

Town and County of Nantucket  
Select Board • County Commissioners

Dawn E. Hill Holdgate, Chair  
Jason Bridges  
Matt Fee  
Kristie L. Ferrantella  
Rita Higgins



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C. Elizabeth Gibson  
Town & County Manager

**AGENDA FOR THE MEETING OF THE  
COUNTY COMMISSIONERS  
DECEMBER 11, 2019 - 6:00 PM  
PUBLIC SAFETY FACILITY COMMUNITY ROOM  
4 FAIRGROUNDS ROAD  
NANTUCKET, MASSACHUSETTS**

- I. CALL TO ORDER***
- II. ANNOUNCEMENTS***
  1. The County Commission Meeting is Being Video/Audio Recorded.
- III. PUBLIC COMMENT\****
- IV. NEW BUSINESS\****
- V. APPROVAL OF MINUTES AND WARRANTS***
  1. Approval of Minutes of November 20, 2019 at 6:00 PM.
  2. Approval of Payroll and Treasury Warrants for December 2019.
- VI. COMMISSIONERS REPORTS/COMMENTS***
  1. Review of Red-lined License Agreement and Grant of "One Big Beach" Easement for 115/117 Baxter Road Previously Approved on October 23, 2019.
- VII. ADJOURNMENT***

*\*Identified on Agenda Protocol Sheet.*

*County Commission Agenda Protocol:*

- *Roberts Rules. The County Commission follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.*
- *Public Comment. Public Comment is for bringing matters of public interest to the attention of the Commission. The Commission welcomes concise statements on matters that are within the purview of the County Commission. At the Commission's discretion, matters raised under Public Comment may be directed to County Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Commission takes action. Except in emergencies, the Commission 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.*
- *New Business: For topics not reasonably anticipated 48 hours in advance of the meeting.*
- *Public Participation. The Commission 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 Commissioners may have questions on the clarity of information presented. The Commission will hear any staff input and then deliberate on a course of action.*
- *Commissioner Report and Comment. Individual Commissioners may have matters to bring to the attention of the Commission. If the matter contemplates action by the Commission, Commissioners will consult with the Chair and/or County Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Commission will not normally take action on Commissioner Comment.*



## Agenda Item Summary

<b>Agenda Item #</b>	VI. 1.
<b>Date</b>	December 11, 2019

### Staff

Ken Beaugrand, Real Estate Specialist

### Subject

Review of language in 115-117 Baxter Road documents (One Big Beach Easement and License Agreement) approved by County Commissioners at October 23, 2019 meeting.

### Executive Summary

Staff has been asked to provide clarification of the language in the License and One Big Beach easement documents for 115-117 Baxter Road, based on the model documents used for a similar arrangement with 109 Baxter Road.

### Staff Recommendation

No further action necessary (other than, going forward “redlined” documents will be provided to the Commission in similar situations, so that any language changes from the “model” documents can be more easily identified and explained).

### Background/Discussion

At the County Commissioners meeting of October 23, 2019, staff presented the Commission with a License Agreement and OBB Easement based (as noted above) on the documents used for 109 Baxter Road. Staff represented at that meeting that the language was “the same” in all documents. With respect to the Easement, the language in fact was not exactly the same. One item was added to the paragraph which requires approval for beach stairs. The item added was a “coastal erosion structure”. This was not viewed as a substantive change because, as with the beach stairs, it requires the same additional approvals. With respect to the License, at the meeting the Commission requested additional language to protect the Town in the event of roadway failure and/or related liability. The Commission authorized staff to work with Town Counsel to insert this language. The Commission, subject to the License wording changes, approved both documents. They have since been duly executed and filed. During and following the meeting, concerns were raised as to the language in the OBB Easement document. Attached are “redlined” versions of the 109 Baxter Road documents to show what exactly was changed for 115-117 Baxter Road.

**Impact:** Environmental  Fiscal  Community  Other

N/A



**Board/Commission Recommendation**

N/A

**Public Outreach**

N/A

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

In keeping with Board's on-going policy to retain/obtain public access to beach areas when possible.

**Attachments**

Town Counsel email dated November 20, 2019

Redlined OBB Easement and License Agreement for 115-117 Baxter Road, showing differences between those and the documents for 109 Baxter Road.

Email exchange between Town Manager, Real Estate Specialist, Town Counsel, County Commission



## Libby Gibson

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**From:** Libby Gibson  
**Sent:** Friday, November 01, 2019 2:51 PM  
**To:** Dawn Hill Holdgate; Jason M. Bridges; Kristie Ferrantella; Matt Fee; Rita Higgins  
**Cc:** 'Rick Atherton'; 'D. Anne Atherton (danneatherton@comcast.net)'; Kenneth Beaugrand  
**Subject:** FW: \*\*REQUEST FOR RECONSIDERATION\*\*  
**Attachments:** COMMENTS AND QUESTIONS RE 115 AND 117 BAXTER ROAD Version of 10.10.19.pdf; Email Sent to Jason re 115 and 117.pdf; 115-117 Baxter Road

Ken Beaugrand and Town Counsel (Vicki Marsh) have conferred regarding the concerns expressed in the email below. See attached email from Vicki. Ken & I have spoken about the concerns and our response with Jason Bridges and Dawn Holdgate (separately). A couple of things to note: it remains Staff's (and Town Counsel's) opinion that there were not substantive changes to the 115-117 license or OBB easement documents from the 109 documents. It is true that the two as presented to the County Commissioners at the 10/23/19 meeting were not identical in language and we should have provided a red-lined version of the template documents so that the Board and public could see what was specifically modified. Vicki's attached email explains the difference in language. See also answers to the questions **below**.

