

**SELECTMEN'S MEETING AGENDA**

*Griffin Room, Town Hall  
Executive Session 6:15 P.M.  
Regular Meeting 6:30 P.M.  
Monday, November 2, 2015*

I. **CALL TO ORDER**

II. **EXECUTIVE SESSION** - Pursuant to M.G.L. c. 30A, Sec. 21(2) to conduct negotiations with nonunion personnel, or to conduct collective bargaining sessions or contract negotiations with nonunion personnel – *Finance Director*

III. **PLEDGE OF ALLEGIANCE**

IV. **WEEKLY BRIEFING**

V. **PUBLIC COMMENT/ANNOUNCEMENTS**

VI. **CONSENT AGENDA**

- A. Approve Application for Change of Officers/Directors on Liquor License for Allen Harbor Yacht Club, Inc.
- B. Vote not to extend the lease of Philbrick's restaurant at Cranberry Valley Clubhouse and vote to issue a new RFP
- C. Accept the resignation of Mary Jane Watson as a member of the Board of Health
- D. Approve the proposed Selectmen's Holiday meeting schedule
- E. Approve holiday hours as recommended by Town Administrator

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

- A. Public Hearing – Classification Hearing – Board of Assessors
- B. Annual Meetings:
  - 1. Board of Assessors – Richard Waystack, Chair
  - 2. Harwich Housing Authority – Bob MacCready, Chair
  - 3. Community Preservation Committee – Bob MacCready, Chair
  - 4. Zoning Board of Appeals – Gary Carreiro, Chair

VIII. **OLD BUSINESS**

- A. Cape Light Compact Inter-governmental Agreement – Barry Worth and Scott Ridley  
*discussion and possible vote*

IX. **NEW BUSINESS**

X. **TOWN ADMINISTRATOR'S REPORT**

- A. Department Budget Instructions
- B. Status of West Harwich/Route 28 Corridor Concepts
- C. Finalization of the reorganization plan for the 2<sup>nd</sup> Floor departments including the move of the Engineering Department to the Albro House

XI. **SELECTMEN'S REPORT**

XII. **ADJOURNMENT**

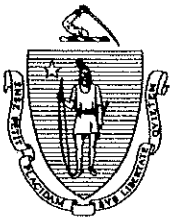
*\*Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact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

**Authorized Posting Officer:**

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

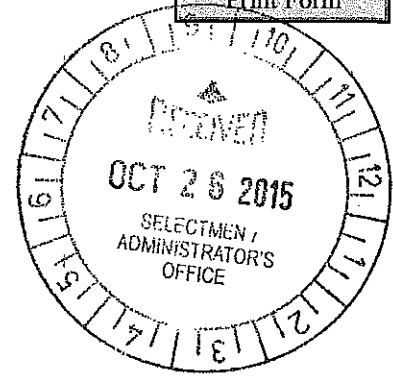
\_\_\_\_\_  
Sandra Robinson, Admin. Secretary

**Date:** \_\_\_\_\_  
October 29, 2015



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

Print Form



**RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION  
 MONETARY TRANSMITTAL FORM**

**APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL  
 LICENSING AUTHORITY.**

ECRT CODE: RETA

CHECK PAYABLE TO ABCC OR COMMONWEALTH OF MA: \$200.00

(CHECK MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL)

CHECK NUMBER

IF USED EPAY, CONFIRMATION NUMBER

A.B.C.C. LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

LICENSEE NAME

ADDRESS

CITY/TOWN  STATE  ZIP CODE

**TRANSACTION TYPE (Please check all relevant transactions):**

- Alteration of Licensed Premises
- Change Corporate Name
- Change of License Type
- Change of Location
- Change of Manager
- Other
- Cordials/Liqueurs Permit
- Issuance of Stock
- Management/Operating Agreement
- More than (3) \$15
- New License
- New Officer/Director
- New Stockholder
- Pledge of Stock
- Pledge of License
- Seasonal to Annual
- Transfer of License
- Transfer of Stock
- Wine & Malt to All Alcohol
- 6-Day to 7-Day License

**THE LOCAL LICENSING AUTHORITY MUST MAIL THIS TRANSMITTAL FORM ALONG WITH THE  
 CHECK, COMPLETED APPLICATION, AND SUPPORTING DOCUMENTS TO:**

**ALCOHOLIC BEVERAGES CONTROL COMMISSION  
 P. O. BOX 3396  
 BOSTON, MA 02241-3396**



**Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street, First Floor  
Boston, MA 02114**

**PETITION FOR TRANSFER OF OWNERSHIP, TRANSFER OF STOCK, NEW OFFICER(S),  
DIRECTOR(S), STOCKHOLDER(S) AND LLC MANAGER(S)**

050600015

ABCC License Number

Harwich

City/Town

The licensee A. Allen Harbor Yacht Club, Inc. and the proposed transferee B. Allen Harbor Yacht Club, Inc. respectfully petition the Licensing Authorities to approve the following transfer of ownership. Any Corporation, LLC or Association, Partnership, Individual, Sole Proprietor Listed in box (A.) must submit a certificate of good standing from the Massachusetts Department of Revenue (DOR).

Is the PRESENT licensee a Corporation/LLC listed in box (A.), duly registered under the laws of the Commonwealth of Massachusetts?

Yes  No If YES, please list the officers, directors and stockholders, their residences, and shares owned by each.

Name	Title	Address	Stock or % Owned
Please see attached letter****			

Is the PROPOSED transferee a Corporation/LLC listed in box (B.), duly registered under the laws of the Commonwealth of Massachusetts?

Yes  No

**TO:** (Place an \* before the name of each DIRECTOR/LLC Manager.)

Name	Title	Address	Stock or % Owned
*Deirdre Kelleher	President	199 State Street #602, Boston, MA, 02109	0
*Michelle A. Fisler	Director	24 Windward Walk, Harwich Port, MA, 02646	0
*Dan O'Shea	Director	79 Wendall Street, Cambridge, MA, 02138	0
*Todd A. McAllister	Director	117 Depot Street, Harwich, MA, 02645	0
*Michael K. Gillis	Director	136 Westfield Street, Westwood, MA, 02090	0

The above named proposed transferee hereby joins in this petition for transfer of said license.

**SIGNATURE OF LAST-APPROVED LICENSEE:** Please see attached letter \*\*\*\*

(If a Corporation/LLC, by its authorized representative)

Date Signed 10/17/2015

**SIGNATURE OF PROPOSED TRANSFEREE:** Deirdre Kelleher

### APPLICATION FOR RETAIL ALCOHOLIC BEVERAGE LICENSE

City/Town

Harwich

#### 1. LICENSEE INFORMATION:

A. Legal Name/Entity of Applicant:(Corporation, LLC or Individual) Allen Harbor Yacht Club, Inc.

B. Business Name (if different) :

C. Manager of Record: Peter Moynagh

D. ABCC License Number (for existing licenses only) : 050600015

E. Address of Licensed Premises: 371 Lower County Road

City/Town: Harwich Port

State: MA

Zip: 02646

F. Business Phone: (508) 432-9774

G. Cell Phone: (508) 718-5364

H. Email: allenharboryc@gmail.com

I. Website: www.allenharboryachtclub.com

J. Mailing address (If different from E.):

City/Town:

State:

Zip:

#### 2. TRANSACTION:

- New License
- New Officer/Director
- Transfer of Stock
- Issuance of Stock
- Pledge of Stock
- Transfer of License
- New Stockholder
- Management/Operating Agreement
- Pledge of License

The following transactions must be processed as new licenses:

- Seasonal to Annual
- (6) Day to (7)-Day License
- Wine & Malt to All Alcohol

**IMPORTANT ATTACHMENTS (1):** The applicant must attach a vote of the entity authorizing all requested transactions, including the appointment of a Manager of Record or principal representative.

#### 3. TYPE OF LICENSE:

- §12 Restaurant
- §12 Hotel
- §12 Club
- §12 Veterans Club
- §12 Continuing Care Retirement Community
- §12 General On-Premises
- §12 Tavern (No Sundays)
- §15 Package Store

#### 4. LICENSE CATEGORY:

- All Alcoholic Beverages
- Wine & Malt Beverages Only
- Wine or Malt Only
- Wine & Malt Beverages with Cordials/Liqueurs Permit

#### 5. LICENSE CLASS:

- Annual
- Seasonal



**6. CONTACT PERSON CONCERNING THIS APPLICATION (ATTORNEY IF APPLICABLE)**

NAME:

ADDRESS:

CITY/TOWN:  STATE:  ZIP CODE:

CONTACT PHONE NUMBER:  FAX NUMBER:

EMAIL:

**7. DESCRIPTION OF PREMISES:**

Please provide a complete description of the premises to be licensed. Please note that this must be identical to the description on the Form 43.

371 Lower County Road, Harwich Port. South side of Lower County Road on property 750' along Lower County Road. Single story main club house 60' 40' plus 30' by 30' staff resident's wing. Lower level contains additional toilets, showers, storage and heater rooms, recreations rooms, snack bar, picnic patio and extensive lawn on the harbor side of the building

Total Square Footage:  Number of Entrances:  Number of Exits:

Occupancy Number:  Seating Capacity:

**IMPORTANT ATTACHMENTS (2):** The applicant must attach a floor plan with dimensions and square footage for each floor & room.

**8. OCCUPANCY OF PREMISES:**

By what right does the applicant have possession and/or legal occupancy of the premises?

**IMPORTANT ATTACHMENTS (3):** The applicant must submit a copy of the final lease or documents evidencing a legal right to occupy the premises. Other:

Landlord is a(n):  Other:

Name:  Phone:

Address:  City/Town:  State:  Zip:

Initial Lease Term: Beginning Date  Ending Date

Renewal Term:  Options/Extensions at:  Years Each

Rent:  Per Year Rent:  Per Month

Do the terms of the lease or other arrangement require payments to the Landlord based on a percentage of the alcohol sales? Yes  No

- IMPORTANT ATTACHMENTS (4):**
1. If yes, the Landlord is deemed a person or entity with a financial or beneficial interest in this license. Each individual with an ownership interest with the Landlord must be disclosed in §10 and must submit a completed Personal Information Form attached to this application.
  2. Entity formation documents for the Landlord entity must accompany the application to confirm the individuals disclosed.
  3. If the principals of the applicant corporation or LLC have created a separate corporation or LLC to hold the real estate, the applicant must still provide a lease between the two entities.

**9. LICENSE STRUCTURE:**

The Applicant is a(n):

Other :

If the applicant is a Corporation or LLC, complete the following:

Date of Incorporation/Organization:

State of Incorporation/Organization:

Is the Corporation publicly traded? Yes  No

**10. INTERESTS IN THIS LICENSE:**

List all individuals involved in the entity (e.g. corporate stockholders, directors, officers and LLC members and managers) and any person or entity with a direct or indirect, beneficial or financial interest in this license (e.g. landlord with a percentage rent based on alcohol sales).

**IMPORTANT ATTACHMENTS (5):**

A. All individuals or entities listed below are required to complete a Personal Information Form.

B. All shareholders, LLC members or other individuals with any ownership in this license must complete a CORI Release Form.

Name	All Titles and Positions	Specific # of Stock or % Owned	Other Beneficial Interest
Deirdre Kelleher	President	0	0
Michelle Fisler	Director	0	0
Dan O'Shea	Director	0	0
Tom Johnson Sr.	Director	0	0
Todd A. McAlister	Treasurer	0	0

\*If additional space is needed, please use last page.

**11. EXISTING INTEREST IN OTHER LICENSES:**

Does any individual listed in §10 have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes  No  **If yes, list said interest below:**

Name	License Type	Licensee Name & Address
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	

\*If additional space is needed, please use last page.

**12. PREVIOUSLY HELD INTERESTS IN OTHER LICENSES:**

Has any individual listed in §10 who has a direct or indirect beneficial interest in this license ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes  No  If yes, list said interest below:

Name	Licensee Name & Address	Date	Reason Terminated
			Please Select
			Please Select
			Please Select

**13. DISCLOSURE OF LICENSE DISCIPLINARY ACTION:**

Have any of the disclosed licenses to sell alcoholic beverages listed in §11 and/or §12 ever been suspended, revoked or cancelled? Yes  No  If yes, list said interest below:

Date	License	Reason of Suspension, Revocation or Cancellation

**14. CITIZENSHIP AND RESIDENCY REQUIREMENTS FOR A (§15) PACKAGE STORE LICENSE ONLY :**

**A.) For Individual(s):**

1. Are you a U.S. Citizen? Yes  No
2. Are you a Massachusetts Residents? Yes  No

**B.) For Corporation(s) and LLC(s) :**

1. Are all Directors/LLC Managers U.S. Citizens? Yes  No
2. Are a majority of Directors/LLC Managers Massachusetts Residents? Yes  No
3. Is the License Manager or Principal Representative a U.S. Citizen?

**C.) Shareholder(s), Member(s), Director(s) and Officer(s):**

- 1.. Are all Shareholders, Members, Directors, LLC Managers and Officers involved at least twenty-one (21) years old? Yes  No

**15. CITIZENSHIP AND RESIDENCY REQUIREMENTS FOR (§12) RESTAURANT, HOTEL, CLUB, GENERAL ON PREMISE, TAVERN, VETERANS CLUB LICENSE ONLY:**

**A.) For Individual(s):**

1. Are you a U.S. Citizen? Yes  No

**B.) For Corporation(s) and LLC(s) :**

1. Are a majority of Directors/LLC Managers **NOT** U.S. Citizen(s)? Yes  No
2. Is the License Manager or Principal Representative a U.S. Citizen? Yes  No

**C.) Shareholder(s), Member(s), Director(s) and Officer(s):**

- 1.. Are all Shareholders, Members, Directors, LLC Managers and Officers involved at least twenty-one (21) years old? Yes  No

**16. COSTS ASSOCIATED WITH LICENSE TRANSACTION:**

A. Purchase Price for Real Property:

B. Purchase Price for Business Assets:

C. Costs of Renovations/Construction:

D. Initial Start-Up Costs:

E. Purchase Price for Inventory:

F. Other: (Specify)

**G: TOTAL COST**

**H. TOTAL CASH**

**I. TOTAL AMOUNT FINANCED**

**IMPORTANT ATTACHMENTS (6):** Submit any and all records, documents and affidavits including loan agreements that explain the source(s) of money for this transaction. Sources of cash must include a minimum of three (3) months of bank statements.

The amounts listed in subsections (H) and (I) must total the amount reflected in (G).

**17. PROVIDE A DETAILED EXPLANATION OF THE FORM(S) AND SOURCE(S) OF FUNDING FOR THE COSTS IDENTIFIED ABOVE (INCLUDE LOANS, MORTGAGES, LINES OF CREDIT, NOTES, PERSONAL FUNDS, GIFTS):**

Not applicable to a change in the Board of Directors

\*If additional space is needed, please use last page.

**18. LIST EACH LENDER AND LOAN AMOUNT(S) FROM WHICH "TOTAL AMOUNT FINANCED" NOTED IN SUB-SECTIONS 16(I) WILL DERIVE:**

A.

Name	Dollar Amount	Type of Financing

\*If additional space is needed, please use last page.

B. Does any individual or entity listed in §19 as a source of financing have a direct or indirect, beneficial or financial interest in this license or any other license(s) granted under Chapter 138? Yes  No

If yes, please describe:

**19. PLEDGE: (i.e. COLLATERAL FOR A LOAN)**

A.) Is the applicant seeking approval to pledge the license?  Yes  No

1. If yes, to whom:

2. Amount of Loan:

3. Interest Rate:

4. Length of Note:

5. Terms of Loan :

B.) If a corporation, is the applicant seeking approval to pledge any of the corporate stock?  Yes  No

1. If yes, to whom:

2. Number of Shares:

C.) Is the applicant pledging the inventory?  Yes  No

If yes, to whom:

**IMPORTANT ATTACHMENTS (7):** If you are applying for a pledge, submit the pledge agreement, the promissory note and a vote of the Corporation/LLC approving the pledge.

**20. CONSTRUCTION OF PREMISES:**

Are the premises being remodeled, redecorated or constructed in any way? If YES, please provide a description of the work being performed on the premises:  Yes  No

21. ANTICIPATED OPENING DATE:

IF ALL OF THE INFORMATION AND  
ATTACHMENTS ARE NOT COMPLETE  
THE APPLICATION WILL BE  
**RETURNED**

APPLICANT'S STATEMENT

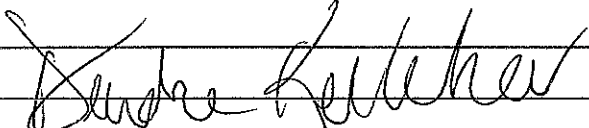
I, Deirdre Kelleher the  sole proprietor;  partner;  corporate principal;  LLC/LLP member

of Allen Harbor Yacht Club, Inc., hereby submit this application for Change of Directors/Officers (hereinafter the

"Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statement and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises does not violate any requirement of the ABCC or other state law or local ordinances;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the Application information as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of, the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

Signature: 

Date: 10/17/2015

Title: President

Additional Space

Please note which question you are using this space for.

Petition for Transfer of Ownership Page List of New Directors (continued)

Catherine O'Leary- Director- 403 Great Western Road, Harwich, MA, 02645  
James M. Geary- Director- 339 Far Reach Road, Westwood, MA, 02090  
Joyce E. Smith- Director- 14 Courtney Road, Harwich, MA, 02645  
Allan R. Campbell- Director- 20 Sea Street, Harwich Port, MA, 02646  
Joseph Lavieri- Director- 23 Sea Breeze Avenue, Harwich Port, MA, 02646  
Dennis B. Clair- Director- 110 Longmeadow Road, Belmont, MA, 02478  
Vincent DeGiacomo- Director- 71 Farm Road, Stowe, MA, 01775  
Terry Griffith- Director- 19 Madison Avenue, Watertown, MA, 02472  
Ronald Dowgiallo- Director- 376 Man Street, Harwich Port, MA, 02646  
Henry Davidson III (Ed)- Director- 21 Radcliffe Road, Weston, MA, 02493  
Joseph McParland Sr.- Director- 4 JoAnne Way, Harwich Port, MA, 02646  
William H. Thomas- Director 330 Rio Terra Drive, Venice, Florida, 34285  
Thomas Johnson-Director- 601 Route 28, The Melrose #214, Harwich Port, MA, 02646

Continued List of Directors from Question 10: None of the below own stock or have a beneficial interest in the license

Ron Dowgiallo- Director  
Ed Davidson- Director  
Terry Griffith Jr.- Director  
Joe McParland Sr.- Director  
William Thomas- Director  
Dennis Clair- Director  
Vincent DeGiacomo- Director  
Allan Campbell- Director  
Catherine O'Leary- Director  
Joyce Smith- Director  
Jim Geary- Director  
Michael Gillis- Director  
Joe Lavieri- Director

MATTHEW P. KELLEY  
Attorney at Law  
72 Route 28, West Harwich, MA, 02671  
(508) 432-3304  
[mp.kelley@verizon.net](mailto:mp.kelley@verizon.net)

TELEPHONE (508) 432-3304

FAX (508) 430-8662

October 17, 2015

Kris Foster, Esquire  
Massachusetts Alcohol Beverage Commission  
239 Causeway Street  
Boston, MA,

RE: **Change of Directors Application for Allen Harbor Yacht Club, Harwich Port, MA**

Dear Attorney Foster,

You may recall speaking with me several weeks ago in connection with Allen Harbor Yacht Club Inc., change in Directors application and some difficulty the club was having in fully filling out the application. At your suggestion, I am enclosing a letter to explain the situation for both the investigator assigned to the application and ultimately to you should it need legal review.

As you may recall the Yacht Club has not updated its directors with the ABCC in over 30 years despite changing the directors annually. When the club recently applied for a Change in Manager the investigator denied the request because the Directors listed in the application were not consistent with either the ABCC records or the Secretary of State's office. Since that time, the Yacht Club has successfully updated the Directors with the Secretary of State's Office and the application submitted with this letter is consistent with what is on file with the Secretary of State.

The lone remaining difficulty is finding someone from the club that can sign the Petition to Transfer form as the last approved licensee as in my best calculation nearly none of the people that were listed previously are still alive. I am not even certain who the correct people to list on the top half of the Petition for Transfer form would be. The Board of Directors is voted in each year by the membership. I have attached a recent vote of the membership that has approved the current board of directors and further a vote that the current board of directors has approved the submitted name for the Change of Manager. If you require I could do my best to track down 30 years' worth of votes to show that the current board directly descends from the last approved directors. I am hopeful that is not necessary.

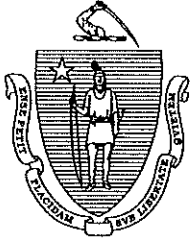


Thank you for your assistance in this matter and please do not hesitate to contact me with any questions that you may have.

Best,

A handwritten signature in black ink, appearing to be 'Matt', written in a cursive style with a horizontal line through the middle.

Matt



*The Commonwealth of Massachusetts*  
*Secretary of the Commonwealth*  
*State House, Boston, Massachusetts 02133*

William Francis Galvin  
Secretary of the  
Commonwealth

Date: August 12, 2015

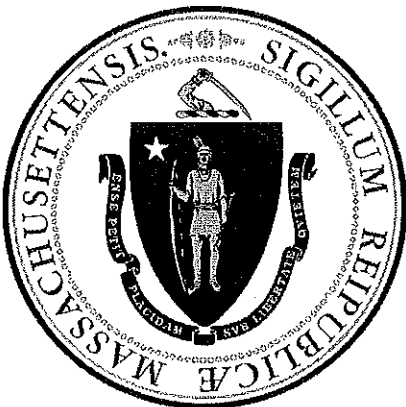
To Whom It May Concern :

I hereby certify that according to the records of this office,

**ALLEN HARBOR YACHT CLUB, INC.**

is a domestic corporation organized on **September 14, 1961**

I further certify that there are no proceedings presently pending under the Massachusetts General Laws Chapter 180 section 26 A, for revocation of the charter of said corporation; that the State Secretary has not received notice of dissolution of the corporation pursuant to Massachusetts General Laws, Chapter 180, Section 11, 11A, or 11B; that said corporation has filed all annual reports, and paid all fees with respect to such reports, and so far as appears of record said corporation has legal existence and is in good standing with this office.



In testimony of which,  
I have hereunto affixed the  
Great Seal of the Commonwealth  
on the date first above written.

*William Francis Galvin*

Secretary of the Commonwealth

Certificate Number: 15084758410

Verify this Certificate at: <http://corp.sec.state.ma.us/CorpWeb/Certificates/Verify.aspx>

Processed by: ach



MASSACHUSETTS DEPT. OF REVENUE  
PO BOX 7066  
BOSTON, MA 02204



MARK E. NUNNELLY, COMMISSIONER  
MICHAEL J. LIVIDOTI, DEPUTY COMMISSIONER



ALLEN HARBOR YACHT CLUB INC  
PO BOX 443  
HARWICH PORT MA 02646-0443

243C

Notice 80619  
T/P ID 042 423 731  
Date 07/09/15  
Bureau CERTIFICATE

OP

**CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE**

The Commissioner of Revenue certifies as of the above date, that the above named individual or entity is in compliance with its tax obligations payable under M.G.L. c. 62C, including corporation excise, sales and use taxes, sales tax on meals, sales and use tax on Boats/RV, withholding taxes, room occupancy excise and personal income taxes, with the following exceptions.

This Certificate certifies that individual taxpayers are in compliance with income tax obligations and any sales and use taxes, sales tax on meals, withholding taxes, and/or room occupancy taxes related to a sole proprietorship. Persons deemed responsible for the payment of these taxes on behalf of a corporation, partnership or other business entity may not use our automated process to obtain a Certificate.

This Certificate does not certify that the entity's standing as to taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law. Taxpayers required to collect or remit the following taxes must submit a separate request to certify compliance: Alcoholic Beverage Excise, Cigarette Excise, International Fuels Tax Agreement, Smokeless Tobacco or Ferry Embarkation.

THIS IS NOT A WAIVER OF LIEN ISSUED UNDER GENERAL LAWS, CHAPTER 62C, SECTION 52.

Very truly yours,

Michael J. Lividoti Deputy Commissioner

ALLEN HARBOR YACHT CLUB  
ANNUAL BUSINESS MEETING 2015

The 62<sup>nd</sup> annual business meeting of Allen Harbor Yacht Club was held on August 29, 2015 at the Club House, Lower County Road, Harwich Port.

Commodore Terry Griffith called the meeting to order at 10:00 a.m.

Upon motion duly made and seconded, it was

VOTED: to accept the Minutes for last year's annual meeting.

Treasurer Todd McAllister reviewed the Balance Sheet and Income Statement. He called attention to the total balance in Checking/Savings of \$390,717.62 as of June 30, 2015 an increase of \$72,899.03 over the previous year's balance of \$317,818.59. Treasurer McAllister indicated that the Club Finances are in good shape.

Chairman of the Finance Committee Dennis Clair presented the Proposed Budget for 2016 of \$492,353.33, a slight decrease from the 2015 Budget.

Co-Chair of the Bridge Committee Anne McParland reported a successful season along with their annual luncheon which 116 people attended. There was a total of 568 players during the season resulting in a net income of \$1,362.00. She concluded with a request on behalf of the Bridge Committee for new tables.

Sandy Brierley on behalf of the Mah Jongg Committee reported a successful season with 24-30 players per week participating. The group raised \$1,135.00.

Laine Kotoski reported on her four years as Junior Commodore expressing her gratitude for the honor and kindnesses she has received. Laine is heading off to college.

Policies & Procedures Committee Chair, Robin Brennan, presented two changes to the By-Laws:

**ARTICLE IV SECTION 5 – rear commodores (Remove publication frequency)**

2. The Rear Commodore with the approval of the Commodore shall assume responsibility for Public Relations, publication of the Roster, and the publication of the Club Newsletter.

**ARTICLE III, SECTION 1 – MEMBERS (Change definition of family age 30 from 25)**

A family is defined as a husband or wife, and all children under the age of thirty. Children of a “family” may, prior to reaching their thirtieth birthday, apply for a separate membership which shall be granted without payment of initiation fee, upon approval of the Board of Directors.

