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of the Town, Tenant, and any Permitted Mortgagee (defined in Section 13.2), including, without limitation, coverage for contractual liability and broad form property damage, with respect to the Premises or arising out of the maintenance, use, or occupancy of the Premises; and (ii) excess liability (so-called umbrella) coverage having a limit of Five Million Dollars (\$5,000,000.00) written on an occurrence basis. Such liability insurance shall be primary and not contributing to any insurance available to the Town, and the Town's insurance shall be in excess thereto.

7.4 Business Personal Property Insurance. Tenant agrees that the Town shall have no responsibility or liability for any loss or damage or injury from any cause whatsoever, including theft or otherwise of fixtures, improvements, or other personal property of Tenant or tenants of residential units on the Premises. Throughout the Term, Tenant shall maintain personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils in amount at least equal to the full replacement cost thereof.

7.5 Insurance Carried by Contractors. During the construction of any Improvements, Tenant shall also require the construction manager and/or general contractor to maintain (i) for the benefit of Tenant and the Town, as additional insured, commercial general liability insurance, including products and completed operations coverage, against any claims for bodily injury, death and property damage occurring upon, in or about the Premises and on, in and about the adjoining sidewalks and passageways during the construction of the Initial Improvements for at

least \$3,000,000 combined single limit; (ii) worker's compensation in amounts required by statute; (iii) employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000), and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or nonowned, in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

7.6 Insurance Coverage Increases. On the fifth (5<sup>th</sup>) anniversary of the Commencement Date, and every five (5) years thereafter, or upon the Town's reasonable request (which shall occur not more often than once every three (3) years), the limits of any of the above-mentioned insurance coverages shall be increased at the written request of the Town to amounts reasonably requested by the Town to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in Massachusetts for injury, death and property damage, but not to exceed the amounts of coverage generally maintained at the time in question for similar residential developments or properties in Massachusetts.

7.7 Insurance Carriers, Policies. All insurance provided for in this Article 7 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "A-" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the Town. Tenant shall submit duplicate originals of all the policies required to be carried hereunder on the Commencement Date and on each anniversary thereof, or at the Town's reasonable request.

7.8 Blanket Policy. Nothing in this Article 7 shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article 7 under a blanket insurance policy or policies covering other properties as well as the Premises, provided, however, that any such policy or policies of blanket insurance (i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by this Article 7, and (ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this Article 7.

7.9 Non-cancellation. Each policy or binder issued by an insurer shall contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to the Town (ten (10) days' prior written notice in the case of non-payment of premiums).

7.10 No Separate Insurance. Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 7 to be furnished by, or which may reasonably be required to be furnished by, Tenant unless the Town and Tenant are included therein as insureds, with loss payable as in this Lease provided. Tenant shall

immediately notify the Town of the placing of any such separate insurance and shall cause the same to be promptly delivered to the Town.

7.11 General Requirements. All policies of insurance provided for in Article 7 hereof shall name the Town and Tenant as the insureds as their respective interests may appear. Subject to Exhibit D and to the requirements of any documents evidencing, relating to or securing any financing held by a Permitted Mortgagee (as defined in Section 13.2), the loss, if any, under such policies shall be adjusted with the insurance companies by Tenant, and shall be payable to Tenant, except that all such payments shall be made to the Town during the last three (3) years of the Term of this Lease. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of any of the Tenant Parties (defined in Section 7.13 below) shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant hereby waives any and all rights of recovery which it might otherwise have against the Town, its agents, employees and other persons for whom the Town may be responsible for any loss or damage to Tenant's property or improvements in the Premises which are either required to be insured under the terms of this Lease or which Tenant, in the absence of any such requirement, elects to insure, notwithstanding that the loss or damage may result from the negligence, willful act or default under the terms of this Lease by the Town, its agents, employees, contractors, or other persons for whom the Town may be responsible. Tenant and its contractors, subcontractors and independent contractors and their insurers shall, to the extent permitted by their approved insurers, waive all rights of subrogation against the Town, and its officers, agents, servants, and employees for losses arising from work performed by each. Any insurance or self-insurance that the Town elects to maintain shall be excess of Tenant's insurance and from other parties insurance and shall not contribute to it.

7.12 The Town's Right to Pay Premiums. Tenant shall pay all of the premiums for all the policies of insurance referred to in this Article 7, and the cost of such insurance shall be deemed to be Additional Rent under this Lease; provided, however, that such insurance premiums may be paid by Tenant directly to its insurer on or before the date such payment is due, or by a Permitted Mortgagee in accordance with the terms of the loan documents for the loan to Tenant. Notwithstanding anything in this Lease to the contrary, in the event of the failure of Tenant either to effect insurance in the names and amounts called for in this Lease or to pay the premiums for the insurance or to deliver the policies to the Town, the Town shall have the right, but not the obligation, to effect such insurance and pay the premiums for the insurance without regard to any cure rights held by the Permitted Mortgagees, which premiums shall be repayable to the Town as Additional Rent on demand, provided, however, that the Town gives Tenant and all Permitted Mortgagees written notice of the same at least fourteen (14) days prior to procuring such insurance.

7.13 Tenant's Indemnification. (a) Tenant shall defend (with counsel reasonably acceptable to the Town), indemnify and hold harmless the Town Parties (as defined below) from and against any and all Claims which may be imposed upon or incurred by or asserted against the Town Parties by reason of any of the following occurrences:

(i) any work or thing done during the Term of this Lease in, on or about the Premises or any part thereof, including during construction of the Initial Improvements and any other Tenant Work, by Tenant or any of the Tenant Parties (as defined below);

(ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, during the Term of this Lease by Tenant or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees (together with Tenant, the “*Tenant Parties*”);

(iii) any negligence or willful misconduct on the part of the Tenant Parties; and

(iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any privately owned roadway, sidewalk or curb appurtenant to the Premises, unless the same occurs solely as a result of the gross negligence or wrongful act of any the Town or its employees, contractors, agents, representatives and invitees (collectively with the Town, the “*Town Parties*”).

(b) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Town which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Article 7. This Lease is made on the express condition that the Town shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Tenant or any of the Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, except to the extent directly and solely caused by the gross negligence or willful misconduct of any of the Town Parties.

(c) If the Town obtains separate counsel due to reasonable concerns that its interests and that of Tenant may be adverse or that counsel provided by Tenant may have a conflict in interest or is not providing effective representation of the Town, then the reasonable expenses of such separate counsel shall be at Tenant’s expense.

(d) The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel reasonably acceptable to the Town or counsel selected by an insurance company which has accepted liability for any such claim.

7.14 Survival of Indemnities. The provisions of Section 7.13 shall survive the termination or expiration of this Lease.

## ARTICLE 8 - USE OF PREMISES

8.1 Permitted Uses. The Premises and the Improvements shall be used exclusively for affordable rental housing and uses incidental thereto, as set forth more particularly in Section 9.2 and the Comprehensive Permit (collectively, the “*Permitted Uses*”).

8.2 Legal Requirements. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall promptly comply with all laws, ordinances, by-laws, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, housing authorities, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, including without limitation the Comprehensive Permit, which may at the time in question be applicable to the Premises and the sidewalks and curbs adjoining the same, or to the use or manner of use of the same or to any of the Tenant Parties, as said laws, ordinances, by-laws, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, housing authorities, boards and officers shall at the time in question be in force and effect (collectively, “*Legal Requirements*”).

8.3 Contests. Tenant shall have the right (but not the obligation) to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to the Town, the validity or application of any Legal Requirement, subject to Tenant providing the Town with written notice thereof on or before the date of contesting same, and further subject to the following:

(a) If, by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or the Town to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the Town to criminal liability or fine, and provided that Tenant (i) bonds over such lien or furnishes to the Town security, reasonably satisfactory to the Town, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

8.4 Compliance with Insurance Requirements. Throughout the Term of this Lease, Tenant, at its expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises.

8.5 Property Management. Tenant will either manage the Premises personally or hire a reputable and experienced property management company to manage the Premises. The Town hereby acknowledges that it has approved the hiring of the \_\_\_\_\_, the management company set forth in the Proposal. If the Premises are to be managed by any party other than the \_\_\_\_\_, Tenant shall, at least sixty (60) days prior retaining any such other party, submit to the Town for approval (a) the name of Tenant’s proposed property

management company, (b) evidence that such company has (i) a good business and character reputation in the community, and (ii) proven property management experience with affordable housing developments, and (c) the identity, background and experience of the senior operational officer, and all agents and employees who will be engaged in the management of the Premises.

8.6 Affordable Housing Restriction. The Town and Tenant agree that the Premises shall be subject to an affordable housing restriction for the full Term of this Lease ensuring that all the units on the Premises are rented to low and moderate tenants, as set forth in Section 9.2, binding the Premises and enforceable by the Town for the Term of this Lease, qualifying under G.L. c. 184, §31, approved and enforceable by the Town and DHCD in the form required or recommended by DHCD for including the units in the Town's Subsidized Housing Inventory (the "**Restriction**"), which Restriction will be recorded with the Registry at Tenant's sole cost and prior to any leasehold mortgage (including any Permitted Mortgage), lien or other encumbrance that is recorded against the Premises (unless each mortgage or lien holder shall have executed a subordination agreement, acceptable to the Town, expressly subordinating its mortgage or other lien to the Restriction), it being recognized that in no event will a foreclosure or deed given in lieu of any lien on the Premises result in the termination of the Restriction without the Town's prior written consent, which may be withheld in its sole and absolute discretion. It is recognized by the Town and Tenant that DHCD may require changes to the Restriction subsequent to its recordation, and they both agree to execute whatever documents may be necessary to accomplish such changes that are acceptable to the parties. No final certificate of occupancy shall be issued for any of the units unless and until the Restriction (or any amendment thereof) has been approved and executed by DHCD and the Town and recorded with the Registry.

8.7 Abandonment of Use. Subject to Force Majeure and except during construction of the Initial Improvements and thereafter during reasonable periods of repair, remodeling and/or restoration, Tenant covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Uses. If the Premises shall be abandoned, deserted, or vacated by the Tenant as indicated by written notice delivered by Tenant to the Town (such decision to abandon, desert or vacate or discontinue construction or operation of the facilities located on the Premises shall be referred to as a decision to "**Discontinue Operations**"), or if fewer than sixty-five percent (65%) of the units are leased and occupied in accordance with Section 8.1 for a period of one hundred eighty (180) consecutive days despite Tenant's good faith and diligent efforts, or for more than one hundred eighty (180) days in any calendar year for any reason, the Town shall have the right to terminate the Lease and recover exclusive possession of the Premises by written notice to Tenant. Notwithstanding the foregoing, the Town's right to terminate this Lease for failure to maintain 65% occupancy as aforesaid may not be exercised if it is attributable to Force Majeure. In the event the Town exercises its right to terminate the Lease hereunder, the Lease shall terminate as of the date that is sixty (60) days after the date of the Town's notice to Tenant thereof, and Tenant's liability with respect to the Lease shall terminate as of such date, unless within such sixty (60) day period, more than sixty-five percent (65%) of the units are leased and occupied in accordance with Section 8.1 (in which event such termination notice shall have no effect), subject to the provisions stated to survive the termination, which shall so survive.

## ARTICLE 9 - RESIDENT SELECTION; COMMITMENTS



9.1 Resident Selection. Tenant shall submit to the Town for approval initial resident selection policies for the affordable rental housing facility that have been approved by DHCD, which approval shall not be unreasonably withheld (the resident selection policies approved by the Town and DHCD are hereinafter referred to as the “*Tenant Selection Plan*”). Tenant shall promptly adopt the Resident Selection Plan, and said Tenant Selection Plan shall include a seventy (70%) percent local preference to Wellfleet residents and/or employees of businesses of the Town, to the extent permitted by the Legal Requirements.

9.2 Affordability Commitments. Tenant agrees that, from the Commencement Date to the Termination Date, and through any date through which Tenant remains in occupancy of the Premises, Tenant shall use the Property for and operate thereon a rental housing development that meets the requirements of this Section 9 (the “*Affordability Commitments*”) based on the following schedule,:

- (a) \_\_\_\_\_ (\_\_\_\_) units shall be available for rent to persons with annual household incomes at or below thirty percent (30%) of the area median annual income;
- (b) \_\_\_\_\_ (\_\_\_\_) units shall be available for rent to persons having with annual household incomes of no more than eighty percent (80%) of the area median annual income; and
- (c) \_\_\_\_\_ (\_\_\_\_) units shall be available for rent to persons with annual household incomes of no more than one hundred twenty percent (120%) of the area median annual income.

Tenant and the Town acknowledge that the foregoing Affordability Commitments are part of and governed by the Comprehensive Permit, the terms of which permit are incorporated herein by reference. In the event that said Comprehensive Permit is amended, the foregoing Affordability Commitments will be amended accordingly, provided however that no Material Modifications (defined in Section 3.1) shall be made to the Comprehensive Permit without the prior written approval of the Selectboard, as set forth in Section 3.1.

For the purpose of this Section 9.2, “*area median income*” shall mean the standard defined from time to time by the Department of Housing and Urban Development (or any successor thereto) as adjusted for household size, or, if defined differently in Section 42, then in accordance with the requirements, from time to time, of Section 42, and acceptable for inclusion of all the Units in the Town’s Subsidized Housing Inventory.

As a condition to occupancy, each potential tenant of a unit shall be required to sign and deliver to Tenant an income certification using a form adopted for such use by Tenant and reasonably acceptable to the Town, which form meets the requirements of Section 42 and any other applicable financing requirements.