C. Elizabeth Gibson  
Town Manager  
Town of Nantucket  
(508) 228-7255

**From:** danneatherton@comcast.net <danneatherton@comcast.net>  
**Sent:** Sunday, October 27, 2019 5:18 PM  
**To:** Jason M. Bridges <jmbridges@nantucket-ma.gov>; Rita Higgins <rhiggins@nantucket-ma.gov>; Matt Fee <mfee@nantucket-ma.gov>; Dawn Hill Holdgate <dhillholdgate@nantucket-ma.gov>; Kristie Ferrantella <kferrantella@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>  
**Subject:** \*\*REQUEST FOR RECONSIDERATION\*\*

TO: MEMBERS OF THE COUNTY COMMISSION, TOWN MANAGER

FROM: RICK ATHERTON, D. ANNE ATHERTON/FOR THE NCC TEAM

RE: REQUEST FOR RECONSIDERATION

We respectfully request that the County Commissioners reconsider the action taken on October 23 re granting a license for the property owner of 115 and 117 Baxter Road to relocate his house into the County/Town road layout.

Our reason is that the decision was based on faulty information that was given to the Commission. Contrary to what the Commission was told during the meeting on October 23, the proposed documents for 115 and 117 are, in fact, not the same as those used for the transaction with the then owner of 109 Baxter Road. (See attached for email sent by Rick to members of the Commission on Friday, October 25. Note: The email was not sent to Dawn who was absent last Wednesday.)

It should be pointed out that the comparison of the documents for 115/117 with the documents for 109 was a preliminary one and not a thorough review. However, the additional language contained in paragraph 5 is readily apparent.

Questions should be asked and answered so that the Commissioners have a good understanding of what they are voting on. Why was the new language in paragraph 5 inserted in the OBB easement for 115 and 117? **It was included at the request of the property owner** What does it mean? **It means that in addition to beach stairs (beach stairs are allowable in both the 109 OBB easement and 115-117 OBB easement provided that Town, ConCom and any other necessary approval is secured in advance), any coastal erosion structure would also have to be approved by the Town, the ConCom and any other necessary approval before it could be installed** Who drafted the language of the documents? **Town Counsel** Why were the Commissioners told that what they were being asked to approve was the "same" as what was done in regard to 109? **The explanation given to the Commissioners was meant to indicate that both documents had the same terms – which they did. The only difference is that "coastal erosion structure" was added as an item that would require the same approval as the beach stairs** Are there additional discrepancies? **No**

Overall we support any property owner's relocating their house back from the way of harm caused by erosion, and if the Town/County can assist in this process, whether in Sconset or Madaket or any other coastal location on the island, we see this assistance as a positive. As you know, over the past years we have become conversant with aspects of Town/County licenses for the use of public land by private property owners in the Baxter Road area. We became aware of the situation re 115/117 Baxter Road when the property owner was before the Conservation Commission several weeks ago. In anticipation of the fact that, if the proposed relocation were to be permitted by the ConCom the owners would be seeking a license from the Town/County, we prepared the attached bullet points for consideration. As we recall, Rick shared an iteration of them with both Jason and Ken Beaugrand some weeks ago.

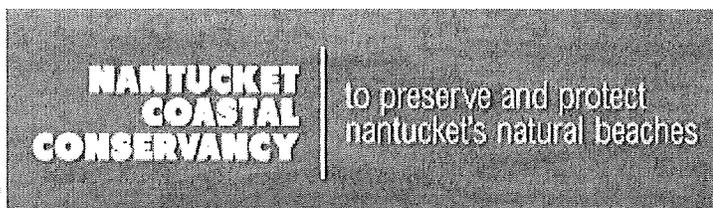
Because new information specifically germane to the matter has been made known since the vote was taken, we look to the Commission to reconsider the request and, we hope, enter into a license agreement with the owner of 115 and 117 Baxter Road that better represents the interests of the Town and the citizens of Nantucket, not just the owner.

Thank you.

ATTACHMENTS (2):

COMMENTS AND QUESTIONS RE 115 AND 117 BAXTER ROAD

EMAIL, SENT BY RICK ATHERTON TO MEMBERS OF THE CC, OCTOBER 24, 2019



[www.savenantucketbeaches.org](http://www.savenantucketbeaches.org)

[info@savenantucketbeaches.org](mailto:info@savenantucketbeaches.org)

**From:** [Vicki Marsh](#)  
**To:** [Libby Gibson](#)  
**Cc:** [Erika Mooney](#); [Kenneth Beaugrand](#); [John Giorgio](#)  
**Subject:** 115-117 Baxter Road  
**Date:** Wednesday, November 20, 2019 1:01:38 PM  
**Attachments:** [KP-#702258-v2-NANT License- 115 Baxter -117 Baxter Road to Kelley.DOC](#)  
[KP-#674627-v2-NANT- Grant of Easement - 115 and 117 Baxter Road.DOC](#)

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Libby-

I apologize for the delay in sending this to you but I am still experiencing computer difficulties. I appreciate your patience.