Upon Motion duly made and seconded it was

VOTED to adopt the two By-Law changes.

Nominating Committee Chair Joe Lavieri submitted the Nominating Committee’s list of proposed Officers and Directors for the year 2015-2016:

**Flag Officers:**

Commodore	Deirdre Kelleher
Vice Commodore	Michelle Fisler
Rear Commodore, Sr.	Dan O’Shea
Rear Commodore	Tom Johnson, Sr.

**Past Commodore: (One-Year Term)**

Terry Griffith, Jr.  
Buz Thomas  
Ed Davidson  
Joe McParland  
Ron Dowgiallo

Directors: (Three-Year Term – 2018)

Vin DeGiacomo

Dennis Clair

Todd McAllister

Submitted By: Joe Lavieri, Chairman, Allan Campbell, Michael Gillis, Joe Mingle, Dennis Picard, Joyce Smith, and Tom Themistos.

Upon Motion duly made and seconded it was

VOTED to accept the Slate of Officers and Directors for 2015-2016 as presented.

Commodore Griffith congratulated incoming Commodore Deirdre Kelleher.

Commodore Griffith recognized and thanked the retiring officers of the Board of Directors: Richard Harris, Andrew Mason, Bill Gvazdauskas, and John Our.

Commodore Griffith thanked the Junior Commodores Laine Kotoski, Seamus Clair, Michaela and Erin Gillis.

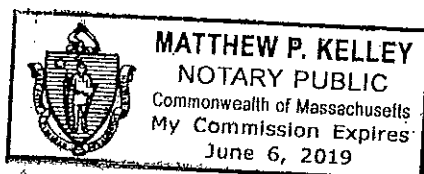
Commodore Griffith called for any Old Business or any New Business. There being none, the Commodore entertained a motion to adjourn.

Upon motion duly made and seconded it was

VOTED to adjourn the annual meeting at 10:23 am.

Respectfully submitted,

Marie Connolly, Secretary pro tem



*A true and attested copy*

*Susan Matulaitis*  
Susan Matulaitis, Secretary

## Sandy Robinson

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**From:** Angelo LaMantia <aslcape@comcast.net>  
**Sent:** Wednesday, October 28, 2015 8:10 AM  
**To:** 'Peter Hughes'; Christopher Clark  
**Cc:** Sandy Robinson; 'c smith'; Ann Steidel  
**Subject:** FW: Draft

At the golf meeting last night, the committee voted not to extend the contract for one year which is permitted in the agreement for the restaurant. The gentleman who currently runs the restaurant was there and fully understands the issues. In order to issue an RFP, find and new restaurant operation, obtain a liquor license etc. and open the restaurant at an appropriate time next year, the process needs to begin immediately. Therefore, if the issue needs to be voted by the BOS can this request[ to not extend the restaurant contract for another year and to issue a new RFP] be placed on the consent agenda for next Monday.

Angelo

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**From:** c smith [mailto:skolfer@hotmail.com]  
**Sent:** Wednesday, October 28, 2015 7:51 AM  
**To:** Angelo  
**Subject:** Draft

does this work?

Chris - last night the HGC voted unanimously NOT to continue the lease with the "Philbrick" group. Therefore, we would like to see that this action is brought before the selectmen for approval, and that we can get to work on a necessary new RFP.

Timing is critical here. The last go around was not handled well. I know we can do a better job so that we are ready to open for business on April 1, 2016. The alcohol beverage license of course is the most difficult piece that has to be put in place. Thus, the sense of urgency!

Sincerely,

Clem Smith, HGC Chair

## AGREEMENT OF LEASE

This AGREEMENT OF LEASE, made and entered into on this 25th day of March, 2013, by and between the **TOWN OF HARWICH**, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, by its **BOARD OF SELECTMEN**, with offices at 732 Main Street, Town Hall, Harwich, Massachusetts 02645, hereinafter called the **LESSOR**, and Ian Philbrick of Country Club Elite, 90 Prell Circle, Brewster, MA, hereinafter called the **LESSEE**.

WHEREAS, the LESSOR, as owner of a golf course known as the **Cranberry Valley Golf Course** located in the Town of Harwich, Massachusetts, is seeking a LESSEE to operate a food and bar service at said golf course that can serve the golfing community and the general public in a pleasing, efficient manner; and,

WHEREAS, the LESSEE is desirous of leasing a portion of the clubhouse building to operate said space as a restaurant for a three (3) year period with two (2) separate one (1) year options to be offered at the sole discretion of the LESSOR and the LESSOR is willing to lease said property to said LESSEE;

NOW THEREFORE, the parties agree as follows:

### 1. PREMISES

1.1: The premises are located at the end of the main foyer of the clubhouse at Cranberry Valley Golf Course at 183 Oak St., Harwich, Massachusetts, and shall consist of the dining room, bar, kitchen, storage room as described in the Request for Proposals issued February 7, 2013. The restaurant accommodates approximately 55 patrons indoors if flatware is used and 96 patrons indoors if paper or plastic is used. An outdoor deck can seat approximately 62 people.

1.2: The Foyer is not part of the leased premises.

1.3: For the purpose of this lease, the Women's Restroom and Men's Restroom located on the first floor of the aforementioned clubhouse, as well as the rear deck and golf course, shall be considered common areas and the LESSEE and the LESSOR shall have equal access to said common areas, such as the back deck area and golf course.

### 2. TERM

2.1: The term of this lease shall be for three (3) years, commencing April 1, 2013 and terminating on March 31, 2016.

2.2: The right to exercise the options of two (2) additional and separate one (1) years will rest solely with the LESSOR with Guidance from the Golf Committee and Director of Golf Operations. Notice to exercise the option will be made in writing 90 days prior to the expiration of the lease.

2.3: The LESSEE will have the right to refuse the Option if they choose to do so, after it has been offered by the Lessor. The acceptance of the option, after given to



the LESSEE must be confirmed 60 days prior to the expiration of the lease.

**3. RENT**

3.1: The LESSEE agrees to pay the LESSOR the sum of

Annual Lease Payment

1 <sup>st</sup> Year	\$7,500
2 <sup>nd</sup> Year	\$7,500
3 <sup>rd</sup> Year	\$7,500
<b>TOTAL</b>	<b>\$22,500</b>
First Year Renewal Option	\$7,500
Second Year Renewal Option	\$7,500

Payments are due on or before the first day of each month.

**4. UTILITIES,**

4.1: LESSEE agrees to pay LESSOR 50% of building utilities when concessions are operational. See page 11 – Utilities.

4.2: LESSEE agrees that the provision of the above utilities is subject to interruption due to any accident, to the making of repairs, alterations or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service or supplies from the sources from which they are usually obtained for said building, or to any cause beyond the LESSOR'S control.

**5. TAXES. - RESERVED**

**6. SECURITY DEPOSIT.**

6.1: LESSEE shall tender the LESSOR a security deposit in the amount of Five Thousand (\$5,000.00) Dollars upon the execution of this lease, to be paid by a certified check.

6.2: Said security deposit shall be held by LESSOR in a separate interest-bearing account as security for the LESSEE'S performance under this lease. At the LESSOR'S sole option, said security deposit may be used by the LESSOR to fulfill any of LESSEE'S obligations under this lease which LESSEE fails or refuses to fulfill, without prejudicing any other remedies available to LESSOR under this lease or at law.

6.3: Said security deposit shall be refunded to the LESSEE with whatever interest that has accrued at the end of the lease, minus any and all deductions that LESSOR has made under paragraph 6.2 above and further subject to LESSEE'S full compliance with the terms, conditions, provisions and covenants of this lease agreement.

**7. USE OF LEASED PREMISES.**

**7.1:** The LESSEE shall use the leased premises only for the purpose of operating a restaurant business under the terms and conditions set forth herein.

**7.2:** The LESSEE agrees that no electronic games shall be installed upon the leased premises without the permission of the Golf Committee

**7.3:** Gambling shall be expressly prohibited on the lease premises

**7.4:** The leased premises shall be used and conducted in a dignified manner.

**7.5:** The LESSEE will not permit any disorderly conduct in the leased area.

**7.6:** No entertainment shall be permitted on the leased premises without the prior written approval of the LESSOR and without the LESSEE obtaining the appropriate entertainment licenses from the Town of Harwich Licensing Authority.

**7.7:** Any entertainment furnished by the LESSEE shall be in good taste and acceptable to the standards of a publicly owned building.

**7.8:** LESSEE shall be solely responsible for any and all costs relating to the operation of the leased premises including, but not limited to, the costs of equipment, materials, supplies, repairs, taxes, licensing fees, attorney's fees, all food items, housekeeping supplies, dishwasher supplies, glassware and china, utensils, pots & pans, insurances, office supplies, sanitation supplies, food service equipment rental, silverware replacement, paper supplies, menu paper and printing, telephone service and printing costs.

**7.9:** The LESSEE agrees that it will assure that all deliveries to the leased premises shall only be made during regular hours of operation.

**7.10:** It is expressly understood by the LESSEE that the LESSOR makes no guarantees or warranties concerning the availability of the golf course for use by the public during the term of this lease agreement. It is, however, understood by both parties that it is the LESSOR'S desire to open the facility for public use as soon as the golf course is ready for play and at all normal times, weather permitting.

**7.11:** Smoking shall be expressly prohibited on the leased premises.

**8. COMPLIANCE WITH LAWS.**

**8.1:** The LESSEE agrees to conduct its operation hereunder in strict compliance with all laws, bylaws, ordinances, rules and regulations of all federal, state, regional and local authorities as from time-to-time are applicable and the LESSEE will procure and pay for all licenses, certificates and permits necessary for the conduct of its operations or construction hereunder and shall pay all charges assessed under federal, state, regional and local statutes, bylaws, ordinances, rules and regulations insofar as they are applicable.

**8.2:** Failure of LESSEE to procure and maintain all necessary licenses and permits to operate a restaurant and bar service shall render this lease void.

**8.3:** The LESSEE acknowledges that no trade or occupation shall be conducted in the leased premises or use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any state, federal, regional law or any municipal bylaw or ordinance in force in the town in which the premises are situated.

**9. HOURS AND DAYS OF OPERATION,**

Unless subsequently agreed upon in writing by and between the parties, and subject to the terms and conditions of any licenses which the LESSEE may hold, the LESSEE agrees to the following terms and conditions concerning days and hours of operation:

**9.1:** The minimum hours of operation during which the LESSEE agrees to serve food to the public are as follows:

(a) December through March: no hours required, however concessionaire may open if weather warrants it.

(b) April: 5:30 A.M. through 5:00 P.M.

(c) May 1 through September 30: 5:30 A.M through 8:30 P.M.

(d) October: 7:00 A.M. through 7:00 P.M.

(f) November: 7:30 A.M. through 7:00 P.M.

**9.2:** The LESSEE agrees that it shall make no changes in the minimum hours of operation without the written consent of the LESSOR.

**9.3:** The LESSEE shall be open for business seven (7) days per week, except that said premises may be closed from December <sup>through</sup> March.

**9.4:** It is understood by and between the parties that the operation of the leased premises may be affected by weather conditions and that, by mutual agreement of the LESSEE and a duly authorized representative of the LESSOR, the LESSEE'S hours of operation on any given day may be less than, or greater than, that which is set forth above; subject to any restrictions as may be placed upon the LESSEE by local licensing authorities, which restrictions may, under no circumstances, be waived or altered by the parties hereto.

**10. EQUIPMENT, FURNISHINGS AND FIXTURES.**

**10.1:** Should the LESSEE determine that, in the conduct of its business under this lease, it shall need, require or desire to add new to replace worn out equipment within the kitchen, or any other portion of the leased premises, the LESSEE shall request the permission of the LESSOR to place any such equipment on the demised premises, specifically noting the exact nature and size of the equipment desired together with the cost of installation and maintenance thereof. The cost shall be borne solely by the LESSEE.

**10.2:** It shall be the responsibility of the LESSEE to provide inventories of

dinnerware and utensils.

**10.3:** All equipment in the restaurant and related area, provided with this lease per the attached inventory, shall remain the property of the LESSOR. Any equipment purchased by the LESSEE shall remain the property of the LESSEE at the conclusion of the lease term. The LESSOR shall be consulted prior to the disposal of any LESSOR owned equipment.

**10.4:** In the event that any such equipment is damaged or destroyed, regardless of the cause therefore, it shall be the responsibility of the LESSEE to repair (and maintain) or replace such equipment. Any such equipment which the LESSEE replaces shall remain the property of the LESSOR upon the conclusion of the lease term.

**10.5:** All equipment is required to be maintained in good, safe working order. An equipment repair to a single piece of equipment with a cost exceeding one thousand dollars (\$1,000) may be presented to the Director of Golf Operations in the same manner as a proposal to purchase new equipment, and if approved by the Director, may be offset against monies owed.

## **11. REPAIRS AND MAINTENANCE**

**11.1:** The LESSEE has inspected the leased premises, acknowledges that the premises are now in good order, and accepts them in the condition that they are now in.

**11.2:** The LESSEE shall, throughout the term of this lease, at its own cost and without any expense to the LESSOR, keep and maintain the interior of leased premises, as delineated in Paragraph 1 herein, in a good, sanitary and neat order, condition and repair, free of debris and any and all other foreign matters; and further, the LESSEE agrees that said area shall be cleared of any such foreign matters of debris immediately as such are, or may be, caused to exist and shall make any and all repairs necessary to keep said premises in a good and satisfactory condition.

**11.3:** The LESSEE shall not permit the leased premises to be damaged, stripped or defaced, nor suffer any waste.

**11.4:** The LESSEE shall not overload the electrical wiring serving the leased premises or within the leased premises and will install, at its own expense, but only after receiving the written approval of the LESSOR, any additional electrical wiring which may be required in connection with LESSEE'S business.

**11.5:** The LESSEE agrees to vacuum the leased premises on a daily basis and to shampoo the carpet on the leased premises three times yearly or on a more frequent basis should the LESSOR determine that more frequent shampooing is required.

**11.6:** The LESSEE shall save the LESSOR harmless within the leased premises from all loss and damage occasioned by the use or escape of water or by the bursting of pipes, as well as from any claim or damage resulting from neglect in not removing snow or ice from the roof of the building or from the sidewalks bordering upon the premises so leased, or by any nuisance made or suffered on the leased premises.

**11.7:** The LESSEE shall provide a written formal sanitation program which

meets or exceeds the minimum requirements of all state, federal, municipal or other agencies authorized to inspect and/or accredit the Restaurant and its food service facility.

**11.8:** The LESSEE shall have the premises exterminated once a month or every two weeks if deemed necessary by the LESSOR.

**11.9:** The LESSEE shall provide, subject to the approval of the LESSOR, a detailed plan for the preventative maintenance of all restaurant equipment located on the leased premises.

**11.10:** The LESSEE agrees that it is further understood that the LESSEE shall be solely responsible for maintaining all furniture on the leased premises in a neat, clean and attractive condition at all times during the term, of this lease.

**11.11:** The LESSEE shall be responsible for repairing or obtaining repairs on any restaurant equipment located on the leased premises at the LESSEE's expense.

**11.12:** It shall be the responsibility of the LESSEE for the repair and maintenance of all electrical and plumbing work that pertains to the function of the restaurant at the LESSEE's expense.

**11.13:** Upon the written request of the LESSEE or upon the failure of the LESSEE to perform necessary repairs and maintenance, and at the sole discretion of the LESSOR, LESSOR may undertake repair or maintenance of the leased premises. In the event that LESSOR, at its sole discretion, elects to undertake any such repair or maintenance, LESSEE shall bear the full cost for said repair or maintenance, including, but not limited to, the cost for labor and materials. Failure of the LESSEE to pay for the full cost of said repair and maintenance within ten (10) days of being billed for same, shall constitute grounds for the termination of this lease agreement.

## **12. ALTERATIONS**

**12.1:** The LESSEE shall not make any structural alterations or additions to the leased premises, but may make non-structural alterations provided the LESSOR consents thereto in writing.

**12.2:** All such allowed non-structural alterations shall be at LESSEE'S expense and shall be of such quality at least equal to the present construction.

**12.3:** Any alterations or improvements made by the LESSEE shall become the permanent property of the LESSOR at the termination of occupancy as provided herein.

**12.4:** No signs shall be installed by LESSEE without the prior written consent of the LESSOR as to the size, type, design and location of said sign. If LESSEE either proceeds without the prior written consent of the LESSOR or installs a sign that does not conform with the specifications approved by the LESSOR, the LESSOR may enter the leased premises to remove any such unauthorized sign and to restore the premises to their former condition. The LESSOR shall bill the LESSEE for any and all costs incurred in so removing any such unauthorized sign.

**12.5:** The LESSEE shall not permit any mechanics, liens or similar liens, to

remain upon the leased premises for labor and material furnished to the LESSEE or claimed to have been furnished to the LESSEE in connection with work of any character performed or claimed to have been performed at the direction of the LESSEE and shall cause any such lien to be released of record forthwith without cost to the LESSOR.

**12.6:** Prior to the commencement of any nonstructural alterations for which the LESSEE has received the LESSOR'S written approval, the LESSEE shall obtain the LESSOR'S consent as to the date and time of the proposed work to assure that such work does not interfere with any other of the LESSOR'S activities.

**13. LIGHTING**

**13.1:** The LESSEE shall, at its sole expense, repair or replace as may be required, all electrical or incandescent light bulbs or fluorescent tubes or other lighting devices located within the leased premises.

**14. REFUSE DISPOSAL AND TEMPORARY STORAGE OF RECYCLABLES**

**14.1:** The LESSEE shall be responsible for all disposal and removal of trash related to the food and bar concession. Such responsibility shall include trash disposal and removal from the leased premises. The grounds surrounding the deck and terrace shall be maintained in a neat and clean condition, free of all debris and other foreign matter.

**14.2:** The LESSEE shall deposit its trash in the dumpster at Cranberry Valley Golf Course. The LESSEE shall deposit said trash on a regular basis so that no refuse will be allowed to accumulate as to constitute a fire or health hazard within the leased premises or to create an unsightly appearance on the leased premises.

**14.3:** LESSEE agrees to pay charges for a dumpster for trash collection.

**14.4:** The LESSEE shall provide appropriate receptacles for temporary storage of recyclable materials, including, but not limited to, cans and bottles. Said receptacles shall be appropriately designed and constructed to handle the types of recycled materials stored therein. Containers must be made of rodent-proof material, such as metal or plastic, and of sufficient strength to bear the weight of stored material without cracking or breaking and to resist puncturing by normal deposit of materials.

**14.5:** Receptacle construction and placement must pose no danger to the public, and shall comply with all building and fire codes. Receptacles shall be topple proof at full load. Prior to the installation of any such receptacles, LESSEE shall obtain prior written approval for the proposed design and location of said receptacles.

**14.6:** The area surrounding the receptacles for temporary storage of recyclable materials shall be maintained in a clean and sanitary manner at all times. No recyclable materials shall be allowed to accumulate around any receptacle or to overflow from any receptacle.

**15. GLASS**

15.1: The LESSEE shall be solely responsible for all glass in or within the premises and for all the LESSEE'S property located in or upon the leased premises.

15.2: The LESSEE shall be responsible for the repair and replacement of any broken or cracked windows, caused by any act or omission of the LESSEE, its agents, servants or employees, within or on the demised premises, all at its own cost. The LESSEE shall also be responsible for assuring that all such windows are cleaned, both the interior and exterior side, on at least a weekly basis.

**16. LESSOR'S ACCESS**

16.1: The LESSOR or agents of the LESSOR may, at all reasonable times, enter upon the leased premises for the purpose of access to common areas in and around the leased premises.

16.2: The LESSOR or agents of the LESSOR may, at all reasonable times, enter to view and inspect the leased premises and make repairs and alterations as the LESSOR should elect to do and may show the leased premises to others.

**17. FOOD**

17.1: All meals prepared shall be nutritionally appropriate, attractively presented, varied sufficiently to avoid boredom, and must be presented with sufficient alternatives to allow for individual differences in tastes.

17.2: All food purchased by the LESSEE for use at the leased premises shall meet the following minimum specifications:

Meat, lamb, beef, veal .....	USDA Choice
Pork .....	US #1
Poultry, eggs, dairy products .....	Grade A
Canned vegetables .....	Choice
Frozen Vegetables.....	Grade A
Fresh produce .....	#1 Quality

All other food purchases must be of comparable quality.

17.3: The LESSEE is responsible for the receipt and storage, inventory control, and use of all food and other products consumed at the restaurant.

17.4: The prices and food offerings on the concession and bar menu, attached hereto as Menu Exhibit to Lease, and incorporated by reference herein, shall not be changed by LESSEE without the written approval of the LESSOR. Any new menu so approved by the LESSOR shall be incorporated into this lease agreement through a written amendment to said agreement.

17.5: Any disposable products used on the leased premises shall be made from recyclable materials and shall be recyclable and biodegradable.

17.6: Minimum Food Service of Breakfast and Lunch must be provided.

**Memorial Day weekend through Labor Day weekend**

**18. RESPONSIBLE ALCOHOLIC BEVERAGES SERVICE PROGRAM**

**18.1:** The LESSEE shall assure that all its employees participate in a "Responsible Alcoholic Beverages Service Program" at least annually, unless the LESSOR, at its sole discretion, prescribes more frequent intervals.

**18.2:** If a new employee is hired by the LESSEE, said employee shall participate in a "Responsible Alcoholic Beverages Service Program" as a condition of said employee's continued employment.

**19. RECORDS AND REPORTS**

**19.1:** The LESSEE shall and hereby agrees to keep in the leased premises during the term hereof, or at a location (made known to the LESSOR by the LESSEE), in the Town of Harwich, for a period of three consecutive years following the end of each lease year, a permanent, complete and accurate record of all sales of merchandise and service and all revenue derived from business conducted in the leased premises for such lease year. LESSEE further agrees to keep, retain and preserve for at least one year after the expiration of this lease, all original sales records and sales slips or sales checks and other pertinent original sales records. All such records, including sales tax reports and business and occupation tax reports, shall be open to the inspection and audit of LESSOR and its agents at all reasonable times during ordinary business hours.

**19.2:** The term "gross sales" is the entire amount of the actual sales price, whether wholly or partly for cash or on credit, of all sales of merchandise and services and all other receipts of all business conducted in or from the leased premises, including all deposits not refunded to purchasers, orders taken in or from the leased premises although said orders may be filled elsewhere, and sales by any sub lessee, concessionaire or licensee in or from the leased premises, and all without credit to the LESSEE for uncollected or uncollectible credit accounts. There shall be excluded from "gross sales" any sums collected and paid out for any sales tax or tax based upon the sale or sales of merchandise and required by law, whether now or hereafter in force, to be paid by the LESSEE or collected from its customers, to the extent that such taxes have been added to and included in the gross sales price. Gratuities from inclusive priced functions shall also be excluded from "gross sales".

**19.3:** The LESSEE shall submit to the LESSOR in a reasonable amount of time, not to exceed ninety (90) days following the end of the first twelve months of this lease, at the place then fixed for the payment of rent, a Review-type Financial Statement and a Certification that all taxes, notes and vendor invoices are current, prepared and signed by a certified public accountant and signed by LESSEE, showing in reasonably accurate detail the amount of gross sales during the preceding lease year and fractional lease year, if any, and shall submit, in a reasonable amount of time, not to exceed ninety (90) days following the expiration or termination of the term, a like statement covering the preceding fractional lease year, if any.

**19.4** The gross sales from this quarterly reporting will be the basis for



determining the amount of additional lease that is due to the LESSOR based on the percentage of gross sales as stated in the pricing portion of this agreement. Payment will be made at this time to the LESSOR at the location designated by the LESSOR.

**19.5:** The LESSEE shall submit to the LESSOR in a reasonable amount of time, not to exceed ninety (90) days following the end of the first twelve months of this lease and subsequently at the end of each lease year ending December 31st, at the place then fixed for the payment of rent, a Review-type Financial Statement and a Certification that all taxes, notes and vendor invoices are current, prepared and signed by a certified public accountant and signed by LESSEE, showing in reasonably accurate detail the amount of gross sales during the preceding lease year or fractional lease year, if any, including the final lease year, including all option years.

## **20. INDEMNIFICATION OF LESSOR**

**20.1:** The LESSOR shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by the LESSEE or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of the LESSEE or of the LESSEE'S contractors, licensees, agents, servants, employees, occupants, sub-tenants, visitors, invitees, guests, or users of any portion of the premises, or shall result from or be caused by any accident, injury or damage or any other matter or thing whether of the same kind as or of a different kind than the matters or things set forth above, and the LESSEE shall indemnify and save harmless the LESSOR from and against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage during the term hereof in or about the leased premises.

**20.2:** The LESSOR shall not be liable to the LESSEE or to any other person for any injury, loss or damage to any person or property on or about the demised premises or the building of which the demised premises are a part or the approaches, sidewalks, patios or appurtenances thereto;

**20.3:** The LESSEE shall save the LESSOR, as owner of the demised premises, harmless and indemnified from and against all loss or damage occasioned by the use or misuse of water or any plumbing, heating or cleaning apparatus, gas or electric fixtures, leaking or bursting pipes or otherwise occasioned by any nuisance made or suffered by or from the demised premises.

**20.4:** This indemnity and hold harmless agreement shall include indemnity against all reasonable costs, expenses and liability incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof, including reasonable attorneys' fees.

**20.5:** The LESSEE shall pay to the LESSOR, on demand, for any damage caused to any portion of the leased premises, or to any portion of the entire areas known as Cranberry Valley Golf Course, incurred as a result of the LESSEE'S operation, and or occupancy, of the demised premises.

