

November 9, 2015

VIA EMAIL AND HAND DELIVERY

Mr. Richard A. Mason,
Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

Re: Surfside Commons, Nantucket, Massachusetts (the "Project")

Dear Mr. Mason:

As you are aware, Surfside Commons LLC (the "Applicant") has proposed to develop the Project on property located at 106 Surfside Road on Nantucket (the "Property") pursuant to M.G.L. Chapter 40B, §§20-23, and its implementing regulations at 760 CMR 56.00 (collectively, "Chapter 40B"). The Applicant filed an initial application for a Project Eligibility Letter ("PEL") with the Massachusetts Housing Partnership ("MHP") on August 19, 2015, and amended its application with a filing on October 7, 2015 (as so amended, the "Application").

The Nantucket Board of Selectmen ("BOS") submitted a letter to MHP dated November 5, 2015 (the "Town Letter") urging MHP to deny issuance of a PEL for a number of reasons discussed below. A letter from the Nantucket Land Council, Inc. ("NLC") dated October 29, 2015 (the "NLC Letter") was also sent to the BOS, with a copy to MHP, urging the BOS to oppose the Project.

On behalf of the Applicant, the purpose of this letter is to respond to certain of the arguments in the Town Letter and the NLC Letter.

1. Sewer Issues.

The Town Letter argues that a PEL should not be issued because the "Property is not in a municipal sewer district and legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property; and sewer development costs are not addressed in the pro forma." In making this argument, the BOS relies on Chapter 396 of Acts of 2008 (the "Act"), and subsequent action taken by the Nantucket Town Meeting. For your convenience, a copy of the Act is attached hereto as Exhibit A.

Section 1 of the Act states that the Nantucket Sewer Commission may authorize sewer facilities and sewer extensions and connections “for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission ... no other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts ...”

Based on this language, the Town Letter argues that the Legislature directed that only those properties which are within areas designated by Town Meeting as sewer districts within the Town of Nantucket (the “Town”) are eligible for connection to the Town sewer system. The Town Letter states that the Nantucket Zoning Board of Appeals (“ZBA”), the comprehensive permit granting authority under Chapter 40B, “does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action”. The Town Letter further advises that it is highly unlikely that the Town Meeting would approve including the Property in a sewer district.

The BOS is incorrect as a matter of law. In fact, as detailed below, the ZBA has the exclusive ability and jurisdiction to approve of a sewer extension and connection of the Project.

The Town Letter totally disregards Section 11 of the Act which provides as follows:

“Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.” (emphasis added)

Section 11 of the Act therefore overrides the provisions of Section 1 by providing, among other things, that projects developed under Chapter 40B are to be treated as “public service uses” akin to municipal buildings. As such, Town Meeting approval to extend and connect to the Town sewer system is not required. The only approval that is required is the permission of the board having jurisdiction over sewers.

In the case of Chapter 40B developments, it has been established beyond doubt that the board having jurisdiction over sewer matters, whether it is the board of selectmen, a specially designated sewer commission established by act of the Legislature, or some other board, is a “local board”. As the Supreme Judicial Court found in Dennis Housing Corp. V. Zoning Bd. of Appeals of Dennis, 439 Mass. 71 (2003): “[t]he ‘local boards’ whose ordinary jurisdiction may be exercised by the [ZBA] under [Chapter 40B] are defined as ‘any town or city board of survey,

board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.”

Furthermore, 760 CMR 56.02, the comprehensive permit regulation, defines a local board as:

“any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.” (emphasis added)¹

Since the board that has jurisdiction over sewer matters is a “local board”, it inexorably follows that the provisions of the Act granting that board the ability to grant approval to Chapter 40B projects to connect to the Town’s sewer system are “Local Requirements and Regulations”, as defined in 760 CMR 56.02. This means that such approval is within the exclusive jurisdiction of the ZBA. See, e.g. Board of Appeals of Wilmington v. Wilmington Arboretum Apts. Associates Limited Partnership, 39 Mass. App. Ct. 1106, (Mass. App. Ct. September 8, 1995), with Judgment after Rescript dated October 24, 1995.

