



TOWN OF NANTUCKET
REQUEST FOR PROPOSALS (RFP)
FOR
WORKFORCE AFFORDABLE RENTAL HOUSING DEVELOPMENT
AT 6 FAIRGROUNDS ROAD

IMPORTANT DATES

- RFP Issuance: **Thursday, February 2, 2017**
- Pre-Proposal Meeting/Site Tour Registration Deadline:
Friday, March 3, 2017 at 1:00 p.m.
- Pre-Proposal Meeting/Site Tour:
Wednesday, March 8, 2017 from 10:30 a.m. to 1:30 p.m.
Alternate Weather Date for Pre-Proposal Meeting/Site Tour:
Friday, March 10, 2017 from 10:30 a.m. to 1:30 p.m.
- Inquiries Deadline: **Wednesday, March 29, 2017 at 1:00 p.m.**
- Proposal Submission Deadline:
Wednesday, April 26, 2017 at 1:00 p.m.
- Proposal Presentations:
Wednesday, May 10, 2017 and Thursday, May 11, 2017
Note: all respondents to the RFP who meet Minimum Threshold Criteria will be asked to present their project proposal to the Review Committee
- Developer Selection: **intended to be made by Wednesday, June 7, 2017**

All times in this document are local time in Nantucket, MA.

I. Request for Proposals

The Town of Nantucket (the "Town") is seeking proposals from qualified developers for the development and ongoing management of no more than sixty-four (64) units of workforce rental housing consistent with Section 139-8D of the Nantucket Zoning Bylaws on approximately three (3) acres of Town-owned land located at 6 Fairgrounds Road and Ticcoma Way, Nantucket (see Lots 83 and 84 as shown on Maps included in Attachment A – the "Property"). The vote of Article 99 of the 2015 Annual Town Meeting authorized the Board of Selectmen to lease the property for affordable housing purposes and for roadway, access and utility purposes to serve said housing (see Attachment B – Town Meeting Vote & Quitclaim Deed). The Town intends to enter into a long-term ground lease and a development agreement with the selected proposer requiring the developer to construct affordable workforce housing thereon and restricting the use of the Property for such purposes.

The purpose of this RFP is to select a developer with demonstrated experience and capacity to develop and manage a residential development project that best addresses the needs and goals

of the community as described in this RFP. The Town anticipates that proposers and/or members of their respective development teams will have demonstrated successful experience with developing and maintaining affordable rental housing, as well as the programs providing subsidy and services for such development.

II. Proposal Submission

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

All proposals must be received by **1:00 p.m. on Wednesday, April 26, 2017** and submitted to:

**Town of Nantucket
Attn: Procurement Officer/ 6 Fairgrounds Road Nantucket Housing Proposal
Town & County Building
16 Broad Street
Nantucket, MA 02554**

To be considered a complete proposal, all proposals must include the following:

1. Cover page labeled "6 Fairgrounds Road Nantucket Housing Proposal." The cover page should also identify the development entity, the primary contact person and all contact information;
2. All required documents, completed and signed by a duly authorized signatory;
3. One clearly marked original and twelve (12) unbound and organized copies in a format that is easily copied; and
4. An electronic version of the complete proposal on a CD or flash drive.

Proposals that are incomplete or conditional will be rejected. Proposals received after this time will be considered non-responsive and either not accepted or returned to the proposer unopened. A proposer may correct, modify or withdraw a proposal by written notice received prior to the time set for receipt of proposals (**1pm on Wednesday, April 26, 2017**). Modifications must be submitted in a sealed envelope labeling the Modification and must reference the original RFP proposal.

Proposals will be opened pursuant to the provisions of M.G.L. c. 30B, §6 (d) at **10:00 a.m. on Thursday, April 27, 2017**. A proposer may not change any provision of the proposal after the receipt deadline (**1pm on Wednesday, April 26, 2017**).

The Town reserves the right to reject any or all proposals or to cancel this RFP if in the Town's sole discretion it is determined to be in the best interest of the Town.

All inquiries should be made via e-mail and directed to: procurement@nantucket-ma.gov no later than **1:00 p.m., Wednesday, March 29, 2017**. Inquiries should have a subject line

entitled: *6 Fairgrounds Road Nantucket Housing RFP Inquiry*. Any inquiries after such date will not be accepted. All inquiries and responses will be shared with all Registered Proposers via e-mail.

In order to receive answers to all inquiries and any RFP amendments, interested parties must be registered as a Registered Proposer with the Town. To register as a potential respondent, please send an e-mail to procurement@nantucket-ma.gov no later than **Friday, March 3, 2017 at 1:00 p.m.** with your name, organization, contact e-mail and indicate in the subject line: *Registered Proposer – 6 Fairgrounds Road Nantucket Housing RFP*. As inquiries are made, answers will be provided as expeditiously as possible to all Registered Proposers at the time.

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 and supplements, is made subject to errors, omissions, prior sale, lease or financing and withdrawal without prior notice, and changes to, additional, and different interpretations of laws and regulations.

Proposers' Responsibility for Due Diligence: *Proposers should undertake their own review and analyses concerning physical conditions, environmental conditions, applicable zoning, required permits and approvals, and other development and legal considerations.*

III. Site Tour and Briefing

Interested proposers are strongly encouraged to attend an on-site briefing session on **Wednesday March 8, 2017 from 10:30 a.m. to 1:30 p.m.** at the Nantucket Public Safety Facility, 4 Fairgrounds Road, Nantucket, MA 02554. Note: Alternate weather date: **Friday, March 10, 2017 – 10:30 a.m. to 1:30 p.m.** Registration to attend the briefing is required no later than **1:00 p.m. on Friday, March 3, 2016**. To register, or for additional information related to the site visit, please send an e-mail to procurement@nantucket-ma.gov.

The site tour and briefing will be an opportunity in a group setting for questions about this project to be asked and answered. The Town will send summary minutes of the Meeting to all those registered; however, the Town is not responsible for making sure all aspects of the meeting and group discussion are relayed to anyone not in attendance at this Site Tour.

Following the Site Tour, the Town reserves the right to amend the RFP criteria.

IV. Development Objectives

The Town is seeking proposals to build and maintain a maximum of sixty-four (64) year-round rental units on the site as a workforce community pursuant to Section 139-8D of Nantucket Zoning Bylaws with the purpose of creating affordable rental housing. In order to assess

housing needs on Nantucket, the Town has completed a study and its findings are found in the 2015 Workforce Housing Needs Assessment (Attachment C) and the recently certified Housing Production Plan (Attachment D).

It is the Town's desire to achieve, an overall bedroom mix, including the maximum number of studio and one bedroom units which will be permitted based on the site's capacity, good site planning, storage, landscaping and recreation considerations, and the market and financial feasibility of a mixed-income affordable rental project. The proposed unit mix must also be able to receive Department of Housing and Community Development (DHCD) approval for the inclusion of 100% of the units in the Town's Subsidized Housing Inventory (SHI) and any DHCD approvals necessary to receive any requested state and/or federal subsidy funds, as applicable.

The development will be subject to a Ground Lease (see example in Attachment E) and Development Agreement (see example in Attachment F) in forms that are acceptable to the Town.

Affordability

Pursuant to the Nantucket Zoning Bylaws, Section 139-8D(3), at least twenty-five (25%) percent of the units must be rented to income eligible households earning eighty (80%) percent or less of the area median income (AMI) for Nantucket County and meet the requirements for all of the rental units to be eligible for inclusion on the DCHD SHI; and seventy (70%) percent of all affordable units shall be rented pursuant to a local preference (which shall include current Town residents, employees of local businesses and nonprofits located in the Town, households whose children attend Town schools and municipal employees) in a proposed lottery, subject to the extent permitted by federal or state law and by DHCD regulations. The Town also prefers that twenty-five percent (25%) of the affordable units and ten (10%) percent of the market rate units be rented pursuant to a municipal employee preference provided it is approved by DHCD. The Town will assist the successful proposer and DHCD by providing documentation of the need for the local preference.

The AMI for Nantucket County will be based upon the income data published annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size, as well as the data published annually by MassHousing for Workforce Housing subsidy eligibility.

The Town will convey a long-term lease of the property to the successful proposer, with a restriction that will ensure that the housing remains affordable in perpetuity or the longest term allowed by law. The successful proposer will enter into a Regulatory Agreement in a form acceptable to DHCD and the Town and will record a restriction preserving the affordability in perpetuity or the longest term allowed by law.

Unit Types

It is the Town's preference that the development reflects the Nantucket community aesthetic and provides housing for a range of family sizes, including studio/one-bedroom units, while paying particular note to the areas of greatest need as articulated in the 2015 Workforce Housing Needs Assessment and the 2016 Housing Production Plan. For this reason the Town is interested in the inclusion of units that are intentionally designed as 'universally accessible' providing single-floor living, which could appeal to a range of family sizes to meet a variety of needs. The total number of bedrooms per lot cannot exceed 57 bedrooms pursuant to Section 139-8D (3) of the Nantucket Zoning Bylaws.

Building Design and Aesthetics

The development's design should reflect the historical design and character of Nantucket and be an example of superior exterior and interior design. Proposers are encouraged to use their creativity and experience in building design, massing, site layout, parking, landscaping and in their choice of materials and methods of construction that will minimize maintenance costs and are energy efficient. However, the minimum requirements are that the units be housed in three or more buildings on the Property, that historic colors and materials be used and that the design adheres to the design guidelines set forth in the Historic District Commission (HDC) handbook, "Building with Nantucket in Mind" (see Attachment G). The designs will be subject to review and input of the HDC. The final appearance of the proposed development should be harmonious with existing norms for attached dwellings in the Town of Nantucket. The overall project design will be evaluated as part of the Comparative Evaluation Criteria described in Attachment H.

Preferred amenities to be included in the development and shown on the site design are recreation spaces and equipment designed for multiple age groups, a grilling / picnicking area, bicycle storage, access to the adjacent bike path, and a common garden. The design should also include basement storage for the units.

Energy Efficiency

The Town is seeking proposals that include building and site designs that are mindful of the tenants' energy and utility costs and limit the project's environmental impact. Details regarding sustainable design features should be incorporated into the project description.

Significant energy efficiency incentives have been made available to Nantucket in the past. Proposers are encouraged to reach out to Lauren Sinatra, Energy Coordinator for the Town (lsinatra@nantucket-ma.gov), to learn about current programs they may want to consider incorporating.

Site

The site's locus is shown on the Maps included in Attachment A. It is adjacent to the Town's Public Safety Building and can be described as a generally level and moderately wooded location. This site has Town water and sewer in close proximity. The site is near to designated public transportation stops and is walking distance to markets, restaurants and other small businesses. The subject parcels are located in the Town's Commercial Neighborhood ("CN") District. A copy of Nantucket Zoning Bylaws is attached (see Attachment I).

Utilities:

- Water *Public*
- Wastewater *Public*
- Electric *National Grid*
- Cable *Comcast*

It is an objective of the project that the site retains unique trees, identified by the Town, and maximizes green space. The project is required to meet lighting objectives, parking requirements, include on-street parking with characteristic aisle width and parking place size, and ensure privacy from the surrounding properties.

Project Permitting

It is the Town's preference that the project is permitted as a workforce rental community development pursuant to Section 139-8D of the Town's Zoning Bylaws. The Planning Board must grant a special permit and the Historic District Commission must grant a certificate of appropriateness for the project. Any variances for dimensional requirements would be subject to Zoning Board of Appeals review and approval.

Acquisition Price

The Town is offering to lease the property for a long-term lease (up to 99 years) to the successful proposer, for an initial payment detailed below and at a nominal annual rent of \$1.00/year for the term of the lease; with terms of the lease to ensure the development conforms to the proposal and to ensure the income-restricted housing remains affordable for the term of the lease. In addition funds may be available for pre-development costs upon application by the proposer and approval from the Community Preservation Committee ("CPC") or the Affordable Housing Trust Fund ("AHTF"). It is the successful proposer's responsibility to file all necessary applications with the appropriate agencies in a timely fashion.

Initial Lease Payment

The Town will require an initial lease payment in the amount of \$1,000 per unit to be constructed, not exceeding \$64,000, to cover all Town costs incidental to the acquisition and

disposition of this site. Thereafter, the current lease payments shall be for nominal consideration, as described above.

V. Property Description

The subject Property is shown on the locus maps contained in Attachment A as Lots 83 and 84. For the Town's title to said Property please see the Quitclaim Deed to the Town (in Attachment B and the Order of the Land Court dated September 12, 2012 recorded with Nantucket County Registry of Deeds in Book 1348, Page 248).

The site is relatively flat, moderately covered by brush. It is bordered by residential, small commercial and municipal neighbors. Primary access to the site is anticipated via Road Lot 80 as depicted on the Maps contained in Attachment A.

Pursuant to application to and approvals by the necessary Town boards, a proposed easement over one or more of the adjoining single-family lots could provide alternative access to Ticcoma Way. Direct access to Fairgrounds Road is not allowed because of the MA Endangered Species Act (MESA) zone along this frontage.

Environmental reports for the overall site are located in Attachment J.

VI. Proposal Submission Requirements

1. The Developer and Development Team

The proposal must include a description of the proposed developer, including the project manager, and his/her experience. Proposals must include:

- The name, mailing address, e-mail address, and telephone number of the proposer, the name of the representative authorized to act on his/her behalf, the name and contact information of the contact to which all correspondence should be addressed, and the names and primary responsibilities of each individual on the development team.
- If the proposer is not an individual doing business under his/her own name, a description of the firm and status of the organization (e.g. whether a for profit, not-for-profit or charitable institution) and a description of the proposed ownership entity (e.g., a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdictions in which it is registered to do business. If the proposer is a non-profit, please include a list of the organization's Board of Directors and areas of expertise they represent.
- The nature of the entity to enter into the long-term lease of the Property and the borrower and guarantors of debt, if any.

- Identification of all principals, partners, co-ventures or sub-developers participating in the transaction, and the nature and share of participants' ownership in the project.
- Discussion of whether the developer will also be the property manager and if the developer will not be the property manager, the name of the proposed property management organization.
- Identification of the development team, such as architects, engineers, lawyers, landscape designers, contractor, development consultants, lenders and investors. Background information, including firm resumes and resumes for principals and employees expected to be assigned to the project, shall be provided.
- A summary of first, the developer's and secondly, the development team's experience individually and collectively, with similar projects. Particular attention should be given to demonstrate experience with projects of a similar scale and complexity of site conditions, design and financing, as well as locations similar to Nantucket. Proposer 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, conventional and subsidy financing, construction, marketing/unit absorption and ongoing property management.

The following order should be used when submitting the information for each project identified:

- Project name and location
 - Project type and description
 - Project scope
 - Project(ed) start date
 - Project(ed) completion date
 - Total development costs
 - Sources of financing
 - Total number of units and bedroom sizes
- Narrative on why your experience is relevant to the 6 Fairgrounds Road Nantucket 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 (during the last 10 years), 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, the property management team or any critical member of the project.

- Provision of municipal references for at least three (3) completed projects, with contact names, title and current telephone numbers of those who can provide information to the Town concerning the Proposer's experience with similar projects.
- Proposed project financing, including a Sources and Uses pro forma providing information similar to that required in the Massachusetts One Stop application (see Attachment K), which shall include (a) a proposed pre-development budget, including all projected sources to be used to secure the necessary permits and approvals for the construction and operation of the development; (b) a construction and development budget which includes detailed sources of funds and uses; and (c) 20 year operating pro forma and rent schedule. Describe in detail previous success in securing such funding and what, if any local, state or federal subsidy money will be sought to create affordability and the timeline for securing those sources.
- At least one (1) letter of interest from a recognized financial institution for a loan amount sufficient for the developer to construct and operate the project.
- Completion of disclosures and certificates in Attachments L – "Certificate of Non-Collusion", M – "Tax Compliance Certificate", and N – "Disclosure of Beneficial Interest".

2. 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 bedroom sizes and affordability was determined to ensure project financial feasibility and appropriateness for the marketplace.
- Preliminary site design as detailed in the Conceptual Design Drawings below.
- Discussion of the physical plan and architectural character of the project and the various programmatic and physical elements of the development, including energy savings/ "green" elements of the building and site designs.
- Construction staging plan and discussion of construction impacts, including but not limited to how the project will be managed to limit impact on neighbors, in particular noise and traffic during the construction period.
- Detailed development schedule for all elements of the plan including key milestones, financing and timeframes for occupancy, including DHCD approval process.
- Outline of required land use, environmental, operational and other governmental or regulatory approvals for the necessary permits and noting any permits or waivers that will be required.