## **21. INSURANCE.**

**21.1:** The LESSEE shall carry and maintain during the duration of the contract, insurance as specified below and in such form as shall protect him and any subcontractor performing work covered by this contract, or the LESSOR, from all claims and liability for damages for bodily injury, including accidental death and for property damage, which may arise from operations under this contract, whether such operations be by itself or by any subcontractor or by anyone directly or indirectly employed by either of them. Except as otherwise stated, the amount of such insurance shall be for each policy not *less* than:

- a. For liability for bodily injury including accidental death, \$1,000,000.00 for any one person and, subject to the same limit for each person, \$3,000,000.00 on account of one accident.
- b. For liability for property damage, \$1,000,000.00 on account of any one accident and \$3,000,000.00 on account of all accidents.
- c. Bodily Injury and Property Damage Insurance covering of all motor vehicles owned by the LESSEE in the amounts required in "21.1.a." and "21.1.b." above.
- d. Insurance in the amounts required in "21.1.a." and "21.1.b." above to cover bodily injuries and property damage resulting from the use of motor vehicles not owned by the LESSEE, while such vehicles are being operated in connection with the prosecution of the work under this contract.
- e. Owner's Protective Insurance secured by the LESSEE in behalf of the LESSOR, which will directly protect the lessor from liability for bodily injuries including accidental death in the amounts required in "21.1.a." above and for property damage in the amounts required in "21.1.b." above.
- f. All policies shall be so written so that LESSOR is listed as an additional insured and so that the LESSOR will be notified of cancellation or restrictive amendment. Certificates in triplicate from the insurance carrier stating the limits of liability and expiration date must accompany all bids. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this contract and article and the above paragraphs in accordance with which insurance is as required by such paragraphs of this contract. The LESSEE shall maintain a public liability insurance policy on the premises with coverage limits of not less than \$1,000,000.00 per person and \$3,000,000.00 per occurrence and the LESSOR named insured on said policy.
- g. The LESSEE agrees, as a condition of this lease, to provide to the LESSOR a certified copy of said insurance policy, showing the LESSOR as a named insured, at the time of the execution hereof, and further the LESSEE agrees to provide verification of the continued existence of said policy at any time as such may be requested by the LESSOR. All such insurance certificates shall provide that such policies shall not be cancelled without at least thirty (30) days prior written notice to each insured named therein.
- h. The LESSEE shall maintain Liquor Law Liability Insurance in the amount of

\$1,000,000.00 occurrence and \$3,000,000.00 aggregate. The Town shall be named as additional insured.

- i. The Lessee shall maintain an umbrella liability insurance in the amount of \$2,000,000/occurrence and \$2,000,000/aggregate. The Town shall be named as additional insured.

**21.2:** The LESSEE further agrees to maintain any and all worker's compensation insurance in accordance with the Massachusetts General Laws and to provide the LESSOR with proof of same within thirty (30) days of the execution of this lease.

## **22. FIRE INSURANCE**

**22.1:** The LESSEE shall not permit any use of the leased premises which will make voidable any insurance on the property of which the leased premises are a part, or on the contents of said property, or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or any similar body succeeding to its powers. The LESSEE shall, on demand, immediately remove said cause or reimburse the LESSOR for all extra insurance premiums caused by the LESSEE'S use of the premises.

## **23. ASSIGNMENT-SUBLEASING**

**23.1:** The LESSEE shall not assign or sublet the whole or any part of the leased premises.

**23.2:** Any attempted assignment by LESSEE shall be void and shall, at the option of the LESSOR, terminate this lease.

**23.3:** Neither this lease nor the leasehold estate of LESSEE nor any interest of LESSEE hereunder in the leased premises or any buildings or improvement thereon shall be subject to involuntary assignment, transfer or sale or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of the LESSOR, terminate this lease.

## **24. FIRE, CASUALTY**

**24.1:** Should a substantial portion of the leased premises or of the property of which they are a part, be substantially damaged by fire or other casualty, the LESSOR may elect to terminate this lease.

**24.2:** When such fire or casualty renders the leased premises substantially unsuitable for their intended use, the LESSEE may elect to terminate this lease if:

- (a) The LESSOR fails to give written notice within thirty (30) days of intention to restore the leased premises; or,

- (b) The LESSOR fails to restore the leased premises to a condition substantially suitable for their intended use within ninety (90) days of said fire or casualty.

**24.3:** The LESSOR reserves, and the LESSEE grants to the LESSOR, all rights which the LESSEE may have for damages or injury to the leased premises, except for damage to the LESSEE'S fixtures, property or equipment.

**25. BANKRUPTCY**

**25.1:** If a petition shall be filed by or against the LESSEE under the Federal Bankruptcy Act or acts amendatory thereof or supplemental thereto, or if any assignment shall be made of the LESSEE'S property for the benefit of creditors, or if a receiver, guardian, conservator or other similar officer shall be appointed to take charge of all, or any portion of the LESSEE'S property by a court of competent jurisdiction, then, in any such case, the LESSOR lawfully may, immediately, or at any time thereafter, without the need of demand or notice, enter into and upon the demised premises or any part thereof in the name of the whole, repossess the same and expel the LESSEE and remove LESSEE'S goods, equipment and effects without being guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of monthly payments or preceding breach of covenant, and upon such entry this lease shall be deemed terminated.

**26. DEFAULT BY LESSEE**

**26.1:** In the event that the LESSEE shall default in the payment of any installment of rent or other sums herein provided for, and said default shall continue for ten (10) days, or if the LESSEE shall default in the observance or performance of any other of the LESSEE'S covenants, agreements or obligations hereunder, and such default shall continue for thirty (30) days, or if the LESSEE shall be declared bankrupt or insolvent according to the law, or shall enter an assignment for the benefit of creditors, then the LESSOR shall have the right thereafter to enter and take complete possession of the leased premises pursuant to any process required by law and to terminate this lease and/or remove the property of the LESSEE, without prejudicing any other remedies available under this lease or at law, for arrears of rent or other damages.

**26.2:** The LESSEE shall indemnify the LESSOR against all loss of rent and other payments which the LESSOR may incur by reason of such termination during the residue of the term of this lease or any extension thereof.

**26.3:** If the LESSEE shall default in the observance or performance of any conditions or covenants on LESSEE'S part to be observed or performed under or by virtue of any of the provisions of this lease, the LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the LESSEE. If the LESSOR makes any expenditures or incurs any obligations for the payment of money in connection therewith, including, but not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceedings, such sums paid or obligations incurred, with interest at the rate of twelve (12) percent per annum and costs, shall be paid to the LESSOR by the LESSEE forthwith as additional rent.

**26.4:** Failure on the part of the LESSOR to complain of any action or

nonaction on the part of the LESSEE, no matter how long the same may continue, shall never be deemed to be waiver by the LESSOR of any of its rights hereunder.

**26.5:** No waiver at any time of any of the provisions hereof by the LESSOR shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the LESSOR to or of any action by the LESSEE requiring the LESSOR'S consent or approval shall not be deemed to waive or render unnecessary the LESSOR'S consent or approval to or of any subsequent similar act by the LESSEE.

**26.6:** No payment by the LESSEE or acceptance by LESSOR of a lesser amount than shall be due from LESSEE to LESSOR shall be treated otherwise than as a payment on account. The acceptance by the LESSOR of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and the LESSOR may accept such check without prejudice to any other rights or remedies which LESSOR may have against the LESSEE.

## **27 YIELDING UP THE PREMISES**

**27.1:** Upon the expiration of this lease, the LESSEE shall yield up and deliver the leased premises and all keys, locks thereto, and other fixtures connected therewith, and all alterations and additions made to or upon the leased premises vacant and unencumbered, clean, neat, and in good condition. All equipment must be clean and operational and facilities clean.

**27.2:** The LESSEE shall, at the expiration or other termination of the lease, remove all the LESSEE'S goods and effects from the leased premises (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the LESSEE, either inside or outside the leased premises).

**27.3:** In the event of the LESSEE'S failure to remove any of the LESSEE'S property from the premises, the LESSOR is hereby authorized, without liability to the LESSEE, for loss or damage thereto, and at the sole risk of the LESSEE, to remove and store any of the property at the LESSEE'S expense or to retain same under LESSOR'S control or to sell at public or private sale, without notice, any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to dispose of such property.

## **28. NON-DISCRIMINATION**

**28.1:** The LESSEE covenants and agrees that it will not exercise or permit its officers, agent or employees to exercise any discrimination against any person because of race, sex, national origin, age, marital status, sexual orientation, disability or religion in the course of its use of the premises or its operations at the leased premises.

## **29. NOTICES**

**29.1:** Any notice from the LESSOR to the LESSEE relating to the leased premises or to the occupancy thereof, shall be deemed duly served if left at the leased premises addressed to the LESSEE or, if mailed to the leased premises by registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSEE. Any notice from the LESSEE to the LESSOR relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if mailed to the LESSOR by registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSOR at Cranberry Valley Golf Course, Office of Director of Golf Course Operations, 183 Oak Street, Harwich, MA 02645 or to such other address as either party may specify to the other by notice given as provided herein.

**30. SEVERABILITY.**

**30.1:** If any provisions of this lease shall to any extent be held invalid or unenforceable, the remainder of this lease shall not be deemed affected thereby.

**31. CONSTRUCTION OF LEASE**

**31.1:** This lease shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

**32. MODIFICATION OF LEASE**

**32.1:** This instrument contains the entire agreement between the parties and supersedes all prior or contemporaneous oral or written agreements, and it may not be modified except in writing and signed by all parties.

**33. MISCELLANEOUS OBLIGATIONS OF LESSEE**

**33.1:** If the LESSEE'S operations hereunder cause or in any way bring about an increase in the LESSOR'S insurance premiums covering the premises, the LESSEE shall pay the resultant increase. Any amounts due the LESSOR under this paragraph shall constitute additional rent and shall be payable within thirty (30) days of notice to the LESSEE.

**33.2:** The LESSEE shall not, during the term of this lease, hire or employ on either a full-time or part-time basis, any employees of the LESSOR regardless of whether such employee of the LESSOR be full-time or part-time employees.

**33.3:** The LESSEE shall not, without the LESSOR'S prior written approval, refer to the LESSOR in any advertising, letterheads, bills, invoices or other printed matter.

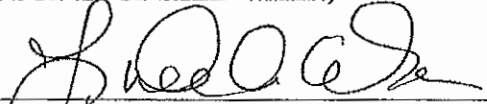
**33.4:** The LESSEE shall be required during the term of this lease to take such reasonable security precautions with respect to its operations at the leased premises as LESSOR, in its discretion, might from time to-time require.

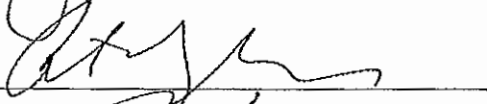
**33.5:** The LESSEE shall name a Principal or approved manager that will be

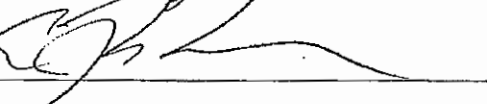
present on site a minimum of 40 hrs weekly for the period of Memorial Day weekend through Labor Day weekend. From March 15<sup>th</sup> through Memorial Day weekend and from Labor Day weekend through December 14<sup>th</sup>, the schedule shall be as mutually agreed upon between the LESSEE and LESSOR. If the LESSEE plans on providing concession services between December through March, a work schedule of the assigned representative responsible for the operation must be presented to the Golf Course Management on the first day of each month.

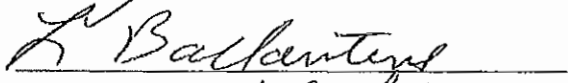
Executed in quadruplicate as a sealed instrument this 25<sup>th</sup> day of

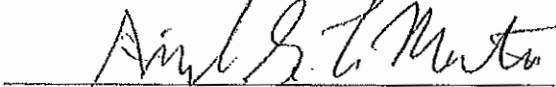
**TOWN OF HARWICH, LESSOR,  
By its BOARD OF SELECTMEN,**

  
\_\_\_\_\_

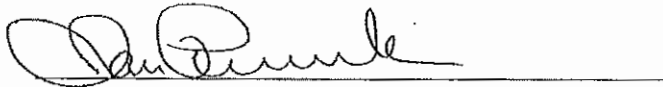
  
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**FOR THE LESSEE:**

  
\_\_\_\_\_

IAN PHILBRICK  
\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_



## Harwich Health

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**From:** suzanne dearborn <suzannedearborn@rcn.com>  
**Sent:** Tuesday, October 27, 2015 10:29 PM  
**To:** Harwich Health  
**Subject:** Resignation letter

Peter S. Hughes, Chair  
Board of Selectmen  
Harwich, MA

Dear Mr. Hughes:

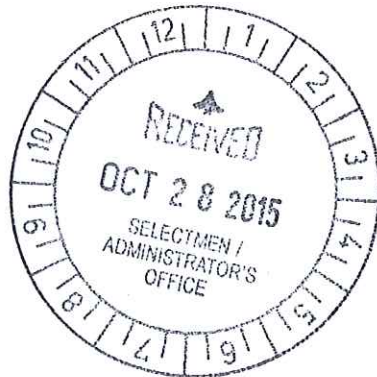
With sincere regret I am writing to resign from the Board of Health. Within the past year I have had to be in the Boston area because of my husband's health. Initially I had hoped that this would be a temporary relocation, but because it was unexpectedly prolonged and officially right now, I do not reside in Harwich, I should not continue on the Board.

I have thoroughly enjoyed my association with Paula Champagne-one of the most impressive professionals I have encountered in my career. The competency of her staff is a testament to her ability; it was always a pleasure to interact with the Department. I will miss my fellow Board members and thank you and the Board of Selectmen for allowing me to serve in this capacity.

I am anticipating that my current situation will soon be resolved and I would look forward to serving the Harwich community some time in the future.,

Sincerely,

Mary Jane Watson  
Vice Chair, Board of Health



**SELECTMEN'S PROPOSED HOLIDAY MEETING SCHEDULE**

<u>Thanksgiving Week</u>	<u>Monday</u> <u>Nov 23</u>	<u>Tuesday</u> <u>Nov 24</u>	<u>Wednesday</u> <u>Nov 25</u>	<u>Thursday</u> <u>Nov 26</u>	<u>Friday</u> <u>Nov 27</u>
	<b>No B O S Meeting</b>			Thanksgiving Holiday	Holiday
	8:30 am – 8:00 pm	8:30 am – 4:00 pm	8:30 am – 12:00 pm		

<u>Christmas Week</u>	<u>Monday</u> <u>Dec 21</u>	<u>Tuesday</u> <u>Dec 22</u>	<u>Wednesday</u> <u>Dec 23</u>	<u>Thursday</u> <u>Dec 24</u>	<u>Friday</u> <u>Dec 25</u>
	<b>B O S will meet</b>			Christmas Eve Selectmen's Holiday	Holiday
	8:30 am – 4:00 pm	8:30 am – 4:00 pm	8:30 am – 4:00 pm		

<u>New Year's Week</u>	<u>Monday</u> <u>Dec 28</u>	<u>Tuesday</u> <u>Dec 29</u>	<u>Wednesday</u> <u>Dec 30</u>	<u>Thursday</u> <u>Dec 31</u>	<u>Friday</u> <u>Jan 1</u>
	<b>No B O S Meeting</b>			New Year's Eve Selectmen's Holiday	Holiday
	8:30 am – 4:00 pm	8:30 am – 4:00 pm	8:30 am – 4:00 pm		

**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

cc: Charleen Greenhalgh, Assistant Town Administrator

Re: Town Hall Hours – Thanksgiving Week  
Employee Hours - Christmas and New Year's Weeks

Date: October 28, 2015

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I recommend the following Town Hall hours for the week of Thanksgiving:

Monday, November 23, 2015	8:30 a.m. – 8:00 p.m.
Tuesday, November 24, 2015	8:30 a.m. – 4:00 p.m.
Wednesday, November 25, 2015	8:30 a.m. – 12:00 p.m.
Thursday, November 26, 2015	Closed - holiday per contract
Friday, November 27, 2015	Closed - holiday per contract

Furthermore, in keeping with past tradition and in the spirit of the holidays, I recommend that the Board of Selectmen declare Thursday, December 24, 2015 (Christmas Eve) and Thursday, December 31, 2015 (New Year's Eve) as Selectmen's holidays. Employees will work until 4:00 p.m. on Monday, December 21, 2015 and Monday, December 28, 2015.

Best wishes this holiday season and in the coming year.

**LEGAL NOTICE  
TOWN OF HARWICH  
NOTICE OF PUBLIC HEARING  
November 2, 2015**

The Harwich Board of Selectmen will hold a Public Hearing on **Monday, November 2, 2015**, no earlier than 6:30 P.M. during their regularly scheduled meeting. The Hearing will be held in the Donn B. Griffin Room located at Town Hall, 732 Main Street in Harwich for the purpose of deciding whether all property shall be taxed at the same rate for Fiscal Year 2016 as set forth in Chapter 40, Section 56 of the Massachusetts General Laws.

All members of the public having an interest in this topic are cordially invited to attend the public hearing and provide information and testimony relevant to this matter.

Peter S. Hughes, Chair  
Linda A. Cebula, Vice Chair  
Jannell M. Brown, Clerk  
Angelo S. La Mantia  
Michael D. MacAskill

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Harwich Board of Selectmen

Cape Cod Chronicle  
October 15, 2015

**LEGAL NOTICE  
TOWN OF HARWICH  
NOTICE OF PUBLIC HEARING  
NOVEMBER 2, 2015**

The Harwich Board of Selectmen will hold a Public Hearing on **Monday, November 2, 2015**, no earlier than 6:30 P.M. during their regularly scheduled meeting. The Hearing will be held in the Donn B. Griffin Room located at Town Hall, 732 Main Street, Harwich for the purpose of deciding whether all property shall be taxed at the same rate for Fiscal Year 2016 as set forth in Chapter 40, Section 56 of the Massachusetts General Laws.

All members of the public having an interest in this topic are cordially invited to attend the public hearing and provide information and testimony relevant to this matter.

Peter S. Hughes, Chair  
Linda A. Cebula, Vice Chair  
Jannell M. Brown, Clerk  
Angelo S. La Mantia  
Michael D. MacAskill  
Harwich Board of Selectmen

The Cape Cod Chronicle  
Oct. 15, 2015

## MOTION

*I move that we*

1. Select a factor of “1” (taxing all property at the same rate)
2. That we do not grant an open space exemption.
3. That we do not grant a residential exemption.
4. That we do not grant a small commercial exemption.



TOWN OF HARWICH  
 732 MAIN STREET  
 HARWICH, MA 02645

BOARD OF ASSESSORS  
 508-430-7503

**FY 2016**

**CLASSIFICATION HEARING – NOVEMBER 2, 2015**

C.I.P. = Commercial, Industrial, Personal Property	\$ 352,323,648
R.O. = Residential, Open Space	\$4,461,686,152
Total Valuation	\$4,814,009,800

**TOTAL LEVY (BY PERCENT)**

Residential	92.6813 %	)		
Open Space	-0-	)	R&O	= 92.6813 %
Commercial	5.2279 %	)		
Industrial	0.5505 %	)	C.I.P.	= 7.3187 %
Personal Property	1.5404 %	)		

**ESTIMATED TAX RATES**

100%	No Shift	All Classes	\$ 9.21	
110%	Shift to CIP	C.I.P. Tax Rate	\$ 9.65	110%
		Res Tax Rate	\$ 8.70	99%
125%	Shift to C.I.P.	C.I.P. Tax Rate	\$10.96	125%
		Res Tax Rate	\$ 8.60	98%
150%	Shift to C.I.P.	C.I.P. Tax Rate	\$13.15	150%
		Res. Tax Rate	\$ 8.43	96%



**TOWN OF HARWICH  
BOARD OF ASSESSORS  
732 MAIN STREET  
HARWICH, MASSACHUSETTS 02645  
TEL: 508-430-7503—FAX 508-430-7086**

**ESTIMATED FY 2016 TAX RATE \$9.21**

\$460,400	+2.22%	Average Single Family	\$4,240.28	+\$200.19
\$340,200	+3.91%	Median Single Family	\$3,133.24	+\$196.46
\$126,000	+1.61%	Median Vacant Residential Lot	\$1,160.46	+\$ 48.18

**FY 2015 TAX RATE \$8.97**

\$450,400	+3.54%	Average Single Family	\$4,040.09	+\$225.14
\$327,400	+2.60%	Median Single Family	\$2,936.78	+\$138.27
\$124,000	+3.85%	Median Vacant Residential Lot	\$1,112.28	+\$ 65.14

**FY 2014 TAX RATE \$8.77**

\$435,000	+1.16%	Average Single Family	\$3,814.95	+\$125.30
\$319,100	0.00%	Median Single Family	\$2,798.51	+\$ 57.20
\$119,400	+1.80%	Median Vacant Residential Lot	\$1,047.14	+\$ 40.71

**FY 2013 TAX RATE \$8.58**

\$430,000	-1.03%	Average Single Family	\$3,689.65	+\$103.86
\$319,500	-2.17%	Median Single Family	\$2,741.31	+\$ 89.32
\$117,300	-6.61%	Median Vacant Residential Lot	\$1,006.43	-\$ 13.44



**FY 2012 TAX RATE \$8.12**

\$441,600	-1.49%	Average Single Family	\$3,585.79	+\$133.88
\$326,600	-2.16%	Median Single Family	\$2,651.99	+\$ 81.73
\$125,600	-11.80%	Median Vacant Residential Lot	\$1,019.87	-\$ 76.61

**FY 2011 TAX RATE \$7.70**

\$448,300	-6.21%	Average Single Family	\$3,451.91	+\$ 91.57
\$333,800	-6.02%	Median Single Family	\$2,570.26	+\$ 73.20
\$142,400	-14.06%	Median Vacant Residential Lot	\$1,096.48	-\$ 68.39

**FY 2010 TAX RATE \$7.03**

\$478,000	-5.25%	Average Single Family	\$3,360.34	+\$207.21
\$355,200	-5.38%	Median Single Family	\$2,497.06	+\$150.81
\$165,700	+1.53%	Median Vacant Residential Lot	\$1,164.87	+\$144.87

**FY 2009 TAX RATE \$6.25**

\$504,500	0.0%	Average Single Family	\$3,153.13	+\$100.90
\$375,400	- 1.2%	Median Single Family	\$2,346.25	+\$ 47.25
\$163,200	- 7.2%	Median Vacant Residential Lot	\$1,020.00	-\$ 44.20

**FY 2008 TAX RATE \$6.05**

\$504,500	- 4.2%	Average Single Family	\$3,052.23	+\$113.80
\$380,000	- 6.3%	Median Single Family	\$2,299.00	+\$ 36.31

\$175,900	-12.8%	Median Vacant Residential Lot	\$1,064.20	-\$ 61.84
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**FY 2007 TAX RATE \$5.58**

\$526,600	+ 7.8%	Average Single Family	\$2,938.43	+\$ 61.16
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\$405,500	+ 9.6%	Median Single Family	\$2,262.69	+\$ 83.98
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\$201,800	+12.0%	Median Vacant Residential Lot	\$1,126.04	+\$ 65.84
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**FY 2006 TAX RATE \$5.89**

\$488,500	+ 9.3%	Average Single Family	\$2,877.27	+\$ 88.61
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\$369,900	+ 8.0%	Median Single Family	\$2,178.71	+\$ 40.89
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\$180,000	+ 15.0%	Median Vacant Residential Lot	\$1,060.20	+\$ 84.89
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**FY 2005 TAX RATE \$6.24**

\$446,900	+ 8.0%	Average Single Family	\$2,788.66	+\$ 56.26
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\$342,600	+11.0%	Median Single Family	\$2,137.82	+\$ 95.78
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\$156,300	+11.0%	Median Vacant Residential Lot	\$ 975.31	+\$ 47.35
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**FY 2004 TAX RATE \$6.60**

\$414,000	+27.0%	Average Single Family	\$2,732.40	+\$112.27
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\$309,400	+33.0%	Median Single Family	\$2,042.04	+\$182.20
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\$140,600	+59.0%	Median Vacant Residential Lot	\$ 927.96	+\$217.39
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**FY 2003 TAX RATE \$8.02**

\$326,700	Average Single Family	\$2,620.13
\$231,900	Median Single Family	\$1,859.84
\$ 88,600	Median Vacant Residential Lot	\$ 710.57

FY 2016 Residential Exemption Executive Summary  
(See also exemption worksheet)

1. Board of Assessor's posted meeting on October 19, 2015, discussion and vote for FY 2016.
2. A residential exemption for residents of up to 20% of the average residential value.
3. An exemption of \$80,000 value at a \$10.00 tax rate would amount to \$800.00 per parcel.
4. In order to fund these exemptions the tax rate on ALL residential property is increased from \$9.00 to \$10.00.
5. All non-residents would increase an additional 10% in taxes. Apartments and vacant land would increase as well. Residents with a value of \$900,000 or more would also pay more.
6. Apartments and multi-family property owners would recoup additional taxes through rent increases, increasing costs for those renting.
7. Commercial, industrial and personal property would not be affected.
8. Although the residential exemption does not give the Town additional revenue, it does require much more effort to qualify the estimated 5,000 residents, before the tax rate is set. Residents must apply for the exemption. Exemptions granted after the bills are mailed will come from the overlay account in the amount of \$800 each. Additional staffing may be required to handle even one half of potential exemptions.
9. Non-residents currently pay a personal property tax while residents are exempt. They have no children in school, they do not utilize as many services as residents, yet they will be asked to pay an additional 10% in taxes on top of the personal property tax.
10. Without the residential exemption we are able to say we tax ALL residents equally. (Only 14 of 351 cities and towns currently shift the burden with the residential exemption.) The Board unanimously voted to recommend to the Board of Selectmen a "Factor of 1", taxing all residents equally.
11. The Board of Assessors discussed possible change in state law to increase senior exemptions amount currently \$1,000 to 80 qualifying households.
12. Also possible to budget town funds to grant additional relief of \$500 to \$1,000 per exemption granted.