The Town Letter makes another point with respect to sewer issues, namely that “the Applicant’s pro forma makes no mention of the cost the Applicant would incur to extend municipal sewer infrastructure to the Property or the resulting sewer fees (\$716,382.00) that would be required for the Applicant to connect and this is a fatal flaw in the Applicant’s pro forma.”

With regard to the issue of costs, the Town Letter assumes that the cost of extending the sewer line to the Project will be borne only by the Applicant rather than the Town. This is not altogether clear – see e.g. 760 CMR 56.05(8)(d), which prohibits a zoning board from imposing any condition imposing costs of off-site improvements that among other things is intended to

¹ The legislative history of the Act provides more evidence that Town Meeting approval is not required for the Project to connect to the Town sewer system. As originally filed by the House, Section 11 did not include the clause: “or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws”. In an October 9, 2008, message to the House, the Governor, stated that “the bill raises concerns that affordable housing developments could be denied access to sewer connections”. After consideration of various proposals to suggest this concern, ultimately the language in Section 11 was adopted. Section 11 was, therefore, intentionally modified prior to ratification in a manner that supports Chapter 40B’s general procedures and to remove the requirement that such projects would require Town Meeting approval.

“address a pre-existing condition affecting the municipality generally.” But even assuming that the cost of extending the sewer line will be borne by the Applicant, (i) there is no requirement that this cost be broken out in the Applicant’s pro forma, and (ii) review of the pro forma is an issue solely between the subsidizing agency and the Applicant, with respect to which the BOS has no standing. As it happens, the Applicant has included the estimated cost of extending the sewer and water line in its overall budget line item of site costs.

Finally, it is not clear how the BOS arrived at the figure of \$716,382 as the sewer connection fee. According to information received from the Project’s civil engineer, the sewer connection fee as shown under Section 200-26 of the Town’s Wastewater Systems Regulations Governing the Use of Common Sewers is \$2,000 per unit. Based on this, the connection fee would be \$112,000 (\$2,000/unit x 56 units = \$112,000). The Project’s engineer also reports that the Town in some cases also imposes sewer privilege fees and capacity utilization fees. If applicable, it is our understanding that these fees can typically take the form of a betterment charge and be paid over 20 years. We note that 760 CMR 56.05(8)(d) prohibits the imposition of costs that “are not generally imposed by a Local Board on unsubsidized housing” or that are “disproportionate to the impacts reasonably attributable to the Project.” Accordingly, any imposition of sewer fees on the Project needs to be done in a manner which is fully consistent with the manner in which other non-Chapter 40B projects have been treated. Further, to the extent proposed sewer fees are not reasonably related to the Project’s potential impacts on the Town sewer system, the Applicant intends to seek a waiver of a portion of the fees. Such a waiver would be especially warranted in this case, where Section 11 of the Act treats Chapter 40B projects as “public services uses”.

The Town Letter states that an on-site sewer disposal system is not feasible for the Project. Insofar as the Project will connect to the Town sewer system pursuant to the comprehensive permit to be granted by the ZBA under Chapter 40B as discussed above, this argument is moot.

2. Water Issues.

The Town Letter urges denial of the PEL on the grounds that the “Property is not currently served by municipal water, which would be needed for drinking water, fire protection and sanitation; and on-site water is likely not feasible given the large size of the Project and small size of the Property and the proximity of the Property to an existing residential septic system on adjacent land.”

The Applicant is fully aware that the Property is not currently served by municipal water. The Applicant reports that there is a 12” water main at the intersection of Surfside Road and Fairgrounds Road, approximately 800 feet from the Property. The Applicant commissioned a flow test in September, 2014, which indicated that there is adequate flow and pressure to support the Project. It is noteworthy that the Surfside Area Plan dated October 6, 2008, recommended extension of the Town’s water lines to the area in which the Project is located “in order to provide an adequate system of hydrants to aid in fire suppression.”

The Town Letter makes the same argument with respect to cost as with sewer, namely that there is a deficiency in the PEL application due to the pro forma not specifying the cost of connecting to municipal sewer. For the reasons outlined in Section 1 above, this is not required, nor any basis whatsoever for denying the PEL.