3. Conceptual Design Drawings

The proposal must include 11 x 17 plans including:

- Site plan that includes building footprints, parking layout, storm drainage, recreation / play areas, grilling / picnicking area, access to bike path 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 providing outdoor space for residents to utilize for recreation
- Floor plans
- Elevations (exterior building materials should be identified on elevations)
- Typical unit plans
- Dry and temperature controlled basement storage for all units (minimum requirement of 8' X 10' per unit)

4. Management Plan

The proposal must include:

- Description of the proposed rents and the strategy for marketing and lottery processes that will be consistent with DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines.
- The proposal must include a plan for the ongoing management of the project. In addition, if the proposer is including a property manager as part of its team, all relevant information as outlined under 'Developer' above should be included as well as 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. To the extent permitted by law, the initial lottery shall give local preference as described in Section IV, "Affordability" above. Proposals may include a lottery agent as part of the development team. An approved affirmative fair housing marketing/lottery plan shall be required that is consistent with DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines. For the proposal, the proposer shall indicate any other lotteries they have been involved in, their role and the outcomes.

At a minimum the selected proposer and/or their agent shall demonstrate:

- A clear understanding of fair housing requirements/laws.
- A clear understanding of local preference opportunities and requirements, and how the lottery will address these.

- A clear understanding of the applicable state standards used to determine program and unit eligibility – i.e. qualified tenants.
- The ability to establish criteria for tenant selection and a fair and unbiased selection process.
- The ability to maintain all necessary reports and certifications required under state and federal law.

VII. Evaluation Criteria

Minimum Threshold Criteria

Proposals that do not clearly and fully comply with these Minimum Threshold Criteria and are not submitted in complete form by **1:00pm on Wednesday, April 26, 2017** will not be considered:

1. Conformance with all submission requirements
2. A minimum of 5 years' affordable housing development experience for principal members of the development team
3. A minimum of 5 years' experience of property management by the property manager
4. A demonstrated successful track record of developing and managing projects of similar scope
5. Developer availability to commence the permitting and application processes for the project within 90 days of selection; sufficient staff resources and availability to perform required services
6. Submission of required forms at Attachments L, M, N and O:
 - Attachment L – Certificate of Non-collusion;
 - Attachment M – Tax Compliance;
 - Attachment N – Disclosure Statement for Transaction with a Public Agency Concerning Real Property, M.G.L. c. 7C, section 38
 - Attachment O – Acknowledgement of Receipt of Documents
7. The proposed development must provide a proposed affordability mix that will allow all units to be eligible for inclusion in the Town's Subsidized Housing Inventory based upon DHCD's requirements; and a minimum of 25% of the units as affordable at or below 80% of the AMI

Comparative Evaluation Criteria

Projects meeting the Minimum Threshold Criteria will then be judged on the Comparative Evaluation Criteria (see Attachment H). The Town will use the comparative criteria for each subject and which will be rated on a scale of Not Advantageous, Advantageous or Highly Advantageous for each listed subject as set forth on the Comparative Evaluation Criteria.

VIII. Selection Process and Rules for Award

All proposals submitted by the deadline will be opened pursuant to M.G.L. c. 30B, §6(d) and recorded. All information contained in the proposals is public. The Town or its designee(s) (i.e., an evaluation committee) will review and evaluate all proposals that have been received by the submission deadline based on the criteria outlined in the “Comparative Evaluation Criteria.” Evaluation of the proposals will be based on the information provided in the proposer’s submission in accordance with the submission requirements of this RFP and any references, and additional information requested and/or gathered by the Town. The most highly advantageous proposal from the proposer deemed most responsive and responsible, taking into consideration all evaluation criteria set forth in the RFP, will be selected by the Town or its designees. **The Town reserves the right to select the proposal that best meets the needs of the community and that may not be the proposal that achieves the highest score. The Town reserves the right to not make any award if it determines in its sole discretion that it is in the best interest of the Town.**

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

IX. Post Selection

Development Agreement

It is the intent of the Town to enter into a development agreement with the selected proposer within 90 days of selection and a long-term lease of the land with terms to ensure the development conforms to the proposal, and restrictions to require the housing remain affordable for the term of the lease, after certain benchmarks have been met. A Draft Development agreement can be found at Attachment F.

Chapter 30B Real Property Dispositions 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*.

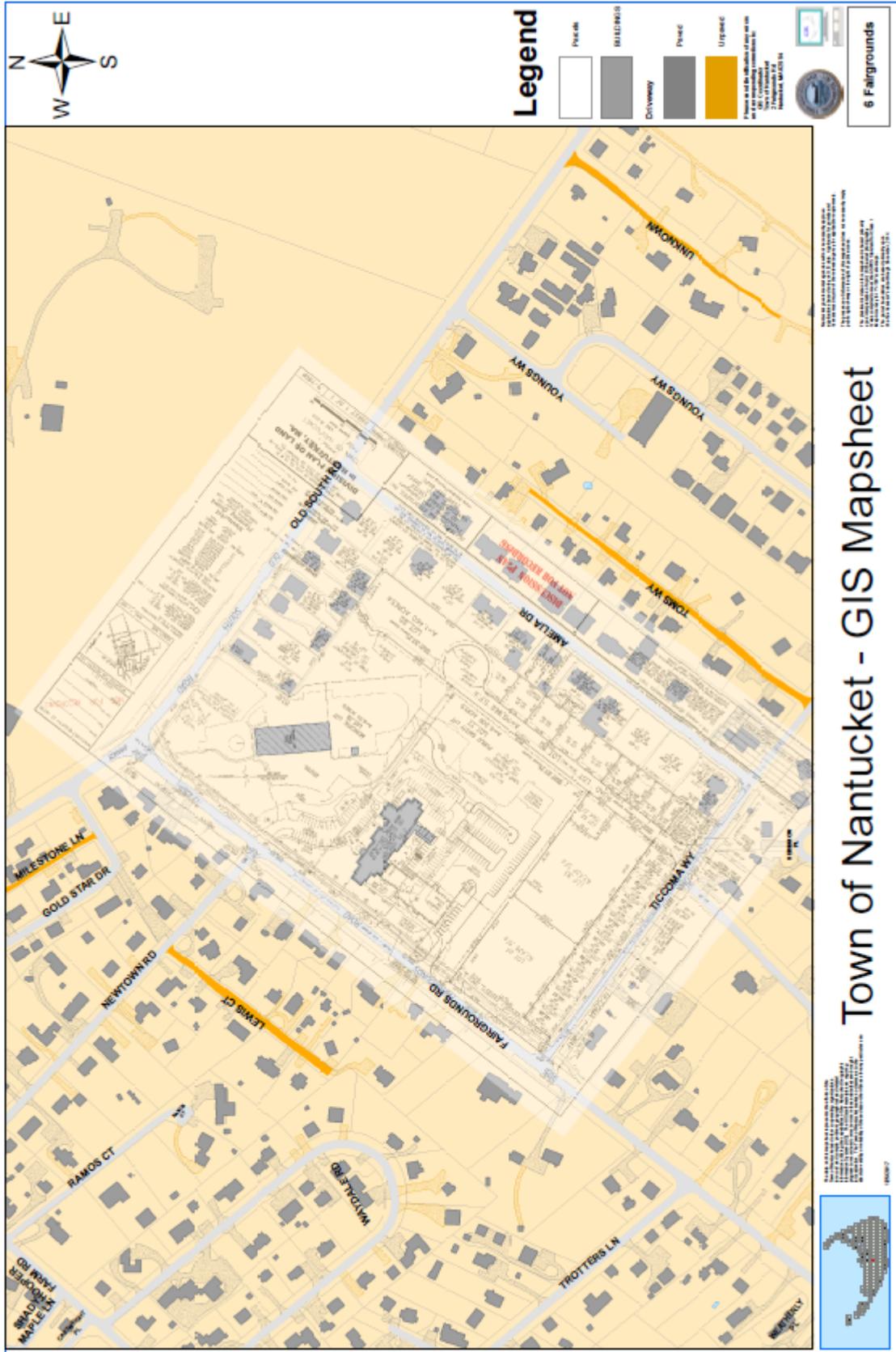
The Town has determined that the public purpose of the project is best met by disposing of the property for less than fair market value; the Town will post a notice in the state’s *Central Register* explaining the reasons for this decision and disclosing the difference between the property value and the price to be received. This notice will be published before the Town enters into any agreement with the developer.

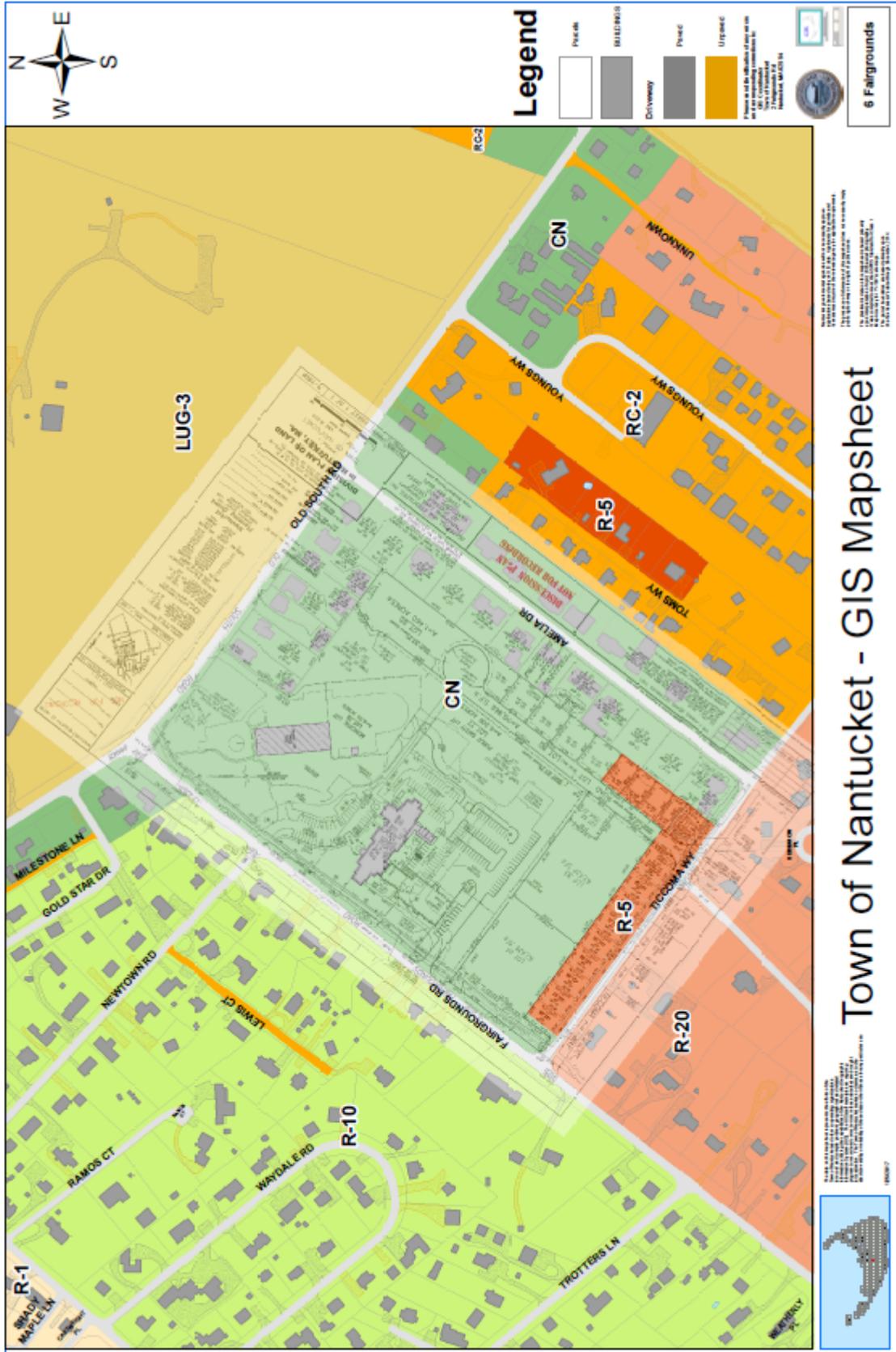
X. Attachments

- A. Maps of the Property and surrounds
- B. Town Meeting Vote & Quitclaim Deed
- C. 2015 Workforce Housing Needs Assessment
- D. 2016 Housing Production Plan
- E. Draft Form of Ground Lease
- F. Draft Form of Land Development Agreement
- G. Building With Nantucket in Mind
- H. Comparative Evaluation Criteria
- I. Nantucket Zoning Bylaws
- J. Environmental Reports
- K. Sections 3 and 4 of Massachusetts One Stop Application

Required Documents:

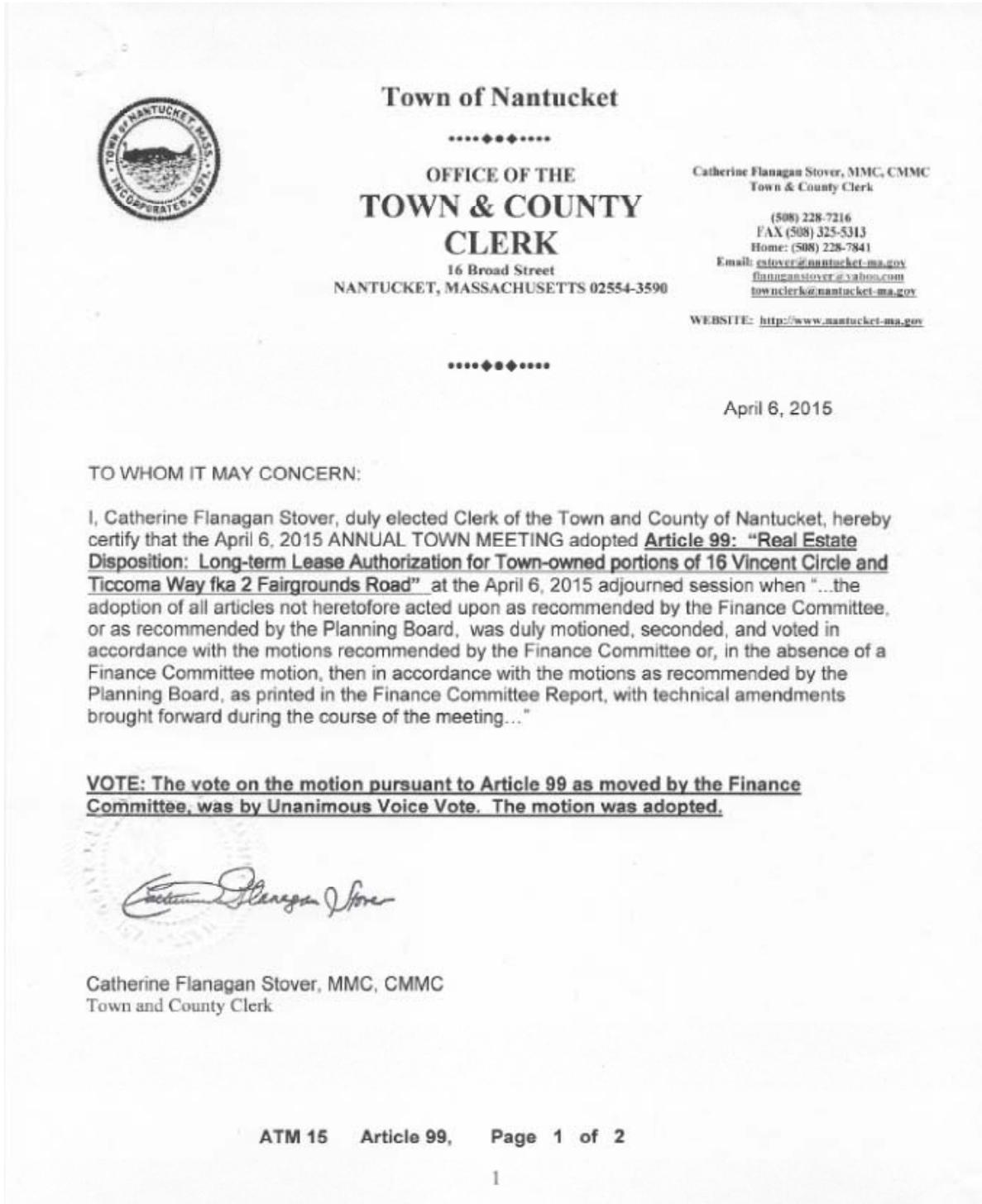
- L. Certificate of Non-Collusion
- M. Tax Compliance Certificate
- N. Disclosure Statement for Transaction with a Public Agency Concerning Real Property
- O. Acknowledgement of Receipt of Documents





ATTACHMENT B
TOWN MEETING VOTE AND QUITCLAIM DEED

2015 ANNUAL TOWN MEETING VOTE (ARTICLE 99)



ARTICLE 99

(Real Estate Disposition: Long-term Lease Authorization for Town-owned portions of 16 Vincent Circle and Ticcoma Way fka 2 Fairgrounds Road)

To see if the Town will vote to transfer all or any portion of the Town-owned property located at 16 Vincent Circle (shown on Assessors Map 67, Parcel 710) not including Lots A, B and C situated off Ticcoma Way and shown on a plan entitled "Subdivision Concept Plan Prepared for the N.P. & E.D.C.," dated September 5, 2013, prepared by Blackwell & Associates, Inc. as voted in accordance with Article 101, 2014 ATM, and 2, 4, 6, 8, 10, 12, 14, and 16 Ticcoma Way (shown on Assessors Map 67, Parcels 700, 701, 702, 703, 704, 705, 706 and 707), from the Board of Selectmen for general municipal purposes to the Board of Selectmen for the purposes of conveyance or lease, and further to authorize the Board of Selectmen to use or convey, lease or otherwise dispose of all or any portions of the property for affordable housing purposes or municipal sponsored housing of any kind including but not limited to housing for seasonal and / or permanent employees of the Town or County of Nantucket, and for roadway, access, and utility purposes to serve said housing and any surrounding property including but not limited to 2 and 4 Fairgrounds Road, subject to Chapter 30B of the Massachusetts General Laws.

