AGENDA FOR THE MEETING OF THE
SELECT BOARD
JULY 22, 2020 - 5:00 PM
REMOTE PARTICIPATION VIA ZOOM WEBINAR
PURSUANT TO GOVERNOR BAKER’S MARCH 12, 2020
ORDER REGARDING OPEN MEETING LAW
NANTUCKET, MASSACHUSETTS
***AMENDED JULY 20, 2020***

YOU TUBE LINK:
https://youtu.be/5AGtNOTbFVE

I. CALL TO ORDER

II. SELECT BOARD ACCEPTANCE OF AGENDA

III. ANNOUNCEMENTS
1. The Select Board Meeting is Being Audio/Video Recorded.

2. Census Complete Count Committee Notice: 2020 Census is Ongoing and of Vital Importance to Nantucket.


IV. COVID-19 WEEKLY UPDATE
1. Select Board Comments/Questions
   - Public Comment

2. Report from Public Health Director
   - Select Board Comments/Questions
   - Public Comment

3. Emergency Orders - Status
   - Local Board of Health/Select Board Joint Emergency Rule and Order No. 11 (Outdoor Dining at Restaurants)
   - Local Board of Health Emergency Order No. 12 (Mandatory Face Covering)
- Status of Reopening Massachusetts
- Select Board Comments/Questions
- Public Comment

4. Public Information and Town Services Update
   - Outreach update
   - Dedicated email covid19@police.nantucket-ma.gov
   - Dedicated phone line 508-325-4111
   - Town offices/public closure status
   - Select Board Comments/Questions
   - Public Comment

V. PUBLIC COMMENT* FOR ITEMS NOT RELATED TO COVID-19 OR OTHER AGENDA ITEMS

VI. NEW BUSINESS*

VII. APPROVAL OF WARRANTS AND PENDING CONTRACTS

2. Approval of Pending Contracts from July 22, 2020 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

VIII. CITIZEN/DEPARTMENTAL REQUESTS
1. Airport Commission: Request for Select Board to Declare Emergency Regarding Per- and Polyfluoroalkyl Substances (PFAS) and to Request that the Department of Revenue Approve Deficit Spending by the Town to Address the PFAS Emergency.

2. Finance Department: Request for Approval of Refunding General Obligation Bonds for Airport.


4. Richmond Great Point Development, LLC: Request to Allow Additional Modular Housing Structures to be Transported Prior to September 15 Over the Road Moratorium End Date, and to Block On-Street Parking Along Washington Street from Salem Street to Coffin Street due to Overwide Units.

IX. REAL ESTATE MATTERS
1. Affordable Housing Trust: Request for Approval to Partially Fund Habitat for Humanity Nantucket's Construction of a Duplex at 31 Beach Grass Road in Richmond's Sandpiper I Development.

2. Request for Approval and Execution of Purchase and Sale Agreement, Quitclaim Deed and Settlement Statement for Town-owned Yard Sale Parcel Known as Parcel 33, Central Street, Unnamed Parcel and Elm Street as Shown on Plan of Land Entitled “Plan of Land Taking and Articles 94 and 95, 2009 ATM in Nantucket, Massachusetts,” Dated November 7, 2016, Prepared by Nantucket
Surveyors, LLC and Recorded with Nantucket County Registry of Deeds as Plan No. 2016-113, Pursuant to Vote on Article 95 of 2009 Annual Town Meeting (Tabled from January 29, 2020; February 19, 2020).


X. TOWN MANAGER’S REPORT

XI. SELECT BOARD’S REPORTS/COMMENT
1. Discussion/Potential Scheduling of Fall Special Town Meeting.


4. Committee Reports.

XII. PUBLIC HEARINGs
1. Public Hearing to Consider the Appeal of 6 Magnolia Ave LLC of Historic District Commission Approval of Certificates of Appropriateness No. HDC2020-01-0470 and -0471 for an Addition and Selective Demolition, Regarding Property Located at 6 Magnolia Avenue, Map 73.3.1, Parcel 57.

XIII. ADJOURNMENT

*Identified on Agenda Protocol Sheet
Select Board Agenda Protocol:

- **Roberts Rules:** The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.

- **Public Comment:** For bringing matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board’s discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action. Except in emergencies, the Board will not normally take any other action on Public Comment. Any personal remarks or interrogation or any matter that appears on the regular agenda are not appropriate for Public Comment.

  Public Comment is not to be used to present charges or complaints against any specifically named individual, public or private; instead, all such charges or complaints should be presented in writing to the Town Manager who can then give notice and an opportunity to be heard to the named individual as per MGL Ch. 39, s 23B.

- **New Business:** For topics not reasonably anticipated 48 hours in advance of the meeting.

- **Public Participation:** The Board welcomes valuable input from the public at appropriate times during the meeting with recognition by the Chair. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of information presented. The Board will hear any staff input and then deliberate on a course of action.

- **Select Board Report and Comment:** Individual Board Members may have matters to bring to the attention of the Board. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.
ORDER SUSPENDING CERTAIN PROVISIONS
OF THE OPEN MEETING LAW, G. L. c. 30A, § 20

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19"); and

WHEREAS, many important functions of State and Local Government are executed by “public bodies,” as that term is defined in G. L. c. 30A, § 18, in meetings that are open to the public, consistent with the requirements of law and sound public policy and in order to ensure active public engagement with, contribution to, and oversight of the functions of government; and

WHEREAS, both the Federal Centers for Disease Control and Prevention (“CDC”) and the Massachusetts Department of Public Health (“DPH”) have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19. Additionally, the CDC and DPH have advised high-risk individuals, including people over the age of 60, anyone with underlying health conditions or a weakened immune system, and pregnant women, to avoid large gatherings.

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise authority over public assemblages as necessary to protect the health and safety of persons; and

WHEREAS, low-cost telephone, social media, and other internet-based technologies are currently available that will permit the convening of a public body through virtual means and allow real-time public access to the activities of the public body; and

WHEREAS section 20 of chapter 30A and implementing regulations issued by the Attorney General currently authorize remote participation by members of a public body, subject to certain limitations;
NOW THEREFORE, I hereby order the following:

(1) A public body, as defined in section 18 of chapter 30A of the General Laws, is hereby relieved from the requirement of section 20 of chapter 30A that it conduct its meetings in a public place that is open and physically accessible to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body for interested members of the public through adequate, alternative means.

Adequate, alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. Where allowance for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.

A municipal public body that for reasons of economic hardship and despite best efforts is unable to provide alternative means of public access that will enable the public to follow the proceedings of the municipal public body as those activities are occurring in real time may instead post on its municipal website a full and complete transcript, recording, or other comprehensive record of the proceedings as soon as practicable upon conclusion of the proceedings. This paragraph shall not apply to proceedings that are conducted pursuant to a general or special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.

A public body must offer its selected alternative means of access to its proceedings without subscription, toll, or similar charge to the public.

(2) Public bodies are hereby authorized to allow remote participation by all members in any meeting of the public body. The requirement that a quorum of the body and the chair be physically present at a specified meeting location, as provided in G. L. c. 30A, § 20(d) and in 940 CMR 29.10(4)(b), is hereby suspended.

(3) A public body that elects to conduct its proceedings under the relief provided in sections (1) or (2) above shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely as provided in section (2).

(4) All other provisions of sections 18 to 25 of chapter 30A and the Attorney General’s implementing regulations shall otherwise remain unchanged and fully applicable to the activities of public bodies.

This Order is effective immediately and shall remain in effect until rescinded or until the State of Emergency is terminated, whichever happens first.
Given in Boston at 6:45 PM this 12th day of March, two thousand and twenty.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts
Nantucket's Census Complete Count Committee recognizes that our community's health and safety are the most pressing concerns during this unprecedented time, and that communication about public health takes priority. However, the 2020 Census is ongoing - and vitally important for Nantucket's future.

It's never been easier to get counted, and to count everyone who lives at your address. You can use your smartphone, tablet, or computer to do so online, you can do so over the phone in 13 languages, or you can complete and return the Census questionnaire that may have been delivered to your home by now. (You do not need a form to respond online or by phone, however!)

The US Census takes place once every ten years and is mandated by the Constitution. Statistics from responses are used to make decisions about federal funding for community services that we rely on every day: health care (including Medicaid, Medicare, and the Children's Health Insurance Program), schools, food assistance, housing, emergency services, senior programs, and more. An accurate count ensures that Nantucket gets it's share, as funding levels that are determined as a result of the 2020 Census will be in place for our community for the next ten years!

Please get counted, and encourage friends, colleagues, and family members to do so at 2020census.gov. Choose your language and click on the "Respond" button to take the Census. It's safe, quick, easy - and individual data is protected by federal law. Your information cannot be shared with any federal, state, or local agency for any reason. There is NO citizenship question on the Census, and everyone is asked to participate. We ALL count for Nantucket!

In an effort to "get out the count" on Nantucket we've started posting information on Facebook, via the Community Foundation for Nantucket's page. Please visit the foundation's page so you can see and - very importantly - share these posts on your own personal and organizational pages! You'll recognize some faces, and can learn a lot about why an accurate count is important. If Facebook isn't your thing, please share the information on Instagram or Twitter - or even by email.

Please get counted and help shape Nantucket's future!
COVID-19 Report to Select Board

7/22/2020
Testing

# of Total PCR tests to date (7/15 AM) = 2,565 (including OIH & Sherburne)

# PCR tests covered by Town funding (the $100k) = 190 (those tested met the criteria for being tested)

# PCR tests covered by private employers for their employees = 296

# PCR tests using self-pay option = 307

Regularly testing 80-100 per day
Overview

• Over the passed week we have seen a sharp rise in cases due to a small set of on-island transmission
• Spread is localized to a series of workers that cohabitate and are asymptomatic
• Contact tracing is in progress
# Metrics

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>COVID-19 positive test rate</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Number of individuals who died from COVID-19</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Number of patients with COVID-19 in hospitals</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Healthcare system readiness</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Testing capacity</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Contact tracing capabilities</td>
<td></td>
</tr>
</tbody>
</table>

**Legend**
- Green: Positive trend
- Yellow: In progress
- Red: Negative trend
Metrics (continued)

• **COVID-19 positive test rate** – Want to keep this number below 10%. Currently at 2.5%

• **Number of individuals who died from COVID-19** – Keep below 5% of cases. Currently 3.45% of cases but 0.039% of those tested

• **Number of patients with COVID-19 in hospitals** – Keep below 10. Currently 0

• **Healthcare system readiness** – Qualitative response. Currently “Yes”

• **Testing capacity** – Qualitative. Ability to keep up with demand. Currently, “yes”

• **Contact tracing capabilities** – Qualitative. Ability to keep up with demand. Currently “Yes”

• **Sewer Predictive Incidence** – Keep below 5%. Monitor for spikes. Currently 0.65% (7/5 sample)
Contact Tracing

• Based on Close Contacts

  What is a close contact?
  • Being within 6 feet of a person, without a mask, for 15 minutes or more.

  • Having direct contact with infectious secretions of a Covid-19 case
    • Includes but is not limited to
      • Sexual Contact
      • Sneezing/coughing without a mask
      • Sharing food utensils, bottle, glassware etc.

  • That means no Tinder, Grindr, Bumble, MeetUp, or any other social contacts with people who are not already quarantining with you!
Contact Tracing

• What is NOT a close contact?

  • Walking by someone at the store
  • Eating at a restaurant that may have had an infected individual
  • Running/biking/walking by someone on the bike path
Contact Tracing - How does it work?

COVID-19 spreads every 3 days.
Contact Tracing - How does it work?

If we can interrupt the spread, we can eliminate entire branches of community spread.
Next Steps

• BOH meeting on Friday to discuss more emergency orders if needed
  • Close Restaurants a 11pm
  • Increase outdoor distance to 10 feet (from 6)
  • Eliminate indoor dining
  • Curbside delivery for retail
  • Increase mask order to include the whole island

• Maintain vigilance
EMERGENCY ORDERS (links)

- Local Board of Health/Select Board Joint Emergency Rule and Order No. 11 (Outdoor Dining at Restaurants)
  

- Local Board of Health Emergency Order No. 12 (Mandatory Face Covering)
  
  file:///C:/Users/emooney/Downloads/Board%20of%20Health%20Order%20No%2012%20-%20Face%20Covering%20(2).pdf

- Status of Reopening Massachusetts
  
  https://www.mass.gov/info-details/reopening-massachusetts
ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING ON-PREMISES LICENSEES SELLING MIXED DRINKS FOR OFF-PREMISES CONSUMPTION

On July 20, 2020, Governor Charlie Baker signed a bill authorizing on-premises licensees to sell mixed drinks for off-premises consumption for the duration of the Governor’s declared state of emergency or until February 28, 2021, whichever comes later.¹

Effective immediately and until the end of the state of emergency or February 28, 2021, whichever comes later, all on-premises licensees licensed for the sale of all alcoholic beverages or wine, malt, and cordials,² may sell mixed drinks for off-premises consumption subject to the following conditions:

1) the mixed drink must be of the same distilled spirits proportions as if it was prepared for on-premises consumption;

2) the mixed drink shall be sold in a sealed container, meaning:
   a) a packaged container with a secure lid or cap designed to prevent consumption without removal of the lid or cap;
   b) if the packaged container has a lid with sipping holes or an opening for straws, the container shall be covered or affixed with an additional seal;
   c) the lid, cap or seal shall be affixed in such a way as to prevent reopening without it being obvious that the lid, cap or seal was removed or broken; and
   d) affixing the cap may be completed by the use of tape or other sticking adhesive before sale;

¹ The text of the bill and amendment can be found HERE. The Governor’s March 10, 2020, declaration of a state of emergency can be found HERE.
² This includes § 12 bars, restaurants, general on premises, hotels, taverns, clubs, war veterans’ clubs, and continuing care retirement communities, § 19E(o) farmer-distilleries with pouring permits; and all-alcohol § 19(b) manufacturers with pouring permits. The bill does not apply to licensees authorized to sell wine and malt beverages only.
3) each customer shall be limited to not more than 64 fluid ounces of mixed drinks per transaction;

4) if the mixed drink is to be transported by a motor vehicle, either by delivery or pick-up, the driver of the motor vehicle shall transport the mixed drink in the trunk of the motor vehicle or in some other area that is not considered the passenger area as defined in section 24I of chapter 90 of the General Laws.

The sale of mixed drinks may only be done from opening until 12:00 am midnight, or the licensee’s closing time previously approved by the Local Licensing Authority, whichever is earlier. All licensees must verify that both the purchaser and recipient of alcohol are at least 21 years old.

Sales must be made as part of a takeout order by way of pickup, including curbside pickup, and delivery. Licensees do not need to obtain a separate transportation permit under M.G.L. c. 138, § 22, in order to make deliveries. Licensees are advised to check with their Local Licensing Authority on any additional requirements in order to sell alcohol for curbside pickup.

All sales must be accompanied by a receipt reflecting the purchase of food along with alcohol, and licensees must keep copies of all receipts for inspection by licensing authorities.

This Advisory should be read in conjunction with the April 3, 2020, Advisory Regarding On-Premises Licensees Selling for Off-Premises Consumption, which can be found HERE.

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to the ABCC Executive Director Ralph Sacramone at rsacramone@tre.state.ma.us or (617) 727-3040 x 731.

(Issued July 21, 2020)
## Agreeements to be Executed by Town Manager

**Unless Resolution of Disapproval by Select Board**

*July 22, 2020*

<table>
<thead>
<tr>
<th>Type of Agreement/Description</th>
<th>Department</th>
<th>With</th>
<th>Amount</th>
<th>Other Information</th>
<th>Source of Funding</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant Agreement</td>
<td>Various</td>
<td>Commonwealth of Massachusetts Department of Energy Resources</td>
<td>($139,340)</td>
<td>Grant award to fund energy conservation measures, EV charging stations, HVAC upgrades, boiler replacement, and administrative costs for Nantucket High School, Town Hall, Visitor’s Center and vehicle infrastructure</td>
<td>Grant Award</td>
<td>July 22, 2020 - March 31, 2022</td>
</tr>
</tbody>
</table>
### Executive Summary
The Town, through its financial advisors, was notified of an opportunity to refund current debt for Airport-related projects. There is an opportunity to refund the debt and save interest costs over the remaining life (15 years) of the debt. The debt was issued on February 25, 2011 for the Airport Terminal and Airport Parking Lot.

### Staff Recommendation
Recommend the approval of the request to proceed with the refunding.

### Background/Discussion
The refunding opportunity, based on conservative projections using recently completed sales of similar issuances, estimate that the budgetary savings in interest to the airport could be in excess of $700,000 over the remaining life of the debt.

### Impact: Environmental ☐  Fiscal ☒  Community ☐  Other ☐
Budgetary reduction in interest costs.

### Board/Commission Recommendation
N/A

### Public Outreach
None

### Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)
None

### Attachments
None
<table>
<thead>
<tr>
<th><strong>Staff</strong></th>
<th>Janet Schulte, Director of Culture and Tourism</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject</strong></td>
<td>Independence Day Celebrations 2021</td>
</tr>
<tr>
<td><strong>Executive Summary</strong></td>
<td>July 4, 2021 falls on a Sunday. Traditionally, the Town has moved the July 4th activities to a different date when it falls on a Sunday to allow access and parking for people attending Sunday morning worship services. Additionally, the fireworks company has not been able to locate a barge for a July 4, 2021 show. This request is to move Main Street and Children’s Beach activities and the Fireworks display to Saturday July 3, 2021 with a fireworks weather date of July 5, 2021.</td>
</tr>
<tr>
<td><strong>Staff Recommendation</strong></td>
<td>Move Main Street and Children’s Beach activities and the Fireworks Display to Saturday, July 3, 2021 with a weather date of July 5, 2021.</td>
</tr>
</tbody>
</table>
| **Background/Discussion** | To accommodate people wishing to attend Sunday morning worship services on July 4, 2021, the Department of Culture and Tourism recommends that the traditional Main Street and Children’s Beach activities and the Fireworks display be moved to Saturday, July 3, 2021, with a fireworks weather date of July 5, 2021.  