3. **Design and Location Issues.**

The Town Letter urges denial of the PEL on the grounds that (i) the “Project far exceeds the applicable density and height limitations ...”; (ii) the “Project design is historically and contextually inappropriate and inconsistent with the ... guidelines of the Historic District Commission ...”; and (iii) “the Project location is inconsistent with and contradictory to the Town and Country Overlay District concept that is included in the Zoning Bylaw and further supported in the 2009 Master Plan.”

The appropriateness of the design of the Project was dealt with extensively in the initial PEL application, and substantial modifications were made in the amendment to the application to address MHP’s concerns. Therefore, a lengthy response on design issues is not required.

With respect to the location of the Project being inconsistent with the Town’s master plan, it is important to point out that it is generally very difficult for a zoning board to prevail when denying a Chapter 40B project on these grounds, and that would be especially the case for the Town. The Housing Appeals Committee (the “HAC”) and the courts have reviewed a number of projects in which inconsistency of a project with a town’s master plan was a significant issue. A recent example is Hanover R.S. Limited Partnership v. Andover Zoning Board of Appeals, No. 12-04, slip op. at 7 (Mass. Housing Appeals Committee Feb. 10, 2014).

Among the factors considered by the HAC in this context are (i) the quality of the master plan and the extent of its implementation; and (ii) the amount of affordable housing that has resulted from affordable housing planning. The HAC analyzes these and other factors to determine if there is “enough evidence to cumulatively establish a local concern of sufficient weight to outweigh the regional need for affordable housing.” Hanover R.S. Limited Partnership, No. 12-04, slip op. at 7.

In Hanover R.S. Limited Partnership, the Andover zoning board failed to cumulatively establish a local concern of sufficient weight to deny a Chapter 40B permit for inconsistency with the master plan because the town’s “failure to meet its statutory minimum 10% housing obligation ‘provide[ed] compelling evidence that the regional need for housing [did] in fact outweigh the objections to the proposal.’” Hanover R.S. Limited Partnership v. Andover Zoning Board of Appeals, slip op. at 21 (citing Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 367, 413 (1973)). This finding of the HAC was made despite the fact that Andover had a subsidized housing inventory of approximately 9.3% of total units, and had approved several large Chapter 40B projects in recent years. In the case of Nantucket, only 2.5% of its total units are on the SHI. Moreover, according to the “Nantucket Workforce Housing

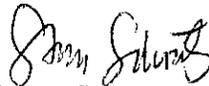
Needs Study”, which was commissioned by the Town itself, in the years 2000-2010, the Town added approximately 2400 total housing units, but only 21 affordable units, less than 1%. Under these circumstances, the Town’s reliance on its master plan in attempting to deny issuance of the PEL appears to be entirely misplaced.

4. **NLC Letter.**

The NLC Letter makes a number of arguments which are incorrect on their face (e.g. that the Project does not qualify for a subsidy) and others that are essentially the same as those made in the Town Letter. Therefore, no detailed response is required to most of the NLC Letter. There is one argument which may require some clarification to the extent that MHP was not previously aware of the issue. The NLC argues that the Deed dated June 24, 2015 (the “Deed”), from the Town for a portion of the Property prohibits the Project. A copy of the Deed in question is attached as Exhibit B. The Deed provides that the property conveyed “shall be used for residential purposes only and shall, for all intents and purposes be combined with and considered one parcel with ... 106 Surfside Road.” The NLC Letter misleadingly contains a quotation mark to indicate that in the Deed, the “Grantee [sic] [warrants and represents] that the assembled land will be used for a single family dwelling unit.” This is simply false. There is absolutely no prohibition in the Deed on the use of any portion of the Property for multifamily residential purposes, or uses accessory thereto.²

We thank you for your consideration, and look forward to continuing to work with you on the Project.