FY 2016 RESIDENTIAL EXEMPTION WORK SHEETS

5030 WINTER RESIDENTS

A	B	C
TOTAL RESIDENTIAL VALUE	TOTAL RESIDENTIAL PARCELS	AVERAGE RESIDENTIAL VALUE
\$4,462,170,232	10,891	\$409,711.71
C	D	E
AVERAGE RESIDENTIAL VALUE	RESIDENTIAL EXEMPTION	RESIDENTIAL EXEMPTION
\$409,712	20%	\$81,942.40
E	F	G
RESIDENTIAL EXEMPTION	ELIGIBLE RESIDENTIAL PARCELS	TOTAL RESIDENTIAL EXEMPTION VALUE
\$81,942	5030	\$412,168,260
A	G	H
TOTAL RESIDENTIAL VALUE	TOTAL RESIDENTIAL EXEMPTION VALUE	TOTAL RESIDENTIAL VALUE MINUS EXEMPTION
\$4,462,170,232	\$412,168,260	\$4,050,001,972

(BNA) BENEFIT NEUTRAL ASSESSMENT

A	F	I
TOTAL RESIDENTIAL VALUE	ELIGIBLE RESIDENTIAL PARCELS	BNA BREAK EVEN POINT
\$4,462,170,232	5030	\$887,111.38



**TOWN OF HARWICH  
BOARD OF ASSESSORS  
732 MAIN STREET  
HARWICH, MA 02645  
TEL: (508) 430-7503 FAX: (508) 430-7086**

To: Board of Selectmen

From: Board of Assessors  
Richard Waystack, Chairman  
Bruce Nightingale  
Jay Kavanaugh

Date: October 10, 2015

RE: Annual Meeting, 2015

The Board of Assessor's, Richard Waystack, Bruce Nightingale and Jay Kavanaugh, in this annual report to the Board of Selectmen, continue to discharge our primary legal responsibility in assuring a fair assessment of all property in the Town of Harwich in a professional manner.

The Town of Harwich has recently received preliminary approval for our Triennial Re-certification. This state mandated review has been done in a timely manner, resulting in an approximate increase in value of 2 ½% town wide. This increase in value is based on qualifying, closed transactions from 2014. As required, the Assessing Department is informing taxpayers through postcards, website notice and a television show which is being shown at the end of the televised Selectmen's meetings as well as numerous times during the week. Taxpayers will be able to view a list of updated valuations in person at the Assessor's Office, Community Center, Brooks Free Library, as well as online through the town website.

It is our intention for tax bills to be sent out in a timely manner for the 14<sup>th</sup> consecutive year. This is our primary function and goal. Any delay in the distribution of tax bills can be costly to the Town in terms of lost revenue and interest.

The Board oversees and approves numerous programs which are available for our Seniors, Veterans, spouses of Veterans, Sight impaired citizens and those who may need assistance in paying taxes because of age, infirmity or financial condition. The Board sponsored an article at the 2015 annual town meeting expanding the qualifications for taxpayers who are over 65 and filing a Senior Tax Exemption. We have a number of programs available through exemptions and deferrals which are readily available to meet the needs of our community. In addition, we provide the criteria for assessing property in Harwich, the abatement process and timetables to file. A list for these programs is now available online. A continuous goal is to make the community aware of all programs available to the taxpayers. The Board has continued its outreach in the community by partnering with the Council of Aging to promote the tax work-off program with volunteerism throughout the Town Departments. Currently, there are opportunities for taxpayers to utilize the Senior Tax Work Off provision to lessen their tax burden. Requirements for this program mirror those of the Senior Exemption.

For those taxpayers who disagree with their assessed value, abatement hearings will commence during the month of February, thirty days after mailing of the third tax bill. **We would once again encourage all those who travel during the winter months to pay close attention to their third billing, as the new valuations will be available for the first time, and we must abide by State statue which requires the Board to act upon abatement application within three months.** We will complete this task on time, but cannot extend this period due to late filings. Abatement applications are accepted at the Assessor's Office between January 1 and February 1, 2016. The 'Application for

Abatement' will be available on the Town of Harwich website as of January 1, and may be filed with the Harwich Board of Assessors *after* January 1, 2016.

Property Record Cards (PRC) and Town Assessments and Assessor's maps continue to be available on the Town Web site. This technology update has been a direct goal of the Assessors and allows greater productivity for our staff while allowing greater access for our public records. The field appraiser position is now outsourced for better efficiency. The entire staff of the Assessing Office, David Scannell, Donna Molino and Tammy Taylor are cross trained so that a continuum of quality customer service is maintained on a consistent basis.

The Board of Assessors meets bi-weekly, Monday at 5:30 in the Assessor's Office. Our posted meetings are open to the public, with the exception of Executive Sessions. All exemptions, deferrals and abatements are subject to Executive Session, following state and town protocols. During Abatement timeframe we increase our meetings to meet the demands of statutory requirements. Attendance is exemplary, and there are no vacancies at this time. The Board of Assessors is one of the few Boards to require state certification as a standard for service, and all members are duly certified at this time.

Our relationship with the Department Head, Director of Assessing David Scannell and his very qualified staff is outstanding. All parties respect the fact that our Board, despite its statutory requirements, is primarily a policy setting Board. Daily operations of the Department are left to those responsible, Mr. Scannell and the hierarchy of the Finance Department. Mr. Scannell continues to update the board on staff issues and his level of communication with the Board allows us to focus our tasks on the regulatory and policy issues that fall within our responsibility.

It is our honor and pleasure to assist the taxpayers of Harwich as we continue to meet our fiduciary responsibilities of civic service in carrying out our regulatory role.

## **ANNUAL REPORT OF THE HARWICH HOUSING AUTHORITY**

### **TO: The Honorable Board of Selectmen and the Citizens of the Town of Harwich**

The office of the Harwich Housing Authority shares space with the Chatham Housing Authority and is located at 240 Crowell Road in Chatham. The office is open five days a week, 8am to 4pm, except for Fridays when we close at 3:30. Our Board is currently one member short, we still don't have a State Appointee. The state is making changes to how the Board's will be set up so I don't expect any one to be appointed until they have worked through how to implement those changes. William J. Doherty resigned from the board as of the end of the December 2014 meeting and Carol Thayer decided not to run for re-election. Randell Pond and Robin Wilkins were elected to the Board in May 2015. Michael MacAskill is the Board of Selectmen liaison to the Housing Authority.

The mission of the Harwich Housing Authority is to provide affordable, decent, safe and sanitary housing through the maintenance of our existing units and the development of new units; to create an environment which enables residents to live responsibly and with dignity; to support residents in their effort to achieve self-sufficiency; to honor public commitments in a fiscally and ethically responsible manner; to create and maintain public confidence in the Authority's operations and staff; to ensure that the facilities owned and managed by the HHA are marketable to the community and are appealing to residents; to enable the HHA staff to improve their performance through appropriate vision, training, and career development; to establish performance goals that meet or exceed industry standards and that optimize the use of available resources to achieve our performance objectives; and to assist the Town, State and National governments in identifying and addressing housing needs.

Eligibility for housing subsidized through the Harwich Housing Authority is governed by rules and regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD) and the United States Department of Housing and Urban Development (HUD).

The Harwich Housing Authority operates a total of forty (40) units of state subsidized housing under three (3) different government subsidy programs. State programs include the Massachusetts Rental Voucher Program (MRVP) which currently has Twenty (20) scattered site family and elderly units under contract. These voucher amounts are based on income and pay for any portion of rent that exceeds 30% to 40% of household income. Other programs include the Massachusetts 705 Family Housing Program which consists of twelve (12) family units, two (2) two-bedroom units and ten (10) three-bedroom units, one which is wheelchair assessable, the rent for these apartments is based on 27% of Household income after deductions. The third is the Massachusetts 167 Program through the Department of Mental Health which has a total of eight (8) special needs units in a single building which is currently leased to Fellowship Health Resources Inc.



Through our Capital Planning Program we have been able to replace all our roofs on the 705 and 167 properties over the past few years. We have recently installed an emergency generator at the 167 site and are currently working on window replacement on our 705 properties.

Projects being funded with Community Preservation Act funds approved by Harwich Town Meetings:

The Rental Assistance Program is still going strong and we have received \$300,000 in additional funds from the CPC at the May 2015 Town meeting. Currently we are assisting 20 households. We have assisted over 70 households since the program started. Under this program we offer assistance to qualified families by paying a portion of their rent each month (not to exceed \$350 per month) for a maximum of three years. We recertify them once a year and adjust their voucher accordingly. This program is designed to help people as they work towards becoming self-sufficient.

Harwich "Buy-Down" Program has received \$75,000 in 2013. There was \$70,837 left from the previous funding and the HHA has decided to use money from our Admin fund to bring that up to \$75,000, we are looking to help fund two houses, these homes would then be "Deed Restricted" ensuring that they remain affordable in the future.

We have been working with Housing Assistance Corp. for our Mortgage Assistance Program; currently there is just over \$1800 in that program. HAC works with the lenders and the families that are facing foreclosure to restructure their mortgage, we then provide the first payment to help them get back on track. We have been able to help several families this past year.

. We continue to contract with the Chatham Housing Authority for management of the HHA. John Stewart handles the daily activities of the HHA. David Chausse is our Maintenance Mechanic and works a part-time schedule with the HHA. We thank them both for their service.

The Harwich Housing Authority wishes to express its gratitude and thanks to the Town and citizens of Harwich for a successful 2015 and looks forward to a productive 2016. We welcome and encourage your support and suggestions in our efforts to continue to provide quality housing for the residents of Harwich.

Respectfully submitted,

Board Members:  
Robert MacCready, Chair  
Robin Wilkins, Vice-Chair  
Shannon McManus, Treasurer  
Randall Pond, Secretary  
State Appointee- Vacant

Staff:  
John Stewart, Executive Director  
David Chausse, Maintenance Mechanic

TOWN OF HARWICH  
COMMUNITY PRESERVATION COMMITTEE

**CPC 2015 Annual Report to Town of Harwich**

Harwich adopted the Community Preservation Act (CPA or the Act) modified to accommodate the replacement of the so-called Land Bank, effective beginning July 1, 2005. The Act establishes a 3% property tax surcharge supplemented by the state by an amount dependent on other funds raised. The Act requires the establishment of a Committee, the Community Preservation Committee, to study and recommend to the Board of Selectmen and the Town projects to be funded from these resources. The committee is comprised of 9 members: 2 selectmen appointees, and representatives from the housing committee, housing authority, recreation, historical commission, open space/real estate, conservation and the planning board.

**Community Preservation Members:**

Cindi Maule (Selectmen Rep.)	David Nixon (Rec. & Youth)
Housing Committee – open	Daniel Tworek (Selectman Rep)
Walter Diggs (Conservation Commission)	Robert MacCready (Housing Authority) - Chair
Jim Atkinson (Planning Board - pending)	Katherine Green (R. E. & Open Space)-Vice Chair
Robert Bradley (Historical Commission)	

Throughout the year there has been generally good attendance at meetings which are monthly but more frequently in November and December as applications are being evaluated. There has recently been some turnover on the committee and currently there is an open position. A full committee greatly enhances the exchange and diversity of information and points of view. I would like to thank David Purdy, Jan Bowers and Peter de Bakker for their past service and contributions to the CPC process.

For fiscal 2016, the CPC made recommendations to the May 2015 ATM for 4 project articles amounting to \$975,000. These articles were approved by town meeting. The articles were distributed:

- \$25K for Historic Preservation Funding
- \$300K for Community Housing
- \$650K for Open Space

In addition, Town Meeting approved payment of debt service of \$662,275 associated with Land Bank purchases.

This year, the Committee has begun considering 15 applications for the next round of project funding. These applications cover all 4 categories, including recreation, which are permitted by the Act and likely represent greater than \$3 million in requests.

To provide perspective on our position this fall: There was approximately \$1.3 million available after last Town Meeting's article appropriations. The initial estimate of revenue being distributed this fall is approximately \$1.6 million based entirely on the previous year, for a total of approximately \$2.9 million in available funds.

With the requirement to fund the Land Bank Debt Service of approximately \$633K, the amount of funds available for projects in all of the areas permitted by the CPA is approximately \$2.2 million. Thus, the review of applications begins with less funds available than the total of the application requests. The Act requires that 10% of receipts be allocated to Open Space, Historical Preservation and Community Housing regardless of the distribution of funding applications.

TOWN OF HARWICH  
COMMUNITY PRESERVATION COMMITTEE

CPC is also in the process of engaging an outside professional for the purpose of having a community preservation plan prepared.

Respectively submitted,  
Robert Cyrus MacCready, Chair

**Town of Harwich**  
**ZONING BOARD OF APPEALS**  
732 Main Street, Harwich, MA 02645

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*tel: 508-430-7506 fax: 508-430-4703*



Board of Appeals report to the Board of Selectmen for the year 2015.

The Board of Appeals currently has eight members: 5 regular members and 3 alternate members:

Gary Carreiro, Chair, John Burke, Clerk, Dave Ryer, Dean Hederstedt, Franco Previd, Joseph Campbell (alternate), Kathleen Muller (alternate) and Paul Doane (alternate).

The Board of Appeals heard 39 cases in 2015. The cases consisted of the following:

Special Permits: 27 - Granted  
Variances: 7- Granted  
40B: NONE  
Motion to Withdraw without Prejudice – 7  
Motion to Dismiss – NONE  
Matter of Right –NONE

The Board held its regularly scheduled meetings throughout the 2015 year. One of the meetings had to be rescheduled due to inclement weather (February 2015).

Respectfully submitted,

Harwich Board of Appeals  
Secretary, Shelagh Delaney

BCK DRAFT DATED 98/227/15

**SIXTHFIFTH AMENDED AND RESTATED  
INTER-GOVERNMENTAL AGREEMENT  
OF THE  
CAPE LIGHT COMPACT  
(~~November 18,~~ 2015September 12, 2012)**

\*\*\*\*\*

This SixtFifth Amended and Restated Inter-Governmental Agreement (“Agreement”) is dated as of OctoberSeptember xx, 20152 and is entered into by and between the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A.

WHEREAS, the Massachusetts Restructuring Act of 1997 (the “Act”) was enacted during a period where Federal Law allowed for the restructuring of existing electric utilities into separate generation, transmission and distribution companies and, accordingly, the Act set forth a framework for the competitive supply of electric generation service to Massachusetts electric customers and allowed electric customers to choose their electric power supplier; and

WHEREAS, the Cape Light Compact (“Compact”) was entered into with the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A, through an original Inter-Governmental Agreement effective as of October, 1997; and

WHEREAS, the County of Barnstable, County of Dukes County and the municipalities legally joining therein, amended the original Inter-Governmental Agreement in June, 1999, September, 2006, November, 2010, February, 2011, ~~and~~ April 11, 2012 and September 2012; and

WHEREAS, the Compact recognizes that local governments have a substantial stake in the restructuring of the Massachusetts electric industry and that local governments represent community interests and provide a “natural aggregator” function through which consumers may gain greater benefits and terms in contracts; and

WHEREAS, under the authority of G.L. c. 164, §134, G.L. c. 25A, §6 and pursuant to the original Inter-Governmental Agreement, adopted October, 1997, as amended, the Compact developed a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact, approved in D.T.E. 00-47 (August 10, 2000) and approved as updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015); and amended June, 1999 and again in September, 2006, the Compact developed a Municipal Aggregation Plan, setting forth the structure, operations, services, funding and policies of the Compact in order to negotiate the best rates for the supply and distribution of electricity and to advance consumer protection and

~~interests for the residents of Cape Cod and Martha's Vineyard; and~~

WHEREAS, the Compact currently operates a municipal aggregation competitive supply program which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha's Vineyard and the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard through the Cape Light Compact Energy Efficiency Plan; and

WHEREAS, the Green Communities Act, St. 2008, c. 169, provided expanded authority to municipalities and other governmental entities to pursue energy efficiency, renewable energy development and other related activities; ~~and~~

WHEREAS, the Compact continues to explore all available options for providing its customers with the best electrical supply and distribution rates and demand side management and renewable programs.

NOW THEREFORE, in consideration of the foregoing, and in order to reflect the current policies and purposes of the Compact, the County of Barnstable, the County of Dukes County and the municipalities legally joining therein hereby enter into this Agreement.

## **ARTICLE I: POLICY AND PURPOSE**

The Compact's goals include, without limitation, the following:

- ◆ To provide the basis for aggregation of all consumers on a non-discriminatory basis;
- ◆ To negotiate the best terms and conditions for electricity supply and transparent pricing;
- ◆ To explore all available options for negotiating the best terms and conditions for electricity supply and the development of renewable energy resources, including, without limitation, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates ("RECs") or both on a long-term, basis;
- ◆ To provide equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department of Public Utilities, or its successor;
- ◆ To provide and enhance consumer protection and options for service under contract provisions and to allow those consumers who choose not to participate to opt-out;
- ◆ To improve quality of service and reliability;

- ◆ To encourage environmental protection through contract provisions;
- ◆ To utilize and encourage renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy;
- ◆ To administer an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management, all through contract provisions, demonstration projects and the use of state mandated system benefit charges for energy efficiency and other related charges and funds;
- ~~◆ To utilize and encourage demand side management and other forms of energy efficiency through contract provisions and state mandated system benefit charges for renewable energy and to use the funds from such charges to advance consumer awareness and adoption of a wide variety of energy efficiency measures through the implementation of an energy efficiency plan;~~
- ◆ To advance specific community goals that may be selected from time to time, such as placing utility wires underground;
- ◆ To provide full public accountability to consumers; and
- ◆ To utilize municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.
- ◆

## ARTICLE II: POWERS OF THE COMPACT

The Compact shall have the following powers:

- a) to plan projects;
- b) to implement projects and/or conduct research;
- c) to negotiate contracts and other agreements, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct financial obligations on any member municipality or county (except for *de minimis* impacts by virtue of such member's participation in the Compact) until approved by such individual member municipality or county, as the case may be;
- d) to adopt an annual budget and to direct the expenditure of funds made available to the Compact by grant or contribution from public and private sector entities, or on account of any contract negotiated or administered by the Compact;

- e) to acquire property by gift, purchase or lease;
- f) to construct equipment and facilities;
- g) to apply for and receive grants, contributions and other such financial assistance from public and private sector entities or to receive amounts derived as a portion of the savings on, or as a surcharge, dedicated mills/kilowatt hour fee or other such charge as part of any electric energy purchase or similar contract negotiated and/or administered by the Compact and, to the extent required as required herein, agreed to by each member municipality or county to be financially bound thereby;
- h) to apply for and receive funds derived from the state mandated system benefit charges and to use such funds in accordance with state law;
- i) to employ staff, consultants, attorneys, technical advisors and independent contractors;
- j) to adopt bylaws to govern its internal affairs;
- k) to reimburse persons who have advanced funds;
- l) to enforce agreements or otherwise prosecute claims on behalf of member municipalities and counties and coordinate their defense in any claim made against them relating to any agreement or other matter related to the Compact;
- m) to invest funds;
- n) to procure insurance;
- o) to obtain project-related financing through any mechanism such as the federal Clean Renewable Energy Bond program, and other financing options;
- p) to contract with an agent, including, without limitation, a regional government or a member, to manage or accomplish any of its functions or objectives;
- q) to enter into agreements with state, quasi-state, county and municipal agencies; cooperatives and private entities, all as is convenient or necessary to manage or accomplish any of the Compact's functions or objectives; and
- r) to perform generally all acts which are necessary or convenient to implement the powers which are expressly or by necessary implication conferred upon the Compact and are not otherwise prohibited under any other provision of law.

### **ARTICLE III: GOVERNING BOARD**



**A. Powers of the Community Representatives.**

The Compact shall have a board of community representatives (hereafter a “Representative” or the “Representatives,” as the case may be and collectively the “Governing Board”) who shall be responsible for the general management and supervision of the business and affairs of the Compact except with respect to those powers reserved to the member municipalities or counties of the Compact by law or this Agreement. The Governing Board may from time to time, to the extent permitted by law, delegate any of its powers to committees, subject to such limitations as the Governing Board may impose. The Governing Board may delegate to the Executive Committee the powers to act for the Governing Board between regular, annual or special meetings of the board. The Governing Board may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Compact or such other title as they may deem appropriate and as is consistent with applicable law.

**B. Number, Qualifications and Term of Office.**

The Governing Board shall consist of one Representative for each member municipality and one County Commissioner appointed by the Barnstable County Board of Commissioners and one Representative appointed by the Dukes County Board of Commissioners, and alternates therefor, in case any such Representative shall be unable to attend a meeting or otherwise participate in any matter regarding the Compact. In the absence of a Representative, his/her alternate shall be entitled to vote and otherwise exercise all of the powers of such Representative. The Representatives, and alternates, shall be selected by the Selectmen or Town Manager, as the case may be, for each member municipality. In the case of the County Representatives, such Representatives and his/her alternates shall be selected by the Board of Commissioners. Except as hereinafter provided, the Representatives (and alternates) shall hold office until the next selection of Representatives (and alternates) by each such member municipality or county and until his/her successor is selected.

**C. Executive Committee.**

There shall be an Executive Committee composed of no less than five (5) Representatives, at least one of whom shall be a Representative from Dukes County or a member town of Dukes County. The Executive Committee shall be selected by majority vote of all of the Representatives.

**D. Manner of Acting and Quorum.**

Provided there is a quorum present at the meeting, and except as specified elsewhere herein, the Governing Board shall act by vote of a majority of the Representatives present at the time of the vote. Unless altered by the Governing Board in accordance with this Agreement, each member municipality and county shall be entitled to select one Representative whose vote shall be equal in weight to the Representative of any other member municipality and county, except as expressly set forth in the succeeding paragraphs. Representatives may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General

governing remote participation, 940 C.M.R. 29.10. A quorum shall be deemed present if the combined population of the towns whose Representatives are present at a meeting is at least equal to 50% of the combined population of all of the member municipalities of the Compact; and provided further, that at least one Representative from one of the Towns in Dukes County or Dukes County and at least two-thirds of the Representatives for Barnstable County and the member municipalities of Barnstable County are physically present or participating remotely in accordance with 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, a simple majority of the members of the public body must be physically present. While a quorum is present, unless another provision is made by law, this Agreement or by the Compact's own rules, all business shall be determined by a majority vote of all participating members.

Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the member municipalities shall be taken by a weighted vote in which the vote of each Representative shall be weighted in the same proportion as the population of the municipality such Representative represents bears to the whole population of the member municipalities of the Compact, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one town, one vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein.

In taking any vote required to be taken by weighted vote hereunder, the votes of Barnstable County and Dukes County shall be tabulated last, with each county's Representative having one equal vote, and the vote of said counties may break a tie; otherwise the counties' votes shall not be accorded any percentage weight but shall be recorded nonetheless.

**E. Rules and Minutes.**

The Governing Board shall determine its own rules and order of business, unless otherwise provided by the Compact or statute or this Agreement. The Governing Board shall also provide for the keeping of minutes of its proceedings. All regular and Executive Committee meeting announcements shall be sent to all members of the Governing Board.

**F. Voting.**

If requested by any Representative, a vote of the body shall be taken by a roll call and the vote of each Representative shall be recorded in the minutes, provided, however, if any vote is unanimous only that fact need be recorded.

**G. Resignation and Removal.**

## **1. Resignation.**

Any Representative (or alternate) may resign at any time upon written notice to the remaining Governing Board. A Representative may resign from the Executive Committee and still keep his or her position as a Representative. The resignation of any Representative (or alternate) or resignation from the Executive Committee shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **2. Removal.**

Any Representative (or alternate) may be removed at any time with or without cause by their appointing authority. The Governing Board may remove a Representative from the Executive Committee or the Governing Board only with good cause.

## **H. Vacancies.**

### **1. Vacancies on the Governing Board.**

Continuing Representatives may act despite a vacancy in the Governing Board and shall for this purpose be deemed to constitute the full board. A vacancy in the Governing Board of a Representative shall be promptly filled, but in no case more than sixty days thereafter, by the appointing authority of the member municipality or county which originally selected such Representative. Each Representative chosen to fill a vacancy on the Governing Board shall hold office until the next annual selection of the Representatives and until his/her successor shall be appointed and qualify. Insofar as there is no Representative then in office representing a member municipality or county, the alternate shall act in his/her stead.

### **2. Vacancies on the Executive Committee.**

Vacancies on the Executive Committee shall be filled in the same manner as the position was originally filled.

### **3. No Right to Compensation.**

Unless the Governing Board in its discretion provides for compensation, no Representative or alternate resigning, and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Compact) no Representative or alternate removed, shall have any right to any compensation as such Representative or alternate for any period following his/her resignation or removal, or any right to damages on account of such removal, whether his/her compensation be by the month or by the year or otherwise.

## **ARTICLE IV: MEETINGS OF THE GOVERNING BOARD**

**A. Place.**

Meetings of the Governing Board, including meetings of the Executive Committee, shall be held at such place within Barnstable County or Dukes County as may be named in the notice of such meeting.

**B. Annual and Regular Meetings.**

The annual meeting of the Governing Board shall be held each year on the second Wednesday of September. In the event the annual meeting is not held on such date, a special meeting in lieu of the annual meeting may be held with all the force and effect of an annual meeting. Regular meetings may be held at such times as the Governing Board may fix but no less frequently than quarterly.

**C. Special Meetings.**

Special meetings of the Governing Board may be called by the chairman or any other officer or Representative at other times throughout the year.

**D. Notice.**

In addition to the personal notice to Representatives set forth in Article III(E), public notice of any regular or annual meeting shall be made in compliance with the Open Meeting Law and other applicable law. Forty-eight hours' notice to Representatives by mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances, provided, however, that public notice of such special meeting has been made in compliance with applicable law. A notice or waiver of notice need not specify the purpose of any special meeting. Personal notice of a meeting need not be given to any Representative if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Representative who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

**E. Vote of Interested Representatives.**

A Representative who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Compact contemplates contracting or transacting business shall disclose his or her relationship or interest to the other Representatives acting upon or in reference to such contract or transaction. No Representative so interested shall vote on such contract or transaction, but he or she may be counted for the purpose of determining a quorum. The affirmative vote of a majority of the disinterested Representatives as set forth in Article III(D) hereof shall be required before the Compact may enter into such contract or transaction.