Enclosed please find the red-lined versions of the License Agreement and the Grant of Easement with Scott Kelley as the owner and Licensee for 115-1117 Baxter Road. Please note that I revised Paragraph 2 of the License Agreement as red-lined as requested by Ken Beaugrand and pursuant to the Select Board's request. They had requested the inclusion of an indemnification by the Licensee to the Town and the County for not only any damages to the Licensee from liability as a result of the condition of the Licensed Premises but also for any damages due to a breach in Baxter Road or a discontinuance of Baxter Road by the County and the Town. Furthermore the Licensor agrees not to assert any claims or bring any lawsuits for property damages for a breach of Baxter Road or its discontinuance by the Town and/or the County. The Licensee also agrees to accept the alternate access provided by the County and/ or the Town in the event of a breach or discontinuance of Baxter Road. This additional language as requested by the Select Board, in my opinion, is a benefit received by the Town and/or the County in granting this license.

Also enclosed for review is the revised Grant of Easement from Scott Kelley containing my red-lined revisions to Paragraph 5. The only revision is to allow a coastal erosion structure to be placed in the Easement Area, provided that the Grantor has applied for and received the approval of all Required town authorities, and agrees to comply with all conditions required for the installation and use of the coastal erosion structure. The Select Board would have to give its approval as it is the Easement holder. This language in my opinion does not give the owner the right to construct the coastal erosions structure in the Easement Area which he still owns in fee, as he still must go through the approval process by all of the required boards. This revision was requested by the owner's attorney, Steven Cohen and was reviewed with Ken.

If you have any questions, please do not hesitate to contact me.

Vicki

Vicki S. Marsh, Esq.

**KP | LAW**

101 Arch Street, 12th Floor

Boston, MA 02110

O: (617) 556 0007

F: (617) 654 1735

[vmarsh@k-plaw.com](mailto:vmarsh@k-plaw.com)

[www.k-plaw.com](http://www.k-plaw.com)

## LICENSE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the County of Nantucket, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, acting by and through its Board of County Commissioners, having an address of Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554(the “Licensor”) and Scott Kelley, of 1005 Bayshore Boulevard, Tampa, Florida, (the “Licensee”),the owner of property located at 115 and 117 Baxter Road, Nantucket, Massachusetts (the “Property”) by virtue of Deeds recorded with the Nantucket County Registry of Deeds in Book 1701, Page 107 and Book 1701, Page 201:

WHEREAS, Licensor is the owner of the land in the layout of Baxter Road as shown on Exhibit A by virtue of an Order of Taking dated October 29, 1975, filed with said Deeds in Book 151, Page 224(“Roadway”);

WHEREAS, due to the eroding coastal bank threatening the safety and structural integrity of the structures on the bluff-side of Baxter Road, the Licensee’s dwelling is in imminent danger; and

WHEREAS, the Licensee has applied to the Nantucket Zoning Board of Appeals to re-locate the dwelling as much as seven and one-half (7.5) feet over the Licensee’s front property line, into the land of the Licensor, provided that the Licensee’s dwelling is no closer than ten (10) feet from the edge of the existing pavement of the Roadway and no less than five(5) feet from the side yard line as shown on the plan entitled “Exhibit Plan for “One Big Beach” Easement in Nantucket, MA, Scale:: 1” = 40’, Oct. 22, 2019 Prepared for Scott Kelley, Addresses: 115 & 117 Baxter Road, Assessor Map 48 Parcel 10 & Assessor Map 48 Parcel 9,” prepared by Nantucket Engineering & Survey, Inc.” attached hereto as Exhibit A; and

WHEREAS, the Licensee has now asked the Licensor for permission to site the dwelling within the unimproved portion of the roadway layout of Baxter Road, upon and over a portion of the layout of the Roadway, as more particularly shown on said plan attached hereto and marked Exhibit A (the “Licensed Premises”); and

WHEREAS, Licensor has agreed, under certain conditions as more particularly set forth herein, to allow a portion of the dwelling to be sited upon and over the Licensed Premises.

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

1. Licensor hereby permits Licensee, its contractors, agents, invitees, permittees and licensees, a non-exclusive right to enter upon and locate, maintain, and repair the dwelling on the Licensed Premises, at their sole cost and expense in

accordance with the plan Licensee had submitted to the Building Inspector of the Town of Nantucket which is attached hereto as Exhibit A, and all federal state and local laws, regulations, ordinances and by-laws. Licensee shall comply with all terms and conditions of the Order of Conditions issued by the Town of Nantucket Conservation Commission dated September 25, 2019, recorded with Nantucket County Registry of Deeds in Book 1712, Page 230. Such entry and use shall be exercised from the date of the execution of this License and shall continue until Licensor grants a permanent easement or such date as it is revoked or terminated pursuant to Section 10 below. Licensor makes no representation or warranty, by said grant of license hereby or otherwise, that the Licensor has title to or rights in the Licensed Premises or that the Licensed Premises may be used for a particular purpose. Licensee acknowledges that they have not relied upon any warranties or representations of the Licensor nor any person acting on behalf of the Licensors, and that Licensee agrees to accept the Licensed Premises “as is”, with no liability on the part of the Licensor for any condition or defect or title in the Licensed Premises, whether or not known to the Licensor or any representative of the Licensor. The terms of this paragraph shall survive the termination of this License.

