

**SELECTMEN'S MEETING AGENDA\***

*Donn B. Griffin Room, Town Hall*

*732 Main Street, Harwich, MA*

*Regular Meeting 6:30 P.M.*

*Tuesday, October 10, 2017*

*As required by Open Meeting Law, you are hereby informed that the Town will be video and audio taping as well as live broadcasting this public meeting. In addition, anyone in the audience who plans to video or audio tape this meeting must notify the Chairman prior to the start of the meeting.*

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. WEEKLY BRIEFING**

**IV. PUBLIC COMMENT/ANNOUNCEMENTS**

**V. CONSENT AGENDA**

- A. Approve Minutes – September 25, 2017 Regular Session
- B. Authorize Chairman to sign Representation Letter for Single Audit FY 16 for Muddy Creek
- C. Approve Town Administrator's recommendation on Perks Entertainment License
- D. Vote to remove Darren Glidden as a member of the Harwich Energy Committee due to lack of attendance
- E. Vote to accept the resignation of Michael Glynn as a member of the Bikeways Committee
- F. Approve contract for replacement of Public Safety Security and Video Monitoring System with Galaxy Integrated Technologies in the amount of \$153,000

**VI. PUBLIC HEARINGS/PRESENTATIONS (Not earlier than 6:30 P.M.)**

- A. Monomoy Regional School District Meeting with the Board of Selectmen and Finance Committee to discuss enrollments by class and demographics including a five-year projection of same
- B. Annual Meetings with the Selectmen:
  - 1. Harwich Energy Committee

**VII. NEW BUSINESS**

- A. Review draft Management Letter for FY16 Audit
- B. Approve and authorize Chair to sign DHCD Regulatory Agreement for Habitat for Humanity's 93-97 Route 28 Project
- C. Discussion on Administration hiring process and Board of Selectmen confirmation

**VIII. OLD BUSINESS**

- A. MMA Annual Meeting and Trade Show

**IX. TOWN ADMINISTRATOR'S REPORT**

- A. Recycling Dividends Program Grant
- B. Departmental Weekly Reports – September 25-29

**X. SELECTMEN'S REPORT**

- A. Committee Vacancy Listing

**XI. ADJOURNMENT**

*\*Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen's Office at 508-430-7513.*

**Authorized Posting Officer:**

**Posted by:** \_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Ann Steidel, Admin. Secretary

**Date:** \_\_\_\_\_  
October 5, 2017

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, SEPTEMBER 25, 2017  
6:30 P.M.**

**SELECTMEN PRESENT:** Ballantine, Brown, Howell, Kavanagh, MacAskill

**OTHERS PRESENT:** Town Administrator Christopher Clark, Carolyn Carey, Amy Usowski, John Rendon, Carol Coppola, Aly Sabatino, Larry Cole, Cyndi Williams, Leo Cakounes, Bradford Chase, Dana DeCosta, and others.

**WEEKLY BRIEFING**

Ms. Usowski reported that the Annual Coast Sweep is this Saturday from 9:00-11:00 and noted that this is an international event that allows for a chance to tabulate how much garbage is on our beaches and in our beach parking lots.

**PUBLIC COMMENT/ANNOUNCEMENTS**

Mr. Cole stated that this Sunday is the ninth annual running of the Cranberry Harvest Half Marathon and 10K Road Races.

Mr. Ulrich, President of the Harwich Chamber of Commerce, announced that Cyndi Williams is the new Harwich Chamber Executive Director. He offered her his congratulations and thanked her for her work.

**CONSENT AGENDA**

- A. Approve Minutes
  - 1. September 11, 2017 Executive Session
  - 2. September 11, 2017 Regular Session
- B. Approve the recommendation of the Town Administrator to install a new pole and relocate an old pole at 60 Kelley Ave. per the request of Verizon and Eversource Energy
- C. Approve request for assistance from the Caleb Chase Fund
- D. Confirm appointment of Jeffrey Pina as Heavy Equipment Operator for DPW as recommended
- E. Confirm appointment of Daniel Mereste as Heavy Equipment Operator for DPW as recommended

Mr. Ballantine moved approval of the Consent Agenda. Ms. Brown seconded the motion and the motion carried by a unanimous vote.

**PUBLIC HEARINGS/PRESENTATIONS** *(Not earlier than 6:30 P.M.)*

- A. Annual Meetings with the Selectmen:
  - 1. Conservation Commission

Mr. Chase delivered the annual report of the Conservation Commission. He and Ms. Usowski took questions and comments from the Board.

## 2. Real Estate and Open Space Committee

Chairman MacAskill noted that the Real Estate and Open Space Committee has cancelled tonight.

### B. Town Administrator/Finance Director to present the Five-Year Financial Plan / update on FY16 & FY 17 Audit

Mr. Clark provided an overview of the 5 Year Financial Plan (see attached) after which Ms. Coppola provided a Power Point presentation of the debt charts. Mr. Clark and Ms. Coppola took questions from the Board. Ms. Coppola stated that she has received a draft of the FY16 audit from auditors Lynch, Malloy and Marini and has reached out to them to get a final audit. She noted that they also conducted a single audit for Muddy Creek and are working on putting that report together. She stated that for FY17 the new auditors, Powers and Sullivan, have completed their on-site work and they are working on additional schedules in their office. She noted that they will need to obtain an OPEB update after which we can finalize the audit for FY17. She stated that she does expect them to have questions about capital assets and things of that nature. She added that we are also doing a special study of cemetery funds. Chairman MacAskill asked if it is on the table for Lynch, Malloy and Marini to make a presentation. Mr. Clark responded that as we are phasing them out, it would be more valuable to have Powers and Sullivan in to see their recommendations relevant to the CAFR to become a AAA rated community and hear any concerns they may have. Chairman MacAskill said Lynch, Malloy and Marini should do an overview on the FY16 audit as well.

## OLD BUSINESS

### A. Ginger Plum Lane Betterment:

1. Vote an Administrative Fee of \$9,376.43 and a 5% interest rate
2. Vote a total Road Betterment of \$176,813 and a prorated share of \$6,907
3. Vote to certify the list of Betterment Assessments to the Board of Assessors

Mr. Clark provided an overview of the betterment process. At his recommendation, Ms. Kavanagh moved to 1) vote an Administrative Fee of \$9,376.43 and a 5% interest rate, 2) vote a total Road Betterment of \$176,813 and a prorated share of \$6,907, and 3) vote to certify the list of Betterment Assessments to the Board of Assessors. Mr. Howell seconded the motion and the motion carried by a unanimous vote.

### B. Saquatucket Landside Project Update

Mr. Clark provided an overview of his memo to the Board dated September 22, 2017 (attached). He took questions from Ms. Kavanagh regarding the structure of the piers and the add alternate of the snack shack. Mr. Clark stated that either we move forward with the base design or we move forward with the base design plus the snack shack. Mr. Howell stated that there were two things we sold this with at Town Meeting – the office and the garage, and we have been trying to get out of the Harbormaster's Building on Bank Street since the early 2000's. He commented that we are having all this conversation about the snack shack and we're not thinking in terms of the fact that we need to fund the garage. He commented that we are holding the garage hostage. Mr. Clark stated that we were

hoping to do everything at \$3,000,000 and the bids didn't come in that way so we had to make some decisions. He said if we leave the garage in and take the snack shack out, there is potential that we can get a bid that we cannot award because we don't have sufficient funds and by removing the garage we definitely know that we can do that portion of the project. He explained that if we sell 203 Bank Street, we can use that revenue to offset the additional cost and do the garage as we had told Town Meeting. Chairman MacAskill commented that we are far outside the scope of this project and what was sold to Town Meeting, the neighbors, the Board, and Finance Committee and said he doesn't understand putting a \$400,000 snack shack ahead of a maintenance building. He pointed out that the architect came before them with a detailed set of plans. He stated that he can't support this project at all and we should go back to Town Meeting for a phased project that makes sense and doesn't sacrifice anything. He stressed that what we really need is a Harbormaster's building. Mr. Rendon stated that he doesn't think we are that far from what we presented to the Town and he noted that we put the snack shack in as an add alternate, not as part of the base bid, and we can take it out if we want. He stated that we aren't changing the project to the point that it's not what the voters voted for. He commented that in every project you have to adjust and we are making some adjustments. He stated that the bids were off for a number of reasons including that the soil ended up being bad where we had to have piles, and the economy is booming and the cost is ridiculous but that's the market. He said they've worked hard on this for two years and did not want to throw this out the window. Chairman MacAskill stated that he doesn't feel this is the same project we brought before the voters. Ms. Brown stated that she was still hung up on the \$5.2 million plan because it was beautiful and she preferred a cafeteria over a food truck in a parking lot. She said she is more concerned about what we want the harbor to be and not the numbers as much and said maybe we should go back to the drawing board with a grand vision with a 5 or 10 year plan. Mr. Howell stated that in looking at the budget presentation earlier, if it's a great idea and we sell it that's great, in this case we are jettisoning one of the two operational components of this and the most important component, the garage, should not be pushed off. He said he can see the grand vision and it would be a great idea but within the context of where we are financially, we should be doing the two operational things first and then building that up into something special. Mr. Cakounes stated that he recommended a phased project at Town Meeting but that was rejected and he thinks it is coming to fruition that it is a good idea. Mr. DeCosta stated that for the future, this does point to having bids prior to Town Meeting which was a past practice of prior Boards. Ms. Kavanagh stated that the original plan was beautiful and would have benefited the entire Town. She said we've had multiple projects in Town that have gone over budget in various areas of the Town where some of them weren't sustaining and we've got a harbor with fees that is sustaining. She said that the process of the pricing isn't unusual and that an architect and engineer designing something and revising it several times is not an unusual process and happens frequently. She said we have to be fiscally responsible but we also have to look above and beyond that dollar, and she disagreed with Mr. Howell's comment that we are holding the garage hostage. She stressed that every construction project goes through different revisions for various reasons and the idea of switching engineers at this point is not feasible. Mr. Hart of the Waterways Committee said we need to look at what we really want and go out to bid again with those changes. Mr. Howell stated that add-ons invite people to take portions of this project and inflate them because if they get the base bid, they get their foot in the door to get the increments. He said he is more interested in seeing this going out to bid with the re-spec of everything and offer the opportunity for alternative bids, not alternate add ons. Mr. Clark said we are pretty close, we can have the architect make these adjustments and then see the value of the \$300,000 we saved in the value engineering and look to see if that gets us where we need to be. He recommended seeing where we are in November. Mr. Ballantine agreed with Mr. Clark's recommendation. Chairman MacAskill said if we add the snack shack as an add alternate it's no harm, and we can take it out in November. Mr. Clark noted that the garage would have to be separate. Mr. Ballantine and Ms. Kavanagh wanted to rebid the project and Mr. Howell said he would like to see a

grand bid. Mr. Clark said we can accelerate and do the garage bid at the same time that we do the main bid and the Board agreed.

#### C. Discussion of management of Bells Neck Bogs

Chairman MacAskill said he would like to see farming on the bog. Mr. Ballantine concurred and commented that it's our heritage. He added that we need to take into consideration that methods to maintain bogs have progressed. The Board took comments from Mr. Cakounes regarding the cranberry market. Mr. Chase of the Conservation Commission said they are ready for an open discussion on this very soon. Mr. Ballantine moved to send Conservation a letter with a suggestion to use that as cranberry. Ms. Brown seconded the motion and the motion carried by a unanimous vote.

#### D. Electronic Communications Policy for Elected Officials and Members of Boards and Commissions

Mr. Howell pointed out that the policy states that it is effective at the vote of the Board and from his conversation with Mr. Banford, this is not possible as it costs \$100 per license and everyone would be out of compliance until he completed his work. He suggested that 30-60 days to implement would be better. Ms. Brown stated that she had trouble with emails being deleted on her phone on her Town email address and said we need to look at our system and also find a better alternative than \$100 a mailbox. Chairman MacAskill said there's no way its \$100 per address and he noted that the County is working on a deal with Microsoft and we should look into this. The consensus of the Board was to bring the policy back in its existing form and get a better price on the licenses.

### **NEW BUSINESS**

#### A. Accessory Apartment By-Law

Chairman MacAskill stated that the Planning Board met on September 20, 2017 and saw no reason to go forward with this and questioned what is wrong with the existing policy. He said they didn't make it a priority and wanted to table it because they saw no reason for change. Ms. Kavanagh stated that there are so many stipulations in our by-law and we are going against the recommendation of the Commission. Ms. Sabatino stated that the Planning Board reviewed the by-law and after careful thought agreed that the existing by-law meets the Town's goals. She said that currently accessory apartments require a Special Permit and that goes through the Planning Board as a hearing process and there are a number of requirements to meet before you can even apply. She said the Planning Board discussed it being a permitted use but after review their main concern was that they wanted the public to have a chance to review the application and have the permit be compatible with the neighborhood. She added that they agreed that it is cumbersome. Chairman MacAskill questioned how many people are doing this without going through the process. Mr. Howell stated there are a lot of requirements in the bylaw and we are trying to create rental stock that is not affordable but middle class. He said it is the language of the by-law, not just the fees that's an impediment. Ms. Kavanagh said the by-law needs to address the issues that are plaguing the Cape right now and we need to do something to make it better. She added that the zoning needs to be looked at overall. Mr. Cakounes said he attended the Planning Board meeting and found it interesting that there is definitely a division between someone who has a single family home and wants to convert the garage to a dwelling or put an addition on and pre-existing homes where they are not changing the structure or impacting the neighborhood and those should be handled administratively. He noted that the Commission is putting together some draft by-laws. Mr. DeCosta suggested asking the Commission for some draft by-laws and he pointed out that

the Board can submit a warrant article for Town Meeting vote. Mr. Clark suggested that the Board make their intent more clear that they expect to see an amendment to this with an administrative component. Chairman MacAskill asked Mr. Clark to work with the Town Planner to get the message across to the Planning Board. Mr. Cakounes said he would look for a by-law that works within the parameters of the existing homes.

#### B. Discussion on Board of Selectmen's Budget Message

Chairman MacAskill said he would bring the budget message back next week and asked the Board to submit their comments to him.

#### C. Discussion of In-House Legal Counsel

Chairman MacAskill stated that this isn't to replace our existing Counsel but rather to do away with some of the work that they do as a cost savings such as work for our regulatory boards, help with writing by-laws, and owners' unknown property. Ms. Brown said she would need to have salary information before she could vote on this. Mr. Howell said we need to at least ask the other towns what their experiences are and what it costs before we can make a decision about re-upping with KP Law. Mr. Clark recommended finding out what the towns of Dennis, Falmouth and Orleans arrangement is and bring this item back. Ms. Kavanagh agreed that it is important to know the cost. Mr. DeCosta noted that he was a Selectman when we got rid of our last Counsel and hired KP Law and it was a cost saving for us to hire them. He said we had someone who lived locally doing our legal work and the overall costs kept getting higher. Ms. Brown suggested having a discussion with Attorney Giorgio about using attorneys right out of law school and paying them at a lesser rate. Mr. Cakounes said he feels this is an area where the Commission should step up. He said he believes it would be a cost effective plan if the County had legal staff and had one high ranking attorney with a couple of interns under them and provided the services to the towns. He suggested the Board send a letter to the County asking them to look at it. Mr. Clark said we would do the research.

#### D. Goals and Objectives Assignments

Chairman MacAskill asked that if anyone has a problem with what they were assigned to, to please let him know.

#### E. Treasure Chest Discussion

Chairman MacAskill said we had a few more complaints about the Treasure Chest. He said one complaint was there were no Committee minutes online and another complaint was about volunteers taking things in the parking lot before residents get to them. Chairman MacAskill asked if anyone had a problem with Ms. Brown delving into this as she is the liaison or would they rather have Mr. Hooper do it. Mr. Howell said he thinks Ms. Brown should do this and pointed out that the Committee has had 7 meetings in 3 years and there are no minutes. Mr. Ballantine and Ms. Kavanagh agreed that Ms. Brown should look into it. Ms. Brown said she would like to meet with Mr. Clark and Mr. Hooper on this as Mr. Hooper is in charge of the volunteers, as well as the Chair of the Committee. Mr. Clark said we can set something up. Mr. Cakounes stated that there should be a written policy and procedure on the operation. He also noted that there is an Open Meeting Law seminar on October 2<sup>nd</sup> in Mashpee and the Board should insist that the Committee members attend.

### **TOWN ADMINISTRATOR'S REPORT**

A. Update on vote on Cape Cod Tech School

Mr. Clark reported that the vote on the Tech School is October 24<sup>th</sup> and there will be two different ballots with two different check-ins and check-outs. He said one ballot will be to determine if the project goes forward and one will be to determine how the Town will pay for it.

Mr. Clark reported that he met with Pastor Leinbach from the First Congregational Church and it was a good meeting. He stated that they want to make sure they protect the unmarked graves underneath the urns that are there now, so they will take a map and agree on where the unmarked graves are so when they do the internments, they don't continue that practice. He added that now that it has been determined that we don't own the property, we have given them notice that we will stop doing maintenance on October 31, 2017 to allow for them to have a transition time. Mr. Howell suggested that the Board discuss the perpetual care funds on a future agenda.

B. Departmental Weekly Reports

There was no discussion or action on this item.

**SELECTMEN'S REPORT**

A. Discussion of format for Budget Sessions tentatively scheduled for Saturday, February 10, 2018

The Board agreed that the Saturday budget session would be preferable. Chairman MacAskill said he would like to discuss the layout of the meeting.

B. Budget/Warrant Timeline

There was no discussion or action on this item.

C. Committee Vacancy List

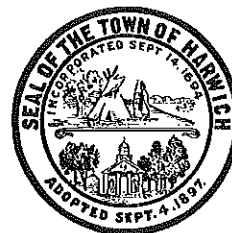
There was no discussion or action on this item.

**ADJOURNMENT**

Ms. Brown moved to adjourn at 9:45 p.m. Ms. Kavanagh seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary



October 10, 2017

Lynch, Malloy, Marini, LLP  
99 Longwater Circle, Suite 200  
Norwell, MA 02601

This representation letter is provided in connection with your audit of the Town of Harwich Massachusetts' major federal award programs for the year ended June 30, 2016. We confirm, to the best of our knowledge and belief, as of the date of this letter the following representations made to you during your audit of the Town's federal award programs.

We are responsible for understanding and complying with and have complied with the requirements of Title 2 U.S. Code of *Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), including requirements relating to preparation of the schedule of expenditures of federal awards.

We acknowledge our responsibility for presenting the schedule of expenditures of federal awards (SEFA) and related notes in accordance with the requirements of the Uniform Guidance, and we believe the SEFA, including its form and content, is fairly presented in accordance with the Uniform Guidance. The methods of measurement or presentation of the SEFA have not changed from those used in the prior period and we have disclosed to you any significant assumptions and interpretations underlying the measurement or presentation of the SEFA.

If the SEFA is not presented with the audited financial statements, we will make the audited financial statements readily available to the intended users of the SEFA no later than the date we issue the SEFA and the auditor's report thereon.

We have identified and disclosed to you all of our government programs and related activities subject to the Uniform Guidance compliance audit, and have included in the SEFA, expenditures made during the audit period for all awards provided by federal agencies in the form of federal awards, federal cost-reimbursement contracts, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other direct assistance.

We are responsible for understanding and complying with, and have complied with, the requirements of federal statutes, regulations, and the terms and conditions of federal awards related to each of our federal programs and have identified and disclosed to you the requirements of federal statutes, regulations, and the terms and conditions of federal awards that are considered to have a direct and material effect on each major program.

We are responsible for establishing and maintaining, and have established and maintained, effective internal control over compliance for federal programs that provides reasonable assurance that we are managing our federal awards in compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a material effect on our federal programs. We believe the internal control system is adequate and is functioning as intended.

We have made available to you all federal awards (including amendments, if any) and any other correspondence with federal agencies or pass-through entities relevant to federal programs and related activities.



We have received no requests from a federal agency to audit one or more specific programs as a major program.

We have complied with the direct and material compliance requirements (except for noncompliance disclosed to you), including when applicable, those set forth in the *OMB Compliance Supplement*, relating to federal awards and confirm that there were no amounts questioned and no known noncompliance with the direct and material compliance requirements of federal awards.

We have disclosed any communications from federal awarding agencies and pass-through entities concerning possible noncompliance with the direct and material compliance requirements, including communications received from the end of the period covered by the compliance audit to the date of the auditor's report.

We have disclosed to you the findings received and related corrective actions taken for previous audits, attestation engagements, and internal or external monitoring that directly relate to the objectives of the compliance audit, including findings received and corrective actions taken from the end of the period covered by the compliance audit to the date of the auditor's report.

Amounts claimed or used for matching were determined in accordance with relevant guidelines in OMB's Uniform Guidance (2 CFR part 200, subpart E).

We have disclosed to you our interpretation of compliance requirements that may have varying interpretations.

We have made available to you all documentation related to compliance with the direct and material compliance requirements, including information related to federal program financial reports and claims for advances and reimbursements.

We have disclosed to you the nature of any subsequent events that provide additional evidence about conditions that existed at the end of the reporting period affecting noncompliance during the reporting period.

There are no such known instances of noncompliance with direct and material compliance requirements that occurred subsequent to the period covered by the auditor's report.

No changes have been made in internal control over compliance or other factors that might significantly affect internal control, including any corrective action we have taken regarding significant deficiencies or material weaknesses in internal control over compliance, subsequent to the period covered by the auditor's report.

Federal program financial reports and claims for advances and reimbursements are supported by the books and records from which the financial statements have been prepared.

The copies of federal program financial reports provided you are true copies of the reports submitted, or electronically transmitted, to the respective federal agency or pass-through entity, as applicable.

We have charged costs to federal awards in accordance with applicable cost principles.

We are responsible for and have accurately prepared the summary schedule of prior audit findings to include all findings required to be included by the Uniform Guidance, and we have provided you with all information on the status of the follow-up on prior audit findings by federal awarding agencies and pass-through entities, including all management decisions.

We are responsible for and have ensured the reporting package does not contain protected personally identifiable information.

We are responsible for and have accurately prepared the auditee section of the Data Collection Form as required by Uniform Guidance.

We are responsible for taking corrective action on each audit finding of the compliance audit and have developed a corrective action plan that meets the requirements of the Uniform Guidance.

**On Behalf of the Town of Harwich, Massachusetts**

\_\_\_\_\_  
Chair, Board of Selectmen

\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Accountant

\_\_\_\_\_  
Date



**OFFICE OF THE TOWN ADMINISTRATOR**

**Christopher Clark, Town Administrator**

732 MAIN STREET, HARWICH, MA 02645

**MEMO**

To: Board of Selectmen

From: Christopher Clark  
Town Administrator

Date: September 28, 2017

Subject: Recommendation on Perks Disciplinary Hearing

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After hearing all testimony at a Disciplinary Hearing on violations of Perks Weekday Entertainment License, which I held on Wednesday, September 27, 2017, I make the following recommendation to the Board of Selectmen with regard to two incidents of noise clearly audible from greater than 150 feet on August 19, 2017:

I recommend that the Board of Selectmen issue a letter of discipline to Taylor Powell, Manager of Perks, for violations of the conditions of their Weekday Entertainment License relating to incidents of music performances which were clearly audible from greater than 150 feet on two occasions on August 19, 2017. I further recommend that the disciplinary letter issued to Perks should indicate that the Board recognizes that they previously issued a warning letter to Perks in 2016 and that the Board intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment License and/or Liquor License for any future violations.

Attached please find detailed minutes of the hearing.

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 11, 2017

VIA USPS AND EMAIL

Mr. Taylor Powell  
Perks  
15345 SW 88 Ave.  
Palmetto Bay, FL 33157

Subject: Notice of Disciplinary Action – Violations of Entertainment License

Dear Mr. Powell:

At a meeting of the Board of Selectmen held on Tuesday, October 10, 2017, the Board voted to approve the recommendation of the Town Administrator to suspend your Weekday Entertainment License for one day on Monday, June 25, 2018. This suspension is related to the two violations of your Weekday Entertainment License on August 19, 2017.

The Board recognizes that you previously received a warning for violations to your Weekday Entertainment License in 2016 and intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment and /or Liquor License for any future violations.

The Board has the highest expectation that in the future you will comply with the conditions of your license.

Sincerely,

\_\_\_\_\_  
Michael D. MacAskill, Chair

\_\_\_\_\_  
Julie E. Kavanagh

\_\_\_\_\_  
Larry Ballantine

\_\_\_\_\_  
Jannell M. Brown

\_\_\_\_\_  
Donald F. Howell

cc: Chief David Guillemette

MINUTES  
PERKS DISCIPLINARY HEARING  
TOWN HALL LIBRARY  
SEPTEMBER 27, 2017  
1:00 P.M.

PRESENT: Christopher Clark – Town Administrator, Chief David Guillemette – Police Dept., Taylor Powell – Perks Manager, Sarah Powell, Adam Lucas, Daniel Allen - musician, Carol and Al Novak – building owners, Attorney Matthew Fitzsimmons, Officer Tegan DeBaggis, Selectman Chair Michael MacAskill, Ann Steidel – Recording Secretary

Mr. Clark opened the hearing at 1:07 p.m. noting that he was appointed by the Board of Selectmen as the Hearing Officer regarding noise complaints as outlined in the letter which was hand-delivered to Perks by Sgt. Boorak. Mr. Clark read the letter into record (see attached) and noted that the hearing is specific to the excessive noise complaints of July 5, 2017 and August 20, 2017.

Mr. Clark distributed the notice of hearing and related reports from the Police Department to Chief Guillemette, Attorney Fitzsimmons, and the Recording Secretary.

Attorney Fitzsimmons pointed out that the date of the August 20, 2017 incident was actually on August 19, 2017 and Officer DeBaggis agreed with that correction.

Mr. Clark explained that he is serving as Hearing Officer only and he will make a recommendation for the Board of Selectmen to vote on after which a notice will be sent to the license holder.

Chief Guillemette reported the following background information:

An informational session was held at the Police Department in May 2016 for all establishments licensed under Chapter 138 of MGL and Mr. Powell was in attendance as well as a representative from the ABCC. A repeat session was held on May 21, 2017 and staff from Perks was present. The liquor and entertainment regulations were discussed as well as the new standard on the licenses of noise not to be plainly audible at a distance of 150 feet. He noted that Perks was issued a warning for noise violation under the former language of noise not to exceed licensed premises in 2016. Mr. Clark distributed the warning letter of 2016.

Chief Guillemette reported that Lt. Considine was working the Harwich Port stroll on the night of July 5, 2017 and became aware of a noise complaint. He explained that Lt. Considine and Officer Goshgarian positioned themselves 150 feet away from Perks and confirmed the complaint. He noted that they contacted Mr. Powell and there was some discussion about it being stroll night. He stated that Lt. Considine explained to Mr. Powell that after 9:00 p.m. it falls outside of the entertainment for stroll night and he noted that Mr. Powell apologized and ended the entertainment at 9:50 p.m. Lt. Considine notified Mr. Powell that this was a warning and any further violations would reported to the Board of Selectmen.

Ms. DeBaggis reported that on August 19, 2017, an upset resident called about the music being extremely loud. She arrived a short time later and could hear the music from the rear of the lot. She said she spoke to the reporting party and went inside their home noting that it was well within the 150 feet. She said that Sgt. Boorak later said it could be heard over 150 feet away. She stated that she went inside the home and could hear the music slightly, the windows and doors were open and there was no

air conditioning. She stated that Sgt. Boorak was parked on Sea Street during this time at approximately 7:00 p.m. and he said there was a violation which he radioed to her. She stated that it was difficult to converse in the bedroom of the home. She said she then contacted employees of Parks and asked them to turn down the music. She said they questioned the 150 feet rule and she recommended they turn down the music halfway which they did. She stated that at 9:00 p.m. there was another call from the same person who stated that the music was turned up again. She then made contact with an employee named Jack who asked what an acceptable level of noise is and she explained that if it is difficult to maintain conversation then it should be turned down.

Attorney Fitzsimmons asked if when Sgt Boorak drove to the Sea Grille, if he took notice of the noise coming from The Port. Officer DeBaggis responded no and that it was apparent it was from Perks. He asked if she recalled speaking to Mr. Powell and she responded that she did not recall but it has been sufficient speaking to employees in the past. He asked if she recalled if Mr. Powell was cooperative and she responded that she did not recall but he has never been uncooperative and the volume was turned down in a timely fashion both times. Officer DeBaggis departed the hearing at 1:33 p.m.

Attorney Fitzsimmons described the business and its role in the community which includes music. He noted that they have had more than 60 nights of music in the past year. He said events that let up to the complaints included that it was stroll night. He stated that there was an immediate response to abate neighborhood concern and their respect for the community is tremendous. He submitted letters from performers, residents, and customers (attached). He stated with regard to the August 19, 2017, The Port had live music that night and he wanted that observed as the noise was not a single source and The Port is immediately next door. He highlighted the letter from Perks (attached). Ms. Powell stated that they can't prove that the officer who parked at the Sea Grille could determine the noise was from Perks and he can't know 100%. She stated that there are neighbors beyond 150' who aren't complaining and have written letters although none were specific to those nights.

Mr. Allen, musician at Perks, stated that they have a video from that night (8/19). He stated that he plays solo guitar from rock to reggae through his own personal system. He stated that there were two monitors and one was facing him. Ms. Powell played the video on a cell phone which was dated August 19 at 7:22 p.m. Mr. Allen stated that the speakers face the bar. He stated that he wasn't aware of the 150 feet rule and if it was too loud it was probably his fault. He stated that he was the musician on both nights. Mr. Clark asked what the music was at The Port and Ms. Powell responded that she didn't know and that it's a very loud sound system. Mr. Allen said it would be hard to differentiate. He said he has had no issues playing anywhere else.

Mr. Powell stated that it is one person complaining every year. He stated that on July 5, 2017 when he talked to Lt. Considine, he said it would be a verbal warning. Mr. Powell also stated that the stroll can be as loud as it wants to be. He said he was concerned that the complaint of July 5, 2017 was being included as it was a warning. Mr. Clark responded that it was a warning and is not considered a violation. He clarified that the two violations occurred on August 19, 2017. He stated that Officer DeBaggis recalled walking in front and it was obvious that the noise was from Perks.

Ms. Novak stated that they own the building (indicated that she and Mr. Novak are the owners). She stated that Perks opens to the street and The Port music is toward the rear. She stated that if Officer DeBaggis were on the sidewalk it would seem like the noise was from Perks but if she had been on the side street it would be different. Ms. Powell stated that The Port is closer than they are. Mr. Clark stated that one report was from the back of the parking lot.

Chief Guillemette stated that the incidents were determined to be violations as they were outside the 150 feet. He stated that the July 5, 2017 incident was a warning and the violations were on August 19, 2017. He said he relies on his officers and their reports.

Mr. Allen stated that they didn't turn the music down enough and they were working with the Police.

Mr. Powell stated that the video shows it's not a blaring loud situation and that weather conditions can affect how noise travels. He said he wants to contribute to the Town in a positive way. He indicated that he felt he was being singled out. Mr. Clark stated that we created a uniform standard and they are here because Perks was in excess of that. He stated that if the Chief believes there is a violation, it will be brought forward and we do have other hearings as well. He stated that everyone has to play by the same rules.

Attorney Fitzsimmons described the history of Perks with regard to the customers, and ensuring a safe crowd. He stated that their goal is to be in compliance and the owners and musicians feel they did comply. He described the area as a sandwich of buildings and noted that wind can make sound travel. He questioned what they could do in the future, by perhaps moving a speaker over or installing a panel. He asked that it be taken into consideration that they dispute that August 19, 2017 is a noise violation and that they made efforts to abate concerns.

Mr. Clark asked Mr. Allen if the volume should have been lower due to wind and Mr. Allen responded yes.

Mr. Clark asked Mr. Powell if he walks around to get a sense of the volume and Mr. Powell responded that he does and they don't want to break the rules.

Mr. Clark questioned Mr. Powell why they didn't relay to the officer that they believed the noise was from The Port if that is what they believed. Mr. Powell responded that he doesn't throw people under the bus. Ms. Powell responded that they don't point fingers. They both stated that they were more concerned with complying with what was being asked.

Mr. Clark stated that the officers have no additional motive other than to seek compliance and they witnessed that it was too loud. He stated that if it was noticeably loud at The Port, they would have them to turn it down. Ms. Powell responded that the Police got the call about Perks so they responded to Perks.

Mr. Fitzsimmons stated that on August 19, 2017, they just wanted to respond and comply with the officer, not to point fingers. He stated that the music was going on at the same time as The Port and collectively one can impact the sound of the other. Mr. Clark stated that we use professional standards and Perks was in violation. He stated that if The Port were in violation, the Chief would have suggested a hearing as well.

Chief Guillemette stated that this does not happen in a vacuum and as many letters of support they submitted, there are just as many complaints on noise in that area. He stated that people's quality of life is being impact and the Police Department responds to that and takes reasonable action.

Mr. Clark said he would read the letters that were submitted. He asked the Chief to see if there were any noise complaints in the area on that same night.

Mr. Powell stated that he lost work in Florida to attend the hearings regarding changing the language on the permits for noise standards and it was said during a hearing that they aren't going to be handing out violations but would be talking with business owners.

Mr. Clark closed the factual portion of the hearing at 2:18 p.m.

Mr. Clark stated that last year the Board of Selectmen voted to issue a warning and the next sequence is suspension for a period of time. He said he would give thoughts to the comments made. He asked Chief Guillemette what he thought a measured punishment would be. Chief Guillemette responded that he was not prepared to answer that but stressed that the problem is not going to go away and it is directly related to outside entertainment. He suggested some length of suspension of entertainment or suspension of the license.

Mr. Novak questioned why fines don't enter into this and suggested progressive fines rather than suspension.

Attorney Fitzsimmons said suspension would impact the business and the season is only 60-70 days.

Mr. Powell stated that they are open weekends from Memorial Day through the end of June and every day in July until the end of August when they go to weekends only. Ms. Powell clarified that they are open weekends from Memorial Day until school gets out and Labor Day is the end of live music after which they are open just weekends.

Attorney Fitzsimmons said suspension of one week would be a 10% financial impact on their business. He noted that the by-laws call for a \$150 fine for the first violation if brought to the District Court. Mr. Clark questioned if he was saying a fine is the next logical step and Attorney Fitzsimmons responded that it is the standard mirrored in the by-law but still is an impact to the business. Mr. Clark said he would take it into consideration. He said if it is a suspension he would avoid the July 4 to Labor Day time period. He said it would likely be one day and it can be on a slow day. He said the next step would be a 2 to 3 day suspension. He stated that one day for one incident is a measured response and he can make a recommendation to the Board and he has to create an element of fairness.

Mr. Powell said a Monday or Tuesday would be better during the school year after Memorial Day.

Mr. Clark stated that he made a site visit to Perks yesterday with the Building Commissioner and he didn't get a good response from the Building Commissioner. He said we will look into whether licenses have been pulled for the bar and a letter is going out on this. (Letter was subsequently given to Mr. Powell before he departed the hearing). Mr. Clark asked Mr. Powell for a correct mailing address and Mr. Powell responded that they are having trouble with the mail and he will submit his forwarding address in Florida to the office.

Mr. Clark closed the hearing at 2:36 p.m.

Submitted by,  
Ann Steidel  
Recording Secretary



RECORD

Originals

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Christopher Clark, Town Administrator

732 MAIN STREET, HARWICH, MA 02645



September 14, 2017

VIA U.S. CERTIFIED MAIL AND HAND-DELIVERED

Mr. Taylor Powell, Manager  
Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing

Dear Mr. Powell:

On September 11, 2017, the Board of Selectmen, acting as the Local Licensing Authority, voted to refer charges of alleged violations of the Liquor/Entertainment License for Perks, located at 545 Route 28, Harwich Port, to the Administrative Officer to conduct a Show Cause Hearing. Specifically the charges are: Excessive noise complaints reported on July 5, 2017 and August 20, 2017.

The hearing will be held on September 27, 2017 at 1:00 p.m. in the Town Administrator's Office at Harwich Town Hall, 732 Main Street, Harwich. You are requested to attend the hearing. You will be given an opportunity to be heard and to introduce evidence. You may be represented by counsel if you so choose.

You are hereby informed that in the event that the allegations are proven, the Board may take disciplinary action against the license, which may include for the purpose of modification, suspension, revocation, or cancellation.

Sincerely,

Christopher Clark, Town Administrator

I hereby certify that a copy of this notice was served to the aforementioned person on the 14<sup>th</sup> day of September, 2017

Harwich Police  
Case #  
17-12602

By: Sgt. 9/14/17  
Harwich Police Department Date

cc: Chief David Guillemette  
Christopher Clark, Town Administrator  
Board of Selectmen

SUPPLEMENTAL NARRATIVE FOR LIEUTENANT KEVIN M CONSIDINE

Ref: 17-9040-OF

Report of Lt. Kevin Considine.

On July 5, 2017 at 2130 hours the Harwich Police Department received a call from reporting a noise complaint, loud outdoor music, at Perks.

I arrived on location with Sgt. Goshgarian. We parked in the Chamber of Commerce lot, well over 150 feet away, and confirmed a violation of loud music from the outdoor patio area at Perks. The music in question was extremely loud and could be heard from a great distance away. On this night in question, the annual Wednesday night music stroll took place from 1800 - 2100 hours. At the time of this complaint, no other music was playing from the bands participating in the stroll.

We walked to Perks and made contact with an employee who was near the sidewalk. I asked the employee if she could get Taylor, the owner for us.

Taylor and his wife arrived out front. I explained that the noise was a violation of his entertainment license. I explained that the noise was plainly audible from over 150 feet from his property boundary. I explained to Taylor that the noise was heard from Pleasant Road (the rear of School House parking lot) as I was in this area prior to the call coming in and heard the music from here.

Taylor told me his entertainment was part of the music in the port night. I explained to Taylor that the music in the port ends at 9 p.m. He was told that after 9 p.m. the entertainment falls under his outside entertainment license and all rules apply regarding the 150 foot standard (on July 6th I spoke to the organizer of the music stroll who told me the band at Perks was not a band hired by the Chamber for the stroll).

Taylor immediately made contact with the band and ended the entertainment for the night, the time was 2150. Taylor came back out to speak to me. He apologized and stated he thought he was still under the music stroll rules. I again clarified the difference and advised him that I would be giving him a verbal warning for the violation any similar type of violation would be referred to the Board of Selectmen. Taylor was very apologetic and stated he wanted to work with us and he was very concerned about the violation.

This report is submitted by:

Lt. Kevin Considine #121.

The following is the report of Officer Tegan DeBaggis.

- 1.) Shortly after 7:00 PM on Sunday August 20, 2017, Harwich Police received a call from [redacted] of the [redacted] stated the music from Perks Coffee Shop & Beer Garden was too loud and he needed an officer to come down immediately.
- 2.) I arrived on location and from across the street by the rear of Schoolhouse lot I could hear the live entertainment, and it did appear louder than usual. [redacted] met me and told me he had heard from someone he knew ([redacted]) that the owner of Perks had said they were going to keep turning up the music to deliberately [redacted].
- 3.) [redacted] requested I enter his house and hear for myself how loud the music was. He told me he was considering suing Perks and the town over the noise issue and he wanted an officer's documentation of what he was experiencing. I observed the house to have all the windows open and several doors open. [redacted] explained they don't have air conditioners in the house and they open the windows and doors during warmer weather. From the living room and dining room area, the music was barely audible, however when I entered the bedroom closest to Perks the music was very loud. While the windows and door were open, it was difficult to hear [redacted] talk over the music.
- 4.) Sgt. Boorack drove to the Cape Sea Grille, a distance farther than 150 feet away, and could still hear the music. I would make contact with the employees at Perks and they agreed to turn the music down. As I was leaving, I was approached by an employee who asked how much he needed to turn it down. I told him the volume could easily be cut in half and still be loud enough to attract customers from the street. He indicated he would do this and as walking away I could hear the music be turned down to an acceptable level.
- 5.) Later in the evening, shortly after 9:00 PM, officers were again called by [redacted] who stated they had turned the music up again. I drove to Cape Sea Grille and confirmed the music could still be heard from that location. Upon making contact with a different employee name Jack, he told me the musician had been turning his volume up. I requested Jack to let the musician into the loop and advise him of the ongoing noise issue. Jack also asked how to know what is an acceptable level of noise. I told him about the 150 foot rule, but suggested that if he could not carry on a conversation in a normal speaking tone that the music may be too loud.