In case the Compact enters into a contract or transacts business with any firm, corporation or association of which one or more of its Representatives is a member, stockholder,

trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Representative or Representatives have or may have interests therein which are or might be adverse to the interests of the Compact. No Representative or Representatives having disclosed such adverse interest shall be liable to the Compact or to any creditor of the Compact or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Representative or Representatives be accountable for any gains or profits to be realized thereon.

Nothing contained herein shall affect the compliance of any Representative or the Governing Board or the Compact with G.L. c. 268A, as set forth in Article VI, below.

#### **ARTICLE V: OPEN MEETING LAW; EXECUTIVE SESSIONS**

The meetings of the Governing Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, including the Open Meeting Law. The Governing Board is therefore required to maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions.

In accordance with the Open Meeting Law, the Governing Board may hold an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the purposes specifically enumerated in the Open Meeting Law, including, but not limited to, to discuss energy-related trade secrets or confidential information.

Matters discussed in executive sessions of the Governing Board must be treated as confidential. A violation of confidentiality may lead to disciplinary action as established by the Governing Board, including removal of a Representative in accordance with Article III(G)(2).

#### **ARTICLE VI: G.L. c. 268A**

The Governing Board, as it consists of county and municipal representatives is subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Public employees who work for two or more public entities may find that each agency has an interest in a particular matter. Compact employees or Representatives may be asked to work on matters for the Compact and the Compact's affiliated organization, the Cape & Vineyard Electric Cooperative, Inc. (the "Cooperative"). In order to help employees and Representatives identify and properly address potential conflicts under the Conflict of Interest Law, employees and Representatives should consider the following: (i) the Cooperative's founding purpose is to develop renewable energy projects and otherwise procure generation and generation-related products (*i.e.*, RECs); (ii) the Compact is a municipal aggregator and serves the complementary purposes of arranging for retail power supply, consumer advocacy and energy efficiency; (iii) the Cooperative seeks to finance and develop such projects and to provide generation to its members and the Compact (to be blended with its

retail power supply); and (iv) the Compact is a member of the Cooperative and the Compact intends to purchase generation from the Cooperative and participate in projects developed by the Cooperative. Any employee or Representative may request free legal advice from the State Ethics Commission about how the Conflict of Interest Law applies to them in a particular situation. This process is explained at <http://www.mass.gov/ethics/commission-services/request-advice.html>.

## **ARTICLE VII: OFFICERS**

### **A. Election.**

At its first meeting of the calendar year, the Governing Board shall elect a chairman, vice chairman, treasurer, secretary and officer at large and such other officers as the Governing Board shall determine. The term of office for those so elected shall be one year and until their respective successors are elected and qualified. Notwithstanding the foregoing, all officers must be a Representative and, upon selection of a successor Representative by such officer's appointing municipality or county, such officer shall immediately tender notice thereof to the Compact and the Governing Board shall select a replacement among the various Representatives for the remaining term of such officer.

### **B. Qualifications.**

Two or more offices may be held by the same person, except the offices of chairman and secretary.

### **C. Vacancies.**

Any vacancy occurring among the officers, however caused, may be filled by the Governing Board, from among the Representatives for the unexpired portion of the term.

### **D. Removal and Resignation of Officers.**

#### **1. Removal.**

Any officer of the Compact may be removed from their respective offices with or without cause by resolution adopted by a majority of the Representatives then in office at any annual or special meeting of the Governing Board or by a written consent by all of the Representatives then in office.

#### **2. Resignation.**

Any officer may resign at any time by giving his or her resignation in writing to the chairman, treasurer, secretary or any other officer or Representative of the Compact. An officer may resign as officer without resigning from other positions in the Compact, including positions on the Executive Committee or as Representative.

**E. Sponsors, Benefactors, Contributors, Advisors, Friends of the Compact.**

Persons or groups of persons designated by the Governing Board as sponsor, benefactor, contributor, advisor or friend of the Compact or such other title as the Governing Board deems appropriate shall, except as the Governing Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

**F. Chairman.**

~~The chairman shall be chief executive officer of the Compact, in consultation with the Compact Administrator and, subject to the control of the Governing Board, shall in general supervise and control all of the business and affairs of the Compact.~~ The chairman shall preside at all meetings at which he or she is present. Unless otherwise directed by the Governing Board, all other officers shall be subject to the authority and supervision of the chairman. The chairman also shall have such other powers and duties as customarily belong to the office of chairman or as may be designated from time to time by the Governing Board.

**Vice Chairman.**

The vice chairman shall assist the chairman and preside at meetings at which the chairman is not present. The vice chairman also shall have such other powers and duties as customarily belong to the office of vice chairman or as may be designated from time to time by the Governing Board.

**G. Treasurer.**

The treasurer shall be the chief financial officer of the Compact and shall have such powers and duties as customarily belong to the office of treasurer or as may be designated from time to time by the chairman or the Governing Board. The roles and responsibilities of the treasurer may be delegated or expanded. Pursuant to the Administrative Services Agreement between the Compact and Barnstable County, as such agreement may be amended from time to time, the County is the designated agent and fulfills the administrative role for the Compact.

**H. Secretary.**

The secretary shall arrange for the recording, consistent with applicable law, of all proceedings of the Governing Board, Executive Committee and any other such committee in a book or books to be kept therefor, shall have custody of the seal of the Compact, and have such powers and duties as customarily belong to the office of clerk or secretary or as may be designated from time to time by the chairman or the Governing Board.

**I. Other Officers.**

The Governing Board shall have legal counsel for the Compact. The Compact's legal counsel may jointly represent the Compact's members or affiliates in accordance with a bylaw adopted by the Compact pursuant to Article II(j).

The Compact shall designate a Chief Procurement Officer, whose role, in accordance with G.L. c. 30B and other applicable provisions of law, shall be to select proposals for and facilitate the award of contracts on behalf of the Compact, with input from members of the Governing Board, Compact staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Governing Board may determine that the Compact, as long as consistent with applicable law, will select proposals and award contracts in another manner.

Other officers shall have such powers as may be designated from time to time by the Governing Board.

#### **K. Compact Administrator.**

In general, the Compact Administrator shall serve as the chief administrative and operating officer and supervise, direct and be responsible for the efficient administration of the business of the Compact. More specifically, the Compact Administrator shall: (i) implement goals and carry out the policies of the Governing Board; (ii) plan, direct, coordinate, and implement all administrative and operational functions of the Compact; (iii) plan, prioritize, schedule, assign, direct, supervise and evaluate the work of all Compact staff; (iv) develop job descriptions for Compact staff and recruit applicants for staff positions, consistent with budgets approved by the Governing Board; (v) supervise and select outside consultants, counsel, etc. as authorized by the Governing Board; (vi) consult with and advise the Governing Board as to the business, operational and strategic concerns of the Compact including fiscal affairs, legal and operational issues, and major program initiatives; (vii) regularly attend all regular and special meetings of the Governing Board and answer all questions addressed to him/her; (viii) ensure that complete and full records of the financial and administrative activity of the Compact are maintained (with the assistance of the Compact's fiscal agent and its auditor); (ix) prepare, maintain, update and complete required reports and filings to local, state and federal governmental authorities; (x) consistent with budgets approved by the Governing Board, manage the Compact's legal affairs, including negotiating and executing contracts and directing the Compact's participation in regulatory and judicial proceedings; (xi) be responsible for power supply procurement for the Compact's electric customers including issuing requests for proposals, and negotiating contracts concerning power supply and renewable energy certificate purchases; (xii) be responsible for general administration of the Compact's energy efficiency program in accordance with all applicable laws and the rules and regulations of the Department of Public Utilities, or any successor entity; (xiii) plan and direct strategic initiatives; and (xiv) perform such other duties as may be directed by the Governing Board from time to time, or as may necessary or advisable to fulfill the Compact's objectives. The Compact Administrator also shall have such other powers and duties as customarily belong to a manager of a municipal light plant or a



major regional inter-governmental association, or as may be designated from time to time by the Governing Board.

## **ARTICLE VIII: BUDGET; MAXIMUM FINANCIAL LIABILITY OF THE MEMBER MUNICIPALITIES AND COUNTIES**

The Compact shall adopt an operating budget for each fiscal year and direct the expenditure of funds in accordance with applicable law. The operating budget and any amendments thereto shall be approved by a weighted vote of the Governing Board in accordance with Article III(D).

~~The Compact, when appropriate, shall adopt an annual budget and direct the expenditure of funds in accordance with applicable law.~~

This Agreement is not intended to impose any independent financial liabilities on the members. Each member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein.

## **ARTICLE IX: COOPERATION**

The member municipalities, Dukes County and Barnstable County agree to act in good faith and use their best efforts to effectuate the intent and purpose of this Agreement. All parties to this Agreement shall cooperate to the fullest extent possible.

## **ARTICLE X: ELECTRICITY AND OTHER AGREEMENTS**

Pursuant to this Agreement, member municipalities, Barnstable County, Dukes County, and private consumers may enter into contracts for the distribution, transmission and/or supply of electricity, for the purchase of energy and RECs, and for project financing in support thereof, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct financial obligations on any member municipality or county (except for *de minimis* impacts by virtue of such member's participation in the Compact) until approved by such individual member municipality or county, as the case may be, and further, that any contract shall indemnify and hold harmless the Compact and its members from any financial liability or provide commercially reasonable indemnification with respect to the provision of such products or services.

## **ARTICLE XI: OTHER APPLICABLE LAWS**

Nothing in this Agreement or in any negotiated contract for the supply of electricity shall be construed to supersede, alter or otherwise impair any obligation imposed on any municipality or county by otherwise applicable law.

## **ARTICLE XII: INDEMNIFICATION OF REPRESENTATIVES AND ALTERNATES**

Each member of the Compact shall, to the extent legally permissible, indemnify the person(s) each such member chooses as set forth in Article III(A) to serve as a Representative for their service on the Governing Board and/or as a member of the Executive Committee and/or as an officer or who has served at any time as a Representative or officer or Executive Committee member of the Compact. All contracts negotiated or undertaken by the Compact shall also include, to the maximum extent feasible, indemnification of the Representatives and the participating members.

### **ARTICLE XIII: AMENDMENT**

This Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Representatives of municipalities whose population is at least equal to 50% of the combined population of all of the member municipalities of the Compact; provided that at least two-thirds of the Representatives from all of Barnstable County vote in the affirmative; and further provided that at least one Representative from all of Dukes County also votes in the affirmative.

### **ARTICLE XIV: TERM AND WITHDRAWAL**

Each member shall take such action as required under G.L. c. 40, §4A to make this Agreement effective. This Agreement shall be effective as of the date that the last of the members signs below, and shall continue in effect for a term not to exceed twenty-five years. At the conclusion of the term, taking into account any changed circumstances, the members shall in good faith negotiate a replacement intergovernmental agreement.

Any governmental member may voluntarily withdraw from the Compact at the end of each quarter of the fiscal year (i.e. June 30th, September 30th, December 31st, March 31st), upon thirty days prior written notice. Withdrawal of such member shall not affect any obligations entered into prior to the date of withdrawal which are binding by their terms on such member, including, without limitation, contracts directly entered into by such member and financial contributions to the Compact made or agreed to be made by such member.

If the purposes of the Compact are attained, or for any other reason duly voted upon by the Governing Board, the Compact may dissolve. Upon dissolution, an accounting of the assets owned by the Compact shall be performed and sold. The proceeds of the sale shall be distributed equitably to the then remaining members of the Compact according to their percent contribution.

### **ARTICLE XV: CONSTRUCTION AND SEVERABILITY**

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of any Massachusetts or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any

government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution or General Laws of Massachusetts, the Compact shall remain in full force and effect as to all severable matters.

## **ARTICLE XVI: MISCELLANEOUS**

### **A. Principal Office.**

The principal office of the Compact shall be located at the Barnstable County Commissioners' Office, P.O. Box 427, Barnstable, MA 02630. The Governing Board may change the location of the principal office in accordance with Article III.

### **B. Compact Records.**

The original, or attested copies, of this Agreement and records of all meetings of the Governing Board and members shall be kept in Massachusetts at the principal office of the Compact. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any member or Representative for any proper purpose and as required by law. The records of the Compact shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, §7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

### **C. Fiscal Year.**

The fiscal year of the Compact shall begin on July 1st and end on June 30th, e.g. the same fiscal year as established by the General Laws for cities and towns in the Commonwealth.

### **D. Seal.**

The seal of the Compact shall be a circular die with the name of the Compact around the periphery and the year and the date of establishment within.

**E. Reports; Compliance with G.L. c. 40, §4A.**

The Compact shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. The Compact agrees that it will perform regular audits of such records separate and apart from audits conducted by the Compact's fiscal agent. Periodic financial statements shall be issued to all members. To the extent applicable, if at all, any reimbursement for or contribution toward the cost of any work related to this Agreement shall be made at such intervals as provided in the Administrative Services Agreement or other applicable agreements. The Compact will comply with all other applicable provisions of G.L. c. 40, §4A.

The Compact shall also prepare a written annual report, in the format required by the Massachusetts Department of Public Utilities ("DPU") regarding the expenditure of energy efficiency funds for the previous calendar year. Such reports shall be filed with the DPU no later than August 1, unless filing or reporting requirements established by the DPU necessitate a different date, and posted to the Compact's web site within thirty days of submission to the DPU. In addition, the Compact shall periodically prepare written overviews of the Compact's program activities for each member for inclusion in its individual town annual reports.

**F. Multiple Originals.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and all of such signature pages shall be read as though one and shall have the same force and effect as though all of the parties had executed a single signature page.

**G. No Partnership or Joint Venture in Contracts with Third Parties; Limitation of Responsibility.**

In carrying out its purposes as described herein, and in entry into any third party contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, neither the Compact nor any of its members shall be a partner or joint venturer with any third party. The relationship between the Compact (and/or its members) on the one hand and the other party(ies) to such contract on the other hand shall be that of buyer and seller or agent for the buyer and seller, as the case may be. Nothing therein contained shall be deemed to constitute the Compact (and/or its members) as a partner, agent or legal representative of any third party or to create a joint venture, agency or any relationship between the Compact (and/or its members) and any third party other than that of buyer and seller or agent for the buyer and seller, as the case may be. The Compact and its members have no responsibility to supply, distribute, transmit, meter, bill or otherwise provide electricity to any consumer and none is implied hereby or thereby. Nothing in this Article XVI(G) shall be construed as prohibiting the Compact from entering into a partnership or joint venture relationship with any organization in which it has a membership interest or affiliation, including the Cooperative.

**H. Appendix.**

The bylaws of the Compact shall be set forth in an appendix to this Agreement. The Compact's administrator may update and replace such appendix each time such bylaws are duly amended by the Governing Board without the necessity of further Governing Board approval.

**AUTHORIZED AND AGREED TO BY:**

Town of Barnstable

Town of Bourne

Town of Brewster

Town of Chatham

Town of Dennis

Town of Eastham

Town of Falmouth

Town of Harwich

Town of Mashpee

Town of Orleans

Town of Provincetown

Town of Sandwich

Town of Truro

Town of Wellfleet

Town of Yarmouth

Barnstable County

Town of Aquinnah

Town of Chilmark

Town of Edgartown

Town of Oak Bluffs

Town of Tisbury

Town of West Tisbury

County of Dukes County

**BYLAWS**  
**OF**  
**CAPE LIGHT COMPACT**  
**Adopted March 25, 2009**

**Bylaw 1.      *Shared Legal Representation Involving Members or Other Public Entities;  
Official Duties of Compact Counsel.***

The purpose of this bylaw is to allow the Compact from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Compact has a direct or substantial interest without violating G.L. c. 268A, Section 11(a) and (c). Such dual or common representation allows the Compact to pool resources for a common purpose, develop mutual interests, and preserve scarce Compact funds. Pursuant to this bylaw, the official duties of Compact counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial proceedings in which the Compact is also a party; (ii) contract negotiations or project development matters in which the Compact or its Members have an interest, and (iii) other matters in which the Compact has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. Compact counsel shall discharge such duties only when requested in writing by the Compact's Governing Board. Prior to making such a request, the Compact's Governing Board shall determine whether the interests of the Compact would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct.





## Cape Light Compact

P.O. Box 427, Barnstable, MA 02630

1.800.797.6699 | Fax: 508.362.4136 | [capelightcompact.org](http://capelightcompact.org)

October 26, 2015

TO: Cape Light Compact Governing Board

FROM: Maggie Downey, Administrator 

RE: Proposed Amendments to the Cape Light Compact's Intergovernmental Agreement

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In order to facilitate review of the proposed amendments to the Cape Light Compact's Intergovernmental Agreement, several Board members, and/or their Selectmen, have asked that I provide a brief summary of the proposed amendments. The amendments can be characterized as follows:

1. Clerical updates – several amendments are proposed for consistency with the Compact's updated Aggregation Plan, approved by the MA Department of Public Utilities in May 2015, (for example, Article VIII), and to more accurately reflect existing operations.
2. A new Section K - This section addresses the responsibilities of the Compact Administrator. Other than the Compact Administrator's job description, there is no document that identifies the tasks that the Compact Administrator performs on behalf of the Compact Governing Board in a centralized fashion. Third-parties dealing with the Compact would expect to see the Compact Administrator's responsibilities set forth in its main organizational instrument. Also, third-parties may want to see evidence of the Compact Administrator's scope of authority and the Intergovernmental Agreement should address this important subject as a matter of good governance.

Attached to this memo is a redlined-version of the proposed amendments and clean version, incorporating the amendments. The updates will be on the Board's November 18<sup>th</sup> meeting agenda.

*Working Together Toward A Smarter Energy Future*

BCK DRAFT DATED 8/27/15

~~SIXTH~~**FIFTH** AMENDED AND RESTATED  
INTER-GOVERNMENTAL AGREEMENT  
OF THE  
CAPE LIGHT COMPACT  
(~~October 14, 2015~~**September 12, 2012**)

\*\*\*\*\*

This ~~Sixt~~**Fifth** Amended and Restated Inter-Governmental Agreement (“Agreement”) is dated as of ~~October~~**September** xx, 201**5**~~2~~ and is entered into by and between the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A.

WHEREAS, the Massachusetts Restructuring Act of 1997 (the “Act”) was enacted during a period where Federal Law allowed for the restructuring of existing electric utilities into separate generation, transmission and distribution companies and, accordingly, the Act set forth a framework for the competitive supply of electric generation service to Massachusetts electric customers and allowed electric customers to choose their electric power supplier; and

WHEREAS, the Cape Light Compact (“Compact”) was entered into with the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A, through an original Inter-Governmental Agreement effective as of October, 1997; and

WHEREAS, the County of Barnstable, County of Dukes County and the municipalities legally joining therein, amended the original Inter-Governmental Agreement in June, 1999, September, 2006, November, 2010, February, 2011, ~~and~~ April 11, 2012 ~~and September 2012~~; and

WHEREAS, the Compact recognizes that local governments have a substantial stake in the restructuring of the Massachusetts electric industry and that local governments represent community interests and provide a “natural aggregator” function through which consumers may gain greater benefits and terms in contracts; and

WHEREAS, under the authority of G.L. c. 164, §134, G.L. c. 25A, §6 and pursuant to the original Inter-Governmental Agreement, adopted October, 1997, ~~as amended, the Compact developed a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact, approved in D.T.E. 00-47 (August 10, 2000) and approved as updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015); and amended June, 1999 and again in September, 2006, the Compact developed a Municipal Aggregation Plan, setting forth the structure, operations, services, funding and policies of the Compact in order to negotiate the best rates for the supply and distribution of electricity and to advance consumer protection and~~

~~interests for the residents of Cape Cod and Martha's Vineyard; and~~

WHEREAS, the Compact currently operates a municipal aggregation competitive supply program which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha's Vineyard and the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard through the Cape Light Compact Energy Efficiency Plan; and

WHEREAS, the Green Communities Act, St. 2008, c. 169, provided expanded authority to municipalities and other governmental entities to pursue energy efficiency, renewable energy development and other related activities; ~~and~~

WHEREAS, the Compact continues to explore all available options for providing its customers with the best electrical supply and distribution rates and demand side management and renewable programs.

NOW THEREFORE, in consideration of the foregoing, and in order to reflect the current policies and purposes of the Compact, the County of Barnstable, the County of Dukes County and the municipalities legally joining therein hereby enter into this Agreement.

## **ARTICLE I: POLICY AND PURPOSE**

The Compact's goals include, without limitation, the following:

- To provide the basis for aggregation of all consumers on a non-discriminatory basis;
- To negotiate the best terms and conditions for electricity supply and transparent pricing;
- To explore all available options for negotiating the best terms and conditions for electricity supply and the development of renewable energy resources, including, without limitation, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates ("RECs") or both on a long-term, basis;
- To provide equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department of Public Utilities, or its successor;
- To provide and enhance consumer protection and options for service under contract provisions and to allow those consumers who choose not to participate to opt-out;

- To improve quality of service and reliability;
- To encourage environmental protection through contract provisions;
- To utilize and encourage renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy;
- To administer an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management, all through contract provisions, demonstration projects and the use of state mandated system benefit charges for energy efficiency and other related charges and funds;
- ~~To utilize and encourage demand side management and other forms of energy efficiency through contract provisions and state mandated system benefit charges for renewable energy and to use the funds from such charges to advance consumer awareness and adoption of a wide variety of energy efficiency measures through the implementation of an energy efficiency plan;~~
- To advance specific community goals that may be selected from time to time, such as placing utility wires underground;
- To provide full public accountability to consumers; and
- To utilize municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.

## ARTICLE II: POWERS OF THE COMPACT

The Compact shall have the following powers:

- a) to plan projects;
- b) to implement projects and/or conduct research;
- c) to negotiate contracts and other agreements, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct financial obligations on any member municipality or county (except for *de minimis* impacts by virtue of such member's participation in the Compact) until approved by such individual member municipality or county, as the case may be;
- d) to adopt an annual budget and to direct the expenditure of funds made available to the

Compact by grant or contribution from public and private sector entities, or on account of any contract negotiated or administered by the Compact;

- e) to acquire property by gift, purchase or lease;
- f) to construct equipment and facilities;
- g) to apply for and receive grants, contributions and other such financial assistance from public and private sector entities or to receive amounts derived as a portion of the savings on, or as a surcharge, dedicated mills/kilowatt hour fee or other such charge as part of any electric energy purchase or similar contract negotiated and/or administered by the Compact and, to the extent required as required herein, agreed to by each member municipality or county to be financially bound thereby;
- h) to apply for and receive funds derived from the state mandated system benefit charges and to use such funds in accordance with state law;
- i) to employ staff, consultants, attorneys, technical advisors and independent contractors;
- j) to adopt bylaws to govern its internal affairs;
- k) to reimburse persons who have advanced funds;
- l) to enforce agreements or otherwise prosecute claims on behalf of member municipalities and counties and coordinate their defense in any claim made against them relating to any agreement or other matter related to the Compact;
- m) to invest funds;
- n) to procure insurance;
- o) to obtain project-related financing through any mechanism such as the federal Clean Renewable Energy Bond program, and other financing options;
- p) to contract with an agent, including, without limitation, a regional government or a member, to manage or accomplish any of its functions or objectives;
- q) to enter into agreements with state, quasi-state, county and municipal agencies; cooperatives and private entities, all as is convenient or necessary to manage or accomplish any of the Compact's functions or objectives; and
- r) to perform generally all acts which are necessary or convenient to implement the powers which are expressly or by necessary implication conferred upon the Compact

and are not otherwise prohibited under any other provision of law.

### **ARTICLE III: GOVERNING BOARD**

#### **A. Powers of the Community Representatives.**

The Compact shall have a board of community representatives (hereafter a “Representative” or the “Representatives,” as the case may be and collectively the “Governing Board”) who shall be responsible for the general management and supervision of the business and affairs of the Compact except with respect to those powers reserved to the member municipalities or counties of the Compact by law or this Agreement. The Governing Board may from time to time, to the extent permitted by law, delegate any of its powers to committees, subject to such limitations as the Governing Board may impose. The Governing Board may delegate to the Executive Committee the powers to act for the Governing Board between regular, annual or special meetings of the board. The Governing Board may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Compact or such other title as they may deem appropriate and as is consistent with applicable law.

#### **B. Number, Qualifications and Term of Office.**

The Governing Board shall consist of one Representative for each member municipality and one County Commissioner appointed by the Barnstable County Board of Commissioners and one Representative appointed by the Dukes County Board of Commissioners, and alternates therefor, in case any such Representative shall be unable to attend a meeting or otherwise participate in any matter regarding the Compact. In the absence of a Representative, his/her alternate shall be entitled to vote and otherwise exercise all of the powers of such Representative. The Representatives, and alternates, shall be selected by the Selectmen or Town Manager, as the case may be, for each member municipality. In the case of the County Representatives, such Representatives and his/her alternates shall be selected by the Board of Commissioners. Except as hereinafter provided, the Representatives (and alternates) shall hold office until the next selection of Representatives (and alternates) by each such member municipality or county and until his/her successor is selected.

#### **C. Executive Committee.**

There shall be an Executive Committee composed of no less than five (5) Representatives, at least one of whom shall be a Representative from Dukes County or a member town of Dukes County. The Executive Committee shall be selected by majority vote of all of the Representatives.

#### **D. Manner of Acting and Quorum.**

Provided there is a quorum present at the meeting, and except as specified elsewhere herein, the Governing Board shall act by vote of a majority of the Representatives present at the



time of the vote. Unless altered by the Governing Board in accordance with this Agreement, each member municipality and county shall be entitled to select one Representative whose vote shall be equal in weight to the Representative of any other member municipality and county, except as expressly set forth in the succeeding paragraphs. Representatives may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. A quorum shall be deemed present if the combined population of the towns whose Representatives are present at a meeting is at least equal to 50% of the combined population of all of the member municipalities of the Compact; and provided further, that at least one Representative from one of the Towns in Dukes County or Dukes County and at least two-thirds of the Representatives for Barnstable County and the member municipalities of Barnstable County are physically present or participating remotely in accordance with 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, a simple majority of the members of the public body must be physically present. While a quorum is present, unless another provision is made by law, this Agreement or by the Compact's own rules, all business shall be determined by a majority vote of all participating members.

Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the member municipalities shall be taken by a weighted vote in which the vote of each Representative shall be weighted in the same proportion as the population of the municipality such Representative represents bears to the whole population of the member municipalities of the Compact, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one town, one vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein.

In taking any vote required to be taken by weighted vote hereunder, the votes of Barnstable County and Dukes County shall be tabulated last, with each county's Representative having one equal vote, and the vote of said counties may break a tie; otherwise the counties' votes shall not be accorded any percentage weight but shall be recorded nonetheless.

**E. Rules and Minutes.**

The Governing Board shall determine its own rules and order of business, unless otherwise provided by the Compact or statute or this Agreement. The Governing Board shall also provide for the keeping of minutes of its proceedings. All regular and Executive Committee meeting announcements shall be sent to all members of the Governing Board.

**F. Voting.**

If requested by any Representative, a vote of the body shall be taken by a roll call and the vote of each Representative shall be recorded in the minutes, provided, however, if any vote is unanimous only that fact need be recorded.

**G. Resignation and Removal.**

**1. Resignation.**

Any Representative (or alternate) may resign at any time upon written notice to the remaining Governing Board. A Representative may resign from the Executive Committee and still keep his or her position as a Representative. The resignation of any Representative (or alternate) or resignation from the Executive Committee shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**2. Removal.**

Any Representative (or alternate) may be removed at any time with or without cause by their appointing authority. The Governing Board may remove a Representative from the Executive Committee or the Governing Board only with good cause.

**H. Vacancies.**

**1. Vacancies on the Governing Board.**

Continuing Representatives may act despite a vacancy in the Governing Board and shall for this purpose be deemed to constitute the full board. A vacancy in the Governing Board of a Representative shall be promptly filled, but in no case more than sixty days thereafter, by the appointing authority of the member municipality or county which originally selected such Representative. Each Representative chosen to fill a vacancy on the Governing Board shall hold office until the next annual selection of the Representatives and until his/her successor shall be appointed and qualify. Insofar as there is no Representative then in office representing a member municipality or county, the alternate shall act in his/her stead.

**2. Vacancies on the Executive Committee.**

Vacancies on the Executive Committee shall be filled in the same manner as the position was originally filled.

**3. No Right to Compensation.**

Unless the Governing Board in its discretion provides for compensation, no Representative or alternate resigning, and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Compact) no Representative



or alternate removed, shall have any right to any compensation as such Representative or alternate for any period following his/her resignation or removal, or any right to damages on account of such removal, whether his/her compensation be by the month or by the year or otherwise.

#### **ARTICLE IV: MEETINGS OF THE GOVERNING BOARD**

**A. Place.**

Meetings of the Governing Board, including meetings of the Executive Committee, shall be held at such place within Barnstable County or Dukes County as may be named in the notice of such meeting.

**B. Annual and Regular Meetings.**

The annual meeting of the Governing Board shall be held each year on the second Wednesday of September. In the event the annual meeting is not held on such date, a special meeting in lieu of the annual meeting may be held with all the force and effect of an annual meeting. Regular meetings may be held at such times as the Governing Board may fix but no less frequently than quarterly.

**C. Special Meetings.**

Special meetings of the Governing Board may be called by the chairman or any other officer or Representative at other times throughout the year.

**D. Notice.**

In addition to the personal notice to Representatives set forth in Article III(E), public notice of any regular or annual meeting shall be made in compliance with the Open Meeting Law and other applicable law. Forty-eight hours' notice to Representatives by mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances, provided, however, that public notice of such special meeting has been made in compliance with applicable law. A notice or waiver of notice need not specify the purpose of any special meeting. Personal notice of a meeting need not be given to any Representative if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Representative who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

**E. Vote of Interested Representatives.**

A Representative who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Compact contemplates contracting or transacting business shall disclose his or her relationship or interest to the other Representatives

acting upon or in reference to such contract or transaction. No Representative so interested shall vote on such contract or transaction, but he or she may be counted for the purpose of determining a quorum. The affirmative vote of a majority of the disinterested Representatives as set forth in Article III(D) hereof shall be required before the Compact may enter into such contract or transaction.

In case the Compact enters into a contract or transacts business with any firm, corporation or association of which one or more of its Representatives is a member, stockholder, trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Representative or Representatives have or may have interests therein which are or might be adverse to the interests of the Compact. No Representative or Representatives having disclosed such adverse interest shall be liable to the Compact or to any creditor of the Compact or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Representative or Representatives be accountable for any gains or profits to be realized thereon.

Nothing contained herein shall affect the compliance of any Representative or the Governing Board or the Compact with G.L. c. 268A, as set forth in Article VI, below.

#### **ARTICLE V: OPEN MEETING LAW; EXECUTIVE SESSIONS**

The meetings of the Governing Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, including the Open Meeting Law. The Governing Board is therefore required to maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions.

In accordance with the Open Meeting Law, the Governing Board may hold an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the purposes specifically enumerated in the Open Meeting Law, including, but not limited to, to discuss energy-related trade secrets or confidential information.

Matters discussed in executive sessions of the Governing Board must be treated as confidential. A violation of confidentiality may lead to disciplinary action as established by the Governing Board, including removal of a Representative in accordance with Article III(G)(2).

#### **ARTICLE VI: G.L. c. 268A**

The Governing Board, as it consists of county and municipal representatives is subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Public employees who work for two or more public entities may find that each agency has an interest in a particular matter. Compact employees or Representatives may be asked to work on matters for the Compact and the Compact's affiliated

organization, the Cape & Vineyard Electric Cooperative, Inc. (the “Cooperative”). In order to help employees and Representatives identify and properly address potential conflicts under the Conflict of Interest Law, employees and Representatives should consider the following: (i) the Cooperative’s founding purpose is to develop renewable energy projects and otherwise procure generation and generation-related products (i.e., RECs); (ii) the Compact is a municipal aggregator and serves the complementary purposes of arranging for retail power supply, consumer advocacy and energy efficiency; (iii) the Cooperative seeks to finance and develop such projects and to provide generation to its members and the Compact (to be blended with its retail power supply); and (iv) the Compact is a member of the Cooperative and the Compact intends to the extent feasible, to purchase generation from the Cooperative and participate in projects developed by the Cooperative. Any employee or Representative may request free legal advice from the State Ethics Commission about how the Conflict of Interest Law applies to them in a particular situation. This process is explained at <http://www.mass.gov/ethics/commission-services/request-advice.html>.

## **ARTICLE VII: OFFICERS**

### **A. Election.**

At its first meeting of the calendar year, the Governing Board shall elect a chairman, vice chairman, treasurer, secretary and officer at large and such other officers as the Governing Board shall determine. The term of office for those so elected shall be one year and until their respective successors are elected and qualified. Notwithstanding the foregoing, all officers must be a Representative and, upon selection of a successor Representative by such officer’s appointing municipality or county, such officer shall immediately tender notice thereof to the Compact and the Governing Board shall select a replacement among the various Representatives for the remaining term of such officer.

### **B. Qualifications.**

Two or more offices may be held by the same person, except the offices of chairman and secretary.

### **C. Vacancies.**

Any vacancy occurring among the officers, however caused, may be filled by the Governing Board, from among the Representatives for the unexpired portion of the term.

### **D. Removal and Resignation of Officers.**

#### **1. Removal.**

Any officer of the Compact may be removed from their respective offices with or without cause by resolution adopted by a majority of the Representatives then in office at any annual or

special meeting of the Governing Board or by a written consent by all of the Representatives then in office.

## **2. Resignation.**

Any officer may resign at any time by giving his or her resignation in writing to the chairman, treasurer, secretary or any other officer or Representative of the Compact. An officer may resign as officer without resigning from other positions in the Compact, including positions on the Executive Committee or as Representative.

**E. Sponsors, Benefactors, Contributors, Advisors, Friends of the Compact.**

Persons or groups of persons designated by the Governing Board as sponsor, benefactor, contributor, advisor or friend of the Compact or such other title as the Governing Board deems appropriate shall, except as the Governing Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

**F. Chairman.**

The chairman shall be chief executive officer of the Compact, in consultation with the Compact Administrator and, subject to the control of the Governing Board, shall in general supervise and control all of the business and affairs of the Compact. The chairman shall preside at all meetings at which he or she is present. Unless otherwise directed by the Governing Board, all other officers shall be subject to the authority and supervision of the chairman. The chairman also shall have such other powers and duties as customarily belong to the office of chairman or as may be designated from time to time by the Governing Board.

**Vice Chairman.**

The vice chairman shall assist the chairman and preside at meetings at which the chairman is not present. The vice chairman also shall have such other powers and duties as customarily belong to the office of vice chairman or as may be designated from time to time by the Governing Board.

**G. Treasurer.**

The treasurer shall be the chief financial officer of the Compact and shall have such powers and duties as customarily belong to the office of treasurer or as may be designated from time to time by the chairman or the Governing Board. The roles and responsibilities of the treasurer may be delegated or expanded. Pursuant to the Administrative Services Agreement between the Compact and Barnstable County, as such agreement may be amended from time to time, the County is the designated agent and fulfills the administrative role for the Compact.

**H. Secretary.**

The secretary shall arrange for the recording, consistent with applicable law, of all proceedings of the Governing Board, Executive Committee and any other such committee in a book or books to be kept therefor, shall have custody of the seal of the Compact, and have such powers and duties as customarily belong to the office of clerk or secretary or as may be designated from time to time by the chairman or the Governing Board.

## **I. Other Officers.**

The Governing Board shall have legal counsel for the Compact. The Compact's legal counsel may jointly represent the Compact's members or affiliates in accordance with a bylaw adopted by the Compact pursuant to Article II(j).

The Compact shall designate a Chief Procurement Officer, whose role, in accordance with G.L. c. 30B and other applicable provisions of law, shall be to select proposals for and facilitate the award of contracts on behalf of the Compact, with input from members of the Governing Board, Compact staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Governing Board may determine that the Compact, as long as consistent with applicable law, will select proposals and award contracts in another manner.

Other officers shall have such powers as may be designated from time to time by the Governing Board.

## **K. Compact Administrator.**

In general, the Compact Administrator shall serve as the chief administrative and operating officer and supervise, direct and be responsible for the efficient administration of the business of the Compact. More specifically, the Compact Administrator shall: (i) implement goals and carry out the policies of the Governing Board; (ii) plan, direct, coordinate, and implement all administrative and operational functions of the Compact; (iii) plan, prioritize, schedule, assign, direct, supervise and evaluate the work of all Compact staff; (iv) develop job descriptions for Compact staff and recruit applicants for staff positions, consistent with budgets approved by the Governing Board; (v) supervise and select outside consultants, counsel, etc. as authorized by the Governing Board; (vi) consult with and advise the Governing Board as to the business, operational and strategic concerns of the Compact including fiscal affairs, legal and operational issues, and major program initiatives; (vii) regularly attend all regular and special meetings of the Governing Board and answer all questions addressed to him/her; (viii) ensure that complete and full records of the financial and administrative activity of the Compact are maintained (with the assistance of the Compact's fiscal agent and its auditor); (ix) prepare, maintain, update and complete required reports and filings to local, state and federal governmental authorities; (x) consistent with budgets approved by the Governing Board, manage the Compact's legal affairs, including negotiating and executing contracts and directing the Compact's participation in regulatory and judicial proceedings; (xi) be responsible for power supply procurement for the Compact's electric customers including issuing requests for proposals, and negotiating contracts concerning power supply and renewable energy certificate purchases; (xii) be responsible for general administration of the Compact's energy efficiency program in accordance with all applicable laws and the rules and regulations of the Department of Public Utilities, or any successor entity; (xiii) plan and direct strategic initiatives; and (xiv) perform such other duties as may be directed by the Governing Board from time to time, or as may necessary or advisable to



fulfill the Compact's objectives. The Compact Administrator also shall have such other powers and duties as customarily belong to a manager of a municipal light plant or a major regional inter-governmental association, or as may be designated from time to time by the Governing Board.

## **ARTICLE VIII: BUDGET; MAXIMUM FINANCIAL LIABILITY OF THE MEMBER MUNICIPALITIES AND COUNTIES**

The Compact shall adopt an operating budget for each fiscal year and direct the expenditure of funds in accordance with applicable law. The operating budget and any amendments thereto shall be approved by a weighted vote of the Governing Board in accordance with Article III(D).

~~The Compact, when appropriate, shall adopt an annual budget and direct the expenditure of funds in accordance with applicable law.~~

This Agreement is not intended to impose any independent financial liabilities on the members. Each member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein.

## **ARTICLE IX: COOPERATION**

The member municipalities, Dukes County and Barnstable County agree to act in good faith and use their best efforts to effectuate the intent and purpose of this Agreement. All parties to this Agreement shall cooperate to the fullest extent possible.

## **ARTICLE X: ELECTRICITY AND OTHER AGREEMENTS**

Pursuant to this Agreement, member municipalities, Barnstable County, Dukes County, and private consumers may enter into contracts for the distribution, transmission and/or supply of electricity, for the purchase of energy and RECs, and for project financing in support thereof, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct financial obligations on any member municipality or county (except for *de minimis* impacts by virtue of such member's participation in the Compact) until approved by such individual member municipality or county, as the case may be, and further, that any contract shall indemnify and hold harmless the Compact and its members from any financial liability or provide commercially reasonable indemnification with respect to the provision of such products or services.

## **ARTICLE XI: OTHER APPLICABLE LAWS**

Nothing in this Agreement or in any negotiated contract for the supply of electricity shall be construed to supersede, alter or otherwise impair any obligation imposed on any municipality

or county by otherwise applicable law.

## **ARTICLE XII: INDEMNIFICATION OF REPRESENTATIVES AND ALTERNATES**

Each member of the Compact shall, to the extent legally permissible, indemnify the person(s) each such member chooses as set forth in Article III(A) to serve as a Representative for their service on the Governing Board and/or as a member of the Executive Committee and/or as an officer or who has served at any time as a Representative or officer or Executive Committee member of the Compact. All contracts negotiated or undertaken by the Compact shall also include, to the maximum extent feasible, indemnification of the Representatives and the participating members.

## **ARTICLE XIII: AMENDMENT**

This Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Representatives of municipalities whose population is at least equal to 50% of the combined population of all of the member municipalities of the Compact; provided that at least two-thirds of the Representatives from all of Barnstable County vote in the affirmative; and further provided that at least one Representative from all of Dukes County also votes in the affirmative.

## **ARTICLE XIV: TERM AND WITHDRAWAL**

Each member shall take such action as required under G.L. c. 40, §4A to make this Agreement effective. This Agreement shall be effective as of the date that the last of the members signs below, and shall continue in effect for a term not to exceed twenty-five years. At the conclusion of the term, taking into account any changed circumstances, the members shall in good faith negotiate a replacement intergovernmental agreement.

Any governmental member may voluntarily withdraw from the Compact at the end of each quarter of the fiscal year (i.e. June 30th, September 30th, December 31st, March 31st), upon thirty days prior written notice. Withdrawal of such member shall not affect any obligations entered into prior to the date of withdrawal which are binding by their terms on such member, including, without limitation, contracts directly entered into by such member and financial contributions to the Compact made or agreed to be made by such member.

If the purposes of the Compact are attained, or for any other reason duly voted upon by the Governing Board, the Compact may dissolve. Upon dissolution, an accounting of the assets owned by the Compact shall be performed and sold. The proceeds of the sale shall be distributed equitably to the then remaining members of the Compact according to their percent contribution.

## **ARTICLE XV: CONSTRUCTION AND SEVERABILITY**

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The



provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of any Massachusetts or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution or General Laws of Massachusetts, the Compact shall remain in full force and effect as to all severable matters.

## **ARTICLE XVI: MISCELLANEOUS**

### **A. Principal Office.**

The principal office of the Compact shall be located at the Barnstable County Commissioners' Office, P.O. Box 427, Barnstable, MA 02630. The Governing Board may change the location of the principal office in accordance with Article III.

### **B. Compact Records.**

The original, or attested copies, of this Agreement and records of all meetings of the Governing Board and members shall be kept in Massachusetts at the principal office of the Compact. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any member or Representative for any proper purpose and as required by law. The records of the Compact shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, §7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

### **C. Fiscal Year.**

The fiscal year of the Compact shall begin on July 1st and end on June 30th, e.g. the same fiscal year as established by the General Laws for cities and towns in the Commonwealth.

### **D. Seal.**

The seal of the Compact shall be a circular die with the name of the Compact around the periphery and the year and the date of establishment within.

**E. Reports; Compliance with G.L. c. 40, §4A.**

The Compact shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. The Compact agrees that it will perform regular audits of such records separate and apart from audits conducted by the Compact's fiscal agent. Periodic financial statements shall be issued to all members. To the extent applicable, if at all, any reimbursement for or contribution toward the cost of any work related to this Agreement shall be made at such intervals as provided in the Administrative Services Agreement or other applicable agreements. The Compact will comply with all other applicable provisions of G.L. c. 40, §4A.

The Compact shall also prepare a written annual report, in the format required by the Massachusetts Department of Public Utilities ("DPU") regarding the expenditure of energy efficiency funds for the previous calendar year. Such reports shall be filed with the DPU no later than August 1, unless filing or reporting requirements established by the DPU necessitate a different date, and posted to the Compact's web site within thirty days of submission to the DPU. In addition, the Compact shall periodically prepare written overviews of the Compact's program activities for each member for inclusion in its individual town annual reports.

**F. Multiple Originals.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and all of such signature pages shall be read as though one and shall have the same force and effect as though all of the parties had executed a single signature page.

**G. No Partnership or Joint Venture in Contracts with Third Parties; Limitation of Responsibility.**

In carrying out its purposes as described herein, and in entry into any third party contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, neither the Compact nor any of its members shall be a partner or joint venturer with any third party. The relationship between the Compact (and/or its members) on the one hand and the other party(ies) to such contract on the other hand shall be that of buyer and seller or agent for the buyer and seller, as the case may be. Nothing therein contained shall be deemed to constitute the Compact (and/or its members) as a partner, agent or legal representative of any third party or to create a joint venture, agency or any relationship between the Compact (and/or its members) and any third party other than that of buyer and seller or agent for the buyer and seller, as the case may be. The Compact and its members have no responsibility to supply, distribute, transmit, meter, bill or otherwise provide electricity to any consumer and none is implied hereby or thereby. Nothing in this Article XVI(G) shall be construed as prohibiting the Compact from entering into a partnership or joint venture relationship with any organization in which it has a membership interest or affiliation, including the Cooperative.

**H. Appendix.**

The bylaws of the Compact shall be set forth in an appendix to this Agreement. The Compact's administrator may update and replace such appendix each time such bylaws are duly amended by the Governing Board without the necessity of further Governing Board approval.

**AUTHORIZED AND AGREED TO BY:**

Town of Barnstable

Town of Bourne

Town of Brewster

Town of Chatham

Town of Dennis

Town of Eastham

Town of Falmouth

Town of Harwich

Town of Mashpee

Town of Orleans

Town of Provincetown

Town of Sandwich

Town of Truro

Town of Wellfleet

**Town of Yarmouth**

**Barnstable County**

**Town of Aquinnah**

**Town of Chilmark**

**Town of Edgartown**

**Town of Oak Bluffs**

**Town of Tisbury**

**Town of West Tisbury**

**County of Dukes County**

**BYLAWS  
OF  
CAPE LIGHT COMPACT  
Adopted March 25, 2009**

**Bylaw 1.     *Shared Legal Representation Involving Members or Other Public Entities;  
Official Duties of Compact Counsel.***

The purpose of this bylaw is to allow the Compact from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Compact has a direct or substantial interest without violating G.L. c. 268A, Section 11(a) and (c). Such dual or common representation allows the Compact to pool resources for a common purpose, develop mutual interests, and preserve scarce Compact funds. Pursuant to this bylaw, the official duties of Compact counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial proceedings in which the Compact is also a party; (ii) contract negotiations or project development matters in which the Compact or its Members have an interest, and (iii) other matters in which the Compact has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. Compact counsel shall discharge such duties only when requested in writing by the Compact's Governing Board. Prior to making such a request, the Compact's Governing Board shall determine whether the interests of the Compact would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct.

BCK DRAFT DATED 9/22/15

**SIXTH AMENDED AND RESTATED  
INTER-GOVERNMENTAL AGREEMENT  
OF THE  
CAPE LIGHT COMPACT  
(November 18, 2015)**

\*\*\*\*\*

This Sixth Amended and Restated Inter-Governmental Agreement (“Agreement”) is dated as of October xx, 2015 and is entered into by and between the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A.

WHEREAS, the Massachusetts Restructuring Act of 1997 (the “Act”) was enacted during a period where Federal Law allowed for the restructuring of existing electric utilities into separate generation, transmission and distribution companies and, accordingly, the Act set forth a framework for the competitive supply of electric generation service to Massachusetts electric customers and allowed electric customers to choose their electric power supplier; and

WHEREAS, the Cape Light Compact (“Compact”) was entered into with the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A, through an original Inter-Governmental Agreement effective as of October, 1997; and

WHEREAS, the County of Barnstable, County of Dukes County and the municipalities legally joining therein, amended the original Inter-Governmental Agreement in June, 1999, September, 2006, November, 2010, February, 2011, April 11, 2012 and September 2012; and

WHEREAS, the Compact recognizes that local governments have a substantial stake in the restructuring of the Massachusetts electric industry and that local governments represent community interests and provide a “natural aggregator” function through which consumers may gain greater benefits and terms in contracts; and

WHEREAS, under the authority of G.L. c. 164, §134, G.L. c. 25A, §6 and pursuant to the original Inter-Governmental Agreement, adopted October, 1997, as amended, the Compact developed a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact, approved in D.T.E. 00-47 (August 10, 2000) and approved as updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015);and

WHEREAS, the Compact currently operates a municipal aggregation competitive supply program which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha’s Vineyard and the Compact also provides

comprehensive energy efficiency services to Cape Cod and Martha's Vineyard through the Cape Light Compact Energy Efficiency Plan; and

WHEREAS, the Green Communities Act, St. 2008, c. 169, provided expanded authority to municipalities and other governmental entities to pursue energy efficiency, renewable energy development and other related activities; and

WHEREAS, the Compact continues to explore all available options for providing its customers with the best electrical supply and distribution rates and demand side management and renewable programs.

NOW THEREFORE, in consideration of the foregoing, and in order to reflect the current policies and purposes of the Compact, the County of Barnstable, the County of Dukes County and the municipalities legally joining therein hereby enter into this Agreement.

## **ARTICLE I: POLICY AND PURPOSE**

The Compact's goals include, without limitation, the following:

- ∅ To provide the basis for aggregation of all consumers on a non-discriminatory basis;
- ∅ To negotiate the best terms and conditions for electricity supply and transparent pricing;
- ∅ To explore all available options for negotiating the best terms and conditions for electricity supply and the development of renewable energy resources, including, without limitation, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates ("RECs") or both on a long-term, basis;
- ∅ To provide equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department of Public Utilities, or its successor;
- ∅ To provide and enhance consumer protection and options for service under contract provisions and to allow those consumers who choose not to participate to opt-out;
- ∅ To improve quality of service and reliability;
- ∅ To encourage environmental protection through contract provisions;
- ∅ To utilize and encourage renewable energy development to the extent practicable



- through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy;
- ∅ To administer an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management, all through contract provisions, demonstration projects and the use of state mandated system benefit charges for energy efficiency and other related charges and funds;
- ∅
- ∅ To advance specific community goals that may be selected from time to time, such as placing utility wires underground;
- ∅ To provide full public accountability to consumers; and
- ∅ To utilize municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.

## **ARTICLE II: POWERS OF THE COMPACT**

The Compact shall have the following powers:

- a) to plan projects;
- b) to implement projects and/or conduct research;
- c) to negotiate contracts and other agreements, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct financial obligations on any member municipality or county (except for *de minimis* impacts by virtue of such member's participation in the Compact) until approved by such individual member municipality or county, as the case may be;
- d) to adopt an annual budget and to direct the expenditure of funds made available to the Compact by grant or contribution from public and private sector entities, or on account of any contract negotiated or administered by the Compact;
- e) to acquire property by gift, purchase or lease;
- f) to construct equipment and facilities;
- g) to apply for and receive grants, contributions and other such financial assistance from public and private sector entities or to receive amounts derived as a portion of the savings on, or as a surcharge, dedicated mills/kilowatt hour fee or other such charge as part of any electric energy purchase or similar contract negotiated and/or

administered by the Compact and, to the extent required herein, agreed to by each member municipality or county to be financially bound thereby;

- h) to apply for and receive funds derived from the state mandated system benefit charges and to use such funds in accordance with state law;
- i) to employ staff, consultants, attorneys, technical advisors and independent contractors;
- j) to adopt bylaws to govern its internal affairs;
- k) to reimburse persons who have advanced funds;
- l) to enforce agreements or otherwise prosecute claims on behalf of member municipalities and counties and coordinate their defense in any claim made against them relating to any agreement or other matter related to the Compact;
- m) to invest funds;
- n) to procure insurance;
- o) to obtain project-related financing through any mechanism such as the federal Clean Renewable Energy Bond program, and other financing options;
- p) to contract with an agent, including, without limitation, a regional government or a member, to manage or accomplish any of its functions or objectives;
- q) to enter into agreements with state, quasi-state, county and municipal agencies; cooperatives and private entities, all as is convenient or necessary to manage or accomplish any of the Compact's functions or objectives; and
- r) to perform generally all acts which are necessary or convenient to implement the powers which are expressly or by necessary implication conferred upon the Compact and are not otherwise prohibited under any other provision of law.