Tenant shall ensure that all the units at the Premises are of comparable quality, and, to the greatest extent practicable, units leased to households of all different income tiers shall be dispersed evenly throughout the Premises.

9.3 Monitoring. Tenant covenants an agency or other entity acceptable to the Town (and DHCD, if applicable) for purposes of monitoring Tenant's compliance with the Affordability Commitments and other applicable program requirements associated with the financing of the Project (the "**Monitoring Agent**") and to make any and all such information available to the Town upon request. Tenant agrees to provide the Monitoring Agent such certifications, information, and/or reports as the Town or the Monitoring Agent may reasonably require in writing in order to ensure compliance with the Affordability Commitments. Tenant shall notify the Town and the Monitoring Agent in writing if Tenant discovers non-compliance with any restrictions hereunder. Tenant further covenants and agrees to provide a monthly report to the Town and/or the Monitoring Agent during the initial rent-up period (following construction of the Initial Improvements) and a quarterly report during the first five (5) years of this Lease Term detailing Tenant's actions with regard to, and compliance with, the Resident Selection process (including but not limited to the local preferences set forth therein) and Affordability Commitments. Thereafter, Tenant covenants and agrees to provide annually to the Town and the Monitoring Agent a copy of any affordability compliance report given by Tenant to DHCD, detailing the foregoing compliance with the Resident Selection process and Affordability Commitments, and a copy of any certifications, reports or other correspondence given to or received by Tenant from DHCD as to the foregoing, as well as providing such other information as reasonably requested by the Town or the Monitoring Agent. Tenant shall keep full, complete and proper books and records of all information and data collected from all resident households to assure that each resident household satisfies the Affordability Commitments, including without limitation the names and ages of members of each tenant household, which books and records shall be available at all reasonable times to the Monitoring Agent and the Town or the Town's representatives during regular business hours, all in compliance with applicable laws.

## **ARTICLE 10 - DAMAGE OR DESTRUCTION**

10.1 Damage or Destruction. Subject to the requirements of any documents evidencing, relating to or securing any financing held by a Permitted Mortgagee (as defined in Section 13.2), if the whole or any part of the Premises be damaged or destroyed by any cause whatsoever, whether insured or uninsured, at any time during the Term of this Lease, Tenant shall, irrespective of insurance proceeds, promptly commence to replace or repair the portion of the Premises that is damaged or destroyed, and complete such repair and/or restoration with due diligence and at its sole cost and expense, with such changes, alterations or modifications as are reasonably determined by Tenant so long as such changes, alterations or modifications do not diminish the overall utility for the Permitted Uses or constitute Material Modifications. The parties recognize that such damage or destruction may require emergency replacement or repair. Subject to the requirements of any documents evidencing or securing any financing held by a Permitted Mortgagee, Tenant shall have the right to hold, use and expend such insurance proceeds or other funds so collected for purposes of the repair, restoration or reconstruction of the Improvements, provided, however, that in the event that a casualty occurs during the last three (3) years of the Lease term, all funds shall be paid to the Town. Subject to the foregoing, Tenant will be entitled to all insurance proceeds and proceeds of any other claims against other parties in order to effect such replacement, modifications or alterations. Provided that the insurance proceeds, together with such funds of the Tenant as are demonstrably available for the

purpose of paying for repair and restoration, are sufficient to complete the repair and restoration of the Improvements, the Town shall have no right to terminate this Lease or condition or delay the repair and restoration of the Improvements.

However, if the Premises are substantially damaged, and the insurance proceeds are required to be paid to any Permitted Mortgagee to repay the indebtedness secured by the Permitted Mortgage, Tenant's obligation to rebuild the Premises shall be limited to the amount of the proceeds received by Tenant from the insurer (the "***Remaining Proceeds***"). If in such case Tenant reasonably determines that the continued operation of the Premises after such replacement and repair in substantially the same manner as conducted prior to the damage or destruction will not be economic and feasible, then Tenant may elect, by written notice given to the Town within one hundred eighty (180) days after the date of such casualty, not to repair or replace the portion of the Premises damaged (the "***Casualty Termination Notice***"), provided, however, that Tenant shall (a) at the Town's request, demolish any destroyed buildings and secure any damaged buildings, in each case to a safe condition reasonably satisfactory to the Town and in compliance with the Legal Requirements, and (b) deliver to the Town the Remaining Proceeds and assign to the Town all its right, title and interest to any other insurance proceeds as may be available. Tenant will vacate the Premises within sixty (60) days from delivery of the Casualty Termination Notice to the Town, whereupon this Lease shall terminate. Tenant's obligations under this Section 10.1 shall survive the termination of the Lease.

**10.2 Allocation of Proceeds.** Subject to the requirements of any documents evidencing or securing any financing held by a Permitted Mortgagee, all insurance proceeds or proceeds of any claim for any damage or destruction to the Improvements, shall, notwithstanding any allocation made by the payor, be paid and allocated in the following order of priority:

- (a) First, to pay all reasonable fees and expenses of collection, including but not limited to, reasonable attorneys' fees and experts' fees, or to reimburse the parties for fees and expenses of collection previously paid by such party;
- (b) Second, to pay any then-outstanding Impositions;
- (c) Third, to pay for any restoration, repair or reconstruction authorized or required pursuant to the provisions of this Lease;
- (d) Fourth, to pay any outstanding amounts secured by mortgages held by any Permitted Mortgagees in their respective order of priority and to the extent required under each such mortgage, provided, however, that if the proceeds are insufficient to pay outstanding amounts owed to all Permitted Mortgagees, then the Tenant shall distribute the funds to Permitted Mortgagees in their respective order of priority and to the extent required under the applicable mortgage; and
- (e) Fifth, to Tenant, from which the Tenant shall be required to pay any then-outstanding Rent pursuant to this Lease; provided, however, that in the case of proceeds of any award for a damage or destruction received at any time during the last ten (10) years of the Term, Tenant shall receive the equivalent of one-tenth of the amount remaining from

such proceeds after payments pursuant to (a) through (d) above, multiplied by the number of years remaining in the Term, and the remainder of proceeds shall be paid to the Town.

In the event that the foregoing provides or is anticipated to provide compensation to any party in excess of the funds loaned or invested by such party, the Town and the Tenant shall negotiate in good faith to revise such allocation of proceeds.

Notwithstanding the foregoing, any insurance proceeds or proceeds of any claim for any damage or destruction to the Improvements shall be subject to the provisions of Exhibit C.

## ARTICLE 11 - TAKING

11.1 Award. In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between the Town and Tenant and those authorized to exercise such right (any such matters being herein referred as a "**Taking**"), the Town and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their respective interests hereunder. Each party so participating shall pay its own expenses therein.

11.2 Termination. (a) If at any time during the Term of this Lease there shall be a Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the earlier of (i) the date upon which the condemning authority takes possession of the real estate subject to the Taking; or (ii) the date title to the real estate is vested in the condemning authority. For the purpose of this Article, "**substantially all of the Premises**" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Improvements such as to allow the economic and feasible operation of fifty percent (50%) or more of the units by Tenant. If substantially all of the Premises shall be taken, and Tenant elects not to terminate this Lease, any requirement by the Town to operate \_\_\_\_\_ ( ) residential units shall be reduced accordingly. All proceeds of any award for any taking, whether pro tanto or final, shall, notwithstanding any allocation made by the awarding authority, be paid and allocated in accordance with the provisions of Section 10.2 (a) through (d) of this Lease, and any remainder shall be allocated between the Town and Tenant in proportion to their respective interests, determined as follows: Tenant's interest in any Taking award will equal the net value to Tenant of the remaining Term of this Lease, the value to Tenant of the use and enjoyment of the Improvements, and Tenant's relocation expenses insofar as relocation expenses are paid by the Taking authority (collectively, the "**Tenant's Share**"). The Town's interest in any taking by Condemnation will equal the value of its fee interest plus the remaining interest in the Improvements (the "**Town's Share**"). Notwithstanding the foregoing, however, the Town shall not share in any Taking award with respect to the Improvements unless and until the unpaid balance of the Permitted Mortgages on the Premises, if any, is paid in full, all such Taking proceeds being used first to pay off and discharge such Permitted Mortgage.

(b) No such termination of this Lease under this Article 11 shall release Tenant from any obligation hereunder for Rent accrued or payable for or during any period prior to the effective date of such termination, and any prepaid rent and insurance premiums beyond the effective date of such termination shall be adjusted.

11.3 Insubstantial Taking. If a portion of the Premises is taken and Section 11.2 does not apply, then this Lease will automatically terminate on the date of the Taking only as to the portion of the Premises taken and this Lease will continue in full force and effect with respect to the remaining portion of the Premises. In such event, any partial Taking award shall be paid first to the Permitted Mortgagees, in their order of priority, to satisfy or reduce the balance secured by Permitted Mortgages; second, to Tenant in an amount equal to the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises subject to the Taking; and third, to the Town. Provided that the amount of the Taking award available for reconstruction, together with such funds of the Tenant as are demonstrably available for the purpose of paying for repair and restoration, are sufficient to complete reconstruction contemplated by the plans and specifications, the Town shall have no right to terminate this Lease or condition or delay Tenant's reconstruction of the Improvements, provided that Tenant undertakes and completes the repair/restoration using commercially diligent efforts.

11.4 Temporary Taking. If the whole or any part of the Premises shall be the subject of a temporary Taking of ninety (90) days or less, this Lease shall remain in full force, and Tenant shall be entitled to receive the entirety of any award so made for the period of the temporary Taking which is within the Term.

Notwithstanding the foregoing, any insurance proceeds or proceeds of any claim for any damage or destruction to the Improvements shall be subject to the provisions of Exhibit C.

## ARTICLE 12 – HAZARDOUS MATERIALS

12.1 Environmental Laws Defined. "*Environmental Laws*" means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("*CERCLA*"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("*RCRA*"); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. ("*SARA*"); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. ("*TSCA*"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass.Gen.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass.Gen.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (defined in Section 12.4 below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and

materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

12.2 Tenant's Environmental Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants as follows:

(a) Except as may be permitted by and only in accordance with Environmental Laws, Tenant shall not allow any Hazardous Materials (defined in Section 12.4 below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.

(b) No activity shall be undertaken on the Premises by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into the Premises, any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

(c) Tenant shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to the Town), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises including all removal, containment and remedial actions. Tenant shall pay or cause to be paid at no expense to the Town all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises.

(d) Tenant, upon execution of this Lease, shall furnish the Town with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. Laws Chapter 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to the Town.

### 12.3 Intentionally Deleted.

12.4 Hazardous Materials Defined. For purposes of this Lease, "**Hazardous Materials**" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health,

safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

12.5 Notices. (a) Tenant shall provide the Town with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the Town concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide the Town with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to the Town any documentation or records as the Town may reasonably request and which are in Tenant's possession, and the Town shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in the Town's possession and may be lawfully delivered to Tenant.

(b) Tenant or the Town shall immediately notify the other party and Permitted Mortgagees in writing should Tenant or the Town become aware of (i) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject the Town, Tenant or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (ii) any lien filed, action taken or notice given of the nature described in this Section 12; (iii) any notice given to Tenant from any occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (iv) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

12.6 Tenant's Environmental Indemnity. Tenant hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to the Town and save harmless the Town Parties for, from and against any and all Claims (including, without limitation, attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the Town Parties and arising from any violation or alleged violation of Environmental Laws, the discovery of or any release of Hazardous Materials on or from the Premises, any environmental problem or other environmental matter described herein relating to the Premises, or as a consequence of any of Tenant's interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and



warranties. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive the expiration or termination of this Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by the Town under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of the Town Parties, provided, however, that nothing contained herein shall prevent the Town from exercising any other rights under the Lease.

### ARTICLE 13 - TRANSFER OF TENANT'S INTEREST

13.1 Assignment by Tenant. Except as provided in Section 13.2, Tenant will not assign this Lease or any interest in this Lease or sublet or permit any other person to occupy or use the Premises or any portion thereof (except for leasing the units to income qualified households) prior to the Final Completion of the Initial Improvements without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion. After Final Completion of the Initial Improvements, the Town's consent shall not be unreasonably withheld, delayed or conditioned provided such assignee or transferee shall (i) have a good reputation in the community and experience operating projects similar to the Project, (ii) use the Premises for the Permitted Uses, and (iii) enter into an Assumption Agreement with the Town, expressly assuming Tenant's obligations under the Lease. Notwithstanding the foregoing, Tenant shall have the right to assign or transfer its rights under this Lease to any entity that Tenant controls, provided that (i) Tenant sends written notice to the Town at least thirty (30) days prior to any such transfer, notifying the Town of the transferee's name and evidence of the control that Tenant exercises over such transferee, and obtains the Town's written consent, not to be unreasonably withheld, (ii) any such transferee enters into an Assumption Agreement, expressly agreeing to perform all of Tenant's obligations under this Lease; and (iii) Tenant shall guarantee the transferee's performance of such obligations, and shall be jointly and severally liable with the transferee until a final certificate of occupancy has been issued for all the units.