Respectfully submitted \_\_\_\_\_ #192

Officer Tegan M. DeBaggis



Harwich Police Department  
Incident Report

Page: 1  
08/23/2017

Incident #: 17-9040-OF  
Call #: 17-9040

Date/Time Reported: 07/05/2017 2130  
Report Date/Time: 07/06/2017 1029  
Status: No Crime Involved

Reporting Officer: Lieutenant Kevin Considine

Signature: \_\_\_\_\_

LOCATION TYPE: Restaurant/Cafeteria  
PERKS COFFEE SHOP  
545 RT 28  
HARWICH MA 02645

Zone: HARWICHPORT

1. ENTERTAINMENT NOISE VIOLATION

NUMBER  
17-08S

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH

FEE  
\$75.00

**LICENSE FOR INNOLDERS, COMMON VICTUALLERS  
AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS**

In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:

Go Industries Inc. d/b/a Perks

to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by Same

of Harwich Port located at 545 Route 28

Description of Premises: Same

Description of amusements to be conducted: Recorded or live music with use of amplification,

Guitar player

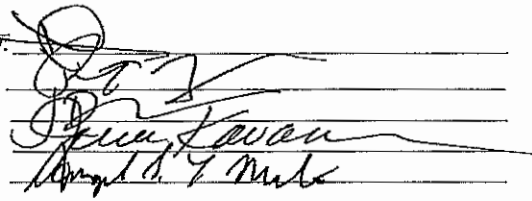
To be conducted between the hours of: 6:00 p.m. – 10:00 p.m.

This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.

Date: April 1, 2017

License granted by:

**EXPIRES DECEMBER 31, 2017**



**THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE**

**Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.**

*Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.*

1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —

2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.

3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.

4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.

5. Muscle or suggestive dancing or any description or form is prohibited.

6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.

7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.

8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.

9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.

10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

THE COMMONWEALTH OF MASSACHUSETTS

State Fee, \$50 1pm-12am or \$100 prior to 1pm TOWN OF HARWICH  
 Municipal Fee, \$85 1pm-12am or \$175 prior to 1pm



LICENSE

For PUBLIC ENTERTAINMENT ON SUNDAY

The Name of the Establishment is PERKS in or on the property at No. \_\_\_\_\_ (address)

The Licensee or Authorized representative, print name and sign here TAYLOR POWELL *Taylor Powell* in 5/16/2017

accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays seasonally	6-10PM	LIVE MUSIC with use of Amplification

~~xxx~~ Michael D. MacAskill ~~Mayor~~ Chairman of Board of Selectman, [Signature] Harwich (City or Town)

Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm – Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm – Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00 Municipal fee per occurrence: Regular hours \$10 per Sunday, special hours \$20 per Sunday. Seasonal only.

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

Do not write in this box

This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license.

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES



# HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530



DAVID J. GUILLEMETTE  
Chief of Police

THOMAS A. GAGNON  
Deputy Chief

## Memorandum



**TO:** Board of Selectmen  
Christopher Clark  
Town Administrator

**FROM:** David J. Guillemette  
Chief of Police 

**DATE:** August 23, 2017

**SUBJECT:** Liquor / Entertainment License violation report

In accordance with Town of Harwich Liquor License Regulations section 1.16 I would like to bring to the board's attention two noise violations the occurred at Perks on August 20, 2017. It should be noted that Perks had been given a verbal warning for a previous violation that occurred on July 5, 2017. Following the July 5<sup>th</sup> violation, Lt. Considine cautioned the owner that any similar violations in the future would be referred to the Board of Selectmen.

The attached violation reports are for your consideration as to whether to hold a public hearing on the matter.

I feel it is also necessary to advise the board of the following facts:

- On May 31, 2017 an information session was held at the Harwich Police Department for all establishments licensed under chapter 138 of Massachusetts General Laws (Liquor).
- At this informational meeting, which Perks personnel attended, copies of the Town of Harwich Liquor License Regulations were distributed and reviewed with the attendees. The recent changes to the entertainment license portion of the liquor regulations were discussed and explained.
- Perks was found in violation of their entertainment license conditions during the 2016 season and given a warning by the licensing authority.



Harwich Police Department  
Incident Report

Page: 1  
08/23/2017

Incident #: 17-9040-OF  
Call #: 17-9040

Date/Time Reported: 07/05/2017 2130  
Report Date/Time: 07/06/2017 1029  
Status: No Crime Involved

Reporting Officer: Lieutenant Kevin Considine

Signature: \_\_\_\_\_

LOCATION TYPE: Restaurant/Cafeteria  
PERKS COFFEE SHOP  
545 RT 28  
HARWICH MA 02645

Zone: HARWICHPORT

1 ENTERTAINMENT NOISE VIOLATION



## SUPPLEMENTAL NARRATIVE FOR LIEUTENANT KEVIN M CONSIDINE

Ref: 17-9040-OF

Report of Lt. Kevin Considine.

On July 5, 2017 at 2130 hours the Harwich Police Department received a call from . . . reporting a noise complaint, loud outdoor music, at Perks.

I arrived on location with Sgt. Goshgarian. We parked in the Chamber of Commerce lot, well over 150 feet away, and confirmed a violation of loud music from the outdoor patio area at Perks. The music in question was extremely loud and could be heard from a great distance away. On this night in question, the annual Wednesday night music stroll took place from 1800 - 2100 hours. At the time of this complaint, no other music was playing from the bands participating in the stroll.

We walked to Perks and made contact with an employee who was near the sidewalk. I asked the employee if she could get Taylor, the owner for us.

Taylor and his wife arrived out front. I explained that the noise was a violation of his entertainment license. I explained that the noise was plainly audible from over 150 feet from his property boundary. I explained to Taylor that the noise was heard from Pleasant Road (the rear of School House parking lot) as I was in this area prior to the call coming in and heard the music from here.

Taylor told me his entertainment was part of the music in the port night. I explained to Taylor that the music in the port ends at 9 p.m. He was told that after 9 p.m. the entertainment falls under his outside entertainment license and all rules apply regarding the 150 foot standard (on July 6th I spoke to the organizer of the music stroll who told me the band at Perks was not a band hired by the Chamber for the stroll).

Taylor immediately made contact with the band and ended the entertainment for the night, the time was 2150. Taylor came back out to speak to me. He apologized and stated he thought he was still under the music stroll rules. I again clarified the difference and advised him that I would be giving him a verbal warning for the violation any similar type of violation would be referred to the Board of Selectmen. Taylor was very apologetic and stated he wanted to work with us and he was very concerned about the violation.

This report is submitted by:

Lt. Kevin Considine #121.

The following is the report of Officer Tegan DeBaggis.

- 1.) Shortly after 7:00 PM on Sunday August 20, 2017, Harwich Police received a call from [redacted] of the [redacted] stated the music from Perks Coffee Shop & Beer Garden was too loud and he needed an officer to come down immediately.
- 2.) I arrived on location and from across the street by the rear of Schoolhouse lot I could hear the live entertainment, and it did appear louder than usual. [redacted] met me and told me he had heard from someone he knew ([redacted]) that the owner of Perks had said they were going to keep turning up the music to deliberately [redacted].
- 3.) [redacted] requested I enter his house and hear for myself how loud the music was. He told me he was considering suing Perks and the town over the noise issue and he wanted an officer's documentation of what he was experiencing. I observed the house to have all the windows open and several doors open. [redacted] explained they don't have air conditioners in the house and they open the windows and doors during warmer weather. From the living room and dining room area, the music was barely audible, however when I entered the bedroom closest to Perks the music was very loud. While the windows and door were open, it was difficult to hear [redacted] talk over the music.
- 4.) Sgt. Boorack drove to the Cape Sea Grille, a distance farther than 150 feet away, and could still hear the music. I would make contact with the employees at Perks and they agreed to turn the music down. As I was leaving, I was approached by an employee who asked how much he needed to turn it down. I told him the volume could easily be cut in half and still be loud enough to attract customers from the street. He indicated he would do this and as walking away I could hear the music be turned down to an acceptable level.
- 5.) Later in the evening, shortly after 9:00 PM, officers were again called by [redacted] who stated they had turned the music up again. I drove to Cape Sea Grille and confirmed the music could still be heard from that location. Upon making contact with a different employee name Jack, he told me the musician had been turning his volume up. I requested Jack to let the musician into the loop and advise him of the ongoing noise issue. Jack also asked how to know what is an acceptable level of noise. I told him about the 150 foot rule, but suggested that if he could not carry on a conversation in a normal speaking tone that the music may be too loud.

Respectfully submitted \_\_\_\_\_ #192  
Officer Tegan M. DeBaggis

RECORD

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 3, 2016

Mr. Taylor Powell  
Perks  
545 Route 28  
Harwich Port, MA 02646

Subject: Letter of Warning – Violations of Entertainment License


Dear Mr. Powell:


At a meeting of the Board of Selectmen held on Monday, October 3, 2016, the Board voted to issue you the following warning notice relating to violations of the conditions of Perks' Weekday Entertainment License on July 6, 2016 and August 10, 2016, per the recommendation of the Town Administrator:

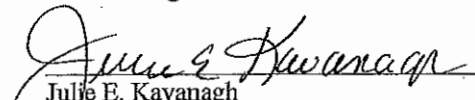
**You are hereby notified that the Board intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment License and/or Liquor License for any future violations.**

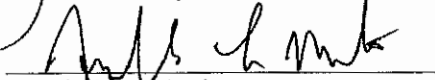
The Board recognizes that this season was the first with significant complaints and has the highest expectation that in the future you will comply with the conditions of your license.

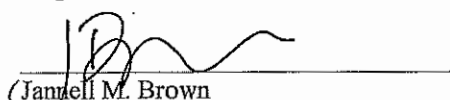
Sincerely,

  
\_\_\_\_\_  
Michael D. MacAskill, Chair

  
\_\_\_\_\_  
Peter S. Hughes

  
\_\_\_\_\_  
Julie E. Kavanagh

  
\_\_\_\_\_  
Angelo S. LaMantia

  
\_\_\_\_\_  
Jannell M. Brown

cc: Chief David Guillemette

**OFFICE OF THE TOWN ADMINISTRATOR**

**Christopher Clark, Town Administrator**

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



## MEMO

To: Board of Selectmen

From: Christopher Clark  
Town Administrator

Date: September 27, 2016

Subject: Recommendation on Perks Disciplinary Hearing

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After hearing all testimony at a Disciplinary Hearing on Perks Entertainment License which I held on Tuesday, September 27, 2016, I make the following recommendation for the Board of Selectmen with regard to incidents on July 6, 2016, August 10, 2016 and August 13, 2016:

I recommend that the Board of Selectmen issue a letter of warning to Taylor Powell, Manager of Perks, for violations of the conditions of their Weekday Entertainment License relating to incidents of music performances past the hours specified on their license on July 6, 2016 and August 10, 2016. Mr. Powell attended a compliance meeting in June about license conditions. The letter should indicate that the Board recognizes that this season was the first with significant complaints and will follow a progressive course of discipline, if needed, up to and including revocation of Entertainment License and/or Liquor License for any future violations.

Please note that I have determined that the August 13, 2016 incident does not constitute a violation of license conditions as the music ended at 10:00 p.m. The officer who responded was within 150 feet (reasonable person standard) and the music was immediately turned down after requested at 9:30 p.m. The license holder appears to be remorseful and willing to comply with the conditions. Attached please find detailed minutes of the hearing.

I suggest that the Board discuss, prior to the 2017 license renewals, the matter of granting all entertainment licenses with uniform ending hours for entertainment as well as changing the standard that music within a dwelling should be contained within premises. Any music outside should adopt the standard used in the Noise By-Law – clearly audible from greater than 150 feet.

Minutes  
Perks Disciplinary Hearing  
Harwich Town Hall  
Town Administrator's Office  
September 27, 2016  
10:00 a.m.

In attendance: Christopher Clark – Town Administrator, Greg Corbo – Town Counsel, David Guillemette – Police Chief, Lt. Kevin Considine, Taylor Powell – Manager (via Skype), Sarah Powell (via Skype), Ann Steidel – Administrative Secretary, Sgt. Adam Hutton, Lisa Sawin, Gary Sawin, Laurel Beloin.

Mr. Clark discussed the process by which the hearing would be conducted and noted that his findings would be reported to the Board of Selectmen. At Atty. Corbo's request, all participants introduced themselves. Mr. Clark noted that this was not an advertised hearing and was referred to him by the Board of Selectmen. He opened the hearing at 10:11 a.m. and read the letter of notice of disciplinary hearing. He noted that the incidents on July 6, 2016, August 10, 2016 and August 13, 2016 were the only ones to be discussed after which he swore in all those giving testimony.

Atty. Corbo noted that the following documents are part of the file: 1. Hearing notice and memo from Police Chief, 2. Police call logs, 3. Police incident report narratives, 4. Entertainment License, 5. Liquor License. He then asked Chief Guillemette to give a synopsis of the complaints.

Atty. Corbo called for testimony from Chief Guillemette, Lt. Considine and Sgt. Hutton, respectively.

Chief Guillemette reported on that on June 16 he held an informational meeting for all liquor licenses holders at which time the liquor licenses regulations were reviewed and there was a presentation from an ABCC investigator. He noted that Mr. Powell was at that meeting. Chief Guillemette further reported that there were 9 complaints of noise at Perks between June 24, 2016 and August 29, 2016 of which 2 were determined to be noise not related to Perks. He stated that of the 7 remaining it was determined that there was no violation occurring for 3 of them when Police arrived, and one was in the early morning. He said he decided he would focus on the 3 remaining incidents – July 6, 2016, August 10, 2016 and August 13, 2016.

Lt. Considine stated that at the Chief's request he placed a call on July 7, 2016 to Mr. Powell and in that conversation they went over the permit conditions and hours. He commented that it was a good conversation and he had suggested to Mr. Powell that he end music at 9:45 p.m. to allow a buffer and Mr. Powell thought that was a good idea. He noted that the music ended at 10:09 p.m. on August 10, 2016 and at 10:30 p.m. on August 13, 2016. Lt. Considine noted that he was not dispatched to any of the incidents at Perks.

Sgt. Hutton reported that on August 13, 2016 he was supervising the evening shift. He noted that at 9:30 p.m. he responded to a complaint of loud music and strobe lights at Perks. He stated that he parked in the Chamber of Commerce parking lot and could hear the music and see the strobe lights. He said he approached Mr. Powell and told him to lower the music and turn off the strobes and Mr. Powell complied.

Chief Guillemette stated that on Wednesday, July 6, 2016 at 11:00 p.m. (Case #16-8851) the Police log indicates a noise complaint which was responded to by Officer Marc Harris who indicated that he spoke

with Mr. Powell and he turned down the music. He further stated that on August 10, 2016 (Case #16-0776) a complaint of loud noise was received at 10:09 p.m. He noted that Officer Goshgarian responded and noted in the Police report that he could hear the music from Schoolhouse Parking Lot, he told a staff member the music needed to stop, and the music stopped without further incident.

Ms. Powell questioned the difference between the Noise By-Law and the license restrictions and pointed out that in one instance the music was from there house. Atty. Corbo said the license conditions needs to be adhered to.

Mr. Powell apologized for the June 24, 2016 morning incident noting that it was just a case of someone pressing the button for the outside speakers when they normally play music inside and he has spoken to staff about this. He pointed out that he lives upstairs. Mr. Clark responded that this incident is not specific to the charges in this hearing.

Mr. Powell questioned who brought this to the Board's attention and Mr. Clark responded that Ms. Sawin came in to see him. He said he forwarded the complaint to Chief Guillemette but did go out to see the site later that evening. He also questioned if this is a Noise By-Law violation or a violation of the Entertainment License and Mr. Clark responded that we are here for the Entertainment License.

Mr. Corbo explained the laws noting that on the one hand the Board of Selectmen sets forth certain conditions in the license including "Not to Exceed Licensed Premises" as well as hours so if noise can be heard outside of the 4 corners of the establishment they may be subject to discipline. He noted that parallel to the license is the Noise By-Law which states that noise cannot be plainly audible at a distance of 150 feet from the building or they could be subject to a fine. He stated that anyone can be subject to that fine regardless if they have a license or not. He said we are here to determine if there was violation of the license, which he said is more restrictive than the Noise By-Law.

Mr. Powell stated that the license does not mention strobe lights and he noted that they were not strobe lights but rather were just the musician's lights. He said that he was not notified that he was in violation and that July 6, 2016 and August 10, 2016 were music stroll nights and there was a heavy influx of people. He added that there is a blanket law that nobody needs a license on stroll night.

Lt. Considine responded that the stroll ends at 9:00 p.m. and everyone under the music stroll umbrella knows that. Atty. Corbo questioned if this is outside of the licensed entertainment and Lt. Considine responded that it is. Mr. Powell said it includes both licensed and unlicensed establishments and he provides a band. Chief Guillemette stated that after 9:00 p.m. it isn't part of the stroll and they are held to their entertainment license.

Ms. Sawin stated that the music was going on after 10:00 p.m. on stroll nights. She displayed a photo of a speaker facing her property and questioned how the music could not be exceeded the 4 corners of the property. Mr. Powell responded that the speaker was moved earlier in the summer. Ms. Sawin stated that she took the photo the day after the August 13, 2016 incident. Mr. Clark questioned if Sgt. Hutton was beyond the 150 feet when he observed Perks from the parking lot on August 13, 2016 and Sgt. Hutton responded that he believed he was. Ms. Sawin stated that the music was loud enough that if a guest wanted to go to sleep early, they could not. She provided a video/audio of the music emanating from Perks which she noted that she shot it from outside the door of her bedroom located at the far side of the building, away from Perks. Mr. Sawin said it is 60 feet to the boundary line. Ms. Sawin said they do not take out the storm windows from their bedroom all summer because of the noise and they

do not have fans or air conditioning on. Mr. Clark questioned if the music ended at 10:00 p.m. on August 13, 2016 and Ms. Sawin said it did.

Atty. Corbo questioned if Ms. Sawin made the complaint on August 10, 2016 and she responded that it was a guest complaint. She said the July 6, 2016 complaint was probably from her.

Ms. Beloin stated that her house is more than 150 feet from Perks and they can hear the music even with the air conditioning in the bedrooms. She added that they can also hear music from Ember.

Mr. Clark stated that he feels that the July 7, 2016 incident of music at 11:00 p.m. is proven as well as the August 10, 2016 incident of music at 10:09 p.m. He stated that he doesn't think the August 13, 2016 incident constitutes a violation as the music ended at 10:00 p.m. He added that currently there are various license hours for the different establishments and he believes there should be a more uniform schedule and the Board may consider this. He noted that there are several different recommendations for disciplinary actions he could make from a written warning to revocation of license but he is leaning toward the more shallow end.

Mr. Powell commented that for 7 seasons there have been no problems at Perks, the issues are all from the Grey Gull, they are zoned commercially, the area is 90% seasonal, there are zero lot lines, they are an outdoor venue, and they intend to tone down the music in the future. He apologized again and he said he did not believe there should be a punishment due to the conflicting license restrictions and Noise By-Law.

Atty. Corbo said his role is to assist in the presentation of evidence and explain the law. He suggested things to be considered as follows: possibly the license is too restrictive, there is sufficient evidence of violations on July 6, 2016 and August 10, 2016, it is a first offense, the Police Department met with Mr. Powell on June 24, 2016 and July 7, 2016 and yet there was still a violation.

Chief Guillemette said his opinion is there are clearly 3 violations of the Entertainment License and suggested a written warning be made.

Mr. Corbo stressed that the Entertainment License and Liquor License are intertwined.

Lt. Considine stated that there was more music this year than ever. Ms. Sawin stated that this is the first year they had all alcohol. She stated that their business has lost 2 customers due to this noise issue. She commented that Perks went from a strumming guitarist to outside Irish pub.

Mr. Clark explained that he would take his recommendation to the Board and provide notification when it is ready and on the Board's agenda. He also described the appeal process.

Mr. Clark closed the hearing at 11:27 p.m.

Submitted by,

Ann Steidel  
Administrative Secretary

Perks  
545 Route 28  
Harwich Port, MA 02646  
September 24, 2017

The Town of Harwich, Board of Selectmen, and the Town Administrator  
732 Main Street  
Harwich, MA 02645

Dear The Town of Harwich, Board of Selectmen, and the Town Administrator:

Perks and our Live Music has been a staple in Downtown Harwich Port for eight years, vacationers and town residents have enjoyed our establishment from morning to night. We employ around twenty-five students and town residents every summer, pay our local tax and meals tax, contribute to the town, and donate to the Family Pantry. We've established ourselves as the first all outdoor dining area in Downtown, and the first venue to provide live music. We've developed a positive reputation for having live music, and patrons come from all over to enjoy our live music and spend their money throughout town's businesses. Our success has created competition, where now two other restaurants have outdoor Live Music. Harwich Port has now become a destination, patrons now are coming from all over the Cape to enjoy the music, people stop in Harwich Port, instead of driving to Chatham. There's now traffic in Harwich Port and the Chamber parking lot is always full during the summer season. Perks is a major contributor to this...

With our growth, our neighbor's, whom seasonally live at the Grey Gull, have had issue. All of the family members have frequented perks to enjoy the live music in the past. About two years ago they stopped coming and started to complain. The only complaints we receive are from the Grey Gull, no other neighboring businesses or residents seem to have a problem with the music. These complaints are isolated to one source, we feel these complaints should not be entertained as the whole property of the Grey Gull lies within the 150ft ordinance. We respect our neighbors and this town, we do everything in our power to comply with the rules and guidelines of our music permit, and to not make our live music a nuisance to anyone.

Please take into account that the first report happened right when the very first Music Stroll had ended and once Lt. Considine clarified the rules of the music stroll and our permit, that we complied and there were no further issues that night or with any other music stroll night. In addition, the Lt. stated that he wouldn't be issuing a violation, and



The Town of Harwich, Board of Selectmen, and the Town Administrator  
September 24, 2017  
Page 2

that this was a verbal warning. In the second complaint, The Port had Live Music playing simultaneously, the rear of their restaurant and the source of their live music is in closer proximity to Sea Street and The Cape Sea Grill. With two businesses playing Live Music it would be pretty difficult to decipher which music was heard, therefore it cannot be proven beyond a reasonable doubt that it was in fact our music, and unfair to issue Perks a violation.

We have live music virtually every night of the summer season, these complaints from the Grey Gull account for a very small percent of the nights over the course of the summer. Please view these complaints as competition, know that the complaints come from one source only, and view the bigger picture on what we've done for the town and its positive growth. We hope to continue to contribute to the town in positive ways and obey the rules and laws set forth in our permits. We hope to coexist peacefully with our neighbors and be respectful to everyone around. Please help us continue to provide this great atmosphere, that thousands of people come to enjoy over the summer season. We're extremely sorry that you've received complaints and will continue to work very hard to have harmony with our neighbors and this great town of Harwich Port.

Sincerely,

Perks  
Taylor & Sarah Powell  
Owners

To whom it may concern,

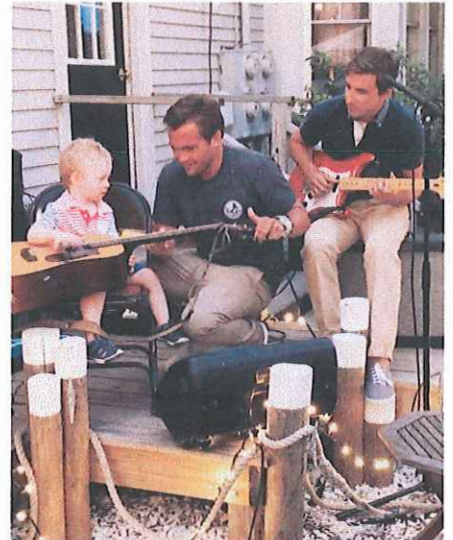
Our names are Stephen Rondinone and Richie Aversa and we are two of the performers at Perks Coffee Shop & Beer Garden. This past summer, Perks became a venue that we very much looked forward to playing every weekend. The venue offers a family friendly atmosphere that has welcomed us and many other guests throughout the summer. Richie and I have had the pleasure of entertaining guests on Saturdays and have witnessed the gratitude guests have expressed in the live music experience that Perks provides. We can personally attest to the fact the at a family with a two year old son, Teddy, came to Perks every weekend for the entertainment due to the child's fascination with music. Teddy's family is not the only family to frequent Perks Beer Garden due to Taylor and Sarah Powell's patronage. Instead of guests sticking around for one or two drinks with dinner, guests will stick around longer to listen to the live music. There is no doubt that the Perks beer garden is good business for the town of Harwich, the hundreds of guests, and vacationers that stroll through the venue every night.

Richie and I would also like to recognize the Powell's diligence in their attention to the sound ordinance. Taylor personally reminded us about the strict 10pm cut off each night we performed at Perks. Richie and I complied with this request each night and we worked with Taylor throughout the evening to check in on sound levels to make sure that the sound system was not too loud. Taylor would swiftly express his concern if he ever thought we were playing too loud. Richie and I would immediately lower our volume out of respect for the surrounding residence and the town of Harwich.

Finally, Richie and I are grateful along with many other guests, for the opportunity to play and enjoy live music at a venue as special as Perks Beer Garden. We do not wish to see any part of the Perks experience disappear and there are many guests that would agree. The photos below picture Teddy as he joined us up on stage each Saturday. Perks created this special moment for Teddy, his family, and for Richie and I. We hope there are more memories like this to come in future summer seasons. Please take our thoughts into consideration as you evaluate Perks Beer Garden in regards to the sound ordinance concerns. Enjoy the fall and winter seasons, and we hope to be back to perform next summer!

All the Best,

Stephen Rondinone & Richie Aversa



# Walter D. Mason

76 Miles Street, Harwich Port, MA 02646

September 25, 2017

To Whom It May Concern:

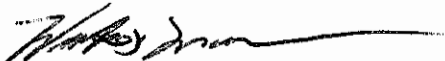
I am writing in support of Taylor and Sarah Powell, d/b/a Perks, regarding the noise complaint hearing.

My wife and I have been customers of Perks for a number of years and have witnessed an incredible change to the nightlife in the village, which in my opinion was mostly due to them. For years the town had nothing to do, other than go out to eat at the other good restaurants in town. This all changed when Perks opened the outside bar and started nighttime entertainment. Seeing the results you now see Ember and the Port trying to emulate some of their success, which makes the town a much better nighttime experience.

In regards to the noise violation, by my back-of-napkin calculation this violation only represents less than 2% of the nights they had music. Between the end of July and into early September they must have had close if not more than 60 nights of music. Obviously, we would all like to see zero percent, but that is something to work towards and improve upon. This is not enough of a reason, however, to make changes to the type of amplification or to require only certain types of performers. The variety they have is what makes this place great for everyone.

The licensing of another outside entertainment permit next door to Perks has probably increased the volume being heard. Working with the owners to adjust the volume would be what I think is a reasonable response to this minor violation.

Sincerely,



To whom it may concern:

I have been a full time, year round resident of Harwich since June 2011, and of Harwich Port specifically from April 2014 through the present. I have also been a patron of Perks since the first summer they opened, in 2010. In the past 3.5 years as a full time, year round resident of Harwich Port I have lived either approximately 0.1 mile (15 Pleasant Street) or 0.4 miles from Perks (14 Grassy Pond).

Being a year round resident, with a full time Monday-Friday job, there are many nights throughout the summer that I stay home. I can tell you with 100% honesty that the only time I have heard music from either of my residences within Harwich Port has been on Wednesday nights coming only from the bands that are located in the public parking areas of town as part of Music in the Port. This may come as a surprise, considering my close proximity to multiple outdoor bars that host live music, but it is true. In fact, the only time I have been able to hear live music from an outdoor bar, has been while visiting friends at 623 Route 28, and that music was coming from Ember.

My experience with both Perks' staff, owners, and customers has never been anything but positive. The warm and friendly atmosphere they have created has helped to revitalize main street Harwich Port, bringing a family friendly outdoor space for people of all ages to our downtown area. At a time when there were no coffee shops, limited grab and go breakfast or lunch options, and zero establishments with outdoor seating, Perks filled a very large void for our village. They have continued to be a warm and friendly neighbor for anyone that walks down their path. The staff greet the children and toddlers of regulars by name. As we all know, currently there is a clear problem with getting young families to live and stay on Cape Cod, I can attest to you that the family friendly atmosphere Taylor & Sarah have created at Perks is helping to not only bring families into our downtown area but keep them in the area, generating additional revenue for surrounding shops.

Harwich Port has undergone many changes over the years I have lived here. The majority of them are positive, and that includes Perks. It is not only detrimental to the village of Harwich Port to restrict the good work that Sarah and Taylor have put in to build their business, but it also sends a message that there isn't a place for young families to grow and succeed in Harwich Port.

Sincerely,

Megan Yaps

14 Grassy Pond Road  
Harwich Port, MA

From: maryannmcc5@gmail.com  
Subject: **Perks**  
Date: **September 21, 2017 at 4:59 PM**  
To: Capobianco.s@gmail.com



To whom it may concern,

We reside at 8 Sail Loft Road, Harwichport. Perks is located behind our home and we have never heard or been disturbed by any music coming from this establishment. Not only that, the owners of Perks, Sarah and Taylor, are outstanding members of the community whom we admire and respect implicitly.

Maryann and Kevin McCarthy

Sent from my iPhone



Adam K. Lucas

774. 408. 6073 Adamklucas@yahoo.com 171 South St. Harwichport, MA 02646

September 21, 2017

To Whom it May Concern,

I am writing this letter in support of Mr. and Mrs. Taylor Powell and of their business, Perks Coffee Shop & Beer Garden.

Having been born and raised around the corner on South St and now owning a home in Harwichport myself, I have seen this village transform; only for the better.

Taylor and Sarah have created a wonderful place to gather with friends and family. It is at Perks where fishing stories from the day are shared and where tomorrow's beach plans are laid out. It is their inviting and cozy atmosphere that brings people back year after year.

As an extremely hard working couple, who only want the best for the town, I fully support their business model and goals. I ask that you consider doing the same.

Thank you.

Sincerely yours,

Adam Lucas

From: Daniel O'Connor [scrappydanny@hotmail.com](mailto:scrappydanny@hotmail.com)  
Subject: noise music  
Date: Nov 30, 2016, 3:01:21 PM  
To: [perkscoffeeandcafe@gmail.com](mailto:perkscoffeeandcafe@gmail.com)

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Hey Taylor,

Sorry to hear about the noise/music issues in Harwich port. I wanted to write and let you know, I spent the entire summer in the front room of the Grey Gull Guest House this past summer.

My window was always open and faced the cafe. I have to say I was never disturbed by the acoustic music or evening strollers.

As you know I get up early and go to bed early, I never lost a night's sleep and never had to close my window!

I hope you are able to resolve the issue, the cafe was a great meeting spot and the Greek salad!! Oh I miss it!!

best  
Danny O'Connor

[413 281 8479](tel:4132818479)

From: **Bethany** beht27@gmail.com   
Subject: **Letter for Perks**  
Date: **September 23, 2017 at 8:14 AM**  
To: capobianco.s@gmail.com



Hi Sarah,

I attached a letter about Perks, the music, etc. Hope it helps at the hearing next week.

Good Luck!

Beth

Bethany Terrio  
27 Old Tavern Lane  
Harwich Port, MA 02646

September 22, 2017

To Whom It May Concern,

I am writing on behalf of Perks Coffee Shop and Beer Garden located at 545 Rt. 28, in Harwich Port. I am a regular customer at Perks Coffee Shop and Beer Garden and have always been impressed with how responsible and professional the owners and their staff are. Taylor and Sarah are always working and available anytime to talk. The quality of the live music at Perks is tasteful and adds to the ambiance, while keeping with the quality of Harwich Port. The noise level has never been an issue for me, as the owners are very respectful of the neighborhood and end the music at a reasonable time.

My family have been residents of Harwich Port for over fifty years. A coffee shop and beer garden that offers live music has been a great addition to Harwich Port. Families, young adults and seniors are now able to enjoy music in a casual, outdoor environment that the owners have so wonderfully created.

Thank you,

Bethany Terrio



From: **Leah Hyman** leahrh@gmail.com  
Subject: PERKS!  
Date: September 26, 2017 at 5:45 PM  
To: Capobianco.s@gmail.com



To whom it may concern @ The Town of Harwich,

I'm Leah Hyman, year-round resident at 11 Braddock Lane in Harwich Port and I can not say enough good things about Sarah & Taylor and PERKS and Isobel! As a former New Yorker, I shopped in Isobel for years, loving the big-city fashion in a small town setting, but I was overjoyed when they decided to open Perks. Harwich Port was in dire need of more activity and places to "hang out," and that's exactly what Perks is — a hang-out where you can get great breakfast or lunch and coffee and then drinks at night, with a laid-back approach and a friendly vibe. It really comes alive at night, hanging around the fire pit, with the cool acoustic music playing and the drinks flowing and the games being played in the back.

Perks has a sophisticated and fun vibe, and it's not at all boisterous or loud or a "scene," like some other places in town, ahem. Taylor and Sarah (and their dog!) run a friendly and inviting place, and as a year-round resident, I only wish it would stay open longer!

Sincerely,

Leah Hyman  
11 Braddock Lane  
Harwich Port, MA  
02646  
(508) 432-0765

Town of Harwich

Re: Perks/ Beer Garden Entertainment License

9/20/17

To Whom it May Concern:

As a resident of Harwich all of my life, I would like to say that the revitalization of Harwichport has been an amazing sight to watch. From being able to lay in the middle of 28 as kids with no cars ever being in sight, to now living in Harwichport and hearing the constant noises of visitors and locals alike enjoying themselves at one of the many restaurants/ businesses that has Harwichport thriving again is awesome! The addition of these businesses and their entertainment nightly is a wonderful and valuable addition to our community and our economy. The Chamber of Commerce has put through great efforts for our town to get the same recognition as other well known Cape towns, like Chatham and Provincetown. These efforts with the growth of our local businesses providing fun and lively entertainment has really made a difference to our small community. It has given people events to look forward to and reasons for them to come back over and over again.

Perks/The Beer Garden is one of our local businesses that has added to the overall greatness that Harwichport is becoming! They provide wonderful food and beverages served in a clean and happy atmosphere. From my apartment (right behind Mason Jar) I can hear most of what goes on in Harwichport and I can attest that music from Perks/The Beer Garden Ends promptly at 10 pm if not a few minutes before. I will say that after the music stops, not only at Perks/The Beer Garden, but The Port, The Mad Minnow and The Hot Stove, their

patrons are off and on loud til close at all the establishments. You know why? Because they are enjoying themselves! It's summer, there are family members that come into town, there are wedding parties everywhere, there are locals enjoying a night out, and there are tourists that come here specifically to have a good time on their vacations!! To deny Perks/The Beer Garden an entertainment license will be a huge loss to Harwichport and all of the people who have come to love going there. As a local, as a resident, as a consumer, as a supporter of small local businesses, as a person who loves my home town, I would sincerely like you to consider all of the positives that Perks/The Beer Garden has contributed to our community and to our local economy and grant them continuation of their entertainment license!

Sincerely,

Nicki Waite

Local

Graduate of Harwich High School

Owner/ Operator of Good Times Ice Cream Truck

Harwichport Resident



## HARWICH ENERGY COMMITTEE

Larry Cole, Chair  
3 Parsons Path  
Harwich, MA 02645  
508-432-2464

Members:  
Valerie Bell  
Terry Hayden  
Barry Worth

September 28, 2017

Mr. Michael MacAskill, Chairman  
Board of Selectmen  
Town of Harwich  
632 Main Street  
Harwich, MA 02645

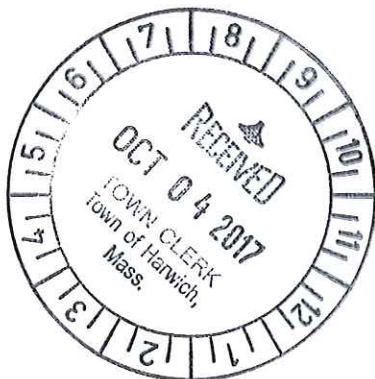
Dear Chairman MacAskill:

This is to officially notify you that the Harwich Energy Committee lacks one authorized member. Since August, 2016, we have had no contact with Mr. Darren Glidden, whom the Board of Selectmen Appointed in early 2016. We were informed last fall by other employees of Solar City, that he was had left the company. I have previously reported that orally, but had not put it in writing, which I now understand is required in order to declare a vacancy.

Recently, I was informed by Selectman Kavanagh that there is a gentleman interested in the Energy Committee, and he has been referred to the Review Committee for vetting. Thus, it is possible that the Board will be ablt to fill this vacancy in the near future.

Yours truly,

Larry Cole



**Michael Glynn  
4 Somerset Road  
Harwich, MA 02645**

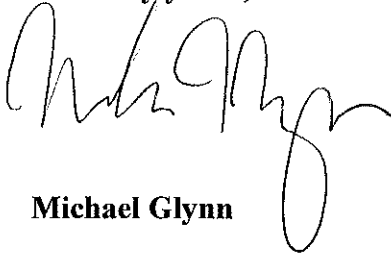
**October 3, 2017**

**Anita N. Doucette,  
Town Clerk  
732 Main Street  
Harwich, MA 02645**

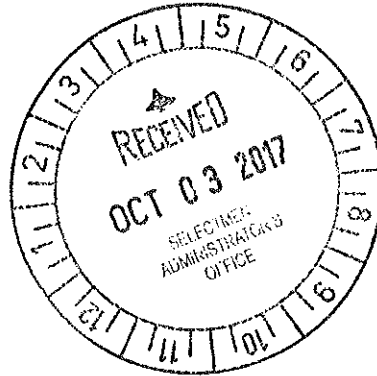
**Dear Ms. Doucette**

**This is to inform you that I will resign from the Town Bikeways Committee,  
effective October 15, 2017**

**Sincerely yours,**



**Michael Glynn**



## Ann Steidel

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**From:** Deputy Chief Tom Gagnon  
**Sent:** Wednesday, October 04, 2017 12:05 PM  
**To:** Michael D. MacAskill; Chief David J. Guillemette; Scott Tyldesley; Ann Steidel; Carol Coppola; Christopher Clark  
**Subject:** Security system question

On Monday Carol, Chris, Scott tyldesley, and myself met in Chris's office to review the quotes received. The system is being purchased under mass State contract ..comm buys...i was told that we needed to obtain three quotes since it was being purchased under state contract ..we contacted our present vendor, American alarms. They furnished an initial quote the when we returned it for revision they did not return a quote..i have emails 're this. We were presented a quote by signet and galaxy. Scott did a price comparison on these two and it was clear that signet was around \$20,000 more. Galaxy came in at our budgeted amount. At the meeting with Carol and Chris, galaxy was chosen. The purpose of the meeting was to make sure we did everything correctly to obtain the quote. I have had extensive conversation as well with the wellfleet police chief who followed the same exact procedure and ended up with galaxy as well.