Sincerely,



Steven Schwartz
Attorney for the Applicant

CC (VIA EMAIL ONLY):

Nantucket Town Manager
Nantucket Town Counsel
Nantucket Town Planner
D.J. MacKinnon

² It is important to note that the Town, which conveyed the subject land only a few months ago, and which is also the only party with standing to enforce the deed restriction, does not in the Town Letter make the argument that is made by NLC.

EXHIBIT A

THE ACT

AN ACT AUTHORIZING THE ESTABLISHMENT OF THE NANTUCKET SEWER COMMISSION AND SEWER DISTRICTS IN THE TOWN OF NANTUCKET

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. The town of Nantucket, acting by and through the Nantucket sewer commission described in section 3, may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission, with such capacity limitations, connections, pumping stations, treatment plants and other works, as may be allocated in such by-law to such sewer district as required for a system or systems of sewage treatment and disposal, and may construct such sewers and related works in said sewer districts defined and established by by-law as may be necessary. No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.

SECTION 2. The town may make and maintain, within sewer districts defined and established as set forth in section 1 in any way therein where common sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way within such district.

SECTION 3. Notwithstanding the provisions of chapter 169 of the acts of 1965, the town may, at any town meeting, by a two-thirds vote, vote that the board of selectmen shall act as a Nantucket sewer commission, or that there shall be a separate Nantucket sewer commission, the members of which shall be appointed by the board of selectmen or elected by popular vote for 3 year terms. The number, constitution and the choice of elected or appointed commissioners of a separate sewer commission shall also be determined by a two-thirds vote of town meeting. If a separate Nantucket sewer commission is established by town meeting, any selectman shall be eligible to serve as a member thereof. Town meeting shall be authorized to change the method of establishment of the Nantucket sewer commission described herein without any limitation on the number of times such commission may be established or re-established as the case may be, by a two-thirds vote. Whenever the phrase "Nantucket sewer commissioners" appears in this act, such phrase shall include within its meaning either the board of selectmen acting as Nantucket sewer commissioners, or the separate appointed or elected Nantucket sewer commission.

SECTION 4. The Nantucket sewer commission, acting for and on behalf of the town of Nantucket, shall have charge of and shall be responsible for the policies, finances, and overall goals of the sewer system, but shall be subject to the charter of the town of Nantucket as to the administration and management of the systems operation and maintenance, and shall be responsible for the good order of all sewers, pipes, pumping stations, treatment and disposal works, and the like. The operations of the Nantucket sewer commission shall be governed by,

and any staff or employees shall be considered part of town administration within the meaning of, the charter of the town of Nantucket unless changed or modified pursuant to said charter.

SECTION 5. The board of selectmen acting for and on behalf of the town of Nantucket, after being duly authorized to do so by town meeting, may take by eminent domain pursuant to chapter 79 of the General Laws or otherwise may, utilizing the procedures described in the charter of the town of Nantucket acquire by purchase or gift any lands, rights of way, or easements, public or private, in the town necessary for accomplishing any purpose mentioned in this act and may construct such sewers under or over any state road, any bridge, pier, tidelands, boulevards or other public way, or within the location of any state land, without the necessity for any formal filings in the registry of deeds, and may enter upon and dig up any private land or any public land or public way, for the purpose of laying such sewers and of maintaining and repairing the same, and may do any other thing proper or necessary for the purposes of this act.

SECTION 6. The financial operations of the sewer system shall be an Enterprise Fund within the meaning of section 53F1/2 of chapter 44 of the General Laws, except as modified herein, and any expenditure from such fund shall be only upon authorization of the Nantucket sewer commission. The town shall, by vote at town meeting, determine whether it shall pay the whole or a portion of the cost of said system or systems of sewerage and sewage disposal, and if a portion, what proportion. If the town votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems, the town, acting through the Nantucket sewer commission, may avail itself of any or all of the methods permitted by the General Laws; and the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments or the additional methods set forth in section 8, and as to liens therefor and to interest thereon, shall apply to assessments made pursuant to this act by the Nantucket sewer commission, except that interest shall be at the rate as may be established by the Nantucket sewer commission from time to time. At the same meeting at which town meeting determines that any portion of the cost is to be borne by the town, it may by vote determine by which of such methods the remaining portion of said cost shall be provided for. The collector of taxes of said town shall certify the payment or payments of any such assessment or apportionments thereof to the sewer commission or to the selectmen acting as such, who shall preserve a record thereof.