2. Licensee hereby releases Licensor and the Town from any and all claims and liabilities of any nature whether known or unknown, both in law or in equity, which Licensee has or may have had from the beginning of the world to the date of execution of this license. Licensee also agrees to indemnify, defend and hold Licensor and the Town of Nantucket (the “Town”) harmless from and against all claims, demands, losses, costs, damages, causes of action, or liabilities whatsoever, including but not limited to mechanic’s liens and reasonable attorney’s fees and expenses, which may be imposed upon, incurred by, or asserted against the Licensor, the Town or their respective agents, employees, successors and assigns by reason of (a) any failure on the part of the Licensee, its agents, contractors, representatives, licensees, permittees or invitees to comply with any provision or term required to be performed or complied with by Licensee, its agents, contractors, representatives, licensees permittees or invitees under this License; (b) for the death, injury or property damage suffered by any person on account of or based upon the act, omission, fault, negligence or misconduct of any person whomsoever, other than the Licensor or the Town relating in any way, to the Licensee’s exercise of its rights under this License; (c) the discharge, release or threatened release at or from the Licensed Premises of oil or hazardous material as defined under federal, state or local law which is caused by Licensee, its agents, contractors, representatives, licensee, permittees or invitees under this License. Licensee will be solely responsible for any hazards created through Licensee’s conduct in connection with this License. Furthermore, Licensee hereby indemnifies and holds harmless ~~releases~~ the Licensor and the Town from any responsibility or liability for Licensee’s losses or damages related to the condition of the Licensed Premises or a

breach in the Roadway or a discontinuance of the Roadway by the Licensor and/or the Town, and Licensee agrees and covenants that it will not assert or bring, nor cause any third-party to assert or bring any claim, demand, lawsuit or cause of action against the Licensor and the Town including without limitation, claims for property damages, diminution in property, value claims, personal injury damages and any other damages relating to or arising from the Licensee's use of the Licensed Premises or for a breach of the Roadway or the discontinuance of the Roadway by the Licensor and/or the Town. As a condition of the License, the Licensee agrees to accept the alternate access on Baxter Road provided by the Licensor or the Town in the event of a breach or discontinuance of the Roadway. The provisions of this Paragraph shall survive the termination of this License.

3. This License to encroach upon the Licensor's Property, more particularly described as the "Licensed Premises" on the attached Exhibit A, shall entitle the Licensee to use the property in the "Licensed Premises" in a manner typical and customary in which a homeowner would use his or her property. Licensee agrees that it shall use and occupy the Licensed Premises at its own risk, and the Licensor shall not be liable to Licensee for any injury or death to persons entering the Licensed Premises pursuant to the License, or loss or damage to vehicles, equipment, the dwelling or other personal property of any nature whatsoever of the Licensee, or of anyone claiming by or through the Licensee, that are brought upon the Licensed Premises pursuant to the License. Licensee shall be responsible for the condition of the dwelling and agrees to maintain it in good and safe condition and repair, at its sole cost and expense. Licensee agrees not to place or construct any additional structures or improvements in, on, under, over or across the Licensed Premises, other than the current dwelling approved by the Licensor, or store any equipment, materials or property of any kind on the Licensed Premises. During the exercise of the rights hereby granted, the use of the Licensed Premises by Licensee shall not unreasonably interfere with the use of the Roadway by the Licensor, the Town and the general public for all purposes for which roadways are used and observe and obey directives of the Licensor and the Town as well as all applicable laws, statutes, ordinances, regulations and permitting or licensing requirements.
4. The Licensee shall grant simultaneously hereto with the execution of this License a "One Big Beach Easement" to the Town over the portion of their Property in a form mutually agreed upon.
5. This License shall not be construed as creating or vesting in the Licensee any estate in the Licensed Premises, but only the limited right of possession as hereinabove stated.

6. This License is personal and exclusive to the Licensee and their heirs at law and is not intended to run with the land. This License may be transferred or assigned only upon the expressed written consent of the Licensor.
7. This License represents the complete understanding and entire agreement between the parties hereto. Any prior agreements or understandings, whether written or oral, are hereby superseded and of no effect.
8. This License is to be interpreted under and construed in accordance with the laws of the Commonwealth of Massachusetts. The parties agree that venue for any dispute arising from this License will be the Nantucket District Court.
9. The Licensee shall procure all necessary permits before undertaking any work on the Licensed Premises. The siting of the dwelling shall be performed in accordance with all laws, by-laws, regulations and permits. The Licensee shall not permit any mechanics' liens or similar liens, to remain upon the Licensed Premises for labor and material furnished to the Licensee or claimed to have been furnished to the Licensee in connection with any work performed or claimed to have been performed at the direction of the Licensee and the Licensee shall cause any such lien to be released forthwith at no cost to the Licensor and shall deliver a copy thereof to Licensor.
10. This License shall be revocable by either party upon written notice of revocation at least sixty (60) days prior to the termination dated stated within said notice. In the event that this License is terminated by revocation of either party pursuant to this section, then the Licensee at its own expense shall remove the dwelling from the Licensed Premises and restore the Licensed Premises to its original condition at the commencement of this License, as nearly as possible. This obligation shall survive the termination of this License.