Let me know if you need anything else. I Will have Scott send cost comparisons to you as well as to Ann for the packet

Sent from my Verizon, Samsung Galaxy smartphone



# HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530



DAVID J. GUILLEMETTE  
Chief of Police

THOMAS A. GAGNON  
Deputy Chief

October 3, 2017

Honorable Board of Selectmen  
Town of Harwich  
732 Main Street  
Harwich, MA 02645

Re: Request for approval of contract with Galaxy Integrated Technologies for replacement of Public Safety Security and Video Monitoring System

The security system at the Harwich Police Department is in need of an overhaul. Funds in the amount of \$153,789 were secured in the 2017 Harwich Town Meeting Warrant, Article 10. Since that time we have worked with three vendors to secure quotes. All three vendors provided quotes based on Massachusetts State Contract pricing. Two of the vendors provided complete quotes, one did not and was subsequently eliminated. Of the two remaining vendors one, Galaxy Integrated Technologies, offered a solution at a significantly lower cost. Galaxy provided the security systems for Chatham Police, Wellfleet Police, Orleans Police and the Barnstable County Detention Center to name a few. Feedback from representatives of those towns has been positive regarding Galaxy. We are here tonight to request that the Selectmen execute the contract with Galaxy so that we may move forward quickly with this project.

Respectfully,

A handwritten signature in black ink, appearing to read "David Guillemette".

David Guillemette  
Chief of Police



Galaxy Integrated Technologies, Inc.  
 100 Leo M. Birmingham Pkwy, Brighton MA 02135  
 Ph: 617-202-6388 Fax: 617-202-6389

## CONTRACT

<b>DATE:</b> September 27, 2017	<b>QUOTATION # :</b> HARWICH Z17-1141R1
	<b>SALES PERSON:</b> Scott Feingold
<b>BILL TO:</b> Town of Harwich 732 Main Street Harwich MA 02645 Accounts Payable 508-430-7502	<b>JOB LOCATION:</b> Harwich Police Department 183 Sisson Road Harwich MA 02645 Thomas Gagnon 508-430-7541

**Furnish and Install Integrated Electronic Security System for the Harwich Police Station Harwich, MA-Card Access, Alarm Monitoring, Intercom Communication, and Video Surveillance Systems for the Police Station System Upgrade Project. This Revision includes; Add Camera at Breathalyzer, Add Cameras at Evidence x2, Add Camera at Fire Bays x2, Add Camera at Gym Hall, Add Card Access Control to Locker Rooms x2, Replace Cameras in Interview Rooms x2, Replace Cameras in Lobby x2, Furnish New Workstation, Furnish & Install Software Support & Upgrade in 2nd and 3rd Year. Pricing per FAC64 State Contract # VC6000187522.**

EQUIPMENT	\$106,152.67
INSTALLATION	\$16,020.00
TECHNICIAN/PROGRAMMING	\$27,000.00
PROJECT MANAGEMENT	\$10,980.00
ENGINEERING	\$0.00
DISCOUNT	-\$10,814.00
SHIPPING AND HANDLING	\$3,661.33
SALES TAX EXEMPT FORM ON FILE	\$0.00
<b>TOTAL:</b>	<b>\$153,000.00</b>

**GALAXY INTEGRATED TECHNOLOGIES TO:**

Please see attached "Galaxy Responsibilities"  
**Permit to be prepaid and added to invoice along with charges for time to acquire permit.**

**CUSTOMER TO:**

Please see attached "Customer Responsibilities"

**NOTE:**

All work to be done open shop unless specified in terms.  
 All work to be done during regular business hours 8:00-4:30 pm Mon-Fri. Any deviation from these hours will be charged at a time and a half hourly rate to the Client accordingly.  
 Client to allow full access to all work areas without any restrictions or down time waiting for rooms or areas, with Exception of Booking Area. Any delays waiting for rooms, or areas to become available for working in will result in a charge per hour at the regular Galaxy Technician rate. Issuance of a purchase order for this particular project shall be deemed acceptance by you (The Client) to the terms set forth herein. If there are any conflicts between any provision in this proposal and your purchase order, the language of this proposal shall control, and further, any provision in your purchase order that purports to claim its language shall control shall be deemed stricken. Any unforeseen field conditions will result in a change order for the difference in time and material. Any jobs canceled after equipment is ordered will result in a 35% restocking fee for equipment that is returnable. Customer will be responsible to pay 100% for any equipment non-returnable if job is canceled.

**PAYMENT TERMS:**

Net 30 days (All terms contingent upon credit approval) A 21% finance charge will be assessed to all amounts past 30 days. 100% of the total equipment price plus start up cost will be billed upon receipt to site or off site storage. 75% of the total labor will be billed once devicing begins. A total of 90% of the total labor will be billed when all field equipment is 100% mounted. The last 10% of the total labor and any other items will be billed when the final programming and testing is complete. All change orders will be billed separately and will not hold up payments on the initial job percentages due for payment.

Equipment only orders will be billed and must be paid 100% before Galaxy orders equipment.

**WARRANTY: One Year for Parts supplied and installed by Galaxy and 60 Days for Labor**

**Form #2014-1**





Galaxy Integrated Technologies, Inc.  
 100 Leo M. Birmingham Pkwy, Brighton MA 02135  
 Ph: 617-202-6388 Fax: 617-202-6389

QUOTATION: HARWICH Z17-1141R1

**GALAXY INTEGRATED TECHNOLOGIES, INC. (GIT)** will provide competent personnel for performance of service as herein stated. For such service, customer agrees to designate one responsible individual who is authorized to call for service.

SERVICE HOURS: FIVE DAY WEEK: MONDAY TO FRIDAY: 8:30AM TO 4:30PM

GIT will not be responsible for equipment or parts which are in disrepair due to misuse, accident or mishandling by others not authorized to service this equipment during our agreement time.

GIT will not be responsible for damages caused by fire, the elements, civil commotion, malicious mischief, negligence of the customer, its agents or acts by God.

All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the estimate. All workers are fully covered by Workmen's Compensation Insurance.

This proposal shall be voidable, at our option, unless accepted and delivered to us within thirty (30) days of the date hereof. This proposal is the property of GIT. It is not for publication and is issued expressly on the condition that it is not to be copied, reprinted or reproduced in any manner; nor is it to be disclosed to any third party, either wholly or in part, without the express written consent of GIT.

Proposed By:

**Galaxy Integrated Technologies, Inc.**

For the amount of: **\$153,000.00**

**Scott Feingold**

Signature: Scott Feingold

Date: 10/3/17

Accepted By:

**Town of Harwich**

**Board of Selectman**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Purchase Order #: \_\_\_\_\_



Galaxy Integrated Technologies, Inc.  
 100 Leo M. Birmingham Pkwy, Brighton MA 02135  
 Ph: 617-202-6388 Fax: 617-202-6389

QUOTATION: HARWICH Z17-1141R1

**Equipment Details:**

ITEM	QTY	DESCRIPTION
1	1	OnGuard 32ES Server Software License – OnGuard Server software license includes; System Adminis
2	1	OnGuard 32ES Client Software License – OnGuard Client software license includes; System Administ
3	4	OnGuard IDES Client Software License – OnGuard Client software license includes; ID Credential C
4	1	32 Access Readers upgrade for all 32ES systems (max of 64 readers).
5	2	Intelligent Dual Reader Controller â€“ 12 or 24 VDC @ 700mA, size (6" (152mm) W x 8" (203mm) L
6	26	Dual Reader Interface Module (Series 2 –Supports OSDP Readers) – 12/24 VDC, 2 Reader interface, '
7	4	Input Control Module (Series two) –12/24 VDC, 16 zone input monitor module, (32) 1K resistors (wit
8	3	Output Control Module (Series two) – 12/24 VDC, 16 relay output control module , RoHS, CE, C-Tiel
9	6	Lenel UL listed hardware enclosure (24â€œx 18â€œx 4.5â€œ) only with lock and tamper switch. (UL App
10	6	Altonix 6A controller power supply
11	6	Altronix 8 channel power distribution module
12	6	Powersonic battery 12V7AH
13		
14	2	Dell DB & Storage Server 48TB
15	1	Dell Precision Workstation, zeon, ssd, quad Nvidia graphics
16	4	Ultra HD 4K monitor
17	1	Chief KTP Monitor Mounting System
18		
19	1	VIDEO CHANNEL LICENSE FOR INTEGRATING MILESTONE VIDEO CHANNELS INTO ON
20	1	INTEGRATION OF MILESTONE XPROTECT PLATFORM INTO ONGUARD 32ES SYSTEMS [
21	1	XPROTECT PROFESSIONAL BASE LICENSE
22	37	XPROTECT PROFESSIONAL DEVICE LICENSE
23	1	MILESTONE ONE YEAR CARE PLUS FOR XPROTECT PROFESSIONAL BASE LICENSE
24	37	MILESTONE ONE YEAR CARE PLUS FOR XPROTECT PROFESSIONAL DEVICE LICENSE
25	6	Axis video encoder with audio
26	6	Lenel Network Audio Recording – single channel audio license for use with the Lenel Network Video
27		
28	1	Intercom Communication Interface for OnGuard- check compatibility chart for intercom systems
29		
30	4	Quasar 4x2K HD IP Panoramic Camera (3.6mm) Swap existing PTZ Location
31	3	Axis HD fixed minidome camera (indoor) Evidence x 2 & breathalyzer New Location
32	6	XPROTECT PROFESSIONAL DEVICE LICENSE
33	6	MILESTONE ONE YEAR CARE PLUS FOR XPROTECT PROFESSIONAL DEVICE LICENSE
34	2	Quasar Ultra HD IP Mini-dome or Bullet Camera (3.5-8mm) +2 Fire Bays New Location
35	1	Quasar 4x2K HD IP Panoramic Camera (3.6mm) Gyn Hall New Location
36	2	Dual Reader Interface Module (Series 2 –Supports OSDP Readers) – 12/24 VDC, 2 Reader interface, '
37	2	HID iClass R40 Card Reader - Proximity (Wall)
38	2	Concealed door switch
39	2	Electrified lockset
40	2	Power transfer hinge
41	4	Axis HD fixed minidome camera (indoor) Interview x2, Lobby x2 Swap
42	2	Year 2 &3 SUSP with Upgrade Labor
43	1	Dell workstation
44		
45		
46		
47		
48		
49		
50		
51		
52		
53	1	Cable
54	1	Wire connectors and hangers
55	1	Miscellaneous materials



Galaxy Integrated Technologies, Inc.  
100 Leo M. Birmingham Pkwy, Brighton MA 02135  
Ph: 617-202-6388 Fax: 617-202-6389

QUOTATION: HARWICH Z17-1141R1

**GALAXY RESPONSIBILITIES:**

Deliver all equipment to job site  
Supply and install all necessary low voltage cables for proper system operation  
Install all equipment  
Perform all final adjustment and system tests  
Train assigned personnel in proper system operation up to a maximum of (24) hour  
ALL change orders must be approved by Deputy Chief Gagnon.

**CUSTOMER RESPONSIBILITIES:**

Provide 120 VAC where needed.  
Provide fire drop tie-in at access control panel locations for fail safe operation of electric locks (wherever required)  
Provide interface point for power door operator (wherever required)  
All cabling to all existing field devices to be existing and functional and or serviceable.  
All electrified locking hardware to be existing and functional and or serviceable.  
All electrified locking hardware power supplies to be existing and functional and or serviceable.  
All network devices and connectivity to be existing and functional and or serviceable.  
All audio devices to be existing and functional and or serviceable.  
Provide and install fire rated plywood backing for panel locations  
Provide wall/Rack space as required to accommodate equipment.

**NOTES:**

# Harwich Police Department Security System Replacement 2017

Galaxy 0	Qty	Each	SubT	
Base price Security and Video	1	124444	\$124,444	
Change cameras on corners	4	2050	\$8,200	Swap existing camera with Quasar 4x2k HD IP Camera
Add camera breathalyzer	1	1380	\$1,380	Add new Axis HD Fixed Camera
Add camera evidence x2	2	1380	\$2,760	Add 2 new Axis HD Fixed Cameras
Add camera Fire bays x2	2	2200	\$4,400	Add 2 new Quasar Ultra HD IP Mini-dome * not sure if this is correct camera, one is needed that will filter extra light by bay doors.
Add camera gym hall	1	2570	\$2,570	Add new Quasar 4x2k HD IP Camera * this is a new add, will be near the proposed added door locks on locker rooms
Add locks to locker rooms	2	3750	\$7,500	Add 2 new locks/readers for locker rooms
replace cameras in 2 interview room	1	1680	\$1,680	swap existing cameras in 2 interview rooms with Quasar Ultra HD
Replace lobby camera	1	1680	\$1,680	swap existing camera in 2 lobby with Quasar Ultra HD
			\$166,614	
			\$153,000	After discount

Signet	Qty	Each	SubT	
Base price Security and Video	1	118500	\$118,500	
Change cameras on corners	1	18150	\$18,150	
Interview analog camera interface	1	5000	\$5,000	To tie existing interview room cameras to new system
Add camera breathalyzer	1	2150	\$2,150	
Add camera evidence x2	1	3900	\$3,900	
Add camera Fire bays x2	1	9380	\$9,380	
Add camera gym hall	1	2150	\$2,150	
Add locks to locker rooms	1	12900	\$12,900	
New genetec workstation	1	1875	\$1,875	
Relace cameras in 2 interview rooms	2	1280	\$2,560	
Replace lobby camera	1	1280	\$1,280	
			\$177,845	

American Alarm	Qty	Each	SubT	
Base price Security and Video			\$128,108	
Change cameras on corners				No data on adds
Interview analog camera interface				
Add camera breathalyzer				
Add camera evidence x2				
Add camera Fire bays x2				
Add camera gym hall				
Add locks to locker rooms				
Replace lobby camera				
			?	

Year 2 and 3 maint

## Ann Steidel

---

**From:** Deputy Chief Tom Gagnon  
**Sent:** Wednesday, October 04, 2017 1:36 PM  
**To:** Carol Coppola; Christopher Clark  
**Cc:** Ann Steidel  
**Subject:** FW: Contract  
**Attachments:** HARWICH-Z17-1141R1 PD New System w Adds Modified Terms2.pdf

Attached is the updated quote, on page 4 is the issue re me authorizing change orders is under Galaxy Responsibilities...The word Quote has been removed and replaced with contract on page one.

I am heading off cape tomorrow but will be available by phone and email.

If Mike has any more questions, feel free to email him this contract as Scott will be emailing all the price comparisons.

Again, Comm Pass was contacted by me at the beginning of this adventure and advised we needed to obtain the 3 quotes as we were purchasing under state contract, and that it did not have to go to bid. They even stated we only had to contact 3 companies and it was fine if one or even two did not return a quote.

tom

---

**From:** Scott Feingold [mailto:ScottF@galaxyintegrated.com]  
**Sent:** Wednesday, October 04, 2017 1:08 PM  
**To:** Deputy Chief Tom Gagnon <tgagnon@harwichpolice.com>  
**Cc:** Scott Tyldesley <s.tyldesley@harwichfire.com>  
**Subject:** RE: Contract

He did, most recent attached.

No worries on moving a camera 10 ft. Lets put this item on the agenda to discuss at prebuild meeting?

---

**From:** Deputy Chief Tom Gagnon [mailto:tgagnon@harwichpolice.com]  
**Sent:** Wednesday, October 04, 2017 12:36 PM  
**To:** Scott Feingold <ScottF@galaxyintegrated.com>  
**Subject:** Contract

I think Scott was going to contact you about changing quote to contract on the item you sent us..i thought on one of the items you sent it listed that I was the only one that could approve a change but do not see it in most recent one..also found one issue with a camera in the area that is near our eoc..training room..it needs to be moved about 10 so it is looking from a different angle..can I call in about an hour and can you get contract out asap

Sent from my Verizon, Samsung Galaxy smartphone

## Ann Steidel

---

**From:** Charleen Greenhalgh  
**Sent:** Tuesday, October 03, 2017 5:59 PM  
**To:** Ann Steidel; Sandy Robinson  
**Subject:** Fwd: Meeting with BoS and FinCom  
**Attachments:** Cohort Attrition Monomoy Regional Middle School 2017.pdf

Additional info for BoS meeting.

Sent from my Verizon 4G LTE smartphone

----- Original message -----

**From:** "Carpenter, Scott" <scarpenter@monomoy.edu>  
**Date:** 10/3/17 4:16 PM (GMT-05:00)  
**To:** Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>  
**Cc:** Christopher Clark <cclark@town.harwich.ma.us>  
**Subject:** Re: Meeting with BoS and FinCom

Charleen,

I've got a list of movement of all students who have left Monomoy at the middle school and high school level, so I know who is choice and who is charter. I believe I sent you just the high school (in/out) data last week, because the middle school data was being compiled. Attached is the middle school data.

Scott

Scott Carpenter  
Superintendent  
Monomoy Regional Schools  
425 Crowell Road, Chatham, MA 02633  
Office: 508-945-5130

On Tue, Oct 3, 2017 at 11:22 AM, Charleen Greenhalgh <[cgreenhalgh@town.harwich.ma.us](mailto:cgreenhalgh@town.harwich.ma.us)> wrote:

Hi Scott,

The Board of Selectmen have continued the joint meeting to next Tuesday, Oct. 10<sup>th</sup>. The Board did ask for some additional information:

- 1) Better comparison of the in and out of students from different schools, etc. (including Lighthouse Charter).
- 2) What are other areas of the state and country doing about pre-school?

I wish I could related better what it is that they are looking for on item #1.

Charleen

Charleen L. Greenhalgh

Assistant Town Administrator

Town of Harwich

732 Main Street

Harwich, MA 02645

508-430-7513

508-432-5039 (Fax)

[cgreenhalgh@town.harwich.ma.us](mailto:cgreenhalgh@town.harwich.ma.us)

**2017 Cohort Attrition -- Transfers out of Monomoy  
Monomoy Regional Middle School**

Based on October 1, 2017 Enrollment

Grade (transitions)	Total
4 <sup>th</sup> to 5 <sup>th</sup>	9
5 <sup>th</sup> to 6 <sup>th</sup>	21
6 <sup>th</sup> to 7 <sup>th</sup>	14
<b>Total</b>	<b>44</b>

Relocated students School/Location	Total	Current Grade (number)
<b>In State:</b>		
Eastham ES	1	5
Barnstable United	1	5
Dartmouth MS	1	6
Nauset MS	1	6
Taunton Public Schools	1	7
Mattacheese MS	1	7
	<b>Total In State: 6</b>	
<b>Out of State:</b>		
Washington	1	5
Florida	2	5 (1); 7 (1)
Mississippi	1	6
New York	1	7
	<b>Total Out of State: 5</b>	
<b>Total</b>	<b>11 (25%)</b>	

Returned to original District (former SC students) Town of residence / School	Total	Current Grade (number)
Yarmouth / D-Y Public Schools	5	5 (2); 6 (1); 7 (2)
Brewster / CCLC	1	6
Eastham / CCLC	1	6
Yarmouth / Nauset MS	1	6
Yarmouth / CCLC	1	7
<b>Total</b>	<b>9 (21%)</b>	



School Choiced Out School / Location	Total	Current Grade (number)
Cape Cod Lighthouse Charter	11	6 (9); 7 (2)
D-Y (Mattacheese)	1	7
Homeschooled	1	5
Nauset MS	9	6 (5); 7 (4)
St. Francis	2	5 (2)
<b>Total</b>	<b>24 (54%)</b>	

**2017 Cohort Attrition – Transfers into Monomoy  
Monomoy Regional Middle School**

Based on October 1, 2017 Enrollment

Grade	Total
Into 5 <sup>th</sup>	11
Into 6 <sup>th</sup>	5
Into 7 <sup>th</sup>	8
<b>Total</b>	<b>24</b>

**Resident Towns of “Transfer In’s”**

Town of residence	Total # of Students
Harwich	13
Chatham	8
Dennis	2
Brewster	1
<b>Total</b>	<b>24</b>

**Where are students coming from?**

School/Location	Total	Current Grade (number)
Cape Cod Lighthouse Charter	1	7
Greenfield MS	1	5
Shrewsbury MS	2	7 (2)
Wareham MS	1	7
D-Y Public Schools	6	5 (3); 6 (2); 7 (1)
Homeschooled	1	7
Moved-in from out-of-state	6	5 (3); 6 (2); 7 (1)
CT (1)		
DC (1)		
FL (1)		
GA (1)		
IL (1)		
MD (1)		
Original US Entry	6	5 (4); 6 (1); 7 (1)
- Brazil (1)		
- Dominican Republic (1)		
- Jamaica (3)		
- Philippines (1)		
<b>Total</b>	<b>24</b>	

**Sandy Robinson**

---

**From:** Carpenter, Scott <scarpenter@monomoy.edu>  
**Sent:** Thursday, September 28, 2017 3:38 PM  
**To:** Christopher Clark; Jack Brown; Nancy Scott; Contact  
**Cc:** bsusko@monomoy.edu; Sandy Robinson  
**Subject:** Re: Meeting with BOS and Finance Committee  
**Attachments:** Monomoy Enrollment and Class Size Numbers FY17 FY18.pdf; Cohort Attrition Monomoy Regional High School 2017.pdf

Chris,

As I mentioned, I unfortunately won't be able to attend this coming Monday's meeting. I am, however, attaching the "good news" enrollment data that I will be sharing at our School Committee meeting tonight to include in your Selectman's packets. I would be happy to attend your following meeting to discuss the numbers and answer any questions. This would be the general content and commentary of my report:

The Monomoy Enrollment and Class Size PDF (attached) compares last year's October 1 numbers to this year's October 1 numbers. Since I have come to the district, I've tried to work with my committee to maintain educationally supportive class sizes of  $19 \pm 2$  students per class at the middle & high school level  $18 \pm 1$  at the elementary level. Average class sizes at the elementary, middle, and high school level fall within these guidelines.

Enrollment at the elementary level is down, in both of our towns. This is not due to school choice, as there are very limited school choice options for families at the elementary level. The decline in elementary enrollment mirrors the ongoing demographic shift in this region of Cape Cod, with progressively fewer and fewer young families. It would behoove our towns to support initiatives that would encourage young families to live in and afford our towns, like affordable housing efforts or supporting initiatives like free preschool for all families (as done in Town of Mashpee for all children, beginning at age 4). Research would also support that such preschool early education programs have the added benefit of ensuring that children are better ready to learn as kindergartners and beyond.

Enrollment at the middle school and high school is up. There is a "bubble" of students, currently in 5th grade, moving up our ranks. This finds the middle school enrollment up by 6.6% this year, and the high school up by 1.5%.

I would anticipate that a five-year enrollment picture would look relatively flat for the district. This year the district's enrollment is down negligibly by .4%. As this bubble of students moves from the middle school to high school, the number of students at the secondary level will rise, but, as with this year, enrollment gains in the upper grades is offset by a dwindling enrollment at the elementary level.

There are some extremely positive trends in this year's October 1 numbers. At the middle school level, the net movement of students out of the middle school, as charter (Lighthouse) and choice (Nauset) options become available to families has decreased significantly -- from 44 students leaving the district last year to only 24 this year.

Since before regionalization at the high school level, there has been a net movement students away from their home district, heading to Nauset (choice) and Sturgis (charter). Monomoy's 2017 October 1 data indicates that the net movement of high school students out of the district has ended, and there is now a negligible net influx of high school students. While we still lose a few students to both Nauset and Sturgis, we are seeing even more students returning and selecting Monomoy as their best choice for high school (see Cohort Attrition PDF). Six high school aged students, who were enrolled in Monomoy last year, transferred out to Nauset Regional Schools over the summer, but this was offset by seven students transferring into Monomoy Regional from Nauset Regional School. Five of these former Nauset students are Harwich and Chatham residents returning to their home district. Monomoy Regional High School also saw a student entering her eighth grade year transferring from Lighthouse Charter to rejoin her peers at our high school because of the offerings available at Monomoy's high school.

Each year approximately 20 students from Monomoy elect for a vocational high school experience at Cape Tech, and again 21 former Monomoy students enrolled at Cape Tech as freshmen this year. Nonetheless, this loss of students to Cape Tech was fully offset by school choice students selecting our high school because of the strong educational program and welcoming culture that we have developed over the past four years.

There is also one other enrollment number which all need to keep an eye upon. Chatham Elementary has a one-year enrollment decline of 12% (compared to Harwich Elementary's one-year enrollment decline of only 3%). To maintain comparable class sizes between Chatham Elementary School and Harwich Elementary School, one kindergarten teacher was moved from Chatham Elementary to Harwich Elementary for this year. Even doing this, there continues to be a slight (1-2 student) imbalance in class sizes between our two elementary schools. If Chatham continues to have low elementary enrollment, Chatham Elementary may become "too small" as an elementary school, and Harwich Elementary may become potentially have "too large" of an

elementary enrollment. As it stands, there are not any more available classrooms in which to move another Chatham Elementary teacher to Harwich (in future years). Our regional agreement states that Chatham children will go to Chatham Elementary and Harwich children to Harwich Elementary -- this may constrain us providing the best elementary education experience for our children. I'll be talking with our families and my School Committee about this long-range dilemma at meetings during the month of October.

I appreciate the support that I have gotten from our town boards which has allowed us to literally build schools and educational programs that are increasingly finding Harwich and Chatham families seeing Monomoy as the best choice for their child.

I look forward to addressing your board.

Scott

Scott Carpenter  
Superintendent  
Monomoy Regional Schools  
425 Crowell Road, Chatham, MA 02633  
Office: 508-945-5130

On Wed, Sep 27, 2017 at 11:28 AM, Sandy Robinson <[srobinson@town.harwich.ma.us](mailto:srobinson@town.harwich.ma.us)> wrote:

Just a reminder! You are scheduled to attend the Selectmen's meeting on Monday, October 2 to meet with the Board and the Finance Committee to discuss enrollments by class and demographics including a 5- year projection. I will need to receive any materials that you will be presenting by tomorrow – Thursday, Sept 28 - so that I can get it in the Board's Agenda packet.

Thank you, Sandy

Monomoy Enrollment numbers  
Comparing FY17 and FY18 October 1 Numbers

FY17	Chatham	Harwich	Choice	TOTAL	Sections	Calculated Avg. Class Size	Note
<b>CHATHAM ELEMENTARY</b>							
Pre K	21	0	0	21			
K	35	8	4	47	3	15.7	half-time aide
Grade 1	29	5	8	42	3	14.0	
Grade 2	41	5	11	57	3	19.0	
Grade 3	27	13	9	49	3	16.3	
Grade 4	41	10	11	62	3	20.7	
Total	194	41	43	278		18.5	School avg.
<b>HARWICH ELEMENTARY</b>							
Pre K	0	49	0	49			
K	1	93	4	98	5	19.6	full-time aide
Grade 1	2	88	5	95	6	15.8	
Grade 2	1	92	11	104	6	17.3	
Grade 3	3	82	12	97	5	19.4	
Grade 4	0	112	13	125	6	20.8	
Total	7	516	45	568		20.3	School avg.
<b>MRMS</b>							
Grade 5	29	105	15	149	8	18.6	
Grade 6	28	94	20	142	8	17.8	
Grade 7	31	83	21	135	8	16.9	
Total	88	282	56	426		17.8	School avg.
<b>MRHS</b>							
Grade 8	22	88	20	130	8	16.3	Grade 8 classes
Grade 9	25	74	21	120		17.0	Grade 9-12 academic class average
Grade 10	26	69	16	111			
Grade 11	26	78	8	112			
Grade 12	29	74	19	122			
Sped Gr 15	6	7	2	15			
Total	134	390	86	610			
Itnerant Services	0	1	0	1			
Out of District	4	9	n/a	13			
Total	427	1239	230	1896			
Percentages	25.63%	74.37%					

FY18	Chatham	Harwich	Choice	TOTAL	School Enrollment Change from Prior Year	Sections	Calculated Avg. Class Size	Note
<b>CHATHAM ELEMENTARY</b>								
Pre K	22	0	0	22				
K	28	3	3	34		2	17.0	
Grade 1	34	6	5	45		3	15.0	
Grade 2	31	4	7	42		3	14.0	
Grade 3	39	6	12	57		3	19.0	
Grade 4	23	13	8	44		3	14.7	
Total	177	32	35	244	-34		17.4	School avg.
					-12.2%			
<b>HARWICH ELEMENTARY</b>								
Pre K	2	45	0	47				
K	0	102	9	111		6	18.5	
Grade 1	2	92	3	97		6	16.2	
Grade 2	3	90	9	102		6	17.0	
Grade 3	2	92	10	104		6	17.3	
Grade 4	3	77	11	91		5	18.2	
Total	12	498	42	552	-16		19.0	School avg.
					-2.8%			
<b>MRMS</b>								
Grade 5	43	121	25	189		9	21.0	
Grade 6	24	92	16	132		8	16.5	
Grade 7	28	82	23	133		8	16.6	
Total	95	295	64	454	28		18.2	School avg.
					6.6%			
<b>MRHS</b>								
Grade 8	32	83	27	142		8	17.8	Grade 8 classes
Grade 9	22	73	16	111			19.1	Grade 9-12 academic class average
Grade 10	24	78	20	122				
Grade 11	33	68	16	117				
Grade 12	26	75	16	117				
Sped Gr 15	6	4	0	10				
Total	143	381	95	619	9			
Itnerant Services	0	0	0	0	1.5%			
Out of District	3	14	2	19				
Total	430	1220	238	1888	-8			
Percentages	26.06%	73.94%			-0.4%			

Cohort Attrition (or gains) from FY17 to FY18				
	Chatham	Harwich	Choice	TOTAL
<b>CHATHAM ELEMENTARY</b>				
Pre K				
K				
Grade 1	-1	-2	1	-2
Grade 2	2	-1	-1	0
Grade 3	-2	1	1	0
Grade 4	-4	0	-1	-5
Total	-5	-2	0	-7
<b>HARWICH ELEMENTARY</b>				
Pre K				
K				
Grade 1	1	-1	-1	-1
Grade 2	1	2	4	7
Grade 3	1	0	-1	0
Grade 4	0	-5	-1	-6
Total	3	-4	1	0
<b>MRMS</b>				
Grade 5	2	-1	1	2
Grade 6	-5	-13	1	-17
Grade 7	0	-12	3	-9
Total	-3	-26	5	-24
<b>MRHS</b>				
Grade 8	1	0	6	7
Grade 9*	0	-15	-4	-19
Grade 10	-1	4	-1	2
Grade 11	7	-1	0	6
Grade 12	0	-3	8	5
Total	7	-15	9	1
Total	2	-47	15	-30

Note: Yellow indicates areas of concern.  
Orange fill indicates imbalance between buildings.  
Green indicates areas of major improvement.\*\*

\*\*As a comparison, cohort attrition going into FY17 found a net 44 middle school students leaving Monomoy and a net 39 high school students leaving Monomoy, largely for school choice (Nauset) and charter options. This loss of students as been cut almost in half (to only 24) at the middle school level, and has been fully negated at the high school level.

\*Gr 9 attrition to Cape Tech averages 20 students/yr. The Gr 9 Harwich attrition (FY17 to FY18) from MRHS can largely be attributed to choice out to Cape Tech.

As a comparison, cohort attrition from FY13 to FY14 before the merger of the middle schools and high schools found a net gain of 13 elementary students, a loss of 26 middle school students, and a loss of 24 high school students.

**2017 Cohort Attrition -- Transfers out of Monomoy**  
**Monomoy Regional High School**  
 Based on October 1, 2017 Enrollment

Grade (transitions)	Total
7→8	10
8→9	30
9→10	3
10→11	1
11→12	1
	<b>45</b>

School/Location	Total	Grade (number)
Nauset Middle School	4 ←	7→8
Friends Academy	1	7→8
Connections on-line learning	1	7→8
Dennis-Yarmouth	1	7→8
Out-of-district placement	1	7→8
CC Tech	21	9→10
Sturgis	6	9→10
Nauset	2 ←	9→10
Keystone	1	9→10
Moved off Cape	6	7→8 (2), 10→11 (3), 11→12 (1)
Bourne (for program with CCCC)	1	11→12
<b>Total</b>	<b>45</b>	

**Positive trends:** Since before regionalization, the net movement of high school students away from their home district has been a challenge for our two towns, as many families choose school choice and charter school options for their high school students. Monomoy's 2017 October 1 data indicates that the net movement of high school students out of the district has ended, and there is now a negligible net influx of high school students.

While six students enrolled in Monomoy in FY17 transferred out to Nauset Regional Schools (←), this was offset by seven students (←) transferring into Monomoy Regional from Nauset Regional School for the FY18 school year. Five of these former Nauset students transferring to Monomoy Regional High School were Harwich and Chatham resident students returning to their home district. Monomoy Regional High School also saw a student entering her 8<sup>th</sup> grade year transferring from Lighthouse Charter to rejoin her peers at our high school because of the offerings available at Monomoy's high school.

**Historical note:** The transition from Grade 8 to Grade 9 historically finds approximately 20 students from Monomoy electing for a vocational high school experience at Cape Cod Tech.

**2017 Cohort Attrition – Transfers into Monomoy  
Monomoy Regional High School  
Based on October 1, 2017 Enrollment**

Grade	Total
7→8	14
8→9	6
9→10	9
10→11	9
11→12	8
18-22 year old Program	2
	<b>48</b>

**Resident Towns of “Transfer In’s”**

Town of residence	Total # of Students
Harwich	18
Chatham	15
Yarmouth	5
Dennis	5
Barnstable	1
Orleans	1
Brewster	2
Eastham	1
<b>Total</b>	<b>48</b>

**Where are kids coming from?**

Sending School and/or Location	# of Students
St. Francis	4
Mattacheese Middle (D-Y)	3
D-Y Regional High School	3
Barnstable High School	2
Cape Tech	3
Nauset Regional Schools	7 ← (5 live in district, 2 live in Nauset district)
Connections on-line	4
Home schooling	1
Moved-in from out-of-state	8 Florida (2), Tennessee, Utah, Connecticut (2), Georgia, New Hampshire
Jamaica	5
St. Pius	1
Trinity Christian	1
Moved-in from out-of-state	1 (Shrewsbury)
Lighthouse Charter School	1 (Harwich resident 8 <sup>th</sup> grader)
Foreign exchange students	4
<b>Total</b>	<b>48</b>





## HARWICH ENERGY COMMITTEE

Members: Valerie Bell, Larry Cole (Chair), Charles Czech, Terry Hayden, Barry Worth

ANNUAL REPORT TO BOARD OF SELECTMEN --- OCTOBER 10, 2017

Last year the then Utility and Energy Conservation Committee's annual report to the Board occurred soon after the moderately successful Energy & Sustainability Fair was held at the Harwich Community Center. This year we have no such significant accomplishment to report. In fact, the Committee foundered from March to September of this year, for lack of a quorum at meetings. That was in part due to individual members' issues with health, family and work, and in part due to two vacancies on the Committee: one for a few weeks, and one for a year. Mr. Worth retired at the end of last year, was persuaded to rejoin the Committee, and was subsequently reappointed by the Board. The other vacancy lasted needlessly long because the chairman neglected to submit a written notification to the Board that the vacancy existed. That was done recently, and the Board has appointed a fifth member, Mr. Charles Czech.

We did meet often enough to draft and recommend to the Board changes in the committee charge and title, which the Board recently approved. We also have been exploring the State's Green Communities Program in order to understand what the Town would need to be in compliance with in order to qualify, and what the benefits would be to the Town were it to qualify. In that regard, we recently met with Mr. Seth Pickering, the Southeast Regional Coordinator for Green Communities in the Department of Energy Resources. Selectman Julie Kavanagh and Assistant Town Administrator Charleen Greenhalgh attended that meeting, and Ms. Kavanagh reported to the Board about it at the Board's next meeting, in anticipation of tonight's report.

Because becoming a Green Community involves considerable work and an aggressive time table to have articles ready for Town Meeting in May, the Committee needs a signal from the Board that it is in favor of our pursuing this, or not. In that connection, it should be understood that the benefits to the town go well beyond the satisfaction of doing right by the environment by reducing its carbon footprint and saving some energy expense. There is substantial State funding available for energy conservation projects that are not eligible to be paid for by the Cape Light Compact's or National Grid's Energy Efficiency Programs. In particular, some of the more expensive recommendations, such as boiler replacements, contained in Peregrine Energy Consultants' report to Sean Libby could be partly financed by grants from the State. Based on the prioritized recommendations made in that report, Mr. Libby is submitting to the Capital Outlay Committee a request for \$140,000 for energy management systems for four municipal buildings. Whether financial aid with those installations is available from the Cape Light Compact, which paid for the Peregrine survey of all the Town's facilities, or potentially from Green Communities, needs to be determined. Thus, if the Board supports pursuing Green Communities, that would be the Committee's main activity in the coming year.

Another Committee activity this past year was assisting some local energy utility customers with problems of service or understanding bills, which is an explicit responsibility contained in the Committee charge. We typically become involved when a citizen has called Town Hall with a problem and is referred to us for help in solving it.

One problem arose from a communications breakdown between National Grid and a seasonal home owner who arrived on a Friday night in March and found no heat in her home, because gas had been turned off while a new connection was made between the home and a new main in the street. There has to be somebody home when gas is turned back on, but the seasonal folks are not here during regular weekday business hours. There may have been no danger of pipes freezing, as National Grid asserts, but the house was cold. National Grid produced three forms of notifications that it purportedly uses, but neighbors on Green Needle claim not to have received the notices that went to customers. One National Grid message was addressed to Town officials, notifying them of which streets in town were scheduled for pipeline work when, but it is not clear to me what you are expected to do with it. Use the reverse 911 system to alert home owners and businesses?

More common is confusion about electric bills. Some of our older citizens have not kept up with the details of changes brought about by electric power deregulation, but customers should not have to become students of industry structure and a long itemized list of charges in order to understand if they are getting what they pay for. What confused two customers early this year was a notification from Eversource that, because they had switched from Consolidated Edison to NextEra for electricity supply, their future bills would reflect that change. Well, they had not switched suppliers. It was Cape Light Compact, which goes to market every six months for wholesale power, that had switched suppliers, commencing in January, but the wording on the notice from Eversource did not make that clear.

A couple of more important matters arose from helping these customers understand their bills. One was being charged for services not received; that is, the rate class was wrong. Periodically both the gas and the electric utilities include inserts with their bills that explain what rate classes are, and urge customers to review them to make sure they are being billed appropriately. For example, most local electric customers are classified Residential, Non-heating, meaning they are not heating their homes with electricity, and if they do not have an electric hot water tank, they should not be paying for a separate additional water meter, as one customer was.

The other most common area of confusion has to do with competitive suppliers. Years ago, when deregulation happened, all residential and small business customers were automatically switched to Cape Light Compact, from which they could, and still can, always opt out and become an Eversource Standard Offer Service customer, or a customer of some other retail power supplier. There is no charge for switching from the Compact to a competitor, but customers need to be aware of the terms and conditions in the contracts they sign with other suppliers, particularly as they pertain to terminating the contract early, to take advantage of lower rates elsewhere, or not renewing when the contract expires. Typically there are charges for doing so.

**TOWN OF HARWICH, MASSACHUSETTS**  
**RECOMMENDATIONS AND SUGGESTIONS FOR IMPROVEMENT IN**  
**ACCOUNTING PROCEDURES AND INTERNAL CONTROL**  
**JUNE 30, 2016**

To the Honorable Board of Selectmen  
Town of Harwich, Massachusetts

In planning and performing our audit of the financial statements of the Town of Harwich, Massachusetts (the Town) as of and for the year ended June 30, 2016, in accordance with auditing standards generally accepted in the United States of America, we considered the Town's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

We are also submitting for your consideration comments and recommendations which are not considered to be material weaknesses or significant deficiencies, but are intended to improve operations and internal accounting control.

The comments and recommendations presented herewith in are intended to improve the system of internal accounting control or result in other operating efficiencies. The factual accuracy of our comments has been discussed with management to obtain their concurrence before the development of our recommendations for improvement. Matters commented on represent findings during the audit and have not been reviewed subsequent to DATE XX, 2017.