13.2 Leasehold Mortgages. (a) Notwithstanding anything to the contrary contained in this Lease, Tenant may, upon prior written notice to the Town, from time to time, encumber, hypothecate or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold interest or any other security instruments in favor of a lender or lenders as partial security for a loan or loans (a "***Permitted Mortgage***" and the holder of such Permitted Mortgage, a "***Permitted Mortgagee***"). Each such Permitted Mortgage shall mature no later than the last day of the term of this Lease, be a leasehold mortgage only, and be expressly subject and subordinate to the terms and conditions of this Lease, including, without limitation, the Affordability Commitments. In no event will the foreclosure of any Permitted Mortgage or deed given in lieu thereof terminate or adversely affect the Affordability Commitments. It is expressly understood and agreed that Tenant has no right to mortgage or otherwise encumber the fee title to the Premises, except that Tenant may encumber the Improvements that Tenant constructs on the Premises. Tenant shall promptly deliver to the Town a true copy of the Permitted Mortgage and any assignment thereof. Tenant shall notify the Town of the address of the Permitted Mortgagee to which notices may be sent, it being understood and agreed that the Town shall have no obligation to notify a Permitted Mortgagee of any default under this Lease until and unless the then-current address of such Permitted Mortgagee shall have been provided to the Town in writing. The Town and Tenant hereby agree that there shall be no modification of this Lease that

would materially and adversely affect such Permitted Mortgagee's rights hereunder without the prior consent in writing of the Permitted Mortgagee.

(b) Permitted Mortgages not Assignment. For the purpose of this Section 13, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Permitted Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of the Town pursuant to Section 13.1) and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, and shall execute a written instrument assuming Tenant's obligations hereunder promptly upon request by the Town.

(c) Permitted Mortgagee Cure Rights. In the event Tenant defaults in the payment of Rent or any other sum of money payable under this Lease, in obtaining and/or maintaining the insurance required hereunder, or any other default or failure curable by a payment of money (any and all of the foregoing, a "**Monetary Default**"), the Town shall not have the right to terminate this Lease unless the Town shall have given a copy of the Monetary Termination Notice (defined in Section 14.2) to Tenant and the Permitted Mortgagees, and such Permitted Mortgagees, without being under any obligation to do so, shall have failed to cure such Monetary Default within the sixty (60)-day notice period set forth in the Monetary Termination Notice (defined in Section 14.2). In the case of any default by the Tenant not curable by the payment of money hereunder (a "**Non-Monetary Default**"), the Town shall not have the right to terminate this Lease by reason of any such default unless the Town shall have given a copy of the Non-Monetary Termination Notice (defined in Section 14.2) to Tenant and the Permitted Mortgagees and such Permitted Mortgagees, without being under any obligation to do so, shall have failed to cure such Non-Monetary Default with the ninety (90) day-period set forth in Section 14.2, or, if such Non-Monetary Default cannot reasonably be cured within such ninety (90) days, within such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Mortgagee to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, provided that the Permitted Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby within such ninety (90)-day period and thereafter continues diligently to effect such cure or obtain such possession or title. The Permitted Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant. Upon the expiration of any applicable cure period, the Town shall notify the Permitted Mortgagee whether or not Tenant has effectuated a cure within said cure period. The provisions of this Section 13.2(c) are conditioned on the following provisions:

(i) Acquisition of Possession. The Permitted Mortgagee shall, within forty-five (45) days after notice of such Tenant Non-Monetary Default, notify the Town of its election

to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Mortgage or otherwise to obtain ownership of Tenant's interest in this Lease. Such notice from the Permitted Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Mortgagee agrees that:

(A) during the period that such Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall terminate or such proceeding shall be discontinued, it will pay or cause to be paid to the Town and to others all sums from time to time becoming due hereunder during such period; and

(B) if delivery of possession of the Premises shall be made to such Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements thereafter arising and herein contained on Tenant's part to be performed (including, but not limited to the Affordability Commitments and the payment of Rent and Additional Rent) except such covenants and agreements which cannot with the exercise of due diligence be performed by such Permitted Mortgagee (such as a default under Section 14.1(e)). Nothing in this subclause (B) shall be construed to require such Permitted Mortgagee to perform any of the Tenant's obligations hereunder accruing after such Permitted Mortgagee ceases to be in possession.

#### **ARTICLE 14 – DEFAULT AND TERMINATION**

14.1 Events of Default. Each of the following events shall be deemed an “*Event of Default*” hereunder:

(a) if Tenant shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease or to observe any provision that is curable by a payment of money, and such failure shall continue for a period of thirty (30) days after notice from the Town to Tenant;

(b) if Tenant shall fail to comply with the provisions of Sections 8.2 or 9.2 hereof, and such failure shall continue for a period of sixty (60) days after notice from the Town to Tenant;

(c) If Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder, and such failure shall continue for a period of thirty (30) days after notice from the Town to Tenant;

(d) if Tenant shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Lease, other than those referred to in subsections (a), (b) and (c) of this Section 14.1, for a period of sixty (60) days after notice from the Town to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such sixty (60) day period, within ninety (90) days from the date of notice from Town to Tenant; and/or

(e) if Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal.

Notwithstanding the foregoing, if there is an Event of Default under subsections 14.1(b) and (d) and such Event is caused primarily because of a Force Majeure event, then such Event of Default shall be excused only for the period of delay caused by the Force Majeure event.

14.2 **Remedies.** Upon an Event of Default, the Town at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be least sixty (60) days after the giving of such notice if the Event of Default is a Monetary Default (the "***Monetary Termination Notice***"), and which shall be at least ninety (90) days for Non-Monetary Defaults (the "***Non-Monetary Termination Notice***"), subject to the rights for notice and cure for the Permitted Mortgagees as set forth in Section 13.2(c). Upon the date specified in such Monetary Termination Notice or the Non-Monetary Termination Notice, as the case may be, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this Lease shall remain in full force and effect), and Tenant shall remain liable as hereinafter provided. In the event that Tenant and the Permitted Mortgagees elect not to remove the Improvements, as provided in Section 15, all Improvements shall become the property of the Town without the necessity of any deed or conveyance from Tenant to the Town. Tenant agrees upon request of the Town to immediately execute and deliver to the Town any deeds, releases or other documents deemed necessary by the Town to evidence the vesting in the Town of the ownership of all Improvements. Upon such termination, the Town may re-enter the Premises and dispossess Tenant and anyone claiming by, through or under Tenant by summary proceedings or other lawful process.

14.3 **Town's Right To Perform Tenant's Covenants.** (a) Upon any Event of Default, the Town may, but shall be under no obligation to, cure such default. The Town may enter upon the Premises (after five (5) days' written notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

(b) The Town shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant or any operator or occupant thereof by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby. The Town shall minimize interference with or disruption of Tenant or Tenant's business, occupants, operators and or lessees.

(c) All reasonable sums so paid by the Town and all reasonable costs and expenses incurred by the Town, including reasonable attorneys' fees and expenses, in connection with the

performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the Town of such cost and expense until the date paid in full, shall be paid by Tenant to the Town, as Additional Rent, on demand. If the Town shall exercise its rights under this Section to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the Town shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such obligation to the Town upon demand.

14.4 No Waiver. No failure by either the Town or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the Town or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the Town or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

14.5 Injunctive Relief. In the event of any breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, the Town shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

14.6 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Town or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

14.7 Town Default. The Town shall not be in default of any of its material obligations under this Lease unless and until Tenant shall have given written notice to the Town specifying the nature of such default and the Town shall have failed to cure the same within ninety (90) days from the date of said notice, provided that if such default cannot reasonably be cured within said ninety (90)-day period, if the Town shall have failed to commence the cure within the ninety (90)-day period and thereafter completed the same within a reasonable period of time.

## **ARTICLE 15 - SURRENDER; HOLD-OVER**

15.1 Surrender. (a) Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, have the right, but not the obligation, to remove any Improvements made by Tenant from the Premises. Tenant shall quit and peacefully surrender and deliver up

the Premises, including the Improvements (if Tenant elects not to remove the same), subject to the rights of a Permitted Mortgagee hereunder, to the possession and use of the Town without delay and in good order, condition and repair (excepting only reasonable wear and tear and damage from a Taking or from a fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant, all as provided under this Lease). The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term or those created or suffered by the Town. Upon or at any time after the expiration or earlier termination of this Lease, the Town shall have, hold and enjoy the Premises and the right to receive all income from the same.

(b) Tenant shall, within sixty (60) days after the expiration or earlier termination of this Lease, remove from the Premises all the Improvements (as provided in Section 15.1(a)) and other personal property, repair any damage to the Premises caused by such removal, unless the Town permits such property to remain, and restore the Premises to the condition they were in as of the Commencement Date.

15.2 Holdover. If Tenant or any party claiming by, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then the Town may, at its option, serve written notice upon Tenant that such holding over constitutes (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Lease. Tenant shall also pay to the Town all damages sustained by the Town resulting from retention of possession by Tenant. The provisions of this Section 15.2 shall not constitute a waiver by the Town of any right of re-entry as set forth in this Lease; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of the Town's right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

15.3 Survival. The provisions of this Article 15 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 16 - ESTOPPEL CERTIFICATES**

The Town and Tenant promptly shall execute and deliver to each other or to any Permitted Mortgagee, within fifteen (15) business days after request, a certificate as to matters customarily requested in connection with estoppel certificates, including, without limitation, whether or not (i) the Lease is in full force and effect, (ii) the Lease has been modified or amended in any respect and describing such modifications or amendments, if any, and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any. Any such certificate may be relied upon by the Town, Tenant, any Permitted Mortgagee, and any transferee or assignee of a Permitted Mortgagee.

## **ARTICLE 17 - NON-DISCRIMINATION COVENANTS**

17.1 Non-Discrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, sublessees, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors.

17.2 Non-Compliance. Tenant shall defend, indemnify and hold the Town Parties harmless from and against any and all Claims of third persons resulting from Tenant's non-compliance with any of the provisions of this Article 17.

## ARTICLE 18 - MISCELLANEOUS

18.1 Amendments to Lease. This Lease may not be amended, modified, supplemented or extended except by a written instrument executed by the Town and Tenant.

18.2 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be delivered by hand, nationally recognized overnight express commercial service such as "Federal Express" (in either case with evidence of delivery or refusal thereof) or by registered or certified mail, return receipt requested, addressed if to Tenant to:

Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

with a copy to:

Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

or to such other address as Tenant may from time to time designate by written notice to the Town, or if to the Town, addressed to:

Town of Wellfleet  
Wellfleet Town Hall  
300 Main Street  
Wellfleet, MA 02667  
Attn: Selectboard  
Phone: (508) 349-0300  
Fax: (508) 349-0305



with a copy to:

KP Law, P.C.  
101 Arch Street  
Boston, MA 02110  
Attn: Katharine Lord Klein, Esq.  
Phone: (617) 556-0007  
Fax: (617) 654-1735

or to such other address as the Town may from time to time designate by written notice to Tenant, or to such other agent or agents as may be designated in writing by either party. The earlier of: (i) the date of delivery by overnight express commercial service, or (ii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

18.3 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.4 Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be in exclusion of any other; and two or more or all of such rights and remedies may be exercised at the same time.

18.5 Integration. All prior understandings and agreements between the parties with respect to this Lease are merged within this Lease, which alone fully and completely sets forth the understanding of the parties.

18.6 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the Town, its successors and assigns, and Tenant, its successors and assigns.

18.7 Notice of Lease. The Town and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, which shall be recorded forthwith with the Barnstable County Registry of Deeds, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

18.8 Enforcement of the Parties' Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the Town's liability under this Lease shall be enforceable only out of the Town's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, the Town, nor shall there be any personal liability on the part of the Town or any member of any officer, employee, agent or representative of the Town, with respect to any obligations to be performed hereunder. Anything contained in this Lease to the contrary notwithstanding, there shall be no personal liability on the part of Tenant or any partner of Tenant, or any officer or employee of Tenant, with respect to any obligations to be performed hereunder. In no event shall any party be liable for indirect, special, consequential or punitive damages, including any lost revenues.

18.9 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

18.12 Massachusetts Law Governs. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, and all claims relating in any way to this Lease shall be brought in the courts of the Commonwealth of Massachusetts.

18.13 Time of the Essence. Time shall be of the essence hereof.

18.15. No Partnership or Joint Venture. Nothing contained under this Lease shall be construed to create a partnership or joint venture between the Town and Tenant or to make the Town an associate in any way of Tenant in the conduct of Tenant's business, nor shall the Town be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

18.16 Prevailing Party. In any litigation between the parties arising out of this Lease, or in connection with any other actions taken or notices delivered in relation to a default by any party to this Lease, the non-prevailing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the enforcement of the terms of this Lease.

18.17 Brokers. The Town and Tenant each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Lease. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Lease or the negotiation therefor.

18.18 Covenants Running with the Land. Tenant intends, declares, and covenants, on behalf of itself and all future holders of Tenant's interest hereunder, that this Lease and the

covenants and restrictions set forth in this Lease regulating and restricting the use, occupancy, and transfer of the Premises (a) shall be and are covenants running with the Premises, encumbering the Premises for the Term of this Lease, binding upon Tenant and Tenant's successors-in-interest; (b) are not merely personal covenants of Tenant; and (c) the benefits shall inure to the Town.

18.19 Tenant Request for Consent. Tenant shall reimburse the Town for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for the Town's consent hereunder.

[Signature on Following Page]

655127/W MST/0044

EXECUTED as of the date first set forth above.