The Licensee shall maintain during the term of this License public liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of the Licensee under the terms and condition of this License to indemnify, defend and hold harmless the Licensor pursuant to insurance coverage on the Property and a Personal Liability Umbrella Policy held by the Licensee: General Liability \$1,000,000.00 per occurrence; Bodily Injury Liability \$3,000,000.00 per occurrence; and Property Damage Liability or a combined single limit of \$3,000,000.00 annual aggregate limit. Prior to entering upon the Licensed Premises, and thereafter on or before January 1 of each year of the term of this License, Licensee shall provide the Licensor with a certificate of insurance in each case indicating the Licensor as an additional insured on the policy and showing compliance with the foregoing provisions. Licensee shall require the insurer to give at least thirty (30) days written notice of termination, reduction or cancelation of the policy to Licensor. Licensee or Licensee's contractors shall maintain workmen's compensation insurance during any site work, maintenance or repair on the Licensed Premises, as required by

law. Licensee agrees that while any contractor is performing work on behalf of the Licensee at the Licensed Premises the contractor shall carry liability insurance and automobile liability insurance in amounts of General Liability and Automobile Liability insurance in amounts of \$1,000,000.00, combined single limit and shall name the Licensor as an additional insured party. Prior to any construction or site work on the Licensed Premises performed by the Licensee or any contractor on behalf of the Licensee on the Licensed Premises, Licensee shall provide Licensor with a copy of the contractor's insurance certificate indicating liability insurance coverage as herein specified, and copies of any approval, permits, necessary or obtained to construct or siting of the dwelling and any construction or excavation work.

Signature Page to Follow

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

LICENSOR:

LICENSEE:

COUNTY OF NANTUCKET  
By its County Commissioners

Owner of 115 and 117 Baxter Road

\_\_\_\_\_  
Jason Bridges

By: \_\_\_\_\_  
Scott Kelley

\_\_\_\_\_  
Kristie L. Ferrantella

\_\_\_\_\_  
Dawn E. Hill Holdgate

\_\_\_\_\_  
Rita Higgins

\_\_\_\_\_  
Matthew G. Fee

## GRANT OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS, I, Scott Kelley (the “Grantor”), of 1005 Bayshore Boulevard, Tampa, Florida, in consideration of One Dollar (\$1.00) paid and in further consideration of a grant of a License Agreement over a portion of Baxter Road in said Nantucket from the County of Nantucket to the Grantor, do hereby GRANT to the Town of Nantucket (the “Town”), a body politic of the Commonwealth of Massachusetts, having offices at 16 Broad Street, Nantucket, Massachusetts 02554, by and through its Board of Selectmen, the “Grantee,” with QUITCLAIM COVENANTS, the following rights, title and interests:

1. A perpetual easement coextensive with and limited to the Easement Area as shown on a plan attached hereto and incorporated herein of Grantor’s Lands (“Easement Plan”), upon the commencement of erosion of the Grantor’s Land such that the southern boundary of the Grantor’s Land meets the mean low water mark. The terms “Easement Area” and “Grantor’s Land,” as well as other terms used in this Grant of Easement, are defined below in Paragraph 2. The scope of the affirmative perpetual easement herein granted is more fully defined, limited, and subject to the conditions and covenants set forth in the following paragraphs.

2. Definitions for the purposes of this Grant of Easement:

“Grantor’s Land” shall mean those two parcels of land situated in the Town and County of Nantucket, Massachusetts, at 115 and 117 Baxter Road, being described in deeds to Grantor recorded with Nantucket County Registry of Deeds in Book 1701, Page 107 and Book 1701, Page 201 and is shown on Assessor’s Map 48 as Parcels 9 and 10.

“coastal bank” shall mean the seaward face or side of any elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland.

“coastal dune” shall mean any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash, including without limitation vegetated areas of American beach grass or other natural beach plants serving to build dunes in dune fields between the landward edge of unvegetated sand and the seaward face or side of the coastal bank. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

“Easement Area” shall initially mean that part or portion of Grantor’s Land lying inland of the mean low water line up to and including: (i) the point of the bottom of the coastal bank, or (ii) any coastal dunes, which is the area between the bottom of the bank and the top of the bank, as shown on the afore-referenced plan, to the point where such coastal dunes terminate and the remainder of Grantor’s Land begins, as the case may be, and as the mean low water line, the coastal bank and the coastal dunes may exist from time to time. To the extent that erosion, accretion, drifting sand, avulsion or other natural phenomena alter the mean low water line, the coastal bank or the coastal dune, the Easement Area shall be deemed correspondingly altered for purposes of this Grant of Easement. The Easement Area is shown as “Beach Easement” on the Easement Plan attached hereto and incorporated herein.

“Coastal Conservation Land” shall mean that ocean-front land, contiguous to Grantor’s Land, now or hereafter owned by the Town or by the Nantucket Islands Land Bank, a government body established for the purpose of land conservation (see, Chapter 669 of the Massachusetts Acts of 1983, as amended), and held for the purpose of preserving the unique natural littoral environment of Nantucket for enjoyment by the general public, and for protecting the scenic and ecological character of the Nantucket shore.

“Commercial Activities” shall mean any activity or event where money is paid to an individual or business entity for services rendered within the Easement Area. By way of illustration only and without limitation, the erection or use of any permanent or temporary structure, kiosk, dock, mooring, stand, cart, sign for advertisement, or other real or personal property, fixtures, or equipment primarily for the purpose of, or incidental or accessory thereto, manufacturing, selling, leasing or otherwise providing from that specific structure or arising from such use any property, good, product or service.

“conservation” and “recreation,” and all derivations therefrom, shall have the general meanings and uses given to those terms by Internal Revenue Code, Section 170(h), and the regulations promulgated thereunder.

“mean high water line” shall mean the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“mean low water line” shall mean the line where the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“intertidal areas” shall mean the area upland of the mean low water line and seaward of the mean high water line, subject to tidal action.