### **ARTICLE III: GOVERNING BOARD**

#### **A. Powers of the Community Representatives.**

The Compact shall have a board of community representatives (hereafter a "Representative" or the "Representatives," as the case may be and collectively the "Governing Board") who shall be responsible for the general management and supervision of the business and affairs of the Compact except with respect to those powers reserved to the member municipalities or counties of the Compact by law or this Agreement. The Governing Board may

from time to time, to the extent permitted by law, delegate any of its powers to committees, subject to such limitations as the Governing Board may impose. The Governing Board may delegate to the Executive Committee the powers to act for the Governing Board between regular, annual or special meetings of the board. The Governing Board may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Compact or such other title as they may deem appropriate and as is consistent with applicable law.

**B. Number, Qualifications and Term of Office.**

The Governing Board shall consist of one Representative for each member municipality and one County Commissioner appointed by the Barnstable County Board of Commissioners and one Representative appointed by the Dukes County Board of Commissioners, and alternates therefor, in case any such Representative shall be unable to attend a meeting or otherwise participate in any matter regarding the Compact. In the absence of a Representative, his/her alternate shall be entitled to vote and otherwise exercise all of the powers of such Representative. The Representatives, and alternates, shall be selected by the Selectmen or Town Manager, as the case may be, for each member municipality. In the case of the County Representatives, such Representatives and his/her alternates shall be selected by the Board of Commissioners. Except as hereinafter provided, the Representatives (and alternates) shall hold office until the next selection of Representatives (and alternates) by each such member municipality or county and until his/her successor is selected.

**C. Executive Committee.**

There shall be an Executive Committee composed of no less than five (5) Representatives, at least one of whom shall be a Representative from Dukes County or a member town of Dukes County. The Executive Committee shall be selected by majority vote of all of the Representatives.

**D. Manner of Acting and Quorum.**

Provided there is a quorum present at the meeting, and except as specified elsewhere herein, the Governing Board shall act by vote of a majority of the Representatives present at the time of the vote. Unless altered by the Governing Board in accordance with this Agreement, each member municipality and county shall be entitled to select one Representative whose vote shall be equal in weight to the Representative of any other member municipality and county, except as expressly set forth in the succeeding paragraphs. Representatives may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. A quorum shall be deemed present if the combined population of the towns whose Representatives are present at a meeting is at least equal to 50% of the combined population of all of the member municipalities of the Compact; and provided further, that at least one Representative from one of the Towns in Dukes County or Dukes County and at least two-thirds of the Representatives for Barnstable County and the member municipalities of Barnstable County are physically present or participating remotely in

accordance with 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, a simple majority of the members of the public body must be physically present. While a quorum is present, unless another provision is made by law, this Agreement or by the Compact's own rules, all business shall be determined by a majority vote of all participating members.

Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the member municipalities shall be taken by a weighted vote in which the vote of each Representative shall be weighted in the same proportion as the population of the municipality such Representative represents bears to the whole population of the member municipalities of the Compact, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one town, one vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein.

In taking any vote required to be taken by weighted vote hereunder, the votes of Barnstable County and Dukes County shall be tabulated last, with each county's Representative having one equal vote, and the vote of said counties may break a tie; otherwise the counties' votes shall not be accorded any percentage weight but shall be recorded nonetheless.

**E. Rules and Minutes.**

The Governing Board shall determine its own rules and order of business, unless otherwise provided by the Compact or statute or this Agreement. The Governing Board shall also provide for the keeping of minutes of its proceedings. All regular and Executive Committee meeting announcements shall be sent to all members of the Governing Board.

**F. Voting.**

If requested by any Representative, a vote of the body shall be taken by a roll call and the vote of each Representative shall be recorded in the minutes, provided, however, if any vote is unanimous only that fact need be recorded.

**G. Resignation and Removal.**

**1. Resignation.**

Any Representative (or alternate) may resign at any time upon written notice to the remaining Governing Board. A Representative may resign from the Executive Committee and still keep his or her position as a Representative. The resignation of any Representative (or

alternate) or resignation from the Executive Committee shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**2. Removal.**

Any Representative (or alternate) may be removed at any time with or without cause by their appointing authority. The Governing Board may remove a Representative from the Executive Committee or the Governing Board only with good cause.

**H. Vacancies.**

**1. Vacancies on the Governing Board.**

Continuing Representatives may act despite a vacancy in the Governing Board and shall for this purpose be deemed to constitute the full board. A vacancy in the Governing Board of a Representative shall be promptly filled, but in no case more than sixty days thereafter, by the appointing authority of the member municipality or county which originally selected such Representative. Each Representative chosen to fill a vacancy on the Governing Board shall hold office until the next annual selection of the Representatives and until his/her successor shall be appointed and qualify. Insofar as there is no Representative then in office representing a member municipality or county, the alternate shall act in his/her stead.

**2. Vacancies on the Executive Committee.**

Vacancies on the Executive Committee shall be filled in the same manner as the position was originally filled.

**3. No Right to Compensation.**

Unless the Governing Board in its discretion provides for compensation, no Representative or alternate resigning, and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Compact) no Representative or alternate removed, shall have any right to any compensation as such Representative or alternate for any period following his/her resignation or removal, or any right to damages on account of such removal, whether his/her compensation be by the month or by the year or otherwise.

**ARTICLE IV: MEETINGS OF THE GOVERNING BOARD**

**A. Place.**

Meetings of the Governing Board, including meetings of the Executive Committee, shall be held at such place within Barnstable County or Dukes County as may be named in the notice

of such meeting.

**B. Annual and Regular Meetings.**

The annual meeting of the Governing Board shall be held each year on the second Wednesday of September. In the event the annual meeting is not held on such date, a special meeting in lieu of the annual meeting may be held with all the force and effect of an annual meeting. Regular meetings may be held at such times as the Governing Board may fix but no less frequently than quarterly.

**C. Special Meetings.**

Special meetings of the Governing Board may be called by the chairman or any other officer or Representative at other times throughout the year.

**D. Notice.**

In addition to the personal notice to Representatives set forth in Article III(E), public notice of any regular or annual meeting shall be made in compliance with the Open Meeting Law and other applicable law. Forty-eight hours' notice to Representatives by mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances, provided, however, that public notice of such special meeting has been made in compliance with applicable law. A notice or waiver of notice need not specify the purpose of any special meeting. Personal notice of a meeting need not be given to any Representative if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Representative who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

**E. Vote of Interested Representatives.**

A Representative who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Compact contemplates contracting or transacting business shall disclose his or her relationship or interest to the other Representatives acting upon or in reference to such contract or transaction. No Representative so interested shall vote on such contract or transaction, but he or she may be counted for the purpose of determining a quorum. The affirmative vote of a majority of the disinterested Representatives as set forth in Article III(D) hereof shall be required before the Compact may enter into such contract or transaction.

In case the Compact enters into a contract or transacts business with any firm, corporation or association of which one or more of its Representatives is a member, stockholder, trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Representative or Representatives have or may have interests therein which are or might be adverse to the interests of the Compact. No Representative or

Representatives having disclosed such adverse interest shall be liable to the Compact or to any creditor of the Compact or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Representative or Representatives be accountable for any gains or profits to be realized thereon.

Nothing contained herein shall affect the compliance of any Representative or the Governing Board or the Compact with G.L. c. 268A, as set forth in Article VI, below.

## **ARTICLE V: OPEN MEETING LAW; EXECUTIVE SESSIONS**

The meetings of the Governing Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, including the Open Meeting Law. The Governing Board is therefore required to maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions.

In accordance with the Open Meeting Law, the Governing Board may hold an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the purposes specifically enumerated in the Open Meeting Law, including, but not limited to, to discuss energy-related trade secrets or confidential information.

Matters discussed in executive sessions of the Governing Board must be treated as confidential. A violation of confidentiality may lead to disciplinary action as established by the Governing Board, including removal of a Representative in accordance with Article III(G)(2).

## **ARTICLE VI: G.L. c. 268A**

The Governing Board, as it consists of county and municipal representatives is subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Public employees who work for two or more public entities may find that each agency has an interest in a particular matter. Compact employees or Representatives may be asked to work on matters for the Compact and the Compact's affiliated organization, the Cape & Vineyard Electric Cooperative, Inc. (the "Cooperative"). In order to help employees and Representatives identify and properly address potential conflicts under the Conflict of Interest Law, employees and Representatives should consider the following: (i) the Cooperative's founding purpose is to develop renewable energy projects and otherwise procure generation and generation-related products (i.e., RECs); (ii) the Compact is a municipal aggregator and serves the complementary purposes of arranging for retail power supply, consumer advocacy and energy efficiency; (iii) the Cooperative seeks to finance and develop such projects and to provide generation to its members and the Compact (to be blended with its retail power supply); and (iv) the Compact is a member of the Cooperative and the Compact intends to purchase generation from the Cooperative and participate in projects developed by the Cooperative. Any employee or Representative may request free legal advice from the State Ethics

Commission about how the Conflict of Interest Law applies to them in a particular situation. This process is explained at <http://www.mass.gov/ethics/commission-services/request-advice.html>.

## **ARTICLE VII: OFFICERS**

### **A. Election.**

At its first meeting of the calendar year, the Governing Board shall elect a chairman, vice chairman, treasurer, secretary and officer at large and such other officers as the Governing Board shall determine. The term of office for those so elected shall be one year and until their respective successors are elected and qualified. Notwithstanding the foregoing, all officers must be a Representative and, upon selection of a successor Representative by such officer's appointing municipality or county, such officer shall immediately tender notice thereof to the Compact and the Governing Board shall select a replacement among the various Representatives for the remaining term of such officer.

### **B. Qualifications.**

Two or more offices may be held by the same person, except the offices of chairman and secretary.

### **C. Vacancies.**

Any vacancy occurring among the officers, however caused, may be filled by the Governing Board, from among the Representatives for the unexpired portion of the term.

### **D. Removal and Resignation of Officers.**

#### **1. Removal.**

Any officer of the Compact may be removed from their respective offices with or without cause by resolution adopted by a majority of the Representatives then in office at any annual or special meeting of the Governing Board or by a written consent by all of the Representatives then in office.

#### **2. Resignation.**

Any officer may resign at any time by giving his or her resignation in writing to the chairman, treasurer, secretary or any other officer or Representative of the Compact. An officer may resign as officer without resigning from other positions in the Compact, including positions on the Executive Committee or as Representative.



**E. Sponsors, Benefactors, Contributors, Advisors, Friends of the Compact.**

Persons or groups of persons designated by the Governing Board as sponsor, benefactor, contributor, advisor or friend of the Compact or such other title as the Governing Board deems appropriate shall, except as the Governing Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

**F. Chairman.**

. The chairman shall preside at all meetings at which he or she is present. Unless otherwise directed by the Governing Board, all other officers shall be subject to the authority and supervision of the chairman. The chairman also shall have such other powers and duties as customarily belong to the office of chairman or as may be designated from time to time by the Governing Board.

**Vice Chairman.**

The vice chairman shall assist the chairman and preside at meetings at which the chairman is not present. The vice chairman also shall have such other powers and duties as customarily belong to the office of vice chairman or as may be designated from time to time by the Governing Board.

**G. Treasurer.**

The treasurer shall be the chief financial officer of the Compact and shall have such powers and duties as customarily belong to the office of treasurer or as may be designated from time to time by the chairman or the Governing Board. The roles and responsibilities of the treasurer may be delegated or expanded. Pursuant to the Administrative Services Agreement between the Compact and Barnstable County, as such agreement may be amended from time to time, the County is the designated agent and fulfills the administrative role for the Compact.

**H. Secretary.**

The secretary shall arrange for the recording, consistent with applicable law, of all proceedings of the Governing Board, Executive Committee and any other such committee in a book or books to be kept therefor, shall have custody of the seal of the Compact, and have such powers and duties as customarily belong to the office of clerk or secretary or as may be designated from time to time by the chairman or the Governing Board.

**I. Other Officers.**

The Governing Board shall have legal counsel for the Compact. The Compact's legal counsel may jointly represent the Compact's members or affiliates in accordance with a bylaw adopted by the Compact pursuant to Article II(j).

The Compact shall designate a Chief Procurement Officer, whose role, in accordance with G.L. c. 30B and other applicable provisions of law, shall be to select proposals for and facilitate the award of contracts on behalf of the Compact, with input from members of the Governing Board, Compact staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Governing Board may determine that the Compact, as long as consistent with applicable law, will select proposals and award contracts in another manner.

Other officers shall have such powers as may be designated from time to time by the Governing Board.

#### **K. Compact Administrator.**

In general, the Compact Administrator shall serve as the chief administrative and operating officer and supervise, direct and be responsible for the efficient administration of the business of the Compact. More specifically, the Compact Administrator shall: (i) implement goals and carry out the policies of the Governing Board; (ii) plan, direct, coordinate, and implement all administrative and operational functions of the Compact; (iii) plan, prioritize, schedule, assign, direct, supervise and evaluate the work of all Compact staff; (iv) develop job descriptions for Compact staff and recruit applicants for staff positions, consistent with budgets approved by the Governing Board; (v) supervise and select outside consultants, counsel, etc. as authorized by the Governing Board; (vi) consult with and advise the Governing Board as to the business, operational and strategic concerns of the Compact including fiscal affairs, legal and operational issues, and major program initiatives; (vii) regularly attend all regular and special meetings of the Governing Board and answer all questions addressed to him/her; (viii) ensure that complete and full records of the financial and administrative activity of the Compact are maintained (with the assistance of the Compact's fiscal agent and its auditor); (ix) prepare, maintain, update and complete required reports and filings to local, state and federal governmental authorities; (x) consistent with budgets approved by the Governing Board, manage the Compact's legal affairs, including negotiating and executing contracts and directing the Compact's participation in regulatory and judicial proceedings; (xi) be responsible for power supply procurement for the Compact's electric customers including issuing requests for proposals, and negotiating contracts concerning power supply and renewable energy certificate purchases; (xii) be responsible for general administration of the Compact's energy efficiency program in accordance with all applicable laws and the rules and regulations of the Department of Public Utilities, or any successor entity; (xiii) plan and direct strategic initiatives; and (xiv) perform such other duties as may be directed by the Governing Board from time to time, or as may necessary or advisable to fulfill the Compact's objectives. The Compact Administrator also shall have such other powers and duties as customarily belong to a manager of a municipal light plant or a

major regional inter-governmental association, or as may be designated from time to time by the Governing Board.

#### **ARTICLE VIII: BUDGET; MAXIMUM FINANCIAL LIABILITY OF THE MEMBER MUNICIPALITIES AND COUNTIES**

The Compact shall adopt an operating budget for each fiscal year and direct the expenditure of funds in accordance with applicable law. The operating budget and any amendments thereto shall be approved by a weighted vote of the Governing Board in accordance with Article III(D).

This Agreement is not intended to impose any independent financial liabilities on the members. Each member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein.

#### **ARTICLE IX: COOPERATION**

The member municipalities, Dukes County and Barnstable County agree to act in good faith and use their best efforts to effectuate the intent and purpose of this Agreement. All parties to this Agreement shall cooperate to the fullest extent possible.

#### **ARTICLE X: ELECTRICITY AND OTHER AGREEMENTS**

Pursuant to this Agreement, member municipalities, Barnstable County, Dukes County, and private consumers may enter into contracts for the distribution, transmission and/or supply of electricity, for the purchase of energy and RECs, and for project financing in support thereof, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct financial obligations on any member municipality or county (except for *de minimis* impacts by virtue of such member's participation in the Compact) until approved by such individual member municipality or county, as the case may be, and further, that any contract shall indemnify and hold harmless the Compact and its members from any financial liability or provide commercially reasonable indemnification with respect to the provision of such products or services.

#### **ARTICLE XI: OTHER APPLICABLE LAWS**

Nothing in this Agreement or in any negotiated contract for the supply of electricity shall be construed to supersede, alter or otherwise impair any obligation imposed on any municipality or county by otherwise applicable law.

#### **ARTICLE XII: INDEMNIFICATION OF REPRESENTATIVES AND ALTERNATES**

Each member of the Compact shall, to the extent legally permissible, indemnify the person(s) each such member chooses as set forth in Article III(A) to serve as a Representative for their service on the Governing Board and/or as a member of the Executive Committee and/or as an officer or who has served at any time as a Representative or officer or Executive Committee member of the Compact. All contracts negotiated or undertaken by the Compact shall also include, to the maximum extent feasible, indemnification of the Representatives and the participating members.

### **ARTICLE XIII: AMENDMENT**

This Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Representatives of municipalities whose population is at least equal to 50% of the combined population of all of the member municipalities of the Compact; provided that at least two-thirds of the Representatives from all of Barnstable County vote in the affirmative; and further provided that at least one Representative from all of Dukes County also votes in the affirmative.

### **ARTICLE XIV: TERM AND WITHDRAWAL**

Each member shall take such action as required under G.L. c. 40, §4A to make this Agreement effective. This Agreement shall be effective as of the date that the last of the members signs below, and shall continue in effect for a term not to exceed twenty-five years. At the conclusion of the term, taking into account any changed circumstances, the members shall in good faith negotiate a replacement intergovernmental agreement.

Any governmental member may voluntarily withdraw from the Compact at the end of each quarter of the fiscal year (i.e. June 30th, September 30th, December 31st, March 31st), upon thirty days prior written notice. Withdrawal of such member shall not affect any obligations entered into prior to the date of withdrawal which are binding by their terms on such member, including, without limitation, contracts directly entered into by such member and financial contributions to the Compact made or agreed to be made by such member.

If the purposes of the Compact are attained, or for any other reason duly voted upon by the Governing Board, the Compact may dissolve. Upon dissolution, an accounting of the assets owned by the Compact shall be performed and sold. The proceeds of the sale shall be distributed equitably to the then remaining members of the Compact according to their percent contribution.

### **ARTICLE XV: CONSTRUCTION AND SEVERABILITY**

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of any Massachusetts or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any

government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution or General Laws of Massachusetts, the Compact shall remain in full force and effect as to all severable matters.

## **ARTICLE XVI: MISCELLANEOUS**

### **A. Principal Office.**

The principal office of the Compact shall be located at the Barnstable County Commissioners' Office, P.O. Box 427, Barnstable, MA 02630. The Governing Board may change the location of the principal office in accordance with Article III.

### **B. Compact Records.**

The original, or attested copies, of this Agreement and records of all meetings of the Governing Board and members shall be kept in Massachusetts at the principal office of the Compact. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any member or Representative for any proper purpose and as required by law. The records of the Compact shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, §7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

### **C. Fiscal Year.**

The fiscal year of the Compact shall begin on July 1st and end on June 30th, e.g. the same fiscal year as established by the General Laws for cities and towns in the Commonwealth.

### **D. Seal.**

The seal of the Compact shall be a circular die with the name of the Compact around the periphery and the year and the date of establishment within.

**E. Reports; Compliance with G.L. c. 40, §4A.**

The Compact shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. The Compact agrees that it will perform regular audits of such records separate and apart from audits conducted by the Compact's fiscal agent. Periodic financial statements shall be issued to all members. To the extent applicable, if at all, any reimbursement for or contribution toward the cost of any work related to this Agreement shall be made at such intervals as provided in the Administrative Services Agreement or other applicable agreements. The Compact will comply with all other applicable provisions of G.L. c. 40, §4A.

The Compact shall also prepare a written annual report, in the format required by the Massachusetts Department of Public Utilities ("DPU") regarding the expenditure of energy efficiency funds for the previous calendar year. Such reports shall be filed with the DPU no later than August 1, unless filing or reporting requirements established by the DPU necessitate a different date, and posted to the Compact's web site within thirty days of submission to the DPU. In addition, the Compact shall periodically prepare written overviews of the Compact's program activities for each member for inclusion in its individual town annual reports.

**F. Multiple Originals.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and all of such signature pages shall be read as though one and shall have the same force and effect as though all of the parties had executed a single signature page.

**G. No Partnership or Joint Venture in Contracts with Third Parties; Limitation of Responsibility.**

In carrying out its purposes as described herein, and in entry into any third party contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, neither the Compact nor any of its members shall be a partner or joint venturer with any third party. The relationship between the Compact (and/or its members) on the one hand and the other party(ies) to such contract on the other hand shall be that of buyer and seller or agent for the buyer and seller, as the case may be. Nothing therein contained shall be deemed to constitute the Compact (and/or its members) as a partner, agent or legal representative of any third party or to create a joint venture, agency or any relationship between the Compact (and/or its members) and any third party other than that of buyer and seller or agent for the buyer and seller, as the case may be. The Compact and its members have no responsibility to supply, distribute, transmit, meter, bill or otherwise provide electricity to any consumer and none is implied hereby or thereby. Nothing in this Article XVI(G) shall be construed as prohibiting the Compact from entering into a partnership or joint venture relationship with any organization in which it has a membership interest or affiliation, including the Cooperative.

**H. Appendix.**

The bylaws of the Compact shall be set forth in an appendix to this Agreement. The Compact's administrator may update and replace such appendix each time such bylaws are duly amended by the Governing Board without the necessity of further Governing Board approval.

**AUTHORIZED AND AGREED TO BY:**

Town of Barnstable

Town of Bourne

Town of Brewster

Town of Chatham

Town of Dennis

Town of Eastham

Town of Falmouth

Town of Harwich

Town of Mashpee

Town of Orleans

Town of Provincetown

Town of Sandwich

Town of Truro

Town of Wellfleet



Town of Yarmouth

Barnstable County

Town of Aquinnah

Town of Chilmark

Town of Edgartown

Town of Oak Bluffs

Town of Tisbury

Town of West Tisbury

County of Dukes County

**BYLAWS  
OF  
CAPE LIGHT COMPACT  
Adopted March 25, 2009**

**Bylaw 1.     *Shared Legal Representation Involving Members or Other Public Entities;  
Official Duties of Compact Counsel.***

The purpose of this bylaw is to allow the Compact from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Compact has a direct or substantial interest without violating G.L. c. 268A, Section 11(a) and (c). Such dual or common representation allows the Compact to pool resources for a common purpose, develop mutual interests, and preserve scarce Compact funds. Pursuant to this bylaw, the official duties of Compact counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial proceedings in which the Compact is also a party; (ii) contract negotiations or project development matters in which the Compact or its Members have an interest, and (iii) other matters in which the Compact has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. Compact counsel shall discharge such duties only when requested in writing by the Compact's Governing Board. Prior to making such a request, the Compact's Governing Board shall determine whether the interests of the Compact would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct.

## OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039



Christopher Clark, *Town Administrator*

Charleen Greenhalgh, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA

To: Department Heads and Committee Chairs  
From: Christopher Clark, Town Administrator  
Re: FY 17 Operating Budget Instructions  
Date: October 29, 2015

Administration in coordination with the finance department has the MUNIS budget worksheets prepared for FY 17. The purpose of this memo is to layout more detailed budget instructions for completion of your respective budgets. The Accounting Department will have the FY 17 budget modules ready to go by Monday November 2, 2015, so you may commence inputting the FY 16 budget requests for your department starting then. **I would ask that all budgets be input into MUNIS prior to Wednesday, November 25, 2015.**

**Overview:** I believe that there are three fundamental components that I would like to ask each department head and committee chair to consider upon development of the FY 17 budget.

First, it is imperative to maintain our existing levels of services to the residents of Harwich. Simply stated, the FY 16 budget should be a basis point in which the FY 17 budget is built upon.

Second, I would like to specifically have you identify increases in your budget above and beyond those detailed below. I have had some discussions with specific departments that have identified enhancements of services (EOS) beyond current levels. I would like that as each budget is developed, that when an enhancement of services or EOS is identified that it be identified as such in a separate line in MUNIS. I believe that the budget process for us to retain our current levels of services within Proposition 2 1/2 is possible. These EOS levels may need to be considered for additional funding through a Proposition 2 1/2 general override or a combination of both partial override and some additional services that could be absorbed within Proposition 2 1/2. The EOS should identify not only personal services that will be increase through additional personnel but also if there are equipment or additional overhead of significance, these items should also be identified. Administration in the review of the budgets will be looking for the EOS designation on those enhanced levels of services in the individual line included in the department submission. If your department seeks modest increases such as an increase in hours that should also be clearly identified but does not need the EOS designation. The purpose of this designation is to be able to segment off the section of the budget that is enhanced and to be able to pass a base budget with the option of providing these enhanced services.

The third and perhaps most critical element to consider is how do we currently operate, and are there opportunities for efficiencies or revenue enhancement opportunities. The Town's development of the solar farm has now produced additional revenues for the Town and is one such category. Operational efficiencies or potential efficiencies should also be identified for administration review and consideration in the development of the FY 17 budget.

**Personnel:** The existing personnel levels should include any contracted economic adjustments such as cost of living, steps and longevity adjustments. Departments that do not have in negotiated collective bargaining agreement with their personnel should provide for an anticipated economic adjustment of 2% effective on July 1 of 2016. In many cases negotiations have been completed or are ongoing. Formal negotiations must be concluded for the adjustments to become operational. As indicated above any new personnel should be clearly identified as enhanced level of services for new personnel or for a significant increase in the number of hours currently allotted. An example such as employee x going from 20 hours per week to 35 hours per week offering additional hours or additional services during that 15 hour time span

**Utilities:** The utility costs projections are more difficult due to the volatility of the respective markets. For the FY 17 budget, please use the assumptions below:

**Electricity:** costs should be projected to increase by 5% over actual usage/costs for FY 15 and review of current utilization for FY 16. I am anticipating an increase due to natural gas pipeline issues to New England that will not be resolved for an additional year or two. The Town solar project is providing benefits in the form of actual cash received for use by the Town or off taker entities. This revenue will be identified in a central account. Your budget should anticipate the increased cost as per past practices.

**Fuel oil:** Those departments that rely upon heating oil should solicit bids directly for this costs and to budget accordingly.

**Gasoline and diesel fuel for vehicles:** It is always a volatile market. It does appear that prices may be dropping or stabilizing in this area. The gasoline and diesel fuel budget projection should be level funded based upon actual usage/costs for FY 15 and a review of current utilization for FY 16. The Town does utilize the services of the County for cooperative bid that usually goes out in the spring. Budget adjustments may be made by administration to reflect the bid environment in the spring.