Atlas Pyrotechnics has been looking for a barge to offer a July 4, 2021 display since December 2019 when we first learned that a barge would not be available for Nantucket’s display on July 4, 2020. At this point, they have not been able to locate one for July 4, 2021. The firm has availability to offer a show on Saturday, July 3rd with a rain date of Monday, July 5, 2021.  

The Town’s decision to move the fireworks off the 4th several years ago to address beach parties with adequate safety personnel meant that Nantucket was moved out of the queue to have a display on the 4th of July. The firm is continuing to look for a barge for July 4, 2022.  

I have conferred with Chief Pittman and Chief Murphy and both are supportive of this proposal.  

Having all Independence Day activities on a single day will return to the “feel” of Independence Day celebrations that visitors and residents enjoyed in the time prior to the need to re-locate them to insure proper safety staffing at all the events. |
Scheduling all Independence Day activities on one day will return to a feel of full-fledged holiday experience for visitors and residents.

**Board/Commission Recommendation**
N/A

**Public Outreach**
We will put the new date on the C&T web site, inform the media, and use social media to get the word out now and closer to the date, or as decisions are made along the way.

**Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)**
N/A

**Attachments**
N/A
Agenda Item Summary

Staff
Erika Mooney, Operations Administrator

Subject
Richmond Modular House Moves

Executive Summary
Richmond is asking the Board to allow new modular moves on 8/18/2020, 8/25/2020, 9/1/2020 and 9/10/2020. Allowing the moves would require blocking of on-street parking from Salem Street to Coffin Street because the units are overwide. At its meeting of 6/3/2020, the Board voted to allow Richmond to move overwide modular houses on eight specific dates through July 20 on the condition that the structures are moved out of the core district by 7:30 am; that Washington Street, which must be closed to on-street parking to allow the overwide structures to maneuver along the route, is reopened to parking no later than 7:30 am; and, that the structures cannot be moved later than 7/20/2020. Richmond is now asking for an exception to this condition to allow for four new moves to occur before the summer moratorium lifts on 9/15/2020.

Staff Recommendation
n/a

Background/Discussion
n/a

Impact: Environmental ☐ Fiscal ☐ Community ☒ Other ☐
Impact to on-street public parking; impact to businesses in the area.

Board/Commission Recommendation
n/a

Public Outreach
The moves, if approved, will be advertised for two weeks prior to the move dates.

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)
Strategic Plan/Affordable Housing

Attachments
Mooney email dated 6/3/2020 to Phil Pastan re: Select Board vote; Richmond new proposed move dates
Absolutely and thank you very very much for working with us

I’ll personally make sure this takes place

Best,

Phil
Sent from my iPhone

On Jun 3, 2020, at 8:11 PM, Erika Mooney <EMooney@nantucket-ma.gov> wrote:

Hi Phil:
At its meeting tonight, the Select Board voted to allow Richmond’s modular moves to proceed per the schedule you provided below, on the conditions that the moves are out of the core district and the street blockings are reopened no later than 7:30 AM and the moves can go no later than July 20. There will be no exceptions to these conditions, especially the end date of July 20. I will get these moves on the schedule in the morning.

Erika

---

Erika D. Mooney  
Operations Administrator  
Town of Nantucket  
16 Broad Street  
Nantucket MA 02554  
508-228-7266 Fax

---

Thank You Erika for your help.

Best,
Phil

06/17   4 modules
06/19   4 modules
06/22   4 modules
07/06   4 modules
07/08   4 modules
07/13   4 modules
07/15   4 modules
07/20   2 modules

<image001.jpg>

Philip Pastan
President
The Richmond Company, Inc.
www.Richmondco.com

23 Concord Street
Wilmington, MA 01887
Telephone - 978-988-3900 ext 16
Fax - 978-988-3950

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Dawn E Hill Holdgate  
Nantucket Select Board  

Begin forwarded message:

From: Andrew Burek <aburek@richmondco.com>  
Date: July 15, 2020 at 12:44:55 PM EDT  
To: Dawn Hill Holdgate <dhillholdgate@nantucket-ma.gov>  
Cc: Phil Pastan <ppastan@richmondco.com>, Kathryn Fossa <kfossa@richmondco.com>  
Subject: FW: Ship Dates

Dear Dawn,

Please see below. Phil asked me to forward to you the barge dates that Richmond has been able to reserve for summer shipments.

Thank you,

Andrew  

Andrew D. Burek  
General Counsel  
23 Concord Street  
Wilmington, MA 01887  
Direct Dial: 978-229-5049  
Fax: 978-988-3950  
aburek@richmondco.com

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See below for new approved barge dates with the Steamship Authority. I checked with Phil Marks and he indicated that 09/03/2020 will not work just before labor day. Therefore we are asking for 4 dates before 09/15/2020

- 8/18/2020
- 8/25/2020
- 9/01/2020
- 09/10/2020

Jack
They all are

Sent from my iPhone

On Jul 17, 2020, at 9:34 AM, Erika Mooney <EMooney@nantucket-ma.gov> wrote:

Phil:

Are any of the units being requested to come in Aug/early Sept affordable units?

Erika

Erika D. Mooney
Operations Administrator
Town of Nantucket
16 Broad Street
Nantucket MA 02554
508-228-7266
508-228-7272 Fax

Ok thank you

Sent from my iPhone

On Jul 16, 2020, at 8:46 AM, Erika Mooney <EMooney@nantucket-ma.gov> wrote:

Yes, Andrew Burek emailed them to Dawn who forwarded them to me.

Erika

Erika D. Mooney
Operations Administrator
Town of Nantucket
16 Broad Street
Nantucket MA 02554
508-228-7266
Agenda Item Summary

<table>
<thead>
<tr>
<th>Agenda Item #</th>
<th>IX. 1.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>7/22/2020</td>
</tr>
</tbody>
</table>

**Staff**

Tucker Holland, Municipal Housing Director

**Subject**

Request from the Affordable Housing Trust for authority to fund Habitat for Humanity for purposes of the construction of a duplex within Richmond’s Sandpiper I Development off of Old South Road

**Executive Summary**

At its May 7th and July 2nd, 2020 meetings, the Affordable Housing Trust voted affirmatively to request authorization from the Select Board to fund Habitat for Humanity for the purposes of constructing a duplex lot within Richmond’s Sandpiper I development (31 Beach Grass Road). Habitat develops ownership home opportunities for year-rounders and these two duplexes will serve households earning at or below 80% of AMI. The Trust has voted to approve $460,000 of funding toward the total construction cost of $660,000 for both units. Funds ($460,000) would come from previously approved CPC funding ($5 million bonding). Habitat has already raised the balance required to complete the units.

**Staff Recommendation**

Approve the request.

**Background/Discussion**

As the Board is familiar with, Habitat has been working diligently to modify its program to conform with Department of Housing and Community Development requirements which would allow their units going forward to count on the Town’s Subsidized Housing Inventory. As the Board is also aware, Habitat has two families already in their queue for whom homes need to be provided before subsequent units can count on the SHI list. At its February 19, 2020 meeting, the Board approved funding ($375,000) for the acquisition of the duplex lot at 31 Beach Grass Road, understanding that purchasing the duplex lot at 31 Beach Grass Road, and forthcoming construction request ($460,000), would allow Habitat to get going without further delay on building year-round residences for these two families and clear the way for all homes after these to count on the SHI list. (While these duplex units at 31 Beach Grass will not count on the SHI, they will be permanently restricted at 80% AMI.)

**Impact: Environmental ☐ Fiscal ☐ Community ☒ Other ☐**

Strategic goal of creating SHI-eligible housing that serves year-round families.

**Board/Commission Recommendation**

N/A
<table>
<thead>
<tr>
<th><strong>Public Outreach</strong></th>
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<tr>
<td>N/A</td>
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</table>

**Attachments**

1. Request letter from Habitat for Humanity
2. Draft grant agreement prepared by Town Counsel
3. Article 28 (2019 ATM) certified result
Dear Brian and the AHTF Board,

On behalf of the Board of Habitat for Humanity Nantucket, Inc, I want to sincerely thank the AHTF again for assisting us in the purchase and build of a duplex at the Richmond Development. The AHTF has been a strong supporter of Habitat in the past and your generous support on the Richmond project will enable the resumption of our construction program.

As a reminder, these two homes in the duplex at 31 Beach Grass will be deed restricted and permanently affordable to homeowners in the less than 80% AMI bracket. The two homeowners, Richard Ho-Shue and Evelyn Dwyer were chosen over 3 years ago in an old Habitat selection process that unfortunately makes them non-SHI list eligible. The three homes that we will build next year off Benjamin Drive, will all be SHI eligible. The Benjamin lot needs extensive site and utility prep work before we can build. We will be using $150k of Habitat funds earned from our eleven mortgages to do this work this summer and fall.

Tucker Holland has asked me to give you the anticipated time frame for the funding needs of the Beach Grass duplex. We estimate the total construction cost for the duplex to be approximately $660K. We have $200k in two remaining grants ($100k from Chip and $100k from the CPC). We are asking for the balance of $460k from the AHTF for the build.

The estimated timing and purposes for the funds are:

- **July 1, 2020:** $60K: - 20% deposit to Signature for duplex build  
  - Surveys, excavation, foundation pour and insulation

- **August 1, 2020:** $150K: - 50% deposit to Signature

- **September 1, 2020:** $150K: - 30% final to Signature for duplex  
  - Barge the duplex from the Cape  
  - Set, finish and make duplex watertight  
  - unload and delivery on Island of Duplex

- **October 1, 2020:** $100K: - HVAC, Electric, plumbing,  
  - paint, finish, driveways, landscape

We are very excited to be building homes for ownership for two deserving Island families this year and three SHI listed homes for Island families in 2021. We will be selecting those three families in our new DHCD approved selection process this fall. We are very appreciative and could not be doing this without your support.

Sincerely,

Gerry Keneally.  
President of Habitat for Humanity Nantucket
PORCH NOTE:
DECK, RAILINGS & POSTS SUPPLIED & INSTALLED ON SITE BY BUILDER PER ALL STATE/LOCAL CODES & INSPECTED BY LOCAL BUILDING OFFICIAL.

263 SQ. F.T. SOLAR READY ZONE
TOWN OF NANTUCKET AFFORDABLE HOUSING TRUST FUND

GRANT AGREEMENT FOR

Habitat for Humanity Nantucket, Inc.

This GRANT AGREEMENT is made on this _______ day of ______________, 2020, by and between the Town of Nantucket Affordable Housing Trust Fund, a municipal affordable housing trust created pursuant to G.L. c. 44, §55C, under a Declaration of Trust dated February 8, 2010, recorded with Nantucket County Registry of Deeds in Book 1221, Page 20, as amended by First Amendment to Declaration of Trust dated September 25, 2014, recorded with said Deeds in Book 1452, Page 271, acting by and through its Board of Trustees, having an address of 2 Fairgrounds Road, Nantucket, Massachusetts 02554 (the “Trust”), and Habitat for Humanity Nantucket, Inc., a Massachusetts non-profit corporation having an address at 35 Old South Road, Nantucket, Massachusetts 02554 (the “Grantee”).

WITNESSETH:

WHEREAS, Grantee submitted a letter dated May 3, 2020, to the Trust requesting a grant in the amount of $460,000.00 for the construction of a residential duplex on the property to be acquired by the Grantee at 31 Beach Grass Road, Nantucket for affordable housing purposes (the “Request”);

WHEREAS, the vote of Article 28 of the 2019 Annual Town Meeting authorized the appropriation of funds for the Trust to develop affordable housing units in the Town of Nantucket, including the costs of construction of affordable housing units;

WHEREAS, the Trust reviewed the Request and voted to award the grant to the Grantee for the amount of $460,000.00 to be used for the purpose of assisting Grantee to construct a residential duplex on the Property to be acquired by the Grantee (the “Units”) and selling the same to Eligible Purchasers (defined below), subject to an affordable housing deed rider held by the Town of Nantucket (the “Project”) and to enter into a grant agreement with Grantee for the purposes set forth herein.

NOW THEREFORE, the Trust and Grantee agree as follows:

1. Funding. As appropriated by said Town Meeting, the Trust at a meeting held on May 7, 2020 voted to grant to Grantee funds totaling $460,000.00 (the “Funds”) on the condition that Grantee shall use the Funds only for the purposes of the Project, as set forth more particularly in their Request and plans and this Grant Agreement and then ratified its vote at their meeting on July 2, 2020.
2. **Conditions.**

   a) Work on the Project must commence within six (6) months from the date of the execution of this Agreement (the “Commencement Date”). All work must be completed and the Units sold to Eligible Purchasers within two (2) years from the Commencement Date, unless extended by the Trust for good cause.

   b) Excess or unused Funds will be returned to the Trust if the Project has not begun or the Project has not been completed as provided for in Section 2(a).

   c) Grantee shall construct the Units on the Property and convey the same to households earning eighty percent (80%) or less of the area median income in the Statistical Area for Nantucket County (the “Area Median Income”), at a price affordable to households earning no more than eighty percent (80%) of the Area Median Income, as determined by the Department of Housing and Urban Development (“HUD”), adjusted for household size (an “Eligible Purchaser”). Grantee shall convey the Units by deeds that shall include a Deed Rider, approved by the Town of Nantucket, granting the Town a permanent affordable housing restriction on the Units, requiring that each of the Units be conveyed to an Eligible Purchaser, meeting the requirements of G.L. c. 184, Sections 31-33, and ensuring that the restrictions stated therein shall survive foreclosure and that the Units shall remain affordable in perpetuity (the “Deed Rider”). The Deed Rider shall be free of liens and free of easements and restrictions that would interfere with the Town’s exercise of its rights under the Deed Rider; all mortgages on the Property or the Units, if any, shall have been subordinated to the Deed Rider.

   d) Grantee shall seek the approval of, and work closely with, _____________________ in the implementation of the Project.

3. **Contact.** Grantee shall identify in writing a contact person responsible for administration of the Project and a second person, authorized to act if the contact person is unavailable.

4. **Budget/Other Sources of Funding.** Prior to the commencement of the Project, Grantee must submit a complete project budget that accounts for (1) the expenditure of all funds awarded under this Grant Agreement; and (2) the identity and amounts of all other sources of funding, if necessary, to complete the Project. If the Trust determines that the Funds have been spent on goods and/or services not included in the Project budget, reimbursement may not be authorized.

5. **Payments.** The Trust shall disburse up to ten percent (10%) of the Funds when Grantee obtains a building permit to construct the Units. The Trust shall disburse no more than seventy-five percent (75%) of the Funds based on the work done, made no more than once a month and paid only upon the presentment of detailed invoices from Grantee or Grantee’s contractor listing in detail the work performed and the cost thereof. The Trust shall have the right to ask for supplementary information. Prior to any payment, the Trust shall have the right to enter the Property to inspect the work. No payment shall be made until the Trust reasonably determines that the work has been done in a good and workmanlike manner and substantially in compliance with the construction documents. The balance of the Funds shall
be paid when Grantee conveys the Units to Eligible Purchasers and records a Deed Rider in compliance with this Grant Agreement. Other than the initial disbursement of up to $46,000.00, which may be expended for costs related to the Project, Grantee shall use the remaining Funds only for the purpose of funding hard construction costs to undertake the Project, as described in the contract documents. If the cost of the Project exceeds the Funds, such sums shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of the Project is more than the Funds (the difference between the two amounts referred to hereinafter as the “Excess”), the Trust shall have no obligation to pay the Excess.

6. Liability of the Trust. The Trust’s liability hereunder shall be to make the payment specified in Section 1 of this Grant Agreement, provided that the conditions set forth in Sections 2 and 5 are followed, and the Trust shall be under no further obligation or liability. Nothing in this Grant Agreement shall be construed to render the Trust or any elected or appointed official or employee of the Trust, or their successors in office, personally liable for any obligation under this Grant Agreement.

7. Indemnification. Grantee shall indemnify, defend, and hold the Trust and its officers, employees, servants and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorneys’ fees, arising out of or relating to Grantee’s performance of the Project, the condition of the Property, or the negligence or misconduct of Grantee or Grantee's agents or employees.

8. Reports; Inspection. Grantee shall provide the Trust with progress reports at four (4)-month intervals beginning sixty (60) days from the date this Grant Agreement is signed, for so long as the Funds remain unexpended, and with final notification within thirty (30) days after the completion of the Project. The Trust shall have the right, upon reasonable request, to inspect the work of Grantee, including the right to enter the Property and the Trust reserves the right to review all final plans and the reasonableness of the scope of work items to be taken to accomplish the stated Project goals.

