

ESCROW AGREEMENT

This AGREEMENT is made this 7th day of May, 2014 by and among 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 (the "Town"), Siasconset Beach Preservation Fund, Inc. ("SBPF"), a Massachusetts 501(c)(3) corporation, and the Treasurer of the Town of Nantucket ("Escrow Agent") as Escrow Agent and not otherwise a party.

R E C I T A L S

WHEREAS, the Town, SBPF, and owners of private properties located along Baxter Road ("Private Property Owners") entered into a License Agreement dated December 13, 2013 for the construction of a coastal engineering structure, including the related supplemental erosion protection, and inspections, repairs and mitigation activities related thereto, as set forth in said License Agreement; and

WHEREAS, the License Agreement provides in Paragraph 2 that SBPF shall be solely responsible for the design and construction of the structure and shall bear all costs of design and construction, and maintenance and repair of the structure, including the costs of any required mitigation, such as sand replenishment, costs of removal of the structure and the costs of restoration of the Licensed Premises, as defined in the License Agreement; and

WHEREAS, pursuant to the License Agreement SBPF is obligated to provide the Town with an amount to secure sufficient performance of the obligations of SBPF in the License Agreement in the event SBPF fails to fulfill its obligations under this License Agreement, or the reasonable costs of removal and restoration thereunder; and

WHEREAS, the Town has determined that \$150,000.00 is to be placed in an escrow account to secure SBPF's performance of obligations pursuant to the License Agreement and SBPF hereby agrees; and

NOW, THEREFORE, in consideration of the terms and provisions contained herein, including the recitals above, which are material to and made part of this Agreement, the Town, SBPF and the Treasurer, hereby agree as follows:

1. Delivery to Escrow Agent. Upon execution of this Agreement by the parties hereto, SBPF shall pay to Escrow Agent the amount of \$150,000.00, (the "Escrow Fund") which will be held by Escrow Agent pursuant to the terms of this Agreement. The Escrow Fund shall be held in a separate non-interest bearing account and shall not be commingled with accounts servicing the general funds of the Town.

2. Release of Escrow Fund. The Escrow Agent shall only release the Escrow Fund to SBPF upon completion of all obligations under the License Agreement to the Town's reasonable satisfaction. Upon release of the Escrow Fund to SBPF all rights and obligations of the parties under this Agreement shall cease.
3. Escrow Agent. The Parties agree to the following additional provisions:
 - (a) In the event of any dispute, questions, ambiguity or misunderstanding arising hereunder, the Escrow Agent may, in its discretion: seek a definitive court determination, order or finding with respect thereto; hold the Escrow Fund until such time as the Escrow Agent, in its sole discretion, is satisfied as to its obligations with respect thereto; retain legal counsel in connection with discharge of its duties and the resolution of such dispute; take such other and further action as the Escrow Agent deems necessary or appropriate under the circumstances; and any combination of the above. In any such event, all expenses of the Escrow Agent, including, without limitation, expenses of suit and reasonable attorneys' fees, shall be the liability of SBPF.
 - (b) Upon the delivery of the Escrow Fund by the Escrow Agent pursuant to the terms hereof, the obligations of the Escrow Agent shall terminate and the Escrow Agent shall be discharged from all further obligations or responsibilities hereunder and with respect to the Escrow Fund.
 - (c) The duties and responsibilities of the Escrow Agent are limited to those expressly set forth herein. The Escrow Agent shall recognize and comply with notices, orders and process issued to it by any governmental authority or court of competent jurisdiction, or jointly by the Parties or their legal counsel.
 - (d) The Escrow Agent may rely and shall be fully protected in acting upon any notice, communication, paper or other document which may be submitted to it in connection with its duties hereunder and which is believed by it to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.
 - (e) The Escrow Agent shall not be required to institute or defend any action or legal process involving any matter referred to herein which in any manner affects it or its duties or liabilities hereunder unless and until it has received full indemnity in an amount, and of such character, as it shall in its sole discretion require, against any and all claims, liabilities, judgments, attorneys' fees and other costs and expenses of any and every kind in relation thereto.
 - (f) SBPF agrees to and hereby does indemnify and save the Escrow Agent harmless of and from any and all claims, liabilities, judgments, attorneys' fees and other costs and expenses of any and every kind and nature, whether or not suit is

commenced, which may be incurred or sustained by it by reason of its performance hereunder.

- (g) Notwithstanding section 4(f), the Escrow Agent shall also not be responsible for any act or failure to act on its part except it shall be responsible in the cases of its own bad faith or gross negligence.
- (h) The Escrow Agent shall have no duties other than those expressly imposed upon Escrow Agent hereunder and shall not be required to take any action other than in accordance with the terms hereof.

4. Miscellaneous

- (a) This Agreement may not be amended, except by written instrument executed by all parties hereto.
- (b) This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the Commonwealth of Massachusetts.
- (c) The Agreement is not an amendment to the License Agreement and does not change any terms therein.

5. Notices. Any notice pursuant to this Agreement shall be in writing and shall be delivered by hand with provision for acknowledgement of receipt or sent by registered or certified mail, return receipt requested, postage prepaid or by Federal Express or other commercial overnight carrier or by facsimile, addressed as follows:

If to Town: Board of Selectmen
 Town of Nantucket
 16 Broad Street
 Nantucket, MA 02554

With copy to: George X. Pucci, Esq.
 Kopelman and Paige, P.C.
 101 Arch Street Street, 12th Floor
 Boston, MA 02110

If to SBPF: Joshua Posner
 SBPF
 PO Box 2279
 Nantucket MA 02584

With copy to: Steven Cohen, Esq,
 Reade, Gullicksen, Hanley, Gifford and Cohen LLP
 PO Box 2669
 Nantucket MA 02554

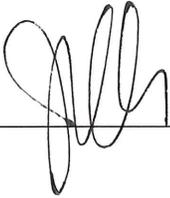
If to Escrow Agent: Town Treasurer
Town of Nantucket
16 Broad Street
Nantucket, MA 02554

IN WITNESS WHEREOF, the parties hereunto set their hands and seals as of this
7 day of May, 2014.

Siasconset Beach Preservation Fund, Inc.:

Escrow Agent:
Town Treasurer

By:

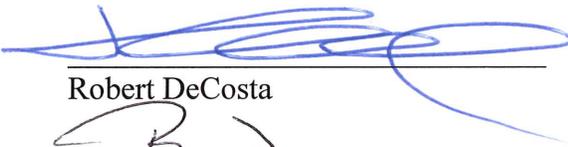


Deborah Weiner
Deborah J. W. Weiner, CMMT

TOWN OF NANTUCKET
BOARD OF SELECTMEN



Rich Atherton



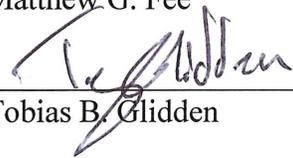
Robert DeCosta



Bruce D. Miller



Matthew G. Fee



Tobias B. Glidden

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