

## DRAFT – FOR DISCUSSION ONLY

### LICENSE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Town of Nantucket, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, acting by and through its Board of Selectmen, having an address of Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554 (the “Licensor”) and Siasconset Beach Preservation Fund, Inc. (“SBPF”), a Massachusetts 501(c)(3) corporation created by residents of Nantucket to protect homes and associated public infrastructure along Baxter Road in the Siasconset area of Nantucket, and the owners of private properties located at 85, 87, 91, 93, 97, 99, 101, 105, 107, and 107A Baxter Road (“Licensees”). SBPF represents and expressly warrants that it is a corporate entity with the legal authority to contract under state and federal law, and that the undersigned has express authority to sign this license as a binding contract on its behalf. SBPF shall also provide the Licensor with such corporate documents as are necessary to confirm these representations and warranty.

WHEREAS, LICENSOR is the owner of certain sections of land (the “Licensed Premises”) depicted on plans prepared by Milone & MacBroom, dated October 25, 2013 which have been submitted to the Nantucket Conservation Commission (the “Commission”) in support of the Notice of Intent described below, copies of which plans are attached hereto as Exhibits A and B;

WHEREAS, the Licensor and SBPF have entered into a Memorandum of Understanding and Amendment to the Memorandum of Understanding agreeing that the Town and SBPF shall apply, as co-applicants, for approval of an emergency project (the “Project”) to protect Baxter Road temporarily in the areas where Baxter Road appears to be in imminent danger due to erosion of Siasconset Bluff, specifically from 85 to 107A Baxter Road; and

WHEREAS, the Licensor and the Licensees have filed a Notice of Intent with the Commission for approval of the Project, which, if approved, would involve the entry upon and use of the Licensed Premises for construction of a coastal engineering structure, as described in the project narrative submitted in support of the Notice of Intent.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the parties hereto agree as follows:

1. Licensor hereby grants to the Licensees a license to enter and use the Licensed Premises to construct a coastal engineering structure to the extent such structure is permitted by the Commission, and expressly subject to any and all conditions which the Commission shall impose upon such permit, and subject also to any and all other federal, state, or local laws, bylaws, regulations or code provisions which may apply to the project. Such entry and use shall be exercised from the date of the execution of this License and the date upon which any permit from the Commission shall become effective, whichever

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occurs later, and shall continue until such date as it is terminated or the entry and use is no longer permitted in accordance with the conditions imposed upon the project by the Commission. Licensor makes no representation or warranty, by said grant of license hereby or otherwise, that the Licensor has title to or rights in the Licensed Premises or that the Licensed Premises may be used for any purpose other than that expressly permitted and conditioned by the Commission. Licensees acknowledge that they have not relied upon any warranties or representations of the Licensor nor any person acting on behalf of the Licensor, and that Licensees agree to accept the Licensed Premises “as is”, with no liability on the part of the Licensor for any condition or defect or title in the Licensed Premises, whether or not known to the Licensor or any representative of the Licensor. The terms of this paragraph shall survive the termination of this License.

2. The Licensees shall own any coastal engineering structure which may be permitted by the Commission on the Licensed Premises. The Licensees shall be solely responsible for the design and construction of the structure and the means, methods and techniques used for building the structure in accordance with the conditions imposed by the Commission and shall also bear all costs of design and construction. The Licensees shall also be solely responsible for all costs necessary for maintenance and repair of the structure in accordance with any and all conditions of approval from the Commission, including the costs of any required mitigation such as sand replenishment. The Licensees shall also be solely responsible for the costs of removal of the structure upon either expiration of any deadline set forth in the Commission’s Order of Conditions or prior thereto if removal is ordered by the Commission or by the Board of Selectmen in connection with any revocation of this License and shall also be solely responsible for the cost of restoration of the Licensed Premises to pre-project conditions. The Licensees shall provide the Licensor with a letter of credit or surety funds in an amount and form satisfactory to the Licensor in order to secure the faithful performance of any of the foregoing obligations should the Licensees fail to fulfill their obligations under this license agreement.
3. Licensees agree to indemnify, defend with counsel of the Licensor’s choosing, and hold Licensor harmless from and against all claims, demands, losses, costs, damages, causes of action, or liabilities whatsoever, including but not limited to mechanic’s liens and reasonable attorney’s fees and expenses, which may be imposed upon, incurred by, or asserted against the Licensor, or its respective agents, employees, successors and assigns by reason of (a) the Licensees’ construction, maintenance, or removal of, any coastal engineering structure permitted by the Commission and any failure on the part of the Licensees, their agents, contractors, or representatives to comply with any condition required to be performed or complied with by Licensees by the Commission; (b) for death, bodily injury or property damage suffered by any person on account of or based upon the act, omission, fault, negligence or

