

# SELECT BOARD MEETING AGENDA\*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Regular Meeting 6:00 P.M.

Monday, June 5, 2023

## **Remote Participation Optional:**

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/789697685>

You can also dial in using your phone.

Access Code: 789-697-685

United States: [+1 \(646\) 749-3122](tel:+16467493122)

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

## I. CALL TO ORDER

## II. PLEDGE OF ALLEGIANCE

## III. PUBLIC COMMENTS/ANNOUNCEMENTS

## IV. CONSENT AGENDA

A. Approve Select Board Meeting Minutes:

1. May 22, 2023
2. May 30, 2023

## V. NEW BUSINESS

- A. Affirm the appointment of Ashley Symington as Director of Youth and Family Services
- B. Water/Wastewater Superintendent to present design drawings and discuss project bid and bid schedule for the Cold Brook Eco Restoration Project; Votes may be taken
- C. Approve the proposed Fiscal Year 2024 Holiday Calendar
- D. Approve the following Conservation Restrictions:
  1. 2 Old Chatham Road
  2. 115 Sears Road
  3. 8 Salt Meadow Lane
- E. Vote to install a streetlight on an existing pole at Cahoon beach parking area located on Cahoon Road
- F. Approve the following Special Permit applications:
  1. One day Entertainment and One day Wines and Malt license for Harwich Conservation Trust – Event on June 24, 2023, 4:00 p.m. to 6:00 p.m., at 1039 Route 28 – Recorded/live music, dancing by patrons or performers, amplification
  2. Road Race permit for 5K for the Children – Event on October 14, 2023, 10:00 a.m. to 12:00 p.m., at 1 Schoolhouse Road
- G. Approve a 2023 Weekday and Sunday Seasonal Amusement license renewal – The Trampoline Center – 296 Route 28 – Amusement Type: Trampolines
- H. Approve a 2023 Weekday and Sunday Seasonal Amusement license renewal – S&S Amusements, LLC d/b/a Bud's Mini Golf – 9 Sisson Road – Amusement Type: Miniature Golf
- I. Update on 374 Main Street

## VI. OLD BUSINESS

- A. Discussion on next steps for Chatham Road and Route 39 intersection

## VII. CONTRACTS

A. Approve the following License Agreements for the Cultural Affairs Programming located at 204 Sisson Road:

- A-04 - Tim Johnson
- A-07 - Natalie Stafford
- A-09 - Janna Powell
- 103 - Erika Nickerson
- 105 - Carolyn Dunford
- 106 - Georgene Reidl
- 107A - Joanne Patukonis
- 108 - Nina Gagarin
- 109 - Stichology-Jane Bessette
- 110 - Cape Cod Makers
- 111 - Nick Nickerson
- 112 - Heather Pilchard
- 114 - Heather MacKenzie
- 115 - Deborah Greenwood
- 201 - Anne Flash
- 202A - Anne Morse
- 204 - Roe Osborn
- 205 - Bernadette Waystack
- 206B - Alla Zbinvosky
- 208B - Jodi French

- 209A - Kim Gagne
- 212 - Taylor Fox
- 213 - Ellen Davies
- 214 - Gail Hickey
- 215 - Martha Little Fuentes
- Lower Level Shop - Jesse Marsolais
- 107b - Donna Spillane
- A04 - Tim Johnson

B. Approve and authorize the chair to sign the Memorandum of Agreement (MOA) between the Town of Harwich and Massachusetts Department of Transportation (MassDot) for signage installation on municipally owned public roadways

VIII. **TOWN ADMINISTRATOR’S REPORT**

IX. **SELECT BOARD MEMBER’S REPORT**

X. **CORRESPONDENCE**

XI. **ADJOURNMENT**

*\*Per the Attorney General’s Office: The Select Board 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:**

\_\_\_\_\_  
Danielle Freiner, Executive Assistant

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

**Date:** \_\_\_\_\_  
June 1, 2023

**PUBLIC**  
**COMMENTS /**  
**ANNOUNCEMENTS**

# **CONSENT AGENDA**

**MINUTES  
SELECT BOARD  
DONN B. GRIFFIN ROOM, TOWN HALL  
732 MAIN STREET, HARWICH, MA  
SWEARING-IN CEREMONY 5:00 PM  
EXECUTIVE SESSION 5:30 PM  
REGULAR MEETING 6:00 PM  
MONDAY, MAY 22, 2023**