9. Public Records; Contract Documents. All document relating to the Project, including, but not limited to, photographs, videos, etc., submitted to the Trust shall become the property of the Town and shall be available for use by the Trust and available by the public under the Massachusetts Public Records Law. The Contract Documents consist of this Grant Agreement, the Request and all documents attached thereto, the Restriction, and plans approved by the Trust. The Contract Documents constitute the entire agreement between the parties concerning the Project.

10. Record Keeping. Grantee agrees to keep, for a period of six (6) years after the Project is completed, such records with respect to the utilization and the proceeds of this Grant Agreement as are kept in the normal course of business and such additional records as may be required by the Trust. Grantee further agrees to make these records available to the Trust upon request.
11. **Assignment.** Grantee shall not assign, subcontract or otherwise transfer this Grant Agreement, in whole or in part, without the prior written consent of the Trust.

12. **Termination.** In the event Grantee fails to fulfill all obligations under the terms of this Grant Agreement, as determined by the Trust, and such failure is not cured within forty-five (45) days after the Trust has given written notice to Grantee specifying such failure, the Trust shall have the right, in its sole discretion, to terminate this Grant Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Grant Agreement. Upon termination, the Trust shall be free to pursue any available rights or remedies, including without limitation, recapture of Funds as set forth in Section 13 below. Upon the expiration or earlier termination of this Grant Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 2, 5, 6, 7, 10, 12, and 13 shall survive said expiration or earlier termination.

13. **Return of Funds.** In the event Grantee fails to fulfill all obligations under the terms of this Grant Agreement and this Grant Agreement is terminated pursuant to Section 12, any Funds granted to Grantee under this Grant Agreement and not yet expended shall be returned forthwith to the Trust without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Grant Agreement as a result of negligent or intentional acts or omissions of Grantee or its agents, employees, contractors or invitees, Grantee shall be liable to repay to the Trust the entire amount of the Funds provided under this Grant Agreement, and the Trust may take such steps as are necessary, including legal action, to recover such funds. Any Funds so returned or recovered shall be placed in the Trust’s account. In the event that the Trust takes legal action under this Grant Agreement, Grantee shall pay any and all costs, including reasonable attorneys’ fees, expended for the enforcement of this Grant Agreement.

14. **Compliance with Laws.** Grantee shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the Project, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required in connection with the Project. No local permit or license is waived by the award of this grant.

15. **Notice.** Any and all notices, or other communications required or permitted under this Grant Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

16. **Severability.** If any term or condition of this Grant Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of
this Grant Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

17. **Governing Law.** This Grant Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Grant Agreement.

Signature Page to Follow
IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement on the day and year first written above.

TOWN OF NANTUCKET
AFFORDABLE HOUSING TRUST FUND

HABITAT FOR HUMANITY NANTUCKET, INC.

By: ____________________________
Name:  Gerry Keneally
Title:  President

By: ____________________________
Name:  John Renwick
Title:  Treasurer

725730v3NANT19710/0001
April 1, 1999

TO WHOM IT MAY CONCERN:

I, Nancy L. Holmes, duly elected Clerk of the Town and County of Nantucket, hereby certify that the April 1, 1999 ANNUAL TOWN MEETING adopted Article: “28” at the April 1, 1999 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, seconded, and voted in accordance with the motions recommended by the Finance Committee or, in the absence of a Finance Committee motion, then in accordance with the motions as recommended by the Planning Board, as printed in the Finance Committee Report, with technical amendments brought forward during the course of the meeting...”

ARTICLE 28
(Appropriation: Affordable Housing Trust Fund)
To see if the Town will appropriate a sum of money to pay costs of acquiring land, which may include any buildings thereon, for the development of affordable housing, and also to pay costs of designing, constructing, reconstructing and equipping affordable housing, all of which shall be undertaken in conjunction with the Town's Affordable Housing Trust, and for the payment of all other costs incidental and related thereto and to determine whether this amount should be raised by taxation, transfer from available funds, borrowing or otherwise, and, further, to authorize the Town to enter into leases, subleases and any other similar arrangements with the Town’s Affordable Housing Trust, or take any other action relative thereto.

(SELECT BOARD)
FINANCE COMMITTEE MOTION: Moved that the sum of Five Million Dollars ($5,000,000) be appropriated to pay costs of acquiring land, which may include any buildings thereon, for the development of affordable housing, and also to pay costs of designing, reconstructing and equipping affordable housing, all of which shall be undertaken in conjunction with the Town’s Affordable Housing Trust, and for the payment of all other costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Select Board, is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor. In conjunction with the development of affordable housing, the Town is authorized to enter into...
leases, subleases and any other similar arrangements to carry out the purposes of this vote with the Town's Affordable Housing Trust. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. While the bonds issued pursuant to this vote shall be general obligations of the Town, it is the intent of Town Meeting that the principal and interest thereon shall be paid from Community Preservation Act revenue. Any affordable housing units developed pursuant to this vote shall be available to tenants with incomes of not less than 30% or more than 200% of area median income for the Town, as most recently determined by the United States Department of Housing and Urban Development.

VOTE: The vote on the motion pursuant to Article 28, as moved by the Finance Committee, was by Declared 2/3 Voice Vote. The motion was adopted.

ATTEST: A TRUE COPY

Nancy L. Holmes, CMC
Town & County Clerk
**Agenda Item Summary**

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<th>Agenda Item #</th>
<th>IX. 2.</th>
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<td>Date</td>
<td>7/22/2020</td>
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**Staff**
Ken Beaugrand, Real Estate Specialist

**Subject**
Disposition of a paper street parcel pursuant to most advantageous bid in response to RFP. Parcel 33 surrounds 36 Low Beach Road on 3 sides and was acquired in 2017 by Order of Taking, authorized by passage of Article 94 at 2009 Annual Town Meeting as part of the “Yard Sale” program.

**Executive Summary**
A Request for Proposal was required as the $3/SF value of this 19,666 SF Sconset land exceeds the $35,000 threshold of MGL 30B. The disposition was authorized by Article 95 at the 2009 ATM. Peter & Natalia O’Brien, the owners of the only abutting property, were the sole bidders. The minimum required bid was $58,998. Their bid at $60,090.72, including all fees, has been accepted. The merger of the parcel with 36 Low Beach Rd will increase the pre-existing nonconforming lot size of the property from 51,907 SF to 71,573 SF in the LUG-3 zone where minimum lot size is 120,000 SF.

**Staff Recommendation**
This matter has been reviewed by REAC twice and at their meeting in February they reviewed Town Counsel's opinion in this matter and then voted four in favor and one abstaining to proceed with the disposition as per the RFP. Recommendation is to proceed to the disposition.

**Background/Discussion**
See attached memorandum to Select Board dated July 17, 2020

**Impact:**
- Environmental ☐
- Fiscal ☒
- Community ☐
- Other ☐

Provides compensation for the purchase as well as an addition to the tax roll.

**Board/Commission Recommendation**
n/a

**Public Outreach**
Request for Proposal was published in the Inquirer and Mirror & the Central Register, posted on the Procurement webpage, and sent by certified mail to the Abutters.

**Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)**
Conforms with the Yard Sale program’s intent to convey non-performing land assets, which have been off the tax rolls, to eligible residential abutters, providing potential for building or landscape improvements and in some instances curing or attenuating dimensional nonconformities (lot size, ground cover, setback intrusions).

**Attachments**
Purchase and Sale, Deed, Plan No. 2016-113, Settlement Statement
Disposition of the Paper Roads located at 28, 30 and 36 Low Beach Road

TO: Select Board
FROM: Ken Beaugrand
DATE: July 17, 2020
SUBJECT: Low Beach Road parcels

The purpose of this memo is to review the history of the yard sale process as it applies to certain “paper streets” described as Parcel 1, Central Street, Unnamed Way and Myrtle Street (“Parcel 1”), Parcel 2, Myrtle Street, Unnamed Way and Holly Street (“Parcel 2”) and Parcel 33, Central Street, Unnamed Way and Elm Street (“Parcel 33”) off Low Beach Road (collectively, the “Parcels”) and to recommend that the Select Board proceed with the disposition of the Parcels as has been recommended by the Real Estate Advisory Committee (“REAC”), me, the Director of Planning and other staff who prepared and issued the Request for Proposals as authorized by the vote of Article 95 of the 2009 Annual Town Meeting. To do otherwise creates a situation where the property owners of 28, 30 and 36 Low Beach Road, abutting the Parcels, have expended time and financial resources over a decade only to have the Town reverse course and reconsider the disposition of the Parcels at the very end of a public and Town-approved process. The Parcels have no direct oceanfront and are bordered on either side by significant existing public open spaces providing public access to the Siasconset beaches. These factors were considered prior to the Town offering the disposition of the land. It is important to also remember that because the lots are undersized for the current zoning district (LUG-3), the additional acreage of the land provides minimal new development potential in terms of ground-cover at a high value for surplus land, because of the neighborhood.

The Parcels were always shown on a plan and part of a dormant, high-density, grid-subdivision laid out to capitalize on the railroad in the early 1900’s which were never constructed. The acquisition of the Parcels was approved by the vote of Article 94 of the 2009 Annual Town Meeting pursuant to the “Yard Sale Program.” The Town created the Yard Sale Program to prevent the construction or use of these paper streets by those claiming possible rights or title in these paper streets. The Yard Sale Program has been very successful for the Town conveying the paper street parcels to the abutters of the paper streets, which also provides additional tax revenue for the Town. The Town took Parcels 1 and 2 by an Order of Taking by Eminent Domain dated May 27, 2015, recorded with the Nantucket Registry of Deeds in Book 1485, Page 28 and Parcel 33 by an Order of Taking by Eminent Domain dated February 22, 2017, recorded with said Deeds in Book 1580, Page 208.

The 2009 Annual Town Meeting also authorized the disposition of the Parcels by a vote of Article 95. This vote is evidence of the Town’s consideration of these dispositions, all of which were unanimously supported. The Property owners abutting the Parcels, at their own expense, then created the necessary plans for the Town to implement what had been authorized by Town Meeting. At that time, the Town discussed the takings with the owners, all expressed interest in their acquisition by the Town, and to forego damage claims since title was vested in their adjacent properties. In the event that these Parcels are not sold to the abutting property owners under the Yard Sale Program, then these property owners may have claims for damages against the Town for the takings of these Parcels.
It was understood by the property owners that to acquire the property they had to submit the highest bid pursuant to the Request for Proposal (“RFP”) process. As the appraised value of each of the Parcels exceeded the $35,000 minimum value as set forth in G.L. c. 30B, § 16 (b) (2)), the Town was required to publish an RFP, which also caused delays in the proposed disposition of the Parcels. The RFP was published in the Inquirer and Mirror, the Central Register, posted on the Procurement Web page and sent by certified mail to the abutters. The bids were opened by the Finance Department and the bids of the current owners of each of these three parcels were accepted all in accordance with the Town procedures. Upon the sale of the Parcels, the Town will receive the following revenue

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<td>$47,090.27</td>
<td>Parcel 2</td>
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<tr>
<td>$59,954.43</td>
<td>Parcel 1</td>
</tr>
<tr>
<td>$60,272.06</td>
<td>Parcel 33</td>
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$167,316.76

The purchase price of these Parcels exceeds the assessed value and the additional funds are helpful to the Town in the current financial climate.

This matter has been reviewed by REAC twice and at their meeting in February after review by Town Counsel voted to recommend 4-0 with one abstention to proceed with recommending to the Select Board the disposition pursuant to the RFP.

At the scheduled hearing on this, the matter was rescheduled to be heard on March 25 as Mr. Fee wanted a review of the REAC committee’s role as to yard sale properties and his concern over coastal erosion. REAC had extensive discussions about the Parcels and always considers implications of properties near the ocean. Here, the paper road that is parallel to the shoreline is more than 1,000 feet from the shore. Further, there are extensive public holdings to the north and south insuring public access in the unlikely event that the entire dune field erodes. The elevation of the dunes exceeds the projections of the CRAC and in the event of catastrophic sea level rise in this location, there are clearly other priority areas than this small cluster of four homes to maintain public access such as Cod Fish Park. In my opinion, no further duplicative reviews are necessary. Because of the pandemic, this matter is still pending.
PURCHASE AND SALE AGREEMENT

Agreement made this _______ day of ______________, 2020.

1. PARTIES AND MAILING ADDRESSES

The Town of Nantucket, a municipal corporation acting by and through its Select Board, having an address of 16 Broad Street, Nantucket, Massachusetts 02554, hereinafter called the SELLER, agrees to SELL and Peter L. O’Brien and Natalia V. O’Brien of 188 Brookline Avenue, Apt. 26J, Boston, Massachusetts 02564, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

The premises are comprised of a certain parcel of land in Nantucket, Massachusetts shown as Parcel 33, Central Street, Unnamed Parcel and Elm Street, containing 19,666± square feet, on a plan of land entitled “Plan of Land Taking and Disposition Articles 94 and 95, 2009 ATM in Nantucket, Massachusetts,” dated November 7, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket County Registry of Deeds as Plan No. 2016-113 (the “Property” or “Premises”). The Premises is considered a non-conforming lot pursuant to the Town of Nantucket Code.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Intentionally Omitted (Vacant Land).

4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

(a) Any liens for municipal betterments assessed after the date of this agreement;

(b) Laws, by-laws, rules, and regulations, whether federal, state, or local, which affect the use of the Premises, including, but not limited to, rules and regulations of the Nantucket Conservation Commission, Nantucket Zoning By-Law, Nantucket Historic District Commission, Nantucket Building Department, Nantucket Planning Board and Nantucket Board of Health;

(c) Real estate taxes for the then-current fiscal year and future periods which are not due and payable at the time of delivery of the deed;

(d) Any fee which may be imposed upon the transaction which is the subject of this agreement by the Nantucket Land Bank Commission, which the Buyer agrees to pay at the
time of delivery of the deed;

(e) Any right, restrictions or easements and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for residential purposes;

(f) Any public rights existing below mean high water, if applicable; and

(i) Said deed shall contain a reversion clause and a restriction set forth in Section 35 below to require the Premises to be used, and effectively merged with, the BUYER’S existing property known as 36 Low Beach Road, Nantucket, Massachusetts, which is shown as Town Assessor’s Map 74 as Parcel 55, for residential purposes and permanently restricting any further division or subdivision of the Premises as combined with said existing property.

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the BUYER shall deliver such plan with the deed in a form adequate for recording.

6. REGISTERED TITLE

In addition to the foregoing, if the title to the said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title to said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

7. PURCHASE PRICE

The agreed purchase price for said premises is Fifty-Nine Thousand and 00/100 Dollars ($59,000.00), of which

$ 0.00  was paid as a deposit
$ 59,000.00  is to be paid at the time of delivery of the deed in cash, or by certified, cashier’s, treasurer’s or bank check(s).

$ 59,000.00  Total

8. TIME FOR PERFORMANCE; DELIVERY OF DEED

Said deed is to be delivered to BUYER at the Nantucket County Registry of Deeds at 1:00 P.M. on the 23rd day of July, 2020, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.
9. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they are now, and (b) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. In the event that such an extension occurs, BUYER agrees to close prior to expiration of the extension period and as soon as reasonably possible after SELLER is prepared to deliver the Premises in compliance with this Agreement. In no event shall SELLER be required to expend more than a total of $1,000.00 to clear title to and deliver possession of the Premises.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.

13. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after delivery of said deed.
14. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

15. INSURANCE

Intentionally Omitted (Vacant Land).

16. ADJUSTMENTS

A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, § 63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed.

17. ADJUSTMENT OF UNASSESSED AND UNABATED TAXES

Intentionally Omitted.

18. BROKER’S FEE

Intentionally Omitted.

19. BROKER’S WARRANTY

Intentionally Omitted.

20. DEPOSIT

All deposits made hereunder shall be held in escrow by Town Treasurer, as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or by court order by a Court having competent jurisdiction.

All deposits made hereunder shall be placed in a non-interest-bearing account. The escrow agent hereunder shall not be liable for any loss suffered with respect to the escrow account or for any action or inaction taken by the escrow agent in good faith with respect to the account or deposit. The escrow agent may resign at any time by transferring the deposit to a successor escrow agent reasonably acceptable to SELLER and BUYER which successor agrees in writing to act as escrow agent. BUYER and SELLER jointly and severally agree to indemnify and hold the escrow agent harmless for any and all costs and expenses, including reasonable attorney’s fees, incurred in connection with any such dispute.
21. **BUYER’S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER’S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages which shall be the SELLER’S sole and exclusive remedy at law and in equity for a breach of this agreement.

22. **RELEASE BY HUSBAND OR WIFE**

Intentionally Omitted.

23. **BROKER AS PARTY**

Intentionally Omitted.

24. **LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES**

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. **WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: **NONE.** SELLER and SELLER’s agents have made no warranties or representations, express or implied, and BUYER is purchasing the premises in it’s “AS IS” and without inspection.

26. **MORTGAGE CONTINGENCY CLAUSE**

None.

27. **CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.
28. **TITLE STANDARDS AND CONVEYANCING PRACTICES**

Any matter relating to performance of this Agreement which is the subject of a title, practice or ethical standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.