A management letter is critical by nature because its purpose is to identify areas where improvements can be made. Accordingly, we have not commented on many positive attributes of the Town's financial management systems. It is also important to understand that it is generally not practical to achieve ideal internal control in the complex governmental accounting environment, and we recognize that practical considerations are an important factor in changing administrative practices and internal control. The Town should weigh the advantages and disadvantages of the suggested changes over the present practices and procedures.

We would like to acknowledge the courtesy and assistance extended to us by Town personnel during our audit.

This communication is intended solely for the information and use of management, the Board of Selectmen, others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Norwell, Massachusetts  
DATE XX, 2017

## **STATUS OF PRIOR YEAR COMMENTS AND SUGGESTIONS**

As part of our audit of the Town's financial statements for the year ended June 30, 2015, we had several comments and suggestions, issued in our report dated June 6, 2016. Due to the timing of the report, certain issues may not have been able to be fully addressed for the year ended June 30, 2016. The status of prior year comments that are still applicable have been listed below.

### **Enhance Certain Aspects of the Town's financial reporting process**

#### **Enhance the cash reconciliation process**

In the prior year, we had recommended that the Town improve the process surrounding account reconciliations and reconciling unknown variances. For 2016, variances still exist in the reconciliation between the bank balances and book balances. The client has informed us that a cashbook module for the computerized financial reporting system (MUNIS) has been ordered and is in the process of being implemented for FY2017 for enhancing the cash processing, accounting, and reconciliation process.

#### **Improve the reporting within the General Ledger, including maintenance of financial activity (including receivables and articles) within proper funds**

In the prior year, we had recommended the Town evaluate the accounting of certain activity and balances, such as Chapter 90 receivables, Community Preservation activity, and the Massachusetts Clean Water Trust loan balance. While improvements have been made, additional improvements could also be made. We recommend that the Town evaluate the existence of receivables and related activity and account for these balances in the general ledger. The new Town Accountant is working to address the general ledger and related matters in the current fiscal year.

These issues have again been identified as material weaknesses in our Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

#### **Town Budget**

During our prior year audit, we reviewed the approved Town budget to the appropriation ledger and noted that the Appendix B of the Town Warrant did not properly foot. No issues were noted in the current year audit.

### **Allocation of Other Post-Employment Benefits (OPEB) and Pension to Enterprise Funds**

With the implementation of GASB #68 and the net pension obligation, a significant liability exists with respect to the classification and responsibility of these obligations. Enterprise funds (business-type activities), which are considered to be self-sustaining, are responsible for the obligations of the employees. The net pension liability and Other Post-Employment Benefits (OPEB) were classified as liabilities of the governmental activities; no allocation of the liabilities was made to the business-type activities.

We continue to recommend the Town determine the liabilities that are allocable to the enterprise funds, and calculate the respective pension and OPEB liabilities of the Governmental and Business-type Activities.

#### **Other Matters**

In connection with our prior year audit, we have the following additional comments:

- **Capital Assets** - Additions to capital assets included payments for leased vehicles that were capitalized in the prior year. We continue to recommend that the Town periodically review and reconcile capital assets.

- **Inventory** - A count and reconciliation of Golf Inventory was not performed in the prior year. Management has provided the Golf Inventory listing at year end.
- **Performance Bonds** – During the prior year, performance bonds were included as part of the general fund. Massachusetts General Law Chapter 41 Section 81U and Governmental Accounting Standards states that performance bonds are an agency fund as the money held is refundable to the contractor after completion of the project. We continue to recommend that the Town create an agency fund for these performance bonds and account for all activity in that fund.
- **WRRRP** - During the prior year, the Town commingled the Winter Rapid Recovery Road Program (WRRRP) revenues and expenses within the Chapter 90 fund activity. We continue to recommend that the Town account for these funds separately as monies received under the WRRRP are to be accounted for separately.

### **CURRENT YEAR COMMENTS AND SUGGESTIONS**

As a result of our current year audit, we make the following comments and suggestions:

#### **Enhancement of internal controls over financial reporting**

During our audit, we noted that subsequent to year end the Town received a reimbursement check due to an overpayment in the amount of \$325,000. Due to a lack of internal controls on the Muddy Creek project, the contractor was overpaid. It is important to reconcile total expenditures to the total contract and/or budget to ensure the Town doesn't overpay for services.

#### **Internal controls, policies and procedures and risk assessments**

We recommend the Town implement a formalized "risk assessment" program, which addresses financial, operational and compliance issues in a proactive manner. Implementation of such a program may take different approaches. Generally, such a program may be administered by a committee, or is incorporated into an existing committee's functions (i.e. finance), where evaluation of risks (including, but not limited to misappropriation of assets, reporting, fraud, etc.) are considered. Assessments may be conducted by questionnaires to personnel and officials, as well as "brainstorming sessions" to evaluate and document the review of established policies and procedures. Additionally, it is equally important to evaluate the potential for additional internal audit function to departmental detail and review with overall financial analysis. Formalized risk also ensure that the level of the "risk of loss" has been documented and accepted by management and those charged with governance. See also our informational comments below. As a result of our current year audit, we have the following comments and recommendations to be considered in the Town's consideration of established internal controls and evaluation of risks affecting the Town.

- Consider establishing additional approval for certain journal entry requests which reclassify or adjust posting which have already been processed through the warrant process. In our opinion, this enhances the financial reporting structure by increasing accountability and transparency. Personnel should ensure appropriate supporting documentation supports all such requests.
- Consider requiring formal documentation/attestation of receipt and reconciliation of account balances maintained and communicated by the Town Accountant to departments. This enhances the overall financial reporting process of the Town and assists in ensuring department heads and officials' internal policies and procedures provide the appropriate "checks and balances" have been implemented and performed before information (vouchers, payroll, receipts) are processed through the Town's financial reporting processes.

**Informational:**

**Other Post-Employment Benefits (OPEB)**

Government Accounting Standards Board, Statement #74, Financial reporting for Postemployment Benefit Plans Other Than Pension Plans, is required to be implemented in fiscal year 2017. This new standard replaces existing accounting for defined benefit OPEB plans that are administered through trusts or equivalent arrangements. Additionally, this standard increases disclosures related thereto and requires reporting as supplementary information a 10 year schedule detailing changes in the liability, among other disclosures.

Additionally, Government Accounting Standards Board, Statement #75, Financial Reporting for Postemployment Benefit Plans Other Than Pensions, is required to be implemented in fiscal year 2018. This new standard replaces the current reporting requirements of GASB Statement #45. Most notably, the new standard will require the unfunded liability to be reported on the Town's Statement of Net Position (Balance Sheet) rather than only a note disclosure. This is similar to the net pension liability which was implemented in the current year with GASB Statement #68. This will have a material effect upon the financial reporting (net position) of the Town.

**Tax Abatement Disclosures**

Government Accounting Standards Board, Statement #77, Tax Abatement Disclosures, is required to be implemented in fiscal year 2017. This new standard requires state and local governments to report additional disclosures related to tax abatement programs with individuals or entities. For the purpose of the Statement, a tax abatement is defined as: a reduction in tax revenues that result from an agreement of one or more governments and an individual or entity in which (a) one or more governments promise to forgo tax revenues to which they are otherwise entitled and (b) the individual or entity promises to take specific action after the agreement has been entered into that contributes to economic development or otherwise benefits the government or the citizens thereof.

**Leases**

Government Accounting Standards Board, Statement #87, Leases, is required to be implemented in fiscal year 2020. This new standard defines a lease as a contract that conveys control over the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction. The Statement establishes a single model for leases accounting (eliminating distinctions between operating and capital leases) on the principle that leases are financings of the right to use an underlying asset. Accordingly, the Town (lessee) is required to recognize a lease liability and an intangible right-to-use lease asset.

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## Sandy Robinson

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**From:** Charleen Greenhalgh  
**Sent:** Monday, September 25, 2017 12:16 PM  
**To:** Ann Steidel; Sandy Robinson  
**Subject:** FW: Habitat, 93-97 Main Street - final approval  
**Attachments:** DHCD OWNERSHIP RA -93-93 HARWI H REDLINED DRAFT.docx; Oak\_St\_Harwich\_Reg Agmt\_Bk 28296 Pg 236.pdf; 93-97\_Main\_St\_Harwich\_ZBA\_DECISION\_clerk\_signed.pdf; FINAL SITE PLANS FOR DECISION AUG 2017.pdf

For the Oct. 2<sup>nd</sup> meeting.

Charleen L. Greenhalgh  
Assistant Town Administrator  
Town of Harwich  
732 Main Street  
Harwich, MA 02645  
508-430-7513  
508-432-5039 (Fax)  
cgreenhalgh@town.harwich.ma.us

**From:** Leedara Zola [mailto:lzola@habitatcapecod.org]  
**Sent:** Monday, September 25, 2017 11:14 AM  
**To:** 'michael.d.macaskill@gmail.com' <michael.d.macaskill@gmail.com>; Christopher Clark <cclark@town.harwich.ma.us>  
**Cc:** Vicki Goldsmith <vg@habitatcapecod.org>; Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>; Alyxandra K. Sabatino <asabatino@town.harwich.ma.us>  
**Subject:** RE: Habitat, 93-97 Main Street - final approval

Hi Michael and Chris –

Attached is a redlined draft of the DHCD Regulatory Agreement (we will present final for Board of Selectmen signature) as well as a copy of the Comprehensive Permit Decision.

The Regulatory Agreement is a stage that I typically think of as a celebratory moment, as it is when the project is fully permitted, and it means the community will be building a new affordable housing neighborhood!

The Regulatory Agreement is provided by DHCD. Our changes are simply adding in project specifics (see redlines). This is the same process we went through with Oak Street (Oak Street Reg Agreement also attached, for reference).

In terms of project summary:

The project was originally proposed as a subdivision of the property into 8 lots and a cul-de-sac; this has remained the same. The “rear” six lots were to be for Habitat for Humanity, single family affordable homes; this has remained the same. Home siting and lot lines changed very slightly during the Zoning Board process as we worked on engineering details. See attached final site plan. We also added in details on landscaping. We feel this is the core of the project, and



it is as we presented when we brought our Local Initiative Program (LIP) application to the Selectmen for approval, and as we presented when we sought funding approval from the Trust.

During the ZBA process there was discussion of conveyance structure. Habitat and HECH ended up with a conveyance structured as we had originally envisioned (Habitat taking title to the whole property, then conveying back to HECH the front two lots). There was also discussion of number of units (there had originally been some confusion between number of structures and number of units). There are six affordable homes (the Habitat homes) and six units that are the "market rate units" (part of the Comprehensive Permit, but not deed restricted affordable). The existing structure on 93 Main Street has two units, the Judah Chase Home on 97 Main Street contains three units, and the Barn will contain one unit. Also as part of the promises during both grant funding and the Comprehensive Permit process, there will be a preservation restriction for the exterior of the Judah Chase Home and the barn.

For full details on the project as permitted, please see the attached Comprehensive Permit Decision.

We are eager to proceed through the Regulatory Agreement process so that Habitat can take title to the property; when you know which Board of Selectmen agenda works for this item, please connect back with us (and make sure to include Vicki, [vg@habitatcapecod.org](mailto:vg@habitatcapecod.org) , as she will be making the Board presentation). Thank you.

|||||

**Leedara Zola**  
Land Acquisition and Permitting  
Habitat for Humanity of Cape Cod  
[lzola@habitatcapecod.org](mailto:lzola@habitatcapecod.org)  
cell: 508-280-6144

*Building Homes, Hope, Lives and Community*

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**From:** Leedara Zola  
**Sent:** Friday, September 22, 2017 9:24 AM  
**To:** 'michael.d.macaskill@gmail.com'; [cclark@town.harwich.ma.us](mailto:cclark@town.harwich.ma.us)  
**Cc:** Vicki Goldsmith; [cgreenhalgh@town.harwich.ma.us](mailto:cgreenhalgh@town.harwich.ma.us); 'asabatino@town.harwich.ma.us'  
**Subject:** Habitat, 93-97 Main Street - final approval

Hi Michael and Chris – Habitat has our Comprehensive Permit for the 93-97 Main Street West Harwich Community Housing project, the Decision was filed with the Town Clerk, and now the appeal period has run and no appeal, so we are full speed ahead.

The next step is what is called "Final Approval" where Habitat as applicant comes back to the subsidizing agency (in this case, as a Local Initiative Program (LIP) project, Subsidizing Agency is both the Town and the Department of Housing and Community Development (DHCD). We review any changes in the project since initial submission, and set the process in motion for review/signing of the DHCD Regulatory Agreement (the standard document between developer, town and state that ensures the project will be developed as an affordable housing development in accordance with the state program).

I can get you a red-lined draft of the Regulatory Agreement by Monday morning (it will be virtually the same document the Town of Harwich signed for Oak Street ). And a project summary (as well as a copy of the ZBA decision, and other pertinent documents)

Would it be possible to get on the agenda for the October 2 Board of Selectmen meeting ?

Also, some personal news is that I have taken another job and will be leaving Habitat. My last day at Habitat is September 29. I've been truly proud to work with Habitat over these last almost six years, and so amazed at what we all together have accomplished. The habitat model really has an element of magic in it. Going forward, Vicki Goldsmith, Habitat's Executive Director, will be the lead contact for this project – [vg@habitatcapecod.org](mailto:vg@habitatcapecod.org) and 508-362-3559 x 15

|||||

**Leedara Zola**  
Land Acquisition and Permitting  
Habitat for Humanity of Cape Cod  
[lzola@habitatcapecod.org](mailto:lzola@habitatcapecod.org)  
cell: 508-280-6144

*Building Homes, Hope, Lives and Community*

LOCAL INITIATIVE PROGRAM  
REGULATORY AGREEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS  
FOR  
OWNERSHIP PROJECT

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_ by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), pursuant to G.L. c. 23B §1 as amended by Chapter 19 of the Acts of 2007, the City/Town of \_\_\_\_\_ Harwich ("the Municipality"), and \_\_\_\_\_, Habitat for Humanity of Cape Cod, Inc., a Massachusetts corporation/~~limited partnership/limited liability company~~, having an address at \_\_\_\_\_, 411 Main Street, Route 6a, Suite 6, Yarmouthport, MA 02675, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Project Sponsor intends to construct a housing development known as \_\_\_\_\_ 93 & 97 Main Street/Route 28 Community Housing at a \_\_\_\_\_ 5.9-acre site on \_\_\_\_\_ ~~Street/Road~~ 93 & 97 Main Street/Route 28536 River Road in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number of \_\_\_\_\_ twelve (12) condominium units/detached dwellings (the "Units") and \_\_\_\_\_ six (6) of the Units will be sold at prices specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the regional median household income (the "Low and Moderate Income Units");

WHEREAS, ~~[For comprehensive permit projects add:—~~ upon application of the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Project Sponsor, DHCD made a determination of project eligibility pursuant to 760 CMR 56.04 and the Project Sponsor has received a comprehensive permit from the Zoning Board of Appeals of the Municipality, which permit is recorded/filed at the \_\_\_\_\_ Barnstable County Registry of Deeds/Registry District of the Land Court (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_ ~~/as Document No. \_\_\_\_\_~~ (the "Comprehensive Permit") ~~—[For Local Action Units add: the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Project Sponsor have made application to DHCD to certify that the units in the Project are Local Action Units (as that term is defined in the Comprehensive Permit Guidelines (the "Guidelines")) published by DHCD with the LIP Program; and~~

WHEREAS, in partial consideration of the execution of this Agreement, ~~{for comprehensive permit projects add:}~~ DHCD is issuing its final approval of the Project within the LIP Program pursuant to Section 19 of this Agreement, and has given and will give technical and other assistance to the Project] ~~{for Local Action Units add: DHCD has given and will give technical and other assistance to the Project};~~

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Project Sponsor hereby agree and covenant as follows:

1. The Project Sponsor agrees to construct the Project in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications") ~~{for comprehensive permit projects add:}~~ and in accordance with all terms and conditions of the Comprehensive Permit]. In addition, all Low and Moderate Income Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in the *Comprehensive Permit Guidelines* (the "Guidelines")) published by DHCD, and must contain complete living facilities including but not limited to a stove, refrigerator, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications.

\_\_\_\_\_ of the Low and Moderate Income Units shall be one bedroom units;  
two (2) of the Low and Moderate Income Units shall be two bedroom units;  
four (4) of the Low and Moderate Income Units shall be three bedroom units; and,  
\_\_\_\_\_ of the Low and Moderate Income Units shall be four bedroom units.

All Low and Moderate Income Units to be occupied by families must contain two or more bedrooms. Low and Moderate Income Units must have the following minimum areas:

one bedroom units	-	700 square feet
two bedroom units	-	900 square feet
three bedroom units	-	1200 square feet
four bedroom units	-	1400 square feet

The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. ~~{For comprehensive permit projects add:}~~ Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit,] the Project must also comply with all applicable local codes, ordinances and by-laws.

Each Low and Moderate Income Unit will be sold for no more than the price set forth in Exhibit B attached hereto and made a part hereof to an Eligible Purchaser. An Eligible

Purchaser is a Family (i) whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U. S. Department of Housing and Urban Development and (ii) whose assets do not exceed the limits specified in the Guidelines. A “Family” shall mean two or more persons who will live regularly in the Low or Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The “Area” is defined as the \_\_\_\_\_ Barnstable MSA/HMFA/County.

2. Upon the occurrence of one of the events described in 760 CMR 56.03(2), the Project will be included in the Subsidized Housing Inventory as that term is described in 760 CMR 56.01. Only Low and Moderate Income Units will be counted as SHI Eligible Housing as that term is described in 760 CMR 56.01 for the purposes of the Act.

3. (a) At the time of sale of each Low and Moderate Income Unit by the Project Sponsor, the Project Sponsor shall execute and shall as a condition of the sale cause the purchaser of the Low and Moderate Income Unit to execute an Affordable Housing Deed Rider in the form of Exhibit C attached hereto and made a part hereof (the “Deed Rider”). Such Deed Rider shall be attached to and made a part of the deed from the Project Sponsor to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low and Moderate Income Unit to offer the Low and Moderate Income Unit to the Municipality and to DHCD at a discounted purchase price more particularly described therein. The Municipality and DHCD shall have the option upon terms more particularly described in the Deed Rider to either purchase the Low and Moderate Income Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low and Moderate Income Unit which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Low and Moderate Income unit will be preserved each time that subsequent resales of the Low and Moderate Income unit occur. (The various requirements and restrictions regarding resale of a Low and Moderate Income Unit contained in the Deed Rider are hereinafter referred to as the (“Resale Restrictions”). If upon the initial resale or any subsequent resale of a Low and Moderate Income Unit, the Municipality and DHCD are unable to find an Eligible Purchaser for the Low and Moderate Income Unit, and the Municipality and DHCD each elect not to exercise its right to purchase the Low and Moderate Income Unit, then the then current owner of the Low and Moderate Income Unit shall have the right to sell the Low and Moderate Income Unit to any person, regardless of his income (an “Ineligible Purchaser”) at the Maximum Resale Price and subject to all rights and restrictions contained in the Deed Rider, and provided that the Unit is conveyed subject to a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low and Moderate Income Unit which will be attached and made part of the deed from the Unit Purchaser to the Ineligible Purchaser.

(b) For each sale of a Low and Moderate Income Unit, DHCD must approve the terms of the Eligible Purchaser’s mortgage financing as evidenced by DHCD’s issuance of the Resale Price Certificate described in the Deed Rider.

(c) The Municipality agrees that in the event that it purchases a Low and Moderate Income Unit pursuant to its right to do so contained in the Deed Rider then in effect

with respect to such Low and Moderate Income Unit, that the Municipality shall within six (6) months of its acceptance of a deed of such Low and Moderate Income Unit, either (i) sell the Low and Moderate Income Unit to an Eligible Purchaser at the same price for which it purchased the Low and Moderate Income Unit plus any expenses incurred by the Municipality during its period of ownership, such expenses to be approved by DHCD, subject to a Deed Rider satisfactory in form and substance to DHCD and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to DHCD, the method for selecting such Eligible Purchaser to be approved by DHCD or (ii) rent the Low and Moderate Income Unit to a person who meets the income guidelines of the LIP Program, upon terms and conditions satisfactory to DHCD and otherwise in conformity with the requirements of the LIP Program. If the Municipality fails to sell or rent the Low and Moderate income unit as provided herein within said six (6) month period, or if at any time after the initial rental of the Low and Moderate Income Unit by the Municipality as provided herein the Low and Moderate Income Unit becomes vacant and remains vacant for more than ninety (90) days, then such Low and Moderate Income Unit shall cease to be counted as SHI Eligible Housing, and shall no longer be included in the Subsidized Housing Inventory.

(d) Each Low and Moderate Income Unit will remain SHI Eligible Housing and continue to be included in the Subsidized Housing Inventory for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Project Sponsor is in default hereunder; (2) the Project and Low and Moderate Income Unit each continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) either (i) a Deed Rider binding the then current owner of the Low and Moderate Income Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Low and Moderate Income Unit is either in compliance with the terms of the Deed Rider, or the Municipality is in the process of taking such steps as may be required by DHCD to enforce the then current owner's compliance with the terms of the Deed Rider or (ii) the Low and Moderate Income Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of the last preceding paragraph, or (iii) the Low and Moderate Income Unit is owned by DHCD.

4. ~~[For comprehensive permit projects where the Project Sponsor is a for-profit entity add:~~

~~(a) Effective August 7, 2007, DHCD has adopted the policies, procedures, and forms for determining limited dividend compliance set forth in the MassHousing document entitled "Preparation of Cost Certification upon Completion of Homeownership 40B Project for Which MassHousing Serves as Project Administrator: Guidance to Developers and Municipalities" (the "MassHousing Guidance"). The MassHousing Guidance shall govern the cost certifications obligations of the Project Sponsor under this Agreement.~~

~~(b) The Project Sponsor shall be a limited dividend organization as defined by 760 CMR 56.01. Project Sponsor agrees that the aggregate profit from the Project which shall be payable to Project Sponsor or to the partners, shareholders or other owners of Project Sponsor or the Project shall not exceed twenty percent (20%) of total development costs of the Project, which development costs have been approved by DHCD (the "Allowable Profit").]~~

~~(c) Within one hundred eighty (180) days after Substantial Completion of the Project (as that term is defined in the MassHousing Guidance) or, if later, within sixty (60) days of the date on which all units in the Project are sold, the Project Sponsor shall deliver to the Municipality and to DHCD an itemized statement of total development costs together with a statement of gross income from the Project received by the Project Sponsor to date in form satisfactory to DHCD (the “Certified Cost and Income Statement”) prepared and certified by a certified public accountant satisfactory to DHCD. DHCD requires the prequalification of the certified public accountant hired by the Project Sponsor as more particularly set forth in Article IV (D) of the Guidelines. If all units at the Project have not been sold within twenty-four (24) months of Substantial Completion, a sale price for the remaining unsold units shall be imputed in an amount equal to the average of the last three (3) arms-length sales of comparable units, and a final Certified Cost and Income Statement shall be required within sixty (60) days thereafter. Prior to DHCD’s acceptance of the Certified Cost and Income Statement and for a period of 30 days after DHCD provides the Municipality with its determination of compliance with the limited dividend requirement, the Municipality shall have the option of having the Certified Cost and Income Statement evaluated for accuracy (e.g., absence of material errors) applying the same standards as DHCD by an independent auditor selected by the Municipality. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter make a final determination of the Project Sponsor’s compliance with the limited dividend requirement.~~

~~(d) All profits from the Project in excess of the Allowable Profit (the “Excess Profit”) shall be paid by the Project Sponsor to the Municipality. The Municipality agrees that upon the receipt by the Municipality of any Excess Profit, the Municipality shall deposit any and all such Excess Profit into an affordable housing fund, if one exists in the Municipality, and otherwise into a fund established pursuant to G.L. c.44 §53A to be used by the Municipality for the purpose of reducing the cost of Low and Moderate Income Units to Eligible purchasers upon resale or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for persons and families of low and moderate income elsewhere in the Municipality. The expenditure of funds from the Affordable Housing Fund shall be reported on an annual basis to DHCD. For so long as the Project Sponsor complies with the requirements of this Section 4, the Project Sponsor shall be deemed to be a limited dividend organization within the meaning of the Act.]~~

**[For comprehensive permit projects where the Project Sponsor is a non-profit entity add:]** Within one hundred eighty (180) days after Substantial Completion of the Project or, if later, within sixty (60) days of the date on which all the units in the Project are sold, the Project Sponsor shall complete and deliver to the Municipality and to DHCD the section of the Local Initiative Program Application for Comprehensive Permit Projects entitled “Project Feasibility – Ownership Projects” (ownership pro forma, profit analysis, and cost analysis), documenting the actual development costs of and income from the Project, prepared and signed by the Chief Financial Officer of the Project Sponsor. Substantial Completion shall be deemed to have occurred when construction of the Project is sufficiently complete so that the Unit may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Low and Moderate Income Units.]

5. (a) Prior to marketing or otherwise making available for sale any of the Units, the Project Sponsor must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the buyer selection process for the Low and Moderate Income Units and must set forth a plan for affirmative fair marketing of Low and Moderate Income Units and effective outreach to protected groups underrepresented in the municipality, including provisions for a lottery, consistent with the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines, provided that any local preference shall apply only to the initial unit sales by the Project Sponsor. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the buyer selection and local preference (if any) aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of *NAACP, Boston Chapter v. Kemp*. **If the Project is located in the Boston-Cambridge-Quincy, MA-NH MSA, the Project Sponsor must list all Low and Moderate Income Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center); other requirements for listing of units are specified in the Guidelines.** All costs of carrying out the Marketing Plan shall be paid by the Project Sponsor.

(b) The Project Sponsor may use in-house staff to draft and/or implement the Marketing Plan, provided that such staff meets the qualifications described in the Guidelines. The Project Sponsor may contract for such services provided that any such contractor must be experienced and qualified under the standards set forth in the Guidelines. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for at least five years following the sale of the last Low and Moderate Income Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Project Sponsor, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

6. Neither the Project Sponsor nor the Municipality shall discriminate on the basis of race, religion, color, sex, sexual orientation, familial status, age, handicap, marital status,



national origin, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of buyers for the Units; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

7. (a) The Project Sponsor agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

(b) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be occupied by a person who was an Eligible Purchaser at the time of purchase; that any Low and Moderate Income Units which have been resold during the year have been resold in compliance with all of the terms and provisions of the Deed Rider then in effect with respect to each such Low and Moderate Income Unit, and in compliance with the Regulations and Guidelines and this Agreement; and that the Project and the Low and Moderate Income Units have otherwise been maintained in a manner consistent with the Regulations and Guidelines, this Agreement, and the Deed Rider then in effect with respect to each Low and Moderate Income Unit.

8. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded/filed with the Registry, and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

9. The Project Sponsor hereby represents, covenants and warrants as follows:

(a) The Project Sponsor (i) is a \_\_\_\_\_, non-profit corporation, duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Project Sponsor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Project Sponsor is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Project Sponsor will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear

of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred in paragraph 19, below).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Sponsor, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially or adversely affect its financial condition.

10. Except for sales of Units to Low or Moderate Income Tenants as permitted by the terms of this Agreement, the Project Sponsor will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a "Sale") or (except as permitted under Section (d) below) mortgage the Property without the prior written consent of DHCD and the Municipality.

(a) A request for consent to a Sale shall include:

- A signed agreement stating that the transferee will assume in full the Project Sponsor's obligations and duties under this Agreement, together with a certification by the attorney or title company that it will be held in escrow and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the Sale;
- The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth owned by such entities;
- A certification from the Municipality that the Project is in compliance with the affordability requirements of this Agreement.

(b) Consent to the proposed Sale shall be deemed to be given unless DHCD or the Municipality notifies the Project Sponsor within thirty (days) after receipt of the request that either

- The package requesting consent is incomplete, or
- The proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has a documented history of serious or repeated failures to abide by agreements of affordable housing funding or regulatory agencies of the Commonwealth or the federal government or is currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, or
- The Project is not being operated in compliance with the affordability requirements of this Agreement at the time of the proposed Sale.

(c) The Project Sponsor shall provide DHCD and the Municipality with thirty (30) day's prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager, or agent of the Project Sponsor; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in the Project Sponsor (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).
- (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of the Project Sponsor's interest in the Project or any party of the Project.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Project Sponsor of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender made at no greater than the prevailing rate of interest or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however to the provisions of Section 14 hereof.

The Project Sponsor hereby agrees that it shall provide copies of any and all written notices received by the Project Sponsor from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

11. Until such time as decisions regarding repair of damage due to fire or other casualty, or restoration after taking by eminent domain, shall be made by a condominium association or trust not controlled by the Project Sponsor, (or if the Project consists of detached dwellings, by homebuyers) Project Sponsor agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement, subject to the approval of the Project's lenders, which lenders have been approved by DHCD and the Municipality.

12. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

13. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

DHCD: Department of Housing and Community Development  
Attention: Local Initiative Program Director  
100 Cambridge St., Suite 300  
Boston, MA 02114

Municipality: Town of Harwich  
732 Main Street  
Harwich, MA 02645

Project Sponsor: Habitat for Humanity of Cape Cod, Inc.  
411 Main Street, Route 6a, Suite 6  
Yarmouthport, MA 02675

14. (a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement shall bind, and the benefits shall inure to, respectively, the Project Sponsor and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement shall be perpetual, provided however, that this Agreement shall terminate if (a) at any time hereafter there is no Low and Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions, and there is no Low and Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 4 hereof, ~~For comprehensive permit projects add:~~ or (b) if a Comprehensive Permit is not granted to the Project Sponsor for the Project by either the Municipality's Board of Appeals (as that term is defined in the Regulations) or by the Housing Appeals Committee (as that term is used in the Act) within a period of eighteen months from the date of execution of this Agreement, or (c) if at any time the Comprehensive Permit is revoked and all applicable appeal periods with respect to such revocation have expired. The rights and restrictions contained in this Agreement shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Project.

(b) The Project Sponsor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of DHCD and its successors and assigns for the term of the Agreement. Project Sponsor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Low and Moderate Income Units at the Project pursuant to the requirements of this Agreement shall also constitute an affordable housing restriction as that term is defined in G.L. c. 184, §31 and as that term is used in G.L. c. 184, §§26, 31, 32, and 33. Such Resale Restrictions shall be for the benefit of both DHCD and the Municipality and both DHCD and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. To the extent that the Municipality is the holder of the Resale Restrictions to be contained in each of the Deed Riders, the Director of DHCD by the execution of this Agreement hereby approves such Resale Restrictions in each of the Deed Riders for the Low and Moderate Income Units of the Project as required by the provisions of G.L. c. 184, §32.

15. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

16. (a) The Project Sponsor and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Project Sponsor or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality hereunder without receiving a Default Notice from Project Sponsor or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 16(a), then the Low and Moderate Income Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed SHI Eligible Housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory. The foregoing sentence shall not apply to Low and Moderate Income Units that have been conveyed in compliance and remain in compliance with Section 3 of this Agreement.

17. The Project Sponsor represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent to Regulatory Agreement attached hereto and made a part hereof.

18. DHCD may delegate to the Municipality any of its oversight and enforcement responsibilities under this Agreement, with the agreement of the Municipality, by providing written notice of such delegation to the Project Sponsor and the Municipality.

**~~[For comprehensive permit projects add:~~**

19. (a) When executed by DHCD, this Agreement shall constitute Final Approval of the Project as described in 760 CMR 56.04(7). DHCD hereby reaffirms and incorporates by reference in this Agreement each of the findings with respect to project eligibility required by 760 CMR 56.04(1) made in the Site Eligibility Letter for the Project dated ~~\_\_\_\_\_~~ ~~May 23, 2016.~~ **~~[If the Project Sponsor is a for-profit entity add: The Project Sponsor hereby explicitly acknowledges its obligation to comply with the cost examination requirements defined in 760 CMR 56.04(8).]~~**

**~~[If the Project Sponsor is a for-profit entity add:~~**

~~(b) — The Project Sponsor has provided financial surety in a form and in the amount required by the Guidelines to ensure completion of the cost examination to the satisfaction of the DHCD and the distribution of excess funds as required at 760 CMR 56.04(8)(c). DHCD will provide a copy of this Agreement to the Municipality's Board of Appeals as required by 760 CMR 56.04(7).]~~

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

Executed as a sealed instrument as of the date first above written.

PROJECT SPONSOR  
HABITAT FOR HUMANITY OF CAPE COD, INC.

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
its Treasurer

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

DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT

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

MUNICIPALITY

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

- Attachments: Exhibit A - Legal Property Description
- Exhibit B - Prices & Location of Low & Moderate Income Units
- Exhibit C - Form of Deed Rider

Consent forms signed by any and all mortgagees whose mortgages are recorded prior to this Regulatory Agreement must be attached to this Regulatory Agreement.

© DHCD When used in the Local Initiative Program, this form may not be modified without the written approval of the Department of Housing and Community Development.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as President of Habitat for Humanity of Cape Cod, Inc., and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as Treasurer of Habitat for Humanity of Cape Cod, Inc., and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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



COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

**CONSENT TO REGULATORY AGREEMENT**

The Undersigned being the holder of a mortgage on the above described Project recorded with the Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ hereby consents to the execution and recording of this Agreement and agrees that in the event of any foreclosure or exercise of remedies under the mortgage it shall comply with the terms and conditions hereof.

LENDER:

\_\_\_\_\_

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

Its:

(If the Project has more than one mortgagee, add additional consent forms. Execution of the consent form by a mortgagee is only necessary if the mortgage has been recorded prior to the Regulatory Agreement.)

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF \_\_\_\_\_, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of \_\_\_\_\_ Bank, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_

Notary Public

Print Name:

My Commission Expires:

**EXHIBIT A**

Re: 93 & 97 Main Street/Route 28 Community Housing  
(Project name)  
Harwich  
(City/Town)  
Habitat for Humanity of Cape Cod, Inc.  
(Developer)

Property Description

**EXHIBIT B**

Re: 93 & 97 Main Street/Route 28 Community Housing  
(Project name)  
Harwich  
(City/Town)  
Habitat for Humanity of Cape Cod, Inc.  
(Developer)

Maximum Selling Prices, Initial Condominium Fees, and Percentage Interest Assigned to Low and Moderate Income Units

	<u>Sales Price</u>	<u>Condo Fee</u>	<u>% Interest</u>
One bedroom units	\$ _____	\$ _____	_____
Two bedroom units	\$ <u>131,750</u>	\$ <u>N/A</u>	<u>N/A</u>
Three bedroom units	\$ <u>\$147,500</u>	\$ <u>N/A</u>	<u>N/A</u>
Four bedroom units	\$ _____	\$ _____	_____

Location of Low and Moderate Income Units

~~\_\_\_\_\_ The housing units which are Low and Moderate Income Units are those designated as lot/unit numbers \_\_\_\_\_ on:~~

~~a plan of land entitled \_\_\_\_\_ recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.~~

~~floor plans recorded with the Master Deed of the \_\_\_\_\_ recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.~~

**EXHIBIT C**

**LOCAL INITIATIVE PROGRAM**  
**AFFORDABLE HOUSING DEED RIDER**

**For Projects in Which**  
**Affordability Restrictions Survive Foreclosure**

made part of that certain deed (the "Deed") of certain property (the "Property") from \_\_\_\_\_ ("Grantor") to \_\_\_\_\_ ("Owner") dated \_\_\_\_\_, 20\_\_\_. The Property is located in the City/Town of \_\_\_\_\_ (the "Municipality").

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the Deed to the Owner at a consideration which is less than the fair market value of the Property; and

WHEREAS, the Property is part of a project which was: [check all that are applicable]

- (i) granted a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20-23, from the Board of Appeals of the Municipality or the Housing Appeals Committee and recorded/filed with the \_\_\_\_\_ County Registry of Deeds/Registry District of Land Court (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_/Document No. \_\_\_\_\_ (the "Comprehensive Permit");
- (ii) subject to a Regulatory Agreement among \_\_\_\_\_ (the "Developer"), [  ] Massachusetts Housing Finance Agency ("MassHousing"), [  ] the Massachusetts Department of Housing and Community Development] ("DHCD") [  ] the Municipality; and [  ] \_\_\_\_\_, dated \_\_\_\_\_ and recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Regulatory Agreement");
- (iii)  subsidized by the federal or state government under the Local Initiative Program, a program to assist construction of low or moderate income housing (the "Program"); and

WHEREAS, pursuant to the Program, eligible purchasers such as the Owner are given the opportunity to purchase residential property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than a maximum resale price, all as more fully provided herein; and

WHEREAS, DHCD, and the City/Town of \_\_\_\_\_ (singly, or if more than one entity is listed, collectively, the "Monitoring Agent") is obligated by the Program or has been

retained to monitor compliance with and to enforce the terms of this Deed Rider, and eligible purchasers such as the Owner may be required to pay to the Monitoring Agent, or its successor, a small percentage of the resale price upon the Owner's conveyance of the Property, as set out in the Regulatory Agreement and as more fully provided herein; and

WHEREAS, the rights and restrictions granted herein to the Monitoring Agent and the Municipality serve the public's interest in the creation and retention of affordable housing for persons and households of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers.

NOW, THEREFORE, as further consideration for the conveyance of the Property at less than fair market value, the Grantor and the Owner, including his/her/their heirs, successors and assigns, hereby agree that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by, the Municipality and the Monitoring Agent, and, if DHCD is a party to the Regulatory Agreement and is not the Monitoring Agent, by DHCD.

1. Definitions. In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Affordable Housing Fund means a fund established by the Municipality for the purpose of reducing the cost of housing for Eligible Purchasers or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to Massachusetts General Laws Chapter 44 Section 53A, et seq.

Applicable Foreclosure Price shall have the meaning set forth in Section 7(b) hereof.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms in the Property plus one.

Approved Capital Improvements means the documented commercially reasonable cost of extraordinary capital improvements made to the Property by the Owner; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.

Area means the Primary Metropolitan Statistical Area or non-metropolitan area that includes the Municipality, as determined by HUD, which in this case is the \_\_\_\_\_ MSA/HMFA.

Area Median Income means the most recently published median income for the Area adjusted for household size as determined by HUD. If HUD discontinues publication of Area Median Income, the income statistics used by MassHousing for its low and moderate income housing programs shall apply.

Base Income Number means the Area Median Income for a four (4)-person household. Currently, the AMI for the \_\_\_\_\_ MSA/HMFA is \$ \_\_\_\_\_.

Chief Executive Officer shall mean the Mayor in a city or the Board of Selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Closing shall have the meaning set forth in Section 5(b) hereof.

Compliance Certificate shall have the meaning set forth in Section 6(a) hereof.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Eligible Purchaser means an individual or household earning no more than eighty percent (80%) of Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_%) of Area Median Income, as required by the Program) and owning assets not in excess of the limit set forth in the Program Guidelines. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter must occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income, assets and residency as the Monitoring Agent may require to determine eligibility as an Eligible Purchaser. An Eligible Purchaser shall be a First-Time Homebuyer if required by the Program and as specified in the Regulatory Agreement.

First-Time Homebuyer means an individual or household, of which no household member has had an ownership interest in a principal residence at any time during the three (3)-year period prior to the date of qualification as an Eligible Purchaser, except that (i) any individual who is a displaced homemaker (as may be defined by DHCD) (ii) and any individual age 55 or over (applying for age 55 or over housing) shall not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that the individual, owned a home or had an ownership interest in a principal residence at any time during the three (3)-year period.

Foreclosure Notice shall have the meaning set forth in Section 7(a) hereof.

HUD means the United States Department of Housing and Urban Development.

Ineligible Purchaser means an individual or household not meeting the requirements to be eligible as an Eligible Purchaser.