Or to take any other action related thereto.

(Board of Selectmen)

FINANCE COMMITTEE MOTION: Moved that the Board of Selectmen is authorized to transfer all or any portion of the Town-owned property located at 16 Vincent Circle (shown on Assessors Map 67, Parcel 710) not including Lots A, B and C situated off Ticcoma Way and shown on a plan entitled "Subdivision Concept Plan Prepared for the N.P. & E.D.C.," dated September 5, 2013, prepared by Blackwell & Associates, Inc. as voted in accordance with Article 101, 2014 ATM, and 2, 4, 6, 8, 10, 12, 14, and 16 Ticcoma Way (shown on Assessors Map 67, Parcels 700, 701, 702, 703, 704, 705, 706 and 707), from the Board of Selectmen for general municipal purposes to the Board of Selectmen for the purposes of conveyance or lease, and further that the Board of Selectmen is authorized to use or convey, lease or otherwise dispose of all or any portions of the property for affordable housing purposes or municipal sponsored housing of any kind including but not limited to housing for seasonal and/or permanent employees of the Town or County of Nantucket, and for roadway, access, and utility purposes to serve said housing and any surrounding property including but not limited to 2 and 4 Fairgrounds Road, subject to Chapter 30B of the Massachusetts General Laws.

BOARD OF SELECTMEN COMMENT: The Board of Selectmen supports the Finance Committee Motion.

Quantum of vote required for passage of the motion is 2/3

ARTICLE 99

(Real Estate Disposition: Long-term Lease Authorization for Town-owned portions of 16 Vincent Circle and Ticcoma Way fka 2 Fairgrounds Road)

To see if the Town will vote to transfer all or any portion of the Town-owned property located at 16 Vincent Circle (shown on Assessors Map 67, Parcel 710) not including Lots A, B and C situated off Ticcoma Way and shown on a plan entitled "Subdivision Concept Plan Prepared for the N.P. & E.D.C.," dated September 5, 2013, prepared by Blackwell & Associates, Inc. as voted in accordance with Article 101, 2014 ATM, and 2, 4, 6, 8, 10, 12, 14, and 16 Ticcoma Way (shown on Assessors Map 67, Parcels 700, 701, 702, 703, 704, 705, 706 and 707), from the Board of Selectmen for general municipal purposes to the Board of Selectmen for the purposes of conveyance or lease, and further to authorize the Board of Selectmen to use or convey, lease or otherwise dispose of all or any portions of the property for affordable housing purposes or municipal sponsored housing of any kind including but not limited to housing for seasonal and / or permanent employees of the Town or County of Nantucket, and for roadway, access, and utility purposes to serve said housing and any surrounding property including but not limited to 2 and 4 Fairgrounds Road, subject to Chapter 30B of the Massachusetts General Laws.

Or to take any other action related thereto.

(Board of Selectmen)

FINANCE COMMITTEE MOTION: Moved that the Board of Selectmen is authorized to transfer all or any portion of the Town-owned property located at 16 Vincent Circle (shown on Assessors Map 67, Parcel 710) not including Lots A, B and C situated off Ticcoma Way and shown on a plan entitled "Subdivision Concept Plan Prepared for the N.P. & E.D.C.," dated September 5, 2013, prepared by Blackwell & Associates, Inc. as voted in accordance with Article 101, 2014 ATM, and 2, 4, 6, 8, 10, 12, 14, and 16 Ticcoma Way (shown on Assessors Map 67, Parcels 700, 701, 702, 703, 704, 705, 706 and 707), from the Board of Selectmen for general municipal purposes to the Board of Selectmen for the purposes of conveyance or lease, and further that the Board of Selectmen is authorized to use or convey, lease or otherwise dispose of all or any portions of the property for affordable housing purposes or municipal sponsored housing of any kind including but not limited to housing for seasonal and/or permanent employees of the Town or County of Nantucket, and for roadway, access, and utility purposes to serve said housing and any surrounding property including but not limited to 2 and 4 Fairgrounds Road, subject to Chapter 30B of the Massachusetts General Laws.

BOARD OF SELECTMEN COMMENT: The Board of Selectmen supports the Finance Committee Motion.

Quantum of vote required for passage of the motion is 2/3

000237

108365

For Grantor's title, see Certificate of Title No. 7250 filed with the Nantucket County Registry District of the Land Court.

EXECUTED as an instrument under seal this 30th day of July, 2004.

NANTUCKET ELECTRIC COMPANY

By: *Cheryl A. LaFleur*
Cheryl A. LaFleur, President

By: *[Signature]*
Robert G. Seega, Assistant Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

County of Worcester, ss:

On this 28th day of July, 2004, before me, the undersigned notary public, personally appeared Cheryl A. LaFleur as President, ~~Robert G. Seega, Assistant Treasurer~~ for Nantucket Electric Company, a corporation, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

(AFFIX SEAL)

Celia B. O'Brien
My Commission Expires _____



CELIA B. O'BRIEN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 20, 2008



LAND COURT, BOSTON. The land herein described will be shown on our approved plan to follow as

JUL 28 2004

Plan 37902^B Lot 51-65
(EXAMINED AS DESCRIPTION ONLY)
George T. Capelianis, Engineer

FLP
Subject to prior registration
of order of court
allowing plan

NANTUCKET LAND BANK CERTIFICATE	
<input type="checkbox"/> Paid \$	
<input checked="" type="checkbox"/> Exempt <u>A</u>	
<input type="checkbox"/> Non-applicable	
No. <u>24643</u>	Date <u>7/30/04</u>
Authorization <u>[Signature]</u>	

EXHIBIT A

1. Statement of Conditions of Subdivision Approval by the Grantor dated as of October 16, 2003, filed with the Nantucket County Registry District of the Land Court as Document Number 108295.
2. Covenant by the Grantor dated October 16, 2003, filed with the Nantucket County Registry District of the Land Court as Document Number 108296.
3. Declaration of Restrictions and Easements by the Grantor dated as of October 16, 2003, filed with the Nantucket County Registry District of the Land Court as Document Number 108299.
4. Grant of Right of Enforcement of Restrictions by the Grantor to the Town of Nantucket, acting by and through its Planning Board, dated as of October 16, 2003, filed with the Nantucket County Registry District of the Land Court as Document Number 108300.
5. Instrument of Trust of Pine Lands Commercial Owners Association Trust dated as of October 16, 2003 ("Instrument of Trust (Commercial)"), filed with the Nantucket County Registry District of the Land Court as Document Number 108297.
6. Facilities Maintenance and Endowment Agreement (Commercial) dated as of October 16, 2003, by and between the Grantor; David Fredericks, Arthur I. Reade, Jr., and Alan J. Rabinowitz, as Trustees of Pine Lands Commercial Owners Association Trust under Instrument of Trust dated as of October 16, 2003; and the Inhabitants of the Town of Nantucket, acting by and through the Nantucket Planning Board, filed with the Nantucket County Registry District of the Land Court as Document Number 108301.
7. Instrument of Trust of Pine Lands Residential Owners Association Trust dated as of October 16, 2003 ("Instrument of Trust (Residential)"), filed with the Nantucket County Registry District of the Land Court as Document Number 108298.
8. Facilities Maintenance and Endowment Agreement (Residential) dated as of October 16, 2003, by and between the Grantor; David Fredericks, Arthur I. Reade, Jr., and Alan J. Rabinowitz, as Trustees of Pine Lands Residential Owners Association Trust under Instrument of Trust dated as of October 16, 2003; and the Inhabitants of the Town of Nantucket, acting by and through the Nantucket Planning Board, filed with the Nantucket County Registry District of the Land Court as Document Number 108302.
9. Order of Taking by the County of Nantucket filed with the Nantucket County Registry District of the Land Court as Document Number 16561.
10. Order of Taking by the County of Nantucket filed with the Nantucket County Registry District of the Land Court as Document Number 31649.

000239

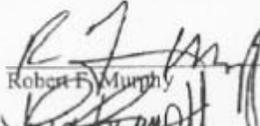
108365

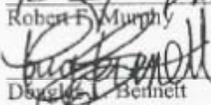
11. Right of Way Easement in favor of New England Telephone and Telegraph Co. filed with the Nantucket County Registry District of the Land Court as Document Number 34862.
12. Layout and Order of Taking by the County of Nantucket dated July 21, 2003, and filed with the Nantucket County Registry District of the Land Court as Document Number 103011.
13. Grant of Bicycle Path Easement from the Grantor to the County of Nantucket dated July 29, 2003, and filed with the Nantucket County Registry District of the Land Court as Document Number 103789.

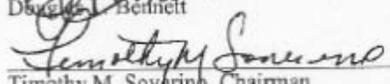
ACCEPTANCE BY THE BOARD OF SELECTMEN

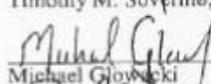
We, the undersigned, being a majority of the Board of Selectmen of the Town of Nantucket, Massachusetts, pursuant to Article 77 of the 2004 Annual Town Meeting as ratified at the Special Election held June 1, 2004 (see certified copies attached), do hereby accept the within conveyance from Nantucket Electric Company to the Town of Nantucket for general municipal purposes.

TOWN OF NANTUCKET
BOARD OF SELECTMEN


Robert F. Murphy


Douglas Bernett


Timothy M. Soverino, Chairman


Michael Glowacki

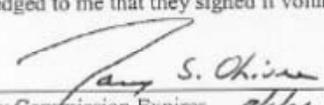

Bruce L. Watts

THE COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss:

On this 21st day of July, 2004, before me, the undersigned notary public, personally appeared Robert F. Murphy, Douglas Bernett, Timothy Soverino, Michael Glowacki, Bruce Watts, as Selectmen for the Town of Nantucket, a municipality, who are personally known to me, and acknowledged to me that they signed it voluntarily for its stated purpose.

(AFFIX SEAL)


My Commission Expires 9/1/06
Nancy S. Chiver

000241



Town of Nantucket

108365

OFFICE OF THE TOWN CLERK

16 Broad Street
NANTUCKET, MASSACHUSETTS 02554-3590

Catherine Flanagan Stover, CMC, CMMC
Town Clerk

(508) 228-7217
FAX (508) 325-5313
Home: (508) 228-7841
Email: twnclerk@nantucket.net

2004 Special Town Election results were announced as follows:

Ballot Question One – Capital Expenditures:

YES	546	ballots
NO	271	ballots
Blanks:	5	ballots

Ballot Question Two – Sewer Improvements:

YES	534	ballots
NO	282	ballots
Blanks:	6	ballots

Ballot Question Three – 2 Fairgrounds Road:

YES	549	ballots
NO	282	ballots
Blanks:	4	ballots

TOTAL BALLOTS CAST:

Registered Voters at the close of registration:	7520
Persons casting votes:	822
Percent of Voters casting ballots:	11 %

Catherine Flanagan Stover, CMC, CMMC
Town Clerk

June 1, 2004 Special Town Election

000242

108365



Town of Nantucket

OFFICE OF THE
TOWN CLERK

16 Broad Street
NANTUCKET, MASSACHUSETTS 02554-3590

Catherine Flanagan Stover, CMC, CMMC
Town Clerk
(508) 228-7217
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April 12 2004

TO WHOM IT MAY CONCERN:

I, Catherine Flanagan Stover, duly elected Clerk of the Town of Nantucket, hereby certify that the April 12, 2004 ANNUAL TOWN MEETING adopted **Article 77: "Real Estate Acquisition: 2 Fairgrounds Road"** at the April 15, 2004 adjourned session when "...the adoption of all articles not heretofore acted upon as recommended by the Finance Committee, or as recommended by the Planning Board" was duly motioned and seconded.

TECHNICAL CORRECTION VIA THE MODERATOR:

In the last line of the motion, add a subsection "k", so that the last line reads "Proposition 2½ so-called (G.L. c. 59, s. 21C(k)).

VOTE: The vote on the motion pursuant to Article 77 as recommended by the Finance Committee, was by Unanimous Voice Vote. The motion was adopted.

Catherine Flanagan Stover, CMC, CMMC
Town Clerk

ARTICLE 77

(Real Estate Acquisition: 2 Fairgrounds Road)

To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise, the property located at 2 Fairgrounds Road, also described as Assessor's Map 67, Parcel 40, including the buildings thereon, for general municipal purposes; further to raise and appropriate, transfer from available funds, or borrow pursuant to all applicable statutes, a sum for the purpose of acquiring said land.

And, to take such other actions as may be appropriate with respect thereto.

(Board of Selectmen)

FINANCE COMMITTEE MOTION: Moved that the Board of Selectmen is hereby authorized to acquire by purchase, gift, eminent domain or otherwise, the property located at 2 Fairgrounds Road, also described as Assessor's Map 67, Parcel 40, including the buildings thereon, for general municipal purposes; and, that the Treasurer of the Town, with the approval of the Board of Selectmen, is authorized to borrow Fifteen Million Five Hundred Thousand Dollars (\$15,500,000) pursuant to any applicable statute, contingent upon the passage by ballot of a referendum question exempting the principal so borrowed and interest thereon from the limitations of Proposition 2½ so-called (G.L. c. 59, s. 21C).

000244

108365

NANTUCKET ELECTRIC COMPANY

I, Gregory A. Hale, do hereby certify:

1. That I am Clerk of Nantucket Electric Company;
2. That the following is a true and correct copy of Article VII of the By-Laws of said Company:

ARTICLE VII

EXECUTION OF PAPERS

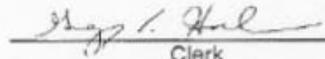
Except as the board of directors may generally or in particular cases authorize the execution thereof in some other manner, all deeds, leases, transfers, contracts, bonds, notes, checks, drafts and other obligations made, accepted, endorsed or released by the corporation, shall be signed by any officer of the corporation.

3. That the following officers have been duly elected or appointed, and now hold the positions in said Company as indicated opposite their names:

Cheryl A. LaFleur - President
David Fredericks - Vice President
Robert G. Seega - Assistant Treasurer

4. That the Board of Directors has passed no specific resolution altering the application of said Article VII to the sale of 2 Fairgrounds Road, Nantucket, Massachusetts. Therefore, said officers are authorized to execute the deed from Nantucket Electric Company to the Town of Nantucket.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Clerk of Nantucket Electric Company; and have caused its corporate seal to be hereto affixed this 30th day of July, 2004.


Clerk

Document No. 108365

Document No. 108365

DEED & Assignment

Nantucket Registry District

JUL 30 2004

RECEIVED FOR REGISTRATION

10 O'CLOCK 35^m A M

NOTED ON CERTIFICATE NO. 7250

IN REGISTRATION BOOK PAGE

TRANSFER CERTIFICATE OF TITLE ISSUED

AND TRANSCRIBED INTO

REGISTRATION BOOK PAGE

BEING CERTIFICATE NO. 21348

Attest: *Jeanne D. Kelley*

Assistant Recorder

000235

108365

ATTACHMENT C
2015 WORKFORCE HOUSING NEEDS ASSESSMENT

THE NANTUCKET WORKFORCE HOUSING NEEDS ASSESSMENT (APRIL 2015) CAN BE FOUND ON THE TOWN OF NANTUCKET'S WEBSITE AT THE FOLLOWING ADDRESS:

[HTTP://WWW.NANTUCKET-MA.GOV/DOCUMENTCENTER/VIEW/10044](http://www.nantucket-ma.gov/documentcenter/view/10044)

**ATTACHMENT D
NANTUCKET HOUSING PRODUCTION PLAN**

**THE NANTUCKET CHAPTER 40B HOUSING PRODUCTION PLAN (JULY 2016) CAN BE FOUND ON
THE TOWN OF NANTUCKET'S WEBSITE AT THE FOLLOWING ADDRESS:**

[HTTP://WWW.NANTUCKET-MA.GOV/DOCUMENTCENTER/VIEW/12794](http://www.nantucket-ma.gov/documentcenter/view/12794)

ATTACHMENT E
DRAFT FORM OF GROUND LEASE

GROUND LEASE

This Ground Lease (this "Lease") is entered into on this _____ day of _____, 201____ (the "Commencement Date"), by and between the Town of Nantucket, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, having an address of Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554 ("Town" or "Landlord"), and _____, with its principal place of business at _____ ("Tenant").