**MEMBERD PARTICIPATING:** Michael MacAskill, Chairman, Mary Anderson, Vice Chair Julie Kavanagh, Don Howell and Jeff Handler

**ALSO PARTICIPATING:** Joseph Powers, Town Administrator

**CALL TO ORDER:** Chairman MacAskill called the meeting of the Select Board to order on May 22, 2023 at 5:00PM and noted that the meeting will begin with the swearing-in of all newly elected officials. Following the swearing-in they will go into Executive Session and then begin the Regular Meeting no later than 6:00PM.

Emily Mitchell, Town Clerk was present to swear-in the newly elected and re-elected officials. There were 4 elected offices, each with two vacancies. She thanked all the candidates for running for elected office and congratulated all those who won their races.

She began with the Select Board, Jeff Handler had been previously sworn in, Don Howell was invited up and Jeff Handler joined in as they were sworn in by Ms. Mitchell.

Next to be sworn in were Merdedith Henderson and Ryan Clarke from Monomoy Regional School Committee.

Allen Thompson was sworn in as a member of the Water/Wastewater Commission.

The remaining elected officials were not present and will be sworn-in at another time.

Mr. Thompson thanked all the folks in town who have supported him since 1966. This will be his last run in public office, he plans to retire after his 3 year term.

All in attendance showed their appreciation with a standing ovation.

Ms. Mitchell explained what was included in the packets that she handed out to the newly elected officials.

**EXECUTIVE SESSION:**

A. Pursuant to MGLK c. 30A, s 21(a)(7) to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements (“Purpose 7”)-  
the Open Meeting Law, G.L. c. 30A, s22(f), (g)—To Review, approve

May 22, 2023

and/or discuss the  
dated January 23, 2023 and

possible release of Executive Session meeting minutes  
February 27, 2023

- B. Pursuant to MGL, s30A s21(a)(3) to discuss strategy with respect to litigate if an open session meeting may have a detrimental effect on the litigating position of the Town-5 Sea Street Extension
- C. Pursuant to MGL c30A, s21(a)(6) to consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the Town.

Chairman MacAskill called the meeting of the Select Board back to order at 6:00PM reporting that tonight's meeting began with a swearing-in ceremony for newly elected officials. In Executive Session the minutes of January 23, 2023 and February 27, 2023 were approved. The release of those minutes was not approved. The discussion on the 5 Sea Street Extension has been rescheduled until May 30, 2023. No decision was made regarding the purchase, exchange, lease or value of real property.

**PLEDGE OF ALLEGIANCE:** Chairman MacAskill invited all attendees to join in the Pledge of Allegiance.

**WELCOME:**

- A. Newly elected member Jeff Handler

Chairman MacAskill welcomed the new Select Board member Jeff Handler.

**PUBLIC COMMENT/ANNOUNCEMENTS:**

Cindy Williams, Executive Director of the Chamber of Commerce announced that they are now open 7 days a week and noted the hours of operation. She also noted upcoming events and shared details.

Link Hooper reminded everyone of the Public Workshop for low lying roads this Wednesday and he gave details.

Bernadatte Waystack of the Harwich Cultural Council announced that the Council will be honoring the designees of this year's Cultural Grants and she shared details. It is a public event and everyone is welcome.

- A. The Board is now known as the Select Board

Mr. MacAskill stated that they are now to be referred to as the Select Board with the passing of the ballot question at the latest election.

- B. Committee Vacancies

Ms. Anderson highlighted the Historic District Historical Commission and noted their 3 vacancies and the causes that they are involved in.

May 22, 2023

### C. Harwich Affordable Housing Trust Forum

Brianna Powell, Housing Advocate announced a public forum that the Trust and JM Goldson are hosting for public feedback and she shared details.

Mr. Powers reminded everyone of the Town's Memorial Day Ceremony and he shared details.