SECTION 7. The revenues received by the fund described in section 6 of this act from sewer assessments, fees, charges, contributions from the town towards the costs of such sewer system as described in section 6, and the like as receipts or revenues, shall be applied to the payment of charges and expenses incident to the design, construction, maintenance, and operation of said system or systems of sewerage and sewage disposal or to the extensions thereof, to the payment of principal or interest upon bonds or notes issued for sewer purposes, or to the payment or redemption of such bonds or notes.

SECTION 8. The Nantucket sewer commission may, in its discretion, prescribe for the users of said sewer systems and disposal works such annual charges, connection fees, assessments, privilege fees, and the like, based on the benefits derived therefrom as such sewer commission may deem proper, subject however, to such by-laws as may be adopted by vote of the town, or as may be provided for in the General Laws. Notwithstanding any law to the contrary, the commission is authorized to impose and collect such charges, fees, or assessments prior to

connection or operation of such system of sewers, and may enter into agreements for the payment thereof over such time as the sewer commission shall determine. In fixing the charges to be imposed for said system, the Nantucket sewer commission is authorized to make use of any fee, charge, assessment or betterment provided for by the General Laws and further may take into consideration all costs for ongoing removal of infiltration and inflow of non-wastewater into the system as part of the normal operating costs of the system; may include, in setting privilege fees, capital costs and interest charges applicable thereto; may impose late fees for unpaid billings; may assess a capacity utilization fee to new estates and properties added to a sewer district authorized by this act from outside a designated needs area in addition to any privilege fee; may charge betterments, special assessments, or any other charge to the estates and properties being served by collection system improvements and extensions to pay for all costs for sewer line extensions to serve new connections, both within the sewer districts authorized by the act and in any areas added to such sewer district; and may impose such charges on properties within a sewer district authorized by the act whether or not such estates and properties are then connected to the sewer system.

SECTION 9. The Nantucket sewer commission may, from time to time, adopt and prescribe rules and regulations for the means of connection of estates and buildings with sewers and for inspection of the materials, the construction, alteration, and use of all connections entering to such sewers, but not including the expansion of districts except as provided in sections 1 and 10, and may prescribe penalties, not exceeding \$300 for the violation of any such rule or regulation. Such rules and regulations shall be available for public review at the sewer commission's designated office during regular office hours. Any changes, deletions, additions or revisions to said rules and regulations deemed necessary by the Nantucket sewer commission from time to time, shall take full effect after a notice of change has been published at least once a week for 2 successive weeks in a newspaper of general circulation in the town of Nantucket, which notice shall detail where and when such revised rules and regulations may be viewed by the general public.

SECTION 10. Notwithstanding any provision of law to the contrary, owners of land not within the sewer districts defined and established pursuant to section 1 of this act shall not be permitted to connect to the town's sewer system except as is set forth in this act. The territory covered by said sewer districts may be amended from time to time by the board having charge of sewers, after a public hearing conducted to consider such amendment, upon approval of the department of environmental protection if otherwise required by law and upon enactment by town meeting of a by-law defining or establishing a new or expanded sewer district. In the event that the board having charge of sewers votes not to amend the territory of any sewer district in accordance with the foregoing sentence, the amendment may nevertheless be enacted in a form of a by-law upon a two-thirds vote of town meeting. Any by-law adopted pursuant to the authority granted to the town of Nantucket by this act may include authorization to the Nantucket sewer commission without a town meeting vote to add to the sewer districts created pursuant to this act properties located within "needs areas" as defined by Nantucket's Comprehensive Wastewater Management Plan prepared by Earth Tech dated March 2004, approved by the secretary of environmental affairs on May 14, 2004, with such conditions and limitations with respect to such authorization as such by-law may provide.

SECTION 11. Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new

connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.

SECTION 12. This act shall take effect as of July 1, 2008.