TOWN OF WELLFLEET,  
By Its Selectboard

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TENANT:

By: \_\_\_\_\_  
Name:  
Title:

Exhibits

- Exhibit A – Legal Description of Premises
- Exhibit B – Plan of Premises
- Exhibit C – Ground Lease Mortgagee Protection Provisions

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B

PLAN OF PREMISES

EXHIBIT C

GROUND LEASE MORTGAGEE PROTECTION PROVISIONS



## LAND DEVELOPMENT AGREEMENT

THIS LAND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between the **Town of Wellfleet**, acting by and through its Selectboard, having an address of Wellfleet Town Hall, 300 Main Street, Wellfleet, MA 02667 (the "Town"), and \_\_\_\_\_, a Massachusetts \_\_\_\_\_, having an address of \_\_\_\_\_ (the "Developer").

### Recitals

WHEREAS, the Town is the owner of a parcel of land (the "Land") located at 95 Lawrence Road, Wellfleet, Massachusetts, consisting of 9.6 acres, more or less, and described in a deed recorded with the Barnstable Registry of Deeds (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_;

WHEREAS, by the vote under Article 42 of the 2019 Annual Town Meeting, the Town authorized the Selectboard to dispose of the Property for affordable housing purposes on such terms and conditions as the Selectboard deems appropriate;

WHEREAS, in December 2020, the Town issued a Request for Proposals (the "RFP"), a copy of which is attached hereto as Exhibit A, soliciting proposals for the development, construction and operation of no more than forty-six (46) affordable rental housing units on a 6-acre portion of the Land, which portion is shown more particularly on the plan attached hereto as Exhibit B and incorporated herein (the "Property");

WHEREAS, the Developer submitted a proposal on \_\_\_\_\_, 2021 in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit C, proposing to construct \_\_\_\_\_ (\_\_\_\_) dwelling units on said portion of the Property (as defined below, the "Improvements"), as more particularly described in the RFP and the Proposal, and operate an affordable housing rental development thereon (collectively, the "Project");

WHEREAS, the Town has awarded the Project to the Developer;

WHEREAS, the Town and the Developer intend to enter into a ninety-nine (99) year ground lease substantially on the same terms as those set forth in the lease attached hereto as Exhibit D and incorporated herein (the "Ground Lease"), pursuant to which the Developer will construct the Improvements and operate the Project;

WHEREAS, the obligations of the Town and the Developer to enter into the Ground Lease are contingent, among other things, on the Developer obtaining the permits and approvals necessary for the construction and operation of the Project and on financing in amounts sufficient in the Town's and Developer's reasonable judgment to construct the Improvements; and

WHEREAS, the parties wish to enter into this Agreement to memorialize the terms and conditions under which the Town and the Developer will enter into the Ground Lease.

NOW, THEREFORE, in consideration of the mutual promises of the parties' contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

## I. LEASE CONTINGENCIES

1.1 Lease of the Property. The Town shall, within thirty (30) days from the date on which the Lease Contingencies (defined below) are satisfied (the "Lease Commencement Date"), lease the Property, together with all appurtenant easements, rights, restrictions, privileges, licenses covenants, and other matters that benefit or burden the Property (collectively, the "Premises"), to the Developer for the purpose of developing and operating the Project on terms substantially similar to the terms and conditions set forth in the Ground Lease attached hereto as Exhibit D and incorporated herein, which shall include terms governing the construction and development of the Project on the Property and shall be a "triple-net" lease under which the Developer shall be solely responsible for the Premises and the Project, including, without limitation, any and all insurance, operating and maintenance costs, and applicable taxes, among other costs and expenses (the "Ground Lease").

1.2 Condition of Property. The Premises will be delivered to the Developer, and the Developer, subject to the provisions of Section 2.1, hereby agrees to accept the Premises in their then "AS-IS" condition, without any representation or warranty of any kind or nature, express or implied, in fact or by law, on the part of the Town and without recourse to the Town. The Town shall have no obligation to do any work on or make any improvements to or with respect to the Premises or the condition thereof. The Developer acknowledges that the Town has no responsibility for, and hereby releases and holds harmless the Town from any and all damages, loss, costs, expenses (including any and all attorneys' fees, and expenses of the Town), claims, suits, demands or judgments of any nature whatsoever, related to any hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste"). The provisions of this Section shall survive the expiration and/or termination of this Agreement.

1.3 Use of the Premises. The Developer will use the Premises for the sole purpose of constructing \_\_\_\_\_ ( ) residential units thereon and renting the same at affordable prices. The units shall consist of \_\_\_\_\_ ( ) studios, \_\_\_\_\_ ( ) one-bedroom units, \_\_\_\_\_ ( ) two-bedroom units and \_\_\_\_\_ ( ) three-bedroom units, subject to minor modification during the permit process.

1.4 Lease Contingencies. The Town and the Developer shall enter into the Ground Lease on the Lease Commencement Date, which is to occur within thirty (30) days from the date

on which all of the following conditions have been satisfied (collectively, the “Lease Contingencies”):

- (a) *Permits and Approvals*: The Developer shall have received final permits and approvals for construction of the Improvements and the operation of the Project, any and all appeal periods shall have expired;
- (b) *Approved Plans and Specifications*: The Town shall have approved the Developer’s plans and specifications for the Improvements to be constructed on the Property and any other improvements made on or to the Premises, showing in detail the location, layout and size of the units, the design of the building(s), the landscaping, and the other improvements to be constructed on the Premises and substantially in conformity with the RFP and the Proposal (the “Improvement Plans”). The Improvement Plans shall be submitted to the Town for the Town’s approval, said approval not to be unreasonably delayed, conditioned or withheld. In the event of disapproval, the Town shall give the Developer an itemized statement of reasons for disapproval within sixty (60) days after the Improvement Plans are submitted to the Town. The Developer shall use reasonable efforts to cause such item to be appropriately revised as soon as possible after receipt of such notice of disapproval and resubmit the same to the Town for approval pursuant to this Section. The Town and the Developer agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such items and/or requested modifications by the other. If no response is received from the Town within said sixty (60) day period, the Improvement Plans shall be deemed approved by the Town. The provisions of this Section are intended to refer to the approval of the Wellfleet Selectboard and do not constitute the approval of or substitute any permits or approvals required from any federal, state and/or local regulatory bodies or approvals required under any applicable laws, rules, regulations, and bylaws, including the Town of Wellfleet Zoning Bylaws;
- (c) *Project Financing Closing*: The Developer shall have received firm Project financing commitments, including, but not limited to public funding commitments, private tax credit equity investor commitments, construction loan commitments, and/or permanent loan commitments from institutional lenders and/or public or quasi-public entities, showing that sufficient funds have been committed, in the Town’s and the Developer’s reasonable judgment, to design and construct the Improvements and to operate and maintain the Project (the “Project Funds”). The Developer shall deliver written notice to the Town, stating that it has received all financing commitments, together with a pro forma of the costs to complete the Project and copies of any and all commitment letters or other documents. The Developer shall provide the Town with a guaranty, given by a guarantor reasonably acceptable to the Town, guaranteeing the Developer’s obligation to construct the Project on the terms set forth in the Ground Lease. The Developer shall close on such financing, receive the Project Funds, and provide the Town with the guarantee (the “Loan Closing”) on or prior to the Lease Commencement Date;
- (d) *Affordable Housing Restriction*. On the Lease Commencement Date, the Developer will record a restriction on the Property ensuring that all \_\_\_\_\_ ( ) units constructed on the Property are rented to persons at affordable prices; specifically,

\_\_\_\_\_ ( ) units shall be rented to persons earning no more than thirty percent (30%) of the area median income in the Metropolitan Statistical Area that includes the Town of Wellfleet ("AMI"), \_\_\_\_\_ ( ) units shall be rented to persons having an income of no more than fifty percent (50%) of AMI, and the remaining \_\_\_\_\_ ( ) units shall be rented to persons with incomes of no more than one hundred twenty percent (120%) of AMI, for the term of the Ground Lease, which restriction shall be on terms satisfactory to the Developer and the Town and approved by the Massachusetts Department of Housing and Community Development ("DHCD") under G.L. c. 184, § 31, including all the units in the Town's Subsidized Housing Inventory ("SHI"), which may be in the form of a Regulatory Agreement acceptable to and entered into by and among the Developer, the Town, and DHCD, and/or a separate restriction granted by the Developer to the Town, at the Town's sole discretion (either or both, the "Restriction"). The Restriction shall be recorded with the Registry at the Developer's sole cost and prior to any mortgages, liens or other encumbrances recorded against the Property (unless each mortgage or lien holder shall have executed a subordination agreement, acceptable to the Town, expressly subordinating its mortgage or other lien to the Restriction). Alternatively, or in addition to the foregoing, the Town may, at its discretion, incorporate the terms of the Restriction in the Ground Lease; and

- (e) *Title Matters.* The Property shall be free from recorded monetary liens and from title defects or encumbrances of record that would materially interfere with the use of the Premises for the development and operation of the Project. In the event that title defects are found, the Town will use reasonable efforts to cure said defects, provided that reasonable efforts shall not require the Town to expend more than \$2,500, inclusive of attorney's fees, or commence any litigation or other legal proceeding.

1.5 Lease Contingency Period. The Developer shall use commercially diligent and good faith efforts to obtain the necessary permits and approvals and financing to construct, operate and maintain the Improvements, to conduct its property inspections under Section 2.1, to review the title to the Property, and to satisfy the other Lease Contingencies within \_\_\_\_\_ ( ) months from the date on which this Agreement (the "Initial Diligence Period"), which period may be extended by the Town in writing only if the Town reasonably determines that the Developer has used such efforts to satisfy the Lease Contingencies, with such extension to be no more than an additional six (6) months from the expiration of the Initial Due Diligence Period (the "Extended Diligence Period", and, together with the Initial Diligence Period, the "Diligence Period"). The Developer shall inform the Town in writing at least every four (4) months during the Diligence Period, or at such sooner or later intervals as the Town may reasonably request, on the efforts made by the Developer to satisfy the Lease Contingencies and provide such other information as the Town may reasonably request to document such efforts. Time shall be of the essence hereof.

1.6 Failure to Satisfy Preconditions. Notwithstanding anything in the RFP or this Agreement to the contrary, in the event that the Lease Contingencies are not satisfied within the Initial Diligence Period, or, if extended by the Town, the Extended Diligence Period, either party may terminate this Agreement by providing the other with at least thirty (30) days prior written notice, provided, however, that if all the Lease Contingencies are satisfied within said thirty (30) day period, this Agreement may not be terminated by either party. In the event of termination,

this Agreement shall be null and void and without recourse to the parties, except for those provisions that are stated herein to survive said termination.

1.7 Title to Property. The Town shall retain the fee to the Property, and shall execute a notice of lease for recording at the Registry.

1.8 Assignability. The Developer shall have no right to assign or transfer its rights hereunder and/or under the Ground Lease of the Property without the Town's prior written consent, which shall not be unreasonably withheld if: (a) the assignee is a limited liability company created solely for the purpose of receiving tax credits (with the general partner thereof being owned and controlled by the Developer) or any other entity owned and controlled by the Developer, (b) the Developer sends written notice to the Town at least thirty (30) days prior to any such transfer, notifying the Town of the transferee's name and evidence of the control that the Developer exercises over such transferee, and obtains the Town's written consent, (c) any such transferee or assignee enters into an Assumption Agreement, expressly agreeing to perform all of the Developer's obligations hereunder and under the Lease; and (d) the Developer shall guarantee the transferee's performance of such obligations, and shall be jointly and severally liable with the transferee until the Project has been completed. Notwithstanding the foregoing, the Developer shall have the right to assign this Agreement and the Ground Lease to DHCD or any institutional lender providing financing for the Project in connection with a leasehold mortgage or security interest securing a loan necessary to complete development of the Project, subject to the terms of this Agreement.

## II. PROPERTY INSPECTIONS

2.1 Access. The Developer and its agents, employees, representatives, consultants, contractors and invitees (with the Developer and others acting, by, through or under the Developer, the "Developer Parties") shall have the right to enter upon the Property from time to time, upon at least two (2) business days prior notice to the Town, for the purpose of conducting its due diligence and such inspections as the Developer deems appropriate, including, without limitation, surveys; wetlands inspections and flagging and visits by the Developer's wetlands consultants for these purposes or other wetlands inspection; geotechnical investigations of the Premises; and, if recommended pursuant to a Phase 1 assessment, soil sampling of the Premises by Developer's environmental consultants, whether for Hazardous Waste or other purposes. The Developer may remove trees or shrubs from the Premises only if reasonably necessary to provide access for test pits and other investigations only in accordance with a plan approved by the Building Commissioner at least seven (7) calendar days prior to such removal, which approval shall not to be unreasonably withheld. The Developer acknowledges and agrees that the Town makes no representation or warranty as to the condition of the Property, and the Developer releases and holds the Town harmless against any claim by the Developer or any of the other Developer Parties for harm to them or their property arising from said entry. The Developer shall promptly restore the Property to substantially its condition prior to said entry and repair any damage caused to the Property. The Developer's obligation to repair and restore the Property shall survive the termination of this Agreement.

2.2 Hazardous Materials. In the event that the Developer finds Hazardous Waste in reportable quantities on the Property and the cost of remediating the same in compliance with

G.L. c. 21E to a Release Action Outcome is estimated by an engineer acceptable to both parties to exceed \$100,000.00, and informs the Town of the same in writing (the “Environmental Notice”), and if the Town, in its sole and absolute discretion, gives notice to the Developer of its intention to remediate such contamination within sixty (60) days of receiving the Environmental Notice and thereafter remediates such hazardous condition within a reasonable period of time, but not to exceed the Diligence Period in any event (as such Diligence Period may be extended in accordance with Section 2.1), in full compliance with applicable law, with the Town paying all of the costs of remediation, the Developer shall fulfill its obligations under this Agreement. Nothing herein shall require or obligate the Town to remediate any contamination on the Property. If the Town elects not to remediate the same, the Developer may terminate this Agreement by giving the Town thirty (30) days prior notice thereof, whereupon this Agreement shall be null and void and without recourse to the parties, except for those provisions that are stated herein to survive said termination.