“Maintenance Obligation” shall mean the ongoing and continuous obligation and duty to adequately patrol, maintain and police (that is, supervise, clean, and maintain order, but not to be required to provide regular patrolling by law enforcement officers) environmental resources in

accordance with the Nantucket Beach Management Plan as the same may be amended from time to time and State and local law, and periodically to inspect the Easement Area.

3. The Grantee and the general public shall have the right to enter upon and use the Easement Area exclusively for conservation and recreational purposes for which beaches are used on Nantucket (with the exception of the vehicular uses that are provided in paragraph 4), but not Commercial Activities. These purposes and uses include, by way of illustration and without limitation, educational uses, swimming, fishing, surfboarding, snorkeling, sunbathing, strolling, walking, hiking, wildlife observation, picnicking, scenic viewing, normal and usual beach recreational activities and games, and other similar or appropriate and reasonable recreational outdoor activities and uses as the Grantee, shall determine from time to time, provided the said similar uses shall have been approved in writing by the Board of Selectmen of the Town of Nantucket and notice of such approval is duly published in a newspaper of general circulation in the Town of Nantucket. The Grantee shall regulate the hours and the scope and nature of the permitted uses and activities in accordance with the Grantee's standard beach-management practices in effect for the beaches of Nantucket as found in the Town of Nantucket Beach Management Plan, as adopted by the Nantucket Board of Selectman June 1, 2005 and "Regulations for the Use of Town-Owned Beaches", said regulations effective August 1, 2003 as amended August 4, 2004 as may be amended from time to time, and further the Grantee may grant special permits, from time to time, with the prior written approval from the Grantor, for such other uses and activities and for extended hours, from time to time, as may be provided for by such duly adopted rules, regulations and/or bylaws. In adopting such rules, regulations and/or bylaws, and in issuing special permits pursuant thereto, the Grantee (together with any applicable departments or other divisions, boards, bodies, agencies, officials or agents of the Town) shall use reasonable efforts to minimize reasonably foreseeable adverse effects of such rules, regulations and/or bylaws and permits proposed to be issued upon the reasonable peaceful enjoyment of the Grantor's Land lying outside the Easement Area and upon the Easement Area. In no event shall the Town authorize, and the Town shall use reasonable efforts to prohibit, any Commercial Activities within the Easement Area. Notwithstanding the foregoing, no member of the general public shall have any right to enter upon, travel over or use those portions of the Easement Area consisting of coastal dunes except with the prior written consent of Grantor or Grantor's heirs, executors, administrators, legal representatives, successors and/or assigns. Notwithstanding the foregoing, the Town shall have the right to enter upon, travel over or otherwise use those portions of the Easement Area consisting of coastal dunes as necessary to perform its Maintenance Obligation.

4. Notwithstanding the uses and activities set forth in paragraph 3 above, the Grantee shall not allow access and use of recreational vehicles in the Easement Area except as provided for herein below, but in no event shall such vehicular use be allowed in, on or over the dunes and dune fields or other environmentally sensitive areas as reasonably identified by the Grantee, and all such vehicular access shall be limited solely to those areas expressly designated and authorized by the Grantee. Vehicular access and use shall be prohibited subject to such rules, regulations and bylaws previously adopted by the Grantee and now existing or hereafter adopted by the Grantee including, but not limited to the issuance of permits for beach access and driving, provided however, during the period from June 1, through and including September 15, the hours of vehicular use and access shall be limited to between 5 P.M. and 10 P.M. or to such other more restrictive dates and evening hours that the Grantee may duly authorize from time to time. The

foregoing sentences shall not limit the official use of vehicles of the Town, its agencies or other governmental entities.

5. Notwithstanding the provisions of paragraphs 3 and 4 above, all movable or fixed structures and signage indicating the limits and/or access to the Easement Area shall be prohibited throughout the Easement Area, except wooden steps to ascend and descend the coastal bank and a coastal erosion structure provided that the Grantor has applied for and received the approval of all requisite Town authorities, and Grantor agrees to comply with any conditions required by said Town authorities for the installation and use of such structures; and Grantor and/or Grantee may erect or maintain fencing, signage or the like along the seaward edge of the coastal bank as may reasonably be warranted to protect the coastal bank and coastal dune or any species listed by any applicable state or federal law or regulation as endangered or threatened so as to advance the conservation purposes for which this Easement is being granted, without unreasonably frustrating the recreational purposes of this Easement. If any structure(s) mandated under applicable state or federal law or regulation frustrate the purposes for which this Grant of Easement is being granted, such structures may be maintained only for as long as is legally required and the party that caused such structure(s) to be placed on the Easement Area shall be responsible for and shall remove such structures(s) within a reasonable period after such time.

6. In addition to any other duties and obligations, the Town shall have the ongoing and continuous obligation and duty to fulfill its Maintenance Obligation and to reasonably ensure that persons granted access pursuant to this easement fully comply with Massachusetts, local and federal laws protecting coastal areas and the use of this beach. Any member(s) of the public who violate(s) the duly adopted rules, regulations and/or bylaws or who refuse to cease and desist from any proscribed conduct, acts or omissions to do or perform anything required to conform to the same may be cited in accordance with said rules, regulations and/or bylaws. The Town may remove from the Easement Area any individual who violates any said rule, regulation and/or bylaw. Further, when issuing any permits pursuant to such rules, regulations and/or bylaws, the Town shall impose such reasonable conditions and restrictions that may be reasonably necessary to assure the Grantor the reasonable peaceful enjoyment of Grantor's Land lying outside the Easement Area.