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misconduct of any person whomsoever, other than the Licensor, relating in any way, to the Licensees' exercise of their rights under this License; (c) any claims seeking damages for alleged adverse effects arising from the construction of the coastal engineering structure including but not limited to alleged adverse effects to downdrift properties, claims for takings, property damage, loss of use, negligence, nuisance, trespass, or diminution of property value; (d) the discharge, release or threatened release at or from the Licensed Premises of oil or hazardous material as defined under federal, state or local law which is caused by Licensees, their agents, contractors, or representatives under this License.

4. Licensees will be solely responsible for any hazards created through Licensees' acts or omissions in connection with this License. Furthermore, Licensees hereby release the Licensor from any and all claims and liabilities of every kind, nature and description whatsoever, whether known or unknown, in both law and equity, which they have or may have had from the beginning of the world to the date of execution of this License. Licensees also release the Licensor and the Town from any responsibility or liability for Licensees' losses or damages related to the condition of the Licensed Premises, and Licensees agree and covenant that they will not assert or bring, nor cause any third-party to assert or bring any claim, demand, lawsuit or cause of action against the Licensor including without limitation, claims for takings, property damage, loss of use, negligence, nuisance, wrongful death, trespass, diminution in property value, personal injury damages and any other damages relating to or arising from the Licensees' use of the Licensed Premises. The provisions of this Paragraph shall survive the termination of this License.
5. Licensees also agree to provide all funding for engineering and design services for the layout of a new public road to be known as Baxter Road Extension, as well as funding for surveys, preparation of easement taking plans and appraisals, and to defend with the Licensor with counsel of Licensor's choosing and indemnify the Licensor against any claims challenging the amount of compensation awarded for any takings needed for the new public roadway.
6. This License shall not be construed as creating or vesting in the Licensees any estate in the Licensed Premises, but only the limited right of entry and use as hereinabove stated.
7. This License is personal and exclusive to the Licensees and is not intended to run with the land. This License may not be transferred or assigned without the express written consent of the Licensor.
8. This License represents the complete understanding and entire agreement between the parties hereto with respect to the entry and use of the Licensed

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Premises. The terms of the aforesaid Memorandum of Understanding and Amendment to the Memorandum of Understanding shall remain in full force and effect to the extent they are consistent with this License. To the extent such terms are inconsistent, the terms of the License shall govern and any inconsistent terms shall be superseded and of no effect.