Recitals

WHEREAS, the Town is the owner of a parcel of land located at 6 Fairgrounds Road, Nantucket, shown as Lots 83 and 84 on a plan of land entitled "Division Plan of Land in Nantucket, MA., prepared for Town of Nantucket," dated June 3, 2016, prepared by Blackwell and Associates, Inc., recorded with Nantucket County Registry of Deeds as Plan No 2016-58, containing a total of approximately 3 acres and being a portion of the premises owned by the Town and described in Certificate of Title No. 21348 filed with Nantucket Registry District of the Land Court and withdrawn from registration by Order of the Land Court dated September 20, 2012, recorded with Nantucket County Registry of Deeds in Book 1348, Page 248, and more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property");

WHEREAS, on _____, 2017, the Town issued a Request for Proposals (the "RFP"), a copy of which is attached hereto as Exhibit B and incorporated herein, soliciting proposals to lease and develop the Property for a workforce affordable rental housing development;

WHEREAS, Tenant submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit C and incorporated herein, agreeing to develop, construct, operate, and maintain on the Property of _____ dwelling units for rent to _____ income households, as specified in greater detail below;

WHEREAS, the Town has accepted the Proposal;

WHEREAS, the Town and the Tenant entered into a Land Development Agreement dated _____, 201____ (the "LDA"), a copy of which is attached hereto as Exhibit D and incorporated herein, 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, pursuant to the LDA, the Tenant has obtained approval of a Special Permit from the Nantucket Planning Board pursuant to the Town of Nantucket Zoning Bylaws pursuant to which the Tenant will construct _____ residential dwellings and will rent the dwellings to _____ income households (the "Project"), all as set forth in the Special Permit;

WHEREAS, pursuant to the LDA, the Developer has obtained the necessary permits and obtained the necessary financing to undertake the Project, and the other contingencies stated therein have been satisfied; and

WHEREAS, the Town and the Tenant wish to enter into this Lease to set forth the terms and conditions under which Tenant will develop, construct and operate the Project in accordance with the RFP, the Proposal, the Agreement, the Restriction (defined below), 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 I – PREMISES

1.1 Premises. Landlord does hereby demise, lease and let unto Tenant and Tenant does hereby take and lease from Landlord the Property and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Property. The Property, together with all easements and appurtenances referred to above, together with all improvements now or hereafter constructed on the Property are hereinafter referred to collectively as the "Premises."

1.2 Landlord's Reserved Rights. Landlord reserves the right to access and enter the Premises, upon reasonable prior notice to Tenant (except in the event of emergency), for the purposes of inspecting the Premises, complying with all applicable laws, rules, regulations, by-laws, court decisions and orders and requirements of all public authorities, and for the purpose of exercising any right reserved to Landlord by this Lease. Landlord shall use reasonable efforts to minimize interference with or disruption of the use of the Premises by Tenant and its agents, employees, contractors, lessees and other occupants of the Premises.

1.3 Condition of Premises. The Premises are delivered to Tenant, and Tenant accepts the Premises, in their present condition, "AS IS," it being agreed that Tenant has had an opportunity to examine and inspect the Premises, and accepts the Premises without any representation or warranty, express or implied, in fact or by law, on the part of Landlord and without recourse to Landlord. Landlord has made no representations or warranties of any kind with respect thereto and Landlord shall have no obligation to do any work on, or make any improvements to or with respect to the Premises or the condition thereof, except as set forth in Section 13.6.

ARTICLE II – TERM

2.1 Term of Lease. Subject to the terms, provisions, covenants, and conditions of this Lease, Tenant and its successors and assigns shall have, hold, possess, and enjoy the Premises for a term of ninety-nine (99) years, which shall begin on the Commencement Date and continue for a period of ninety-nine (99) years, unless sooner terminated as provided below (the "Term"). A "Lease Year" shall be each successive twelve (12) month period commencing either (i) on the Commencement Date, if the Commencement Date is the first day of a month, or else (ii) the first day of the first full month following the Commencement Date. If the Commencement Date is

other than the first day of a month, then the Term of the Lease shall be extended by the number of days between the Commencement Date and the first day of the next full month. Any such partial month at the beginning of the Term shall be included in the first Lease Year, with the result that the first Lease Year may in fact include twelve (12) consecutive months, plus a partial month, and that the expiration of this Lease shall occur on the last day of a month. The parties acknowledge and agree that notwithstanding the foregoing, the parties shall be bound by all the provisions of this Lease as of the Commencement Date and the Tenant shall have the right and the obligation to develop the Premises as set forth herein.

2.2 Early Termination. Tenant agrees that if construction of the Improvements has not commenced by the Construction Start Date (defined below), or, if started, has not been completed by the Final Completion Date (both as defined in Section 5.1 below), Landlord may elect to terminate this Lease upon ninety (90) days' written notice to Tenant; provided, however, that if the Improvements are commenced or completed, as the case may be, within such ninety (90)-day period, such termination notice shall be null and void and this Lease shall continue in full force and effect.

ARTICLE III – RENT

3.1 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, impositions or deductions of any kind charged, assessed or imposed on or against the Premises. Except as stated otherwise, Landlord 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.

3.2 Base Rent. Tenant agrees to pay Landlord base rent ("Base Rent") in the amount of _____ Dollars (\$_____) per Lease Year during the Term of this Lease, which shall be paid in full, in advance, on the Commencement Date and on each anniversary thereof. In addition to the payment of the Base Rent, Tenant has made an initial lease payment of \$_____ as of the Commencement Date.

3.3 Additional Rent. In addition, Tenant shall, from the Commencement Date, bear, pay, and discharge any and all general and special assessments, duties, fees or charges, water rates, sewer betterment charges and sewer usage charges, and all other Impositions (defined below) during the Term hereof, in relation to the Premises, the Improvements made thereon, and/or Tenant's use and operation of the Premises, or as Tenant is required to pay under the Project Documents (the "Additional Rent"). The Base Rent and the Additional Rent are referred to, together, as the "Rent." Rent shall be paid without counterclaim, notice, demand, abatement or offset at Landlord's address set forth above.

3.4 Late Fee. Any payment of Rent due hereunder not paid when due shall bear interest at the Default Rate (defined below) from the due date until paid in full.

ARTICLE IV - TAXES, ASSESSMENTS, AND UTILITIES

4.1 Impositions. Tenant shall pay as Additional Rent any and all taxes, rates, charges, license fees, municipal liens, levies, excises, fees or other charges, whether general or special, or ordinary or extraordinary, of every kind and nature, including governmental or other impositions, charged, levied, assessed, or imposed, whether by federal, state, local, or any other public authority, during the Term hereof, in relation to the Premises, the Improvements made thereon, Tenant's personal property, and/ or Tenant's use and operation of the Premises, whether such charges are made directly to Tenant or through or in the name of Landlord. All such charges shall be referred to herein as "Impositions." Tenant shall pay all of the Impositions promptly, before any fine, penalty, interest, or cost may be added for nonpayment and shall furnish to Landlord, on request, official receipts or other satisfactory proof evidencing such payment.

4.2 Challenges, Protests. Nothing contained in this Lease shall prevent or prohibit Tenant from protesting the validity or amount of any Imposition against the Premises or the Improvements or from taking such actions as may be required or permitted by law for enforcing and effecting a protest, provided that Tenant shall not withhold payment of any Imposition while any such contest or objection is pending.

4.3 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.

4.4 Installation of Utilities. Tenant acknowledges that Landlord shall have no obligation to provide any facilities, utilities, or services of any kind to the Premises whatsoever during the Term of this Lease, such as, but not limited to, water, heat, gas, hot water, electricity, light and power. Landlord makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Premises. Tenant shall be responsible, at its sole cost and expense, for installing and providing utilities to serve the Premises. Without limiting the foregoing, Tenant shall be responsible for connecting public water and public sewer to the Premises in compliance with all Town, and state licenses, permits and regulations. The Town agrees to cooperate with Tenant, subject to Town Meeting authorization, in granting licenses or easements to utility public utility companies and other appropriate entities over, under and through the Premises as may be required by such companies and entities to serve the Premises, including, without limitation, easements required for electric, water, sanitary sewer, storm water drainage, and telephone and telecommunications service, which licenses and easements shall, at Landlord's option, terminate upon the expiration or earlier termination of this Lease. Tenant shall have the right, at its sole expense, to connect to all common utilities and to enter into agreements with utility and similar service companies and providers as are required in order to service the Premises, and may do so in its name. Tenant covenants and agrees to hold Landlord harmless from any costs, fees and/or charges incurred in connection herewith, and to pay on demand any and all costs incurred by Landlord for utilities and similar services with respect to the Premises.

4.5 Utility Charges. Tenant shall pay or shall cause to be paid, as Additional Rent, directly to the utility provider, all charges for water, electricity, telephone, gas, sewer and other services furnished to or used at 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 Landlord (“Utility Charges”).

ARTICLE 5 – TENANT IMPROVEMENTS

5.1 Construction of Building(s): Tenant shall develop and construct on the Premises _____ (___) units of affordable rental housing (such units, and any additional units and other improvements constructed on the Premises, are referred to as the “Improvements”). Tenant shall commence work on the Improvements as soon as reasonably practicable following the Commencement Date, but no later than _____ (___) days after this Lease is executed by the parties (as such time may be extended from time to time by Landlord, the “Construction Start Date”), which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Approved Plans (as defined in Section 5.3 below). For purposes of this Lease, construction of the 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 Improvements, and “Final Completion” of the Improvements will be deemed to have occurred upon the issuance of a permanent certificate of occupancy for the Improvements. The Final Completion of the Improvements shall occur by _____ (as such time may be extended from time to time by Landlord, the “Final Completion Date”). Landlord, at its sole option, may extend these deadlines if Landlord determines that Tenant has proceeded diligently in its performance, and Landlord shall reasonably extend the deadlines for events of Force Majeure (defined below). If Tenant, despite its diligent and good faith efforts, fails to commence construction by the Construction Start Date and/or to complete construction of the Improvements by the Final Construction Date, as may have been extended as provided above, this Lease may be terminated by Landlord by giving Tenant at least _____ (___) days prior written notice, whereupon all obligations under this Lease shall terminate, except those that are identified to survive the expiration or termination of this Lease.

5.2 Force Majeure. If the commencement or the completion of the Improvements is prevented or delayed beyond the Construction Start Date or the Final Completion Date, respectively, because of strikes, lockouts, labor troubles, inability to procure materials, power failures, riots, insurrection, war, appeals or litigation relating to any permits or licenses necessary to construct and use the Improvements for the Permitted Uses (defined below), or other causes beyond Tenant’s reasonable control (collectively, “Force Majeure”), then Landlord shall extend the Construction Start Date or the Final Completion Date, as the case may be, for an equivalent period, providing the foregoing shall not apply to inability of the Tenant to obtain and retain financing necessary to construct the Initial Improvements or to Tenant’s financial inability to satisfy the monetary obligations of Tenant contained in this Lease.

5.3 Approved Plans. Tenant shall, at Tenant's sole expense, prepare plans and

specifications for the construction of the Improvements on the Premises and for any work done or improvements made on or to the Premises, and show in detail the location, layout and size of the units, the design of the building(s), the landscaping, and all other Improvements to be constructed on the Premises. The plans and specifications shall be submitted to Landlord for the Landlord's approval (the "Approved Plans") before the commencement of any work on the Premises. Landlord shall not withhold approval unreasonably, and in the event of disapproval, Landlord shall give to Tenant an itemized statement of reasons for disapproval within sixty (60) days after the plans and specifications are submitted to Landlord. Tenant 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 Landlord for approval pursuant to this Section 5.3. Landlord and Tenant agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such item and/or requested modifications by the other. If no response is received from Landlord within said sixty (60) day period, the plans and specifications shall be deemed approved by Landlord.

5.4 Alterations, Improvements, and Changes Permitted. Tenant and its successors and assigns shall have the right to make such alterations, improvements, and changes to any building that may from time to time be on the Premises as Tenant may deem necessary, provided that Tenant shall not deviate materially from the Approved Plans without obtaining Landlord's prior written consent, which shall not be unreasonably withheld. The parties shall follow the submission, response, and resubmission process set forth in Section 5.3 above.

5.5 Required Permits. (a) Tenant shall obtain all permits, approvals and licenses from governmental authorities ("Required Permits") required for construction, use and operation of the Improvements and any other alterations, removals, installations, additions, changes, replacements or other improvements to the Premises (collectively with the Improvements, "Tenant Work"), and shall, upon written request, provide Landlord with a copy of each. Upon full or partial completion of the Improvements and prior to occupying any part of the Premises for any purpose other than performing the Improvements, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the Required Permits such evidence of approval ("Required Approval") as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses. Tenant may contest, in good faith and on the same terms and conditions as provided in Section 9.4, the validity or applicability of any Legal Requirement (as defined in Section 9.3 below) which is the basis for any Required Permit or Required Approval.

5.6 Cooperation. Landlord agrees to use reasonable efforts to assist Tenant in obtaining any Required Permit or Required Approval with respect to any construction or other work to be performed on the Premises, as Tenant may from time to time reasonably request, at Tenant's sole cost, but Tenant acknowledges that Landlord 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 that fees will be waived or reduced.

5.7 Ownership. During the Term, all Improvements shall belong to and be vested in Tenant, and Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for income tax purposes. Upon the expiration or earlier termination of this Lease, title to

all Improvements, shall immediately and automatically vest in Landlord and shall be surrendered at that time in accordance with Article 16 below.

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

5.9 Manner of Construction; Cost of Improvements. Tenant shall construct all Tenant Work in a good and workmanlike manner, in compliance with Legal Requirements and good engineering and construction practices. The Improvements shall be constructed in material compliance with the Approved 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. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated or developed area. Tenant shall pay (or cause to be paid) all costs and expenses associated with any Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold Landlord Parties (as defined in Section 8.13 below) harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) (collectively, "Claims") attributable to the performance of any Tenant Work.

5.10 Tenant's Responsibility to Discharge Liens. (a) 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 by, through or under Tenant, Tenant, within sixty (60) days after notice of the filing thereof, shall 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, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, together with interest at the prime rate of interest reported from time to time in the Wall Street Journal or any successor publication plus two (2) percentage points (the "Default Rate") from the respective dates of Landlord's making of the payment or incurring of the cost and expense until paid in full, shall constitute Additional Rent under this Lease and shall be paid by Tenant to Landlord on demand.

(b) Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of any mechanic's, laborer's or materialman's lien, and may defer the discharge of record thereof, provided that:

(i) Tenant shall provide Landlord with security reasonably satisfactory to Landlord or shall bond over to assure payment of contested items;

(ii) Tenant shall immediately pay or shall bond over such contested item or items if the protection of the Premises or of Landlord's interest therein from any lien or claim shall, in the reasonable judgment of Landlord, require such payment;

(iii) Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord. Landlord shall not be subjected to any liability for the payment of any loss, costs or expenses in connection with any such proceedings, and Tenant shall defend, indemnify and save Landlord Parties harmless from and against any such loss, costs and expenses; and

(iv) Notwithstanding the provisions of subsection (iii) above, Landlord shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Town of Nantucket or any agency, authority, branch, authority, division, office or subdivision of or for the Town of Nantucket, nor shall Landlord be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by Landlord nor to take any position inconsistent with a position previously taken and made public by Landlord.

Subject to the foregoing, and without cost to it, Landlord shall promptly execute and deliver any reasonable documents which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

5.11 Performance and Payment Bonds: Prior to the commencement of the construction of the Improvements, Tenant shall provide Landlord with copies of a performance and labor and materials payment bond provided by Tenant's contractor, in the amount of 100% of the value of the Improvements to be done by Tenant under the terms of this Lease, ensuring the completion of the Improvements and payment for labor and materials in the form customarily used to ensure subdivision completion, which bond shall name Tenant, Landlord and Permitted Institutional Mortgagees (as defined below) as Obligees under said bonds (collectively, the "Bond"). In the event the Improvements as required under this Lease are not completed within the time set forth in Section 5.1 above (including any extensions thereof under Section 5.2 or as otherwise agreed upon by the parties), or if the Improvements are not completed substantially in accordance with the Approved Plans, subject to the rights of the Permitted Institutional Mortgagees, the Landlord shall have the right to make a claim under the Performance Bond to complete the Improvements in accordance with this Lease.

5.12 Inspection of Improvements. Landlord'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 Improvements, the Town shall have the right to inspect the work to determine conformity with the Approved Plans, and may direct Tenant to perform such additional work as may be necessary to conform to said plans and specifications.

ARTICLE 6 - USES AND AFFORDABLE HOUSING RESTRICTION

6.1 Permitted Uses. The Premises and the Improvements shall be used exclusively for purposes of affordable rental housing and uses which are ancillary thereto (the “Permitted Uses”). Tenant shall use the Premises for the purpose of constructing, developing, operating and maintaining _____ (__) dwelling units built in accordance with the Project Documents (such _____ (__) dwelling units, and any additional units constructed on the Premises, are referred to as the “Units”), _____ percent (___%) of which shall be leased to individuals and households with an annual income at or below ____ percent (___%) of the area median income of Nantucket County that includes the Town of Nantucket, as such areas and incomes are determined by the United States Department of Housing and Urban Development (“HUD”), adjusted for household size, owning assets not in excess of the limit set forth in guidelines published by DHCD, as amended from time to time (a “Qualifying Household”). It is intended that all Units shall qualify for inclusion in the Subsidized Housing Inventory for the Town of Nantucket maintained by the DHCD and that Tenant shall file any and all applications with DHCD and take other measures to ensure such inclusion.