7. This Grant of Easement shall be binding upon and inure to the benefit of the Grantor(s) and his/her/their heirs, executors, administrators, legal representatives, successors and assigns and this Grant of Easement shall be binding upon and inure to the benefit of the Grantee, and the Town and its successors and assigns. The Town's successors and assigns shall be entities eligible to hold qualified conservation restrictions under applicable federal tax law.

8. This Grant of Easement shall be subject to and interpreted pursuant to the laws of the Commonwealth of Massachusetts, and, to the extent applicable to shorefront property, also subject to the laws of the United States of America.

9. Rights retained by the Grantor(s) in and to the Easement Area shall be inferior and incidental to the conservation and recreational use of the Easement Area provided for here, and shall be valid to the extent consistent with this Grant of Easement, and only if exercised so as not to impair the conservation and recreational rights and interests conveyed to the Town hereunder.

Said granted and retained rights shall exclude the right to physically alter the Easement Area, by any manual or mechanical means, in any way that would diminish the conservation and recreational purposes of this Grant of Easement. The Grantor(s) and the Town shall have the right to enforce the terms, conditions and provisions hereof by an action in equity brought in the Nantucket Superior Court of the Commonwealth of Massachusetts, and in no other courts or jurisdictions, but although the Nantucket Superior Court shall be the initial forum, nothing herein shall affect or diminish the Town's or Grantor's rights to appeal any decision made by such Court. The Grantor hereby agrees that no such action shall be commenced unless and until the Grantor shall have given thirty (30) days written notice to the Town, itemizing and detailing with particularity the alleged acts or omissions of the Town deemed to be in material violation of the terms, conditions and/or provisions hereof. In the event that the Town shall have substantially cured such material violations and has taken reasonable measures to assure that incurable violations shall be avoided in the future, no such actions shall be commenced. However, in no event shall the Town be liable for any monetary damages based upon a violation (material or otherwise) hereof.

10. The Grantee has represented to the undersigned Grantor(s) that the Town has taken or shall promptly take all lawful measures for the Town to accept this Grant of Easement on behalf of itself and the Grantee and to undertake the Maintenance Obligation provided for herein. Grantor represents that he is the rightful lawful owner of the Grantor's Land and the Easement Area and that he possesses the legal authority to grant the rights in real property conveyed to Grantee under this Grant of Easement.

11. No term, covenant or provision of this Grant of Easement, nor the granting or acceptance hereof, shall be construed to be a waiver or release by Grantee or the Town of any right, title or interest it may hold relative to the Easement Area, any permanently submerged land, any coastal dune, any coastal bank or any other land affected by this Grant of Easement.

12. The Grantor shall be absolved from liability claims arising from accidents or injuries occurring to users of the Easement Area in accordance with the provisions of M.G.L. c 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C. Grantor may, in Grantor's discretion, close the Easement Area to public use in the event the landowner liability protection afforded in M.G.L. c. 21, §17C is repealed or altered in a manner which materially increases, in Grantor's reasonable opinion, Grantor's potential liability to public users of the Easement Area, and provided (a) no other statute or law affords Grantor, liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C; or (b) Grantee elects not to provide reasonable insurance coverage or otherwise agrees to hold Grantor harmless against potential liability to public users of the Easement Area, except for liabilities directly caused by or arising from Grantor's gross negligence or willful misconduct. Upon the effective date of another statute or law affording to Grantor, in Grantor's counsel's reasonable opinion, with liability protection substantially similar to that now afforded by M.G.L. c. 21, §17C, or Grantee agreeing to provide reasonable insurance coverage or to otherwise hold Grantor harmless against potential liability to public users of the Easement Area (except for liabilities directly caused by or arising from Grantor's gross negligence or willful misconduct), then Grantor shall promptly open for public use all portions of the Easement Area then closed to the public. The Town shall use reasonable

efforts not to compromise in any way the liability protection now afforded to Grantor by M.G.L. c. 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C.

13. Grantor and the Town shall not use the Easement Area in any manner detrimental to the Easement Area or inconsistent with the purpose of this Grant of Easement.

14. Any notices or deliveries required or permitted to be given to the Town pursuant to this instrument shall be in writing and delivered to the Board of Selectmen at Town and County Building, 16 Broad Street, Nantucket, Massachusetts 02554. Any notices or deliveries required or permitted to be given to Grantor pursuant to this instrument shall be in writing and delivered to Grantor at 1005 Bayshore Boulevard, Tampa, Florida. All such notices shall be delivered by registered or certified mail, postage prepaid and receipt required, or overnight express courier with receipt required. Either the Town or the Grantor may change its address to which any notice is to be delivered by providing the other with reasonable notice of such new address in one of the manners specified above.

[Signatures Follow On Next Page]

In witness whereof, the undersigned Grantor, intending to be legally bound hereby, has affixed his hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**GRANTOR:**

\_\_\_\_\_  
Scott Kelley

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019 before me, the undersigned notary public, personally appeared Scott Kelley, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

ACCEPTANCE BY THE TOWN OF NANTUCKET

The undersigned, constituting a majority of the Town of Nantucket Board of Selectmen, hereby acknowledge that at a meeting of the Board of Selectmen held on \_\_\_\_\_, 2019, the forgoing Grant of Easement was accepted pursuant to the authority of Section 3.3 of Chapter 289 of the 1996 Acts of the General Court, pursuant to which we have directed publication of notice regarding this acceptance.