2.3 Indemnification. The Developer shall defend, indemnify and hold harmless the Town and those acting by or through the Town from any and all liabilities, damages, loss, costs, expenses (including reasonable attorneys’ fees), causes of action, suits, claims, demands or judgments (any, “Claims”) arising out of or related to this Agreement, the rights granted under Section 2.1, the act or omission of any of the Developer Parties, for any material change in the Developer’s representations and/or warranties, for the Developer’s failure to comply with the terms of this Agreement or any applicable laws, rules, regulations and/or bylaws, and/or for any Hazardous Materials (defined below) that are brought upon, stored, located, released, discharged, possessed, managed, processed, or otherwise handled on or present on the Property, by the Developer and/or any of the other Developer Parties and/or for failing to comply with any environmental laws, rules, regulations and/or bylaws (the latter, the “Developer Hazardous Activities”), except if caused directly by the gross negligence of the Town. The Developer shall be solely responsible for assuming and paying any and all liabilities, damages, loss, costs expenses, causes of action, suits, claims, demands or judgments (including, without limitation reasonable attorneys’ fees and experts’ fees and expenses, clean-up costs, waste disposal costs and other costs, expenses, penalties and fines within the meaning of any law, regulation, code or bylaw relating to Hazardous Materials) that arise or are related to the Developer Hazardous Activities. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such Claims brought thereon, and the defense thereof. The foregoing obligations shall survive the expiration or termination of this Agreement.

2.4 Insurance. The Developer shall obtain and maintain through the term of this Agreement comprehensive general liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of the Developer under the terms and conditions of this Agreement to indemnify, defend and hold harmless the Town: General Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate; Bodily Injury Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate, and umbrella insurance in the amount of \$5,000,000.00, which shall name the Town as an additional insured. The Developer shall provide the Town with a copy of such insurance policy prior to entering the Property and at such times as the Town may request, showing compliance with the foregoing provisions. The insurance coverage required hereunder

shall be issued by insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A or better.

### III. DEFAULT, TERMINATION

3.1 Events of Default. It shall be an event of default under this Agreement if, after the Town has given the Developer sixty (60) days prior notice thereof, the Developer fails to proceed diligently to obtain the necessary permits and approvals, obtain financing, and/or satisfy the other Lease Contingencies that are the responsibility of the Developer, or the Developer fails to comply with any of the other material terms of this Agreement. The Town shall have the right to terminate this Agreement and pursue any and all available rights and remedies, and, if such termination is due to Developer's failure to use good faith and commercially diligent efforts to satisfy the Lease Contingencies, the Town shall have the right to recover any costs and expenses (including reasonable attorneys' fees) incurred by the Town under this Agreement.

3.2 Termination. In the event that this Agreement is terminated, the Developer shall promptly repair any damage caused to the Property by the Developer or its agents, employees, contractors or representatives and restore the Property to its condition prior to the Developer's entry.

### IV. GENERAL PROVISIONS

4.1 Cooperation. The Town agrees to use reasonable efforts to assist the Developer, at the Developer's sole cost and expense, in obtaining any and all permits, approvals and other authorizations required by any governmental authorities with respect to the Project and in satisfying other Lease Contingencies that are the responsibility of the Developer, but the Developer acknowledges that the Town has no control over and cannot guarantee that permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees will be waived.

4.2 Development of the Property. Subject to delivery of the Ground Lease of the Premises, and all other terms and conditions herein, the Developer agrees for itself and its successors and permitted assigns and at its sole cost and expense to develop the Project on the Property and substantially complete the same within \_\_\_\_\_ (\_\_\_\_) months from the Lease Commencement Date, as evidenced by final Certificates of Occupancy for all \_\_\_\_\_ (\_\_\_\_) units.

4.3 Costs of Enforcement. The Developer agrees to reimburse the Town for any and all costs and expenses, including reasonable attorneys' fees and court fees, incurred by the Town in enforcing this Agreement.

4.4 Representations and Warranties. The Developer represents that the following representations and warranties are true and accurate as of this date and shall continue as such through the date on which the Ground Lease is signed by the Developer and the Town:

- (a) The Developer is a duly organized and existing \_\_\_\_\_ in good standing under the laws of the Commonwealth of Massachusetts and has the power and authority to enter into and perform its obligations under this



Agreement, and every other agreement or instrument entered into or to be entered into by it pursuant to this Agreement.

- (b) The Developer has the power, authority, and legal right to enter into and perform this Agreement, and each other document entered into or to be entered into by it pursuant to this Agreement, and the execution, delivery and performance hereof and thereof:
  - (i) have been duly authorized;
  - (ii) have the requisite approval of all governmental bodies;
  - (iii) will not violate any judgment, order, law or regulation applicable to Developer or any provisions of the Developer's organizational documents; and
  - (iv) do not conflict with, constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.
- (c) Developer represents that, to the best of its knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition of the Developer, or the ability of the Developer to perform its obligations under this Agreement, or under any other documents entered into by the Developer pursuant to this Agreement.
- (d) The Developer has made or will make its independent investigation and inquiry into all matters relevant to its entering into and performing its obligations under the Agreement without reliance on any statement or representation of the Town except as expressly set forth herein.

4.5 Waiver. The failure on the part of the Developer or the Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

4.6 Limitation on Damages. Notwithstanding anything in this Agreement to the contrary, neither party shall be liable to the other for any consequential, incidental, or punitive

damages.

4.7 No Partnership. Nothing contained under this Agreement shall be construed to create a partnership or joint venture between the Town and the Developer or to make the Town an associate in any way of the Developer in the conduct of the Developer's business, nor shall the Town be liable for any debts incurred by the Developer in the conduct of the Developer's business.

4.8 Attorneys' Fees. In any litigation between the parties arising out of this Agreement, or in connection with any other actions taken or notices delivered in relation to a default by any party to this Agreement, the non-prevailing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the enforcement of the terms of this Agreement.

4.9 Brokers. Each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Agreement. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Agreement or the negotiation therefor.

4.10 Town's Cost. The Developer shall reimburse the Town for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by the Developer for the Town's consent hereunder.

4.11 Headings and Captions for Convenience Only. 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.

4.12 Term of Agreement. This Agreement, if not earlier terminated pursuant to Section 2.1 or other sections of this Agreement, shall expire once the parties have entered into the Ground Lease and the Developer and the Town have satisfied all of their other obligations under this Agreement.

4.13 Severability. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

4.14 Dates. If the end of any time period herein, or if any specified date, falls on a weekend or national or state holiday, then the end of such time period, or such date, as the case may be, shall be extended to the next business day thereafter. Any period provided herein for action by the Developer shall end at 4:00 P.M. on the last day of such period, unless this Agreement provides that performance is due by a different time on that day.

4.15 Governing Law. This Agreement shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

Exhibits:

Exhibit A: Request for Proposals

Exhibit B: Plan of Land

Exhibit C: Proposal

Exhibit D: Ground Lease

73982/WELL/0182

[Signature Page Follows]

Executed as a document under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

TOWN OF WELLFLEET,  
By Its Selectboard

DEVELOPER:

\_\_\_\_\_  
Michael DeVasto, Chair

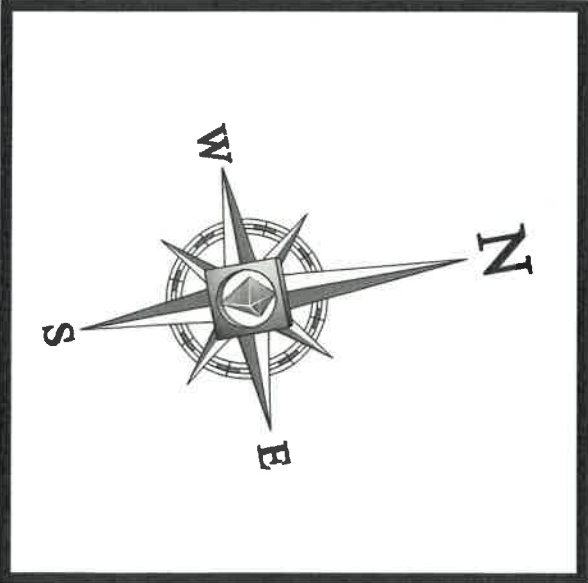
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Janet Reinhart, Vice Chair

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Ryan Curley, Clerk

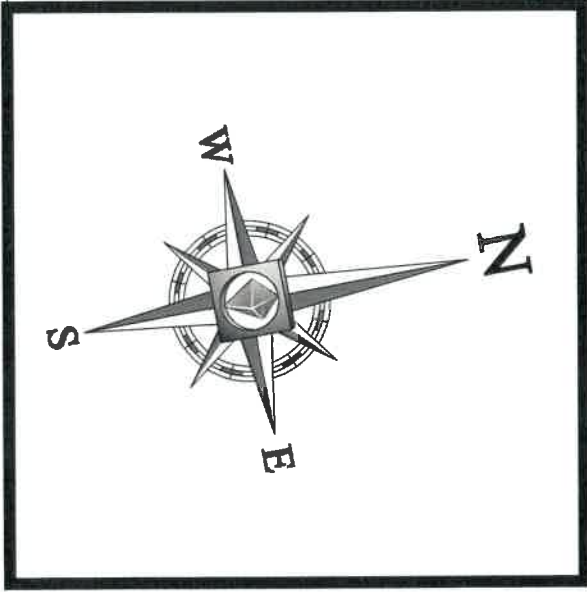
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Helen Miranda Wilson



DUPLEX UNITS (6)  
1,650 SF EACH





PROPOSED 2-STORY  
RESIDENTIAL BUILDING  
9,750 SF FOOTPRINT  
16 UNITS



## **Section xx.xx Sewage Disposal**

### **Background**

Bidders shall be required to connect the project into the future decentralized sewer district that is in the planning stages and will be completed by the Town. As this area of the Duck Creek Watershed in Wellfleet has been determined to be nitrogen impaired, the Town has identified this project as a possible means of net nitrogen reduction from the watershed. To accomplish this, the Town intends to utilize this public/private partnership to collaboratively develop a decentralized sewer district in this section of Town. As the first step in this process, the Town commissioned a study of available wastewater nitrogen reduction technologies, which analyzed their costs, benefits and projected nitrogen reduction benefits associated with various development and wastewater collection treatment alternatives. The report included cost alternatives and schematic layouts of possible treatment systems that might be used for this decentralized wastewater district. The full report, entitled "Residential Development Wastewater System Evaluation 95 Lawrence Road Development" includes detailed cost analyses and schematic layout figures and can be downloaded from the Town's website at the following link: **ADD LINK HERE**.

Based upon the assessment of the nitrogen reduction cost per kilogram of nitrogen removed of the various options considered, the Town has determined that creating a decentralized sewer district, which will serve the affordable housing at 95 Lawrence Road, the adjacent municipal parcels and the surrounding private residential parcels, is preferred. As such, bidders for the development of the 95 Lawrence Road Affordable Housing Project shall agree to enter into a cost sharing arrangement with the Town that allows for the development of the site while providing capital resources necessary to assist the Town with constructing the decentralized sewer district infrastructure.

### **General Project Description**

The proposed sewer district will be completed in two phases. Phase I will include the design and permitting of the full tertiary level wastewater treatment facility (WWTF) and effluent disposal system and construction of the wastewater infrastructure necessary to collect and treat the sewage generated from the proposed affordable housing project and the adjacent elementary school, fire station and police headquarters. Phase II, which is not part of the housing development project, will include the expansion of the treatment system components to their full design capacity and construction of the surrounding sewage collection system, which will then allow for the connection of nearby private residential properties into the sewer district.

## Town Responsibilities

As noted, the Town intends to create a sewer district to service the proposed 95 Lawrence Road development. This sewer district will ultimately provide advanced sewage treatment and wastewater disposal for the 95 Lawrence Road housing development, the adjacent municipal parcels and the private residences in the neighborhood surrounding the project site. In order to proceed with the affordable housing project on the 95 Lawrence Road Parcel, the Town will complete Phase I of the sewer district, as described herein, and will issue a “will-serve” sewer commitment to the chosen 95 Lawrence Road Developer within two years of executing the development agreement.

## Developer Responsibilities

The Developer shall commit to funding their percentage of the capital costs associated with the construction of Phase I of the sewer project as described herein and shall agree to connect to the sewer district and pay all associated user and capital fees as determined by the Town for their proportional use of the system. Capital cost funding shall be based upon the estimated percentage of the construction cost as described below. User costs shall be based upon actual costs associated with the operation, maintenance, upkeep and improvement of the sewer district infrastructure, portioned in accordance with the water-use associated with each connected user.

In addition to the requisite funding commitment by the Developer to the Town for wastewater infrastructure, the Developer shall agree to partner with the Town in identifying, writing, applying and securing grant funds for the wastewater infrastructure required for the project. Several grant opportunities (such as MassWorks Grants), are regularly made available to fund infrastructure that supports environmental water quality remediation as well as the development of affordable housing. As the development of this sewer district will directly benefit both areas for Wellfleet, seeking and securing grants for this work will be a priority of the Town and Bidders should demonstrate past success in grant applications and awards on similar projects, as part of their qualifications package.