6.2 Affordable Housing Restriction. Landlord and Tenant agree that the Premises and each of the Units shall be subject to a permanent affordable housing restriction, qualifying under G.L. c. 184, § 31, approved and enforceable by Landlord 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 Institutional 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 Landlord, expressly subordinating its mortgage or other lien to the Restriction). It is recognized by the Landlord 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. 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 Landlord and recorded with the Registry.

6.3 Marketing Plan. Tenant shall market the Units and shall conduct a tenant selection process for the Units in accordance with an affirmative fair marketing plan approved by DHCD.

ARTICLE 7 – REPAIRS AND MAINTENANCE

7.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall maintain the Premises, the Improvements thereon and all roadways,

sidewalks, curbs, landscaped areas, fences and entranceways on the Premises in good order and condition (except for reasonable wear and tear and damage from a Taking (as defined in Section 12.1 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 safe, clean and sanitary operable condition throughout the Term of this Lease. Without limitation, Tenant shall keep the driveways and sidewalks on the Premises in good order and condition and shall be responsible for removing ice and snow therefrom. 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.

7.2 No Obligation of Landlord. Except as otherwise expressly provided herein, Landlord 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 8 – INSURANCE AND INDEMNITY

8.1 Casualty Insurance. Tenant shall, at its sole expense, obtain and keep in force during the Term, “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 Nantucket County Area that includes the Town of Nantucket, naming Landlord as an additional insured. The amount of such insurance will be set forth on an “agreed amount endorsement” to the policy of such insurance and will not be less than 100% of the full replacement value of the Improvements and/or other Improvements, as determined from time to time.

8.2 Builder’s Risk. During the period of any construction or structural alteration of the Improvements, 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 Landlord may reasonably require.

8.3 Liability Insurance. Throughout the Term of this Lease, Tenant shall maintain, for the benefit of Landlord and Tenant, and naming Landlord as an additional insured, the following insurance: (i) commercial general liability insurance, written on an occurrence basis, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) 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 Landlord, Tenant, and any Permitted Institutional Mortgagee, 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 Landlord, and Landlord’s insurance shall be in excess thereto.

8.4 Personal Property Insurance. 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.

8.5 Insurance Carried by Contractors. During the construction of the Improvements, Tenant shall also require the construction manager and/or general contractor for the Improvements to maintain (i) for the benefit of Tenant and Landlord, as additional insured, commercial general liability insurance, including products and completed operations coverage, against any claims for personal 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 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.

8.6 Insurance Coverage Increases. On the fifth (5th) anniversary of the Commencement Date, and every five (5) years thereafter, or upon Landlord'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 may be increased at the written request of the Town to amounts reasonably requested by the Town, but not to exceed the amounts of coverage generally maintained at the time in question for similar residential developments or properties in Massachusetts.

8.7 Insurance Carriers, Policies. All insurance provided for in this Article 8 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 Landlord. 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 Landlord's reasonable request.

8.8 Blanket Policy. Nothing in this Article 8 shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article 8 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 8, 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 8.

8.9 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 8 to be furnished by, or which may reasonably be required to be furnished by, Tenant unless Landlord and Tenant are included therein as insureds, with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the placing of any such separate insurance and shall cause the same to be delivered as in Section 8.7 hereof required.

8.10 Adjustment. All policies of insurance provided for in Article 8 hereof shall name Landlord as an additional insured. The loss, if any, under such policies shall be adjusted with the insurance companies by Tenant and shall be payable to Tenant and Landlord as the loss payees as their interests may appear, unless required otherwise by the terms of any Permitted Institutional Mortgage. 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 (as defined in Section 8.13 below) shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

8.11 Non-cancellation. Each policy or binder issued by an insurer shall, to the extent obtainable, 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 Landlord, Tenant and any Permitted Institutional Mortgagee (as defined in Section 14.2 below) named therein.

8.12 Landlord's Right to Pay Premiums. Tenant shall pay all of the premiums for all the policies of insurance referred to in this Article 8, and the cost of such insurance shall be deemed to be Additional Rent under this Lease. In the event of the failure of Tenant, either to effect insurance in the names called for in this Lease or to pay the premiums for the insurance or to deliver the policies to Landlord, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums for the insurance, which premiums shall be repayable to Landlord as Additional Rent on demand. Failure to repay the same shall carry with it the same consequence as failure to pay Rent.

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

(i) any work done or action taken during the Term of this Lease in, on or about the Premises or any part thereof, including during construction of the Improvements and any other Tenant Work, by Tenant or by any other party other than Landlord and its employees, contractors, agents, or representatives (collectively with Landlord, the "Landlord Parties");

(ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any sidewalk or curb on the Premises, during the Term of this Lease by Tenant or any other party other than the Landlord Parties;

(iii) any negligence or willful misconduct on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, occupants, operators, invitees, visitors, or users of any portion of the Premises (collectively with Tenant, the “Tenant Parties”);

(iv) any accident, injury or damage to any person or property occurring on the Premises or any part thereof, including any sidewalk or curb on the Premises, except to the extent the same occurs solely as a direct result of the gross negligence or wrongful act of any of the Landlord Parties; and

(v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

(b) If Landlord 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 Landlord, then the reasonable expenses of such separate counsel shall be at Tenant’s expense.

(c) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to Landlord 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 8. This Lease is made on the express condition that Landlord 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 caused directly by the gross negligence or willful misconduct of Landlord.

(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 Landlord or counsel selected by an insurance company which has accepted liability for any such claim.

(e) To the maximum extent this Lease may be made effective according to law, Tenant agrees to use and occupy the Premises at Tenant’s own risk, and Landlord shall have no responsibility or liability for any loss or damage to fixtures or other personal property of Tenant or any person claiming by, through or under Tenant.

(f) The provisions of this Section 8.13 shall survive termination or expiration of this Lease.

ARTICLE 9 – USE OF PREMISES

9.1 Permitted Uses. The Premises and the Improvements shall be used exclusively for Permitted Uses and uses ancillary thereto.

9.2 Abandonment of Use. Subject to Force Majeure, except during construction of the 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 after the issuance of a certificate of occupancy, the Premises shall be abandoned, deserted, or vacated by the Tenant (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 fifty percent (50%) of the Units located on the Premises are leased and occupied in accordance with Section 6.1 for a period of one hundred eighty (180) consecutive days or for more than one hundred eighty (180) days in any calendar year for any reason (except for Force Majeure), Landlord shall have the right, subject to the rights of the Permitted Institutional Mortgagees as set forth in Section 14.2 below, to terminate the Lease and recover exclusive possession of the Premises by written notice to Tenant. In the event Landlord exercises its right to terminate the Lease under this Section 9.2, the Lease shall terminate as of the date that is ninety (90) days after the date of Landlord’s notice to Tenant thereof, and Tenant’s rights with respect to the Lease shall terminate as of such date, unless within such ninety (90) day period, more than fifty percent (50%) of the Units are leased and occupied in accordance with Section 6.1 (in which event such termination notice shall have no effect).

9.3 Legal Requirements. Throughout the Term of this Lease, Tenant, at its expense, shall promptly comply with and shall cause all Tenant Parties to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, authorities, boards and officers, which may be applicable to the Premises, or to the use or manner of use of the same or to any of the Tenant Parties (collectively, “Legal Requirements”). Tenant shall, in the event of any violation or any attempted violation of this Section by any Tenant Party, take steps, immediately upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be.

9.4 Contests. Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to Landlord, the validity or application of any Legal Requirement, subject to Tenant providing Landlord 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 incurrance of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or Landlord 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 Landlord to criminal liability or fine, and provided that Tenant (i) bonds over such lien or furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and

(c) Landlord shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Town of Nantucket or any agency, authority, branch, division, office or subdivision thereof, nor shall Landlord be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by Landlord nor to take a position inconsistent with a position previously taken and made public by Landlord.

9.5 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, and Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any attempted violation of the provisions of this Section by any Tenant Party, take all reasonable steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

9.6 Property Management. Tenant will either manage the Premises personally or hire a reputable and experienced property management company to manage the Premises. If Tenant will not personally manage the Premises, prior to the Final Completion Date, Tenant shall at least sixty (60) days prior to retaining any other such party submit to Landlord 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.

ARTICLE 10 – RESIDENT SELECTION; AFFORDABILITY COMMITMENTS

10.1 Resident Selection. Prior to selecting residents, Tenant shall submit to Landlord for approval initial resident selection policies and criteria for the Units, which approval shall not be unreasonably withheld, conditioned or delayed (the resident selection policies and criteria approved by Landlord are hereinafter referred to as the "Resident Selection Criteria"). Tenant shall promptly adopt the Resident Selection Criteria. The Resident Selection Criteria shall include but shall not be limited to provide for a preference for residents and employees of the Town of Nantucket for up to seventy percent (70%) of the Affordable Units or the maximum approved by DHCD, to the extent allowed by Legal Requirements. Tenant shall select tenants for the Premises in a fair and impartial manner, based on the Resident Selection Criteria, which shall be made available to such tenants upon request.

10.2 Affordability Commitments. From and after the Final Completion Date until the expiration or earlier termination of the Term of this Lease, Tenant covenants to lease _____ percent of the Units to Qualified Households (“Affordability Commitments”). As a condition to occupancy, each potential tenant of an Affordable Unit shall be required to sign and deliver to Tenant an income certification using a form adopted for such use by Tenant and reasonably approved by Landlord. If, after initial occupancy, the income of a Qualifying Household increases, and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, Tenant shall not be in default hereunder so long as the tenant income does not exceed the amount permitted pursuant to the terms of the Regulatory Agreement.

10.3 Rental Expenses. Each Affordable Unit shall be affordable to households with incomes at or below ___% of the median incomes for similarly sized households in Nantucket County that includes the Town of Nantucket. The annual rental expense for each Affordable Unit, including the provision of heat, electricity and hot water, shall not exceed ____ percent (____%) of the income of an individual or household earning no more than _____ percent (____%) of the area median income for Nantucket County that includes the Town of Nantucket, adjusted for household size. Notwithstanding the foregoing, if an Affordable Unit has a subsidy commitment through any federal or state rental assistance program, then the maximum rent shall be that permitted by such program as set forth in the Regulatory Agreement.

10.4 Reporting Requirements. Tenant covenants and agrees to secure and maintain on file for inspection and copying by Landlord such information, reports and certifications as Landlord may reasonably require in writing in order to ensure that the Affordability Commitments are being complied with. Tenant further covenants and agrees to notify Landlord in writing if Tenant discovers non-compliance with any restrictions hereunder.

ARTICLE 11 – DAMAGE OR DESTRUCTION

If the whole or any part of the Improvements used for the Permitted Uses are 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 such Improvements or any part thereof 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 (a) do not diminish the overall utility for the Permitted Uses, and (b) are reasonably comparable to the quality of the Improvements that existed prior to the damage or destruction. The parties recognize that such damage or destruction may require emergency replacement or repair. Tenant will be entitled to all insurance proceeds in order to effect such replacement, modifications or alterations. Notwithstanding the foregoing, in the event that the Improvements are substantially damaged, and the insurance proceeds are required to be paid to any Permitted Institutional Mortgagee to repay the indebtedness secured by the Permitted Institutional 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 repair or replacement of the Improvements is not in furtherance of the Permitted Uses or that the amount of the Remaining Proceeds render the repair or replacement uneconomic, Tenant may elect not to repair or replace the damaged

Improvements and terminate this Lease by giving Landlord one hundred eighty (180) days written notice thereof, specifying the reasons for such termination (the “Casualty Termination”), provided however that Tenant shall (a) at Landlord’s request, demolish any destroyed buildings and secures any damaged buildings, in each case to a safe condition reasonably satisfactory to Landlord and in compliance with the Legal Requirements, and (b) deliver to Landlord the Remaining Proceeds and assign to Landlord all its right, title and interest to any other insurance proceeds as may be available. After delivery of the Casualty Termination Notice to the Landlord, Tenant will vacate the Premises as soon as reasonably possible. Tenant’s obligations under subsections (a) and (b) shall survive the termination of this Lease.

ARTICLE 12 – TAKING

12.1 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 Landlord and Tenant and those authorized to exercise such right (any such matters being herein referred as a “Taking”), Landlord and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.

12.2 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. Rent hereunder shall be paid to the date of such Taking. Tenant hereby waives all rights in condemnation awards, except awards for Tenant’s fixtures and equipment, the unamortized costs of the Improvements on the Premises, the value to Tenant of the remaining Term of this Lease, and any separate awards which may be made for Tenant’s relocation expenses, business interruption, and the like (collectively, the “Tenant’s Share”). Landlord shall be entitled to receive that portion of the award or compensation allocable to its interest in the Premises (the “Landlord’s Share”). All awards from the Taking will be divided between Tenant and Landlord in the proportion that Tenant’s Share bears to Landlord’s Share. Notwithstanding the foregoing, however, Landlord shall not share in any Taking award with respect to the Improvements unless and until the unpaid balance of the Permitted Institutional Mortgage (as defined in Section 14.2 below) on the Premises, if any, is paid in full, all such Taking proceeds with respect to the Improvements being used first to pay off and discharge such Permitted Institutional Mortgage.

(b) No such termination of this Lease under this Article 12 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.

12.3 Insubstantial Taking. If a portion of the Premises is taken and Section 12.2 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 and any relocation benefits, if any, shall be paid first to the Tenant in an amount equal to the greater of (i)

the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises subject to the Taking; or (ii) the amount necessary to discharge or, if such amount is insufficient, to reduce any Permitted Institutional Mortgage. The balance, if any, of the Taking award shall be paid to Landlord.

12.4 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.

12.5 Other Damages. Nothing in this Article shall be construed to prevent Tenant from making its claim against the Taking authorities for any other damage or damages suffered by Tenant provided the same shall not adversely affect the compensation to which Landlord is entitled pursuant to the provisions of this Article 12.

ARTICLE 13 – ENVIRONMENTAL

13.1 Environmental Laws Defined. “Environmental Laws” means, collectively, any federal, state, or local law, rule or regulation, code or by-law (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 (as defined in Section 13.4 below) or providing for the protection, preservation or enhancement of the natural environment, and 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.

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

(a) Tenant shall not allow any Hazardous Materials (as defined in Section 13.4 below) to exist or be brought upon, stored, located, discharged, possessed, managed, processed,

or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises.

(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 unless a permit has been issued under any applicable Environmental Law.

(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 Landlord), 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 Landlord 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.

13.3 Landlord's Environmental Representations, Warranties and Covenants. Landlord hereby represents, warrants and covenants that Landlord has not, to the best of its knowledge or belief, received notice of any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, that is, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions will be in, either direct or indirect violation of any Environmental Laws. Landlord shall not permit its agents, employees, contractors or invitees entering the Premises to bring, store, locate, discharge, or handle any Hazardous Materials (as defined in Section 13.4 below) on the Premises.

13.4 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.

13.5 Notices. (a) Tenant shall provide Landlord 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 Landlord concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide Landlord 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 Landlord any documentation or records as Landlord may reasonably request and which are in Tenant's possession and may be lawfully delivered to Landlord, and Landlord shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in Landlord's possession and may be lawfully delivered to Tenant.

(b) Tenant or Landlord shall immediately notify the other party in writing should Tenant or Landlord 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 Landlord, 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 under any Environmental Law; (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.

13.6 Environmental Indemnity. Tenant hereby shall pay, indemnify, defend with counsel acceptable to Landlord and save harmless Landlord 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 any Environmental Law) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of Landlord Parties arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of any of Tenant's use or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties. Tenant further agrees and covenants that none of Landlord Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by Landlord. The provisions of this Section 13.6 shall survive the expiration or the earlier termination of this Lease; in addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by Landlord under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of Landlord Parties, provided, however, that nothing contained herein shall prevent Landlord from exercising any other rights under the Lease.

ARTICLE 14 – TRANSFER OF TENANT'S INTEREST

14.1 Assignment by Tenant. 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 Qualified Households) prior to the Final Completion of the Initial Improvements without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. After the Final Completion of the Initial Improvements, Landlord's consent shall not be unreasonably withheld. 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 hereunder and 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.

14.2 Leasehold Mortgages. (a) Notwithstanding anything to the contrary contained in this Lease, Tenant may from time to time, and in each case upon prior written notice to Landlord, 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 an institutional lender or lenders as security for a loan or loans (referred to herein as a "Permitted Institutional Mortgage," and the holder of such Permitted Institutional Mortgage is referred to herein as a "Permitted Institutional Mortgagee"). Each such Permitted Institutional Mortgage shall mature no later than the last day of the term of this Lease, and shall be a Leasehold Mortgage only, expressly subject to the terms and conditions of this Lease. It is expressly understood and agreed that Tenant has no right to mortgage or otherwise encumber the fee title to the Premises. Tenant shall promptly deliver to Landlord a true copy of the Permitted Institutional Mortgage and any assignment thereof. Tenant shall notify Landlord of the address of the Permitted Institutional Mortgagee to which notices may be sent, it being understood and agreed that Landlord shall have no obligation to notify a Permitted Institutional Mortgagee of any default under this Article 14 until and unless the address of such Permitted Institutional Mortgagee shall have been provided to Landlord in writing.