9. This License is to be interpreted under and construed in accordance with the laws of the Commonwealth of Massachusetts.
10. The Licensees shall procure all necessary permits before undertaking any work on the Licensed Premises. The siting of the coastal engineering structure shall be performed in accordance with the conditions set by the Commission. The Licensee shall not permit any mechanics' liens or similar liens, to remain upon the Licensed Premises for labor and material furnished to the Licensee or claimed to have been furnished to the Licensee in connection with any work performed or claimed to have been performed at the direction of the Licensee and the Licensee shall cause any such lien to be released forthwith at no cost to the Licensor.
11. If, in consultation with the Commission and the Director of Public Works, the Licensor determines that this License should be revoked, this License shall be revocable by the Licensor at its sole discretion upon written notice of revocation at least sixty (60) days prior to the termination date stated within said notice. In the event that this License is terminated, then the Licensee at its own expense shall remove the structure from the Licensed Premises and restore the Licensed Premises to its original condition at the commencement of this License, as nearly as possible. This obligation shall survive the termination of this License.
12. The Licensees shall maintain during the term of this License public liability insurance, including coverage for bodily injury, wrongful death and property damage, and coverage for any of the claims referenced in paragraphs 3 and 4 above, in the following minimum amounts: General Liability \$10,000,000 per occurrence; Bodily Injury Liability \$10,000,000 per occurrence; and Property Damage Liability or a combined single limit of \$10,000,000 annual aggregate limit. Prior to entering upon the Licensed Premises, and thereafter on or before January 1 of each year of the term of this License, Licensee shall provide the Licensor with a certificate of insurance in each case indicating the Licensor as an additional insured on the policy and showing compliance with the foregoing provisions. Licensee shall require the insurer to give at least thirty (30) days written notice of termination, reduction or cancelation of the policy to Licensor. Licensee or Licensee's contractors shall maintain workmen's compensation insurance during any site work, maintenance or repair on the Licensed Premises, as required by law. Licensee agrees that while any contractor is performing work on behalf of the Licensee at the Licensed Premises the contractor shall carry liability insurance and

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automobile liability insurance in amounts of General Liability and Automobile Liability insurance in amounts of \$3,000,000.00, combined single limit and shall name the Licensor as an additional insured party. Prior to any construction or site work on the Licensed Premises performed by the Licensee or any contractor on behalf of the Licensee on the Licensed Premises, Licensee shall provide Licensor with a copy of the contractor's insurance certificate indicating liability insurance coverage as herein specified, and copies of any approval, permits, necessary or obtained to construct or siting of the dwelling and any construction or excavation work.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

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EXECUTED as an instrument under seal as of the date first above written.

LICENSOR:

TOWN OF NANTUCKET  
By its Board of Selectmen

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

LICENSEES:

Siasconset Beach Preservation Fund, Inc.