#### **CONSENT AGENDA:**

- A. Approve the Select Board Meeting Minutes for May 8, 2023
- B. Accept the resignation of Jeffrey Handler, Local Planning Committee, effectively immediately.

Mr. Howell moved to vote to approve the Consent Agenda as presented, seconded by Ms. Anderson.

Mr. Handler abstained from voting on the meeting minutes as he was not present at that meeting and he abstained on his resignation.

Vote 4:0:1 with Mr. Handler abstaining.

#### **NEW BUSINESS:**

- A. Presentation by Susy Holmes, Executive Director of Barnstable County Retirement on a potential Cost of Living Adjustment (COLA) increase from 3% to 5%.

Votes may be taken.

Ms. Holmes informed the Board that that Barnstable County Retirement would like to increase the COLA from 3% to 5% for FY23. She explained that they are presenting to all the towns in the county to allow them to vote. Two Thirds of all the town's positive votes are needed to make the increase. She explained the cost to the towns and offered an estimated increase to the town's budget.

Ms. Anderson asked Mr. Powers if the town can include this in the budget.

Mr. Powers replied that if the majority votes to pass the increase, they will be obligated to include it in the budget. He noted that other towns voted against it because of the compounding effect. His concern is the way it relates to the bargaining that they had just completed.

Ms. Holmes noted that 9 towns have approved it and only one more is needed to have the two thirds vote. There are 5 towns who have not yet voted. She explained with specific numbers how the numbers compound. She also noted the \$18,000 cap and the additional \$30.00 per month for each retiree at that number.

The Board discussed the pros and cons of a positive vote.

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Ms. Kavanagh moved to approve the increase from 3 to 5% in Fiscal Year 23 for the Barnstable County Retirement not to exceed \$18,000 per year for those retirees, seconded by Ms. Anderson. Vote 4:0:1 with Mr. MacAskill abstaining.

#### B. Discussion of broadband in Harwich

Mr. MacAskill commented that he has been approached by interested parties related to broadband in Harwich. He welcomed John Ketchum who distributed information to the Board.

Mr. Ketchum explained that he is speaking for himself and not any committees that he is involved with in town. He gave a brief description of his background and gave a brief overview noting what he feels should be discussion items. He showed a presentation as he described broadband. He offered suggestions and feels they should be concerned about where the demand is going and where the network that they currently have, which belongs to Comcast, is going. He explained that the technology is called Passive Optical Network and noted its benefits. He also spoke about the service that Comcast uses in Harwich and on Cape Cod for internet access. His goal is to start the discussion of what they really need in Harwich, which he feels is Universal Broadband Access. He also noted what other towns are doing and the challenges that all towns are facing including cost.

Board members expressed concerns and asked questions. Discussion continued regarding it being a regional project. They agreed to have further conversations.

Mr. Powers noted that he and Mr. Ketchum have met several times including with representatives from Open Cape. He noted tasks that he had assigned to the IT Director and the staff is already working on this. He asked that they bring this conversation back but that the Board allow staff to do the work that they are doing and allow them to bring it back in a coherent manner.

Mr. MacAskill appreciates what the staff is already doing and also noted that this will require a regional approach. His next steps would be to have another meeting on this in the near future and to go over the next steps.

Mr. Ketchum thanked Mr. Powers and the Board for the opportunity to talk .

#### C. Discussion - Chatham Road and Route 39 intersection

Mr. Powers noted that many projects are languishing because there is no associated funding mechanism. This is on the docket for matters to include in the planning for the 2024 Annual Town meeting.

Mr. MacAskill commented on how long this discussion has gone on without it being the priority that it should be.

Link Hooper, DPW Director contacted the known homeowner at that intersection who also has concerns about the intersection being dangerous. They have questions that cannot be answered

May 22, 2023



until the property is surveyed. He estimated the project cost to be \$300,000 and also noted what they already done to try and impact the intersection.

Linda Cebula, Traffic and Safety Committee commented hat they have been looking at this intersection as far back as 2016. She asked what the ten steps are that have to be done for this project and if they could be put in writing.

Board members expressed their concerns.