(b) Permitted Institutional Mortgages not Assignment. For the purpose of this Article 14, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Permitted Institutional 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 Institutional Mortgagee 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 Institutional 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 Institutional Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of Landlord pursuant to Section 14.1) 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 Landlord.

(c) Permitted Institutional Mortgagee Cure Rights. In the event that Tenants 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, Landlord shall not have the right to terminate this Lease if a Permitted Institutional Mortgagee, without being under any obligation to do so, shall have cured such monetary default within sixty (60) days after the giving of notice to it by Landlord. In the case of any default by the Tenant other than in the payment of money hereunder, Landlord shall not have the right to terminate this Lease by reason of any such default if a Permitted Institutional Mortgagee, without being under any obligation to do so, shall have cured such default with ninety (90) days after the giving of notice to it by Landlord, or, if such 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 Institutional Mortgagee to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, provided, that the Permitted Institutional 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 Institutional 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, Landlord shall notify the Permitted Institutional Mortgagee whether or not Tenant has effectuated a cure within said cure period. The provisions of this Section 14.2(c) are conditioned on the following provisions:

(i) Acquisition of Possession. The Permitted Institutional Mortgagee shall, within sixty (60) days after notice of such Tenant non-monetary default, notify Landlord of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of Tenant's interest in this Lease. Such notice from the Permitted Institutional Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Institutional 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 Landlord 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 Institutional Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Institutional 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 Institutional Mortgagee. Nothing in this subclause (B) shall be construed to require such Permitted Institutional Mortgagee to perform any of the Tenant's obligations hereunder accruing after such Permitted Institutional Mortgagee ceases to be in possession.

(d) Additional Rights of Permitted Institutional Mortgagee and Landlord's Covenants. In addition to the matters set forth above, the Landlord agrees, for so long as a Permitted Institutional Mortgage is outstanding, as follows:

(i) Notwithstanding anything to the contrary contained in this Lease, in the event that the Landlord would otherwise have the right to terminate this Lease by reason of any Event of Default by Tenant which cannot be cured by a Permitted Institutional Mortgagee, e.g., an Event of Default under Section 15.1(e), or if a Permitted Institutional Mortgagee, its successors or assigns shall acquire Tenant's interest in this Lease, the Landlord will enter into an amendment or other agreement naming the Permitted Institutional Mortgagee or its nominee as Tenant hereunder for the remainder of the Term effective as of the date of such termination, upon the same terms, provisions, covenants, and agreements as herein contained, provided the Permitted Institutional Mortgagee or its nominee shall make written request upon the Landlord for such amendment or other agreement within sixty (60) days after the later of (a) the date of such termination or acquisition, or (b) date of receipt of notice of the termination;

(ii) If this Lease is rejected or disaffirmed by the Landlord or Tenant pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, the Landlord shall offer the Permitted Institutional Mortgagee a new lease upon the same terms and conditions within ten (10) days after the date of such rejection; and

(iii) The fee title to the Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct notwithstanding the acquisition of said fee title by the Landlord, Tenant, or any third party by purchase or otherwise.

(e) Fee Mortgage. This Lease and Tenant's interest in the Premises shall be subordinate to any mortgage or deed of trust now or hereafter encumbering Landlord's fee interest in the Premises or any portion thereof (a "Fee Mortgage"), and to the interests of the mortgagee or beneficiary thereunder (the "Fee Mortgagee"). The foregoing subordination in respect of Fee Mortgages shall, however, not be operative unless and until Landlord shall procure and deliver to Tenant a recordable subordination, nondisturbance and attornment agreement from each Fee Mortgagee in form reasonably satisfactory to Tenant and any Leasehold Mortgagee.

ARTICLE 15 – DEFAULT AND TERMINATION

15.1 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, and such failure shall continue for a period of thirty (30) days after notice from Landlord to Tenant;

(b) If Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder;

(c) if Tenant shall fail to perform or comply with any of the other terms, covenants or conditions in this Lease and such failure shall continue for a period of forty-five (45) days after notice from Landlord 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 forty-five (45) day period, within such additional time reasonably necessary provided Tenant commences to cure the same within such forty-five (45) day period and thereafter prosecutes the curing of such default with diligence (but in no event shall such additional period exceed ninety (90) days); and

(d) 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.

15.2 Remedies. Upon an Event of Default, Landlord 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 at least sixty (60) days after the giving of such notice. Upon the date specified in such notice, 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 and all Improvements shall become the property of Landlord without the necessity of any deed or conveyance from Tenant to Landlord. Tenant agrees upon request of Landlord to immediately execute and deliver to Landlord any deeds, releases or other documents deemed necessary by Landlord to evidence the vesting in Landlord of the ownership of all Improvements. Upon such termination, Landlord may re-enter the Premises and dispossess Tenant and anyone claiming by, through or under Tenant by summary proceedings or other lawful process.

15.3 Landlord's Right To Perform Tenant's Covenants. (a) Upon an Event of Default, Landlord may, but shall be under no obligation to, take any and all actions to cure such default. Landlord may enter upon the Premises (after ten (10) 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) Landlord 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. Landlord shall use reasonable efforts to minimize interference with the use of the Premises for the Permitted Uses.

(c) All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord, 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 Landlord of such cost and expense until the date paid in full, shall be paid by Tenant to Landlord as Additional Rent on demand. If Landlord shall exercise its rights under Section 15.3(a) 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 Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such obligation to Landlord upon demand. All costs incurred by Landlord hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

15.4 No Waiver. No failure by either Landlord 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 Landlord 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 Landlord 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.

15.5 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened 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.

15.6 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 by Landlord 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.

ARTICLE 16 – SURRENDER; HOLD-OVER

16.1 Surrender. (a) Tenant shall on the last day of the Term, quit and peacefully surrender and deliver up the Premises, including the Improvements (if Tenant elects not to remove the same), to the possession and use of Landlord 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 the day before the Commencement Date, those permitted under this Lease (excluding any lien evidencing or securing any monetary obligation), or created or suffered by Landlord and shall be surrendered

without any payment by Landlord on account of the Improvements (if Tenant elects not to remove the same). Upon or at any time after the expiration or earlier termination of this Lease, Landlord shall have, hold and enjoy the Premises and the right to receive all income from the same.

(b) Tenant shall remove from the Premises all of Tenant's personal property within thirty (30) days after the termination of this Lease and shall repair at Tenant's sole cost any damage to the Premises caused by such removal, unless Landlord permits such property to remain. Tenant shall, at its expense, repair any and all damage to the Premises resulting from or caused by the removal of such property.

16.2 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 Landlord 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 Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this Section 16.2 shall not constitute a waiver by Landlord 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 Landlord'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.

16.3 Survival. The provisions of Article 16 shall survive the expiration or sooner termination of this Lease.

ARTICLE 17 – ESTOPPEL CERTIFICATES

Landlord and Tenant promptly shall execute and deliver to each other or to any Permitted Institutional Mortgagee, within thirty (30) 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 Landlord, Tenant, any Permitted Institutional Mortgagee, and any transferee or assignee of a Permitted Institutional Mortgagee.

ARTICLE 18 – NONDISCRIMINATION COVENANTS

18.1 Non-Discrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that neither Tenant nor its successors in interest, sublessees, licensees, operators, and assigns shall 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, the

selection of suppliers and contractors, and the selection of Qualified Households for the Units.

18.2 Non-Compliance. Tenant shall defend, indemnify and hold Landlord 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 18. The provisions of this Section 18.2 shall survive the expiration or earlier termination of this Lease.

ARTICLE 19 – MISCELLANEOUS

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

19.2 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:

With a copy to:

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

Town of Nantucket
Town & County Building
16 Broad Street
Nantucket, MA 02554
Attn: Town Manager

with a copy to: Vicki S. Marsh, Esq.
KP Law, P.C.
101 Arch Street
12th Floor
Boston, MA 02110

or to such other address as Landlord 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.

19.3 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.

19.4 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under Landlord, subject, however, to the exceptions, reservations and conditions of this Lease and matters of record. The foregoing shall not create any liability on the part of Landlord for any defects in or encumbrances on Landlord's title existing as of the date hereof.

19.5 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.

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

19.7 Notice of Lease. Landlord 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 Nantucket 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.

19.8 Enforcement of Landlord's Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, Landlord's liability under this Lease shall be enforceable only out of Landlord's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, Landlord, nor shall there be any personal liability on the part of Landlord or any board, officer, employee or agent of Landlord, with respect to any obligations to be performed hereunder. In no event shall Landlord or Tenant be liable to the other for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

19.9 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that Landlord may acquire

or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless Landlord executes and records an instrument affirmatively electing otherwise.

19.10 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.

19.11 Massachusetts Law Governs. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

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

19.13 No Partnership or Joint Venture. Nothing contained under this Lease shall be construed to create a partnership or joint venture between Landlord and Tenant or to make Landlord an associate in any way of Tenant in the conduct of Tenant's business, nor shall Landlord 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.

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

19.15 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.

19.16 Brokers. Landlord 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.

19.17 Covenants Running with the Land. Landlord and Tenant intend, declare, and covenant, on behalf of themselves and all future holders of Landlord's or Tenant's interest hereunder, as the case may be, 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 the parties and their successors-in-interest; (b) are not merely personal covenants of Tenant; and (c) the benefits shall inure to Landlord and Tenant.

[signatures on following page]

EXECUTED as of the date first set forth above.

LANDLORD:

TOWN OF NANTUCKET
By its Board of Selectmen

TENANT:

By: _____
Name:
Title:

574003/ NANT19713/0050

ATTACHMENT F
DRAFT FORM OF LAND DEVELOPMENT AGREEMENT

LAND DEVELOPMENT AGREEMENT

This Land Development Agreement (this “LDA” or “Agreement”) is made this ____ day of _____, 20__ by and between the Town of Nantucket, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, having an address of Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554 (the “Town”), and _____ having an address of _____ (the “Developer”), which term shall include its successors and assigns.

WHEREAS, the Town is the owner of a parcel of land located at 6 Fairgrounds Road, Nantucket, shown as Lots 83 and 84 on a plan of land entitled “Division Plan of Land in Nantucket, MA., prepared for Town of Nantucket,” dated June 3, 2016, prepared by Blackwell and Associates, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2016-58 containing a total of approximately 3 acres, and as more particularly described in Exhibit A attached hereto and incorporated herein (the “Property”);

WHEREAS, on _____, 2017, the Town issued a Request for Proposals, (the “RFP”), a copy of which is attached hereto as Exhibit B, soliciting proposals to lease the Property for the purpose of constructing and operating thereon an affordable housing development and ancillary facilities, as further described in Section I-B below (the “Project”);

WHEREAS, the Developer submitted a proposal in response to the RFP (the “Proposal”), a copy of which is attached hereto as Exhibit C, proposing to construct _____ dwelling units on the Property, as more particularly described in the RFP and the Proposal (the “Improvements”), and operate a rental affordable housing 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 ground lease (the “Ground Lease”) that sets forth the terms under which the Improvements will be constructed and operated;

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

WHEREAS, the Developer, in partial consideration for the Property, agrees to develop the Property and to undertake, at its sole cost and expense, all the work that is required to be

done under this LDA to construct, develop and complete the Project as more particularly defined herein (hereinafter referred to as the “Work”); and

WHEEAS, 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. DEVELOPMENT AGREEMENT

The Developer agrees (for itself and any successors to, or assigns of, any interest in the Property or any portion thereof) to develop the Property and undertake the Work as follows:

A. Lease Contingencies

1. Lease of the Property: The Town shall, on the date on which the Lease Contingencies as follows are satisfied, lease the Property to the Developer for the purpose of developing 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:

(a) *Permits and Approvals*: The Developer shall have received final permits and approvals for the construction of the Improvements and the operation of the Project, and all appeal periods therefrom shall have expired: and

(b) *Approved Plans and Specifications*: Pursuant to this subsection, the Town shall have approved the Developer’s plans and specifications for the construction of the Improvements on the Property and for any work done or improvements made on or to the Property, showing in detail the location, layout and size of the units, the design of the buildings, the landscaping, and the other improvements to be constructed on the Property (the “Improvement Plans”). The Improvement Plans shall be submitted to the Town for the Town’s approval, as being in substantially in conformity with the RFP and the Proposal, 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 effort 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; and

(c) *Construction Commitments*: The Developer shall have received and provided the Town firm written Project financing commitments, including, but not limited to, public funding commitments, construction loan commitments and/or permanent loan commitment 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, construct, operate and maintain the Improvements and operate the Project.

2. Due Diligence of Developer. The Developer shall use diligent and good faith efforts to obtain the necessary permits and approvals and financing to construct, operate and maintain the Initial Improvements and to satisfy other Lease Contingencies.

3. 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 despite the Developer's good faith and diligent efforts within _____ (__) months from the date on which this Agreement is executed, or such later time as the Town may, in its sole discretion, agree (the "Diligence Period"), either the Town or the Developer may terminate this Agreement by providing the other with at least ____ (__) days prior written notice, provided, however, that if all the Lease Contingencies are satisfied within said ____ (__) day period, this Agreement may not be terminated by either party. In the event of termination, this Agreement shall be null and void, without recourse to the parties, except those provisions that are expressly stated herein to survive said termination. The Developer shall meet with the Town at least every ____ (__) months during the Diligence Period, or at such sooner or later intervals as the Town may reasonably request, to report on efforts made by the Developer to satisfy the Lease Contingencies and provide such information as the Town may reasonably request.

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

B. Construction Obligations

1. Construction of Project: The Developer shall construct on the Property the Improvements containing no more than _____ (__) units and containing no more than _____ (__) bedrooms for use as a rental affordable housing development. ____ (__) units shall contain one bedroom, _____ (__) units shall contain two bedrooms and ____ (__) units shall contain three bedrooms. The Project shall be constructed and the Work performed in accordance with the Improvement Plans approved by the Town and in accordance with all laws and with the requirements of all permits. All of the units shall be rented to households whose income does not exceed _____ percent (__ %) of the area median income for Nantucket County as determined by the United States Department of Housing and Urban Development ("HUD"). The Project shall also include the parking, landscaping, and other features and improvements as described in the Developer's Proposal.

2. Construction Schedule: The Developer shall complete the Project in accordance with the terms of this LDA within _____ (__) months from the date of this LDA. The Developer must commence construction of the Project within (____) days from the date of the LDA. The Town at its sole option may extend these deadlines if the Town determines that the Developer has proceeded diligently in its performance, and the Town shall reasonably extend the deadlines for force majeure and other events beyond the control of the Developer.

3. Performance and Payment Bonds: Prior to the commencement of any Work, the Developer shall provide the Town with a performance and labor and materials payment bond of a surety acceptable to the Town, or other form of surety, acceptable to the Town, in the amount of 100% of the value of the Work to be done by the Developer under the terms of this LDA ensuring the completion of the Work and payment for labor and materials in the form customarily used to ensure subdivision completion (the “Bond”). In the event the Work as required by this LDA is not completed within the time set forth in Section 2 above (including any extensions thereof agreed upon by the parties), or if the Work is not completed substantially in accordance with the Improvement Plans, the Town shall have the right to call upon the surety to complete the Work in accordance with this LDA. Upon the Town’s consent which shall not be unreasonably withheld, conditioned or delayed, a payment and performance bond in favor of the Lender in form and amount acceptable to the Town may be substituted, in which case the Town shall have no right to bond proceeds payable to the Lender unless Lender agrees to provide rights under the payment and performance bond should Lender not enforce its rights under said bond.

4. Quality of Work: The Developer shall procure all necessary permits before undertaking any Work, and shall cause all the Work to be performed in a good and first-class workmanlike manner in compliance with good engineering and construction practices, and using new materials of prime quality or such high quality recycled materials and in accordance with the Improvement Plans and all applicable laws, ordinances, codes and regulations. The Developer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. Dust, noise, lighting and other effects of the Project shall be controlled using commercially reasonable methods with the understanding that such matters while they will be reasonably mitigated cannot be eliminated completely in any construction project. As a precondition for the issuance of any Certificate of Occupancy for the Building, the Developer shall provide a certification to the Town by a licensed architect, at the Developer’s expense, that the Work is done substantially in accordance with the Improvement Plans (the “Independent Architect”).

5. Liens: The Developer shall not permit any mechanic's liens or similar liens to remain upon the Property for labor and materials furnished to the Developer in connection with work of any character performed at the direction of the Developer and shall cause any such lien, if it shall become perfected, to be released of record without cost to Town, by satisfaction and discharge of such lien or protection and surety against such lien by bond.