## Capital Cost Determination

The capital cost contribution attributed to the development of the 95 Lawrence Road site shall be based upon a percentage of the overall wastewater infrastructure costs of the planned sewer district. As shown in Tables 13 of the aforementioned evaluation report, the lowest estimated cost to design, permit and install an Innovative/Alternative (I/A) septic system (including contingencies) that would serve just the 95 Lawrence Road development was \$764,324.00. In contrast, the cost associated with the design, permitting and construction of the tertiary level treatment system for the entire sewer district, minus the surrounding sewage collection system and its associated contingency and design costs, would be \$1,748,300.00. As noted, this estimate does not include the Phase II cost to design or construct the collection



system associated with the surrounding residential parcels, as the Town shall secure funding to complete those tasks separate from Phase I of the project.

Based upon these estimates, the cost to complete a stand-alone I/A septic system at the 95 Lawrence Road site would be approximately 44% of the cost for the full Phase I treatment facility and effluent disposal system. Using this methodology, the Town has determined that the successful bidder shall commit to funding 44% of the actual Phase I costs of the wastewater treatment facility project (as defined herein), once the total project costs are finalized.

If, in the event that the Town does not fulfill its contractual commitments to provide a sewer "will serve" letter to the Developer within two years of the date of execution of the agreement, the Developer will have the right to commission the design, permitting and construction of a stand-alone I/A treatment system that will use the Best Available I/A Technologies that can meet all required MassDEP water quality discharge standards for this Watershed section of Cape Cod Bay. If this clause in the contract is enacted, the Developer shall not be required to connect to any planned or future sewer district, until such time as a sewer connection was made available AND the I/A system in use was deemed to be in failure per definitions of a failed onsite septic system in accordance with 310 CMR 15.000.

## **ATTACHMENT J**

### **Certificate of Non-Collusion**

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

\_\_\_\_\_  
Individual or Corporate Name of Proposer    Date

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Printed Name of Authorized Agent

## **ATTACHMENT K**

### **Tax Compliance Certificate**

Pursuant to M.G.L., Chapter 62C, sec. 49A, the individual executing this proposal certifies, under pains and penalties of perjury, that to the best of his/her knowledge and belief the Bidder has complied with all of the laws of the Commonwealth relating to taxes.

Name of Proposer: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT L

[To be completed prior to sale]

### Disclosure of Beneficial Interest

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the transaction described below. This form must be filed with the Division of Capital Asset Management, as required by M.G.L. c. 7, sec. 40J, prior to the conveyance of or execution of a lease for real property. Attach additional sheets if necessary.

1. Public agency involved in this transaction: Bourne Housing Authority.
2. Complete legal description of the property
3. Type of Transaction:
4. Seller: \_\_\_\_\_  
Buyer: \_\_\_\_\_
5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the property described above.

Name

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name

Title or Position

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. This section must be signed by the individual(s) or organizations(s) entering into this real property transaction with the public agency named in Item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

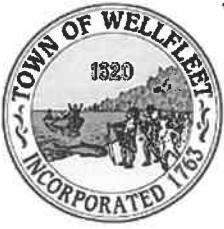
The undersigned swears under the pains and penalties of perjury that this form is completed and accurate in all respects.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - H

<b>REQUESTED BY:</b>	<b>Selectboard Member Wilson</b>
<b>DESIRED ACTION:</b>	<b>To discuss and establish a real property transfer fee for the Town of Wellfleet</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve having the town of Wellfleet establish and write a Property transfer fee to then be reviewed and approved at a future Selectboard meeting.</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s): _____
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



*Town Of Chatham*  
*Department of*  
*Community Development*

Town Annex 261 George Ryder Road  
Chatham, MA 02633

TELEPHONE (508) 945-5168

FAX (508) 945-5163



**CHATHAM SELECT BOARD**  
**AGENDA REPORT**

*Example*

**TO:** Honorable Select Board  
Jill R. Goldsmith, Town Manager

**FROM:** Katie Donovan, Director of Community Development  
Aly Sabatino, Principal Planner

**DATE:** February 11, 2021 (Date of Meeting February 23, 2021)

**SUBJECT:** Housing Related Special Legislation – An Act Establishing a Real Property Transfer Fee in the Town of Chatham

**BACKGROUND AND DISCUSSION**

At your meeting on January 12<sup>th</sup>, you requested that Town Counsel draft Special Legislation to that would create a property tax surcharge to be used for attainable housing purposes. Attached please find the drafted special legislation.

**RECOMMENDATION**

Should the Board wish to move forward with the Special Legislation staff will prepare a corresponding warrant Article for the upcoming Annual Town Meeting.

**(2-11-21 DRAFT FOR DISCUSSION PURPOSES)**

**AN ACT ESTABLISHING A REAL PROPERTY  
TRANSFER FEE IN THE TOWN OF CHATHAM.**

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

SECTION 1. For purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Purchaser", shall refer to the transferee, grantee or recipient of any real property interest.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred; all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; the fair market value, at the time of transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Real property interest", shall refer to any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under chapter 183A of the General Laws; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", shall refer to the transferor, grantor or immediate former owner of any real property interest.

"Time of transfer" of any real property interest shall mean the time at which such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

"Town" shall refer to the Town of Chatham acting by and through its Select Board.

SECTION 2. There is hereby imposed a fee equal to one half per cent (1/2%) of the purchase price paid upon the transfer of any real property interest in any real property situated in the Town of Chatham for consideration of two million dollars (\$2,000,000) or more. Said fee shall be the liability of the seller of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the seller. The fee shall be paid to the Town of Chatham,



or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative and the seller or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The Town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The register of deeds for Barnstable County, and the assistant recorder for the registry district of Barnstable County, shall neither record nor register, or receive or accept for recording or registration, any deed, except a mortgage deed, to which has not been affixed such a certificate executed by the Town or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The Town shall deposit all fees received hereunder with the Town treasurer. The treasurer shall deposit such fees in the Chatham Housing Trust Fund or the Chatham Affordable Housing Trust Fund. The fee imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed.

Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead, the Town may require payment of the fee referred to in real property interests so conveyed as determined by the Town.

SECTION 3. At any time within seven days following the issuance of the certificate of payment of the fee imposed by section two, the seller or his legal representative may return said certificate to the Town or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the seller or his legal representative.

SECTION 4. The following transfers of real property interests shall be exempt from the fee established by section two. Except as otherwise provided, the seller shall have the burden of proof that any transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 10.

(a) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies, or subdivisions, including but not limited to transfers to the Town of Chatham.

(b) Transfers which, without additional consideration, confirm, correct, modify, or supplement a transfer previously made.

(c) Transfers made as gifts without consideration. In any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interest transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interest transferred and the amount of consideration claimed by the seller to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interest transferred, at the time of transfer.

(d) Transfer to the trustees of a trust in exchange for a beneficial interest received by the purchaser in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(e) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(f) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(g) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interest so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(h) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(i) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (1) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(j) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property (including real property interests and other property received) which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a partnership or limited

liability company, the transferee receives property (including real property interests and other property received) which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(k) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(l) Transfers of property consisting in part of real property interests situated in Chatham and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Chatham; provided that the purchaser shall furnish the Town with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(m) Transfers of minority interests in corporations, trusts, partnerships, or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership, or limited liability company.

SECTION 5. (a) The Town treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the **Chatham Housing Trust Fund** or the Chatham Affordable Housing Trust Fund. Said accounts shall be subject to examination by the director of accounts or his agent pursuant to section forty-four of chapter thirty-five of the General Laws.

(b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of partnerships filed with the Town for the purpose of determining or fixing the amount of the fee imposed under section two or for the purpose of determining the existence of any exemption

under section four shall not be public records for the purposes of section ten of chapter sixty-six of the General Laws.

SECTION 6. A seller who fails to pay all or any portion of the fee established by section two on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:

(a) Interest: The seller shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to fourteen per cent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee imposed by this chapter, fails to pay all or a portion of the fee within thirty days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the Town for each month or portion thereof thereafter that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty five per cent of the unpaid fee due at the time of transfer. Whenever the Town determines that all or a portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the fee imposed by this chapter, a penalty equal to the amount of said fee as determined by the Town shall be paid by the seller in addition to said fee.

SECTION 7. (a) The Town shall notify the purchaser and the seller by registered or certified mail of any failure to discharge in full the amount of the fee due under this Act and any penalty or interest assessed. The Town shall grant a hearing on the matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by the Town within thirty days after the mailing of said notice. The Town shall notify the purchaser and the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty, or interest within fifteen days after said hearing. Any party aggrieved by a determination of the Town concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of the

determination of the Town. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser and seller shall be bound by the terms of the notification, assessment, or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the Town. All decisions of said courts shall be appealable. Every notice to be given under this section by the Town shall be effective if mailed by certified or registered mail to the purchaser or the seller at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in real property, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in Barnstable County, such notice shall be effective when so mailed to the purchaser or seller in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in Barnstable County.

(b) All fees, penalties and interest required to be paid pursuant to this chapter shall constitute a personal debt of the seller and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the Town; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

(c) If any seller liable to pay the fee established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the Town upon all property and rights to property, whether real or personal, belonging to either such purchaser or such seller. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Town (i) with respect to real property or fixtures, in the registry of deeds for Barnstable County, or (ii) with respect to personal property, in the office in which a security or financing statement or notice with respect

to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty two C of the General Laws.

(d) Sellers applying for an exemption under subsections (a) through (m) of section four shall be required at the time of application for exemption to execute an agreement legally binding on sellers and separately legally binding upon any Legal Representative of the sellers (1) assuming complete liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (2) submitting to the jurisdiction of the trial court of the commonwealth sitting in Barnstable County. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser, or judgment creditor unless notice of the agreement has been recorded or filed by the Town.

In any case where there has been a refusal or neglect to pay any fee, interest or penalties imposed by this act, whether or not levy has been made, the Town, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce the lien of the Town under this section with respect to such liability or to subject any property of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

The Town may issue a waiver or release of any lien imposed by this section. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

SECTION 8. The fee described by Section two shall be of ten-year duration from the date this legislation takes effect. This fee may continue for five-year periods by a majority vote at Town Meeting reauthorizing the fee. The fee described by Section two 1) may be decreased or increased, 2) the threshold consideration amount may be revised, or 3) the fee may be eliminated

by a two-thirds vote of Town Meeting. In the event that Town Meeting does not renew the fee at the ten-year anniversary, or any subsequent five year anniversary, or Town Meeting votes to eliminate the fee, the balance of any fees previously collected shall be used to satisfy any outstanding liabilities or obligations incurred by the Town of Chatham, the Chatham Housing Trust or the Chatham Affordable Housing Trust as a result of imposition of the fee, and the remainder may be expended without further appropriation by the Select Board for affordable or attainable housing purposes. In the event that the liabilities and obligations of the Town of Chatham, the Chatham Housing Trust or the Chatham Affordable Housing Trust exceed the amounts transferred to the Town, the fee shall remain in full force and effect until such liabilities and obligations have been satisfied.

SECTION 9. The provisions of this act are severable, and if any provision hereof, including without limitation any exemption from the fee imposed hereby, shall be held invalid in any circumstances such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

SECTION 10. If the Town has determined that a fee is due by asserting the application of the evasion of fee doctrine described in Section six (b), then the seller shall have the burden of demonstrating by clear and convincing evidence as determined by the Town that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the fee set forth in Section two and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of demonstrating by clear and convincing evidence as determined by the Town that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to Section two to be thereby avoided.



SECTION 11. This act shall take effect ninety (90) days following the date of passage.



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

V

### BUSINESS - I

<b>REQUESTED BY:</b>	Selectboard Member Curley
<b>DESIRED ACTION:</b>	To place and article petitioning to the General Court to exempt the Town of Wellfleet from Prevailing wages on small projects
<b>PROPOSED MOTION:</b>	I move to recommend and place the article petitioning the General Court Exempting the Town of Wellfleet from prevailing wages on small projects as written
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

**Article XX Petition to Exempt the Town of Wellfleet from Prevailing Wages on Small Projects.**

To see if the Town will vote to petition the General Court to enact a special act of the Town of Wellfleet, the text of which is set forth below, and that the General Court be authorized with the approval of the Selectboard to make constructive changes in the text thereof as may be necessary or advisable in order to accomplish the intent of this legislation to secure its passage, as follows:

**AN ACT RELATIVE TO THE PREVAILING WAGE IN THE TOWN OF WELLFLEET**

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

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Wellfleet shall be exempt from complying with sections 26 through 27G of chapter 149 of the General Laws for projects estimated to cost \$50,000 or less.

SECTION 2. This act shall take effect on the first day of the fiscal year following passage of this act and shall apply to taxes levied for fiscal years beginning that fiscal year and thereafter.

Or to take any other action relative thereto

*Explanation: In the interest of reducing the costs borne by Wellfleet taxpayers this would exempt construction projects with a total cost under \$50,000 from prevailing wage determinations reducing the overall costs of small projects within the town.*



## SELECTBOARD

**AGENDA ACTION REQUEST**  
Meeting Date: March 9, 2021

VI

## SELECTBOARD REPORTS:

[illegible]



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

VII

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### **TOWN ADMINISTRATOR REPORT**

Please see attached report



# TOWN OF WELFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667  
Tel (508) 349-0300 Fax (508) 349-0305  
[www.wellfleetma.org](http://www.wellfleetma.org)

To: Board of Selectmen  
From: Maria T. Broadbent, Town Administrator  
Subject: Town Administrator's Report  
Date: March 5, 2021

This report is for the period February 20, 2021 through March 5, 2021.