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

85 Baxter Road

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

87 Baxter Road

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

91 Baxter Road

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

93 Baxter Road

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

97 Baxter Road

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

99 Baxter Road

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

101 Baxter Road

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

105 Baxter Road

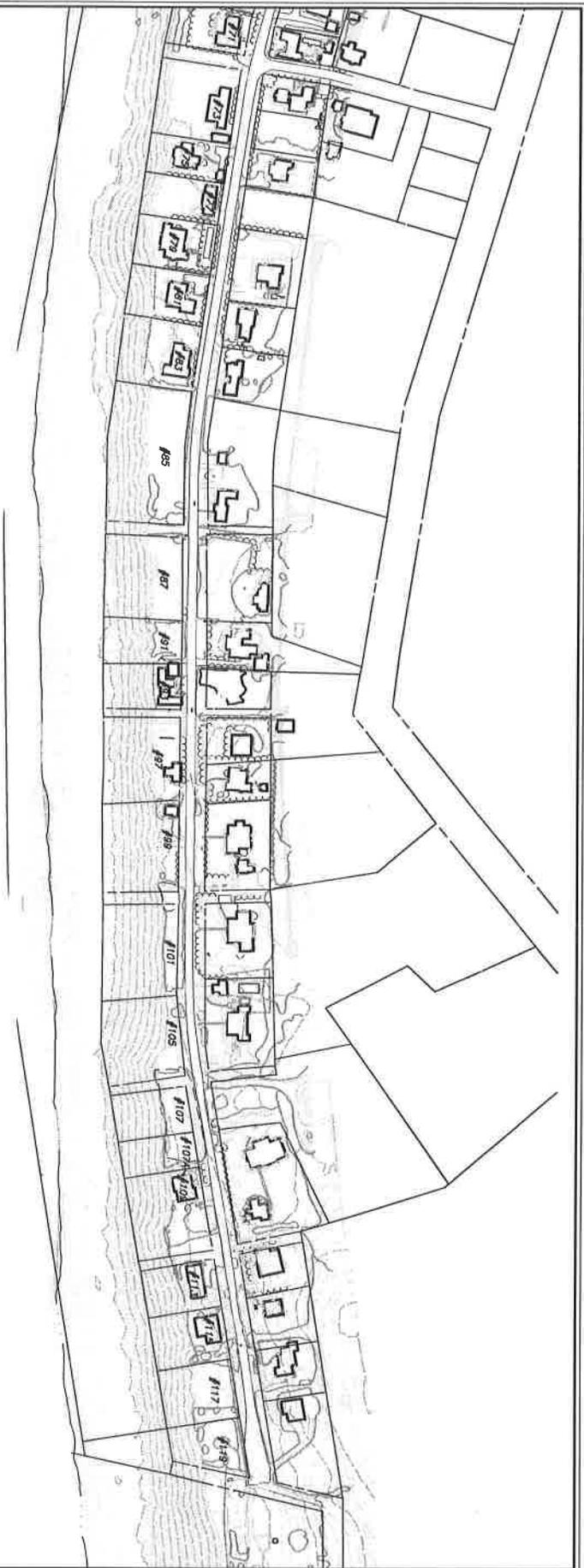
By: \_\_\_\_\_

107 Baxter Road

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

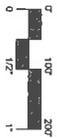
107A Baxter Road

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



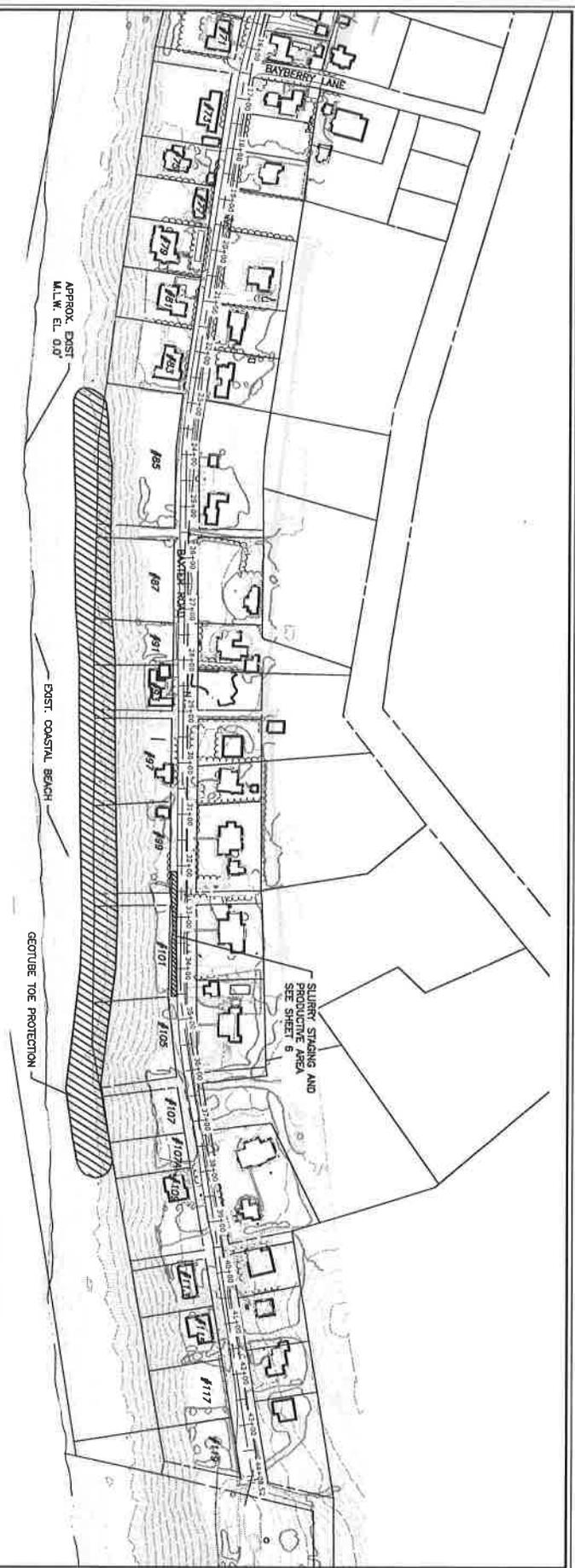
# ATLANTIC OCEAN

- GENERAL NOTES**
1. ALL ELEVATIONS ARE BASED ON MEAN LOW WATER DATUM (MLW=-0.0')
  2. CONTOURS SHOWN IN 2 FOOT INTERVALS.
  3. EXISTING TOPOGRAPHIC SURVEY INFORMATION SHOWN ON THIS PLAN TAKEN FROM A LIDAR SURVEY PROVIDED BY COL.-EAST AND BLACKWELL & ASSOCIATES, INC. PERFORMED ON JULY 15, 2013, AND CAN ONLY REFLECT CONDITIONS AS THEY EXISTED AT THE TIME OF THE SURVEY.



FOR PERMITTING PURPOSES ONLY

<b>EXIST</b>	<b>EXISTING CONDITIONS - TEMPORARY SLOPE STABILIZATION</b> <b>BAXTER ROAD</b> <b>SLOPE STABILIZATION</b> NANTUCKET, MASSACHUSETTS	<b>REVISIONS</b> <table border="1"> <tr><td> </td><td> </td></tr> </table>											 <b>MILONE &amp; MACBROOM</b> <small>One Federal Plaza          150 Main Street, Suite 1012          Springfield, Massachusetts 01103          (413) 241-6978 Fax (413) 241-6911          www.miloneandmacbroom.com</small>