29. **NOTICES**

All notices, demands, consents and approvals required or permitted hereunder shall be deemed to have been duly given if in writing addressed to BUYER or SELLER at:

In the case of BUYER:

Mr. and Mrs. Peter O’Brien
188 Brookline Avenue, Apt. 26J
Boston, MA 02564

With a copy to:

Steven L. Cohen, Esq.
Cohen & Cohen Law, P.C.
34 Main Street
P.O. Box 786
Nantucket, MA 02554
(508) 228-0337
Facsimile: (508) 228-0970

In the case of SELLER:

Town of Nantucket
Town and County Building
16 Broad Street
Nantucket, MA 02554

With a copy to:

Vicki S. Marsh, Esq.
KP Law, P.C.
101 Arch Street, 12th Fl.
Boston, MA 02110
(617) 556-0007
Facsimile: (617) 654-1735

and shall be deemed delivered upon the earliest to occur of (a) receipt or refusal to accept delivery; or (b) upon delivery prior to 5:00 P.M. on any business day by telecopy evidenced by written or printed receipt confirmation, provided a copy of any such notice sent by telecopy is sent also by means of one of the above-described manners of delivery. BUYER and SELLER may change the address to which any notice is to be sent by giving reasonable notice to the other party of such new address in the manner specified.

30. **NO BROKER WARRANTY**

The parties warrant and represent each to the other that there is no broker involved with the transaction to which this agreement pertains. In the event of a breach of the foregoing representation, the breaching party shall indemnify and hold harmless the non-breaching party for
all expenses, including attorney’s fees, which arise from such breach. The provisions of this section shall survive delivery of the deed hereunder.

31. SELLER’S CONTINGENCY

SELLER’s obligations hereunder shall be contingent upon SELLER complying prior to closing with the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of the premises and obtaining all necessary authority to sell the premises, including but not limited to a declaration that the premises constitutes surplus property and an appropriate Town Meeting vote.

32. VENUE

The parties hereto agree that all actions on this Agreement shall be brought in the Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Nantucket Division, to the extent that said Court shall have jurisdiction of the subject matter in any such action.

33. EXTENSION AUTHORITY

By executing this Agreement, Buyer and Seller hereby grant to their respective attorneys the actual authority to bind them by facsimile for the limited purpose of allowing them to grant extensions, and Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge that either party has disclaimed the authority granted herein to bind them.

34. CLOSING DOCUMENTS

BUYER agrees to sign at closing all forms reasonably required by SELLER including without limitation a disclosure statement pursuant to G.L. c. 7C, sec. 38. BUYER agrees to pay the legal costs incurred for preparing a Quitclaim Deed for the Premises.

35. MERGER OF PREMISES

BUYER shall consolidate the Premises with the BUYER’S existing abutting lot as set forth in the provisions of the “Nantucket Yard Sale Program.” This consolidation process includes but is not limited to obtaining a special permit from the Zoning Board of Appeals to alter any premises which is a nonconforming lot pursuant to Town Code 139-33A (8) and, filing a new perimeter plan with the Nantucket Planning Board and Massachusetts Land Court, if applicable.

BUYER warrants that the Premises shall not be used as separate buildable lots or resold as a separate buildable lot and shall be used for residential uses only. Notwithstanding any provision herein to the contrary, BUYER shall accept the deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce such restrictions and covenants as follows:

“The Grantor’s conveyance of the parcel(s) described herein is based in part on the Grantee’s warranty and representation to the Grantor that such parcel(s) shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 36 Low Beach Road, shown on Town Assessor’s Map 74 as Parcel 55, previously acquired by Grantee by Deed recorded with Nantucket county Registry of
Deeds in Book 1696, Page 82(together, the "Combined Premises"), and that no part of the Combined Premises shall be hereafter divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Select Board and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises, and prohibiting the use or conveyance of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four months of the Date of the Deed, the Parcel has not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used or conveyed in a manner inconsistent with these restrictions unless a prior written release is granted by the Town of Nantucket Select Board and recorded with said Deeds."

These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body" pursuant to G.L. c. 184, Section 26 such that the restrictions contained herein shall be enforceable for the full term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the grantee hereby appoints the grantor as its agent and attorney in fact to execute and record such notice and further agrees that the grantee shall execute and record such notice upon request. The representations, warranties and provisions of this Section 35 shall survive the delivery of this deed and any conveyance of the Premises, and BUYER shall accept a deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce these covenants.

36. CONDITION OF PREMISES

BUYER acknowledges that prior to the date of this Agreement, BUYER entered the Premises for the purpose of surveying and inspecting the Premises, as necessary for BUYER's financing and purchasing of the Premises and BUYER agrees that BUYER and BUYER's agents fully and completely inspected the Premises, and that BUYER is wholly satisfied with the condition of the Premises. SELLER and SELLER's agents have made no warranties or representations with respect to the Premises, express or implied, on which BUYER has relied except as otherwise set forth in this Agreement. In the event that BUYER and/or BUYER's agents, contractors and employees access the Premises to make any further inspections, assessments, surveys, appraisals or other non-invasive examination of the surface of the Premises, then such access shall be solely at the BUYER's risk, and BUYER shall indemnify and save SELLER harmless from any and all claims, demands, suits or causes of action of any nature whatsoever arising from BUYER's and its agents', contractors' and employees' presence at and/or actions upon or about the Premises, including, without limitation, any claim for personal injury or property damage made by any such person afforded access to the Premises pursuant hereto. BUYER will, and will cause its agents, employees, and contractors, to observe any posted rules and regulations on the Premises.
37. REPRESENTATION BY COUNSEL

BUYER and SELLER each acknowledge and agree that they have by counsel of their own choosing or have had an opportunity to be so represented by counsel, and both BUYER and SELLER have read and understand the terms of this Agreement.

38. ASSIGNMENT AND RECORDING OF AGREEMENT

BUYER shall not file this Agreement with any Registry of Deeds or recording office. BUYER shall not assign this Agreement to any party without SELLER’s prior written consent, which consent SELLER may withhold for any or no reason. In the event BUYER so files or assigns this Agreement without SELLER’s prior written consent, then SELLER may elect, upon written notice to BUYER, to terminate this Agreement and to retain any and all deposits.

39. SEVERABILITY

If this Agreement shall contain any term or provision which shall be invalid, then the remainder of the Agreement, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law, provided such term or provision does not materially affect the obligations of either of the parties nor the essence of the Agreement.

Signature Page to Follow
SELLER:
TOWN OF NANTUCKET
By its Select Board

ESCROW AGENT:
TOWN TREASURER

BUYER:

By: ___________________________
Peter L. O’Brien

By: ___________________________
Natalia V. O’Brien
QUITCLAIM DEED

Parcel 33, Central Street, Unnamed Parcel and Elm Street, Nantucket, Massachusetts

The Town of Nantucket, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Select Board (the “Grantor”), in consideration of Fifty-Nine Thousand and 00/100 Dollars ($59,000.00), the receipt of which is hereby acknowledged, pursuant to the authority of Article 95 voted upon at the 2009 Annual Town Meeting, a certified copy of which is attached hereto, grants to Peter L. O’Brien and Natalia V. O’Brien, husband and wife as tenants by the entirety, of 188 Brookline Avenue, Apt. 26J, Boston, Massachusetts 02215 (the “Grantee”), with QUITCLAIM COVENANTS, a certain parcel of land shown as Parcel 33, Central Street, Unnamed Parcel and Elm Street, containing 19,666± square feet, in Nantucket, Massachusetts shown on a plan of land entitled “Plan of Land Taking and Articles 94 and 95, 2009 ATM in Nantucket, Massachusetts,” dated November 7, 2016, prepared by Nantucket Surveyors, LLC, recorded with Nantucket County Registry of Deeds as Plan No. 2016-113. The premises hereby conveyed are a portion of Central Street, an Unnamed Parcel and Elm Street and, is vacant land (the “Parcel”).

The Grantor’s conveyance of this Parcel is based in part on the Grantee’s warranty and representation to the Grantor that such Parcel shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 36 Low Beach Road and shown on Town Assessor’s Map 74 as Parcel 55 previously acquired by Grantee pursuant to Deed recorded with said Deeds in Book 1696, Page 82 (together with the Parcel, the “Combined Premises”), and that no part of such Parcel or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Select Board and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcel and Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, as from time to time amended; prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcel has not been merged with the Grantee’s existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Select Board and recorded with said Deeds.
By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor’s reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be “other restrictions held by any governmental body,” pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

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

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

For Grantor’s title, see Order of Taking dated February 22, 2017 recorded with said Deeds in Book 1580, Page 208.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]
EXECUTED under seal this ______ day of ________________, 2020.

TOWN OF NANTUCKET
BY ITS SELECT BOARD

______________________________  
Dawn E. Hill Holdgate

______________________________  
Jason Bridges

______________________________  
Matthew G. Fee

______________________________  
Kristie L. Ferrantella

______________________________  
Melissa K. Murphy

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this _____ day of ____________, 2020, before me, the undersigned Notary Public, personally appeared Dawn E. Hill Holdgate, Jason Bridges, Matthew G. Fee, Kristie L. Ferrantella and Melissa K. Murphy as Members of the Select Board of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Select Board of the Town of Nantucket.

______________________________
Notary Public
My Commission Expires:
SETTLEMENT STATEMENT

Town of Nantucket (“Seller”)
Peter L. O’Brien and Natalia V. O’Brien (“Buyer”)
Parcel 33, Central Street, Unnamed Parcel and Elm Street,
Nantucket, MA (Property)
July 23, 2020 (Closing Date)

Purchase Price: $ 59,000.00

Less:
Deposit $ 00.00

Plus:
Payment in Lieu of Tax Adjustment
7/23/20-12/31/20 $ 90.72
Reimbursement of Town’s Legal Fees $ 1,000.00

Net Amount Due Seller: $ 60,090.72

Checks:

Town of Nantucket $ 60,090.72
BUYER:  

By: ___________________
    Peter L. O’Brien

SELLER: TOWN OF NANTUCKET
SELECT BOARD

By: ___________________

By: ___________________
    Natalia V. O’Brien
Agenda Item Summary

Staff
Ken Beaugrand, Real Estate Specialist

Subject
Disposition of a paper street parcel pursuant to most advantageous bid in response to RFP. Parcel 1 surrounds 30 Low Beach Road on 3 sides and was acquired in 2017 by Order of Taking, authorized by passage of Article 94 at 2009 Annual Town Meeting as part of the “Yard Sale” program.

Executive Summary
A Request for Proposal was required as the $3/SF value of this 19,560 SF Sconset land exceeds the $35,000 threshold of MGL 30B. The disposition was authorized by Article 95 at the 2009 ATM. Low Beach LLC, a Massachusetts corporation, the owner of the only abutting property, was the sole bidder. The minimum required bid was $58,680. Their bid at $59,769.10, including all fees, has been accepted.

Staff Recommendation
This matter has been reviewed by REAC twice and at their meeting on February they reviewed Town Counsel’s opinion in this matter and then voted four in Favor one abstaining to proceed with the disposition as per the RFP. Recommendation is to proceed to the disposition.

Background/Discussion
See attached memorandum to Select Board dated July 17, 2020

Impact: Environmental ☐ Fiscal ☒ Community ☐ Other ☐
Provides compensation for the purchase as well as an addition to the tax roll.

Board/Commission Recommendation
n/a

Public Outreach
Request for Proposal was published in the Inquirer and Mirror & the Central Register, posted on the Procurement webpage, and sent by certified mail to the Abutters.

Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)
Conforms with the Yard Sale program’s intent to convey non-performing land assets, which have been off the tax rolls, to eligible residential abutters, providing potential for building or landscape improvements and in some instances curing or attenuating dimensional nonconformities (lot size, ground cover, setback intrusions).

Attachments
Purchase and Sale, Deed, Plan No. 2017-101, Settlement Statement, Town Counsel opinion
Disposition of the Paper Roads located at 28, 30 and 36 Low Beach Road

TO: Select Board
FROM: Ken Beaugrand
DATE: July 17, 2020
SUBJECT: Low Beach Road parcels

The purpose of this memo is to review the history of the yard sale process as it applies to certain “paper streets” described as Parcel 1, Central Street, Unnamed Way and Myrtle Street (“Parcel 1”), Parcel 2, Myrtle Street, Unnamed Way and Holly Street (“Parcel 2”) and Parcel 33, Central Street, Unnamed Way and Elm Street (“Parcel 33”) off Low Beach Road (collectively, the “Parcels”) and to recommend that the Select Board proceed with the disposition of the Parcels as has been recommended by the Real Estate Advisory Committee (“REAC”), me, the Director of Planning and other staff who prepared and issued the Request for Proposals as authorized by the vote of Article 95 of the 2009 Annual Town Meeting. To do otherwise creates a situation where the property owners of 28, 30 and 36 Low Beach Road, abutting the Parcels, have expended time and financial resources over a decade only to have the Town reverse course and reconsider the disposition of the Parcels at the very end of a public and Town-approved process. The Parcels have no direct oceanfront and are bordered on either side by significant existing public open spaces providing public access to the Siasconset beaches. These factors were considered prior to the Town offering the disposition of the land. It is important to also remember that because the lots are undersized for the current zoning district (LUG-3), the additional acreage of the land provides minimal new development potential in terms of ground-cover at a high value for surplus land, because of the neighborhood.

The Parcels were always shown on a plan and part of a dormant, high-density, grid-subdivision laid out to capitalize on the railroad in the early 1900’s which were never constructed. The acquisition of the Parcels was approved by the vote of Article 94 of the 2009 Annual Town Meeting pursuant to the “Yard Sale Program.” The Town created the Yard Sale Program to prevent the construction or use of these paper streets by those claiming possible rights or title in these paper streets. The Yard Sale Program has been very successful for the Town conveying the paper street parcels to the abutters of the paper streets, which also provides additional tax revenue for the Town. The Town took Parcels 1 and 2 by an Order of Taking by Eminent Domain dated May 27, 2015, recorded with the Nantucket Registry of Deeds in Book 1485, Page 28 and Parcel 33 by an Order of Taking by Eminent Domain dated February 22, 2017, recorded with said Deeds in Book 1580, Page 208.

The 2009 Annual Town Meeting also authorized the disposition of the Parcels by a vote of Article 95. This vote is evidence of the Town’s consideration of these dispositions, all of which were unanimously supported. The Property owners abutting the Parcels, at their own expense, then created the necessary plans for the Town to implement what had been authorized by Town Meeting. At that time, the Town discussed the takings with the owners, all expressed interest in their acquisition by the Town, and to forego damage claims since title was vested in their adjacent properties. In the event that these Parcels are not sold to the abutting property owners under the Yard Sale Program, then these property owners may have claims for damages against the Town for the takings of these Parcels.
It was understood by the property owners that to acquire the property they had to submit the highest bid pursuant to the Request for Proposal (“RFP”) process. As the appraised value of each of the Parcels exceeded the $35,000 minimum value as set forth in G.L. c. 30B, § 16 (b) (2)), the Town was required to publish an RFP, which also caused delays in the proposed disposition of the Parcels. The RFP was published in the Inquirer and Mirror, the Central Register, posted on the Procurement Web page and sent by certified mail to the abutters. The bids were opened by the Finance Department and the bids of the current owners of each of these three parcels were accepted all in accordance with the Town procedures. Upon the sale of the Parcels, the Town will receive the following revenue

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel 2</td>
<td>$47,090.27</td>
</tr>
<tr>
<td>Parcel 1</td>
<td>$59,954.43</td>
</tr>
<tr>
<td>Parcel 33</td>
<td>$60,272.06</td>
</tr>
</tbody>
</table>

__________

$167,316.76

The purchase price of these Parcels exceeds the assessed value and the additional funds are helpful to the Town in the current financial climate.

This matter has been reviewed by REAC twice and at their meeting in February after review by Town Counsel voted to recommend 4-0 with one abstention to proceed with recommending to the Select Board the disposition pursuant to the RFP.

At the scheduled hearing on this, the matter was rescheduled to be heard on March 25 as Mr. Fee wanted a review of the REAC committee’s role as to yard sale properties and his concern over coastal erosion. REAC had extensive discussions about the Parcels and always considers implications of properties near the ocean. Here, the paper road that is parallel to the shoreline is more than 1,000 feet from the shore. Further, there are extensive public holdings to the north and south insuring public access in the unlikely event that the entire dune field erodes. The elevation of the dunes exceeds the projections of the CRAC and in the event of catastrophic sea level rise in this location, there are clearly other priority areas than this small cluster of four homes to maintain public access such as Cod Fish Park. In my opinion, no further duplicative reviews are necessary. Because of the pandemic, this matter is still pending.
PURCHASE AND SALE AGREEMENT

Agreement made this ______ day of ______________, 2020.

1. PARTIES AND MAILING ADDRESSES

The Town of Nantucket, a municipal corporation acting by and through its Select Board, having an address of 16 Broad Street, Nantucket, Massachusetts 02554, hereinafter called the SELLER, agrees to SELL and Low Beach, LLC, a Massachusetts limited liability company, having an address of 1509 Country Club Road, Wilmington, North Carolina 28403, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

The premises are comprised of a certain parcel of land in Nantucket, Massachusetts shown as Parcel 1, Central Street, Unnamed Way and Myrtle Street, containing 19,560± square feet, on a plan of land entitled “Taking and Disposition Plan of Land in Nantucket, MA Prepared for P. Rhoads Zimmerman & Low Beach, LLC,” dated November 3, 2014, prepared by Blackwell & Associates, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2014-101 (the “Property” or “Premises”). The Premises is considered a non-conforming lot pursuant to the Town of Nantucket Code.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Intentionally Omitted (Vacant Land).