B. Financial Obligations

1. Financing: The Developer has obtained funds sufficient to lease the Property and to construct and complete the Project from one or more lenders or mortgage holders or other funding, equity and other financing sources (collectively the “Funding Sources”), secured by one or more mortgages or other instruments creating an encumbrance or lien upon the Property to be recorded hereafter and including as the same may be refinanced, subject to paragraph 2 below,

(the “Mortgage(s)”). The holder(s) of the Mortgage(s), which shall include any insurer or guarantor of any obligation or condition secured by any Mortgage, is (are) referred to herein as the “Mortgage Holder(s)”. The Developer agrees to pay all amounts due in accordance with the requirements of the Funding Sources. The Mortgage(s) shall be subject to and subordinate to this LDA. The Developer shall cause the Funding sources to give not less than sixty (60) days prior written notice to the Town, by registered mail, of the Funding sources’ intention to foreclose upon the Mortgage, in which event the Town shall have the right, but not the obligation, to cure whatever default (s) have entitled the Funding sources to issue the foreclosure notice. The Town shall provide to the Funding Sources advance notice and opportunity to cure any default under this LDA as provided in Section II of this LDA and shall consent to the Funding Sources exercising any rights under their Mortgages and security agreements, pursuant to Mortgage(s) and any other collateral security, financing or loan documents entered into between the Developer and any of the Funding Sources, so long as the Funding Sources shall recognize and agree to comply with the terms and provisions of this LDA.

2. Refinancing / Additional Financing. The Developer shall provide the Town with thirty (30) days prior written notice of any intended refinancing of the Funding Sources that is to occur prior to completion of the Project, which shall require the Town’s prior written consent, which consent shall not be unreasonably withheld or denied.

3. Obligation to Pay Taxes and Assessments. The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over the Mortgage(s), but this clause shall not be deemed to preclude Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

C. Use of Property

1. Affordable Housing: The Developer agrees that one hundred percent (100%) of the Units in the Project shall be subject to an affordable housing restriction (the “AHR”) and/or regulatory agreement as required by the funding source of the Project to be recorded no later than the Town’s issuance of the first certificate of occupancy for any of the Units in the Project and the Developer shall have recorded subordination agreements executed by Mortgage Holder(s) such that the AHR shall be senior to all Mortgages, pursuant to which each of the Units shall be rented and occupied by an individual or household earning no more than ____ percent (___%) of the median income for Nantucket County, as determined by HUD at the time of the lease (the “Eligible Tenants”). The AHR shall be in perpetuity or for the longest period permitted by law, which in any event shall be for at least ninety-nine (99) years, that such Units qualify for inclusion in the DHCD’S Subsidized Housing Inventory, and that such restriction shall be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33.

2. Use and Maintenance: The Developer shall use the Property to provide affordable housing to income-eligible persons as described above in this LDA. The Developer shall

maintain the Property, the Buildings, the Units and other improvements thereon in decent, safe and sanitary condition and otherwise in good order, condition and repair. To this end, the parties shall have, if necessary, further defined and delineated the Developer's and Town's obligations in a management agreement.

3. Insurance: The Developer agrees to maintain the following insurance:

(a) *Type of Insurance*: The Developer shall continuously maintain in full force, for the Term hereof, a builder's risk policy or a policy of comprehensive casualty and property damage insurance, insuring the Property and all improvements thereto, in an amount equal to at least one hundred percent (100%) of the replacement costs thereof, under which, until the completion of the Work, the Town shall be named as additional insured and under which the insurer agrees to defend, indemnify and hold the Town harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to the Work, the condition of the Property, or any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the Developer, or failure to comply with the provisions of this LDA or with applicable laws in connection with the exercise of the rights and obligations of the Developer hereunder, in the broadest form of such coverage from time to time available in Massachusetts. All policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment ;

(b) *Minimum Limits*: Developer shall, at a minimum, carry comprehensive public liability insurance in the amount of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate. However, the Town shall have the right to require the Developer to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require the Developer to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Property;

(c) *Evidence of Insurance*: Prior to commencement of Work under this Agreement, the Developer shall provide the Town with complete copies of the insurance policy(ies) required under this Agreement, as well as copies of those "endorsement pages" confirming that the Town is an additional insured, and annually thereafter;

(d) *Acceptable Insurers*: All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A or better, licensed to write such insurance in the Commonwealth of Massachusetts and acceptable to the Town.

Notwithstanding the foregoing, insurance requirements of the Funding Sources may be substituted for the insurance requirements above, provided the Town agrees to such substitution.

4. Obligation to Restore: In the event that any damage or destruction of the Property occurs as a result of the negligent or willful act or omission of the Developer, or of any of its employees or agents, members, lessees, assignees, licensees or invitees, the Developer shall be responsible for the full restoration of the damaged or destroyed Property, reasonable wear and tear excepted, regardless of the cost thereof or the time remaining on the Term of this LDA, provided, however, that if Developer has maintained insurance in accordance with Section I.C.3, said restoration shall be subject to available insurance proceeds. Notwithstanding anything to the contrary contained in this LDA, the Developer shall restore any damage or destruction to the Property that shall have been caused by the malicious and intentional actions of the Developer, or of any of its employees or agents, members, lessees, assignees, licensees or invitees, reasonable wear and tear excepted, regardless of the cost thereof or the time remaining on the Term of this LDA, provided, however, that if Developer has maintained insurance in accordance with Section I.C.3, said restoration shall be subject to available insurance proceeds.

5. Environmental: The Developer shall comply with all state and federal environmental laws and shall defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town arising from any release or threat of release of any hazardous materials which are first placed on, in or under all or any portion of the Property on or after the date of this LDA.

II. NOTICE AND DEFAULT PROVISIONS

A. Default of Developer and Rights of Parties.

1. Developer Default. The following shall be an event of default by the Developer (referred to herein as "Developer Default"):

a. Failure by the Developer to observe or perform any of the Developer's covenants, agreements, or obligations set forth in this LDA within sixty (60) days following receipt of written notice from the Town specifying such failure, or such longer period reasonably required to cure the breach, provided the cure was commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted (said cure period the "Developer Cure Period");

b. Failure by the Developer, after all applicable cure periods, to observe or perform any of the Developer's covenants, agreements, or obligations under the Affordable Housing Restriction, or any other similar document or instrument now or hereafter in effect between the Town and the Developer relating to this Project;

c. Failure by the Developer, after all applicable cure periods, to observe or perform any of the Developer's covenants, agreements, or obligations pursuant to the requirements of the Funding Sources;

d. The sale or other transfer of any kind or nature of the Property, or any part thereof, other than the Mortgage(s) and other than the leasing of any completed units in the ordinary course of business, without the prior written consent of the Town;

e. The issuance of any execution or attachment against Developer or any of Developer's property pursuant to which the Property shall be taken or occupied or attempted to be taken or occupied, provided that Developer is first provided an opportunity to cure the same within sixty (60) days unless extended by agreement of the parties.

f. The filing by Developer of a voluntary petition, or the filing against Developer of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Developer, or the filing by Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of Developer or of all or any part of Developer's property, without the consent or acquiescence of Developer, such appointment shall not have been vacated or otherwise discharged.

2. Rights of Town Upon Developer Default: In the event of a Developer Default after all applicable notice periods, the Town shall have the following rights and remedies:

(a) Surety. The Town shall have the right to call upon surety under the Bond to complete the Work; or

(b) Specific Performance. The Town shall have the right to institute such action and proceedings as may be appropriate against the Developer, including actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction seeking restitution from the Developer in an amount representing the Town's costs, liabilities, losses and expenses resulting directly from the Developer Default.

3. Town's Option To Cure Developer Default. The Town may, at its option, cure any Developer Default, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this LDA, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the Town in curing such Developer Default and to a lien upon the Leasehold Property for such reimbursement; provided, however, that any such lien shall be

subject and junior always to the lien of (including any lien contemplated by) any then existing mortgages on the Leasehold Property authorized under this LDA, or any future advances, extensions, modifications, refinances or substitutions thereof.

4. Notice of Foreclosure. The Developer shall cause the Mortgage Holders to give not less than sixty (60) days prior written notice to the Town, by registered mail, of each Mortgage Holder's intention to foreclose upon its Mortgage or to accept a conveyance of the Leasehold Property in lieu of foreclosure, in which event the Town shall have the right, but not the obligation, to cure whatever default(s) have entitled the Mortgage Holder to issue the foreclosure notice, subject to appropriation, which amount, together with the Town's costs and expenses (including counsel fees) shall be added to the amounts due to the Town pursuant to paragraph 3 above.

6. Town's Option To Purchase Property Following Foreclosure. In the event that ownership of the Leasehold Property has vested in a Mortgage Holder by way of foreclosure or action in lieu thereof, the Town shall be entitled to (and every mortgage instrument made prior to completion of the Work with respect to the Property by the Developer or successor in interest shall so provide), at the Town's option, a conveyance to the Town of the Leasehold Property upon payment to such Mortgage Holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such Mortgage Holder in and as a direct result of the subsequent ownership or management of the Property; (iv) the costs of any improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued to the date of payment on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

B. Default of Mortgage Holder.

Any Mortgage Holder in whom title to the Leasehold Property has vested by way of foreclosure or action in lieu thereof shall be subject to the Developer Default provisions pursuant to Section II.A.1, above, and the Town shall have the enforcement rights set forth in Section II.A.2, above, as if the Mortgage Holder were the Developer, so that the Mortgage Holder shall receive notice of a Developer Default in its capacity as Developer and an additional notice in its capacity as Mortgage Holder, and shall have the benefit of all the cure periods set forth thereunder.

C. Default of Town.

1. The following shall be an event of default by the Town (referred to herein as "Town Default"):

(a) Upon receipt of written notice by the Developer specifying the failure of the Town to observe or perform any of the Town's covenants, agreements, or obligations hereunder within sixty (60) days following receipt of written notice from the Developer

(or its successors or assigns, or any Mortgage Holder), specifying such failure, or such longer period reasonably required to cure the breach, provided the cure was commenced immediately after receipt of said notice and continuously and diligently prosecuted (said cure period, the "Town Cure Period");

(b) Upon receipt of written notice by the Developer specifying the failure of the Town to observe or perform, after all applicable cure periods, any of the Town's covenants, agreements, or obligations under the AHR, the Use Covenant, or any other similar document or instrument now or hereafter in effect between the Town and the Developer relating to this Project or the Property.

2. Rights of Developer Upon Town Default. In the event that a Town Default has occurred, the Developer's sole remedy shall be to institute such action and proceedings as may be appropriate against the Town, including actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction seeking restitution from the Town in an amount representing Developer's costs, liabilities, losses and expenses resulting directly from the Town Default.

D. Mortgage Holder's Option to Cure Developer Defaults.

After any Developer Default, each Mortgage Holder(s) shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however, that if the breach or default is with respect to the Developer's failure to construct the improvements in accordance with Project Approvals,, nothing contained within this LDA shall be deemed to authorize or permit such Mortgage Holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the Town, by written agreement satisfactory to the Town and any other party having a right to enforce this LDA in the event of default, to complete in the manner provided in this LDA, the Work.

III. GENERAL PROVISIONS

A. Access: The Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA.

B. Sale, Assignment: Until the Project has been completed in accordance with this LDA; Developer shall not sell, assign or otherwise transfer the Property or any portion thereof, other than to the Mortgage Holder(s) and leasing of Units to occupants, without the Town's prior written consent, which shall not be withheld unreasonably. Any sale, assignment or other transfer of the Property, whether before or after the completion of the Project, shall be subject to the terms of this LDA, and the buyer, assignee or transferee shall assume the obligations of Developer under this LDA in writing as if it were the original developer hereunder. Any attempted assignment or other transfer made contrary to this Section shall be void.

C. Compliance with Laws: The Developer shall carry out the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all necessary permits.

D. Development Costs: The Developer shall be solely liable for all costs incurred in construction of all the Work required under this LDA to restore and adapt the Property for the Project and in compliance with all laws, ordinances, rules, regulations and codes applicable to the permitted use.

F. Cooperation: The Town agrees to use reasonable efforts to assist the Developer in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authorities with respect to any construction or other work to be performed on the Property, 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.

G. Enforcement: The parties hereto, and thereafter the permitted successors and assigns of the parties hereto, covenant and agree that the losing party will reimburse the winning party for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing (but not defending against the enforcement action of the other party) this LDA or in remedying or abating any violation thereof, provided that no obligation shall arise under this section until a court of competent jurisdiction shall have determined that the party from whom reimbursement is being sought has violated this LDA.

H. Indemnification / Liability: The Developer agrees to defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town by reason of this LDA. This 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.

I. Notices: Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (1) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

TOWN:

If to the Town of Nantucket:

Town of Nantucket
Town & County Building
16 Broad Street
Nantucket, MA 02554
Attention: Town Manager

With a copy to:

Vicki S. Marsh, Esq.
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

DEVELOPER:

If to the Developer:

With a copy to:

J. Notice of Mortgage Holders. The Developer shall, at all times, provide the Town with an up-to-date list of names and addresses of Mortgage Holders. Any Mortgage Holder may also notify the Town of its address.

K. Waiver. The failure on the part of the Developer or 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 LDA 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.

L. Headings and Captions for Convenience Only. The captions and headings throughout this LDA 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 LDA, nor in any way affect this LDA, and shall have no legal effect.

M. Binding: the terms of this LDA shall be binding on the parties, and their respective successors, heirs and assigns. All covenants, agreements, terms and conditions of this LDA shall be construed as covenants running with the land.

N. Entire Agreement of Parties; No Oral Agreement. There are no oral agreements between the parties hereto affecting this LDA, and this LDA supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this LDA.

O. Governing Law. This LDA shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

[remainder of this page is intentionally blank]

WITNESS the above execution hereof under seal as of the day and year first above written.

TOWN OF NANTUCKET,
By its Board of Selectmen

By: _____
Name:
Title: President

By: _____
Name:
Title: Treasurer

Exhibits

- Exhibit A: Property Description
- Exhibit B: Request for Proposals
- Exhibit C: Proposal
- Exhibit D: Ground Lease

574070/NANT19713/0050

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this _____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared _____, 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 act and deed of the Board of Selectmen of the Town of Nantucket.

(Official Signature and Seal of Notary)

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared _____, _____, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, as _____ of _____

(Official Signature and Seal of Notary)

ATTACHMENT G
“BUILDING WITH NANTUCKET IN MIND”

“BUILDING WITH NANTUCKET IN MIND” CAN BE LOCATED ON THE TOWN OF NANTUCKET’S
HISTORIC DISTRICT COMMISSION’S PAGE AT:

[HTTP://WWW.NANTUCKET-MA.GOV/537/BUILDING-WITH-NANTUCKET-IN-MIND](http://www.nantucket-ma.gov/537/BUILDING-WITH-NANTUCKET-IN-MIND)

ATTACHMENT H
COMPARATIVE EVALUATION CRITERIA
6 FAIRGROUNDS ROAD NANTUCKET HOUSING PROJECT

	NOT ADVANTAGEOUS	ADVANTAGEOUS	HIGHLY ADVANTAGEOUS
DEVELOPER EXPERIENCE & CAPACITY (TEAM)			
<ul style="list-style-type: none"> • Demonstrated experience in and capability for designing, permitting, developing and managing similar residential projects • Outcome of comparable projects • Demonstrated experience securing financing for similar projects • Experience developing energy efficient homes • Property management experience with similar projects • The quality of the team’s reputation and references, particularly in terms of its regulatory track record and ability to complete projects as proposed • Success in marketing approach, including affirmative fair housing marketing plans and lottery, meeting State requirements • Successful long-term management approach 	Development team members have had only minimal experience in the development of projects with similar scope (i.e., less than 5 years), including legal, design, development, financing, and management experience with rental housing	1) Development team members have had significant experience in the development of projects of similar scope (i.e., 5-7 years), including significant legal, design, financing, affordable housing management, and development experience 2) Energy efficient buildings part of standard development approach.	1) Development team members have significant and substantial successful development of affordable housing project of similar scope (i.e., 8 or more years), including significant legal, design, financing, affordable housing management and development experience 2) Energy efficient design is their standard approach to design and development

	NOT ADVANTAGEOUS	ADVANTAGEOUS	HIGHLY ADVANTAGEOUS
AFFORDABILITY			
<ul style="list-style-type: none"> • Proposal meets the greatest level of affordability fiscally possible • Proposal meets requirements to have all units qualify on the SHI list • Addresses the Town’s desire to work to provide at least 25% of affordable units and 10% of market units allocated to municipal employee use, if approved by DHCD 	The proposal does not meet the requirements of the Town’s Zoning Bylaws and contains less than 25% of the units affordable to households at 80% or less AMI	The proposal meets the requirements of the Town’s Zoning Bylaws and contains 25% of the units affordable to households at 80% AMI or less and the proposal complies with DHCD Guidelines for local preferences including the municipal employee preference	The proposal meets the requirements of the Town’s Zoning Bylaws and contains at least 25% of the units affordable to household at 80% AMI or less and the proposal complies with DHCD guidelines for local preferences including the municipal employee preference.
NUMBER OF UNITS AND PERMITTING			
<ul style="list-style-type: none"> • No more than 64 units will be constructed on the property • Workforce rental housing pursuant to Nantucket Zoning Bylaws 	Proposal is for fewer than 64 units and does not clearly address the permitting for the project	Proposal is for fewer than 64 units permitted by Nantucket Zoning Bylaws	Proposal has 64 units permitted by Nantucket Zoning Bylaws