Maximum Resale Price means the sum of (i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (ii) the Resale Fee and any necessary marketing expenses (including broker's fees) as may have been approved by the Monitoring Agent, plus (iii) Approved Capital Improvements, if any (the original cost of which shall have been discounted over time, as calculated by the Monitoring Agent); provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning seventy percent (70%) of the Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_%) of Area Median Income, as required by the Program) of Area Median Income, as required by the Program) for an Appropriate Size Household could obtain mortgage financing (as such purchase price is determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not

be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lesser price.

Monitoring Services Agreement means any Monitoring Services Agreement for monitoring and enforcement of this Deed Rider among some or all of the Developer, the Monitoring Agent, the Municipality, MassHousing and DHCD.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 7(b) hereof.

Mortgagee shall have the meaning set forth in Section 7(a) hereof.

Program Guidelines means the regulations and/or guidelines issued for the applicable Program and controlling its operations, as amended from time to time.

Resale Fee means a fee of **Two Percent (2%)** of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, to be paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of this Deed Rider, including the supervision of the resale process.

Resale Price Certificate means the certificate issued as may be specified in the Regulatory Agreement and recorded with the first deed of the Property from the Developer, or the subsequent certificate (if any) issued as may be specified in the Regulatory Agreement, which sets forth the Resale Price Multiplier to be applied on the Owner's sale of the Property, as provided herein, for so long as the restrictions set forth herein continue. In the absence of contrary specification in the Regulatory Agreement the Monitoring Agent shall issue the certificate.

Resale Price Multiplier means the number calculated by dividing the Property's initial sale price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Purchaser. The Resale Price Multiplier will be multiplied by the Base Income Number at the time of the Owner's resale of the Property to determine the Maximum Resale Price on such conveyance subject to adjustment for the Resale Fee, marketing expenses and Approved Capital Improvements. In the event that the purchase price paid for the Property by the Owner includes such an adjustment a new Resale Price Multiplier will be recalculated by the Monitoring Agent by dividing the purchase price so paid by the Base Income Number at the time of such purchase, and a new Resale Price Certificate will be issued and recorded reflecting the new Resale Price Multiplier. A Resale Price Multiplier of \_\_\_\_\_ is hereby assigned to the Property.

Term means in perpetuity, unless earlier terminated by (i) the termination of the term of affordability set forth in the Regulatory Agreement or Comprehensive Permit, whichever is longer; or (ii) the recording of a Compliance Certificate and a new Deed Rider executed by the purchaser in form and substance substantially identical to this Deed Rider establishing a new term.

2. Owner-Occupancy/Principal Residence. The Property shall be occupied and used by the Owner's household exclusively as his, her or their principal residence. Any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited.



3. Restrictions Against Leasing, Refinancing and Junior Encumbrances. The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent; provided that this provision shall not apply to a first mortgage granted on the date hereof in connection with this conveyance from Grantor to Owner securing indebtedness not greater than one hundred percent (100%) of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the Monitoring Agent shall be paid upon demand by Owner to the Municipality for deposit to its Affordable Housing Fund. The Monitoring Agent or Municipality may institute proceedings to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees. Upon recovery, after payment of costs, the balance shall be paid to the Municipality for deposit to its Affordable Housing Fund. In the event that the Monitoring Agent consents for good cause to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceed the actual carrying costs of the Property as determined by the Monitoring Agent, shall be paid to the Municipality for deposit to its Affordable Housing Fund.

4. Options to Purchase.

(a) When the Owner or any successor in title to the Owner shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Owner shall notify the Monitoring Agent and the Municipality in writing of the Owner's intention to so convey the Property (the "Conveyance Notice"). Upon receipt of the Conveyance Notice, the Monitoring Agent shall (i) calculate the Maximum Resale Price which the Owner may receive on the sale of the Property based upon the Base Income Number in effect as of the date of the Conveyance Notice and the Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate together with permissible adjustments for the Resale Fee, marketing expenses and Approved Capital Improvements (as discounted), and (ii) promptly begin marketing efforts. The Owner shall fully cooperate with the Monitoring Agent's efforts to locate an Eligible Purchaser and, if so requested by the Monitoring Agent, shall hire a broker selected by the Monitoring Agent to assist in locating an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price after entering a purchase and sale agreement. Pursuant to such agreement, sale to the Eligible Purchaser at the Maximum Resale Price shall occur within ninety (90) days after the Monitoring Agent receives the Conveyance Notice or such further time as reasonably requested to arrange for details of closing. If the Owner fails to cooperate in such resale efforts, including a failure to agree to reasonable terms in the purchase and sale agreement, the Monitoring Agent may extend the 90-day period for a period commensurate with the time the lack of cooperation continues, as determined by the Monitoring Agent in its reasonable discretion. In such event, the Monitoring Agent shall give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period.

(b) The Monitoring Agent shall ensure that diligent marketing efforts are made to locate an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above and to enter the requisite purchase and sale agreement. If more than one Eligible Purchaser is located, the Monitoring Agent shall conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to enter a purchase and sale agreement with Owner and to purchase

the Property. Preference shall be given to Appropriate Size Households. The procedure for marketing and selecting an Eligible Purchaser shall be approved as provided in the Regulatory Agreement and any applicable Program Guidelines. If an Eligible Purchaser is located within ninety (90) days after receipt of the Conveyance Notice, but such Eligible Purchaser proves unable to secure mortgage financing so as to be able to complete the purchase of the Property pursuant to the purchase and sale agreement, following written notice to Owner within the 90-day period the Monitoring Agent shall have an additional sixty (60) days to locate another Eligible Purchaser who will enter a purchase and sale agreement and purchase the Property by the end of such sixty (60)-day period or such further time as reasonably requested to carry out the purchase and sale agreement.

(c) In lieu of sale to an Eligible Purchaser, the Monitoring Agent or the Municipality or designee shall also have the right to purchase the Property at the Maximum Resale Price, in which event the purchase and sale agreement shall be entered, and the purchase shall occur within ninety (90) days after receipt of the Conveyance Notice or, within the additional sixty (60)-day period specified in subsection (b) above, or such further time as reasonably requested to carry out the purchase and sale agreement. Any lack of cooperation by Owner in measures reasonably necessary to effect the sale shall extend the 90-day period by the length of the delay caused by such lack of cooperation. The Monitoring Agent shall promptly give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period. In the event of such a sale to the Monitoring Agent or Municipality or designee, the Property shall remain subject to this Deed Rider and shall thereafter be sold or rented to an Eligible Purchaser as may be more particularly set forth in the Regulatory Agreement.

(d) If an Eligible Purchaser fails to purchase the Property within the 90-day period (or such further time determined as provided herein) after receipt of the Conveyance Notice, and the Monitoring Agent or Municipality or designee does not purchase the Property during said period, then the Owner may convey the Property to an Ineligible Purchaser no earlier than thirty (30) days after the end of said period at the Maximum Resale Price, but subject to all rights and restrictions contained herein; provided that the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner agrees to execute, to secure execution by the Ineligible Purchaser and to record with the Deed; and further provided that, if more than one Ineligible Purchaser is ready, willing and able to purchase the Property the Owner will give preference and enter a purchase and sale agreement with any individuals or households identified by the Monitoring Agent as an Appropriate Size Household earning more than eighty percent (80%) but less than one hundred twenty percent (120%) of the Area Median Income.

(e) The priority for exercising the options to purchase contained in this Section 4 shall be as follows: (i) an Eligible Purchaser located and selected by the Monitoring Agent, as provided in subsection (b) above, (ii) the Municipality or its designee, as provided in subsection (c) above, and (iii) an Ineligible Purchaser, as provided in subsection (d) above.

(f) Nothing in this Deed Rider or the Regulatory Agreement constitutes a promise, commitment or guarantee by DHCD, MassHousing, the Municipality or the Monitoring Agent that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

(g) The holder of a mortgage on the Property is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Conveyance Notice.

5. Delivery of Deed.

(a) In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the selected purchaser by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Owner to the selected purchaser, (v) such additional easements, restrictions, covenants and agreements of record as the selected purchaser consents to, such consent not to be unreasonably withheld or delayed, (vi) the Regulatory Agreement, and (vii), except as otherwise provided in the Compliance Certificate, a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the selected purchaser, and to record with the deed. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the selected purchaser or the enforceability of the restrictions herein.

(b) Said deed, including the approved Deed Rider, shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the selected purchaser, exercised by written notice to the Owner at least five (5) days prior to the delivery of the deed, at such other place as the selected purchaser may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the selected purchaser to the Owner, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in Section 4(a) above.

(c) To enable Owner to make conveyance as herein provided, Owner may, if Owner so desires 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, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed. Nothing contained herein as to the Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the selected purchaser to take title, nor anything else in this Deed Rider shall be deemed to waive, impair or otherwise affect the priority of the rights herein over matters appearing of record, or occurring, at any time after the recording of this Deed Rider, all such matters so appearing or occurring being subject and subordinate in all events to the rights herein.

(d) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the selected purchaser.

(e) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date of the execution of the purchase and sale agreement, reasonable wear and tear only excepted.

(f) If Owner shall be unable to give title or to make conveyance as above required, or if any change of condition in the Property not included in the above exception shall occur, then Owner shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition herein required. The Owner shall use best efforts to remove any such defects in the title, whether voluntary or involuntary, and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Owner that such defect has been cured or that the Property has been so restored. The selected purchaser shall have the election, at either the original or any extended time for performance, to accept such title as the Owner can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Owner shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Owner shall, unless the Owner has previously restored the Property to its former condition, either:

(A) pay over or assign to the selected purchaser, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonably expended by the Owner for any partial restoration, or

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the selected purchaser a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Owner for any partial restoration.

6. Resale and Transfer Restrictions.

(a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Owner, or the Owner's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the selected purchaser of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and unless a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent which Compliance Certificate refers to the Property, the Owner, the selected purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the selected purchaser, which new Deed Rider is identical in form and substance to this Deed Rider.

(b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and may record such Compliance Certificate in connection with the conveyance of the Property.

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser, the Owner shall deliver to the Monitoring Agent a copy of the Deed of the Property, including the deed rider, together with recording information. Failure of the Owner, or Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

7. Survival of Restrictions Upon Exercise of Remedies by Mortgagees.

(a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent, the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Deed Rider, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Deed Rider.

(b) The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the

Municipality or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Purchaser), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the Municipality or its designee, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the Municipality or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current “as is, where is” condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee’s mortgage, and further subject to a Deed Rider, as set forth below.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

(e) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the foreclosing Mortgagee agrees to annex to the deed and to record with the deed, except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is an Ineligible Purchaser, then during the term of ownership of the Property by such Ineligible Purchaser, the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such third party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

(g) Upon satisfaction of the requirements contained in this Section 7, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 6(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 7 is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider.

(h) The Owner understands and agrees that nothing in this Deed Rider or the Regulatory Agreement (i) in any way constitutes a promise or guarantee by MassHousing, DHCD, the Municipality or the Monitoring Agent that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section 4(a) hereof, the procedures set forth in this Section 7 shall supersede the provisions of Section 4 hereof.

#### 8. Covenants to Run With the Property.

(a) This Deed Rider, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, having the benefit of Section 32 of such Chapter 184, and is enforceable as such. This Deed Rider has been approved by the Undersecretary of DHCD.

(b) In confirmation thereof the Grantor and the Owner intend, declare and covenant (i) that this Deed Rider, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (ii) are not merely personal covenants of the Owner, and (iii) shall enure to the benefit of and be enforceable by the Municipality, the Monitoring Agent and DHCD and their successors and assigns, for the Term. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts have been satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land and that any requirements of privity of estate have been satisfied in full.

9. Notice. Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the following entities and parties in interest at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Grantor:

Owner:

Monitoring Agent: (1) Director, Local Initiative Program  
DHCD  
100 Cambridge Street  
Boston, MA 02114

Others:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

10. Further Assurances. The Owner agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent upon its request with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and other material information pertaining to the Property and the Owner's conformance with the requirements of the Comprehensive Permit, Program and Program Guidelines, as applicable.

11. Enforcement. (a) The rights hereby granted shall include the right of the Municipality and the Monitoring Agent to enforce this Deed Rider independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Municipality and the Monitoring Agent, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Deed Rider, the



Municipality and Monitoring Agent shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Deed Rider;
- (ii) money damages for charges in excess of the Maximum Resale Price, if applicable;
- (iii) if the violation is a sale of the Property to an Ineligible Purchaser except as permitted herein, the Monitoring Agent and the Municipality shall have the option to locate an Eligible Purchaser to purchase or itself purchase the Property from the Ineligible Purchaser on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Deed Rider; specific performance of the requirement that an Ineligible Purchaser shall sell, as herein provided, may be judicially ordered.

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Deed Rider in the absence of a Compliance Certificate, by an action in equity to enforce this Deed Rider; and

- (v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Monitoring Agent and/or the Municipality in the event successful enforcement action is taken against the Owner or Owner's successors or assigns. The Owner hereby grants to the Monitoring Agent and the Municipality a lien on the Property, junior to the lien of any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Monitoring Agent and the Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Deed Rider against the Owner and to assert such a lien on the Property to secure payment by the Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent and/or Municipality fails to enforce this Deed Rider as provided in this

Section, DHCD, if it is not named as Monitoring Agent, shall have the same rights and standing to enforce this Deed Rider as the Municipality and Monitoring Agent.

(d) The Owner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Monitoring Agent and the Municipality the right to take all actions with respect to the Property which the Monitoring Agent or Municipality may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Deed Rider.

12. Monitoring Agent Services; Fees. The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Deed Rider. As partial compensation for providing these services, a Resale Fee [] shall [] shall not be payable to the Monitoring Agent on the sale of the Property to an Eligible Purchaser or any other purchaser in accordance with the terms of this Deed Rider. This fee, if imposed, shall be paid by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

13. Actions by Municipality. Any action required or allowed to be taken by the Municipality hereunder shall be taken by the Municipality's Chief Executive Officer or designee.

14. Severability. If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15. Independent Counsel. THE OWNER ACKNOWLEDGES THAT HE, SHE, OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

16. Binding Agreement. This Deed Rider shall bind and inure to the benefit of the persons, entities and parties named herein and their successors or assigns as are permitted by this Deed Rider.

17. Amendment. This Deed Rider may not be rescinded, modified or amended, in whole or in part, without the written consent of the Monitoring Agent, the Municipality and the holder of any mortgage or other security instrument encumbering all or any portion of the Property, which written consent shall be recorded with the Registry.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Grantor: \_\_\_\_\_

Owner: \_\_\_\_\_

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

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [*check one*]: [ ] a current driver's license, [ ] a current U.S. passport, [ ] my personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

LOCAL INITIATIVE PROGRAM  
REGULATORY AGREEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS  
FOR  
OWNERSHIP PROJECT

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_ by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), pursuant to G.L. c. 23B §1 as amended by Chapter 19 of the Acts of 2007, the Town of Harwich ("the Municipality"), and Habitat for Humanity of Cape Cod, Inc, a Massachusetts corporation, having an address at 411 Main Street, Route 6a, Suite 6, Yarmouthport, MA 02675, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Project Sponsor intends to construct a housing development known as 93 & 97 Main Street/Route 28 Community Housing at a 5.9-acre site on 93 & 97 Main Street/Route 28 in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number of twelve (12) dwellings (the "Units") and six (6) of the Units will be sold at prices specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the regional median household income (the "Low and Moderate Income Units");

WHEREAS, upon application of the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Project Sponsor, DHCD made a determination of project eligibility pursuant to 760 CMR 56.04 and the Project Sponsor has received a comprehensive permit from the Zoning Board of Appeals of the Municipality, which permit is recorded/filed at the Barnstable County Registry of Deeds/Registry District of the Land Court (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Comprehensive Permit"); and

WHEREAS, in partial consideration of the execution of this Agreement, DHCD is issuing its final approval of the Project within the LIP Program pursuant to Section 19 of this Agreement, and has given and will give technical and other assistance to the Project;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the

parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Project Sponsor hereby agree and covenant as follows:

1. The Project Sponsor agrees to construct the Project in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications") and in accordance with all terms and conditions of the Comprehensive Permit. In addition, all Low and Moderate Income Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in the *Comprehensive Permit Guidelines* (the "Guidelines")) published by DHCD, and must contain complete living facilities including but not limited to a stove, refrigerator, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications.

\_\_\_\_\_ of the Low and Moderate Income Units shall be one bedroom units;  
two (2) \_\_\_\_\_ of the Low and Moderate Income Units shall be two bedroom units;  
four (4) \_\_\_\_\_ of the Low and Moderate Income Units shall be three bedroom units; and,  
\_\_\_\_\_ of the Low and Moderate Income Units shall be four bedroom units.

All Low and Moderate Income Units to be occupied by families must contain two or more bedrooms. Low and Moderate Income Units must have the following minimum areas:

one bedroom units	-	700 square feet
two bedroom units	-	900 square feet
three bedroom units	-	1200 square feet
four bedroom units	-	1400 square feet

The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit, the Project must also comply with all applicable local codes, ordinances and by-laws.

Each Low and Moderate Income Unit will be sold for no more than the price set forth in Exhibit B attached hereto and made a part hereof to an Eligible Purchaser. An Eligible Purchaser is a Family (i) whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U. S. Department of Housing and Urban Development and (ii) whose assets do not exceed the limits specified in the Guidelines. A "Family" shall mean two or more persons who will live regularly in the Low or Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The "Area" is defined as the Barnstable MSA/HMFA/County.

2. Upon the occurrence of one of the events described in 760 CMR 56.03(2), the Project will be included in the Subsidized Housing Inventory as that term is described in 760 CMR 56.01. Only Low and Moderate Income Units will be counted as SHI Eligible Housing as that term is described in 760 CMR 56.01 for the purposes of the Act.

3. (a) At the time of sale of each Low and Moderate Income Unit by the Project Sponsor, the Project Sponsor shall execute and shall as a condition of the sale cause the purchaser of the Low and Moderate Income Unit to execute an Affordable Housing Deed Rider in the form of Exhibit C attached hereto and made a part hereof (the "Deed Rider"). Such Deed Rider shall be attached to and made a part of the deed from the Project Sponsor to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low and Moderate Income Unit to offer the Low and Moderate Income Unit to the Municipality and to DHCD at a discounted purchase price more particularly described therein. The Municipality and DHCD shall have the option upon terms more particularly described in the Deed Rider to either purchase the Low and Moderate Income Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low and Moderate Income Unit which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Low and Moderate Income unit will be preserved each time that subsequent resales of the Low and Moderate Income unit occur. (The various requirements and restrictions regarding resale of a Low and Moderate Income Unit contained in the Deed Rider are hereinafter referred to as the "Resale Restrictions"). If upon the initial resale or any subsequent resale of a Low and Moderate Income Unit, the Municipality and DHCD are unable to find an Eligible Purchaser for the Low and Moderate Income Unit, and the Municipality and DHCD each elect not to exercise its right to purchase the Low and Moderate Income Unit, then the then current owner of the Low and Moderate Income Unit shall have the right to sell the Low and Moderate Income Unit to any person, regardless of his income (an "Ineligible Purchaser") at the Maximum Resale Price and subject to all rights and restrictions contained in the Deed Rider, and provided that the Unit is conveyed subject to a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low and Moderate Income Unit which will be attached and made part of the deed from the Unit Purchaser to the Ineligible Purchaser.

(b) For each sale of a Low and Moderate Income Unit, DHCD must approve the terms of the Eligible Purchaser's mortgage financing as evidenced by DHCD's issuance of the Resale Price Certificate described in the Deed Rider.

(c) The Municipality agrees that in the event that it purchases a Low and Moderate Income Unit pursuant to its right to do so contained in the Deed Rider then in effect with respect to such Low and Moderate Income Unit, that the Municipality shall within six (6) months of its acceptance of a deed of such Low and Moderate Income Unit, either (i) sell the Low and Moderate Income Unit to an Eligible Purchaser at the same price for which it purchased the Low and Moderate Income Unit plus any expenses incurred by the Municipality during its period of ownership, such expenses to be approved by DHCD, subject to a Deed Rider satisfactory in form and substance to DHCD and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to DHCD, the method for selecting such Eligible Purchaser to be approved by DHCD or (ii) rent the Low and Moderate Income Unit to a person who meets the income guidelines of the LIP Program, upon terms and conditions satisfactory to DHCD and otherwise in conformity with the requirements of the LIP Program. If the Municipality fails to sell or rent the Low and Moderate income unit as provided herein within said six (6) month period, or if at any time after the initial rental of the Low and Moderate Income Unit by the Municipality as provided herein the Low and Moderate Income Unit becomes vacant and

remains vacant for more than ninety (90) days, then such Low and Moderate Income Unit shall cease to be counted as SHI Eligible Housing, and shall no longer be included in the Subsidized Housing Inventory.

(d) Each Low and Moderate Income Unit will remain SHI Eligible Housing and continue to be included in the Subsidized Housing Inventory for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Project Sponsor is in default hereunder; (2) the Project and Low and Moderate Income Unit each continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) either (i) a Deed Rider binding the then current owner of the Low and Moderate Income Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Low and Moderate Income Unit is either in compliance with the terms of the Deed Rider, or the Municipality is in the process of taking such steps as may be required by DHCD to enforce the then current owner's compliance with the terms of the Deed Rider or (ii) the Low and Moderate Income Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of the last preceding paragraph, or (iii) the Low and Moderate Income Unit is owned by DHCD.

4.

Within one hundred eighty (180) days after Substantial Completion of the Project or, if later, within sixty (60) days of the date on which all the units in the Project are sold, the Project Sponsor shall complete and deliver to the Municipality and to DHCD the section of the Local Initiative Program Application for Comprehensive Permit Projects entitled "Project Feasibility – Ownership Projects" (ownership pro forma, profit analysis, and cost analysis), documenting the actual development costs of and income from the Project, prepared and signed by the Chief Financial Officer of the Project Sponsor. Substantial Completion shall be deemed to have occurred when construction of the Project is sufficiently complete so that the Unit may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Low and Moderate Income Units.

5. (a) Prior to marketing or otherwise making available for sale any of the Units, the Project Sponsor must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the buyer selection process for the Low and Moderate Income Units and must set forth a plan for affirmative fair marketing of Low and Moderate Income Units and effective outreach to protected groups underrepresented in the municipality, including provisions for a lottery, consistent with the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines, provided that any local preference shall apply only to the initial unit sales by the Project Sponsor. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the buyer selection and local preference (if any)



aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of *NAACP, Boston Chapter v. Kemp*. **If the Project is located in the Boston-Cambridge-Quincy, MA-NH MSA, the Project Sponsor must list all Low and Moderate Income Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center); other requirements for listing of units are specified in the Guidelines.** All costs of carrying out the Marketing Plan shall be paid by the Project Sponsor.

(b) The Project Sponsor may use in-house staff to draft and/or implement the Marketing Plan, provided that such staff meets the qualifications described in the Guidelines. The Project Sponsor may contract for such services provided that any such contractor must be experienced and qualified under the standards set forth in the Guidelines. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for at least five years following the sale of the last Low and Moderate Income Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Project Sponsor, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

6. Neither the Project Sponsor nor the Municipality shall discriminate on the basis of race, religion, color, sex, sexual orientation, familial status, age, handicap, marital status, national origin, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of buyers for the Units; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

7. (a) The Project Sponsor agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

(b) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be occupied by a person who was an Eligible Purchaser at the time of purchase; that any Low and Moderate Income Units which have been resold during the year have been resold in

compliance with all of the terms and provisions of the Deed Rider then in effect with respect to each such Low and Moderate Income Unit, and in compliance with the Regulations and Guidelines and this Agreement; and that the Project and the Low and Moderate Income Units have otherwise been maintained in a manner consistent with the Regulations and Guidelines, this Agreement, and the Deed Rider then in effect with respect to each Low and Moderate Income Unit.

8. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded/filed with the Registry, and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

9. The Project Sponsor hereby represents, covenants and warrants as follows:

(a) The Project Sponsor (i) is a non-profit corporation, duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Project Sponsor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Project Sponsor is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Project Sponsor will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred in paragraph 19, below).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Sponsor, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially or adversely affect its financial condition.

10. Except for sales of Units to Low or Moderate Income Tenants as permitted by the terms of this Agreement, the Project Sponsor will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a "Sale") or (except as permitted under Section (d) below) mortgage the Property without the prior written consent of DHCD and the Municipality.

(a) A request for consent to a Sale shall include:

- A signed agreement stating that the transferee will assume in full the Project Sponsor's obligations and duties under this Agreement, together with a certification by the attorney or title company that it will be held in escrow and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the Sale;
- The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth owned by such entities;
- A certification from the Municipality that the Project is in compliance with the affordability requirements of this Agreement.

(b) Consent to the proposed Sale shall be deemed to be given unless DHCD or the Municipality notifies the Project Sponsor within thirty (days) after receipt of the request that either

- The package requesting consent is incomplete, or
- The proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has a documented history of serious or repeated failures to abide by agreements of affordable housing funding or regulatory agencies of the Commonwealth or the federal government or is currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, or
- The Project is not being operated in compliance with the affordability requirements of this Agreement at the time of the proposed Sale.

(c) The Project Sponsor shall provide DHCD and the Municipality with thirty (30) day's prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager, or agent of the Project Sponsor; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in the Project Sponsor (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).
- (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of the Project Sponsor's interest in the Project or any party of the Project.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Project Sponsor of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender made at no greater than the prevailing rate of interest or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however to the provisions of Section 14 hereof.

The Project Sponsor hereby agrees that it shall provide copies of any and all written notices received by the Project Sponsor from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

11. Until such time as decisions regarding repair of damage due to fire or other casualty, or restoration after taking by eminent domain, shall be made by a condominium association or trust not controlled by the Project Sponsor, (or if the Project consists of detached dwellings, by homebuyers) Project Sponsor agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement, subject to the approval of the Project's lenders, which lenders have been approved by DHCD and the Municipality.

12. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

13. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

DHCD: Department of Housing and Community Development  
Attention: Local Initiative Program Director  
100 Cambridge St., Suite 300  
Boston, MA 02114

Municipality: Town of Harwich  
732 Main Street  
Harwich, MA 02645

Project Sponsor: Habitat for Humanity of Cape Cod, Inc.  
411 Main Street, Route 6a, Suite 6  
Yarmouthport, MA 02675

14. (a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement shall bind, and the benefits shall inure to, respectively, the Project Sponsor and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement shall be perpetual, provided however, that this Agreement shall terminate if (a) at any time hereafter there is no Low and Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions, and there is no Low and Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 4 hereof, **or (b)** if a Comprehensive Permit is not granted to the Project Sponsor for the Project by either the Municipality's Board of Appeals (as that term is defined in the Regulations) or by the Housing Appeals Committee (as that term is used in the Act) within a period of eighteen months from the date of execution of this Agreement, or (c) if at any time the Comprehensive Permit is revoked and all applicable appeal periods with respect to such revocation have expired. The rights and restrictions contained in this Agreement shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Project.

(b) The Project Sponsor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of DHCD and its successors and assigns for the term of the Agreement. Project Sponsor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Low and Moderate Income Units at the Project pursuant to the requirements of this Agreement shall also constitute an affordable housing restriction as that

term is defined in G.L. c. 184, §31 and as that term is used in G.L. c. 184, §§26, 31, 32, and 33. Such Resale Restrictions shall be for the benefit of both DHCD and the Municipality and both DHCD and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. To the extent that the Municipality is the holder of the Resale Restrictions to be contained in each of the Deed Riders, the Director of DHCD by the execution of this Agreement hereby approves such Resale Restrictions in each of the Deed Riders for the Low and Moderate Income Units of the Project as required by the provisions of G.L. c. 184, §32.

15. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

16. (a) The Project Sponsor and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Project Sponsor or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality hereunder without receiving a Default Notice from Project Sponsor or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 16(a), then the Low and Moderate Income Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed SHI Eligible Housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory. The foregoing sentence shall not apply to Low and Moderate Income Units that have been conveyed in compliance and remain in compliance with Section 3 of this Agreement.

17. The Project Sponsor represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent to Regulatory Agreement attached hereto and made a part hereof.

18. DHCD may delegate to the Municipality any of its oversight and enforcement responsibilities under this Agreement, with the agreement of the Municipality, by providing written notice of such delegation to the Project Sponsor and the Municipality.

19. (a) When executed by DHCD, this Agreement shall constitute Final Approval of the Project as described in 760 CMR 56.04(7). DHCD hereby reaffirms and incorporates by reference in this Agreement each of the findings with respect to project eligibility required by 760 CMR 56.04(1) made in the Site Eligibility Letter for the Project dated May 23, 2016.

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

Executed as a sealed instrument as of the date first above written.

PROJECT SPONSOR  
HABITAT FOR HUMANITY OF CAPE COD, INC.

By: Henry F. Smith  
Its President

By: Paula Cole  
its Treasurer

DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT

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

MUNICIPALITY

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

Attachments: Exhibit A - Legal Property Description  
Exhibit B - Prices & Location of Low & Moderate Income Units  
Exhibit C - Form of Deed Rider

Consent forms signed by any and all mortgagees whose mortgages are recorded prior to this Regulatory Agreement must be attached to this Regulatory Agreement.

© DHCD When used in the Local Initiative Program, this form may not be modified without the written approval of the Department of Housing and Community Development.



COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss.

9/25/, 2017

On this 25 day of September, 2017, before me, the undersigned notary public, personally appeared Nancy F. Smith, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding document, as President of Habitat for Humanity of Cape Cod, Inc., and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Mary E. Campbell



**MARY E. CAMPBELL**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 14, 2019

Notary Public  
Print Name: MARY E. Campbell  
My Commission Expires: 11-14-19

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss.

9/29, 2017

On this 29 day of September, 2017 before me, the undersigned notary public, personally appeared Linda Cebula, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding document, as Treasurer of Habitat for Humanity of Cape Cod, Inc., and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Mary E. Campbell



**MARY E. CAMPBELL**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 14, 2019

Notary Public  
Print Name: MARY E. Campbell  
My Commission Expires: 11-14-19

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss.

\_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_,ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

**CONSENT TO REGULATORY AGREEMENT**

The Undersigned being the holder of a mortgage on the above described Project recorded with the Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ hereby consents to the execution and recording of this Agreement and agrees that in the event of any foreclosure or exercise of remedies under the mortgage it shall comply with the terms and conditions hereof.

LENDER:

\_\_\_\_\_

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

(If the Project has more than one mortgagee, add additional consent forms. Execution of the consent form by a mortgagee is only necessary if the mortgage has been recorded prior to the Regulatory Agreement.)

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF \_\_\_\_\_, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of \_\_\_\_\_ Bank, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

**EXHIBIT A**

Re: 93 & 97 Main Street/Route 28 Community Housing  
(Project name)  
Harwich  
(City/Town)  
Habitat for Humanity of Cape Cod, Inc.  
(Developer)

Property Description

**EXHIBIT B**

Re: 93 & 97 Main Street/Route 28 Community Housing  
(Project name)  
Harwich  
(City/Town)  
Habitat for Humanity of Cape Cod, Inc.  
(Developer)

Maximum Selling Prices, Initial Condominium Fees, and Percentage Interest Assigned to Low and Moderate Income Units

	<u>Sales Price</u>	<u>Condo Fee</u>	<u>% Interest</u>
One bedroom units	\$ _____	\$ _____	_____
Two bedroom units	\$131,750	\$ <u>N/A</u>	<u>N/A</u>
Three bedroom units	\$147,500	\$ <u>N/A</u>	<u>N/A</u>
Four bedroom units	\$ _____	\$ _____	_____

**EXHIBIT C**

**LOCAL INITIATIVE PROGRAM**  
**AFFORDABLE HOUSING DEED RIDER**

**For Projects in Which**  
**Affordability Restrictions Survive Foreclosure**

made part of that certain deed (the "Deed") of certain property (the "Property") from \_\_\_\_\_ ("Grantor") to \_\_\_\_\_ ("Owner") dated \_\_\_\_\_, 20\_\_\_. The Property is located in the City/Town of \_\_\_\_\_ (the "Municipality").

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the Deed to the Owner at a consideration which is less than the fair market value of the Property; and

WHEREAS, the Property is part of a project which was: [check all that are applicable]

- (i) granted a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20-23, from the Board of Appeals of the Municipality or the Housing Appeals Committee and recorded/filed with the \_\_\_\_\_ County Registry of Deeds/Registry District of Land Court (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_/Document No. \_\_\_\_\_ (the "Comprehensive Permit");
- (ii) subject to a Regulatory Agreement among \_\_\_\_\_ (the "Developer"), [ ] Massachusetts Housing Finance Agency ("MassHousing"), [ ] the Massachusetts Department of Housing and Community Development] ("DHCD") [ ] the Municipality; and [ ] \_\_\_\_\_, dated \_\_\_\_\_ and recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Regulatory Agreement");
- (iii)  subsidized by the federal or state government under the Local Initiative Program, a program to assist construction of low or moderate income housing (the "Program"); and

WHEREAS, pursuant to the Program, eligible purchasers such as the Owner are given the opportunity to purchase residential property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than a maximum resale price, all as more fully provided herein; and

WHEREAS, DHCD, and the City/Town of \_\_\_\_\_ (singly, or if more than one entity is listed, collectively, the "Monitoring Agent") is obligated by the Program or has been retained to monitor compliance with and to enforce the terms of this Deed Rider, and eligible

purchasers such as the Owner may be required to pay to the Monitoring Agent, or its successor, a small percentage of the resale price upon the Owner's conveyance of the Property, as set out in the Regulatory Agreement and as more fully provided herein; and

WHEREAS, the rights and restrictions granted herein to the Monitoring Agent and the Municipality serve the public's interest in the creation and retention of affordable housing for persons and households of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers.

NOW, THEREFORE, as further consideration for the conveyance of the Property at less than fair market value, the Grantor and the Owner, including his/her/their heirs, successors and assigns, hereby agree that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by, the Municipality and the Monitoring Agent, and, if DHCD is a party to the Regulatory Agreement and is not the Monitoring Agent, by DHCD.

1. Definitions. In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Affordable Housing Fund means a fund established by the Municipality for the purpose of reducing the cost of housing for Eligible Purchasers or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to Massachusetts General Laws Chapter 44 Section 53A, et seq.

Applicable Foreclosure Price shall have the meaning set forth in Section 7(b) hereof.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms in the Property plus one.

Approved Capital Improvements means the documented commercially reasonable cost of extraordinary capital improvements made to the Property by the Owner; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.

Area means the Primary Metropolitan Statistical Area or non-metropolitan area that includes the Municipality, as determined by HUD, which in this case is the \_\_\_\_\_ MSA/HMFA.

Area Median Income means the most recently published median income for the Area adjusted for household size as determined by HUD. If HUD discontinues publication of Area Median Income, the income statistics used by MassHousing for its low and moderate income housing programs shall apply.

Base Income Number means the Area Median Income for a four (4)-person household. Currently, the AMI for the \_\_\_\_\_ MSA/HMFA is \$ \_\_\_\_\_.

Chief Executive Officer shall mean the Mayor in a city or the Board of Selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Closing shall have the meaning set forth in Section 5(b) hereof.

Compliance Certificate shall have the meaning set forth in Section 6(a) hereof.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Eligible Purchaser means an individual or household earning no more than eighty percent (80%) of Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_%) of Area Median Income, as required by the Program) and owning assets not in excess of the limit set forth in the Program Guidelines. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter must occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income, assets and residency as the Monitoring Agent may require to determine eligibility as an Eligible Purchaser. An Eligible Purchaser shall be a First-Time Homebuyer if required by the Program and as specified in the Regulatory Agreement.

First-Time Homebuyer means an individual or household, of which no household member has had an ownership interest in a principal residence at any time during the three (3)-year period prior to the date of qualification as an Eligible Purchaser, except that (i) any individual who is a displaced homemaker (as may be defined by DHCD) (ii) and any individual age 55 or over (applying for age 55 or over housing) shall not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that the individual, owned a home or had an ownership interest in a principal residence at any time during the three (3)-year period.

Foreclosure Notice shall have the meaning set forth in Section 7(a) hereof.

HUD means the United States Department of Housing and Urban Development.

Ineligible Purchaser means an individual or household not meeting the requirements to be eligible as an Eligible Purchaser.

Maximum Resale Price means the sum of (i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (ii) the Resale Fee and any necessary marketing expenses (including broker's fees) as may have been approved by the Monitoring Agent, plus (iii) Approved Capital Improvements, if any (the original cost of which shall have been discounted over time, as calculated by the Monitoring Agent); provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning seventy percent (70%) of the Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_%) of Area Median Income, as required by the Program) of Area Median Income, as required by the Program) for an Appropriate Size Household could obtain mortgage financing (as such purchase price is determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not



be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lesser price.

Monitoring Services Agreement means any Monitoring Services Agreement for monitoring and enforcement of this Deed Rider among some or all of the Developer, the Monitoring Agent, the Municipality, MassHousing and DHCD.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 7(b) hereof.

Mortgagee shall have the meaning set forth in Section 7(a) hereof.

Program Guidelines means the regulations and/or guidelines issued for the applicable Program and controlling its operations, as amended from time to time.

Resale Fee means a fee of **Two Percent (2%)** of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, to be paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of this Deed Rider, including the supervision of the resale process.

Resale Price Certificate means the certificate issued as may be specified in the Regulatory Agreement and recorded with the first deed of the Property from the Developer, or the subsequent certificate (if any) issued as may be specified in the Regulatory Agreement, which sets forth the Resale Price Multiplier to be applied on the Owner's sale of the Property, as provided herein, for so long as the restrictions set forth herein continue. In the absence of contrary specification in the Regulatory Agreement the Monitoring Agent shall issue the certificate.

Resale Price Multiplier means the number calculated by dividing the Property's initial sale price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Purchaser. The Resale Price Multiplier will be multiplied by the Base Income Number at the time of the Owner's resale of the Property to determine the Maximum Resale Price on such conveyance subject to adjustment for the Resale Fee, marketing expenses and Approved Capital Improvements. In the event that the purchase price paid for the Property by the Owner includes such an adjustment a new Resale Price Multiplier will be recalculated by the Monitoring Agent by dividing the purchase price so paid by the Base Income Number at the time of such purchase, and a new Resale Price Certificate will be issued and recorded reflecting the new Resale Price Multiplier. A Resale Price Multiplier of \_\_\_\_\_ is hereby assigned to the Property.

Term means in perpetuity, unless earlier terminated by (i) the termination of the term of affordability set forth in the Regulatory Agreement or Comprehensive Permit, whichever is longer; or (ii) the recording of a Compliance Certificate and a new Deed Rider executed by the purchaser in form and substance substantially identical to this Deed Rider establishing a new term.

2. Owner-Occupancy/Principal Residence. The Property shall be occupied and used by the Owner's household exclusively as his, her or their principal residence. Any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited.

3. Restrictions Against Leasing, Refinancing and Junior Encumbrances. The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent; provided that this provision shall not apply to a first mortgage granted on the date hereof in connection with this conveyance from Grantor to Owner securing indebtedness not greater than one hundred percent (100%) of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the Monitoring Agent shall be paid upon demand by Owner to the Municipality for deposit to its Affordable Housing Fund. The Monitoring Agent or Municipality may institute proceedings to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees. Upon recovery, after payment of costs, the balance shall be paid to the Municipality for deposit to its Affordable Housing Fund. In the event that the Monitoring Agent consents for good cause to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceed the actual carrying costs of the Property as determined by the Monitoring Agent, shall be paid to the Municipality for deposit to its Affordable Housing Fund.