4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

(a) Any liens for municipal betterments assessed after the date of this agreement;

(b) Laws, by-laws, rules, and regulations, whether federal, state, or local, which affect the use of the Premises, including, but not limited to, rules and regulations of the Nantucket Conservation Commission, Nantucket Zoning By-Law, Nantucket Historic District Commission, Nantucket Building Department, Nantucket Planning Board and Nantucket Board of Health;

(c) Real estate taxes for the then-current fiscal year and future periods, which are not due and payable at the time of delivery of the deed;

(d) Any fee which may be imposed upon the transaction which is the subject of this
agreement by the Nantucket Land Bank Commission, which the Buyer agrees to pay at the
time of delivery of the deed;

(e) Any right, restrictions or easements and reservations of record, if any, so long as the
same do not prohibit or materially interfere with the use of said premises for residential
purposes;

(f) Any public rights existing below mean high water, if applicable; and

(i) Said deed shall contain a reversion clause and a restriction set forth in Section 35 below
to require the Premises to be used, and effectively merged with, the BUYER’S existing
property known as 30 Low Beach Road, Nantucket, Massachusetts, which is shown as
Town Assessor’s Map 74 as Parcel 54, for residential purposes and permanently
restricting any further division or subdivision of the Premises as combined with said
existing property,

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the BUYER shall deliver such plan
with the deed in a form adequate for recording.

6. REGISTERED TITLE

In addition to the foregoing, if the title to the said premises is registered, said deed shall be in form
sufficient to entitle the BUYER to a Certificate of Title to said premises, and the SELLER shall
deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate
of Title.

7. PURCHASE PRICE

The agreed purchase price for said premises is Fifty-Eight Thousand Six Hundred Eighty and
00/100 Dollars ($58,680.00), of which

$  5,868.00  was paid as a deposit
$ 52,812.00  is to be paid at the time of delivery of the deed in cash, or by
certified, cashier’s, treasurer’s or bank check(s) or by attorney’s
IOLTA check.

$ 58,680.00  Total

8. TIME FOR PERFORMANCE; DELIVERY OF DEED

Said deed is to be delivered to BUYER at the Nantucket County Registry of Deeds at 1:00 P.M. on
the 23rd day of July 2020, unless otherwise agreed upon in writing. It is agreed that time is of the
essence of this agreement.
9. **POSSESSION AND CONDITION OF PREMISES**

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they are now, and (b) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

10. **EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. In the event that such an extension occurs, BUYER agrees to close prior to expiration of the extension period and as soon as reasonably possible after SELLER is prepared to deliver the Premises in compliance with this Agreement. In no event shall SELLER be required to expend more than a total of $1,000.00 to clear title to and deliver possession of the Premises.

11. **FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. **BUYER’S ELECTION TO ACCEPT TITLE**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.

13. **ACCEPTANCE OF DEED**

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after delivery of said deed.
14. **USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

15. **INSURANCE**

Intentionally Omitted (Vacant Land).

16. **ADJUSTMENTS**

A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, § 63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed.

17. **ADJUSTMENT OF UNASSESSED AND UNABATED TAXES**

Intentionally Omitted.

18. **BROKER’S FEE**

Intentionally Omitted.

19. **BROKER’S WARRANTY**

Intentionally Omitted.

20. **DEPOSIT**

All deposits made hereunder shall be held in escrow by Town Treasurer, as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or by court order by a Court having competent jurisdiction.

All deposits made hereunder shall be placed in a non-interest-bearing account. The escrow agent hereunder shall not be liable for any loss suffered with respect to the escrow account or for any action or inaction taken by the escrow agent in good faith with respect to the account or deposit. The escrow agent may resign at any time by transferring the deposit to a successor escrow agent reasonably acceptable to SELLER and BUYER which successor agrees in writing to act as escrow agent. BUYER and SELLER jointly and severally agree to indemnify and hold the escrow agent harmless for any and all costs and expenses, including reasonable attorney’s fees, incurred in connection with any such dispute.
21. BUYER’S DEFAULT; DAMAGES

If the BUYER shall fail to fulfill the BUYER’S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages, which shall be the SELLER’S sole and exclusive remedy at law and in equity for a breach of this agreement.

22. RELEASE BY HUSBAND OR WIFE

Intentionally Omitted.

23. BROKER AS PARTY

Intentionally Omitted.

24. LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: NONE. SELLER and SELLER’s agents have made no warranties or representations, express or implied, and BUYER is purchasing the premises in it’s “AS IS” and without inspection.

26. MORTGAGE CONTINGENCY CLAUSE

None.

27. CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.
28. TITLE STANDARDS AND CONVEYANCING PRACTICES

Any matter relating to performance of this Agreement, which is the subject of a title, practice or ethical standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.

29. NOTICES

All notices, demands, consents and approvals required or permitted hereunder shall be deemed to have been duly given if in writing addressed to BUYER or SELLER at:

In the case of BUYER:
Low Beach, LLC
1509 Country Club Road
Wilmington, NC  28403

With a copy to:
Bryan J. Swain, Esq.
Vaughan, Dale, Hunter, & Beaudette, P.C.
2 Whaler’s Lane
P.O. Box 659
Nantucket, MA  02554
(508) 228- 4455
Facsimile: (508) 228- 3070

In the case of SELLER:
Town of Nantucket
Town and County Building
16 Broad Street
Nantucket, MA  02554

With a copy to:
Vicki S. Marsh, Esq.
KP Law, P.C.
101 Arch Street, 12th Fl.
Boston, MA  02110
(617) 556-0007
Facsimile: (617) 654-1735

and shall be deemed delivered upon the earliest to occur of (a) receipt or refusal to accept delivery; or (b) upon delivery prior to 5:00 P.M. on any business day by telecopy evidenced by written or printed receipt confirmation, provided a copy of any such notice sent by telecopy is sent also by means of one of the above-described manners of delivery. BUYER and SELLER may change the address to which any notice is to be sent by giving reasonable notice to the other party of such new address in the manner specified.

30. NO BROKER WARRANTY

The parties warrant and represent each to the other that there is no broker involved with the transaction to which this agreement pertains. In the event of a breach of the foregoing representation, the breaching party shall indemnify and hold harmless the non-breaching party for
all expenses, including attorney’s fees, which arise from such breach. The provisions of this section shall survive delivery of the deed hereunder.

31. SELLER’S CONTINGENCY

SELLER’S obligations hereunder shall be contingent upon SELLER complying prior to closing with the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of the premises and obtaining all necessary authority to sell the premises, including but not limited to a declaration that the premises constitutes surplus property and an appropriate Town Meeting vote.

32. VENUE

The parties hereto agree that all actions on this Agreement shall be brought in the Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Nantucket Division, to the extent that said Court shall have jurisdiction of the subject matter in any such action.

33. EXTENSION AUTHORITY

By executing this Agreement, Buyer and Seller hereby grant to their respective attorneys the actual authority to bind them by facsimile for the limited purpose of allowing them to grant extensions, and Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge that either party has disclaimed the authority granted herein to bind them.

34. CLOSING DOCUMENTS

BUYER agrees to sign at closing all forms reasonably required by SELLER including without limitation a disclosure statement pursuant to G.L. c. 7C, sec. 38. BUYER agrees to pay the legal costs incurred for preparing a Quitclaim Deed for the Premises.

35. MERGER OF PREMISES

BUYER shall consolidate the Premises with the BUYER’S existing abutting lot as set forth in the provisions of the “Nantucket Yard Sale Program.” This consolidation process includes but is not limited to obtaining a special permit from the Zoning Board of Appeals to alter any premises which is a nonconforming lot pursuant to Town Code 139-33A (8) and, filing a new perimeter plan with the Nantucket Planning Board and Massachusetts Land Court, if applicable.

BUYER warrants that the Premises shall not be used as separate buildable lots or resold as a separate buildable lot and shall be used for residential uses only. Notwithstanding any provision herein to the contrary, BUYER shall accept the deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce such restrictions and covenants as follows:

“The Grantor’s conveyance of the parcel(s) described herein is based in part on the Grantee’s warranty and representation to the Grantor that such parcel(s) shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 30 Low Beach Road, shown on Town Assessor’s Map 74 as Parcel 54, previously acquired by Grantee by Deed recorded with Nantucket County Registry of
Deeds in Book 928, Page 107(together, the “Combined Premises”), and that no part of the Combined Premises shall be hereafter divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Select Board and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises, and prohibiting the use or conveyance of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four months of the Date of the Deed, the Parcel has not been merged with the Grantee’s existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used or conveyed in a manner inconsistent with these restrictions unless a prior written release is granted by the Town of Nantucket Select Board and recorded with said Deeds."

These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be “other restrictions held by any governmental body” pursuant to G.L. c. 184, Section 26 such that the restrictions contained herein shall be enforceable for the full term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the grantee hereby appoints the grantor as its agent and attorney in fact to execute and record such notice and further agrees that the grantee shall execute and record such notice upon request. The representations, warranties and provisions of this Section 35 shall survive the delivery of this deed and any conveyance of the Premises, and BUYER shall accept a deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce these covenants.

36. CONDITION OF PREMISES

BUYER acknowledges that prior to the date of this Agreement, BUYER entered the Premises for the purpose of surveying and inspecting the Premises, as necessary for BUYER’s financing and purchasing of the Premises and BUYER agrees that BUYER and BUYER’s agents fully and completely inspected the Premises, and that BUYER is wholly satisfied with the condition of the Premises. SELLER and SELLER’s agents have made no warranties or representations with respect to the Premises, express or implied, on which BUYER has relied except as otherwise set forth in this Agreement. In the event that BUYER and/or BUYER’s agents, contractors and employees access the Premises to make any further inspections, assessments, surveys, appraisals or other non-invasive examination of the surface of the Premises, then such access shall be solely at the BUYER’s risk, and BUYER shall indemnify and save SELLER harmless from any and all claims, demands, suits or causes of action of any nature whatsoever arising from BUYER’s and its agents’, contractors’ and employees’ presence at and/or actions upon or about the Premises, including, without limitation, any claim for personal injury or property damage made by any such person afforded access to the Premises pursuant hereto. BUYER will, and will cause its agents, employees, and contractors, to observe any posted rules and regulations on the Premises.
37. REPRESENTATION BY COUNSEL

BUYER and SELLER each acknowledge and agree that they have by counsel of their own choosing or have had an opportunity to be so represented by counsel, and both BUYER and SELLER have read and understand the terms of this Agreement.

38. ASSIGNMENT AND RECORDING OF AGREEMENT

BUYER shall not file this Agreement with any Registry of Deeds or recording office. BUYER shall not assign this Agreement to any party without SELLER’s prior written consent, which consent SELLER may withhold for any or no reason. In the event BUYER so files or assigns this Agreement without SELLER’s prior written consent, then SELLER may elect, upon written notice to BUYER, to terminate this Agreement and to retain any and all deposits.

39. SEVERABILITY

If this Agreement shall contain any term or provision which shall be invalid, then the remainder of the Agreement, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law, provided such term or provision does not materially affect the obligations of either of the parties nor the essence of the Agreement.

Signature Page to Follow
SELLER:  
TOWN OF NANTUCKET  
By its Select Board

ESCROW AGENT:  
TOWN TREASURER  

BUYER:  LOW BEACH, LLC

By: Michael G. Cain, Sr., Manager
QUITCLAIM DEED

Parcel 1, Central Street, Unnamed Way and Myrtle Street, Nantucket, Massachusetts

The Town of Nantucket, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Select Board (the “Grantor”), in consideration of Fifty-Eight Thousand Six Hundred Eighty and 00/100 Dollars ($58,680.00), the receipt of which is hereby acknowledged, pursuant to the authority of Article 95 voted upon at the 2009 Annual Town Meeting, a certified copy of which is attached hereto, grants to Low Beach, LLC, a Massachusetts limited liability company, having an address of 1509 Country Club Road, Wilmington, North Carolina 28403 (the “Grantee”), with QUITCLAIM COVENANTS, a certain parcel of land shown as Parcel 1, Central Street, Unnamed Way and Myrtle Street, containing 19,560± square feet, in Nantucket, Massachusetts shown on a plan of land entitled “Taking and Disposition Plan of Land in Nantucket, MA Prepared for P. Rhoads Zimmerman & Low Beach, LLC,” dated November 3, 2014, prepared by Blackwell & Associates, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2014-101. The premises hereby conveyed are a portion of Central Street, an Unnamed Way and Myrtle Street and, is vacant land (the “Parcel”).

The Grantor’s conveyance of this Parcel is based in part on the Grantee’s warranty and representation to the Grantor that such Parcel shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 30 Low Beach Road and shown on Town Assessor’s Map 74 as Parcel 54 previously acquired by Grantee pursuant to Deed recorded with said Deeds in Book 928, Page 107 (together with the Parcel, the “Combined Premises”), and that no part of such Parcel or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Select Board and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcel and Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, as from time to time amended; prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcel has not been merged with the Grantee’s existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Select Board and recorded with said Deeds.
By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor’s reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be “other restrictions held by any governmental body,” pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

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

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

For Grantor’s title, see Order of Taking dated May 27, 2015, recorded with said Deeds in Book 1485, Page 28.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]
EXECUTED under seal this _____ day of ______________, 2020.

TOWN OF NANTUCKET
BY ITS SELECT BOARD

__________________________________
Dawn E. Hill Holdgate

__________________________________
Jason Bridges

__________________________________
Matthew G. Fee

__________________________________
Kristie L. Ferrantella

__________________________________
Melissa K. Murphy

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this _____ day of ______________, 2020, before me, the undersigned Notary Public, personally appeared Dawn E. Hill Holdgate, Jason Bridges, Matthew G. Fee, Kristie L. Ferrantella and Melissa K. Murphy as Members of the Select Board of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Select Board of the Town of Nantucket.

__________________________________
Notary Public
My Commission Expires:
## SETTLEMENT STATEMENT

Town of Nantucket ("Seller")  
Low Beach, LLC ("Buyer")  
Parcel 1, Central Street, Unnamed Way and Myrtle Street,  
Nantucket, MA (Property)  
July 23, 2020 (Closing Date)

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<tr>
<td>Deposit</td>
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<td>Town of Nantucket</td>
<td>$53,901.10</td>
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BUYER: LOW BEACH, LLC

By: ___________________

Michael G. Cain, Sr., Manager

SELLER: TOWN OF NANTUCKET
SELECT BOARD

________________________

________________________

________________________

________________________
Erika-

Please enclose the e-mail Opinion below in the Select Board members’ packets, as requested by Ken.

Thank you-

Vicki

Vicki S. Marsh, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
vmash@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: Vicki Marsh
Sent: Monday, February 3, 2020 2:22 PM
To: Kenneth Beaugrand <kbeaugrand@nantucket-ma.gov>
Cc: Andrew Vorce (AVorce@nantucket-ma.gov) <AVorce@nantucket-ma.gov>; Eleanor Antonietti (eantonietti@nantucket-ma.gov) <eantonietti@nantucket-ma.gov>; 'Erika Mooney' <EMooney@nantucket-ma.gov>; 'Libby Gibson' <LGibson@nantucket-ma.gov>; John Giorgio <JGiorgio@k-plaw.com>
Subject: Parcel 33, Low Beach Road

Ken-

You have requested my opinion on the process for the sale of Parcel 33, off Low Beach Road (the “Parcel”) after public discussion of this matter at the Select Board meeting on January 29. I understand that at the Select Board meeting at the time of consideration of the approval of the sale of the Parcel and the execution of the Deed, Mr. Rick Atherton requested that the Select Board refer this matter to the REAC Committee for reconsideration and questioned the sale of a portion of the Parcel to the abutting property owner who owns 36 Low Beach Road. The Select Board is authorized to acquire this Parcel by purchase, gift or eminent domain by a vote of Article 94 of the 2009 Annual Town Meeting, and to dispose of this Parcel by a vote of Article 95 of the 2009 Annual Town Meeting. The land in question is shown as Parcel 33, Central Street, Elm Street and an unnamed way bounding Assessor’s Map 74, as Parcel 71.2, owned by the Town of Nantucket, and being the former Railroad Bed, shown on a plan of land entitled “Plan of Land, Taking and Disposition, Articles 94 and 95, 2009 ATM in Nantucket, Massachusetts,” dated November 7, 2016, recorded with Nantucket County Registry of Deeds as Plan No. 2016-113 (the “Taking Plan”). The Town, acting by and through the Select Board, took the Parcel by eminent domain by
Order of Taking dated February 22, 2017, recorded with said Deeds in Book 1580, Page 208. The Parcel is comprised of portions of Central Street, Elm Street and an unnamed way bounded by a parcel shown on Town Assessor’s Map 74 as Parcel 71.2.

As authorized by Article 95, the Town recently decided to issue a Request for Proposals for the Parcel as well as Parcels 1 and 2 off Low Beach Road (the “Parcels”), which have also been acquired by the Town by a taking by eminent domain, in order to comply with G.L. c. 30B, Section 16. In response to the Request for Proposals the Town received proposals from the abutting lot owners for each of the Parcels. In the matter of Parcel 33, the abutting property owner proposed to purchase the Parcel for an amount in excess of the Town's requested minimum bid. In preparation for the Select Board’s meeting for the approval and execution of the Purchase and Sale Agreement and Deed for the Parcel, this sale was considered by the REAC Committee and they determined that this sale was pursuant to a Request for Proposal and should be forwarded to the Select Board for its approval.