## 1. General

- Town Hall remains closed to the public, except by appointment only, as precaution to the COVID-19 virus. Town staff is available by appointment.
- Supervisors continue to monitor the safety of staff and to encourage work from home when appropriate.
- In order to keep information flowing to the community about COVID vaccines and other related matters, Emergency Management Team meetings have been expanded to twice a month on the first and third Tuesdays at 10 am. The Selectboard will also include an update at the beginning of their meetings, held the second and fourth Tuesdays at 6 pm. A link to both these meetings, held via Zoom, can be found on the Town of Wellfleet's website.

## 2. Fiscal Matters

- The FY 2019/2020 audit began Monday, 2/8/2021. As has already been reported, the Auditors made random selections for expenditures, payroll, receivables, capital assets, and journal entries, all of which required detailed documentation to be provided through a secure portal. Due to the Town's substantial reliance upon paper records, combined with the financial system's technological shortcomings, locating, organizing, and scanning this information was both time and labor intensive, though we believe all auditor requests have been satisfied at this time. The Auditors have been forthcoming with their intention to report several major deficiencies in the Town's financial and accounting activities which will require immediate mitigation measures to correct. Some of the noted concerns shared with the Town Accountant thus far are: improper encumbrance documentation, tracking and reconciliation, deficiencies surrounding payments made without a purchase order in place or executed contracts violating Town Policy, inappropriate vendor maintenance leading to the Town being deficient on issuing required 1099s, paying employees outside of union contract rates, and inaccurate benefit day tracking impacting the Town's financial liability statements. Again, Administration is anticipating substantial management letter comments resulting from this deep dive audit.

## TOWN ADMINISTRATOR'S REPORT TO THE SELECTMEN

- On February 17 the Town Administrator, Town Accountant, and Town Treasurer spoke with the assigned rating agency, S&P Global, regarding the upcoming bond sale totaling \$9,220,000 covering the following items; Lt. Island Road Repair (\$150,000), Fire & Rescue Equipment on Forestry 90 (\$40,000), Wellfleet Elementary School Fire Suppression Engineering (\$110,000), Water System Upgrade (\$1.34M), Harbor Dredging (\$7.5M), EMS Equipment (\$80,000). The Town received a AAA rating from S&P on Monday, February 22 allowing for a very attractive bond sale.
- The Town Accountant was awarded two large grants last week through the Community Compact Grant Program. Separate applications were submitted to the State Department detailing Wellfleet's desire to address and adopt best practices surrounding financial and human resources policies and procedures. Leveraging The Collins Center's consulting expertise, two initial scopes were designed to address the areas of finance and human resources. The consulting partnership will work with Administration to review all existing standards, then generate updated documents reflecting legal necessities and best practice methodology. The total award, which will be released shortly, is \$41,000.00 and is a welcomed aspect to mitigating the current situations.
- The Town Accountant has been researching more appropriate financial systems to support the Town's growing operating needs from a technological and systems perspective. The environment dictated by COVID has forced daily business in a new direction, one that requires robust integrated systems, both internally and customer facing, to continually provide outstanding customer service in conjunction with more efficiently operating the Town. Vadar is ill-equipped to offer desperately needed purchasing, receiving, budgeting, payroll and human resources functionalities, all areas that are anticipated to receive significant deficiency reports from the auditors. In addition, more advanced information systems offer customer portals to transact applications and process payments simultaneously developing accountability matrices, clear workflows and customer convenience. Once the management letter has been issued, Administration anticipates a recommendation to move forward on acquiring a more advanced system which will be a part of mitigating likely several deficiencies in process and procedure.
- The Town Accountant has been working with the IRS Agent assigned to the case over the past week. The audit has continued to focus on fuel acquisition at the Marina in 2018, of which all documentation has been provided to the best of our ability. No further information on the status is available.

### 3. Meetings – Most meetings are via conference call/Zoom

- February 22- Mid Lower Cape Vaccine Working Group-Vaccines for age 75+
- February 23- Wastewater Task Force-funding options
- February 24-Wellfleet Harbor Actors Theatre-intro & plans for 2021 season
- February 24-Housing Authority-RFP for 95 Lawrence Road
- February 24-FinCom-proposed budgets for Beach, Recreation, Library

## TOWN ADMINISTRATOR'S REPORT TO THE SELECTMEN

- February 25-Rebecca Noble & Peter Cook-plan to update selectboard on bike trails
- March 1-Carole Ridley-Herring River Restoration Status
- March 1-Federal delegation-funding for Herring River Restoration Project
- March 3-Emergency Management Team Meeting
- March 2-Jay Coburn, Community Development Partnership-introduction
- March 2-Housing Authority-RFP 95 Lawrence Road
- March 4-Atlantic White Shark Conservancy-introduction & facility tour
- March 4-KP Law-HDYLTATown status

### 4. Personnel Matters:

- Interviews for the Assistant Town Clerk, Committee Secretary to the planning Board, Board of Water Commissioners, Finance Committee, and, Water Clerk position will be conducted shortly.
- Will Sullivan has been hired as Harbormaster.
- The new Assistant Town Administrator will begin on April 1<sup>st</sup>.





## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

# VIII

### TOPICS FOR FUTURE AGENDAS

<b>Requested by:</b>	<b>Topic:</b>	<b>Requested to be on:</b>
<b>The Selectboard</b>	<b>All restaurants and businesses that plan to change seating for the upcoming 2021 season do need to get permission for Fire, Police, and Health, to find out if the policy from last season has expired</b>	<b>No specific date was given</b>
<b>Board Member Curley</b>	<b>Public Safety Concerns at Cahoon Hollow Beach</b>	<b>No specific date was given but would like to discuss before June 2021</b>
<b>Board Member Curley</b>	<b>Schedule a time for the Wastewater Committee to meet with the Selectboard</b>	<b>As soon as a meeting could be set up, before Town Meeting</b>
<b>Board Member Wilson</b>	<b>Discussion of Management of beach parking lots during the summer season, White Crest in particular</b>	<b>Before May</b>
<b>Board Chair DeVasto</b>	<b>Set up a date for the hearing for Beach Rules and Regulations to be advertised 2 times</b>	<b>As soon as possible to hold at the March 23<sup>rd</sup> meeting</b>
<b>Selectboard</b>	<b>Selectboard to decide on date for Broadbent's six-month review then to move into executive session</b>	<b>As soon as possible</b>



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

IX

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### CORRESPONDENCE AND VACANCY REPORTS

- **Letter from Wellfleet Historical Society & Museum ~ February 2, 2021**  
**Regarding the stairway behind Town Hall**
- **Letter from Martha Smith ~ March 5, 2021**  
**Regarding the ATV track on 1069 Brown's Neck Road Wellfleet**

# Wellfleet Historical Society & MUSEUM

February 2, 2021

Attention: Wellfleet Selectboard

Town Hall

300 Main Street

Wellfleet, MA 02667

The Wellfleet Historical Society and Museum, Inc., ("WHSM"), will build and maintain a stairway on Town-owned land between the Wellfleet Town Hall parking lot and the rear of WHSM property at 258 and 262 Main Street. WHSM agrees to allow the general public to cross its property from the stairway to the Museum, and/or access Main Street beyond.

WHSM reserves the right to close access to the stairs for any reason, including, without limitation, inclement weather or unsafe conditions. WHSM also reserves the right at its discretion to remove the stairway. By allowing such public access, and maintaining the stairway, no right of way, easement or any other encumbrance is created on the property of WHSM.

Sincerely,

Brad Williams

Interim President

Wellfleet Historical Society & Museum Inc.



## Rebekah Eldridge

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**From:** Martha S. Smith <marthasheasmithuc@icloud.com>  
**Sent:** Friday, March 5, 2021 3:27 PM  
**To:** Board of Selectmen  
**Subject:** ATV track on Brown's Neck Road

To: Selectboard, Town of Wellfleet  
From: Martha Shea Smith  
Re: ATV track at 1069 Brown's Neck Road  
Date: March 5, 2021

The Brown's Neck Road neighborhood is peaceful, often described as "desirable" by local real estate agents. I am writing because my next door neighbor, Mr. Robichaud has created an atv track around his outbuilding at 1069 Brown's Neck Road. The noise generated by the driving of the vehicle around and around is infringing on my peace and quiet. My husband is on hospice care and I am his primary caregiver. This significant repetitive noise is irritating to him and to me. The character of the neighborhood does not support such a land use but beyond that from what I read in the by laws of the town, such noise is not allowed. Mr Robichaud recently renovated the outbuilding creating a stairway and small deck as well as installing windows. Heavy machinery was brought in to alter the landscape for the track and the area in back and on the sides of the building was cleared of vegetation.

Please advise the course of action open to me to inhibit and or stop the noise we are experiencing as well as a contact person on the board.

I have already spoken to Mr. Robichaud concerning this matter. I have filed a complaint with the town.



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

X

## MINUTES

<b>REQUESTED BY:</b>	<b>Executive Assistant</b>
<b>DESIRED ACTION:</b>	<b>Approval of meeting minutes for February 23, 2021</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the minutes of February 23, 2021 as printed in draft.</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

**Wellfleet Board of Selectmen  
Virtual Meeting  
Tuesday February 23, 2021  
Meeting Agenda**

**Members Present:** Michael DeVasto, Chair; Janet Reinhart, Vice-Chair; Justina Carlson, Ryan Curley, Helen Miranda-Wilson

**Others Present:** Maria Broadbent, Town Administrator; Rebekah Eldridge, Executive Assistant; Michael Hurley, Wellfleet Police Chief; Hillary Lemos, Health Agent; Rich Pauley, Wellfleet Fire Chief; Dick Elkin, Chair of the Energy Committee; Mia Baumgarten, Bill Hewig, KP Law town representative for the contract renewal; Nancy Civetta, Wellfleet Shellfish Constable; Peter Cook, Member of the Bike and Walkways Committee; John Riel, Natural Resource Advisory Board; Kristy Senatori, Cape Cod Commission.

Chair DeVasto called the meeting to order at 6:00PM

**I. Announcements, Open Session and Public Comments**

**Note:** Public comments must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.

- Chief Hurley made an announcement that scams are on the rise and asked the public to please keep an eye on families, friends, and neighbors. Stressing to not give out personal information to anyone that is unknown to them.
- Elkin urged the board to please sign the license renewal for Comcast explaining it is urgent. DeVasto asked Eldridge to locate the license and have it signed. Reinhart stated she gave all the signed papers that were in the selectboard office to Jeanne Maclauchlan, Eldridge will check with her.
- Selectboard Member Wilson recognized two members of board that have resigned recently she publicly thanked Peg Carnduff and Debra Freeman both she stated have done great things for the town of Wellfleet and the town is at a great loss.

**II. COVID-19 Updates and Recommendations**

- Health Lemos gave an update on the vaccines that are being rolled out. Having the most vulnerable residents vaccinated first. She urged residents that can travel to sign up on the mass.gov web site to go to a vaccine site off cape. She continued explaining the next clinic that is being conducted locally will be held Thursday February 25, 2021. She explained that if a local resident is 75 or older would like to try and get into the clinic please contact her at her office in Wellfleet, giving that number.
- She stated there are 6 positive cases in town and it is holding steady but not increasing. Curley stated there was a letter sent to the governor regarding vaccines and expressed his disappointment that the selectboard wasn't involved in that letter or the signing of it. Town Administrator Broadbent explained that she received the letter not realizing the selectboard wasn't on the chain of recipients. Selectboard Member Reinhart explained she was on

that meeting and that Wellfleet was very much involved in the meeting the Wellfleet Selectboard was on that letter. They discussed this further and will make sure going forward the selectboard will be notified by the group email.

### **III. Public Hearings**

#### **A. Comcast License Renewal**

- Administrator Broadbent discussed with the board that timewise this hearing was to be published for two consecutive listings and it is before them again to approve as all the regulations have been followed. She introduced attorney Hewig who explained the contract and the details of it. He explained that he represented all the lower cape. He stated that Comcast is obligated to comply with all Massachusetts rules and regulations, if they do not comply the town can file a noncompliance order which will order them to comply and if they do not they can be fined on a daily basis. He continued explaining the contract and how it will work for the next 10 years.
  - Wilson had questions for Hewig asking about streaming and availability of the channel. Baumgarten explained to Wilson that Comcast doesn't have control over the town channel and that she puts up the programming regarding the town channel. Baumgarten explained her scheduling for programming and stated she would be more than happy to discuss issues that someone is having on an individual basis.
  - The board continued to discuss the details of the contract and moving forward
  - **Selectboard Member Reinhart moved; Selectboard Member Carlson seconded; it was voted to approve the signing of the Comcast License Agreement for the term of ten years dated from December 1, 2020 through November 30, 2030. 5-0**
- a. Granting of hardship exemption for commercial shellfishing permit to Jackie Bassett – Shellfish Constable Civetta
- Chair DeVasto recused himself for the next two items because although he feels that he has no financial impact he stated that he doesn't need to vote so he wouldn't. He asked Vice Chair Reinhart to take over during the shellfish items.
  - Shellfish Constable Civetta explained to the board Basset has been a shell fisherman for a while now and this was an oversight on his part not getting his permit in. The board had no issues with this item.
  - **Board Member Carlson moved, Board Member Curley seconded; it was voted to approve, granting Jackie Bassett a hardship exemption and to direct the Shellfish Constable to issue him a 2021 Commercial Shellfishing permit. 4-0 -1**
- b. Approval of Grant Transfer – Shellfish Constable Civetta
- Civetta explained that this is a great thing to happen and she believes that this is exactly why the shellfish regulations exist allowing family members continue a tradition.