TOWN OF NANTUCKET

By its Board of Selectmen

\_\_\_\_\_  
Dawn E. Hill Holdgate

\_\_\_\_\_  
Rita Higgins

\_\_\_\_\_  
Jason Bridges

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Kristie L. Ferrantella

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public personally appeared, Dawn E. Hill Holdgate, Rita Higgins, Jason Bridges, Matthew G. Fee and Kristie L. Ferrantella as members of the Board of Selectmen of the Town of Nantucket, and 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 document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free act and deed of the Board of Selectmen of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## COUNTY COMMISSIONERS

Minutes of the Meeting of October 23, 2019. The meeting took place in the Public Safety Facility Community Room, 4 Fairgrounds Road, Nantucket, MA 02554. Members of the Commission present were Jason Bridges, Matt Fee, Kristie Ferrantella and Rita Higgins. Dawn E. Hill Holdgate was absent.

### I. CALL TO ORDER

Chair Bridges called the meeting to order at 6:00 PM.

### II. ANNOUNCEMENTS

1. Chair Bridges announced that the County Commission meeting is being video/audio recorded, in accordance with the requirements of the Open Meeting Law.

### III. PUBLIC COMMENT

None.

### IV. NEW BUSINESS

None.

### V. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

1. Approval of Minutes of September 25, 2019 at 6:00 PM. Mr. Fee moved to approve the minutes of September 25, 2019 at 6:00 PM; Ms. Ferrantella seconded. So voted 4-0.

2. Approval of Payroll and Treasury Warrants for October 2019. Ms. Ferrantella moved to approve the payroll and treasury warrants for October 2019; Ms. Higgins seconded. So voted 4-0.

3. Approval of Pending Contracts for October 23, 2019 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference. Ms. Higgins moved to approve the pending contract as presented; Ms. Ferrantella seconded. So voted 4-0.

### VI. REAL ESTATE MATTERS

1. Private Owner Request: a) Request for Approval and Execution of License Agreement Regarding House Relocation at 115 and 117 Baxter Road to within the Public Layout of Baxter Road; b) Request for Acceptance of Grant of "One Big Beach" Easement over portions of 115 and 117 Baxter Road. Real Estate Specialist Kenneth Beaugrand reviewed the request, noting it is similar to what the Commission previously voted for 109 Baxter Road. Mr. Fee said he feels the process could be improved upon with additional language to indemnify the Town and County in case the road must be abandoned. He suggested there be protections for the Town and County against future litigation if the parties are not working together cooperatively. Discussion among the Commission and Mr. Beaugrand regarding alternate access followed. Attorney Steven Cohen, representing the owner of 115/117 Baxter Road noted that the alternate access is provisional on the road being breached, not abandonment of the road. Mr. Fee said he wants to avoid an adversarial relationship. Mr. Fee moved to approve the license agreement on the condition that Town Counsel provides language to add to the license to protect the Town and County in case of road abandonment or future litigation and allow the chair to sign on behalf of the Commission; Ms. Higgins seconded for discussion. Attorney Cohen said Mr. Fee's motion is very broad and he understands Mr. Fee's point, but he is not in favor of holding up the process. He added that he feels this is a "last minute policy change" regarding the license for this property, which is not the same as previous agreements. Ms. Higgins said that road abandonment is a key piece for her. Ms. Ferrantella noted that this is a time sensitive request as there is a finite window to move the house from the eroding bluff. Mr. Fee spoke on his motion and said he doesn't feel this is a burdensome request. Chair Bridges said he would be more comfortable with the motion if it only includes language for road abandonment, not future litigation. Mr. Beaugrand suggested the Commission approve the documents as currently drafted and make the

proposed changes in future agreements. He noted that there is already language regarding alternate access in the license agreement. Ms. Higgins proposed a friendly amendment to Mr. Fee's motion to include hold harmless language in the license for road abandonment and/or breach and to get an opinion from Town Counsel regarding the future litigation language. Mr. Fee did not accept the friendly amendment. On Mr. Fee's motion, so voted 2-2. Chair Bridges and Ms. Ferrantella were opposed. The motion was not adopted. Ms. Higgins moved to approve the License Agreement and accept the Grant of "One Big Beach" Easement on the condition that a Hold Harmless Agreement is added to the License where the Licensee accepts the alternate access in the case of breach and/or road abandonment, and to request Town Counsel to provide an opinion on how to protect the Town and County from future litigation; Ms. Ferrantella seconded. So voted 3-1. Mr. Fee was opposed.

#### VII. COMMISSIONERS REPORTS/COMMENTS

None.

#### VIII. ADJOURNMENT

The meeting was unanimously adjourned at 6:29 PM.

Approved the 20<sup>th</sup> day of November, 2019.

**COUNTY COMMISSIONERS  
OCTOBER 23, 2019 – 6:00 PM  
PUBLIC SAFETY FACILITY COMMUNITY ROOM  
4 FAIRGROUNDS ROAD  
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- V. 1. Draft minutes of September 25, 2019 at 6:00 PM
- V. 3. Pending contracts spreadsheet
- VI. 1a and 1b. Agenda Item Summary (AIS), re: 115/117 Baxter Road; License Agreement with Exhibit A;  
Grant of "One Big Beach" Easement with easement plan