At the Select Board meeting, Mr. Atherton raised the question as to whether the Town should sell the portion of the Parcel, which abuts the former railroad bed. In reviewing the title to the Parcel, I find that the property was in the original Surfside Subdivision and is shown on a plan of land entitled “Sections 1 & 2, Plan of House Lots of Chas. F. Coffin at Low-Beach, Siasconset, Nantucket, Mass.,” dated July 23, 1895 recorded with said Deeds in Plan Book 7, Page 14 (the “Surfside Plan”). A portion of the Parcel as described in the Deed to 36 Low Beach Road is bounded by the Nantucket Central Railroad as shown on said Plan (the “Railroad Bed”). This Railroad Bed, which is a railroad right of way 100 feet wide, ran through the subdivision, as shown on the Surfside Plan. A portion of the Railroad Bed was registered by the Land Court and is shown as Lot 23 on Land Court Plan No. 9393-L, and was subsequently acquired by the Town of Nantucket by an Order of Taking filed with the Nantucket Registry District of the Land Court as Document No. 36806 and noted on Certificate of Title No. 20083 (the “Railroad Bed Taking”). Since the width of Lot 23 is only 40 feet wide, there is a remaining strip of land which lies between the Parcel off Low Beach Road and the Railroad Bed, and is shown on the Taking Plan, as being owned by “owners unknown.”

In reviewing the Town’s Taking, I find that the Taking named Taso Denis and Irwin Levy, Trustee of the Teasdale Family Irrevocable Trust (the “Former Owner”) as the owners of the Parcel. Since the Deed to the owner of 36 Low Beach Road describes the boundaries as being by the ways of Central Street and Elm Street, it is my opinion that they own to the middle line of the ways since the Deed does not reveal another intention other than to convey the fee to the midpoint of the private ways opposite its property. G.L. c. 183, s. 58. There is also an argument to be made that since the Deed to 36 Low Beach Road describes the land as being bounded “by Low Beach Road, shown as Nantucket Central Railroad, on said plan,” that the Owner also owns to the centerline of the former Railroad Bed which was a right of way running through the subdivision. Although the Taking named the Former Owner as the owner of the Parcel, no damages however, were awarded to the former or current property owner and there was no appropriation made in the Article for any award of damages for the Taking. As has been the practice with property taken by eminent domain pursuant to the Nantucket Yard Sale Program the Town has not awarded damages to the property owner for land taken as the property owner will then be offered to acquire the land for monetary consideration or consideration in the form of a One Big Beach Easement or other public access easements. It is my understanding from conversations with Andrew Vorce that this was the intention of these Articles that the land would be taken and disposed of similar to that of the Yard Sale Program. There was no award of damages to the property owners for the Takings of Parcel 33 and Parcels 1 and 2 because these property owners would then be able to respond to a Request for Proposals and acquire the Parcels for consideration. In the event that the Select Board decides to retain this portion of the Parcel abutting the Railroad Bed, they may wish to consider that there have been no claim for damages filed against the Town in response to the Order of Taking and pursuant to G.L. c. 79A. Therefore if the Town decides not to sell this portion of the Parcel then it may be subject to a claim for damages and legal action for the award of damages by the owner of Parcel 33 or by an owner who claims to have owned the property prior to the Taking.

REAC may determine that since the Parcel was sold pursuant to the award of the bid on the Request for Proposals that they will not make any recommendation as to the sale of the portion of Parcel 33 abutting Lot 23. REAC shall then forward this matter to the Select Board for its consideration, to determine if this
portion of the Parcel serves any municipal purpose for the Town. The Select Board may also wish to consider that the Request for Proposals was issued for the sale of the Parcel and a proposal was made by for its purchase for an amount of consideration exceeding the minimum bid. If the Select Board determines that they do not wish to retain the portion of the Parcel, they may then dispose of the entire Parcel as authorized by Article 95 of the 2009 Annual Town Meeting similar to those taken for Yard Sale purposes.

The Request for Proposals does provide that the Town may cancel the disposal or sale of the Parcel at any time even after choosing the Successful Proposer, until a purchase and sale agreement between the Town and the Successful Proposer has been signed by all parties and delivered. If the Select Board then decides not to dispose of the portion of the Parcel abutting Lot 23 and disposing of just the remainder of the Parcel then it will need to have a new plan prepared showing the remaining portion of the Parcel to be disposed of, and will require the issuance of a new Request for Proposals. This process will also need to be done for Parcels 1 and 2 off Low Beach Road which were also included in this Request for Proposals.

If you have any questions or if I can be of additional assistance in this matter, please feel free to contact me.

Vicki

Vicki S. Marsh, Esq.
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Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
vmash@k-plaw.com
www.k-plaw.com

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## Agenda Item Summary

<table>
<thead>
<tr>
<th>Agenda Item #</th>
<th>IX. 4.</th>
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<tbody>
<tr>
<td>Date</td>
<td>7/22/2020</td>
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</tbody>
</table>

### Staff

Ken Beaugrand, Real Estate Specialist

### Subject

Disposition of a paper street parcel pursuant to most advantageous bid in response to RFP. Parcel 2 surrounds 28 Low Beach Road on 3 sides and was acquired in 2017 by Order of Taking, authorized by passage of Article 94 at 2009 Annual Town Meeting as part of the “Yard Sale” program.

### Executive Summary

A Request for Proposal was required as the $3/SF value of this 15,326 SF Sconset land exceeds the $35,000 threshold of MGL 30B. The disposition was authorized by Article 95 at the 2009 ATM. P. Rhoads Zimmerman, the owner of the only abutting property, was the sole bidder. The minimum required bid was $45,978. Their bid at $47,047.66 including all fees, has been accepted.

### Staff Recommendation

This matter has been reviewed by REAC twice and at their meeting on February they reviewed Town Counsel’s opinion in this matter and then voted four in Favor one abstaining to proceed with the disposition as per the RFP. Recommendation is to proceed to the disposition.

### Background/Discussion

See attached memorandum to Select Board dated July 17, 2020

### Impact: Environmental

☐ Fiscal ☒ Community ☐ Other ☐

Provides compensation for the purchase as well as an addition to the tax roll.

### Board/Commission Recommendation

n/a

### Public Outreach

Request for Proposal was published in the Inquirer and Mirror & the Central Register, posted on the Procurement webpage, and sent by certified mail to the Abutters.

### Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)

Conforms with the Yard Sale program’s intent to convey non-performing land assets, which have been off the tax rolls, to eligible residential abutters, providing potential for building or landscape improvements and in some instances curing or attenuating dimensional nonconformities (lot size, ground cover, setback intrusions).

### Attachments

Purchase and Sale, Deed, Plan No. 2014-101, Settlement Statement, Town Counsel opinion
Disposition of the Paper Roads located at 28, 30 and 36 Low Beach Road

TO: Select Board

FROM: Ken Beaugrand

DATE: July 17, 2020

SUBJECT: Low Beach Road parcels

The purpose of this memo is to review the history of the yard sale process as it applies to certain “paper streets” described as Parcel 1, Central Street, Unnamed Way and Myrtle Street (“Parcel 1”), Parcel 2, Myrtle Street, Unnamed Way and Holly Street (“Parcel 2”) and Parcel 33, Central Street, Unnamed Way and Elm Street (“Parcel 33”) off Low Beach Road (collectively, the “Parcels”) and to recommend that the Select Board proceed with the disposition of the Parcels as has been recommended by the Real Estate Advisory Committee (“REAC”), me, the Director of Planning and other staff who prepared and issued the Request for Proposals as authorized by the vote of Article 95 of the 2009 Annual Town Meeting. To do otherwise creates a situation where the property owners of 28, 30 and 36 Low Beach Road, abutting the Parcels, have expended time and financial resources over a decade only to have the Town reverse course and reconsider the disposition of the Parcels at the very end of a public and Town-approved process. The Parcels have no direct oceanfront and are bordered on either side by significant existing public open spaces providing public access to the Siasconset beaches. These factors were considered prior to the Town offering the disposition of the land. It is important to also remember that because the lots are undersized for the current zoning district (LUG-3), the additional acreage of the land provides minimal new development potential in terms of ground-cover at a high value for surplus land, because of the neighborhood.

The Parcels were always shown on a plan and part of a dormant, high-density, grid-subdivision laid out to capitalize on the railroad in the early 1900’s which were never constructed. The acquisition of the Parcels was approved by the vote of Article 94 of the 2009 Annual Town Meeting pursuant to the “Yard Sale Program.” The Town created the Yard Sale Program to prevent the construction or use of these paper streets by those claiming possible rights or title in these paper streets. The Yard Sale Program has been very successful for the Town conveying the paper street parcels to the abutters of the paper streets, which also provides additional tax revenue for the Town. The Town took Parcels 1 and 2 by an Order of Taking by Eminent Domain dated May 27, 2015, recorded with the Nantucket Registry of Deeds in Book 1485, Page 28 and Parcel 33 by an Order of Taking by Eminent Domain dated February 22, 2017, recorded with said Deeds in Book 1580, Page 208.

The 2009 Annual Town Meeting also authorized the disposition of the Parcels by a vote of Article 95. This vote is evidence of the Town’s consideration of these dispositions, all of which were unanimously supported. The Property owners abutting the Parcels, at their own expense, then created the necessary plans for the Town to implement what had been authorized by Town Meeting. At that time, the Town discussed the takings with the owners, all expressed interest in their acquisition by the Town, and to forego damage claims since title was vested in their adjacent properties. In the event that these Parcels are not sold to the abutting property owners under the Yard Sale Program, then these property owners may have claims for damages against the Town for the takings of these Parcels.
It was understood by the property owners that to acquire the property they had to submit the highest bid pursuant to the Request for Proposal (“RFP”) process. As the appraised value of each of the Parcels exceeded the $35,000 minimum value as set forth in G.L. c. 30B, § 16 (b) (2)), the Town was required to publish an RFP, which also caused delays in the proposed disposition of the Parcels. The RFP was published in the Inquirer and Mirror, the Central Register, posted on the Procurement Web page and sent by certified mail to the abutters. The bids were opened by the Finance Department and the bids of the current owners of each of these three parcels were accepted all in accordance with the Town procedures. Upon the sale of the Parcels, the Town will receive the following revenue

<table>
<thead>
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<th>Parcel</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Parcel 2</td>
<td>$47,090.27</td>
</tr>
<tr>
<td>Parcel 1</td>
<td>$59,954.43</td>
</tr>
<tr>
<td>Parcel 3</td>
<td>$60,272.06</td>
</tr>
</tbody>
</table>

$167,316.76

The purchase price of these Parcels exceeds the assessed value and the additional funds are helpful to the Town in the current financial climate.

This matter has been reviewed by REAC twice and at their meeting in February after review by Town Counsel voted to recommend 4-0 with one abstention to proceed with recommending to the Select Board the disposition pursuant to the RFP.

At the scheduled hearing on this, the matter was rescheduled to be heard on March 25 as Mr. Fee wanted a review of the REAC committee’s role as to yard sale properties and his concern over coastal erosion. REAC had extensive discussions about the Parcels and always considers implications of properties near the ocean. Here, the paper road that is parallel to the shoreline is more than 1,000 feet from the shore. Further, there are extensive public holdings to the north and south insuring public access in the unlikely event that the entire dune field erodes. The elevation of the dunes exceeds the projections of the CRAC and in the event of catastrophic sea level rise in this location, there are clearly other priority areas than this small cluster of four homes to maintain public access such as Cod Fish Park. In my opinion, no further duplicative reviews are necessary. Because of the pandemic, this matter is still pending.
PURCHASE AND SALE AGREEMENT

Agreement made this _____ day of ________________, 2020.

1. PARTIES AND MAILING ADDRESSES

The Town of Nantucket, a municipal corporation acting by and through its Select Board, having an address of 16 Broad Street, Nantucket, Massachusetts 02554, hereinafter called the SELLER, agrees to SELL and P. Rhoads Zimmerman, of 1105 Belle Meade Boulevard, Nashville, Tennessee 37205, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

The premises are comprised of a certain parcel of land in Nantucket, Massachusetts shown as Parcel 2, Myrtle Street, Unnamed Way and Holly Street, containing 15,326± square feet, on a plan of land entitled “Taking and Disposition Plan of Land in Nantucket, MA Prepared for P. Rhoads Zimmerman & Low Beach, LLC,” dated November 3, 2014, prepared by Blackwell & Associates, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2014-101 (the “Property” or “Premises”). The Premises is considered a non-conforming lot pursuant to the Town of Nantucket Code.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Intentionally Omitted (Vacant Land).

4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

(a) Any liens for municipal betterments assessed after the date of this agreement;

(b) Laws, by-laws, rules, and regulations, whether federal, state, or local, which affect the use of the Premises, including, but not limited to, rules and regulations of the Nantucket Conservation Commission, Nantucket Zoning By-Law, Nantucket Historic District Commission, Nantucket Building Department, Nantucket Planning Board and Nantucket Board of Health;

(c) Real estate taxes for the then-current fiscal year and future periods, which are not due and payable at the time of delivery of the deed;

(d) Any fee which may be imposed upon the transaction which is the subject of this agreement by the Nantucket Land Bank Commission, which the Buyer agrees to pay at the
time of delivery of the deed;

(e) Any right, restrictions or easements and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for residential purposes;

(f) Any public rights existing below mean high water, if applicable; and

(i) Said deed shall contain a reversion clause and a restriction set forth in Section 35 below to require the Premises to be used, and effectively merged with, the BUYER’S existing property known as 28 Low Beach Road, Nantucket, Massachusetts, which is shown as Town Assessor’s Map 74 as Parcel 53, for residential purposes and permanently restricting any further division or subdivision of the Premises as combined with said existing property,

5. **PLANS**

If said deed refers to a plan necessary to be recorded therewith the BUYER shall deliver such plan with the deed in a form adequate for recording.

6. **REGISTERED TITLE**

In addition to the foregoing, if the title to the said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title to said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

7. **PURCHASE PRICE**

The agreed purchase price for said premises is Forty-Five Thousand Nine Hundred Seventy-Eight and 00/100 Dollars ($45,978.00), of which

\[ \begin{align*}
\$ 4,597.80 & \quad \text{was paid as a deposit} \\
\$ 41,380.20 & \quad \text{is to be paid at the time of delivery of the deed in cash, or by certified, cashier’s, treasurer’s or bank check(s) or by attorney’s IOLTA check.} \\
\end{align*} \]

\[ \text{$45,978.00 \quad \text{Total}} \]

8. **TIME FOR PERFORMANCE; DELIVERY OF DEED**

Said deed is to be delivered to BUYER at the Nantucket County Registry of Deeds at 1:00 P.M. on the 23rd day of July 2020, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.
9. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they are now, and (b) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. In the event that such an extension occurs, BUYER agrees to close prior to expiration of the extension period and as soon as reasonably possible after SELLER is prepared to deliver the Premises in compliance with this Agreement. In no event shall SELLER be required to expend more than a total of $1,000.00 to clear title to and deliver possession of the Premises.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.

13. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after delivery of said deed.
14. **USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

15. **INSURANCE**

Intentionally Omitted (Vacant Land).

16. **ADJUSTMENTS**

A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, § 63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed.

17. **ADJUSTMENT OF UNASSESSED AND UNABATED TAXES**

Intentionally Omitted.

18. **BROKER’S FEE**

Intentionally Omitted.

19. **BROKER’S WARRANTY**

Intentionally Omitted.

20. **DEPOSIT**

All deposits made hereunder shall be held in escrow by Town Treasurer, as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or by court order by a Court having competent jurisdiction.

All deposits made hereunder shall be placed in a non-interest-bearing account. The escrow agent hereunder shall not be liable for any loss suffered with respect to the escrow account or for any action or inaction taken by the escrow agent in good faith with respect to the account or deposit. The escrow agent may resign at any time by transferring the deposit to a successor escrow agent reasonably acceptable to SELLER and BUYER which successor agrees in writing to act as escrow agent. BUYER and SELLER jointly and severally agree to indemnify and hold the escrow agent harmless for any and all costs and expenses, including reasonable attorney’s fees, incurred in connection with any such dispute.
21. **BUYER’S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER’S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages, which shall be the SELLER’S sole and exclusive remedy at law and in equity for a breach of this agreement.

22. **RELEASE BY HUSBAND OR WIFE**

Intentionally Omitted.

23. **BROKER AS PARTY**

Intentionally Omitted.

24. **LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES**

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. **WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: **NONE.** SELLER and SELLER’s agents have made no warranties or representations, express or implied, and BUYER is purchasing the premises in it’s “AS IS” and without inspection.

26. **MORTGAGE CONTINGENCY CLAUSE**

None.

27. **CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.
28. **TITLE STANDARDS AND CONVEYANCING PRACTICES**

Any matter relating to performance of this Agreement, which is the subject of a title, practice or ethical standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.

29. **NOTICES**

All notices, demands, consents and approvals required or permitted hereunder shall be deemed to have been duly given if in writing addressed to BUYER or SELLER at:

In the case of BUYER:  
Mr. P. Rhoads Zimmerman  
1105 Belle Meade Boulevard  
Nashville, TN 37205  

With a copy to:  
Bryan J. Swain, Esq.  
Vaughan, Dale, Hunter, & Beaudette, P.C.  
2 Whaler’s Lane  
P.O. Box 659  
Nantucket, MA 02554  
(508) 228-4455  
Facsimile: (508) 228-3070

In the case of SELLER:  
Town of Nantucket  
Town and County Building  
16 Broad Street  
Nantucket, MA 02554  

With a copy to:  
Vicki S. Marsh, Esq.  
KP Law, P.C.  
101 Arch Street, 12th Fl.  
Boston, MA 02110  
(617) 556-0007  
Facsimile: (617) 654-1735

and shall be deemed delivered upon the earliest to occur of (a) receipt or refusal to accept delivery; or (b) upon delivery prior to 5:00 P.M. on any business day by telecopy evidenced by written or printed receipt confirmation, provided a copy of any such notice sent by telecopy is sent also by means of one of the above-described manners of delivery. BUYER and SELLER may change the address to which any notice is to be sent by giving reasonable notice to the other party of such new address in the manner specified.