**Natural gas:** Is plentiful in the continental United States however due to natural gas pipeline issues to New England it is anticipated that natural gas costs will increase by 5% over actual usage/costs for FY 15 and a review of current utilization for FY 16.

**Water**: Is projected to increase by 5% over actual usage/costs for FY 15 and review of the current utilization for FY 16.

Please also find attached to these FY 16 budget instructions the Board of Selectmen's FY 17 budget message that is used as a guide for administration in its preparations for the development of the FY 17 budget.

If you have any questions or concerns with the budget instructions please do not hesitate to contact me for additional information or direction.

Attachment



October 5, 2015

Chris Clark  
Harwich Town Administrator  
732 Main Street  
Harwich, MA 02645

Subject: FY 2017 Budget Message

Dear Chris,

The Harwich Town Charter, section 9-2-2, requires that the Board of Selectmen provide a budget message on or before the first Tuesday in October to guide the Town Administrator in the development of the budget for the fiscal year ahead. The lack of projected and planned savings associated with regionalizing our school system and the challenges of employee's health care benefits have put significant pressure on the municipal budget in recent years.

In an effort to continue to provide high quality municipal services and improve our equipment and facilities we have increasingly relied on capital and debt exclusions, which the voters have on many occasions supported. Although this approach has allowed us to technically stay within the confines of Proposition 2 ½ our taxpayers continue to pay more. We have also enjoyed reasonable growth, which has generated new revenues to support our expenditures.

Consistent with the most recent Town Administrator goals & objectives, the FY 2017 budget needs to stay within the limits of Proposition 2 ½ plus forecasted growth. The use of capital / debt exclusions to satisfy items typically supported via the budget shall be minimized. Any and all items proposed outside of 2 ½ / growth shall be rank ordered with priority justification.

Specifically any and all additions to personnel (hours and/or people) must be within the limits of Proposition 2 ½ and not detract from building maintenance.

To help effectively manage our department budgets we suggest the allocation of indirect costs to each department. This will provide us with a better understanding of the total costs to operate each of our departments as we continue to match fees with services. It is necessary to review total department costs including those that are carried by another department (DPW for instance) when determining fees. If planned expenses are not covered through fees, an article should be developed for town meeting so that the taxpayers can determine if they are willing to use property taxes to fund these expenses.

Significant improvements to the water and land sides of Saquatucket Harbor are actively being pursued. Harbor income surplus funds should be used to offset the payments associated with repayment of these funds over time. We recommend the development of a payment / cash flow schedule spread over the life of the debt repayment to guide the consideration of user fees once the facilities have been improved. In this manner the users will pay for the improvements which they enjoy, not the taxpayer. Therefore, beginning with the FY2017 budget, any excess of waterways revenue in excess of appropriate costs should be placed in a waterways capital fund rather than free cash.

As we prepare to move forward with our Comprehensive Wastewater Management Plan covering a 40 year span, the taxpayers will shoulder a \$200+ million burden. Wastewater will be funded through a combination of real estate taxes, infrastructure funding, enterprise funding and user fees. In reality these are taxes to be paid by taxpayers in addition to existing real estate taxes and fees.

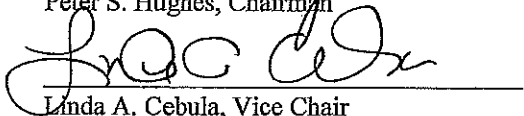
As discussed on several occasions the Board of Selectmen has a keen and active interest in providing for the proper maintenance of our existing facilities. For too long we have used building / facility maintenance as the buffer to balance the budget. This segment of the budget needs to be adequately funded so as to preserve our municipal assets and improve their operational efficiency wherever feasible. In the process of developing the FY 2017 budget we believe it is appropriate to manage building maintenance by consolidating all department maintenance into a single building maintenance account under the control of Sean Libby.

We encourage you to manage expectations in the process of soliciting and integrating individual department requests for FY 2017. As a board we are prepared to assist you in this process. We look forward to better understanding the priorities and working through the difficult yet necessary task of saying "no".


Sincerely,



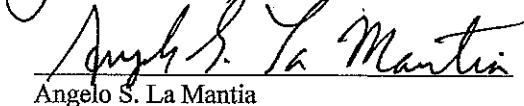
Peter S. Hughes, Chairman



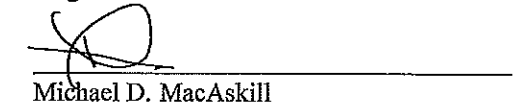
Linda A. Cebula, Vice Chair



Jannell M. Brown, Clerk



Angelo S. La Mantia



Michael D. MacAskill

HARWICH BOARD OF SELECTMEN

## **COMMUNITY DEVELOPMENT SUPPORT STAFF WORK FLOW EFFECTIVE 11-2-2015**

### **EXECUTIVE ASSISTANT - CONSERVATION**

Primary staff support for Conservation Department and secondary staff support for Health Department<sup>1</sup>.  
Board Work - attend Conservation Board meetings and take minutes<sup>2</sup>.  
Trainer of other personnel for Conservation Department items.  
Building and Health Department licensing and annual permits.

### **PLANNING ASSISTANT**

Primary staff support for Planning Department and secondary staff support for Historic Commission<sup>1</sup>.  
Board Work - attend Planning Board meetings and take minutes<sup>2</sup>.  
Trainer of other personnel for Planning Department and Historic Commission items and for FEMA assistance.  
Budget preparation and budget maintenance for all departments including preparation of reports.

### **EXECUTIVE ASSISTANT - BUILDING**

Primary staff support for Building Department and for Historic Commission<sup>1</sup>.  
Board Work - attend Historic Commission meetings and take minutes<sup>2,3</sup>.  
Trainer of other personnel for Building Department items.  
Oversight of permit intake and Accela data entry.  
Ordering supplies for all departments, inventory control, and storage; contact for equipment maintenance.

### **ADMINISTRATIVE ASSISTANT - A**

Secondary staff support for Building and Planning Departments<sup>1</sup>.  
Board Work - attend Board of Appeals meetings and take minutes<sup>2,3</sup>.  
Staffing of customer service window.  
Permit intake and Accela data entry.

### **ADMINISTRATIVE ASSISTANT - B**

Primary staff support for Health Department and Conservation Department<sup>1</sup>.  
Board Work - attend Health Board meetings and take minutes<sup>2</sup>.



Staffing of customer service window.  
Permit intake and Accela data entry.

### **ALL STAFF**

Customer service including window and telephone assistance as needed.  
Assist with permit intake and Accela data entry as needed.  
Cross-train basic services in all departments.  
Assist with technology and records including scanning to create a permit history file.  
May do additional Board Work in accordance with the Side Letter of Agreement between Town of Harwich and Harwich Employees Association.

### **DEPARTMENTAL ORGANIZATION**

All Assistants report to individual department heads for regulatory and procedural matters in that department. Evaluations will be by individual department heads.

Administrative items will be handled jointly by the Health Director, Conservation Administrator, Building Commissioner and Town Planner:

Annual budget – 4 signatures required.

Weekly payroll – 3 signatures required.

Vacation requests for all new Community Development employees will be based on seniority as provided in the HEA contract. Existing employees as of July 14, 2015 may continue to request vacations based on seniority within their individual departments. Department Heads will determine staffing needs before granting any vacation requests.

### **NOTES**

- 1) Job responsibilities within each department shall be consistent with approved job descriptions for that department.
- 2) Board Work will be voluntary for existing staff and will be required for all new hires as per the Side Letter of Agreement between Town of Harwich and Harwich Employees Association.
- 3) The Building Commissioner shall assign the Executive Assistant – Building to Board Work for either the Board of Appeals or the Historic Commission. The Administrative Assistant A shall be responsible for Board Work for the other board.

**OFFICE OF THE TOWN ADMINISTRATOR**

Christopher Clark, *Town Administrator*

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA



To: Board of Selectmen

A handwritten signature in black ink, appearing to be "C. Clark", is written over the "To:" line.

From: Christopher Clark, Town Administrator

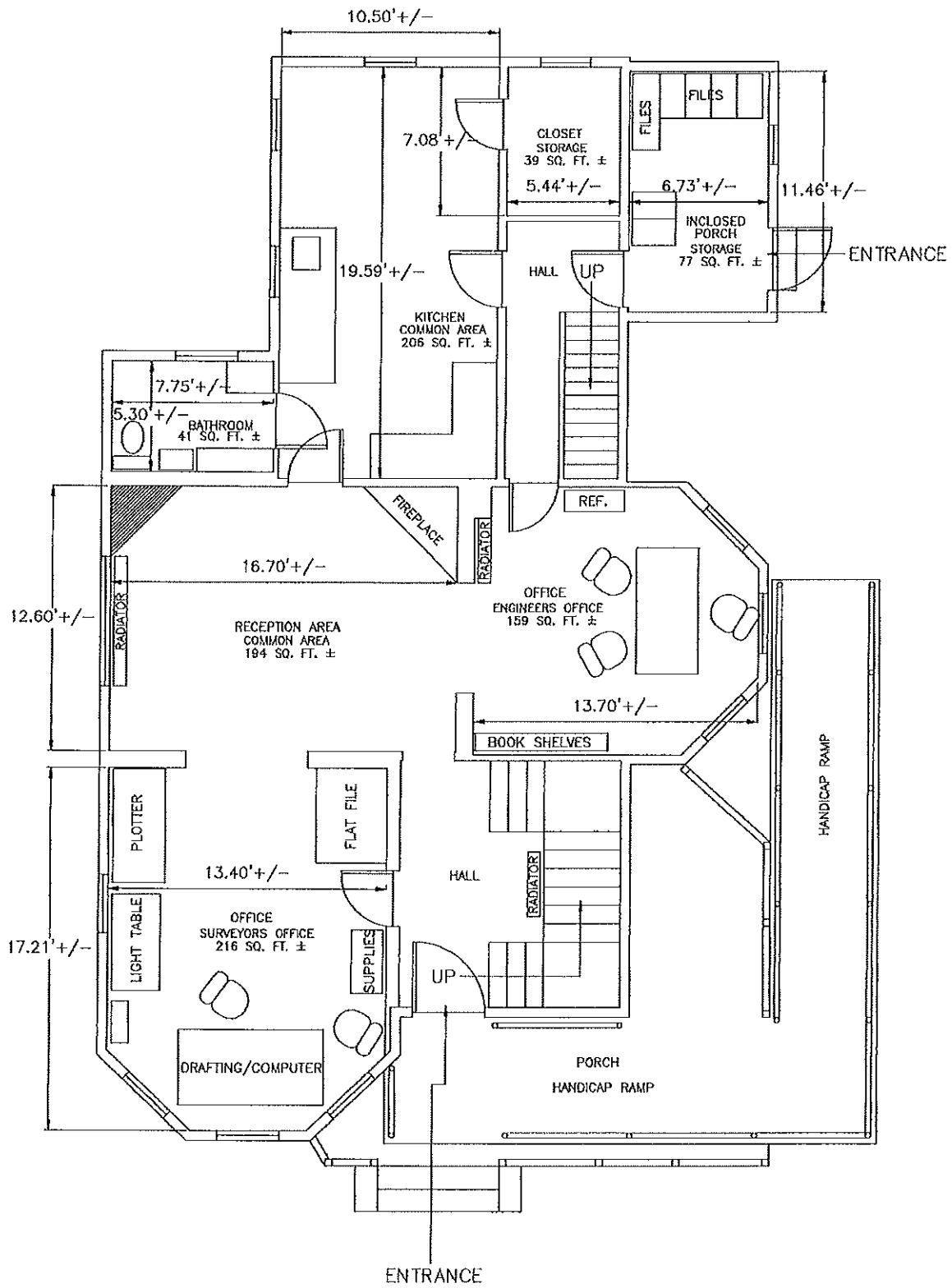
Re: Relocation of Engineering Department to Albro House

Date: June 3, 2015


I have continued my discussions with departments on the second floor of Town Hall regarding the revised layout. I did present to the departments the observation that at the time, Selectmen Hughes had pointed out that the Selectmen's Office in Town Hall is probably in underutilized area of the building. I discussed this with various departments on the second floor to see if there was an element of Community Development that could relocate into the space. Suffice to say that there are differences of opinion on the reallocation of space on the second floor. However, after discussion with Mr. Cafarelli, Town Engineer, he has put together the concept of relocating himself and the Surveyor to the Albro House. He has prepared the attached plan that shows the area on the first floor and how would be utilized with two office areas being developed and the retention of a common space for continued use by outside parties as meeting space. I believe that the Sea Scouts continue to use this building for their meetings. I also requested that Sheila House, who currently occupies a portion of the second floor along with other professional services, discuss this concept with Mr. Cafarelli. They have done so and both have reported back to me that they believe this reallocation of space would be mutually beneficial to both. I believe this concept merits significant consideration. I would like to proceed with the relocation of these departments to the building unless the Board of Selectmen has significant objection.

I do further believe that the concept of reallocating the space in Town Hall currently designated for the Selectmen does have some merit as well. I believe that due to the current use of electronic media that the Selectmen use this current space only sporadically and we can allocate and provide first preference for the Library meeting room in Town Hall adjacent to the Selectmen's current office as an area for Board members to conduct interviews, read any correspondence or utilize space for other duties. Selectmen have also used the extra table in the general Selectmen's office area as a spot to review mail or correspondence. If the Board is okay with the concept of reallocating the space in Town Hall for another purpose, I will continue my efforts to streamline the uses of Town Hall to remove some of the overcrowding that exists in certain areas. I do not have at this moment a specific concept for reuse. Mr. Cafarelli did look at this area and it is similar in size to the current area that he is in that appears to be deficient for his operational needs.

The Board is also aware that Administration is continuing its look at relocating files down to the Community Center basement for a more permanent storage. I believe this will yield additional benefits in trying to make Town Hall a more functional workable space. Administration believes that by carefully reviewing and making changes where they make sense, such as the relocation of the Veterans Agent to the Community Center, has been to the overall benefit of the organization and will continue to make the strides.



## MEMORANDUM

To: Christopher Clark, Town Administrator  
From: Sean Libby, Facilities Maintenance Manager   
Re: Albro House revisions for Business Office  
Date: 29 October 2015

Per your request yesterday I have reviewed the survey I completed in February 2014 and prioritized building improvements to support moving the Engineering department to the first floor. I am assuming that the Engineering and Surveying Department will be the last of the occupants added to this building.

As we have discussed in the past, this building can be renovated many different ways to meet the operational needs of the town and our financial capabilities. After you review the enclosed prioritized list, I would like to have a meeting to discuss the path to the future.

There has also been various discussions on where the ramp should be located which would affect any estimate. No matter where it goes I feel it should be replaced in its entirety. Once a decision has been made on the location, the removal or repair of the mudroom/storeroom and garage, we can begin right away with no impact to the tenants. These decisions will also direct the approach we take with the remainder of the exterior repairs and painting. As of today we have approval for the purchase of replacement gutters which should be installed soon.

I also recently found out that the restoration of the sash windows is not covered by a previous article as originally thought. There are no more funds in this article so we will need to re-assess and plan for these repairs.

Encl; Albro House Assessment 2014; Cost estimate for improvements FY15; prioritized list Oct 2015

CC: Lincoln Hooper, DPW Director

Albro House Interior revision for FY 15CP		
Item Description	Estimate source	FY - 15
Remove cracked plaster and replace with sheetrock. @ \$4.00 Per square foot.	Local contractor	\$19,000.00
Remove and replace carpet with industrial medium grade carpet with pad.	RS Means	\$12,000.00
Remove peeling wallpaper, prepare walls for paint with one primer and two finish coats.	RS Means & local contractor	\$13,500.00
Upgrade panel to 200amp service and add outlets to each office	local contractor	\$13,500.00
Replace gas fired boiler with new energy efficient model	local contractor	\$12,000.00
Replace Water heater		\$1,000.00
Window repairs - funded previously CPC		
Demo		
		\$71,000.00
	x20% est prevail wage	\$85,200.00

Priority

Prior to Moving Engineering			Comments
1	Upgrade panel to 200amp service and add outlets to each office	local contractor	\$13,500.00
2	Remove cracked plaster and replace with sheetrock. @ \$4.00 Per square foot.	Local contractor	\$19,000.00
3	Remove and replace carpet with industrial medium grade carpet with pad.	RS Means	\$12,000.00
			\$44,500.00
Post Move in of Engineering Department			Comments
4	Evaluate A/C requirements - Possibly split systems		\$30,000.00
5	Remove peeling wallpaper, prepare walls for paint with one primer and two finish coats.	RS Means & local contractor	\$13,500.00
6	Replace gas fired boiler with new energy efficient model	local contractor	\$12,000.00
7	Replace Water heater		\$1,000.00
			\$56,500.00

The additional outlets will allow the office space to be configured to provide the most efficiency and an increased load

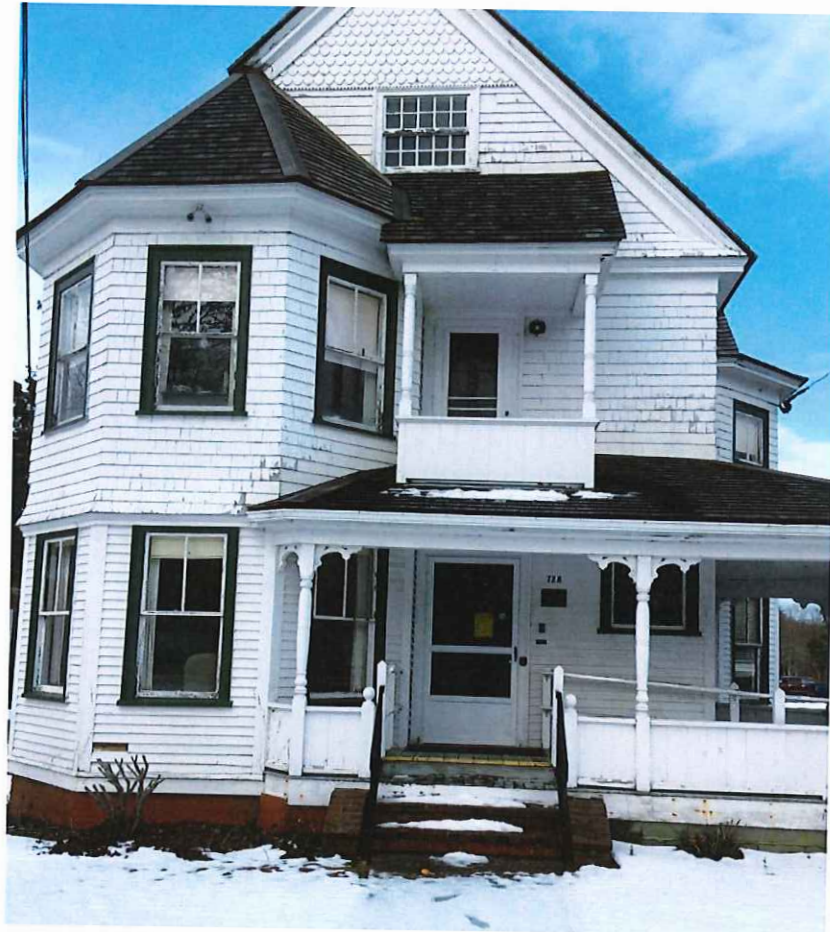
There are areas throughout the building wwhere the plaster is cracked and separating from the lath. Remove and replace with sheetrock. Complete before occupying the first floor because of the dust.

Replace aging carpet after the sheetrock is completed and before moving in the bottom floor to minimize operational impact while installing.

Recommend we move to energy efficient variable speed split unit heat pumps. Until installed widow units can be used as done in the past.

Painting the interior to include ceilings.

Albro House  
728 Main Street



February 2014

### **General Description**

2874 sq ft wood frame construction built in 1900 which the town acquired in 1995. This facility currently supports the youth counselor and the services she provides. There is also an agreement with the Sea Cadets for their use in meetings and training.

During the time that the town has occupied the building there have been projects to upgrade the electrical, install a new roof and some minor cosmetic repairs.

Currently there is an active contract to install storm windows and frames. This contract was developed by the town engineering department and windows were provided to the contractor.

### **Building Exterior**

The exterior of the building has a clapboard wood mixed with wood shingle covering. The majority is in good condition but in need of minor repairs and paint for protection. There was no indication of any rot or softening wood. Peeling paint has exposed the wood throughout and which should be painted ASAP to prevent damage.



The soffit and fascia board are also exposed and show some sign of wear. This should be planned for replacement within the next few years.





The front porch is still in usable condition and meets ADA requirements. A maintenance check and repair should be done to ensure decking is secure with no nails protruding after the winter. Ramp Railings are not continuous and is beginning to bow so will need replacement. Gutter and down spout needs to be repaired or replaced and secured better to prevent future damage. Every effort should be made to preserve the historical design as this is the main focal point from the street.



### **Building Envelope**

There are many areas for air and moisture intrusion and or conditioned air to escape. This is primarily due to the age and technique of construction. The type, thickness and grade of insulation for the exterior walls is unknown. The walls and ceilings in most rooms are constructed of wood frame with a lath and plaster interior finish.

With the completion of the storm window install the outside air intrusion should improve dramatically.

All of the sash windows are single pane with a desperate need of attention. Many of the windows are locked in place with a screw and will need repairs to the weights for proper operation. Recommend a project to repair and upgrade windows to double pane. When this project is underway there should also be an inclusion to insulate around the window frame. According to what I've been told, this has been previously identified, presented and approved.



The cedar shingle roof is fairly new having been completed in the spring of 2011. There were no observations of leakage or deterioration.

The blown in cellulose insulation for the attic is old and has compressed to an average depth of 3 inches. This gives an approximate R value of 10 which could be improved with more depth.



## Basement

Brick and block original foundation walls in good condition. There is some sign of wear in the mortar however no structural concerns were noted. Both of the windows are missing glass panes and have tempary repairs to block rodents and the elements. Some housekeeping needs to be done to keep the utilites accessible.



## Storage room

The storage room is a newer addition that is attached to the east wall. It is well insulated and other than housekeeping to ensure a 2<sup>nd</sup> available means of egress no discrepancies were noted.



## 1<sup>st</sup> Floor

Front Foyer is 7'x11'6" carpeted with wall paper covering over lath and plaster walls. The lower section of the wall is Wainscot with hardwood in good condition. Flooring is carpeted and like the rest of the building has outlived its life expectancy. It is reported to be almost 30 years old.



The main living room is 16'8" x 12'4" which has a fireplace that looks to be in excellent condition but the condition of the chimney is unknown. The wall paper is intact and not peeling. Carpet needs to be replaced.



Sea Cadet meeting room is 16'8" x 13' and needs a complete cosmetic overhaul. The wall paper is peeling and torn in numerous spots. The plaster ceiling is separating from the lath. There is a current plan to place sheetrock over the plaster.



Bathroom is in good condition with no visible signs of water damage.

Kitchen area is carpeted which is worn, recommend replacement with VCT tile Ceiling needs repair after sewage line replacement from the 2<sup>nd</sup> floor bathroom.



Pantry ceiling plaster is separating from lath. Plans are in place to cover with sheetrock. There is a heavy draft in this room from the lath exposure and the single pane window. Walls and shelving need paint.

Stairwell leading upstairs has flaking paint throughout. Because of the age of the house this could be lead based paint. The flakes should be tested to determine if the house needs to be remediated or if it can be painted over. The plaster walls are cracked and separating from the lath.

## **2<sup>nd</sup> Floor**

Room one – Counselor's office. 15'x13'. Ceiling stained but not damaged from water infiltration in the attic. Needs carpet and paint.

Room two – 12'x13' with a 2'x6' closet. Needs carpet and paint. Ceiling was re-done with 1'x1' tongue and groove acoustic tiles.

Hall closet 3x5' with peeling wallpaper – No carpet.

Hallway 3'x37' Wallpaper peeling in various locations. Carpet is worn and needs to be replaced.



Room 3 on (R) 13'7" x 12'5" octagonal. Ceiling tiles are stained but still good condition, can be painted for aesthetics. Needs carpet.

Bathroom would be operational when septic line is repaired. The room requires some painting and could use some upgrading of fixtures for aesthetics.

### ***Utilities***

Boiler – Gas fired boiler with the last known inspection dated 1997. Age of the boiler is unknown. There are signs of water leaking from the manifold and heat exchanger. The system is not currently leaking most like does when it is cold.

Water heater – Gas fired 40 gallon tank manufactured in 1989. Good condition but should probably be flushed due to limited use.

Power service – 100 amp service. Panel believed to be installed in June 1995 along with some other electrical upgrades.



### ***Garage***

The garage and attached storage shed is in very poor condition. The exterior trim in many places throughout is either broken or rotting. The roof shingles need to be replaced to include new sheathing. The area over the storage side will require the rafters to be replaced before any sheathing or shingles are placed.

The garage door panels are soft and some have pulled out of the framework. Door is beyond repair and requires replacement. The frame has also began to rot and requires replacement.

The personnel door is wooden which has swollen and warped from exposure to the elements. The door frame should be replaced with the door. Stairs need to be built to make the door accessible.



### ***General observations and opinions***

This building has a lot of potential but requires some long overdue maintenance. The current state of condition will only deteriorate further without immediate attention. I would recommend that the priority be on the building envelope. Once the windows are installed and exterior painted the cosmetics on the interior can be planned and budgeted for in future years. Additional costs for the near future would be a replacement for the heating boiler before it fails.

After reviewing some of the documentation from the planning department it appears there is some desire to change the exterior. If this is still the case I would recommend restoring historical appearance by relocating the ramp to the side door and making adjustments to the entrances there to ensure ADA compliance. This would allow a rebuild/repair to the front porch to return the exterior view to the original design. Lastly there was some documentation to remove the garage. I would second this recommendation as it would save the town thousands in repairs to a building that I have not seen used very much for storage.

Another item in the planning office files for future improvements was an estimate for two Trane split unit cooling systems. When we are ready to make this improvement I would not recommend this system. I would rather see a ductless with energy efficient variable refrigerant flow split system heat pumps. This would not only reduce energy costs but also help maintain the humidity within the spaces.