4. Options to Purchase.

(a) When the Owner or any successor in title to the Owner shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Owner shall notify the Monitoring Agent and the Municipality in writing of the Owner's intention to so convey the Property (the "Conveyance Notice"). Upon receipt of the Conveyance Notice, the Monitoring Agent shall (i) calculate the Maximum Resale Price which the Owner may receive on the sale of the Property based upon the Base Income Number in effect as of the date of the Conveyance Notice and the Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate together with permissible adjustments for the Resale Fee, marketing expenses and Approved Capital Improvements (as discounted), and (ii) promptly begin marketing efforts. The Owner shall fully cooperate with the Monitoring Agent's efforts to locate an Eligible Purchaser and, if so requested by the Monitoring Agent, shall hire a broker selected by the Monitoring Agent to assist in locating an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price after entering a purchase and sale agreement. Pursuant to such agreement, sale to the Eligible Purchaser at the Maximum Resale Price shall occur within ninety (90) days after the Monitoring Agent receives the Conveyance Notice or such further time as reasonably requested to arrange for details of closing. If the Owner fails to cooperate in such resale efforts, including a failure to agree to reasonable terms in the purchase and sale agreement, the Monitoring Agent may extend the 90-day period for a period commensurate with the time the lack of cooperation continues, as determined by the Monitoring Agent in its reasonable discretion. In such event, the Monitoring Agent shall give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period.

(b) The Monitoring Agent shall ensure that diligent marketing efforts are made to locate an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above and to enter the requisite purchase and sale agreement. If more than one Eligible Purchaser is located, the Monitoring Agent shall conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to enter a purchase and sale agreement with Owner and to purchase

the Property. Preference shall be given to Appropriate Size Households. The procedure for marketing and selecting an Eligible Purchaser shall be approved as provided in the Regulatory Agreement and any applicable Program Guidelines. If an Eligible Purchaser is located within ninety (90) days after receipt of the Conveyance Notice, but such Eligible Purchaser proves unable to secure mortgage financing so as to be able to complete the purchase of the Property pursuant to the purchase and sale agreement, following written notice to Owner within the 90-day period the Monitoring Agent shall have an additional sixty (60) days to locate another Eligible Purchaser who will enter a purchase and sale agreement and purchase the Property by the end of such sixty (60)-day period or such further time as reasonably requested to carry out the purchase and sale agreement.

(c) In lieu of sale to an Eligible Purchaser, the Monitoring Agent or the Municipality or designee shall also have the right to purchase the Property at the Maximum Resale Price, in which event the purchase and sale agreement shall be entered, and the purchase shall occur within ninety (90) days after receipt of the Conveyance Notice or, within the additional sixty (60)-day period specified in subsection (b) above, or such further time as reasonably requested to carry out the purchase and sale agreement. Any lack of cooperation by Owner in measures reasonably necessary to effect the sale shall extend the 90-day period by the length of the delay caused by such lack of cooperation. The Monitoring Agent shall promptly give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period. In the event of such a sale to the Monitoring Agent or Municipality or designee, the Property shall remain subject to this Deed Rider and shall thereafter be sold or rented to an Eligible Purchaser as may be more particularly set forth in the Regulatory Agreement.

(d) If an Eligible Purchaser fails to purchase the Property within the 90-day period (or such further time determined as provided herein) after receipt of the Conveyance Notice, and the Monitoring Agent or Municipality or designee does not purchase the Property during said period, then the Owner may convey the Property to an Ineligible Purchaser no earlier than thirty (30) days after the end of said period at the Maximum Resale Price, but subject to all rights and restrictions contained herein; provided that the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner agrees to execute, to secure execution by the Ineligible Purchaser and to record with the Deed; and further provided that, if more than one Ineligible Purchaser is ready, willing and able to purchase the Property the Owner will give preference and enter a purchase and sale agreement with any individuals or households identified by the Monitoring Agent as an Appropriate Size Household earning more than eighty percent (80%) but less than one hundred twenty percent (120%) of the Area Median Income.

(e) The priority for exercising the options to purchase contained in this Section 4 shall be as follows: (i) an Eligible Purchaser located and selected by the Monitoring Agent, as provided in subsection (b) above, (ii) the Municipality or its designee, as provided in subsection (c) above, and (iii) an Ineligible Purchaser, as provided in subsection (d) above.

(f) Nothing in this Deed Rider or the Regulatory Agreement constitutes a promise, commitment or guarantee by DHCD, MassHousing, the Municipality or the Monitoring Agent that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

(g) The holder of a mortgage on the Property is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Conveyance Notice.

5. Delivery of Deed.

(a) In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the selected purchaser by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Owner to the selected purchaser, (v) such additional easements, restrictions, covenants and agreements of record as the selected purchaser consents to, such consent not to be unreasonably withheld or delayed, (vi) the Regulatory Agreement, and (vii), except as otherwise provided in the Compliance Certificate, a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the selected purchaser, and to record with the deed. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the selected purchaser or the enforceability of the restrictions herein.

(b) Said deed, including the approved Deed Rider, shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the selected purchaser, exercised by written notice to the Owner at least five (5) days prior to the delivery of the deed, at such other place as the selected purchaser may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the selected purchaser to the Owner, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in Section 4(a) above.

(c) To enable Owner to make conveyance as herein provided, Owner may, if Owner so desires 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, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed. Nothing contained herein as to the Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the selected purchaser to take title, nor anything else in this Deed Rider shall be deemed to waive, impair or otherwise affect the priority of the rights herein over matters appearing of record, or occurring, at any time after the recording of this Deed Rider, all such matters so appearing or occurring being subject and subordinate in all events to the rights herein.

(d) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the selected purchaser.

(e) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date of the execution of the purchase and sale agreement, reasonable wear and tear only excepted.

(f) If Owner shall be unable to give title or to make conveyance as above required, or if any change of condition in the Property not included in the above exception shall occur, then Owner shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition herein required. The Owner shall use best efforts to remove any such defects in the title, whether voluntary or involuntary, and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Owner that such defect has been cured or that the Property has been so restored. The selected purchaser shall have the election, at either the original or any extended time for performance, to accept such title as the Owner can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Owner shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Owner shall, unless the Owner has previously restored the Property to its former condition, either:

(A) pay over or assign to the selected purchaser, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonably expended by the Owner for any partial restoration, or

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the selected purchaser a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Owner for any partial restoration.

6. Resale and Transfer Restrictions.

(a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Owner, or the Owner's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the selected purchaser of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and unless a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent which Compliance Certificate refers to the Property, the Owner, the selected purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the selected purchaser, which new Deed Rider is identical in form and substance to this Deed Rider.

(b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and may record such Compliance Certificate in connection with the conveyance of the Property.

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser, the Owner shall deliver to the Monitoring Agent a copy of the Deed of the Property, including the deed rider, together with recording information. Failure of the Owner, or Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

7. Survival of Restrictions Upon Exercise of Remedies by Mortgagees.

(a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent, the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Deed Rider, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Deed Rider.

(b) The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the

Municipality or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Purchaser), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the Municipality or its designee, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the Municipality or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Deed Rider, as set forth below.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

(e) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the foreclosing Mortgagee agrees to annex to the deed and to record with the deed, except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is an Ineligible Purchaser, then during the term of ownership of the Property by such Ineligible Purchaser, the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such third party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

(g) Upon satisfaction of the requirements contained in this Section 7, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 6(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 7 is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider.

(h) The Owner understands and agrees that nothing in this Deed Rider or the Regulatory Agreement (i) in any way constitutes a promise or guarantee by MassHousing, DHCD, the Municipality or the Monitoring Agent that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section 4(a) hereof, the procedures set forth in this Section 7 shall supersede the provisions of Section 4 hereof.

#### 8. - Covenants to Run With the Property.

(a) This Deed Rider, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, having the benefit of Section 32 of such Chapter 184, and is enforceable as such. This Deed Rider has been approved by the Undersecretary of DHCD.

(b) In confirmation thereof the Grantor and the Owner intend, declare and covenant (i) that this Deed Rider, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (ii) are not merely personal covenants of the Owner, and (iii) shall enure to the benefit of and be enforceable by the Municipality, the Monitoring Agent and DHCD and their successors and assigns, for the Term. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts have been satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land and that any requirements of privity of estate have been satisfied in full.



9. Notice. Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the following entities and parties in interest at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Grantor:

Owner:

Monitoring Agent: (1) Director, Local Initiative Program  
DHCD  
100 Cambridge Street  
Boston, MA 02114

Others:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

10. Further Assurances. The Owner agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent upon its request with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and other material information pertaining to the Property and the Owner's conformance with the requirements of the Comprehensive Permit, Program and Program Guidelines, as applicable.

11. Enforcement. (a) The rights hereby granted shall include the right of the Municipality and the Monitoring Agent to enforce this Deed Rider independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Municipality and the Monitoring Agent, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Deed Rider, the

Municipality and Monitoring Agent shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Deed Rider;
- (ii) money damages for charges in excess of the Maximum Resale Price, if applicable;
- (iii) if the violation is a sale of the Property to an Ineligible Purchaser except as permitted herein, the Monitoring Agent and the Municipality shall have the option to locate an Eligible Purchaser to purchase or itself purchase the Property from the Ineligible Purchaser on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Deed Rider; specific performance of the requirement that an Ineligible Purchaser shall sell, as herein provided, may be judicially ordered.

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Deed Rider in the absence of a Compliance Certificate, by an action in equity to enforce this Deed Rider; and

- (v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Monitoring Agent and/or the Municipality in the event successful enforcement action is taken against the Owner or Owner's successors or assigns. The Owner hereby grants to the Monitoring Agent and the Municipality a lien on the Property, junior to the lien of any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Monitoring Agent and the Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Deed Rider against the Owner and to assert such a lien on the Property to secure payment by the Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent and/or Municipality fails to enforce this Deed Rider as provided in this

Section, DHCD, if it is not named as Monitoring Agent, shall have the same rights and standing to enforce this Deed Rider as the Municipality and Monitoring Agent.

(d) The Owner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Monitoring Agent and the Municipality the right to take all actions with respect to the Property which the Monitoring Agent or Municipality may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Deed Rider.

12. Monitoring Agent Services; Fees. The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Deed Rider. As partial compensation for providing these services, a Resale Fee [] shall [] shall not be payable to the Monitoring Agent on the sale of the Property to an Eligible Purchaser or any other purchaser in accordance with the terms of this Deed Rider. This fee, if imposed, shall be paid by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

13. Actions by Municipality. Any action required or allowed to be taken by the Municipality hereunder shall be taken by the Municipality's Chief Executive Officer or designee.

14. Severability. If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15. Independent Counsel. THE OWNER ACKNOWLEDGES THAT HE, SHE, OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

16. Binding Agreement. This Deed Rider shall bind and inure to the benefit of the persons, entities and parties named herein and their successors or assigns as are permitted by this Deed Rider.

17. Amendment. This Deed Rider may not be rescinded, modified or amended, in whole or in part, without the written consent of the Monitoring Agent, the Municipality and the holder of any mortgage or other security instrument encumbering all or any portion of the Property, which written consent shall be recorded with the Registry.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Grantor: \_\_\_\_\_ Owner: \_\_\_\_\_

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

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [*check one*]: [ ] a current driver's license, [ ] a current U.S. passport, [ ] my personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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



Case #2017-04 – Habitat for Humanity of Cape Cod, Inc.

**Applicant:** Habitat for Humanity of Cape Cod, Inc.  
**Site:** 93 and 97 Main Street, West Harwich  
**Map/Parcel:** 10-w5 and 10-w3-B  
**Project Name:** Main Street West Harwich Community Housing  
**Hearing Dates:** March 8, 2017; March 21, 2017; March 23, 2017; April 6, 2017; April 26, 2017; June 28, 2017; July 26, 2017; and August 15, 2017.

Summary:  
**A TRUE COPY, ATTEST:**  
*[Signature]*  
**TOWN CLERK OF  
HARWICH, MASS.**

Habitat for Humanity of Cape Cod, Inc. c/o Attorney Warren H. Brodie, has made application for a Comprehensive Permit pursuant to MGL Chapter 40B Sections 20-23 and 760CMR 56.00, to create an eight lot subdivision to provide for 6 new single family affordable homes, 2 developed "market rate" lots and a cul-de-sac. The property is located at 93 and 97 Route 28, Harwich, Map# 10, Parcels #W3-B and W5 located in the R-L Zoning District.

**Background**

SEP 22 2017

Habitat for Humanity is a non-profit organization dedicated to building simple, decent homes in partnership with families in need. Habitat builds new homes for first-time homebuyers through donated land, materials, labor and funding as well as other special financing strategies. The organization has built 108 units throughout the fifteen towns of Cape Cod.

The property is two separate parcels 93 and 97 Main Street, totaling 2.466 acres. The property is in the CH-1 and RH-1 Zoning District. The parcel to the west, 93 Main Street, has an existing ranch home that is currently configured as a duplex. The parcel to the east, 97 Main Street, has an older, historic home (the Chase home) and a barn. The Chase home is being used as three separate dwelling units and the barn contains one dwelling unit. Portions of the property are in the FEMA flood Zone AE. The site has access to town water, electric, and will be serviced by individual on-site sewage disposal systems (septic systems).

**Applicant's Request**

Habitat for Humanity of Cape Cod, Inc. is seeking a Comprehensive Permit to reconfigure the property to create eight individual house lots, ranging from 8,187 square feet to 21,436 square feet, as well as a parcel containing the cul-de-sac roadway.

Habitat will build six new affordable homes on Lots 1 through 6, using the Habitat "sweat equity" program and will sell the homes affordably to income qualified, eligible households through the Department of Housing and Community Development (DHCD) Local Initiative Program.

The Habitat homes will be one-story and two-story homes, with four homes having 3-bedrooms and two homes having 2-bedrooms. They will be served by on-site septic systems, public water and, funding permitting, will have roof-top solar panels. Each Habitat home will have a shed. An on-site parking/driveway area is provided on each lot. Habitat is proposing to offer the units for sale at a price affordable to households at or below 65% of the area median income.

Lots 7 and 8 will contain the existing dwellings and structures and will be the “market rate” lots

#### **Procedural and Hearing Summary**

On September 16, 2016 Habitat for Humanity applied to the Department of Housing & Community Development (DHCD) for a Project Eligibility letter for the 93 and 97 Main Street West Harwich project. The application was submitted under the Local Initiative Program. On February 1, 2017, DHCD issued a Project Eligibility letter.

On February 2, 2017, the Applicant filed an application to the Harwich Zoning Board of Appeals for a Comprehensive Permit to develop the 93 and 97 Main Street West Harwich project. On March 9, 2017, project notification and review request letters were sent to local boards, agencies and officials in accordance with 760 CMR 760 56.05(3), including Building Department, Conservation Department, Department of Public Works, Disability Rights Committee, Fire Department, Health Department, Historic Commission, Planning Department, Town Engineer and Water Department.

A public hearing before the Zoning Board of Appeals was duly advertised in the Cape Cod Chronicle on February 16, 2017 and February 23, 2017 and notices were sent to all abutters in accordance with MGL Chapter 40A. The hearing was opened on March 8, 2017, continued to March 21, 2017, continued to March 23, 2017, continued to April 6, 2017, continued to April 26, 2017, continued to June 28, 2017, continued to July 26, 2017, and continued to August 15, 2017. The public hearing closed on August 15, 2017 and the Board rendered a decision. At that meeting, the Board voted to grant the comprehensive permit subject to conditions. Board Members deciding this appeal were David Ryer, Chair; John P. Burke, Clerk; Dean Hederstedt; Kathleen Muller; and Al Donaghue.

#### **Findings of Fact: Standing**

*Motion: The Board moves to make the following findings regarding the Applicant's standing to apply for a Comprehensive Permit under MGL Chapter 40B, in accordance with 760 CMR 56.04:*

1. A Project Eligibility Letter was issued by the Department of Housing and Community Development (DHCD) on February 1, 2017. The letter confirms that the Applicant and the project meet all minimum requirements of 760 CMR 56.04 Project Eligibility. Said letter includes findings by DHCD that: the project is generally eligible under the Local Initiative Program; the site is appropriate for residential development; the conceptual plan is appropriate for the project location; the project appears financially feasible in the context of the Harwich housing market; the initial pro forma appears financially feasible and consistent with the cost examination and limitations on profits and distributions on the basis of estimated development costs.
2. The Project Eligibility Letter confirms that the project sponsor and development team meet the general eligibility standards of the Local Initiative Program. Habitat for Humanity of Cape Cod, Inc. is a non-profit organization. A letter from the Internal Revenue Service clarifies that the organization is exempt under §501(c)(3) of the tax code based on a ruling issued to Habitat for Humanity International.
3. The Applicant submitted a Purchase and Sale Agreement documenting site control.

*Vote: Based upon the evidence submitted and testimony provided, the Applicant has satisfied all of the requirements for standing pursuant to MGL Chapter 40B and 760 CMR 56.04.*

**Findings of Fact: Consistency with Local Needs**

Motion: The Board moves to make the following findings with respect to the proposed development insofar as it relates to being consistent with local needs:

1. Pursuant to Massachusetts General Law Chapter 40B, Habitat for Humanity of Cape Cod, Inc. seeks to construct six new affordable single-family dwelling units. The existing units will remain on the property on two separate market rate lots.
2. In accordance with the ZBA Rules and Regulations for Review of Comprehensive Permits, Habitat for Humanity submitted an application, preliminary site development and utility plans, a review of the conditions in the surrounding area, preliminary architectural drawings, a tabulation of proposed buildings, a preliminary plan for re-division of the land, and a list of requested waivers.
3. The property is two separate parcels 93 and 97 Main Street, totaling 2.466 acres. The property is in the CH-1 and RH-1 Zoning District. The parcel to the west, 93 Main Street, has an existing ranch home that is currently configured as a duplex. The parcel to the east, 97 Main Street, has an older, historic home (the Chase home) and a barn. The Chase home contains three separate dwelling units and the barn contains one dwelling unit. The property is located on Main Street (Route 28), a State highway.
4. The Applicant is proposing re-subdivision of the subject property. The property is proposed to be subdivided into eight lots and an area for the cul-de-sac roadway as follows:

Lot #1	7,587 sq ft
Lot #2	11,130 sq ft
Lot #3	10,668 sq ft
Lot #4	9,469 sq ft
Lot #5	9,385 sq ft
Lot #6	10,426 sq ft
Lot #7	21,436 sq ft
Lot #8	9,262 sq ft
Parcel #9	18,078 (cul-de-sac roadway)

5. There are no wetlands on or impacting the site.
6. The Habitat homes will be four 3-bedroom homes and two 2-bedroom homes.
7. The dwellings will be served by on-site septic systems in compliance with Title V.
8. The six Habitat homes will be affordable in perpetuity for qualified individuals and households under the Department of Housing and Community Development Local Initiative Program and will be deed-restricted using the DHCD Local Initiative Program Affordable Housing Deed Rider.
9. The six Habitat homes will be available and will be marketed on a fair and open basis via Department of Housing and Community Development approved Affirmative Fair Housing Marketing. Habitat for Humanity will act as its own lottery agent. Applicant shall request Local Preference for four of the seven units.
10. The statutory requirement of MGL Chapter 40B is to provide 10% of the housing stock as affordable housing units; this goal is also reflected in Harwich's Department of Housing and Community Development Housing Production Plan. According to the Department of Housing and Community Development Subsidized Housing Inventory as of December 5, 2014, the Town of Harwich has 333 affordable units, comprising 5.4% of the total housing stock. The Town has not been granted a certification of compliance with the plan by DHCD and has not shown recent progress towards achieving its Statutory Minima. The



project is not a large project as defined by 760 CMR 56 and this application has not been previously received.

11. The Applicant has requested waivers from the Code of the Town of Harwich. In review of the relief requested and the proposed plan for the development, the Board finds that the certain requested waivers may be granted without adversely affecting the public health and safety of occupants in the development, the surrounding neighborhood, and the residents of the Town of Harwich, provided the conditions hereafter to be imposed in this permit are strictly followed.

*Vote: Based upon the evidence submitted and testimony provided, the Board moves to approve these findings with respect to the project's consistency with local needs.*

### Decision

*Motion: Based upon the findings of fact, the Board moves to grant a Comprehensive Permit in Case #2017-14 in accordance with MGL Chapter 40B, §§20-23 for the development proposed by Habitat for Humanity of Cape Cod, Inc., subject to strict conformance to the following conditions, terms, and restrictions:*

#### I. CONDITIONS

##### A. General

A.1 The holder of this Comprehensive Permit is defined as a non-profit entity, Habitat for Humanity of Cape Cod, Inc. The site is defined as that property containing approximately 2.466 acres of land constituting 93 and 97 Main Street, West Harwich, Massachusetts. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.

A.2 Except as may be provided for in the following conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). The Approved Plans consist of the following:

i. Site Plan titled "Site Plan of #93 & #97 Main Street West Harwich, MA" prepared for Habitat for Humanity of Cape Cod, Inc. by down cape engineering, inc. dated 01/31/2017 and revised through 7-13-2017 and Landscape Plan revised through 8-3-2017 (3 sheets).

ii. Elevations and floor plans by Brown, Lindquist, Fenuccio & Raber Architects, Inc. dated June 13, 2017 entitled

a. "3-BR CAPE FOR HABITAT FOR HUMANITY OF CAPE COD LOT #1 ON 93 & 97 MAIN STREET, HARWICH", consisting of 13 numbered drawings

b. "3-BR RANCH FOR HABITAT FOR HUMANITY OF CAPE COD LOT #2 ON 93 & 97 MAIN STREET, HARWICH", consisting of 12 numbered drawings

c. "2-BR RANCH FOR HABITAT FOR HUMANITY OF CAPE COD LOT #3 ON 93 & 97 MAIN STREET, HARWICH", consisting of 13 numbered drawings

- d. "2-BR RANCH FOR HABITAT FOR HUMANITY OF CAPE COD LOT #4 ON 93 & 97 MAIN STREET, HARWICH", consisting of 13 numbered drawings
- e. "3-BR RANCH FOR HABITAT FOR HUMANITY OF CAPE COD LOT #5 ON 93 & 97 MAIN STREET, HARWICH", consisting of 12 numbered drawings
- f. "3-BR CAPE FOR HABITAT FOR HUMANITY OF CAPE COD LOT #6 ON 93 & 97 MAIN STREET, HARWICH", consisting of 13 numbered drawings

iii. Landscaping Plans included as part of Site Plan.

iv. "Declaration of Protective Covenants and Restrictions for XXXXXX" and "Declaration of Trust Establishing the XXXXXX Homeowners Association" drafts dated August 15, 2017.

A.3 The Applicant shall be a Non-Profit Entity as required by Chapter 40B and it and its successors and assigns, shall comply with all applicable requirements of Chapter 40B and the regulations adopted thereunder.

A.4 The Project shall consist of not more than eight (8) house lots. Lots 1 through 6 will be the affordable units and will contain single family houses and other related residential amenities, all as shown on the Approved Plans. Lots 7 and 8 are the market rate lots.

A.5 (A) Any building to be constructed on the market rate lots and (B) any renovation of an existing building on a market rate lot except for that noted in (D) below, will be on the same footprint as the currently existing structure and will not exceed the current configuration of such structure. The current use each of the 3 existing structures is as follows:

- one building of 1794 sq ft, with a maximum of 2 units, with a total of 5 bedrooms and 3 baths;

- one building of 2,610 sq ft, with a maximum of 3 units, with a total of 6 bedrooms and 3.5 baths;

- one building of 732 sq ft, with a maximum of 1 unit, with a total of 2 bedrooms and 1 bath;

and (C) the architectural style and building materials of any such new construction or renovation shall be generally consistent with the existing such styles and materials.

(D) The ranch home, formerly numbered as 93 Main Street and shown as Lot 8 on the subdivision plan, will need to be partially demolished to create enough area for the new cul-de-sac roadway. Demolition will be the approximately 555 square feet that is a one bedroom/one bathroom unit. This same square footage may be re-built to the south of the existing home, as noted on the Site Plan. Floor plans and elevations shall be submitted to the Board's file prior to issuance of the building permit.

A.6 The Applicant will reasonably work with the Cape Cod Commission and/or the Massachusetts Historical Commission to develop a preservation restriction for the exterior of Judah Chase

House and barn. Such a preservation restriction shall be recorded at the Barnstable Registry of Deeds, and at any other appropriate governmental registry required to give it full effect .

- A.7 This Comprehensive Permit is granted for the use of Lots 7 and 8 (the market rate lots) for residential purposes only.
- A.8 In order to prepare for any connection to a future sewer system, a sewer line will exit each affordable unit on the street side of the unit.
- A.9 Each affordable and market rate unit will be serviced by Town of Harwich water.
- A.10 All residential units approved under this Comprehensive Permit shall be residential units, subject to a Declaration of Protective Covenants and Restrictions. These Protective Covenants and Restrictions shall, among other items, prohibit garbage disposals, prohibit irrigation and drinking water wells, require the owners to reasonably maintain their properties and grounds, and require the owners to reasonably cooperate with the Town and the State on the location of any future sidewalks along Route 28. Prior to the conveyance of any of Lots 1 through 6, Applicant will record a Trust establishing a Homeowners Association that will, among other items, address the road, drainage and utilities, including snow removal, maintenance, repair and replacement and requiring the Association promptly remove any snow windrows along the project site frontage on Route 28 within the sight triangle areas of the project, where such accumulations would exceed 2.5 feet in height and prohibiting installing or planting anything within 10 feet of the edge of the paved roadway other than grass or low bushes less than 2.5 feet in height not affecting sight lines or emergency access
- A.11 Pursuant to the Waiver List voted upon by the Board at the August 15, 2017 hearing, the Applicant has requested, and the Board has granted, waivers from the Harwich Zoning Bylaw and other local by-laws and regulations as specified in Exhibit A hereto. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§20-23. Any subsequent revision to the Plans, including but not limited to revisions that are apparent in the Final Plans that require additional or more expansive waivers of any local by-laws or regulations must be approved by the Board in accordance with 760 CMR 56.05(11) To the extent that additional waivers are subsequently determined to be required with respect to improvements that are shown on the Approved Plans, such waivers shall be deemed an insubstantial change to the Comprehensive Permit under 760 CMR 56.05(11), and can be granted administratively by the Board.
- A.12 The Applicant shall comply with all local regulations of the Town of Harwich and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- A.13 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project. All required state permits and approvals, including, but not limited to, Title V wastewater disposal permits shall be submitted to the Board's file prior to issuance of a building permit.

- A.14 Prior to issuance of building permits or any construction, all plans shall be reviewed and approved for consistency with this decision by appropriate Town agencies and departments. The Building Inspector or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. Inspections necessary to ensure completion of the road-work to applicable standards shall be set by the Town Engineering Department.
- A.15 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan construction financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.
- A.16 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.17 The sidewalks, driveways, roads, utilities, drainage systems, and all other infrastructure shown on the Approved Plans as serving the Project shall remain private until such time, if ever, the Project roadways are accepted by the Town of Harwich as public ways, and the Town of Harwich shall not have, so long as the roadway remains private, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and landscape maintenance. Nothing stated above shall prevent the Applicant, its successors and assigns from petitioning the Town of Harwich to accept the roadway in the future.
- A.18 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.
- B. *Affordability Requirements*
- B.1 Six (6) Habitat houses in the Project shall be low- or moderate-income units, meaning they shall be sold to households whose income is no more than eighty percent (80%) of the area median income, as determined by the United States Department of Housing and Urban Development ("HUD") and DHCD. Upon sale to eligible households, Applicant shall record the DHCD "Local Initiative Program Affordable Housing Deed Rider For Projects in Which Affordability Restrictions Survive Foreclosure".
- B.2 Upon completion of the Project and in perpetuity, the six (6) Habitat houses shall meet the criteria for inclusion in DHCD's "Subsidized Housing Inventory" (SHI).
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an affirmative fair housing marketing plan prior to the sale of any units, and shall ensure that the Project complies with the Subsidizing Agency's fair housing requirements. A copy of this plan will be provided to the Board prior to issuance of building permits.

B.4 At the approval of the applicable subsidy program, the maximum number of affordable units allowed by law and applicable subsidy program, but no more than seventy (70%) percent of the units, shall be reserved for current residents of the Town of Harwich, municipal employees of the town of Harwich, employees of businesses located in the Town of Harwich and households with children attending Harwich’s schools. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project’s monitoring agent to effectuate this local preference, with an approved secondary lottery for all other applicants. The Applicant shall assist the Town in the submittal of any evidence required by the Subsidizing Agency to support this local preference requirement.

C. *Submission Requirements*

C.1 Prior to any construction on the Site, whether or not pursuant to a building permit, the Applicant shall:

- a. Obtain a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA). The Board shall also be provided a copy of the SWPPP submitted along with the NPDES filing.
- b. Provide the Board with evidence of compliance with pre-blasting activities requirements, if necessary.
- c. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”) that conform to the requirements of this Comprehensive Permit and incorporate the conditions herein. The Final Plans shall also incorporate all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall signed and sealed by the Professional Land Surveyor, the Registered (Civil) Engineer of record. The Final Plans shall be submitted to the Board at least forty-five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the “Final Site Plan Submission Date”).

At a minimum, the Final Plans shall consist of a Definitive Subdivision Plan containing all of the required information from the Harwich Subdivision Rules and Regulations, except as waived herein.

- d. Obtain from the Harwich Board of Health a Disposal Works Permit pursuant to 310 CMR 15.00 (Title V) for each individual septic system.
- e. Obtain all required approvals from the Town Conservation Commission.
- f. Applicant proposes to establish homeowner’s associations for Lots 1 through 6 to maintain and repair the project roadway and associated infrastructure, including the stormwater management system, in conformance with the draft document, “Declaration of Trust Establishing the XXXXX Homeowners Association” dated August 15, 2017. Applicant shall record the Declaration of Trust Establishing the XXXXX Homeowners Association at the Barnstable County Registry of Deeds and provide

proof of recording to the Board.

- g. Applicant proposes to establish neighborhood covenants, in conformance with the draft document "Declaration of Protective Covenants and Restrictions for XXXXXXXXXX" dated August 15, 2017. Applicant shall record the Declaration of Protective Covenants and Restrictions at the Barnstable County Registry of Deeds and provide proof of recording to the Board.

**C.2** Prior to the issuance of a building permit for the project, the Applicant shall:

- a. Record this Comprehensive Permit with the Barnstable County Registry of Deeds, at the Applicant's expense, and provide proof of the same to the Building Inspector.
- b. Submit to the Board and the Building Inspector evidence of Final Approval from the Subsidizing Agency (DHCD), as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board and the Building Inspector a copy of the Regulatory Agreement for the Project. Execution and recording of such Regulatory Agreement shall be complete prior to the issuance of any building permit.
- d. Submit to the Building Inspector final Architectural Plans prepared and sealed by an architect with a valid registration in the Commonwealth of Massachusetts ("Architectural Plans"). The Architectural Plans shall be submitted in such form as the Building Inspector may request.
- e. The Board's engineer shall approve the maintenance schedule for the stormwater system.
- f. Obtain and file with the Building Inspector a copy of all federal, state, and local permits and approvals required for the Project.
- g. Submit evidence of a disposal works permit from the Harwich Board of Health pursuant to 310 CMR 15.00 (Title V), for construction of the septic systems for any lot for which a building permit is sought.

**D.** *Construction Completion; Certificate of Occupancy*

**D.1** Prior to issuance of a certificate of occupancy for any affordable lot in the Project, the Applicant shall:

- a. Submit interim engineer's certification of compliance with utilities plan and profiles to the Department of Public Works.
- b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the Project has been constructed in compliance with the Final Plans.
- c. Obtain acceptance from the Building Department and/or Fire Department of testing of

all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units

- d. Prior to issuance of a Certificate of Occupancy for any of the affordable units, the Applicant shall landscape the property using drought-tolerant plants and a minimum of 5" of loam on any disturbed areas of the site, which shall then be seeded with grass, of a type suitable for the location it is being applied to. All landscaping shall be done in accordance with a landscape plan approved by the Board.
- D.2 Prior to the issuance of a Certificate of Occupancy for the barn on lot 7, Applicant or applicant's designee shall have recorded the Historic Preservation Restriction on the exterior of the Judah Chase house and barn.
- D.3 Prior to issuance of the final certificate of occupancy, the Applicant shall:
- a. Submit to the Building Department, in digital file format, a final as-built plan showing rim and invert elevations, roadway, and associated construction. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.
  - b. Submit to the Board and Building Inspector as-built plans for all buildings in the Project.
- D.3 Once the six affordable housing Certificates of Occupancy have been issued, there shall be no dumpsters or other similar outdoor receptacles for collective storage of trash, rubbish or garbage for the six affordable housing lots. All outdoor receptacles for trash, rubbish or garbage on these lots shall be for the sole use of that individual lot owner, and all receptacles must be covered.
- E. *Project Design and Construction*
- E.1 The Applicant and the site general contractor shall attend a preconstruction conference with the Building Inspector and other Town Department heads as may be determined.
- E.2 The Applicant shall comply with the blasting guidelines required by applicable Massachusetts state law, rules, and regulations. The Applicant shall permit representatives of the Board to observe and inspect the Site and construction progress until such time as the Project has been completed.
- E.3 The proposed construction shall be in accordance with applicable federal and state laws, rules and regulations, and all local Town of Harwich bylaws, rules and regulations, including but not limited to those pertaining to Building, Fire, Safety and Health, unless specifically waived in this Decision

- E.4 Placement of propane tanks, if any, shall adhere to all applicable town and state regulations, including 527 CMR 6.00.
- E.5 The Applicant shall request and obtain permits and approvals from the Harwich Fire Department for any fire hydrant locations.
- E.6 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.
- E.7 During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan.
- E.8 Appropriate signage shall be shown on the Final Plans.
- E.9 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans. The location of features shown on the approved design including but not limited to fill pipes, vents, bollards, connections between tanks (if applicable) etc., shall be shown on the Final Plans.
- E.10 If natural gas is proposed, gas service locations shall be included on the Final Plans.
- E.11 Soil material used as backfill for access drives shall be certified by the Project Engineer to the Building Inspector as meeting design specifications, as applicable.
- E.12 Exterior construction activities shall be conducted between the hours of 7 a.m. and 7p.m., Monday through Saturday. For purposes of this condition, exterior construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and erection of new structures. All off-site utility work shall be coordinated and approved by the Department of Public Works and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on site during construction.
- E.13 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. All construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.14 No building areas shall be left in an open, unstabilized condition. If construction ceases for a period of more than sixty days, temporary stabilization shall be accomplished by hay bales,



hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.

E.15 All retaining walls shall be constructed in an aesthetic manner, specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.

E.16 Snow removal shall be the obligation of the Applicant and its successor Homeowner's Association, until such time, if ever, that the Town agrees to accept responsibility for snow removal.

F. *Traffic Safety Conditions*

F.1 Vehicles exiting the project site shall be placed under STOP-sign control with a marked STOP-line provided.

F.2 All signs and pavement markings to be installed within the project site shall conform to the applicable standards of the Manual on Uniform Traffic Control Devices (MUTCD).

F.3 Signs and landscape features to be installed along project site roadways, internal to the project site and within the site triangle of the project site roadway intersection with Route 28, shall be designed and maintained so as not to restrict lines of sight.

G. *Police, Fire, and Emergency Medical Conditions*

G.1 Appropriate sight distance shall be maintained at the intersection of the Project Driveway and Main Street.

G.2 Parking in the cul-de-sac area shall be prohibited.

H. *Water, Septic, and Utilities*

H.1 The water, septic, and drainage utilities servicing the houses in the Project shall be installed and tested in accordance with applicable Town of Harwich requirements and protocols, except as may be waived herein.

H.2 Utilities shall be installed in accordance with the requirements of the utility companies and state and town requirements. Utilities shall be installed by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like.

I. *Other General Conditions*

I.1 The proposed structures shall be constructed in accordance with the approved Site Plans and Architectural Plans. Any changes to the structures prior to initial occupancy (beyond what is

permitted pursuant to Condition A.2) must comply with the procedures set forth in 760 CMR 56.05(11).

- I.2 This decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later. In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.
- I.3 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; (b) have access to, and inspect, examine and make copies of all of the books and records of the Applicant pertaining to the project; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

Vote: The Board votes to approve the Comprehensive Permit with conditions:

#### Request for Waivers and Variances

*Motion: With respect to the Applicant's request for relief from local rules and regulations, the Board finds that certain requested waivers may be granted without adversely affecting the public health and safety of occupants in the development, the surrounding neighborhood, and the residents of the Town of Harwich, provided the conditions imposed in this permit are strictly followed. Therefore, the following waivers are granted to Habitat for Humanity for the development of the Oak Street Community Housing project.*

#### Code of the Town of Harwich, Massachusetts, Chapter 325: Zoning

##### W1. Article V: Use Regulations

##### § 325-8 Applicability of use regulations, 325-9 Permitted uses and § 325-9 Table of Use Regulations

Waiver requested from the applicability of use regulations for Lot 7 and Lot 8; waiver requested to allow multifamily use on Lot 7 and two-family on Lot 8

##### W1. § 325-12 Road construction requirements for certificate of occupancy.

Instead of the Planning Board in the role of determining completeness of road construction, approval by the Town of Harwich Department of Public Works Director or Town Engineer.

**W3. Article VI: Area, Height and Bulk Regulations**

Waive this Article to the extent required to build to plans as submitted.

	Lot Size	Frontage	Frontyard Setback	Sideyard Setback	Backyard Setback	Min Bldg Height
	Table Format : Dimensional Requirement Minimum CH1 and RH1/Provided					
Lot 1	40,000/8,187	150/186.14	25/13.6	20/46.3	20/10.5	No waiver
Lot 2	40,000/11,130	150/50.37	25/12.8	20/10.6	20/44.5	No waiver
Lot 3	40,000/10,668	150/33.62	25/43.0	20/11.1	20/40.2	No waiver
Lot 4	40,000/9,469	150/33.83	25/43.9	20/10.3	20/49.0	No waiver
Lot 5	40,000/9,385	150/48.56	25/7.8	20/19.7	20/20.1	No waiver
Lot 6	40,000/10,426	150/86.01	25/11.3	20/12.4	20/62	No waiver
Lot 7	40,000/21,436	150/152.0	25/42.2	20/28.9	20/15.9	No waiver
Lot 8	40,000/9,262	150/256.25	25/13	20/7.8	20/corner lot	No waiver
Lot 9	Cul-de-sac Roadway, not buildable, no dimensional requirements applicable					

Waivers requested from this article include, but are not limited to, the above dimensional requirements as well as a request for a waiver from §325-18 A: waive minimum width of lots and shape number requirements; §325-18 C: waive requirements for corner lots; §325-18 G: waive setback requirements for accessory structures (sheds) for lot lines internal to the development (see note 1 below); §325-18 O: waive prohibition on site preparation prior to building permits

Note 1: Sheds siting as shown on the submitted plans is an approximation. Based on field conditions sheds may be sited differently, but setback to perimeter abutters (not lot lines internal to the development) will adhere to §325-18 G.

**W4. Article VII: Sign Regulations**

Waiver requested from the size and durational requirements in §325-25: Definitions so that the Habitat for Humanity donor and volunteer recognition signage erected during construction is classified as a "Temporary Sign" and so is exempt from regulations under §325-31 O..

**W5. Article IX Off Street Parking and Loading Requirements § 325-42H Design requirements.**

Waiver requested from 20' minimum distance for a driveway serving a dwelling unit from other drives.  
 Waiver requested from 10' minimum distance for a driveway from a side lot line

**Town of Harwich, Massachusetts, Board of Health, Regulations and Policies**

**W6. § 1.211** Request waiver from the requirements in this section, including the requirement of a hearing before the Board of Health.