30. **NO BROKER WARRANTY**

The parties warrant and represent each to the other that there is no broker involved with the transaction to which this agreement pertains. In the event of a breach of the foregoing representation, the breaching party shall indemnify and hold harmless the non-breaching party for
all expenses, including attorney’s fees, which arise from such breach. The provisions of this
section shall survive delivery of the deed hereunder.

31. SELLER’S CONTINGENCY

SELLER’S obligations hereunder shall be contingent upon SELLER complying prior to closing with
the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of
the premises and obtaining all necessary authority to sell the premises, including but not limited to
a declaration that the premises constitutes surplus property and an appropriate Town Meeting vote.

32. VENUE

The parties hereto agree that all actions on this Agreement shall be brought in the Superior Court
Department of the Trial Court, Commonwealth of Massachusetts, Nantucket Division, to the extent
that said Court shall have jurisdiction of the subject matter in any such action.

33. EXTENSION AUTHORITY

By executing this Agreement, Buyer and Seller hereby grant to their respective attorneys the actual
authority to bind them by facsimile for the limited purpose of allowing them to grant extensions, and
Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they
have actual knowledge that either party has disclaimed the authority granted herein to bind them.

34. CLOSING DOCUMENTS

BUYER agrees to sign at closing all forms reasonably required by SELLER including without
limitation a disclosure statement pursuant to G.L. c. 7C, sec. 38. BUYER agrees to pay the legal
costs incurred for preparing a Quitclaim Deed for the Premises.

35. MERGER OF PREMISES

BUYER shall consolidate the Premises with the BUYER’S existing abutting lot as set forth in the
provisions of the “Nantucket Yard Sale Program.” This consolidation process includes but is not
limited to obtaining a special permit from the Zoning Board of Appeals to alter any premises which
is a nonconforming lot pursuant to Town Code 139-33A (8) and, filing a new perimeter plan with
the Nantucket Planning Board and Massachusetts Land Court, if applicable.

BUYER warrants that the Premises shall not be used as separate buildable lots or resold as a
separate buildable lot and shall be used for residential uses only. Notwithstanding any provision
herein to the contrary, BUYER shall accept the deed required to be delivered pursuant to this
Agreement if such deed contains permanent restrictions, held by SELLER and running with the
land, to enforce such restrictions and covenants as follows:

“The Grantor’s conveyance of the parcel(s) described herein is based in part on the Grantee’s
warranty and representation to the Grantor that such parcel(s) shall be used for residential
purposes only and shall, for all intents and purposes, be combined with and considered as one
parcel with the abutting property at 28 Low Beach Road, shown on Town Assessor’s Map 74 as
Parcel 53, previously acquired by Grantee by Deed recorded with Nantucket County Registry of
Deeds in Book 848 Page 240 (together, the “Combined Premises”), and that no part of the Combined Premises shall be hereafter divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Select Board and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises, and prohibiting the use or conveyance of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four months of the Date of the Deed, the Parcel has not been merged with the Grantee’s existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used or conveyed in a manner inconsistent with these restrictions unless a prior written release is granted by the Town of Nantucket Select Board and recorded with said Deeds.”

These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be “other restrictions held by any governmental body” pursuant to G.L. c. 184, Section 26 such that the restrictions contained herein shall be enforceable for the full term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the grantee hereby appoints the grantor as its agent and attorney in fact to execute and record such notice and further agrees that the grantee shall execute and record such notice upon request. The representations, warranties and provisions of this Section 35 shall survive the delivery of this deed and any conveyance of the Premises, and BUYER shall accept a deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce these covenants.

36. CONDITION OF PREMISES

BUYER acknowledges that prior to the date of this Agreement, BUYER entered the Premises for the purpose of surveying and inspecting the Premises, as necessary for BUYER’s financing and purchasing of the Premises and BUYER agrees that BUYER and BUYER’s agents fully and completely inspected the Premises, and that BUYER is wholly satisfied with the condition of the Premises. SELLER and SELLER’s agents have made no warranties or representations with respect to the Premises, express or implied, on which BUYER has relied except as otherwise set forth in this Agreement. In the event that BUYER and/or BUYER’s agents, contractors and employees access the Premises to make any further inspections, assessments, surveys, appraisals or other non-invasive examination of the surface of the Premises, then such access shall be solely at the BUYER’s risk, and BUYER shall indemnify and save SELLER harmless from any and all claims, demands, suits or causes of action of any nature whatsoever arising from BUYER’s and its agents’, contractors’ and employees’ presence at and/or actions upon or about the Premises, including, without limitation, any claim for personal injury or property damage made by any such person afforded access to the Premises pursuant hereto. BUYER will, and will cause its agents, employees, and contractors, to observe any posted rules and regulations on the Premises.
37. REPRESENTATION BY COUNSEL

BUYER and SELLER each acknowledge and agree that they have by counsel of their own choosing or have had an opportunity to be so represented by counsel, and both BUYER and SELLER have read and understand the terms of this Agreement.

38. ASSIGNMENT AND RECORDING OF AGREEMENT

BUYER shall not file this Agreement with any Registry of Deeds or recording office. BUYER shall not assign this Agreement to any party without SELLER’s prior written consent, which consent SELLER may withhold for any or no reason. In the event BUYER so files or assigns this Agreement without SELLER’s prior written consent, then SELLER may elect, upon written notice to BUYER, to terminate this Agreement and to retain any and all deposits.

39. SEVERABILITY

If this Agreement shall contain any term or provision which shall be invalid, then the remainder of the Agreement, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law, provided such term or provision does not materially affect the obligations of either of the parties nor the essence of the Agreement.

Signature Page to Follow
SELLER:
TOWN OF NANTUCKET
By its Select Board

ESCROW AGENT:
TOWN TREASURER

BUYER:
By: ___________________________
P. Rhoads Zimmerman

711024v2 NANT 19712/0285
QUITCLAIM DEED

Parcel 2, Myrtle Street, Unnamed Way and Holly Street,
Nantucket, Massachusetts

The Town of Nantucket, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Select Board (the “Grantor”), in consideration of Forty-Five Thousand Nine Hundred Seventy-Eight and 00/100 Dollars ($45,978.00), the receipt of which is hereby acknowledged, pursuant to the authority of Article 95 voted upon at the 2009 Annual Town Meeting, a certified copy of which is attached hereto, grants to P. Rhoads Zimmerman, of 1105 Belle Meade Boulevard, Nashville, Tennessee 37205 (the “Grantee”), with QUITCLAIM COVENANTS, a certain parcel of land shown as Parcel 2, Myrtle Street, Unnamed Way and Holly Street, containing 15,326± square feet, in Nantucket, Massachusetts shown on a plan of land entitled “Taking and Disposition Plan of Land in Nantucket, MA Prepared for P. Rhoads Zimmerman & Low Beach, LLC,” dated November 3, 2014, prepared by Blackwell & Associates, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2014-101. The premises hereby conveyed are a portion of Myrtle Street, an Unnamed Way and Holly Street and, is vacant land (the “Parcel”).

The Grantor’s conveyance of this Parcel is based in part on the Grantee’s warranty and representation to the Grantor that such Parcel shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 28 Low Beach Road and shown on Town Assessor’s Map 74 as Parcel 53 previously acquired by Grantee pursuant to Deed recorded with said Deeds in Book 848, Page 240 (together with the Parcel, the “Combined Premises”), and that no part of such Parcel or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Select Board and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcel and Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, as from time to time amended; prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcel has not been merged with the Grantee’s existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Select Board and recorded with said Deeds.
By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the
Grantor’s reservation of, and otherwise grants to the Grantor, such restrictions on the use of the
Combined Premises. These restrictions shall be enforceable for a term of 200 years from the
date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be
deemed to be “other restrictions held by any governmental body,” pursuant to G.L. c. 184, §26,
such that the restrictions contained herein shall be enforceable for the term of 200 years and not
be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a
notice is ever needed to extend the time period for enforceability of these restrictions, the
Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such
notice and further agrees that the Grantee shall execute and record such notice upon request.

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

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

For Grantor’s title, see Order of Taking dated May 27, 2015, recorded with said Deeds in
Book 1485, Page 28.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]
EXECUTED under seal this ______ day of ______________, 2020.

TOWN OF NANTUCKET
BY ITS SELECT BOARD

______________________________
Dawn E. Hill Holdgate

______________________________
Jason Bridges

______________________________
Matthew G. Fee

______________________________
Kristie L. Ferrantella

______________________________
Melissa K. Murphy

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this _____ day of ____________, 2020, before me, the undersigned Notary Public, personally appeared Dawn E. Hill Holdgate, Jason Bridges, Matthew G. Fee, Kristie L. Ferrantella and Melissa K. Murphy as Members of the Select Board of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Select Board of the Town of Nantucket.

______________________________
Notary Public
My Commission Expires:

711035v2NANT19712/0285
TAKING AND DISPOSITION
Plan of Land
in
Nantucket, MA
Prepared for
P. RHoads Zimmerman
& LOW BEACH, LLC
Scale: 1" = 50'
NOVEMBER 5, 2014
BLACKWELL & ASSOCIATES, INC.
Prepared by: Linda Zimmerman
NANTUCKET, MA 02554
508-228-1382

Nantucket Board of Selectmen

Nantucket Planning Board

Graphic Scale

LOW BEACH
(PUBLIC - VARIABLE WIDTH)
(UNDEVELOPED - 200')
(ROAD PLAN DRAWS IT - PLAN NO. 202)

PARCEL 1 - 19,560 S.F.

PARCEL 2 - 15,828 S.F.

49.645 S.F.

40.873 S.F.

LEGAL

WATERMARK CREATED WITH WATERMARK TOOL

WATERMARK REQUIRED AND WRITTEN ON BACK OF ORIGINAL

508-228-1382

9/25/2014

3/25/2014

2/5/2014

1/1/2014

NANTUCKET REGISTRY OF DEEDS

NANTUCKET REGISTRY OF DEEDS

NANTUCKET REGISTRY OF DEEDS

NANTUCKET REGISTRY OF DEEDS

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NANTUCKET REGISTRY OF DEEDS

NANTucket Board of Selectmen

Nantucket Planning Board

NANTUCKET REGISTRY OF DEEDS

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NANTUCKET REGISTRY OF DEEDS

NANTucket Board of Selectmen

Nantucket Planning Board

NANTUCKET REGISTRY OF DEEDS

NANTucket Board of Selectmen

Nantucket Planning Board
## SETTLEMENT STATEMENT

Town of Nantucket ("Seller")
P. Rhoads Zimmerman ("Buyer")
Parcel 2, Myrtle Street, Unnamed Way and Holly Street,
Nantucket, MA (Property)
July 23, 2020 (Closing Date)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td><strong>Purchase Price:</strong></td>
<td>$ 45,978.00</td>
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<td><strong>Less:</strong></td>
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<tr>
<td>Deposit</td>
<td>$ 4,597.80</td>
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<tr>
<td><strong>Plus:</strong></td>
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<tr>
<td>Payment in Lieu of Tax Adjustment 7/23-12/31/20</td>
<td>$ 69.66</td>
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<tr>
<td>Reimbursement of Town’s Legal Fees</td>
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<td><strong>Net Amount Due Seller:</strong></td>
<td><strong>$ 42,449.86</strong></td>
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<td><strong>Checks:</strong></td>
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<tr>
<td>Town of Nantucket</td>
<td>$ 42,449.86</td>
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</table>
BUYER:                                                                 SELLER: TOWN OF NANTUCKET
SELECT BOARD

By: ___________________                                                                                                 _
P. Rhoads Zimmerman

________________________

________________________

________________________

________________________

711057v2NANT19712/0285
Erika-

Please enclose the e-mail Opinion below in the Select Board members’ packets, as requested by Ken.

Thank you-

Vicki

Vicki S. Marsh, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
vmash@k-plaw.com
www.k-plaw.com

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From: Vicki Marsh
Sent: Monday, February 3, 2020 2:22 PM
To: Kenneth Beaugrand <kbeaugrand@nantucket-ma.gov>
Cc: Andrew Vorce (AVorce@nantucket-ma.gov) <AVorce@nantucket-ma.gov>; Eleanor Antonietti (eantonietti@nantucket-ma.gov) <eantonietti@nantucket-ma.gov>; 'Erika Mooney' <EMooney@nantucket-ma.gov>; 'Libby Gibson' <LGibson@nantucket-ma.gov>; John Giorgio <JGiorgio@k-plaw.com>
Subject: Parcel 33, Low Beach Road

Ken-

You have requested my opinion on the process for the sale of Parcel 33, off Low Beach Road (the “Parcel”) after public discussion of this matter at the Select Board meeting on January 29. I understand that at the Select Board meeting at the time of consideration of the approval of the sale of the Parcel and the execution of the Deed, Mr. Rick Atherton requested that the Select Board refer this matter to the REAC Committee for reconsideration and questioned the sale of a portion of the Parcel to the abutting property owner who owns 36 Low Beach Road. The Select Board is authorized to acquire this Parcel by purchase, gift or eminent domain by a vote of Article 94 of the 2009 Annual Town Meeting, and to dispose of this Parcel by a vote of Article 95 of the 2009 Annual Town Meeting. The land in question is shown as Parcel 33, Central Street, Elm Street and an unnamed way bounding Assessors’ Map 74, as Parcel 71.2, owned by the Town of Nantucket, and being the former Railroad Bed, shown on a plan of land entitled “Plan of Land, Taking and Disposition, Articles 94 and 95, 2009 ATM in Nantucket, Massachusetts,” dated November 7, 2016, recorded with Nantucket County Registry of Deeds as Plan No. 2016-113 (the “Taking Plan”). The Town, acting by and through the Select Board, took the Parcel by eminent domain by
Order of Taking dated February 22, 2017, recorded with said Deeds in Book 1580, Page 208. The Parcel is comprised of portions of Central Street, Elm Street and an unnamed way bounded by a parcel shown on Town Assessor’s Map 74 as Parcel 71.2.

As authorized by Article 95, the Town recently decided to issue a Request for Proposals for the Parcel as well as Parcels 1 and 2 off Low Beach Road (the “Parcels”), which have also been acquired by the Town by a taking by eminent domain, in order to comply with G.L. c. 30B, Section 16. In response to the Request for Proposals the Town received proposals from the abutting lot owners for each of the Parcels. In the matter of Parcel 33, the abutting property owner proposed to purchase the Parcel for an amount in excess of the Town’s requested minimum bid. In preparation for the Select Board’s meeting for the approval and execution of the Purchase and Sale Agreement and Deed for the Parcel, this sale was considered by the REAC Committee and they determined that this sale was pursuant to a Request for Proposal and should be forwarded to the Select Board for its approval.

At the Select Board meeting, Mr. Atherton raised the question as to whether the Town should sell the portion of the Parcel, which abuts the former railroad bed. In reviewing the title to the Parcel, I find that the property was in the original Surfside Subdivision and is shown on a plan of land entitled “Sections 1 & 2, Plan of House Lots of Chas. F. Coffin at Low-Beach, Siasconset, Nantucket, Mass.,” dated July 23, 1895 recorded with said Deeds in Plan Book 7, Page 14 (the “Surfside Plan”). A portion of the Parcel as described in the Deed to 36 Low Beach Road is bounded by the Nantucket Central Railroad as shown on said Plan (the “Railroad Bed”). This Railroad Bed, which is a railroad right of way 100 feet wide, ran through the subdivision, as shown on the Surfside Plan. A portion of the Railroad Bed was registered by the Land Court and is shown as Lot 23 on Land Court Plan No. 9393-L, and was subsequently acquired by the Town of Nantucket by an Order of Taking filed with the Nantucket Registry District of the Land Court as Document No. 36806 and noted on Certificate of Title No. 20083 (the “Railroad Bed Taking”). Since the width of Lot 23 is only 40 feet wide, there is a remaining strip of land which lies between the Parcel off Low Beach Road and the Railroad Bed, and is shown on the Taking Plan, as being owned by “owners unknown.”