	NOT ADVANTAGEOUS	ADVANTAGEOUS	HIGHLY ADVANTAGEOUS
SITE DESIGN			
<ul style="list-style-type: none"> • Thoughtful and efficient site design, minimizing impervious surfaces • Uses standards of low impact development • Underground utilities • Recreation area(s) designed for multiple ages • Exterior lighting – minimal impact to neighbors • Buffer to neighboring properties • Storm water management • Landscape plan including parking area • Area designated for snow • Adequate screened visitor parking • Central trash and recycling area, appropriately screened 	Proposal fails to include or address all site design criteria	The proposal meets or exceeds all design requirements of the RFP with thoughtful traffic flow, buildings siting, minimal impact of exterior lighting, and development design	Proposal meets all “advantageous” requirements and respects adjacent properties, provides heightened attention to landscaping plan, grading and lighting, helps with the restoration of the vegetation
BUILDING DESIGN			
<ul style="list-style-type: none"> • Exterior design and materials is of high quality, while remaining compatible with local historical design, including the use of historic colors • Creative design that is cost effective and high quality • Interior layouts meet a variety of family-type needs • Finishes support durability and low-maintenance for tenant • Management office on-site with storage • Adequate tenant dry, temperature controlled storage (in basement) 	Design appears incongruous with local historical design patterns, interior lay-outs not effective use of space	Proposal creates a development that reflects local historical design and efficient interior layouts, creating a desirable neighborhood	Proposal articulates a compelling development vision that is cost-effective, energy efficient, and has an attractive design and efficient use of interior space, reflects local historical design

	NOT ADVANTAGEOUS	ADVANTAGEOUS	HIGHLY ADVANTAGEOUS
FINANCIAL FEASIBILITY			
<ul style="list-style-type: none"> • Adequacy of proposed budgets (development and operating) • Appropriateness of rents in relation to market • Track record of securing proposed conventional and subsidy financing • No financial support from the Town except for the contribution of the proposed land 	Proposal does not demonstrate an understanding of development costs and operating budgets for affordable housing and requires Town’s additional monetary support or infrastructure	Proposal contains realistic development and operating budgets and evidence of success in securing necessary financing and includes application for additional financial support for Town CPC or AHTF grants	Proposal contains realistic development and operating budgets and evidence of a high degree of success in securing necessary financing and other sources of funding and does not include any additional financial support from the Town

	NOT ADVANTAGEOUS	ADVANTAGEOUS	HIGHLY ADVANTAGEOUS
REFERENCES & SITE VISITS			
<ul style="list-style-type: none"> References – a minimum of three municipal references, include references from all projects undertaken in the last 10 years Site visits – the selection committee may choose to visit proposers’ completed projects 	<p>1) Minimum of 3 references not met, or references were poor and/or inadequate</p> <p>2) Properties visited were in poor condition. Evidence of widespread resident dissatisfaction</p>	<p>1) Strong references reflecting projects came in on time and within budget, good property management structure</p> <p>2) Properties visited were in good condition, site layout was efficient, buildings were well designed, and residents were overall satisfied and there is no evidence of systemic issues</p>	<p>1) Strong references reflecting timely completion, excellent budget control, property management structure excellence and high degree of professionalism of developer</p> <p>2) Properties visited were in excellent condition, site layout and landscaping excellent, excellent building design and use of energy efficient and durable materials. Written evidence of broad residents’ support of the project including testimonials</p>

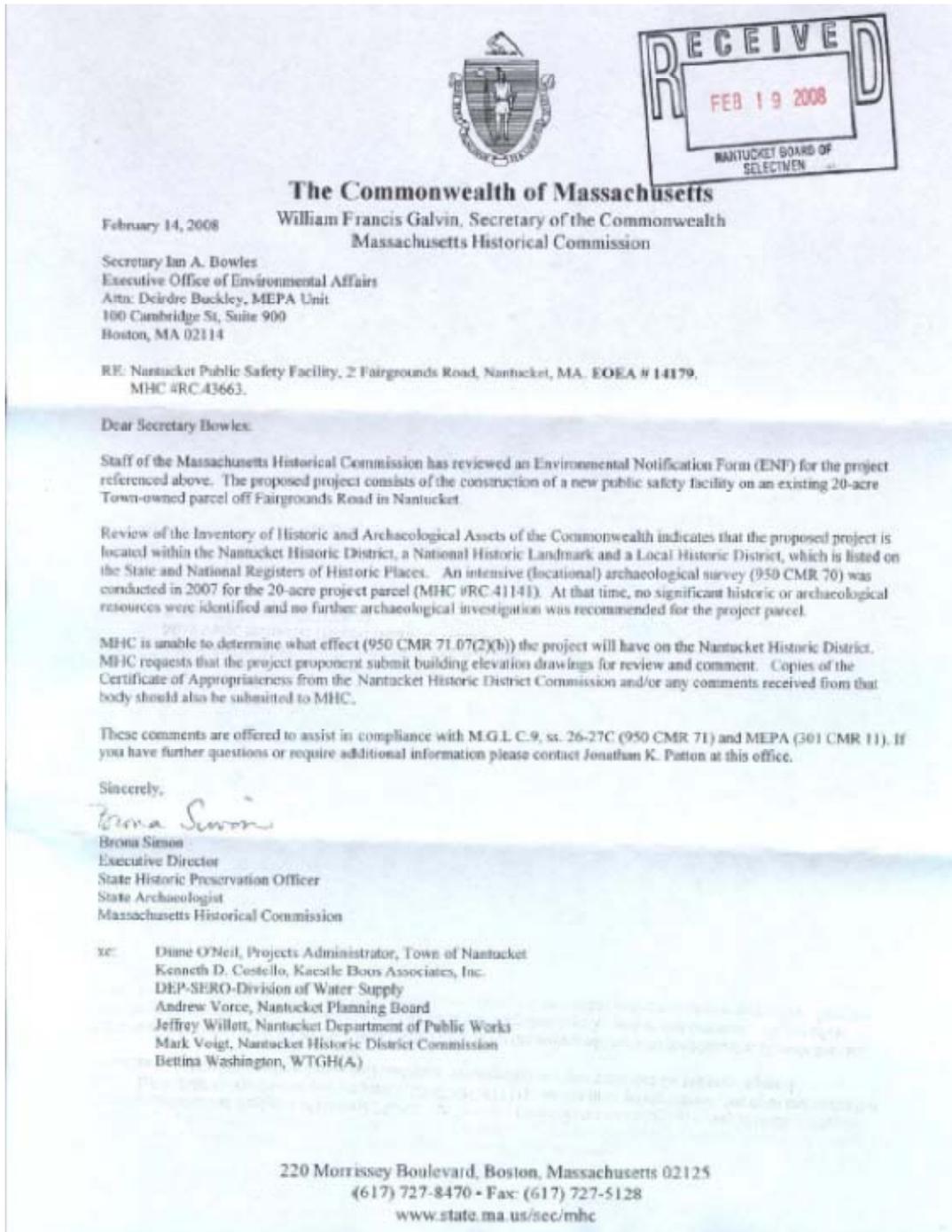
**ATTACHMENT I
NANTUCKET ZONING BYLAWS**

THE TOWN OF NANTUCKET ZONING BYLAWS CAN BE FOUND ON THE TOWN OF NANTUCKET'S WEBSITE AT THE FOLLOWING ADDRESS:

[HTTP://WWW.NANTUCKET-MA.GOV/445/TOWN-OF-NANTUCKET-BYLAWS](http://www.nantucket-ma.gov/445/TOWN-OF-NANTUCKET-BYLAWS)

**ATTACHMENT J
ENVIRONMENTAL REPORTS**

MASSACHUSETTS HISTORICAL COMMISSION



MASSACHUSETTS ENVIRONMENTAL PROTECTION CERTIFICATE



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT
GOVERNOR

Jan A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

February 6, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Nantucket Municipal Facilities & Housing Project
PROJECT MUNICIPALITY : 2 Fairgrounds Road - Nantucket
PROJECT WATERSHED : Islands
EOEA NUMBER : 14362
PROJECT PROPONENT : Town of Nantucket
DATE NOTICED IN MONITOR : January 7, 2009

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I determine that the above project **does not require** the preparation of an Environmental Impact Report (EIR).

According to the Environmental Notification Form (ENF), the proposed project consists of the construction of a 57,000 square foot (sf) consolidated public safety facility (PSF) for police and fire departments, two municipal office buildings totaling about 15,000 sf each, and 42 affordable housing units (3 bedrooms each). The project will be divided into three phases. Phase I includes the construction of a PSF on eight acres. Phase II includes the construction of 42 affordable housing units on 6.39 acres. Phase III includes the construction of the municipal office buildings and the demolition of the existing 14,220 sf building on 5.37 acres. The project is estimated to generate approximately 1,705 new trips and require 260 new parking spaces. The site has 69 existing parking spaces. The project will be provided with municipal water and wastewater service. It is estimated to consume approximately 12,231 gallons per day (gpd) of water, and it will generate approximately 10,194 gpd of wastewater. The project site is approximately 19.76 acres. In 2003, an 82-unit residential subdivision and an unspecified amount

of commercial space was proposed by another proponent for this site (EEA #12915), and the Secretary determined that an EIR was required for the project. On February 12, 2008, the Town of Nantucket withdrew an ENF (EEA #14179) for a public safety facility on this project site.

The proponent is proposing the project to improve municipal facilities and to provide the necessary parking that these services require. The project is based on a Town-wide Feasibility Study of existing municipal facilities and parking. The proponent has developed both on-site and off-site alternatives for this project as part of its feasibility study. The current project is the Preferred Alternative.

The project is subject to MEPA review pursuant to Sections 11.03(1)(b)(2), 11.03(2)(b)(2), and 11.03(6)(b)(14) because the project creates 5 or more acres of impervious area; may involve the taking of an endangered or threatened species or species of special concern, provided that the site is greater than two acres of disturbance of designated priority habitat; and generates 1,000 or more new trips and includes the construction of 150 or more new parking spaces. It will require a Conservation & Management Permit from the Natural Heritage Endangered Species Program (NHESP) for the relocation of Nantucket Shadbrush. The project should comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. Because the proponent is not seeking financial assistance from the Commonwealth, MEPA jurisdiction is limited to those aspects of the project within the subject matter of state permits and that may cause Damage to the Environment, as defined in the MEPA regulations (in this case: significant habitat).

The quality of stormwater runoff generated by the project will be improved by the implementation of Best Management Practices. Existing site runoff is sheet flow. The project will create approximately 9.48 acres of impervious area. The proponent will utilize porous pavement in employee parking areas. Stormwater on the site flows to a combination of infiltration bioswales and bioretention/rain gardens for pavement areas and roof runoff. About 95 percent of the precipitation will be infiltrated on-site. The rate of water discharging from the site will remain less than existing peak runoff rates. The proponent has committed to perform an annual inspection and maintenance program for the stormwater collection system and a seasonal sweeping program of the proposed driveways and parking areas. The project site is located within the Zone II of a municipal water supply well.

The proponent has conducted a rare plant survey of the project site. In 2007, the proponent found a total of 44 populations of Nantucket Shadbrush, a plant species of Special Concern. No other state-listed rare plants were found on the project site. Seven populations, consisting of about 261 individual plants will be protected from further disturbance within a ten to fifteen-foot no disturbance buffer area by the proponent. The remaining colonies of Shadbrush will be transplanted to on-site designated open space areas, or they will be relocated off-site at the adjacent Town-owned Water Department parcel on the other side of Old South Road. The

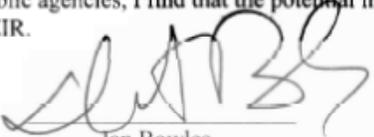
proponent will coordinate closely with the NHESP to protect and preserve the Nantucket Shadbush. It is working with NHESP to develop a relocation plan for the various Nantucket Shadbush plants that cannot be avoided based upon its Conceptual Master Plan.

There is an existing ten-foot wide bike path along Fairgrounds Road. The proponent has constructed an eight-foot wide bike/pedestrian path along the site's frontage with Ticcoma Way. There are four bus routes that pass the project site. They are the Siasconset, the Miacomet, the Airport, and the Surfside bus routes. I encourage the proponent to provide scaled existing and proposed conditions plans and building elevation drawings for the project to the Massachusetts Historical Commission (MHC) as requested in MHC's comment letter, as well as the Certificate of Appropriateness from the Nantucket Historic District Commission and its comments.

While I note the concerns of the Nantucket Land Council, the project will provide overall net benefits to the environment by protecting and preserving the Nantucket Shadbush and by providing improved stormwater infiltration/drainage on an already partially developed site. In addition, MEPA jurisdiction over this project is limited to the subject matter of the only state permit required for the project – the NHESP Conservation & Management Permit. The project's impacts to the Nantucket Shadbush can be adequately addressed and worked out with the NHESP during permitting. Therefore, based on a review of the information provided by the proponent and after consultation with relevant public agencies, I find that the potential impacts of this project do not warrant the preparation of an EIR.

February 6, 2009

Date



Ian Bowles

Comments received:

MassWildlife/NHESP, 1/22/09
MHC, 1/23/09
Nantucket Land Council, 1/26/09
MassDEP/SERO, 1/27/09
Horsley Witten Group, 1/30/09
Horsley Witten Group, 2/3/09

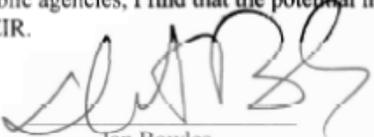
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IAB/WTG/wg

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February 6, 2009
Date



Ian Bowles

Comments received:

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Horsley Witten Group, 1/30/09
Horsley Witten Group, 2/3/09

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ENVIRONMENTAL NOTIFICATION FORM

FOR THE HORSLEY WITTEN GROUP ENVIRONMENTAL NOTIFICATION FORM, PLEASE GO TO THE TOWN OF NANTUCKET WEBSITE AT:

[HTTP://WWW.NANTUCKET-MA.GOV/DOCUMENTCENTER/VIEW/14797](http://www.nantucket-ma.gov/documentcenter/view/14797)

ATTACHMENT K
SECTIONS 3 AND 4 OF MASSACHUSETTS "ONE STOP" APPLICATION

FOR THE MASSACHUSETTS "ONE STOP" AFFORDABLE HOUSING FINANCE APPLICATION (SECTIONS 3 AND 4), PLEASE GO TO THE TOWN OF NANTUCKET WEBSITE AT:

[HTTP://WWW.NANTUCKET-MA.GOV/DOCUMENTCENTER/VIEW/14796](http://www.nantucket-ma.gov/documentcenter/view/14796)

ATTACHMENT L (REQUIRED)
CERTIFICATE OF NON-COLLUSION

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and Concessionaires, and withholding and remitting child support.

Federal Employer ID Number

Name of Corporation

President's Signature

Date

Please Print Name

ATTACHMENT M (REQUIRED)
TAX COMPLIANCE CERTIFICATE

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and Concessionaires, and withholding and remitting child support.

Federal Employer ID Number

Name of Corporation

President's Signature

Date

Please Print Name

ATTACHMENT N (REQUIRED)
DISCLOSURE STATEMENT FOR TRANSACTION WITH
A PUBLIC AGENCY CONCERNING REAL PROPERTY

DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) Real Property:

A certain parcel of land in Nantucket, Massachusetts shown as Lots 83 and 84, located at 6 Fairgrounds Road, Nantucket, containing three acres, more or less, shown on a plan of land entitled “_____”, recorded with Nantucket County Registry of Deeds as Plan No.

(2) Type of Transaction, Agreement, or Document:

Lease of property by Town of Nantucket

(3) Public Agency Participating in Transaction:

Town of Nantucket, acting by and through its Board of Selectmen, Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554

(4) Disclosing Party’s Name and Type of Entity (if not an individual):

(5) Role of Disclosing Party (Check appropriate role):

____ Lessor/Landlord Lessee/Tenant

____ Seller/Grantor _____ Buyer/Grantee

____ Other (Please describe): _____

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

(7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert “none” if none):

(8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee’s interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

(9) This Disclosure Statement is hereby signed under penalties of perjury.

Print Name of Disclosing Party (from Section 4, above)

Authorized Signature of Disclosing Party

Date :

Print Name & Title of Authorized Signer

ATTACHMENT O (REQUIRED)
ACKNOWLEDGEMENT OF RECEIPT OF DOCUMENTS

TOWN OF NANTUCKET

DOCUMENT ACKNOWLEDGMENT FORM

WORKFORCE AFFORDABLE RENTAL HOUSING DEVELOPMENT RFP

**I ACKNOWLEDGE RECEIPT OF THIS REQUEST FOR PROPOSALS AND ALL
ADDENDA AND UNDERSTAND I MUST ENCLOSE THIS SIGNED
ACKNOWLEDGMENT AS PART OF MY PROPOSAL.**

Company Name

Signed

Date