**W7. FEES:** request waiver from Board of Health fees, except for fees for inspections.

**Code of the Town of Harwich, Massachusetts, Chapter 400: Subdivision of Land and Site Plan Special Permits**

**W8. § 400-10** Subdivision filing A (1-7), B (1-3) Plan, profile and cross section requirements

Due to site being a comprehensive permit, relief from normal subdivision filing requirements is requested. The roadway is small and simple and fairly level, and is adequately shown in plan view with grades and drainage clearly indicated, so profiles and cross sections are not required. There are details and drainage sections for construction provided, and the plans are stamped by a Professional Engineer.

**W9. § 400-11 Subdivision review procedure C (1-4) Definitive Plan**

Request waiver from normal review process due to site being a comprehensive permit applicant.

**W10. § 400-11 Subdivision review procedure D, Performance guarantee, E Recording, F. Evidence of Satisfactory performance, G Release of performance guarantee**

Due to comprehensive permit, request ZBA be permitting authority, with building department and engineering department handling oversight of construction, occupancies and roadway completion. As part of the Comprehensive Permit process, upon approval the ZBA, sitting in place of the Planning Board, would endorse subdivision plan, and the plan would then be recorded at the Barnstable Registry of Deeds. Applicant requests waiver from subsection D(1) financial security, but will file a covenant per subsection D(2).

**W11. § 400-12 B. Width (1) Right Of Way**

Request reduction from 50' to 40' in width in the Right Of Way (ROW)

The reason for the request is due to the small size of the subdivision, the number of homes served is seven, only two homes over the threshold for a "Way" which needs only a 40' ROW per current Harwich regulations in Table 1. A smaller ROW saves room for the homes and lots in this 100% affordable development.

**W12. § 400-12 A. Location and alignment**

Request reduction from the 25' road layout intersection radius noted on Figure No. 1; roadway pavement meets minimum radius, so intent of rule is met, right of way was flared to accommodate the proper pavement radius.

Creating a 25' Right of Way radius in this North West corner of the site would result in a small and odd shaped remainder parcel.

**W13. § 400-12 B. Width (2) minimum pavement width and berms**

Request reduction from 22' to 21' exclusive of berms, request to have twelve inch machined berm on both sides of roadway rather than 18" wide berms. The reason for this request is to maintain the rural character of the area by reducing impervious area (see section 400-12E). The number of lots is only two over the threshold for the twenty foot pavement width. The size of the berms is requested to be a 12" x 3" Cape Cod berm typical for smaller roadways in the region.

**W14. § 400-12 C Dead-end way (2)**

Request circular turn around with outside diameter of 84' and right of way diameter of 86' less than the 90' and 110' required. This request is made to help maintain the rural character of the roadway, and to reduce impervious area. The proposed cul-de-sac has oversize entrance radii and is sufficient to turn around a 30' single unit truck, which replicates many fire trucks. There is no center island proposed which will also help facilitate vehicle turn arounds at the roadway end.

**W15. § 400-12 E rural character.**

Request waiver from requirement from filing Preliminary Plan when requesting design standard relief to maintain Rural Character. Waiver requested to simplify permitting under the comprehensive permit statute.

**W16. § 400-13 Design standards for utilities A. Drainage (5)**

Request ability to install subsurface drainage partially beneath roadway surface instead of completely within easements outside of the right of way. The reason for this request is to save trees and room for homes and septic systems in this 100% affordable development.

**W17. § 400-14 A (1) Required improvements and specifications for construction**

Request Figure 4 centerline radius be reduced to 65' from 150'. The reason for this request is due to the roadway needing to turn left toward the center of the site in a short distance. The reduced radius does not affect the safety due to the turn only being a short distance at this radius, only about a fifty five degree bend. The fact that the roadway is a short cul-de-sac and driving speeds will be minimal further ensures safety. Fire trucks can easily navigate this shallow bend.

**W18. § 400-14 E (2) Drainage System**

Request drainage systems be installed on low side of superelevated roadway only, and at lowpoint in cul-de-sac, instead of pairs of interconnected basins. The proposed drainage system will adequately drain the small roadway, which pitches with the natural terrain. Not having cross pipes means less interference if a gravity sewer is run down the center of the roadway in the future. Eliminating extra structures gives economy to the 100% affordable development. Further the proposed system utilizes secondary deep sump hooded manholes to provide the 44% TSS removal prior to infiltration mandated by the State DEP guidelines, and this is in excess of the diagram shown in the subdivision regulations.

**W19. § 400-14 H Base and leveling course (1)**

Request reducing width of T-base to 26' from 28', due to reduced pavement width. Extending the T-base 18" beyond the pavement is requested, as this will be adequate to support the edge of pavement.

**W20. § 400-14 J Berms**

As stated earlier in 400-12 (B) request 12"x3" Cape Cod berms. Larger berms not needed in small development, helps maintain rural character and provide smoother transitions to driveways.

**W21. § 400-14 M (1)(7) Sidewalks**

Waiver requested from having a sidewalk on one side of roadway. Subdivision is only 2 lots over "Way" which does not require sidewalks. To maintain the rural character and reduce impervious area, it is requested to eliminate the requirement for sidewalks. The subdivision is a short dead end route, residential in nature, and there is not a sidewalk on Rt. 28 to connect to. It is further requested to waive the requirement in (7) to provide the in lieu payment when sidewalks are waived. This subdivision is being constructed by a not-for-profit corporation with 100% of the new homes being affordable, no profit which could pay for sidewalks elsewhere is being generated.

**w22. § 400-14 N Bounds (1) and O.**

Waiver requested to reduce the number of cement bounds to four points on the roadway is requested. Numerous perimeter bounds exist, and four additional monuments on select corners is requested to be adequate to monument the subdivision. Rebar with survey caps are requested to be set on remaining front lot corners. Cost savings are the reason for the request, as the development is 100% affordable and will not generate a profit.

**General**

Fee Waivers –waive all local fee payments to the Town of Harwich.

*Vote: The Board votes to grant the requested waivers:*

**Ordered**

Comprehensive Permit in Case #2017-14 has been granted with conditions. This decision must be recorded at the Barnstable Registry of Deeds for it to be in effect. The relief authorized by this decision must be exercised within three years. Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to M.G.L. Chapter 40A, Section 17, within twenty days after the date of the filing of this decision in the office of the Town Clerk. The Applicant has the right to appeal this decision as outlined in M.G.L. Chapter 40B, Section 22.

VOTE: 3-2-0

**VOTING IN FAVOR**

Mr. David Ryer, Chair  
Mr. Dean Hederstedt  
Mr. Al Donoghue

**VOTING IN OPPOSITION**


Mr. John P. Burke, Clerk  
Ms. Kathleen Muller

  
\_\_\_\_\_  
David Ryer, Chair

8/29/17  
Date Signed

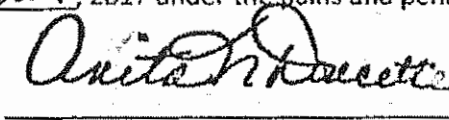
**AUG 30 2017**

This Decision has been filed with the Town Clerk on

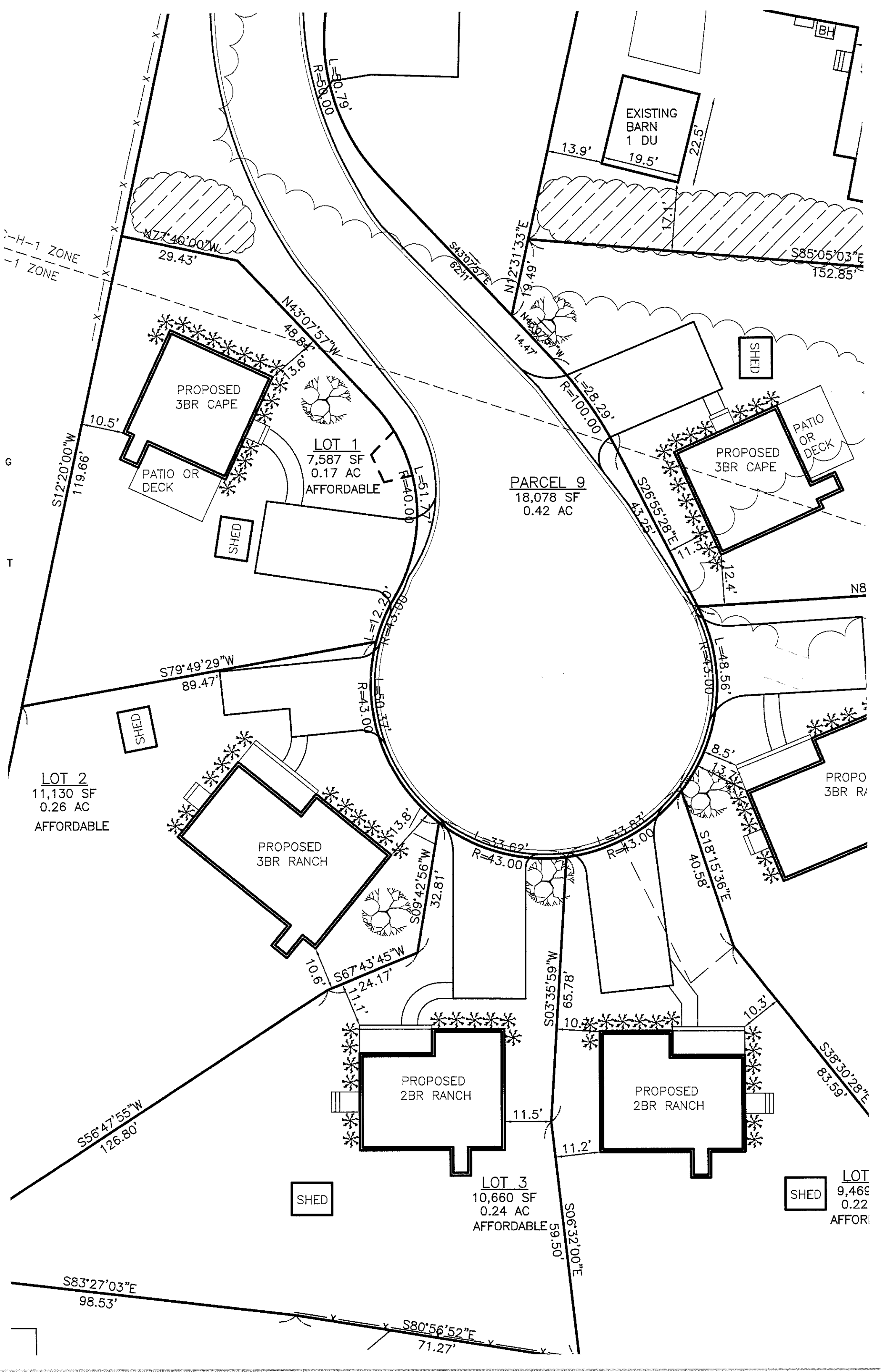
  
\_\_\_\_\_  
Town Clerk

I, Anita Doucette, Clerk of the Town of Harwich, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Zoning Board of Appeals filed this decision and that no appeal of the decision has been filed in the office of the Town Clerk.

Signed and sealed this 22<sup>nd</sup> day of September, 2017 under the pains and penalties of perjury.

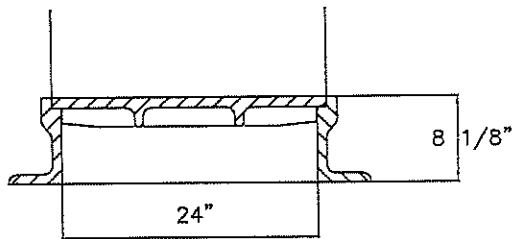
  
\_\_\_\_\_  
Anita Doucette, Town Clerk

**SEP 22 2017**



1" = 1'-0"

MANUF. LeBARON, BROCKTON, MA  
 MODEL: LF 248-2  
 WEIGHT: 480 LBS

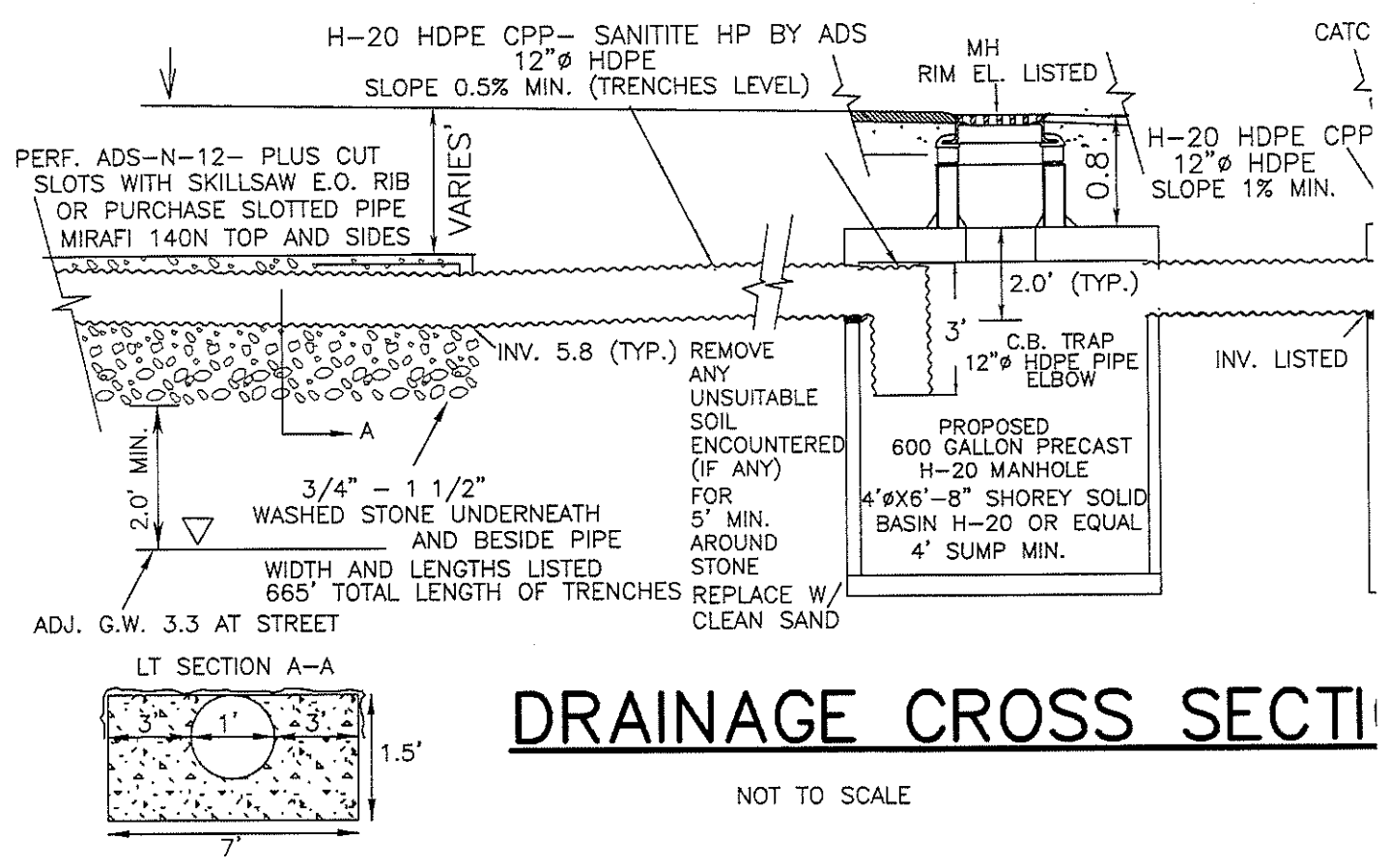


ELEV.			ELEV.
11'	0"	4	11.5'
	12"	A LS 10YR 3/2	
9'	27"	B LS 10YR 4/4	9.25'
		C MS 10YR 7/6	
			ADJ. GW EL. 2.8
1'	120"		1.5'
0'	126"		0.5'

TER ENCOUNTERED

ELEV.			ELEV.
10.5'	0"	8	11'
	12"	A LS 10YR 5/1	
8.7'	36"	B LS 10YR 4/6	8'
		C MS 10YR 7/6	
			ADJ. GW 3.8
			ADJ. GW EL. 4.2
2.5'	97"		2.9'
0'	114"		1.5'

TER ENCOUNTERED



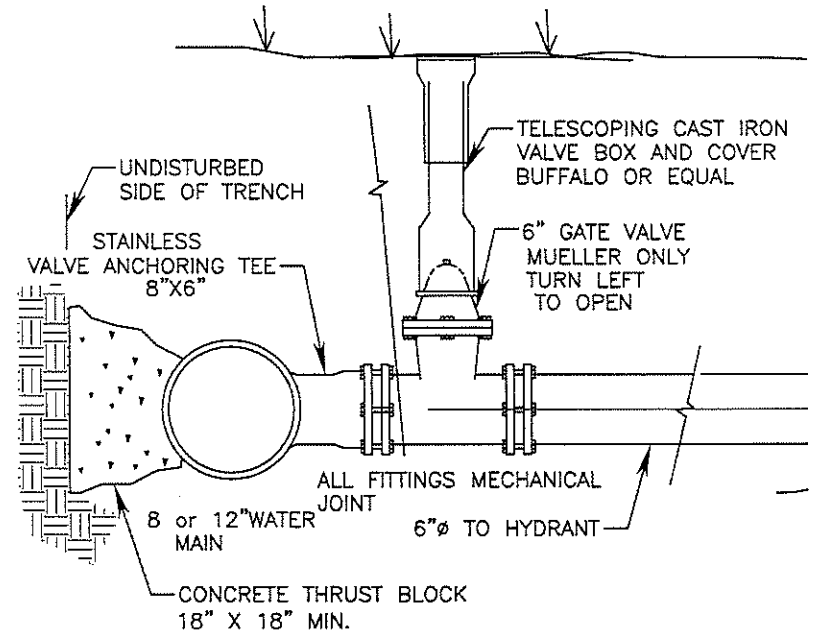
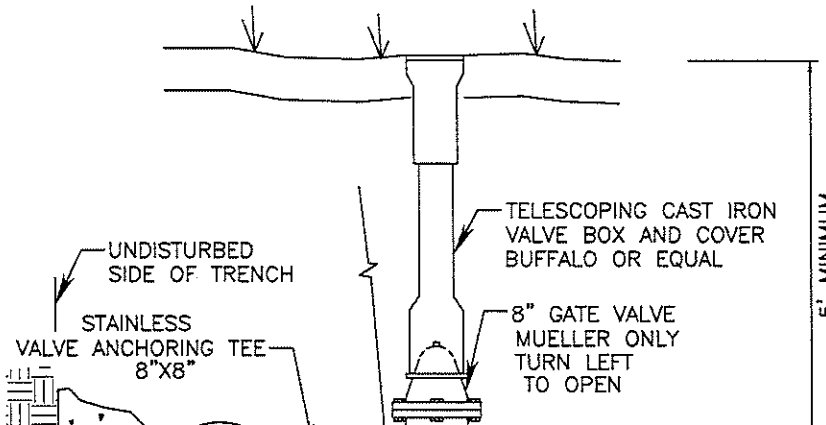
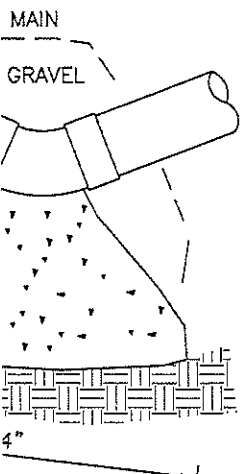
## DRAINAGE CROSS SECTION

NOT TO SCALE

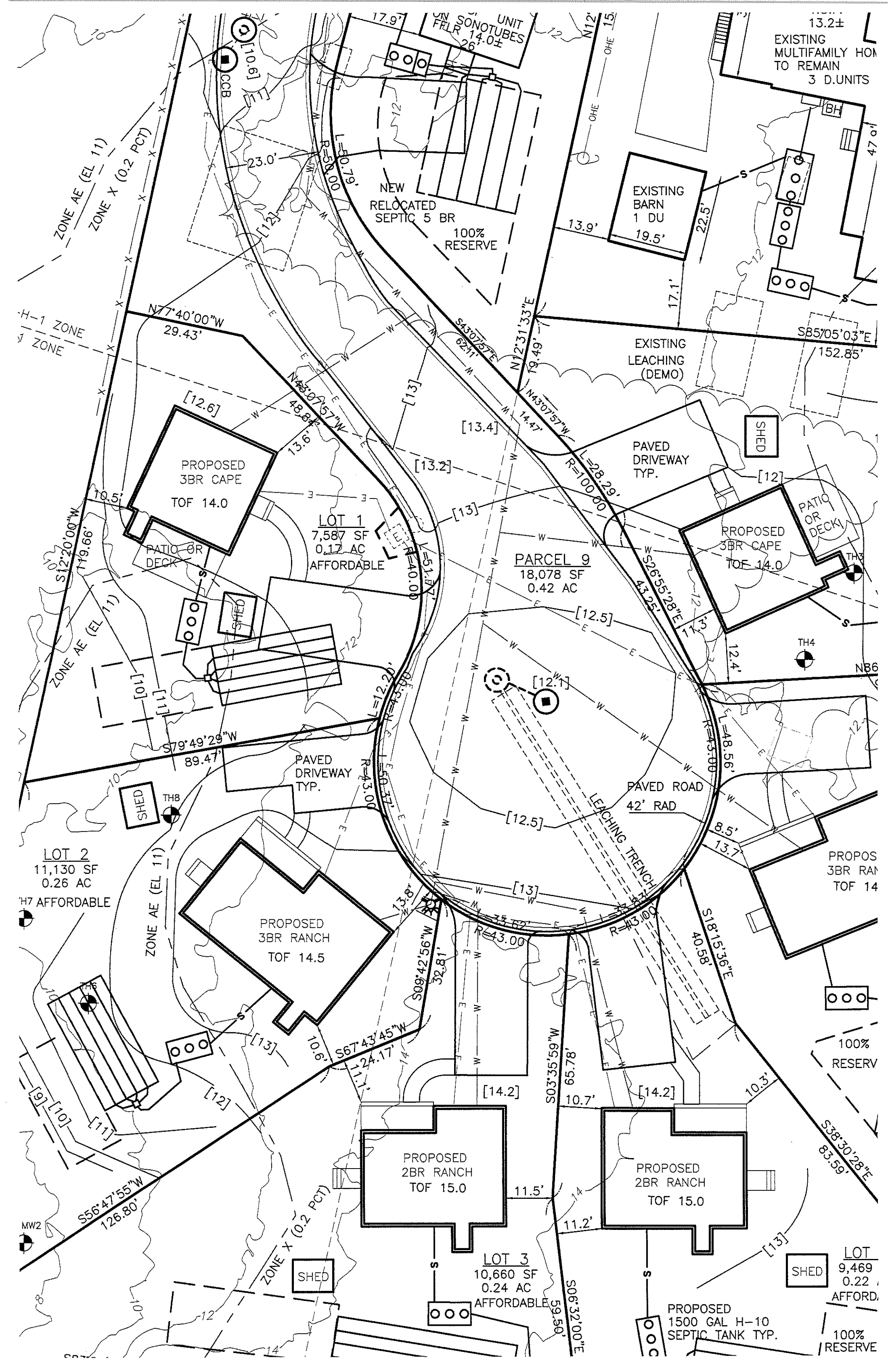
## WATER LINE NOTES:

- ALL MATERIALS AND WORKMANSHIP TO CONFORM TO THE RULES, REGULATIONS AND SPECIFICATIONS OF THE HARWICH WATER DEPARTMENT AS AMENDED TO PRESENT. DISTRICT HAS AUTHORITY TO AMEND PLANS.
- WATER MAIN AND FIRE SERVICE LINE SHALL BE CEMENT LINED DUCTILE IRON PIPE CLASS 52 8" DIA. DOMESTIC SERVICE TO BE 200 PSI CTS PLASTIC LINE TO DISTRICT SPECIFICATIONS.
- GATE VALVE SHALL BE MUELLER ONLY. IRON BODY, BRONZE MOUNTED, DOUBLE DISC, WITH TWO INCH OPERATING NUT WITH MECHANICAL JOINT HUBS. GATE VALVE SHALL CONFORM IN EVERY RESPECT TO ALL APPLICABLE AWWA STANDARDS. VALVE SHALL BE DESIGNED FOR 200 PSI WORKING AND 300 PSI TEST PRESSURE AND SHALL OPEN LEFT.
- VALVES SHALL ALSO CONFORM TO THE SPECIFICATIONS OF THE AWWA AS TO SIZE STEM, PITCH OF THREAD, GASKET SEATING AREA SHALL BE FULLY MACHINED TO THE FIXED DIMENSIONS AND TOLERANCES AS PER AWWA SPECIFICATIONS. ALL VALVES SHALL BE PROVIDED WITH "O" RINGS. THE DESIGN OF THE VALVE SHALL BE SUCH THAT THE SEAL PLATE CAN BE FITTED WITH NEW "O" RINGS WHILE THE VALVE IS UNDER PRESSURE IN THE FULLY OPEN POSITION.
- VALVE BOXES SHALL BE BUFFALO OR PIONEER AND SHALL BE FURNISHED AND INSTALLED FOR ALL VALVES. THEY SHALL BE CAST IRON, TAR COATED, SLIDING TYPE ADJUSTABLE VALVE BOXES TOGETHER WITH CAST IRON COVERS. SEE DISTRICT REGULATIONS.
- CONCRETE THRUST BLOCKS AS SHOWN, CONCRETE SHALL BE 1 PART CEMENT TO 2 PARTS SAND AND 4 PARTS COARSE AGGREGATE. CONCRETE CLASS "C" WITH A 28 DAY COMPRESSION STRENGTH OF 2000 PSI MINIMUM, MAXIMUM AGGREGATE SIZE OF 1-1/2". THRUST BLOCKS SIZED PER SPECIFICATIONS. ALTERNATELY PRECAST THRUST BLOCKS TO DISTRICT SPECIFICATIONS MAY BE UTILIZED.
- CARE SHALL BE TAKEN TO ENSURE THAT ALL CONCRETE THRUST BLOCKS BEAR AGAINST UNDISTURBED TRENCH WALLS, AND NOT TO ENCASE FLANGES AND BOLTS ON MECHANICAL JOINT FITTINGS. WHERE UNSUITABLE BEARING MATERIAL IS ENCOUNTERED, EXCAVATE AND PLACE SUFFICIENT CONCRETE BALLAST TO OFFSET THE ANTICIPATED THRUSTS.
- HARWICH WATER DEPARTMENT APPROVED CONTRACTOR AND INSPECTOR REQUIRED.
- CONTRACTOR RESPONSIBLE FOR AS-BUILTS AND PLACING SAME ON ENGINEERED DRAWING AND SUBMITTING TO WATER DEPT. FOR THEIR RECORDS.
- ALL FILL TO BE PLACED IN LIFTS AND ROLLED WITH A 10 TON VIBRATORY ROLLER TO ACHIEVE 95% MAX. DRY DENSITY IN ACCORDANCE WITH ASTM-1557, METHOD "D"

ROTATE H AS REQUIRED







13.2±  
EXISTING  
MULTIFAMILY HOM  
TO REMAIN  
3 D. UNITS

NEW  
RELOCATED  
SEPTIC 5 BR  
100%  
RESERVE

EXISTING  
BARN  
1 DU  
19.5'

PROPOSED  
3BR CAPE  
TOF 14.0

LOT 1  
7,587 SF  
0.17 AC  
AFFORDABLE

PARCEL 9  
18,078 SF  
0.42 AC

PROPOSED  
3BR CAPE  
TOF 14.0

LOT 2  
11,130 SF  
0.26 AC  
H7 AFFORDABLE

PROPOSED  
3BR RANCH  
TOF 14.5

PROPOSED  
2BR RANCH  
TOF 15.0

PROPOSED  
2BR RANCH  
TOF 15.0

LOT 3  
10,660 SF  
0.24 AC  
AFFORDABLE

PROPOSED  
1500 GAL H-10  
SEPTIC TANK TYP.

LOT  
9,469  
0.22  
AFFORDABLE

100%  
RESERVE



Together

FOR A *Stronger* FUTURE

MMA Annual Meeting and Trade Show  
January 19 and 20, 2018  
Boston

Join more than 1,000 local leaders at this must-attend event, featuring distinguished speakers, state and national leaders, experts on key municipal and national issues, and hundreds of Trade Show exhibitors. The high-energy, two-day event is devoted to learning, problem-solving, and idea sharing.

## NETWORKING

The MMA Annual Meeting is a rich environment for idea exchange and problem-solving. Local leaders have countless opportunities to discuss the challenges they face and to learn what their peers are doing to move their communities forward.

The event also features business meetings specifically for mayors, councillors and aldermen, selectmen, town managers and administrators, and finance committee members.



## TRADE SHOW

More than 200 exhibitors will be on hand to showcase the latest in products and services tailored to Massachusetts cities and towns. The MMA's Trade Show provides a great opportunity to find out what's new in the municipal marketplace. The Trade Show will also feature a series of Learning Lab workshops.

## WORKSHOPS

A central feature of the MMA Annual Meeting is the wide selection of workshops covering the latest developments affecting local government. **Here are the 2018 workshop titles:**

- Addressing Off-Duty Misconduct in the Social Media Age
- Best Practices for Veterans' Services Programs
- Boost Your Downtown With Better Parking Management
- Combatting Climate Change With Clean Energy
- Dealing With the Spillover Effects of the Opioid Epidemic
- Developments and Initiatives in Municipal Finance
- Do's and Don'ts of Municipal Social Media Policies
- Employment Liability Best Practices
- High-Quality Budget Presentations and GFOA Best Practices
- Hiring and Training a Modern Police Force
- Inspire Engagement With a Citizens Academy
- Labor Law Update: Recent Cases and Agency Decisions
- Leading Locally on Economic Development
- Leading the Way to a Thriving Workplace
- Marijuana Law: The Way Forward for Municipalities
- Municipal Law Update
- New Public Works Project Strategies
- Not Just for Accountants: Know Your Chart of Accounts
- A Practical Approach to Mitigating Cybersecurity Risks
- Recruiting a Town Manager in Times of Change
- Strategies for Managing Health Care Costs
- Strong Families Make Strong Communities
- Successful and Effective Land Use and Zoning Policies
- Using Municipal Cooperation to Improve Services and Achieve Savings
- Weathering Climate Change Through Preparation
- Your Role in Making Your Community Healthier

*As always, there will be ample opportunities for questions and interaction with presenters and colleagues.*



# GET THE MMA ANNUAL MEETING APP!

Make the most of your MMA Annual Meeting experience with our official app. Find out how to get it in the December Beacon.

## SPEAKERS

Each year, the MMA Annual Meeting features dynamic and inspiring speakers, with messages tailored to local government.



### Keynote Address David Breashears

An accomplished filmmaker, author, mountaineer and speaker, Breashears co-directed and photographed the first-ever IMAX film shot from Mount Everest. Since 1978, he has combined his climbing and filmmaking skills to complete more than 40 film projects. A faculty

member at MIT's Sloan School of Management, he is also the founder and Executive Director of GlacierWorks. He will talk about leadership, planning and team building.



### Friday Dinner Dennis Lehane

Award-winning author and Boston native Lehane is best known for his novels "Mystic River," "Gone, Baby, Gone," "Shutter Island" and "Live by Night," all of which have been adapted into popular films. Lehane has published more than a dozen novels, and has

also written for the acclaimed HBO series "The Wire" and "Boardwalk Empire." He has taught fiction writing at several colleges.



## Saturday Evening Entertainment

### Beatlejuice

For more than 20 years, Beatlejuice has been entertaining audiences across New England with the timeless hits of the Fab 4. Beatlejuice covers every era of the Beatles catalog, faithfully reproducing some of the greatest songs ever written. Close your eyes, and you'll be convinced you're listening to John, Paul, George and Ringo.

*Speakers for the closing session and Women Elected Municipal Officials Luncheon are to be announced.*

## SCHEDULE AT A GLANCE

### Friday, January 19

8-9 a.m.	Orientation for first-time attendees
9:30-11 a.m.	Keynote Address
11 a.m.-5 p.m.	Trade Show
Noon-1:30 p.m.	WEMO Luncheon
2-3:30 p.m.	Workshops
3:45-5 p.m.	Workshops
6-7 p.m.	Opening Reception
7-9 p.m.	Banquet Dinner

### Saturday, January 20

7:30-8:30 a.m.	Member Associations' Breakfast
8:30-10 a.m.	Business meetings for member associations
10 a.m.-2 p.m.	Trade Show
10:15-11:50 a.m.	MMA Annual Business Meeting
Noon-1:30 p.m.	MIIA Luncheon/Business Meeting
2-3:30 p.m.	Workshops
3:45-5 p.m.	Closing Session
6-7:15 p.m.	President's Reception/ Municipal Awards Ceremony
7:15-9:15 p.m.	Banquet Dinner

Follow #MassMuni18 on Twitter for the latest news.

Massachusetts Municipal Association

# 2018 ANNUAL MEETING & TRADE SHOW

January 19 & 20, 2018 | Hynes Convention Center and Sheraton Boston Hotel, Boston



## PROGRAM REGISTRATION FORM

New Registration  I've already registered but need to make changes (e.g., add'l dinner tickets - name field required)

Name (please print or type)

First name or nickname for badge

Title

Municipality, organization or other affiliation

Street address

City or town State ZIP

Daytime phone number Fax number

E-mail address

Guest's first name Guest's last name

Please note: "Personal guest" registration category is not for use by co-workers or associates within your community, organization or business.

Are you a first-time attendee?  yes  no

Your registration fee includes admission to the keynote address, all workshops, your member group business meeting, the trade show, and the opening and president's receptions.  
**Cancellations:** Refunds will be made in full for registration or meal tickets ONLY if you notify the MMA by a letter on municipal letterhead postmarked no later than Jan. 3, 2018.

**Hotel reservations** must be made directly with the Sheraton Boston Hotel at (800) 325-3535 or online through the MMA website.

For more information about the hotel, visit [www.sheratonbostonhotel.com](http://www.sheratonbostonhotel.com) or [www.mma.org](http://www.mma.org).

Please complete this form and return to:  
Annual Meeting, Massachusetts Municipal Association  
One Winthrop Square, 2nd floor, Boston, Massachusetts 02110  
or fax to (617) 695-1314 or email to [amregistrations@mma.org](mailto:amregistrations@mma.org)

### A. Conference Pre-registration DEADLINE: JANUARY 10, 2018

- Member.....\$180
- Business Program Member .....\$180
- Other Government Entities.....\$295

All registrations after Jan. 10 deadline must be processed on-site. There will be an additional \$50 charge for on-site registration.

**Subtotal A** \$ \_\_\_\_\_

### B. Events

#### NUMBER OF TICKETS

- \_\_\_\_\_ Friday Dinner @ \$39 per person \$ \_\_\_\_\_
- \_\_\_\_\_ Saturday Dinner @ \$45 per person \$ \_\_\_\_\_
- \_\_\_\_\_ Women Elected Municipal Officials lunch (Friday) @ \$29 per person \$ \_\_\_\_\_

**Subtotal B** \$ \_\_\_\_\_

**Total Due A+B** \$ \_\_\_\_\_

Make check payable to Massachusetts Municipal Association.

### Credit Card Information (All Fields Required)

Card Holder's Name

Card Holder's Email Address (receipt will be emailed)

Card Holder's Billing Address

City or town State ZIP

Card Number Exp. Date

Card Holder's Signature

For up-to-date info visit [www.mma.org](http://www.mma.org)  
(617) 426-7272 | (800) 882-1498

For Office Use Only: Amount \$ \_\_\_\_\_ Check # \_\_\_\_\_ Date: \_\_\_\_\_

# 2018 Annual Meeting & Trade Show

January 19 & 20, 2018 | Hynes Convention Center and Sheraton Boston Hotel, Boston

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Guest's first name Guest's last name

Please note: "Personal guest" registration category is not for use by co-workers or associates within your community, organization or business.

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Your registration fee includes admission to the keynote address, all workshops, your member group business meeting, the trade show, and the opening and president's receptions.

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- Business Program Member .....\$180
- Other Government Entities .....\$295

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**Subtotal A** \$ \_\_\_\_\_

### B. Events

#### Number of Tickets

\_\_\_\_\_ Friday Dinner @ \$39 per person \$ \_\_\_\_\_

\_\_\_\_\_ Saturday Dinner @ \$45 per person \$ \_\_\_\_\_

\_\_\_\_\_ Women Elected Municipal Officials lunch (Friday) @ \$29 per person \$ \_\_\_\_\_

**Subtotal B** \$ \_\_\_\_\_

**Total Due A+ B** \$ \_\_\_\_\_

Make check payable to Massachusetts Municipal Association.

### Credit Card Information (All Fields Required)

Card Holder's Name

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City or town State ZIP

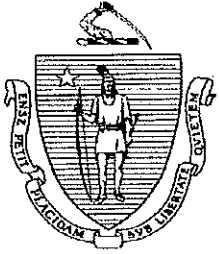
Card Number Exp. Date

Card Holder's Signature

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or email to [amregistrations@mma.org](mailto:amregistrations@mma.org)

For up-to-date info visit  
[www.mma.org](http://www.mma.org)  
.....  
**(617) 426-7272 | (800) 882-1498**

For Office Use Only: Amount\$ \_\_\_\_\_ Check # \_\_\_\_\_ Date: \_\_\_\_\_



OFFICE OF THE GOVERNOR  
COMMONWEALTH OF MASSACHUSETTS  
STATE HOUSE • BOSTON, MA 02133  
(617) 725-4000

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR



September 20, 2017

Dear Mr. Christopher Clark,

Congratulations! I am pleased to notify you that the Town of Harwich has been awarded a Recycling Dividends Program grant of \$12,100 through the Sustainable Materials Recovery Program. I want to thank you for your commitment to reducing waste and increasing recycling for the benefit of our communities and the environment.

Enclosed you will find further instructions from the Department of Environmental Protection on next steps. Please feel free to contact Tina Klein at 617-292-5704 if you have any questions.

Governor Charles D. Baker

Lt. Governor Karyn E. Polito



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Matthew A. Beaton  
Secretary

Karyn E. Polito  
Lieutenant Governor

Martin Suuberg  
Commissioner

September 20, 2017

Mr. Christopher Clark  
Town Administrator  
Town of Harwich  
732 Main Street  
Harwich, MA 02645

Dear Mr. Clark,

Congratulations! It is my pleasure to inform you that the Massachusetts Department of Environmental Protection (MassDEP) has awarded the Town of Harwich Recycling Dividends funds under the Sustainable Materials Recovery Program. The Town of Harwich has earned 11 points and will receive \$12,100.

Please note, awards for the following grant categories are being evaluated (Mattress Recycling Initiative, SMART/PAYT, Curbside Recycling/Food Waste Carts, Drop-off Equipment, School Recycling Assistance, Waste Reduction Enforcement Coordinator, Waste Reduction Projects, Organics Capacity Projects) and will be announced separately.

The Sustainable Materials Recovery Program (SMRP) was created under 310 CMR 19.300-303 and the Green Communities Act, which directs a portion of the proceeds from the sale of Waste Energy Certificates to recycling programs approved by MassDEP. The Recycling Dividends Program (RDP) provides payments to municipalities that have implemented specific programs and policies proven to maximize reuse, recycling and waste reduction. Municipalities receive payments according to the number of criteria points their program earns. Eligibility criteria will ramp up over time, leveraging increasingly greater diversion results and lower solid waste disposal.

The key dates and deadlines specific to your award are summarized in the enclosed Checklist. The detailed terms and conditions are specified in the RDP Contract which has been mailed to the Recycling Contact of record for your municipality, copied below. The Recycling Contact will facilitate getting this document signed by an Authorized Signatory and will return it to MassDEP. Once received, the RDP Payment will be remitted to your municipality. Should you have any questions, please call Tina Klein at 617-292-5704.