EXHIBIT B

DEED

Bk: 01488 Pg: 213



2015 00001718
Bk: 1488 Pg: 213 Page: 1 of 11
Doc: DD 06/26/2015 02:17 PM

QUITCLAIM DEED

**Parcel 7, Copeland Street, Parcels 8 and 9, MacLean Street and
Parcels 10 and 11, School Street, Nantucket, Massachusetts**

The TOWN OF NANTUCKET, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Board of Selectmen (the "Grantor"), in consideration of Twenty-Five Thousand Five Hundred and 00/100 Dollars (\$25,500.00), the receipt of which is hereby acknowledged, pursuant to the authority of Article 99 voted upon at the 2011 Annual Town Meeting and Article 84 voted upon at the 2012 Annual Town Meeting, certified copies of which are attached hereto, grants to Whitney A. Gifford, Trustee of Nantucket 106 Surfside Realty Trust under a Declaration of Trust dated October 24, 2013 recorded with Nantucket County Registry of Deeds in Book 1410, Page 199 of Six Young's Way, Nantucket, Massachusetts 02554 (the "Grantee"), with QUITCLAIM COVENANTS, five certain plots of land in Nantucket, Massachusetts shown as Parcel 7, Copeland Street, Parcels 8 and 9 MacLean Street and Parcels 10 and 11, School Street on a plan of land entitled "Taking and Disposition Plan of Land in Nantucket, MA Prepared for Nantucket 106 Surfside Realty Trust," dated June 2, 2014, prepared by Blackwell & Associates, Inc., recorded with said Deeds as Plan No. 2014-52. The premises hereby conveyed are a portion of Copeland Street, MacLean Street and School Street in Nantucket, Massachusetts. Parcel 7 contains approximately 5,354 square feet, more or less; Parcels 8 and 9 each contain 8,154 square feet, more or less; Parcel 10 contains 6,665 square feet, more or less; and Parcel 11 contains 6,764 square feet, more or less of vacant land as shown on said Plan (the "Parcels").

The Grantor's conveyance of these Parcels is based in part on the Grantee's warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at 106 Surfside Road and shown on Town Assessor's Map 67 as Parcel 80 previously acquired by Grantee pursuant to Deed recorded with said Deeds in Book 1410, Page 205 (collectively with the Parcel, the "Combined Premises"), and that no part of such Parcels or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded with said Deeds. Accordingly, the Parcels hereby granted to the Grantee are conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcels and Combined Premises to residential use, prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcels to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcels have not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the

Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds.

By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor's reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body," pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

The undersigned certifies that there has been full compliance with the provisions of G. L. c. 44 §63A.

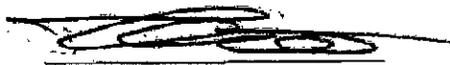
No deed stamp taxes are due on this conveyance pursuant to G.L. c. 64D, §1.

For Grantor's title, see Order of Taking dated September 10, 2014 recorded with said Deeds in Book 1452, Page 137.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]

EXECUTED under seal this 24 day of June, 2015.

TOWN OF NANTUCKET
BY ITS BOARD OF SELECTMEN



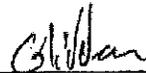
Robert DeCosta



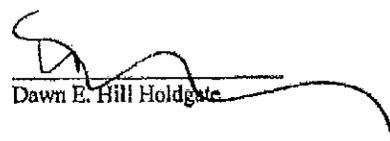
Matthew G. Fee



Rick Atherton



Tobias B. Glidden

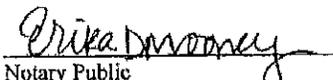


Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this 24 day of June, 2015, before me, the undersigned Notary Public, personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as Members of the Board of Selectmen of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Board of Selectmen of the Town of Nantucket.


Notary Public
My Commission Expires:

NANTUCKET LAND BANK	
CERTIFICATE	
<input checked="" type="checkbox"/> Paid \$	50.00
<input type="checkbox"/> Exempt	
<input type="checkbox"/> Non-applicable	
No.	36400
Date	6/25/15
Authorization	MW