Mr. Powers commented that they continue to search for an engineer, absent that there are funds available that have been going to general engineering. There is a project plan that accounts for what has just been passed as well as drawing in projects from years past to try and get all of the backlog done. This is one of those projects.

Mr. MacAskill asked that, if there is money available for engineering and surveying and that 's what they need to put a plan and cost together, why wouldn't they start with that?

Mr. Powers replied that he is unsure that the money is available because of the number of engineering projects that they already have. He will not know that until he looks at everything in total.

Mr. MacAskill commented that this project should be at the top of the list because it started in 2016.

Board members asked Mr. Hooper questions and made suggestions regarding speed limits and signs.

Mr. MacAskill commented that they will wait until Mr. Powers brings the plan back and then there will be further discussion.

#### D. Discussion on roles of Committee members giving the Select Board direction

Mr. MacAskill commented that this conversation began when a resident approached him with a project and he, as the liaison to that committee, sent him to that committee. Mr. MacAskill described the process that was followed. He noted that committees are advisory committees to the Select Board and that the Town Administrator expressed that he should know before it comes before the Select Board. He asked Mr. Powers what he thinks should be changed in that process.

Mr. Powers commented that he was not prepared for that conversation.

Mr. MacAskill will bring that conversation back on a future date.

#### E. Discussion on potential charter revisions

Mr. MacAskill noted that the packet includes some recommendations for revisions of the charter.

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Mr. Powers commented that he has opined and offered again that, as someone who reads that book constantly, it is ripe for a review but he added, that is not his call.

Mr. MacAskill noted that he believes they have \$75,000 to hire an outside firm to review the charter and make suggestions.

Mr. Powers believes that the scope was reduced at Town Meeting and he will check.

Mr. Howell commented that the scope was reduced from zoning bylaws down to the charter and regular bylaws.

Mr. MacAskill commented that he anticipates this coming back as part of the Town Administrator's Plan. Some of the suggestions are part of a big picture, one that he would like to see the Board go forward with, to change the specified time of Town Meeting and he gave his reasons.

Mr. Howell noted that beginning the meetings with department heads earlier in February could help avoid issues with the Finance Committee closer to Town Meeting.

Mr. Powers is already working on getting earlier dates for next year. He can present the Board with a schedule and he gave a brief summary of past discussions about the charter and a charter commission, noting what the commission would do. He feels having a conversation along the lines of a commission first would be helpful. It would make the next steps simpler and he expressed his concerns about not having a required time to review. He will share a newsletter with the Board that refers to that issue. He feels there is great value in the Town contemplating where we are with the charter and how to handle it.

Mr. Howell noted that the dates mean that they can't go past but you can always go sooner. He noted that he had been the chair of the Review Committee and noted the positive changes that had occurred.

Mr. Powers noted that he is talking about references in the charter that refer to Capital Outlay, Finance Committee, Select Board, separate from what he does. There is a disconnect in that this Town has had a practice of incorporating Finance Committee recommendations into the printed warrant. He noted that the printed warrant is the purview of the Select Board only. He noted that Finance Committee requirements that are in the charter. He suggested they look at the deadlines in the charter and two owns them and what they should do for next steps.

Board members voiced their opinions and concerns and all agreed that more conversation is needed. There was also conversation about KP Law and their involvement with the charter.

Mr. MacAskill referred to creating a commission and having the entire document reviewed and also hiring a firm to review. He asked Mr. Powers how that can be accomplished.

May 22, 2023

Mr. Powers replied that legally speaking there are two mechanism that towns can use to change their charters which he described in detail. He will ask counsel the procedure to create a commission.

Mr. Howell noted that a Charter Commission is an elected body.

F. Discussion and possible vote to send a letter of support for the project at 5 Bells Neck Road

John Carey of Hyannis spoke to the Board, asking for a letter of support for the project at 5 Bells Neck Road. He thanked them for their previous support on a project and he gave an update.

Mr. Powers asked Mr. Carey questions about the project. He commented that the Board could offer a letter of support but could not refer to the project as a partnership.

Board members offered their support and agreed to sign the letter.

Mr. Powers and staff will “tweak” the letter before it is signed.