In reviewing the Town’s Taking, I find that the Taking named Taso Denis and Irwin Levy, Trustee of the Teasdale Family Irrevocable Trust (the “Former Owner”) as the owners of the Parcel. Since the Deed to the owner of 36 Low Beach Road describes the boundaries as being by the ways of Central Street and Elm Street, it is my opinion that they own to the middle line of the ways since the Deed does not reveal another intention other than to convey the fee to the midpoint of the private ways opposite its property. G.L. c. 183, s. 58. There is also an argument to be made that since the Deed to 36 Low Beach Road describes the land as being bounded “by Low Beach Road, shown as Nantucket Central Railroad, on said plan,” that the Owner also owns to the centerline of the former Railroad Bed which was a right of way running through the subdivision. Although the Taking named the Former Owner as the owner of the Parcel, no damages however, were awarded to the former or current property owner and there was no appropriation made in the Article for any award of damages for the Taking. As has been the practice with property taken by eminent domain pursuant to the Nantucket Yard Sale Program the Town has not awarded damages to the property owner for land taken as the property owner will then be offered to acquire the land for monetary consideration or consideration in the form of a One Big Beach Easement or other public access easements. It is my understanding from conversations with Andrew Vorce that this was the intention of these Articles that the land would be taken and disposed of similar to that of the Yard Sale Program. There was no award of damages to the property owners for the Takings of Parcel 33 and Parcels 1 and 2 because these property owners would then be able to respond to a Request for Proposals and acquire the Parcels for consideration. In the event that the Select Board decides to retain this portion of the Parcel abutting the Railroad Bed, they may wish to consider that there have been no claim for damages filed against the Town in response to the Order of Taking and pursuant to G.L. c. 79A. Therefore if the Town decides not to sell this portion of the Parcel then it may be subject to a claim for damages and legal action for the award of damages by the owner of Parcel 33 or by an owner who claims to have owned the property prior to the Taking.

REAC may determine that since the Parcel was sold pursuant to the award of the bid on the Request for Proposals that they will not make any recommendation as to the sale of the portion of Parcel 33 abutting Lot 23. REAC shall then forward this matter to the Select Board for its consideration, to determine if this
portion of the Parcel serves any municipal purpose for the Town. The Select Board may also wish to consider that the Request for Proposals was issued for the sale of the Parcel and a proposal was made by for its purchase for an amount of consideration exceeding the minimum bid. If the Select Board determines that they do not wish to retain the portion of the Parcel, they may then dispose of the entire Parcel as authorized by Article 95 of the 2009 Annual Town Meeting similar to those taken for Yard Sale purposes.

The Request for Proposals does provide that the Town may cancel the disposal or sale of the Parcel at any time even after choosing the Successful Proposer, until a purchase and sale agreement between the Town and the Successful Proposer has been signed by all parties and delivered. If the Select Board then decides not to dispose of the portion of the Parcel abutting Lot 23 and disposing of just the remainder of the Parcel then it will need to have a new plan prepared showing the remaining portion of the Parcel to be disposed of, and will require the issuance of a new Request for Proposals. This process will also need to be done for Parcels 1 and 2 off Low Beach Road which were also included in this Request for Proposals.

If you have any questions or if I can be of additional assistance in this matter, please feel free to contact me.

Vicki

Vicki S. Marsh, Esq.
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101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
vmash@k-plaw.com
www.k-plaw.com

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Outline #1 for 091920 or 092620 Special Town Meeting Warrant
For 072220 SB review
As of 071920
NOTE: Numbering & Order is NOT FINAL

ARTICLES FROM 2020 ATM
39 articles were passed over at 2020 ATM; 22 of those were citizen articles (see attached)

OTHER
1. Airport Borrowing Authority in Connection with PFAS
2. Our Island Home Override ($5,000,000) (passed at 2020 ATE, still needs TM vote)
3. Senior Center?

CITIZEN ARTICLES
Submittal deadline
Articles (39) Carried Over from 2020 ATM:* 

Article 11/Town – Newtown Road Transportation Improvements ($1,154,105) (did not pass at 2020 ATE; still needs ballot vote)  
Article 12/Town – Reconstruction of Lover’s Lane ($3,272,892) (did not pass at 2020 ATE; still needs ballot vote)  
Article 13/Town – Construction & Improvements to Amelia Dr & Waitt Dr ($3,721,200) (did not pass at 2020 ATM, still needs ballot vote)  
Article 14/Town – Construction & Improvements to Children’s Beach Stormwater Pump Station ($3,300,000) (passed at 2020 ATE, still needs TM vote)  
Article 24/Town – OPEB Annual Contribution ($500,000)  
Article 25/Town – Senior Work-off Program ($25,000)  
Article 26/Town – Appropriation to Airport Special Purpose Stab Fund for Airport Employee Accrued Liabilities ($100,000)  
Article 27/Town – Appropriation to Town Special Purpose Stab Fund for Town Employee Accrued Liabilities ($500,000)  
Article 30/Town – Nantucket Islands Land Bank Financing  
Article 35/Citizen – C. Williams – Appropriation to Incineration of Solid Waste (no Dollar Amount)  
Article 36/Citizen – C. Williams – Appropriation for Legal Opinion for Beach Access (no Dollar Amount)  
Article 37/Citizen – A. Lowell – Appropriation for Hazardous Waste Facility ($1,000,000)  
Article 38/Citizen – M. Zodda – Appropriation to Re-establish Parks & Recreation Dept (no Dollar Amount)  
Article 43/Town – Zoning Map Change: Appleton Rd, Bartlett Rd, Perry Ln  
Article 44/Town – Zoning Map Change: Old South Rd, Ticcoma Way  
Article 45/Town – Zoning Map Change: Francis, Union, Washington Sts, Saltmarsh Way  
Article 48/Town – Zoning Bylaw Amendment: Residential Swimming Pools  
Article 54/Citizen – S. Ottison – Zoning Map Change: Cobble Court  
Article 55/Citizen – R. Von Kampen – Zoning Map Change: Polpis Rd, Chatham Rd  
Article 56/Citizen – I. Schreiber – Zoning Map Change: Rugged Rd  
Article 57/Citizen – J. Driscoll – Zoning Map Change: Driscoll Way  
Article 58/Citizen – V. Oliver – Zoning Bylaw Amendment: Commercial Mid-Island Height  
Article 61/Citizen – R. Atherton – Zoning Bylaw Amendment & Home Rule Petition: Coastal Erosion Liability Waiver  
Article 63/Citizen – A. Lowell – Affordable Housing Requirements  
Article 64/Citizen – A. Lowell – Public Property Damage  
Article 67/Citizen – J. McGrady – Prohibiting Roundabouts Near Schools  
Article 68/Citizen – T. Williams – Complaint Committee  
Article 73/Citizen – B. Mandel – Single Use Plastics Bylaw Amendment  
Article 75/Citizen – I. Golding – Bylaw Amendment: Bicycles  
Article 76/Citizen – I. Golding – Bylaw Amendment: Bicycles  
Article 78/Citizen – L. Williams – Bylaw Amendment: Outdoor Lighting
Article 79/Citizen – J. Lindner – Bylaw Amendment: Leaf Blowers
Article 83/Citizen – B. Swain – Bylaw Amendment: Sewer District Map Change/Cliff Rd
Article 84/Citizen – B. Swain – Bylaw Amendment: Sewer District Map Change/Kimball Ave
Article 101/Town – Real Estate Acquisition: 114 Orange St
Article 102/Town – Real Estate Conveyance: 114 Orange St
Article 103/Town – Real Estate Acquisition: 64 N Liberty St
Article 114/Citizen – I. Golding – Bylaw Amendment: Bicycles
Article 116/Town – Stabilization Fund Appropriation ($500,000)

*does not include any of the items removed from Article 10*
September 19, 2020 Special Town Meeting Timeline - as of 071920
Endorsed by Select Board:
Revised:

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>Wed, Jul 22</td>
<td>SB schedules STM for 09/19/20 &amp; endorses timeline</td>
</tr>
<tr>
<td>Wed, Aug 5</td>
<td>SB reviews potential warrant articles</td>
</tr>
<tr>
<td>Thurs, Jul 23 to Fri, Jul 31</td>
<td>Warrant open for any non-Town articles</td>
</tr>
<tr>
<td>Mon, Aug 3</td>
<td>Forward citizen articles to FinCom</td>
</tr>
<tr>
<td>Wed, Aug 12</td>
<td>SB adopts warrant</td>
</tr>
<tr>
<td>Fri, Aug 14</td>
<td>Warrant forwarded to FinCom</td>
</tr>
<tr>
<td>Thurs, Aug 20</td>
<td>Warrant &amp; FinCom public hearing notice published in newspaper</td>
</tr>
<tr>
<td>Tues, Aug 24</td>
<td>FinCom public hearing on warrant articles; possible adoption of motions</td>
</tr>
<tr>
<td>Mon, Aug 31</td>
<td>FinCom meeting on warrant articles/motions - Adoption of Motions</td>
</tr>
<tr>
<td>Wed, Sep 2</td>
<td>SB review motions/comments, adopts any comments</td>
</tr>
<tr>
<td>Thurs, Sep 3</td>
<td>Warrant with motions sent to printer*</td>
</tr>
<tr>
<td>Fri, Sep 11</td>
<td>Warrant with motions mailed out to voters**</td>
</tr>
<tr>
<td>Tues, Sep 15 (time TBD)</td>
<td>pre-STM FinCom meeting</td>
</tr>
<tr>
<td>Tues, Sept 15 (time TBD)</td>
<td>pre-STM conference with Moderator</td>
</tr>
<tr>
<td>Sat, Sept 19 - 9am</td>
<td>STM starts</td>
</tr>
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**NOTES:**
Special Voter Registration Deadline: TBD
Planning Board public hearing (if any zoning articles): TBD
Citizen articles require the signatures of 100 registered voters in order to be valid for inclusion on the warrant
Citizen articles to be sent to Town Counsel as rec'd
No special sessions with Town Counsel are included here (only for ATM)
Per c. 44-8 of Town Code: STM appropriations require quorum of 5% reg voters; transfers require 3%
Town Counsel review of articles & motions built in to timeline
*Printer/mailing requires 2 weeks lead time -- THE TIME ALLOWANCE NOTED MAY NOT BE ENOUGH TIME
**by Charter, warrant w/motions must be mailed to voters 7 days prior to Town Mtg - DUE TO COVID MAIL SLOWDOWN VOTERS MAY NOT GET IT IN TIME

Public Outreach (dates TBD):
- NCTV videos re FinCom motions
- Info boards for lobby at STM ??
- Voter's Guide ??
- Radio overview
- Rotary - ??
<table>
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<th>Town Assoc ??</th>
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<tr>
<td>E-newsletter special edition</td>
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<tr>
<td><strong>TBD:</strong></td>
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<tr>
<td>CapCom review of any Capital Articles</td>
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<tr>
<td>Does NOT include Planning Board hrgs</td>
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<tr>
<td>Date</td>
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<td>-----------------------</td>
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Town Counsel review of articles & motions built in to timeline
*Printer/mailing requires 2 weeks lead time -- The TIME ALLOWANCE NOTED MAY NOT BE ENOUGH TIME
**by Charter, warrant w/motions must be mailed to voters 7 days prior to Town Mtg - DUE TO COVID MAIL SLOWDOWN VOTERS MAY NOT GET IT IN TIME

Public Outreach (dates TBD):
NCTV videos re FinCom motions
Info boards for lobby at STM ??
Voter's Guide ??
Radio overview
Rotary - ??
September 26, 2020 Special Town Meeting Timeline - as of 071920
Endorsed by Select Board:
Revised:

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<td>E-newsletter special edition</td>
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**TBD:**
- CapCom review of any Capital Articles
- Does NOT include Planning Board hrgs
Review of 2020 Annual Town Election

Summary: Questions 1, 5, 6, 7 Passed; Questions 2, 3, 4 Failed

1. Operating Override – COMPANION ATM ARTICLE: A15*
Shall the Town of Nantucket be allowed to assess an additional $5,000,000 in real estate and personal property taxes for the purpose of supporting the operation of Our Island Home for the fiscal year beginning on July 1, 2020?
Results: Passed
Y – 1232
N – 564
B – 64
*FC Motion was amended at ATM so that no override is in place

2. Debt Exclusion for Newtown Road Transportation Improvements – COMPANION ATM ARTICLE: A11 ($1,154,105)
Shall the Town of Nantucket be allowed to exempt from the provisions of Proposition Two and One-half, so-called, the amounts required to pay for the bond issued in order to make various transportation-related improvements on Newtown Road including the costs of professional services for design, permitting, engineering, construction, construction supervision, materials, and other related professional services, and any other costs incidental and related thereto?
Results: Failed
Y – 766
N – 964
B – 130

3. Debt Exclusion for Reconstruction of Lover’s Lane – COMPANION ATM ARTICLE: A12 ($3,272,892)
Shall the Town of Nantucket be allowed to exempt from the provisions of Proposition Two and One-half, so-called, the amounts required to pay for the bond issued in order to make various transportation-related improvements on Lover’s Lane, including the costs of professional services for design, permitting, engineering, construction, construction supervision, materials, and other related professional services, and any other costs incidental and related thereto?
Results: Failed
Y – 850
N – 863
B - 147

4. Debt Exclusion for Construction and Improvements to Amelia Drive and Waitt Drive – COMPANION ATM ARTICLE: A13 ($3,721,200)
Shall the Town of Nantucket be allowed to exempt from the provisions of Proposition Two and One-half, so-called, the amounts required to pay for the bond issued in order to make various transportation-related improvements on Amelia Drive and Waitt Drive, including the costs of professional services for design, permitting, engineering, construction, construction supervision,
5. Debt Exclusion for Construction and Improvements to Children’s Beach Storm Water Pump Station – COMPANION ATM ARTICLE: A14 ($3,300,000)

Shall the Town of Nantucket be allowed to exempt from the provisions of Proposition Two and One-half, so-called, the amounts required to pay for the bond issued in order to make various improvements to the Children’s Beach storm water pump station, including the costs of professional services for design, permitting, engineering, construction, construction supervision, materials, and other related professional services, and any other costs incidental and related thereto?

Results: Passed
Y – 1360
N – 375
B - 125

6. Capital Outlay Exclusion – COMPANION ATM ARTICLE: A10*

Shall the Town of Nantucket be allowed to assess an additional $896,160 in real estate and personal property taxes for the following purposes in the amounts as follows for the fiscal year beginning July 1, 2020?

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<th>Department</th>
<th>Purpose</th>
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<tr>
<td>Fire</td>
<td>Replacement of Self-contained Breathing Apparatus Equipment</td>
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**Total Capital Exclusion:** $896,160

Results: Passed
Y – 1007
N – 703
B - 150

*FC Motion was amended at ATM so that no override is in place
7. **Capital Outlay Exclusion – COMPANION ATM ARTICLE: A10**

Shall the Town of Nantucket be allowed to assess an additional $266,522 in real estate and personal property taxes for the continuation of closed caption television camera assessment of storm water drainage systems within the Town for the fiscal year beginning July 1, 2020?

**Results:** Passed

- Y – 962
- N – 705
- B - 193

*FC Motion was amended at ATM so that no override is in place*

**Non-Binding Ballot Questions:**

1. **Are you satisfied with our current open town meeting form of government?**

   **Results:**
   - Y – 887
   - N – 788
   - B - 185

2. **Would you like the Town to invest time and resources to investigate alternative forms of local government for further review?**

   **Results:**
   - Y – 1102
   - N – 593
   - B – 165

*Action(s) needed:*

- Board will need to determine – *before Aug 5* – if it wants to request up to 3 local Prop 2 ½ questions to be placed on the November election ballot
June 24, 2020

RE: Select Board Pledge to the Nantucket Community

Dear Nantucket Community,

Many in our community are experiencing grief and pain as we watched the senseless and tragic deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor. To watch the action and inaction of officers is nothing short of horrifying. These events have exposed deeply entrenched systemic racism in our country and our community.

We respect those who choose to protest in peace and are committed to do all we can to stand with the black community, as well as other minorities, to ensure that we do the work to make Nantucket a more just and equitable community for all its constituents. As we look to build a better future, we must learn from our history. We are committed to take action now - to have the conversations, investigate our systems to understand and address the discrimination that may be subtle or overt, and to make meaningful change to create a safer, more equitable community for all our residents.

Today, we make the following pledge and commitment, inspired by the Massachusetts Municipal Management Association Task Force on Diversity and Inclusion:

- We stand with those who are calling out police brutality, ingrained racism and violence toward people of color in our country;
- We commit as leaders to strengthen the trust in our community by making sure that we hire police officers and team members who reflect the values of integrity, compassion and respect for the diversity of all individuals;
- We commit to listening to and proactively responding to community concerns when they arise;
- We stand with our police officers and team members who demonstrate these high moral values every day;
- We share in the anger and sadness our community members are feeling, we are channeling those feelings to work toward a better future for the residents of our community and generations to come;
- We commit to continuing to be active participants in working hard to educate, train and effect change in our organizations and throughout the community;
We commit to find further information on what policies, training and practices are in place in Massachusetts related to fair and impartial policing and identification of areas for improvement to strengthen the trust in our communities for our team members to participate in.

In addition, we are committed to taking other critical actions to improve our community:

- Develop an Equity/ Diversity Office in Town Administration - a cabinet level position whose focus will be to ensure equitable service delivery in the community and help us move forward with our new objectives;
- Create a new system for community members and staff to report racist or discriminatory incidents;
- Ongoing professional development training for our staff and volunteer board/commission members on racial identity, implicit bias and racial equity;
- Create a Diversity, Equity and Inclusion Strategic plan to assess our current practices, policies and procedures as well as to overall agency culture - this plan will have both short-term and long-term goals;
- Create a Diversity Advisory board who will focus on 8 key areas: language access; family support, public safely, economic opportunity, infrastructure and livability, and health and wellness.

Nantucket has always been a community noted for its courage. As we face the difficult realities together, we are confident that we will be successful in creating a community where all our residents can feel safe and welcome.

Town of Nantucket Select Board

Dawn Hill Holdgate, Chair
Jason Bridges, Vice Chair
Matt Fee
Kristie Ferrantella
Melissa Murphy
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XII. 1 - HDC Appeal is in a separate agenda packet