Thank you for your commitment to advancing recycling and waste reduction in Massachusetts. Together our efforts will reduce greenhouse gas emissions; conserve natural resources and save energy, while also supporting jobs and reducing disposal costs for waste generators and municipalities.

Sincerely,

Martin Suuberg  
Commissioner

cc: Lincoln Hooper, DPW Director

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper





Checklist for Recycling Dividends Program Grant Award

**This document contains important grant deadlines and requirements**

**STEP ONE: EXECUTING THE CONTRACT**

It is the responsibility of the municipal Recycling Contact to ensure that the RDP Contract is signed by an individual currently holding one of the Titles listed on page 1 of the enclosed Authorized Signatory Listing form, which your municipality filed with MassDEP in the spring of 2017. If the person(s) listed on the form has changed (for example, a new Mayor has been elected), the municipal official with the same title may sign the RDP Contract. A new Authorized Signatory Listing form IS NOT REQUIRED.

For reference, a copy of your Authorized Signatory Listing has been sent to the municipal Recycling Contact.

*The signed original RDP Contract must be returned to the address listed below **no later than December 31, 2017 or funds will be forfeited.***

**STEP TWO: TRACK EXPENDITURES BY APPROVED EXPENSE CATEGORY**

- This is not a reimbursement-based grant. Your award payment will be processed as soon as the RDP Contract is returned.
- However, you are required to keep track of approved expenditures, by expense categories. See Section 8 – Use of Funds, for a list of approved expense categories, and Section 9 for record keeping requirements.
- Be prepared to be audited.

**STEP THREE: REPORT EXPENDITURES AND REMAINING BALANCE**

- Funds do not need to be spent in the fiscal year awarded; they may be accumulated across fiscal years in order to make a larger purchase than is possible with one year's award. The municipality is required to report all expenditures from the previous calendar year no later than February 15<sup>th</sup>.

**Contact Dawn Quirk with any questions:** 617-292-5557 or Dawn.Quirk@state.ma.us

**Return completed documents to:** Dawn Quirk, MassDEP, Consumer Programs, One Winter Street, 7<sup>th</sup> Floor, Boston, MA 02108

## OFFICE OF THE TOWN ADMINISTRATOR

Christopher Clark, *Town Administrator*

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



To: Board of Selectmen  
From: Christopher Clark, Town Administrator  
Re: Weekly Report September 25 - 29, 2017  
Date: October 4, 2017

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On Monday, the morning consisted of a meeting with staff to talk about Ambulance Billing and then met with two ladies about the Town needing to take better care of our cemeteries. I went out to site and met with DPW personnel. Our efforts are good when one considers the limited resources. Met with Cyndi Williams from the Chamber to discuss various issues. The Cape Cod Commission held a meeting with Town Administrators regarding cable and wi-fi services on Cape Cod and Cape Net. The balance of the afternoon was spent preparing for the BOS meeting and then attending the meeting in the evening.

On Tuesday, started with our meeting follow up session in the office. We then conducted interviews of the candidates for the clerical position in the Community Development Department. I then met with Charleen and Aly to go over CPC applications. The balance of the morning was with John Rendon on the Saquatucket project. "Lunchtime" was spent on a site visit to Harwich Port to view sites of liquor and entertainment hearings. Meeting immediately afterward on a staff issue. I also met with our Asst. Conservation Agent regarding property ownership maps. I also finished the day with a conversation with the Town Attorney on various legal issues. I returned in the evening for a successful meeting with the Housing Authority on our Housing Trust effort.

Wednesday highlights include meeting with the Chair to go over the agenda. I had a meeting with our Regional Town Finance group to share and update on financial issues. I spent time on preparing the weekly report. The balance of the afternoon was preparing and then conducting the Perks Show Cause Hearing.

Thursday, the morning consisted of meeting on the Saquatucket project. I met with Andrea Aldana on Housing Issues. CPC Chair David Nixon came in to discuss some operational issues. I worked on paperwork for balance of the morning and into afternoon. I then attended a Community Development meeting to discuss enforcement issues with Harwich Port businesses. I then met with the new COA Director on operational issues before leaving for the day.

Friday morning consisted of meeting with Barry Viprino on Farm issues. I then had a discussion with the Deputy Fire Chief on operational issues. I had an additional meeting with Carol from Finance on operational issues. I had lunch out but did return to the office to tackle some paperwork before leaving around 3:00.

I did also throughout the week, in the early morning or after hours in the evening, work on the Capital Budget Summary and various items related to same.

Memorandum from Charleen Greenhalgh  
 Assistant Town Administrator  
 Town of Harwich

October 4, 2017

To: Christopher Clark, Town Administrator  
 From: Charleen Greenhalgh, Assistant Town Administrator  
 Re: Weekly Report – Week of September 25, 2017

Another busy week, which included, but was not limited to:

- Monthly meeting with Cyndi Williams, Director, Chamber of Commerce
- Three (3) Administrative Assistant Interviews for Community Development; prepared offer letter and did CORI.
- Finalized CPC Application for the Albro House. Met with Aly Sabatino, Town Planner and Chris Clark, Administrator to review Housing Trust CPC application.
- Attended Housing Authority Meeting.
- Attended Selectmen Agenda meeting.
- Met with Mr. Clark and Sandy Robinson to review and establish the Department Head presentation schedule to the COC for Capital Projects.
- Attended the Southeast Coast of Massachusetts IPMA-HR Chapter meeting in Hyannis.
- Attended the weekly Community Development Meeting with senior staff.
- Reached out to the COC and FinCom Chairs to let them know that I would now be assisting them with their meeting agendas and preparing minutes until a new Recording Secretary could be found.
- Prepared the COC agenda for Oct. 3<sup>rd</sup>, posted and distributed.
- Researched the Open Meeting Law complaint from Ronald Beaty; drafted response letter to the Massachusetts Attorney General for the Board of Selectmen's consideration.
- Personnel matters once again taking time to work through.
- Status update on employment vacancies:

<u>Position</u>	<u>Status</u>	<u>Replacement or New</u>
Administrative Assistant – Community Dev.	Filled	Replacement
Sr. Health Agent	Interviews set for Oct. 5	Replacement
Greenskeeper I	Reviewing Applications	Replacement
Board Recording Secretary	Posted on Website and <i>Indeed</i> (website), reviewing applications	Replacement

# WEEKLY REPORT TO THE SELECTMEN

## BUILDING DEPARTMENT

PERIOD ENDING 10/04/2017

As of

	2014	2015	2016	10/04/17
Cumulative Building Permits	1395	1433	1331	1107
Cumulative Plumbing & Gas Permits	1226	780	1123	944
Cumulative Electric Permits	936	1051	1095	650
Signs	27	32	41	23
Regulatory Boards (ZBA, Historic)	64	59	57	66

The Town has finally hired an Administrative Assistant to fill our vacant clerical spot. She will start next week. Requests for property, zoning and permit information continue to require significant time and research from the department. As the shoulder seasons are the busiest for home projects and real estate sales, there has been an increase in building permits applications and property research.

Respectfully Submitted,



Ray Chesley 10.4.17

Building Commissioner

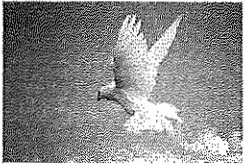
## Cemetery Administrator's Weekly Report

Week ending September 30, 2017

- Meeting with Cemetery Commission Cynthia Eldredge makes a motion to name the pet burial grounds after Christine Wood and recommends the name to be Christine Wood Memory Garden it was a unanimous vote. Robbin Kelley will contact surviving family member for permission and draft a letter to the Board of Selectmen with Commission recommendation.
- Met with family at Pine Grove Cemetery to go over lot information and preplanning for future burial. Monument mark out in Island Pond and Evergreen Cemeteries Surveyed Donahue lot in Island Pond Cemetery for Saturday burial.
- Review Mount Pleasant Cemetery Gravestone Conservation CPC packet; creating updated report with all the picture of memorials with location and descriptions of work to be done. Color coded map of Mount Pleasant Cemetery highlighting lots to have work performed.
- Finalized the Pre Planning Luncheon to be held on Monday October 2, 2017. Received all 14 participants' biographies and topics. Created schedule of times for each speaker and contact sheets for handouts. Coordinated with Linda the menu to be served. Coordinated with Susan Jusell, Harwich Town Nurse and Kevin Grunwald, Social Services Coordinator COA to introduce speakers.
- On September 22 I continued my Certificate program in Local Government Leadership & Management with Suffolk University classes. Classes require extensive reading and projects due weekly we are currently working on Strategic Leadership.

Respectfully Submitted

Robbin Kelley  
Cemetery Administrator



**Pre Planning Luncheon Monday October 2, 2017**  
**Are you Dying to Know?**  
**Straight Talk about Death and Dying**



**Speakers:**

- ❖ Robbin Kelley – Town of Harwich Cemetery Administrator  
Harwich Cemetery Department, 273 Queen Anne Road, Harwich, MA 02645  
[Rkelley@town.harwich.ma.us](mailto:Rkelley@town.harwich.ma.us) 508-430-7549
- ❖ Judi Wilson– Town of Harwich Council on Aging Director  
Harwich Community Center, 100 Oak Street, Harwich, MA 02645  
[jwilson@town.harwich.ma.us](mailto:jwilson@town.harwich.ma.us) 508-430-7550
- ❖ Attorney Elizabeth Lynch – Elder Law  
702 Putnam Ave, Cotuit, MA 02635 508-428-7560
- ❖ Tom Blute – Henry T Crosby & Sons  
672 Main Street, Harwich, MA 02645  
[tomblute@crosbymonuments.com](mailto:tomblute@crosbymonuments.com) 508-432-0007
- ❖ Lt. Kevin Considine – Harwich Police Department  
Harwich, MA 02645  
[considine@harwichpolice.com](mailto:considine@harwichpolice.com) 508-430-7542 ext.5521
- ❖ Susan Jusell – Harwich Town Nurse  
100 Oak Street, Harwich, MA 02645  
[sjusell@harwich.ma.us](mailto:sjusell@harwich.ma.us) 508-430-7550
- ❖ Kevin Grunwald – Social Services Coordinator  
100 Oak Street Harwich, MA 02645  
[kgrunwald@town.harwich.ma.us](mailto:kgrunwald@town.harwich.ma.us) 508-430-7551
- ❖ Nancy Reynolds – Hospice Liaison for Beacon Hospice  
[Nancy.reynolds@amedisys.com](mailto:Nancy.reynolds@amedisys.com) 774-319-1115
- ❖ Christine Damery– Doane Beal & Ames Funeral Home  
260 Main Street, West Harwich, MA 02671  
[Christine.Damery@Dignitymemorial.com](mailto:Christine.Damery@Dignitymemorial.com) 508-385-7116
- ❖ Annie Gibbons – With Amazing Grace  
[www.withamg.net](http://www.withamg.net)  
[a.gibbons@comcast.net](mailto:a.gibbons@comcast.net) 508-237-0595
- ❖ Shawney L. Carroll–Veteran’s Agent  
100 Oak Street, Harwich, MA 02645 508-430-7510
- ❖ Jack & Eileen Wyatt– Vocalists Quality Entertainment  
[Djoncapecod.com](http://Djoncapecod.com)  
[jwyattdj@aol.com](mailto:jwyattdj@aol.com)
- ❖ Angela Angelini – Director of Business Development  
820 Harwich Road, Brewster, MA 02631  
[aangelini@Maplewoodsl.com](mailto:aangelini@Maplewoodsl.com) 774-323.3983
- ❖ Jennifer Pickett – Reference Librarian Brooks Free Library  
739 Main Street Harwich, MA 02645  
[jpickett@clamsnet.org](mailto:jpickett@clamsnet.org) 508-430-7562

## Pre-Planning 2017

**Robbin Kelley** - Cemetery Administrator Town of Harwich- Cemetery Lots Traditional/Casket Burials vs Cremation.

**Kevin Grunwald** – MSW Social Service Coordinator, Harwich Council on Aging –The Death Café a death café is a place for people to come with their questions their curiosity, their wish to find out how other people are thinking about death.

**Nancy Reynolds** - Hospice Liaison, Beacon Hospice “Dispelling the Myths of Hospice.”

**Susan Jusell** – Harwich Town Nurse “Resources available”

**Angela Angelini** – Director of Business Development, Maplewood of Brewster. Senior Living communities designed to suit your lifestyle and healthcare needs. Bringing a unique and exciting new choice for seniors and commitment to offering residents exceptional quality service, amenities and peace of mind.

**Tom Blute** – Henry T. Crosby & Sons Monumentation

**Lt. Kevin Considine** – “Unattended Deaths” & Prescription Medication Safety.” As well as our role in us called to hospice deaths and.....our new policy on police response to medical calls. Important especially for elders to know

**Attorney Elizabeth Lynch** – Elder Law FREE legal services for Harwich residence at COA

**Annie Gibbons** – with Amazing Grace, Funeral Concierge Services outside the scope of a funeral home, Dog sitting, personal shopping, emergency house cleaning, elderly care, organization of food and flowers arriving at home, transportation from airports, preparing your home for family and friends.

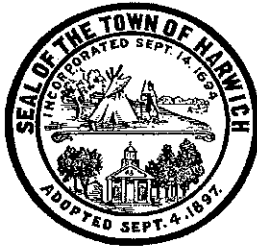
**Jennifer Pickett** – Reference Librarian Brooks Free Library Displaying resources available at library. Books on dealing with loss, guides to wills and estate planning, to making end of life decisions.

**Christine Damery** – Funeral Director, Doane Beal & Ames specializes in Funeral Pre Planning and educating the public on the benefits of preplanning. Her wish is that no one enters the funeral home uninformed and unprepared during the most difficult time in their life.

**Shawney L. Carroll** – Veteran’s Agent, Veterans Laws and Benefits. Bourne Massachusetts National Cemetery

**Judi Wilson**– Town of Harwich Council on Aging Director “Programs available to help avoid loneliness”

**Jack & Eileen Wyatt** – Vocalists Quality Entertainment singing Amazing Grace



**HARWICH  
ASSESSORS  
OFFICE**  
508-430-7503

## Memo

To: Sandy Robinson  
Ann Steidel

From: Donna Molino

Date: October 2, 2017

**RE: Assessor's Department Weekly Report (w/e 9/29/17)**

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1. Gather boat information to process bills for FY2018 boat excise.
2. Processed motor vehicle abatements.
3. Exemptions.
4. Assisted taxpayer with exemption.
5. Processed and reviewed abutter's lists.
6. Processed and reviewed weekly deeds.
7. Processed end-of-month closing and reports.
8. DLS meeting in Randolph
9. Field inspection for a residential property.
10. Procedure manual.



Channel 18 Weekly Report w/e September 30, 2017



- Filmed Board of Selectmen
- Filmed Planning Board
- Filmed ZBA
- Assist COA with 'Being Mortal' Simulcast
- Respond to website change requests
- Drafted Cable Use Policy (continued)
- Finished employee evaluation for dept. head
- Scheduled Ballot testing with Town Clerk
- Assisted Building dept. with research project request
- Met with Building Maintenance to discuss possible Small Hearing Rm. Project
- Continue research for Ch.18 assigned Selectmen's goals
- Schedule updates and meetings for October
- Film Community Center update
- Film Conservation Trust Update
- Filmed Community Journal (5 volunteers reported for duty)
- Agendas and Minutes posted
- All clips and meetings transferred and posted to YouTube
- Video file maintenance

Please Follow Channel 18 on YouTube for frequent video updates/meetings

[www.youtube.com/harwichchannel18](http://www.youtube.com/harwichchannel18)

And Facebook for additional info

[www.facebook.com/harwichchannel18](http://www.facebook.com/harwichchannel18)

Respectfully Submitted,

Jamie Lee Goodwin

Weekly Update for the Community and Cultural Centers  
September 25, 2017 – September 29, 2017

I am pleased to provide a report on my work at both the Community Center and the Cultural Center for the week running 9/25 to 9/29.

- Finished CPC article including the 12 copies required by the committee and delivered the finished report to Town Hall.
- I continued to work on the Town of Harwich Facility Rental information as part of my department goals.
- Working with the elementary school to have our flyers for our upcoming events at the Center sent home so parents are informed.
- Conducted an interview with Bill Galvin of the Cape Cod Chronicle to better advertise our events at the center. In addition, provided monthly calendar for the newspaper to publish for information for the community.
- Completed agenda for the Facilities Committee meeting for October 13<sup>th</sup> meeting and posted the agenda to the Town website.
- I did a Channel 18 update on information about the Community Center and upcoming events in the building.
- This week we averaged 5-7 tours of the Cultural Center for interested parties. We will have two rooms coming available for some of the individuals on the wait list at the Cultural Center.
- Working on several policy/procedures for the Cultural Center Including wait list information, current rental agreements including late fees, additional fees for multiple renters in one studio and art room pricing and storage cost for supplies.
- Scheduled the 2<sup>nd</sup> open house at the Cultural Center in conjunction with the Harwich Chamber of Commerce for Saturday December 2, 2017.
- I continued to work on the Community Center budget for FY 19
- Followed up with several individuals regarding use of both the Community Center and the Cultural Center for a host of different programs and events.

Should you need further information on these weekly activities, please do not hesitate to get in touch with me.

Carolyn Carey, Community Center Director



# Town of Harwich

## COUNCIL ON AGING

Harwich Community Center ♦ 100 Oak Street ♦ Harwich, MA 02645  
Tel: 508-430-7550 Fax: 508-430-7530

## WEEKLY REPORT

**TO:** Chris Clark, Town Administrator  
**FROM:** Judi Wilson, Director, Council on Aging  
**RE:** COA WEEKLY REPORT - week ending September 30, 2017

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In addition to our regular activities, below is a summary of our work this week:

### Programs:

- Hosted a live simulcast program of author "Dr. Atul Gawande" with Nauset Neighbors attended by approximately 120 individuals
- Hosted a "Death Café" attended by 20 individuals which enabled participants to talk about death and dying
- Arranged 7 medical rides for seniors with volunteers
- Served 14 seniors at weekly Wellness Clinic
- Assisted 3 seniors with Fuel Assistance applications
- Completed updates and registration for 2017 Thanksgiving 2-day meal program
- Conducted home visits and appointments with seniors to provide seniors and their families with health and wellness counseling, resource information, and referrals for assistance

### Administration:

- Reviewed, condensed and updated promotional and resource information in the COA
- Drafted CORI Policy for COA Board to review in October
- Attended Cape COAST (Councils On Aging Serving Together) meeting and met with Barnstable County Human Services Dept. to discuss changes in coordination of regional SHINE program
- Attended Cape Cod Hoarding Task Force meeting and initiated plans for Buried in Treasures support group
- Met with staff at Brooks Library to discuss program collaboration
- Met with several seniors to discuss their specific concerns regarding transportation and COA's responsiveness to seniors' needs

Respectfully submitted,

Judi Wilson



# TOWN OF HARWICH

## DEPARTMENT OF PUBLIC WORKS

273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

### **DPW Activity for the period of September 24, 2017 - September 30, 2017**

#### **Highway Maintenance**

- Completed 23 work orders
- Trash runs Monday, Wednesday and Friday
- Finished all street sweeping
- Brooks Park fence project completed
- Cleaned 18 catch basins with catch basin truck
- Patched multiple locations with Canto Paving
- Drainage work on hold while contractor works elsewhere for approximately 1 week
- began prep work and coordination for paving with MCE Dirtworks

#### **Vehicle Maintenance**

- Performed fourteen repairs on vehicles, small, and heavy equipment
- Sent out three trucks for front end alignments
- Installed LED spotlight on the Fire Departments ladder truck

#### **Cemetery Maintenance**

- Mowed and weedwacked Evergreen Cemetery
- Mowed Town Hall, Albro House, Exchange Park, Doane Park, Brooks Academy, Wychmere Overlook and Memorial Squares
- Blew leaves off bike trail for half-marathon
- Cleaned up for burial in Island Pond Cemetery

#### **Parks Maintenance**

- Mowed and prepped 7 ball fields once
- Weedwacked fence lines of the fields
- Worked with Cemetery Maintenance on mowing of Town Hall, Albro House, Exchange Park, Doane Park, Brooks Academy, Wychmere Overlook and Memorial Squares

### **Facility Maintenance**

- Received 14 new work orders and completed 9 work orders from back log
- Continued with the boiler replacement for the Fire Department Headquarters.
- Replaced all of the boiler drains and auto air relief vents on each of the heating coils in Fire Department Headquarters

### **Disposal Area**

- C&D: 12 loads, 205.13tons
- MSW: 8 loads, 190.44tons
- Recycling: 6 loads, 25.52tons
- Vehicles Recorded: 5,931
- Revenue: \$43,200.70

### **Reception**

- 70 phone calls
- 15 walk ins
- 34 work orders processed.



## TOWN OF HARWICH

732 Main Street

Harwich, MA

02645

ENGINEERING DEPARTMENT

(508)430-7508

### WEEKLY REPORT WEEK OF SEPTEMBER 25, 2017

- Research and review crosswalk policy with Planner and Jerry Beltis
- Review delayed MS4 requirements and report future actions needed to Chris Clark. Discuss with AECOM possible future Capital MS4 requirements.
- Answer questions to bid packages currently out
- Road Inspections (field)-
  1. Littlefield Pond Road
  2. Denwich Road
  3. Chloe's Path on hold
  4. Seth Whitefield Road (a.k.a. Hawksnest Road) Shelley's Path on hold
  5. Arthur's Way
- Work on rest room and septic plan for Brooks park
- Work on specifications for pre-engineered metal building at Cranberry Valley Golf Course
- Zoning Board of Appeals-review and report on all cases
- Building Permits-review and report on all cases
- Planning Board-review and report on all cases
  - a. Site plans (existing conditions, proposed conditions, drainage)
  - b. Approval Not Required Plans (ANR) (Safe and Adequate Access, Panhandles etc.)
  - c. Definitive Plans (drainage, frontage, site distances, area and shape number requirements)
- Assist Building Department, Assessors, Conservation Commission Agent, and Planner with research of various properties and submittals.
- Provide technical support, and scanning and copying of plans for all Departments, Boards and Committees.
- Continual E911 address verifications and changes. In communications with Verizon and Mass GIS for their E911 mapping purposes.
- Prepare Weekly Report

Respectively submitted:  
Robert Cafarelli, PE



**TOWN OF HARWICH**  
**FINANCE DIVISION**  
**732 MAIN STREET, HARWICH, MA 02645**  
**TEL: 508-430-7518 FAX: 508-430-7504**

**Carol Coppola**  
**Finance Director/Town Accountant**

**Wendy Tulloch**  
**Assistant Town Accountant**

*Report of the*  
**Finance Director/Town Accountant – Week Ending 9/29/17**

Undertakings within the Finance Department during the past week include the following initiatives/tasks:

- Identify 3 CPC articles remaining in General Fund and reclassify to CPC fund,
- Research 140 Special Revenue Funds, identify 65+ funds no longer used carrying balances (most funds dating back 10 fiscal years),
- Categorize all Special Revenue Funds for external auditor,
- Attend board of Selectmen's meeting,
- Continue work on Schedule A and year end reports for DOR,
- Attend Law Seminar in Randolph,
- Demonstration on Open Gov software for financial transparency,
- Review final FY 16 audited financial statements,
- Review draft FY 16 Management Letter,
- Review draft FY 16 Single Audit,
- Audit, process and approve payroll transactions,
- Audit, process and approve vendor transactions,
- Review and record cash receipts.

Sincerely,

Carol Coppola  
Finance Director/Town Accountant



# Harwich Fire Department



*Fire Suppression*

*Prevention*

*Emergency Services*

Norman M. Clarke Jr., **Chief of Department**

David J. LeBlanc, Deputy **Fire Chief**

Weekly Report – September 24, 2017 through October 01, 2017

## Incidents:

Fire/Explosion	01
Overpressure/Rupture	00
Rescue Call/ EMS	54
Hazardous Condition	02
Service Call	04
Good Intent	06
False Call	19
Severe Weather/Disaster	00
Special Type/Complaint	00
Total	86

## Fire Prevention:

Inspections	
Resale	11
Annual	05
Joint	00
Final	00
Lockbox	00
Liquid Propane Storage	01
Pre-Inspection	02
Oil Tank	00
Oil burner	00
Town Hall Hours	04
Underground Storage Tank	00
Truck Tank	00
InspectionsMisc	02

## Items of note:

Chief and Deputy met with National Grid/RH White re: East Harwich Gas project and concerns.

Began training for new 4-Gas meters that were approved at the May ATM and recently purchased.

Town-wide radio system final detail worked out and parts delivered. Construction starts 10/04/2017



## Weekly Report for Selectman

9/26-10/2

### **Golf Operations**

- The golf course was open in full all 7 days.
- Upcoming Tournaments:
  - Pals For Life Charity 10/4/17
  - Senior Club Championship 10/5&6
  - Monomoy Athletic Booster Club 10/8

### **Golf Course Maintenance**

- Golf Course remains in good shape
- Continuing bunker maintenance
- Pump house controller install
- Pumps to be pull, rebuilt and reinstall starting around Mid-November

### **Golf Course Infrastructure Project**

- 10/3 Bid Posted in Central Register
- 10/12 Advertise Bid Package in newspaper
- 10/26 Bid Opening
- 11/6 Bid Award by Selectman

## Ann Steidel

---

**From:** John Rendon  
**Sent:** Wednesday, October 04, 2017 10:15 AM  
**To:** Sandy Robinson; Ann Steidel  
**Cc:** Michelle Morris; William Neiser; Heinz Proft  
**Subject:** Harbormaster Dept Weekly Report 25 Sep - 01 Oct

### Operations:

- Hauled & cleaned regulatory Swim buoys from Nantucket Sound for the season.
- Continued to clear sections of the marina so construction contractor for the Marina Replacement project can get a head start on the demolition of the marina.
- Assisted Natrual Resources with Pleasant Bay water sampling on board 77B.
- 77B conducted 2 pump-outs for a total of 60 gallons of waste.

### Admin:

- Created Replacement Sticker Application.
- Contacted more boat owners in WD Section and also WA Section to relocate.
- Provided email list to HPBY for Inner/Outer Harbor mooring lists.
- Revoked (1) Wychmere Inner Harbor Mooring for no use.
- Processed 8 transient slip reservations.

### Meetings:

- Met with TA and Eastward Companies to discuss potential contract award for the SAQ Landside Renovation project.
- BOS meeting - status of Saquatucket Landside project.

### Training:

- Harbormaster attended Death Investigation/Missing Persons training session conducted by Cape & Islands District Attorney's office.

**John C. Rendon**  
Harbormaster  
Town of Harwich  
774 212-6193 (c)

## Health Director Weekly Report Week ending September 30, 2017

- Projects-
  - Staff Vacancy- Sr. Health Inspector- three candidates have applied for the full time position. An interview team is being assembled and interviews will be scheduled as soon as possible.
  - Annual Employee Flu Clinic- More planning taking place this week for the clinic. We will be running the clinic as a mock "drill" in order to meet our deliverable for the Emergency Planning Coalition.
  - Document Scanning-Our administrative staff continues to work on scanning documents to the Accela program. We are scanning soil logs as time permits.
  - License renewal-The BOH updated the fee schedule and created new fee categories. This has created the need to update all of our applications and fee schedules as well as notify stakeholders of the new fees that will be imposed starting January 1<sup>st</sup>. We are working with Accela to ensure renewals go smoothly this year-automatically expiring and allowing renewals electronically.
  - Updating forms-The change in fees has necessitated an update in our applications and forms. We have updated the paper forms as well as the downloadable forms on the website.
  - Community Development-met with TA and ATA to discuss compliance with various restaurants/entertainment license holders.
  
- Consultations:
  - Pre-variance meetings-met with various engineers and designers proposing to upgrade septic systems that will require variances from Title 5 as well as local BOH regulations
  - Perks-met with owners of Perks to discuss the seasonal requirements of the license (May1- Sept 15 per BOH variance approval for the septic system in 2012) The owners would like to change the dates of the seasonal restriction to better fit busy season. I advised them to make a request to modify the previous variance conditions. This would be a full hearing before the BOH. The owners also discussed the possibility of expanding the establishment into the retail space at the store front. The septic system is the limiting factor in this situation and will need a full review before any changes are to be made. One possibility was removing a bedroom from the apartment upstairs to provide additional septic flow, removing retail store space to provide additional septic flow. These ideas will require a solid design plan as well as BOH approval.
  - 88 Bank Street-met with Attorney Bill Crowell and owners. A second story addition is proposed and will require ZBA review.
  - Food truck-met with prospective food truck operator
  
- Permit review and issuance-
  - RET-
    1. 140 Uncle Venies
    2. 31 Ryder Road
    3. 77 azalea
    4. 530 Route 28-main house
    5. 530 Route 28-office/garage
    6. 23 Red River
    7. 10 Lake Drive
    8. 7 Jeremy Lane
    9. 26 Frances
    10. 161 Route 28
  
  - Certificate of Compliance issued-
    1. 31 Ryder Road

- *Annual business license and permit review-*
  1. John Peters, Installer
  2. Mitchells Gourmet Food-temporary for Cape Verdean Museum opening
- *Septic system plan review and issuance-*
  1. 13 Pamela
  2. 161 Route 28-repair
  3. 11 Shore Road
  4. 14 Hidden Cove
  5. 13 Pamela
- *Building plan review and approval*
  1. 16 Robins Way
  2. 86 Sisson
  3. 36 Pilgrim
  4. 427 Great Western Road
  5. 142 depot Road
  6. 161 Church Street
- *Well construction permits-*
  1. 37 Ayer Lane
  2. 2 Weston Wood
- *Inspections-*
  - *Food Inspections-*
    1. Jake Rooney's-re-inspection
    2. Hot stove
    3. Alecsies house of pizza
    4. Harwich Junior Theater
    5. The Tern Inn
    6. Value Mart (and re-inspections)
    7. West Harwich Save-On
    8. Dairy Queen
    9. Cape Cod Tech School
    10. Harwich Elementary
    11. Monomoy Regional High School
    12. Rosewood Manor
    13. Wingate
    14. Castaways
  - *Final Inspections- Septic systems-*
    1. 85 bank Street
    2. 26 Harwood
    3. 42 Sea Street
    4. 16 Harwood
  - *Site visits/walk thru for non-compliance/floor plan clarification*
    1. 142 Depot Road-finished basement previously approved, now has a full bathroom and online pictures show a bed in the "family room". Met with realtor,
  - *Complaints-*
    1. Tobacco Control program informed us of two violations of selling to a minor: 7-11 and the Mobil on Rt 124. This is the first offense at each of these establishments and written warnings will be issued.
    2. 14B Harold Street-Beach plum condos. Owner of condo complained of water leak in unit above her-not fixed after many requests to the association. Leak caused water damage to the ceiling in her unit. -Inspection done -leak fixed, no water damaged left.
    3. 33 Willow Street-complaint of overflowing septic system-no action required

IT Department summary – week ending 9/30/2017

- Worked with Maintenance Manager to evaluate renewal options for online cost estimating
- Resolved issues with Outlook email synchronizing with Exchange Server
- Replaced switch in DPW network
- Evaluated cost to augment email to Boards and Committees
- Moved Crystal Reports installation at Water Department
- Completed Server Upgrade & loaded System to be used by MUNIS Self Service module and Tyler Content Manager
- Backups, Server maintenance and Antivirus monitoring
- Ongoing maintenance and problem resolution on computer, phone, email, printer and software for Town employees.

## Ann Steidel

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**From:** Heinz Proft  
**Sent:** Wednesday, October 04, 2017 9:52 AM  
**To:** Ann Steidel; Sandy Robinson  
**Subject:** Heinz -Natural Resources Weekly report 10/4/2017

Natural Resources Weekly report 10/4/2017

- \* Completed and submitted 2017 Hinkley's Pond CPC application.
- \* Attended Pleasant Bay Alliance watershed alliance watershed workgroup meeting.
- \*Water Sampling buoys for Pleasant Bay Alliance sampling program retrieved and stored for the off season.
- \* Shellfish patrols completed on open days (Wed & Sat. in Sept.) and now posted updated October open areas and open days (Wed, Sat, and Sun)
- \* Completed COASTSWEEP beach clean up event on Sat. September 30th.
- \* All Harwich fresh and salt water sampling kits cleaned and stored for the off season. Dissolved Oxygen meters brought indoors/warm storage.
- \* Continued shellfish lab seed planting. Round Cove seeded. Field planting of seed will continue until the end of October.
- \*Coordinated with Monomoy 5th grade science program. Set up 9 group tours of the Harwich Shellfish lab over two days (Oct. 19th and Oct. 20th)
- \*NOTE\* - I will be on vacation next week and therefore there will be no Natural Resources Director weekly report submitted.

Heinz Proft  
Nat. Resources Director



# HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541

Fax 508-432-2530



DAVID J. GUILLEMETTE  
Chief of Police

THOMAS A. GAGNON  
Deputy Chief

## WEEKLY ACTIVITY REPORT FOR WEEK OF 9/24/17 THROUGH 9/30/17

### PATROL

- 291 Calls and patrol-initiated activity logged
  - 8 arrests
  - 1 Protective Custody (alcohol)
  
- 26 motor vehicle stops resulting in:
  - 16 Verbal warnings
  - 6 Written warnings
  - 1 Criminal Complaint
  - 3 Investigations
  
- 14 Motor vehicle accidents investigated

### ADMINISTRATION

- After action review of Cranberry Harvest Festival
- Meeting with resident re: possible LTC reinstatement
- LTC denial appeal Orleans District Court
- Entertainment License violation hearing (Perks)

### COMMUNITY POLICING

- Bike Patrol – Harwich Port, Center, Beaches, Campgrounds
- Foot Patrol – local businesses
- Car Seat Installation

## Recreation Department Weekly Report 10/1-10/7

- We have submitted our CPC request for FY19 in the amount of \$333,500 for Phase 5 of the Brooks Park Improvement Project. This includes a new LED lighting system for the park.
- We have also submitted our 7 year plan Capital Requests which includes for FY19 funding for a new passenger van, and the paving of Bank Street Beach Parking lot.
- We will be opening bids next Thursday (10/12) for the Brooks Park Playground Expansion as well as the Whitehouse Field Irrigation Project. We are looking to have both of these projects completely done by early Spring 2018.
- Fall Youth Programs are in full swing and we have over 250 youth participating in a variety of programming on a daily basis.
- We are prepping to start our Annual Saturday Night Open Gym Program in early November. This extends open gym until 9:30pm every Saturday night during the cold weather months. It usually runs until mid to late March.
- We will, once again, be assisting the school in it's annual Special Olympics on Tuesday October 17. We typically provide equipment for the event and assistance in set up and the running of the games.



## Recreation Department Weekly Report 9/24-9/30

- Work has been completed on Phase 3 of the Brooks Park Project with the completion of the tennis practice wall and the safety fencing running in front of the new picnic pavilion.
- Phase 4 will be underway soon. Rfp for the Playground expansion went out on 9/27 and we have had several preliminary meetings on the new restroom facility.
- Rfp for the Whitehouse Field Irrigation project went out on 9/27. We hope to have the work done in late October.
- We submitted our request to the Community Preservation Committee for funding for Phase 5 of Brooks Park which includes replacing the lighting system currently in place with a complete LED lighting system.
- Fall youth programs have been very busy with just about every program filled to capacity. We have a great group of part time revolving fund staff this fall to help us with programming.
- The Recreation Department currently has a very active Twitter page and we are starting to put together a Recreation Department Facebook page to further promote programming/make announcements etc.



## TOWN OF HARWICH

### OFFICE OF THE TREASURER/COLLECTOR

732 MAIN STREET, HARWICH, MA 02645

TEL: 508-430-7501 FAX: 508-430-7504

Amy Bullock  
Treasurer / Collector

Nancy Knepper  
Assistant Treasurer/Collector

### Weekly Report to the Board of Selectmen

Week ending September 29, 2017

Along with our regular weekly duties and responsibilities, which include but are not limited to processing payroll, receiving, reporting and depositing tax/water payments and departmental receipts, processing accounts payable checks, assisting Taxpayers and Employees with any requests and other various customer service, the following took place:

- Monday morning meeting with Finance Director and Town Administrator regarding ambulance billing/collection services
- Prepared an RFP for above services, to be advertised in the October 5<sup>th</sup> edition of the Cape Cod Chronicle
- Provided coverage in the Assessor's Office

#### Weekly collections 9/24 to 9/30

Tax/Water Collections:	\$472,012.62
Departmental turnovers:	\$203,848.35
Total:	\$675,860.97

#### Weekly Disbursements 9/24 to 9/30

Accounts Payable	\$798,149.70
Payroll (week ending 9/16)	\$317,671.13
Total:	\$1,115,820.83

Respectfully submitted,  
Amy Bullock  
Treasurer/Collector



# Harwich Water Department Weekly Activity Report

Dan Pelletier, Superintendent

## For Week Ending: September 30, 2017

Please see the following highlights from the previous week:

- Receive & review SCADA development screens
- Remove & replace fascia boards on Well 6
- Install new water main gates @ Riverside Terrace, Harbor Way, & River Bend Rd
- Trench Paving of water service patches
- Water main break located on Route 28 @ Hillside Drive minor water loss, 8" AC pipe
- Continue mark-outs & conduct existing conditions survey of Lower County Road
- Receive bids for Well 6 conversion & M-Well motor replacement, cleaning, and redevelopment
- Continue quarterly billing preparation
- Conducted large meter change-outs
- Attend water sampling training

### Ongoing/Upcoming Items:

- Continue Large Meter Change-outs
- Install new gate clusters & water main stubs on Riverside Drive in preparation for water main installation in FY19
- Wednesday 10/4/17 Water Commissioners meeting 7 am
- SCADA hardware installation beginning 10/10/17
- SCADA Radio Installation Scheduled to start 10/16/17
- Re-Insulate & Vault Ceilings at Wells 8 & 9

### Quick Stats

+18	-17.0%	-18.9%
Water Samples Taken	Weekly Change in Pumping	YTD Change in Pumping

### Activities Last Week

Change Meter	10	Service Repair	11
Confirm Meter Read	2	Turn Off (Seasonal)	5
Customer Concern	2	Turn Off	1
Final Read	4	Turn On	1
Markouts	10	Gate Valve Replacement	4

### Activities Statistics

	<u>2016</u>	<u>2017YTD</u>	<u>2017WTD</u>
Curb Stop Repair/Renewals	4	1	0
Frozen Water Meter/Services	23	2	0
Hydrant Maintenance/ Repairs	2	0	0
Hydrants Replaced/Installed	5	1	0
Markouts	358	275	10
New Water Service Installations	36	32	0
Property Transfer Requests	380	294	4
Renewal of Water Services	34	44	0
Seasonal Turn On/Off	1171	610	5
Water Main Repairs	3	4	0
Meter Changes	706	396	10
Meters Installed	36	32	0
Service Repairs/Misc. Services	104	93	11

**TOWN OF HARWICH  
NOTICE OF VACANCIES ON VARIOUS TOWN BOARDS, COMMISSIONS  
AND COMMITTEES**

The Board of Selectmen will give consideration to the appointment of members to the following Boards, Commissions and Committees:

Agricultural Commission.....	4
Appeals Board (alternate) .....	2
Building Code Board of Appeals.....	5
Cemetery Commission.....	1
Community Preservation Committee .....	1
Conservation Commission (2 full and 2 alternate) .....	4
Disability Rights Committee.....	1
Finance Committee .....	2
Forest Committee.....	1
Historic District/Historical Commission (alternate) .....	2
Housing Committee .....	1
Municipal Revenue and Economic Development Committee.....	5
Planning Board (2 alternate) .....	2
Traffic Safety Committee .....	1
Trails Committee .....	2
Treasure Chest Committee (1 alternate) .....	1
Voter Information Committee.....	1
Wastewater Support Committee (New).....	5

**Committee Vacancy Forms** are available at the Selectmen's Office,  
732 Main Street, Harwich