- **Board Member Carlson moved; Board Member Wilson seconded; it was voted to approve the transfer of grants 85E, 85 E-A, 85 E-AB from Todd LeBart and Holly LeBart, to Todd LeBart, Holly LeBart, and Peter Brundage. 4-0-1**

**IV. Board/Committee Appointments and Updates**

**a. Disclosure of appearance of conflict of Interest – Peter Cook**

- Chair DeVasto came back to the meeting, he asked Peter to explain why he filled out this form.
- Cook explained he has two family members that own property to where the state plans to put the bike path. He felt that this was appropriate for him to fill out the form. Board Members questioned the form and how it was filled out. They discussed with him times when he would need recuse himself during meetings. They discussed his form at great length to decide if his financial interest can or can't be overlooked with his ability to act fairly in his capacity as a member of the bike and walkways committee. Cook explained to the Board that he will go to the State Ethics Attorney and will go with his guidance as to when or when not to recuse.
- **Board Member Wilson moved; Chair DeVasto seconded; it was voted that the selectboard has determined that the financial interest of Peter Cook is not so substantial as to be deemed likely to affect the integrity of the services which the town may expect from him as a member of the Bike and Walkways Committee. This disclosure is dated February 18, 2021. 4-0-1 (Selectboard Member Carlson abstained).**

**V. Business**

**a. Review and Discussion of Appointment of Assistant Town Administrator**

- Administrator Broadbent presented to the Board that she had sent to them information regarding the applicant and went on to explain that this person was the unanimous choice of the interview panel. She discussed her qualifications to the Board but asked to keep the name private until the Board either approved or disapproved her appointment. Broadbent went on to state that this person will be a great fit for Wellfleet and the Town Hall Staff.
- Chair DeVasto stated given that all the interview panel chose this applicant he has no issues and would like to move forward.
- The probationary period was discussed, and the candidate's ability to move to Wellfleet. Broadbent explained that the applicant will be moving here by the end of June.
- **No Action Was Taken**

**b. Update from the Cape Cod Commission – Kristy Senatori**

- Senatori began her presentation on what the Cape Cod Commission's year has involved. She recognized Dick Elkin and all his work with the Commission. She also stated that the Commission was pleased to move forward with the Herring River Project. She continued discussing what the Commission has been doing through the year 2020 and what is



projected for 2021. She stated a lot of the Commissions focus has been the Covid Pandemic stating that she is on the covid task force for the Commission and gave a website to where residents can see information about employment, traffic data, and covid rates throughout the cape, the site also gives data on housing and economic impacts that the pandemic has left.

- She continued that Cape Cod Commission has partnered with Cape Cod Chamber of Commerce issuing surveys to surrounding towns and allowing them to understand local business's trying to capture winter off season impacts on the businesses. The Commission would like to help local businesses. She discussed amendments that were made and passed. She expressed to the town that the Commission is pleased to see Wellfleet moving forward with their climate planning. They are addressing their housing needs and will be sending out a housing survey to be able to identify how second homeowners are utilizing their second homes and impacts on first time home buyers in 2020. They are looking at a community housing plan. The Board thanked her for her time.
- **No Action Was Taken**

c. Proposed Warrant Article for Town Meeting – National Resources Advisory Board

- Riel presented to the board a warrant article that the Resource Advisory Board would like to go before the Annual Town Meeting. He spoke about a project that has been in the works for a few years regarding dredging. It was about moving the "black Custard" and move it into a cove. The Board is asking for \$25,000 to continue with his project. He discussed suction dredging and what permitting will be needed for that project. He welcomed comments and advice from the Selectboard.
- Wilson asked if this was a version of maintenance dredging. He confirmed that it was. She went on to advise there was a person from Dennis that he could speak with regarding maintenance dredging.
- **Selectboard Member Reinhart moved, Selectboard Member Curley seconded; it was voted to approve the warrant article that has been presented by John Riel to the Selectboard asking to appropriate or transfer funds for the purpose of investigating and recommending practical engineering methods to reduce the scope and expense of future North Channel Harbor dredging, or do or act anything thereon. 5-0**

d. Reconsideration of disposition of town property map until the review schedule as specified in Policy on Disposition of Town-owned Land is followed. – Board Member Curley

- Selectboard Member Curley explained to the Board that the Selectboard has a policy regarding the procedure that is to be followed before any town property that is to be disposed of in any way shape or form. Which allows anyone to speak on it at a meeting, to make sure the selectboard

doesn't dispose of land irresponsibly. He would like the Town Administrator to enforce these procedures and follow the schedule, being it goes to all Town Boards and then is brought to the Planning Board and finally to the Selectboard. Selectboard Member Curley would like to see this process being followed moving forward.

- The Board discussed town properties and the importance of following these regulations. There are a few properties that will be placed on the town warrant.
- **Selectboard Member Curley moved; Selectboard Member Wilson seconded; to rescind the placement Map #30, Parcel #186 & 188 and Map #42, Parcel #137, on the annual town warrant and remand the proposed disposition to the Town Administrator and instruct the Town administrator to follow the review schedule as required in the policy on the Disposition of Town Owned Land. 5-0**

e. Discussion on Right to Farm – Chair DeVasto

- Chair DeVasto read his motion that went along with the agenda item request. This will not be voted tonight to be put on the agenda. He stated he brought this up in the spring after a large push from constituents to have this adopted. It does not supersede any existing town or seashore bylaws or policies. It will give some protection to people practicing farming with permission. He continued explaining his position on why he feels this is important.
- The board discussed at great length the right to farm; what it entails, animals, vegetables, shellfish, etc. The Board continued to discuss this and how the Health Agent feels about this, how other departments feel. He read from his documentation that he provided to the board stating that the right to farm should be permitted in Wellfleet and that this is a normal practice of agriculture. The Board members shared their support for this. They discussed the declaration.
- **Selectboard Chair DeVasto moved; Selectboard Member Curley seconded; and it was voted to have the Selectboard ask Wellfleet Town Counsel to review and determine as to whether the draft bylaw that has been amended would supersede any existing bylaws, regulations or permitting requirements in the town of Wellfleet as well as review the language for its legality. 5-0**
- Chair DeVasto moved on to discuss with the Board Members Agricultural Conditions. He stated it doesn't need to be put on a warrant or send it to town counsel he expressed his desire to discuss this. He went to each individual member. Board Member Wilson believed this was a different matter altogether. She continued to discuss her thoughts and opinions on this. Board Member Curley stated he would be hesitant to establish a commission by the time of town meeting. He explained his concerns further. Chair DeVasto that he believed that town commissions had to be created at town meeting. He was unsure of the process once it was there. Chair DeVasto explained to the board that he has always been

in favor of having an agricultural commission. Board Member Carlson agreed with DeVasto and stated this could be a very positive initiative for the town.

- f. Discussion on if the selectboard would like to continue the Cahoon Hollow Lease – Suzanne Grout Thomas
- Thomas stated that due to timing with the summer almost here and the bid went out at this time in previous years. The parking lot has been operated as a pay parking lot. She stated there are two ways the parking lot can function. As a pay parking lot that can go out for bid or have it as a free lot to the town's residents. Board Member Wilson asked if the beachcomber was going to lease it again, Thomas explained that they had previously leased it for three years. Wilson stated she feels it should be put out to bid so the town doesn't lose revenue.
  - Board Member Carlson questioned the loss. Thomas explained that the loss was due to staff being compensated for working the parking lot, police details, she explained when the lot fell into the ocean due to erosion, they lost revenue. The fourth of July was discussed. The Board then asked both the police and fire chief's their thoughts and opinions on this lot.
  - Chief Hurley discussed having the cost on police detail and equipment into the lease, but he still feels it might be a loss. He stated any revenue brought in would help with his budget. He explained an incident that took place the previous summer. Chair DeVasto asked if the lot was closed and the other lot was open wouldn't the cost be the same to the town?
  - Chief Pauley discussed that he agreed with Chief Hurley and believes that whether the parking lot was open the tourists would come. It is in the best interest of the town to maybe continue the lease, but he feels there will be additional expenditures. He stated they needed to make sure that public safety staff was in place to address issues that do arise during the summer months.
  - The Board continued this discussion, going over dumpsters, revenue, issues that occur. There is no simple solution, Reinhart stated that whatever the solution is it needs to cover the towns costs. The Board continued this discussion.
  - **Selectboard Member Curley moved; Selectboard Member seconded; it was voted to approve that the town of Wellfleet continue to lease Cahoon Hollow Parking lot with the condition that trash removal is the responsibility of the lease and the request that the Town Administrator put this out to bid. 5-0**
- g. Discussion of Use of Town Property moving forward – Town Administrator Broadbent
- **Selectboard Chair DeVasto moved, Board Member Reinhart seconded; and it was voted to approve the use of town property on a case by case basis with the selectboard only after receiving the**

**approval of the Fire department, Police Department, and the Board of Health, until further notice. 5-0**

- The board discussed this motion and the use of town property. They discussed that all departments could weigh in on the use of the property, but these three departments need to approve unanimously before it is before the Board. This is for public safety due to the Covid-19 pandemic.

**VI. Selectboard Reports**

- Board Member Wilson discussed that the Cemetery meeting needs to be watched and it discussed green burials. She gave some information on the slide show that was presented.
- Chair DeVasto stated that the MSI draft strategic plan was still open for public comments, he gave the website to go and read the report. This document will be used as a basis to inform legislation for a long time.

**VII. Town Administrator's Report**

- Administrator Broadbent gave her update going down the list informing the Board that the highlight of her report is that the Town Accountant and Town Treasurer met with the state agency and the Town of Wellfleet has come back with a AAA rating. She stated it makes a huge difference in the cost of certain things. She continued to discuss that the Board now has her recommendations for the new Harbormaster, she stated the hiring panel was a great asset to this process.
- Chair DeVasto asked if the selectboard wished to meet before the 14-day period for right to refuse to discuss the hiring of the Harbormaster. Reinhart stated she had no issues with the candidate that was given to them. Chair DeVasto stated that this was not a discussion he wanted to poll the Board to see if they wanted the time to lapse. Wilson stated she has heard many pros and cons and this appointment she feels is quite controversial. The Board discussed meeting on March 2, 2021, Eldridge will set this up. Chief Pauley spoke to the Board that this is out of order and not have this conversation, he explained that the board has put themselves in great jeopardy legally by announcing the candidate. Administrator Broadbent stated she would like the hiring panel to be a part of the meeting, the Board agreed.
- Selectboard Member Curley explained that at their January 26<sup>th</sup> meeting the Selectboard voted to approve money for a dredging lobbyist and stated that the Board received an email stating that this needs to go out to bid because of the dollar amount. She explained that it is required to go out for procurement. She continued explaining how this needs to work. This will go through the proper channels for procurement.
- Selectboard Member Wilson asked Broadbent about communication policies. Broadbent explained that she met with the Provincetown Independent and would like to have a set media policy so that all staff members and committee members/chairs understand communication with the media. She gave some examples of what the media may feel is public record that the state does not.

**VIII. Topics for Future Discussion**

- All restaurants and businesses that plan to change seating for the upcoming season do need to get permission form Fire, Police, and Health. Make sure the policy that was written last year hasn't expired.
- Public Safety issues at Cahoon Hollow – Board Member Curley
- Wastewater Committee to come before the Selectboard – Board Member Curley
- Beach and Traffic Regulations – comment with Broadbent – Board Member Curley
- Management of the Beach Parking Lots over the summer she named White Crest in particular – Board Member Wilson
- Request from The United States Department of Commerce asking for a response from the Board and this needs to be on an agenda very soon – Board Member Wilson
- Administrator Broadbent's six-month review to be done at the March 9, 2021 meeting. Broadbent asked for that to be a public meeting.
- Should a warrant be brought to the town if LaCount Hollow should be resident taxpayer beach only

**IX. Correspondence and Vacancy Reports**

- a. Letter of gratitude for rec program/Becky Rosenberg – Rachel & Liam Rowland

**X. Minutes**

- a. January 26, 2021 - amended  
b. February 9, 2021

- **Selectboard Member Curley moved; Selectboard Member Reinhart seconded; it was voted to approve the January 26, 2021 meeting minutes as amended. 4-0-1**
- **Selectboard Member Curley moved; Selectboard Member Reinhart seconded; it was voted to approve the February 9, 2021 meeting minutes as written. 4-0-1**

**XI. Adjournment**

- **Selectboard Member moved; Selectboard Member Carlson seconded; it was voted to adjourn the meeting 5-0**
- Meeting was adjourned at 9:48PM

***Public Records:***

*Comcast License*  
*Hardship shellfish paperwork*  
*Grant transfer paperwork*  
*Natural Resource Advisory Board draft warrant article*  
*Paperwork for disposition of town owned land*  
*Town Administrators Report*  
*Letter from Rachel and Liam Rowland*  
*Meeting Minutes January 26, 2021*  
*Meeting Minutes February 9, 2021*



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: March 9, 2021

XI

### ADJOURNMENT

<b>REQUESTED BY:</b>	<b>Chair Devasto</b>
<b>DESIRED ACTION:</b>	<b>Adjournment</b>
<b>PROPOSED MOTION:</b>	<b>I move to adjourn.</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____