Mr. Howell moved that Mr. Powers redraft the letter and to authorize Mr. MacAskill to sign, seconded by Ms. Anderson. Vote 5:0 in favor.

Mr. Carey asked if he can be involved in Harwich by being on a committee. Mr. Howell replied, explaining that preference is given to residents but that he is not prohibited from applying.

**CONTRACTS:**

- A. Vote to approve an Inter-municipal Agreement with the Town of Orleans regarding the Supportive Daycare Program for residents with dementia and cognitive impairment.

Mr. Howell moved to approve the Inter-municipal Agreement as presented and to authorize the Chair to sign, seconded by Ms. Anderson. Vote 5:0 in favor.

**TOWN ADMINISTRATOR’S REPORT:**

No report.

**SELECTMEN’S REPORT:**

Mr. Howell commented and acknowledged the efforts of Pete McCarthy and noted that everyone did a terrific job.

Ms. Anderson recognized a teacher, Nancy Gifford, who was elected as the Massachusetts STEM Teacher of the Year. She read the letter of recognition.

**CORRESPONDENCE:**

May 22, 2023

None

**ADJOURNMENT:**

Ms. Kavanagh moved to adjourn, seconded by Ms. Anderson. Vote 5:0 in favor.

Meeting adjourned.

Respectfully submitted,

Judith R. Moldstad,  
Recording Secretary

DRAFT

May 22, 2023

**MINUTES  
SELECT BOARD  
DONN B. GRIFFIN ROOM, TOWN HALL  
732 MAIN STREET, HARWICH, MA  
EXECUTIVE SESSION 5:00 PM  
REGULAR MEETING 6:00 PM  
TUESDAY, MAY 30, 2023**

**MEMBERS PARTICIPATING:** Michael MacAskill, Chair, Mary Anderson, Vice Chair, Julie Kavanagh, Don Howell and Jeff Handler

**ALSO PARTICIPATING:** Joseph F. Powers, Town Administrator

**CALL TO ORDER:** Chairman MacAskill called the meeting of the Harwich Select Board to order at 6:00PM on Tuesday, May 30, 2023. He stated that they had started the meeting in Executive Session at 5:00 PM.

**EXECUTIVE SESSION:**

A. Pursuant to M.G.L. c. 30A, s21(a)(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating power of the  
Town- 5 Sea Street Extension

B. Pursuant to G.L. c 30A, sec 21(a)(2) to conduct strategy session in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel: Fire Chief and Town Administrator

Mr. MacAskill stated that, in Executive Session, they discussed litigation with respect to 5 Sea Street. No announcements were made as litigation is on going.

With respect to non-union negotiations, they did not discuss the Town Administrator. Decisions were made with respect to the Fire Chief but no announcements were made at this meeting.

**PLEDGE OF ALLEGIANCE:**

Mr. MacAskill invited all attendees to join in the Pledge of Allegiance

**SELECT BOARD TO REORGANIZE:**

Mr. MacAskill nominated Mary Anderson as Chair, seconded by Ms. Kavanagh. Vote 5:0 in favor.

Mr. MacAskill nominated Julie Kavanagh as Vice Chair, seconded by Ms. Anderson. Vote 5:0 in favor.

Ms. Anderson nominated Jeff Handler as Clerk, seconded by Ms. Kavanagh. Vote 5:0 in favor.

May 30, 2023

Ms. Anderson moved that Michael MacAskill and Don Howell be the Interview Committee, seconded by Mr. Handler. Voter 5:0 in favor.

**SELECT BOARD AS OF MAY 30, 2023:**

Mary Anderson, Chair, Julie Kavanagh, Vice Chair, Jeff Handler, Clerk, Michael MacAskill and Don Howell, Interview Committee

Ms. Anderson, Chair, thanked Mr. MacAskill for taking a second year as Chair, she hopes she can do as well. It has been an education watching him and she is grateful for his help.

**PUBLIC COMMENTS/ANNOUNCEMENTS:**

\*\*At 3:34 in the recording, the screen went black. It resumed at 3:54. \*\*

At the time the recording resumed, an announcement was being made by Shelia House of the Youth Services Committee regarding a website for high school age kids to use and access information regarding helplines and other resources. Cards with the information will be distributed in various places.