SHEET NO. 20-F-11 DATE: OCT. 26, 2013 SCALE: 1" = 200' DRAWN BY: 2867-11													



ATLANTIC OCEAN

NOTE:  
 LENGTH = 1,500 LF  
 AREA OF IMPACT = 105,320 SF

- GENERAL NOTES**
1. ALL ELEVATIONS ARE BASED ON MEAN LOW WATER DATUM (M.L.W.=01.0')
  2. CONTOURS SHOWN IN 2 FOOT INTERVALS.
  3. EXISTING TOPOGRAPHIC SURVEY INFORMATION SHOWN ON THIS PLAN TAKEN FROM A LIDAR SURVEY PROVIDED BY COL-EAST AND BLACKWELL & ASSOCIATES, INC. PERFORMED ON JULY 15, 2013, AND CAN ONLY REFLECT CONDITIONS AS THEY EXISTED AT THE TIME OF THE SURVEY.
  4. LIMITS OF SAND COVER OVER THE GEOTEXTILE TUBES NOT SHOWN FOR CLARITY. FOR LIMITS SEE TYPICAL SECTION ON SHEET 4 AND CROSS SECTIONS SHEETS 7 THRU 11.
  5. GEOTUBE LIMITS, ELEVATIONS AND SLOPE IS BASED ON DESIGN PROVIDED BY MACAFERRI AND OCEAN & COASTAL CONSULTANTS.



FOR PERMITTING PURPOSES ONLY

<p>GEN</p>	<p><b>GENERAL PLAN - TEMPORARY SLOPE STABILIZATION</b></p> <p><b>BAXTER ROAD SLOPE STABILIZATION</b></p> <p>NANTUCKET, MASSACHUSETTS</p>	<p>REVISIONS</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td> </td><td> </td></tr> </table>													<p><b>MILONE &amp; MACBROOM</b></p> <p><small>One International Place        1701 Maple Street, Suite 3012        Springfield, Massachusetts 01103        413-244-6100 Fax 413-244-6111        www.miloneandmacbroom.com</small></p>
<p>REV: 1</p> <p>DATE: OCT. 26, 2013</p> <p>BY: 2867-11</p> <p>CHECKED: 3-05-11</p>															