John Chory of Harwich spoke of the Route 39 and Chatham Road intersection and offered suggestions of signage at that intersection. He asked the Board to consider his suggestion, signage is much less expensive than the proposed project. At the request of Ms. Anderson, he will email his suggestion to her.

A. Committee Vacancies

No discussion on this subject.

**CONSENT AGENDA:**

A. Approve the Select Board Meeting Minutes:

1. May 15, 2023

B. Vote to approve the Assistant Town Administrator's recommendations to grant

permission by NSTAR ELECTRIC COMPANY d/b/a  
EVERSOURCE ENERGY for the purpose to install 64' +/- of 1-3"  
conduit and one handhold 202/H14A at 82 Clearwater Drive

C. Accept the resignation of Judith Underwood, Trustee of the Harwich Affordable Housing Trust Fund, effective May 19, 2023

Mr. Handler moved to approve the Consent Agenda as presented, including sending a letter of thanks to Ms. Underwood for her service, seconded by Mr. Howell. Vote 5:0 in favor.

**NEW BUSINESS:**

A. Discussion and vote on proposed Select Board Summer Meeting Schedule

May 30, 2023

Mr. Howell commented on the amount of time between meetings and hopes the time will be used to begin some things they have discussed looking ahead at the next Town Meeting.

Mr. MacAskill agreed and noted that a Special Meeting can be called if there is a need.

Mr. Howell moved to accept the schedule as approved and presented, seconded by Mr. Handler. Vote 5:0 in favor.

#### B. Discussion on Select Board Working Sessions

Ms. Anderson suggested a working session noting the it is similar to a meeting in that the agenda is posted. The differences are that it is open to the public, it is not televised, there is no public comment and the Board is seated at a round table. She proposed that the Board do a few Working Sessions beginning on June 12, 2023 to discuss goals for the following year. She asked Board members for comments. The meeting was reschedule to June 20th for all members to be able to attend.

All members agreed that the Working Session is a good idea. Mr. Howell added that he feels it should be driven by a particular subject rather than an agenda.

#### C. Approve a 2023 Season Innholders license renewal - Allen Harbor Inn, 326 Lower County Road

Mr. MacAskill moved to approve the license renewal as presented, seconded by Ms. Kavanagh. Vote 5:0 in favor.

#### D. Approve the following Special Permits:

1. One Day All Alcohol License - HECH Children's Center - Event to be held on June 11,2023, 12:00PM to 4:00PM, outside 204 Sisson Road

Mr. MacAskill moved to approve the Special Permit as presented, seconded by Ms. Kavanagh. Vote 4:0 in favor with Mr. Howell not voting with an apparent conflict of interest.

2. One Day Wines and Malt License - Pleasant Bay Boating Community - Event to be held June 15, 2023, 5:00PM , outside at 228 Route 28

Mr. MacAskill moved to approve the Special Permit as presented, seconded by Ms. Kavanagh. Vote 5:0 in favor.

#### E. Appoint Claudia Williams as a Trustee of the Harwich Affordable Housing Trust Fund effective May 30, 2023 and term to expire June 30, 2023

Mr. Handler moved to appoint Claudia Williams as presented, seconded by Ms. Kavangh.

Mr. Howell commented that he will be voting against and gave his reasons.

May 30, 2023

Discussion followed in regards to whether or not there are benefits to having Ms. Williams one meeting before her three year term begins.

Vote 4:1 in favor with Mr. Howell opposed.

F. Appoint a member of the Select Board as a Trustee to the Harwich Affordable Housing Trust Fund

Mr. Handler moved to appoint a member of the Select Board as a Trustee to the Harwich Affordable Housing Trust Fund. Motion withdrawn.

Mr. MacAskill commented that he would like to appoint Ms. Anderson as the Select Board member as a Trustee to the Harwich Affordable Housing Trust Fund.

Ms. Anderson commented that she would accept the nomination and that she will be seeking help from other Select Board members.

Mr. Handler moved to appoint Mary Anderson of the Select Board as a Trustee of the Harwich Affordable Housing Trust Fund for a term to expire June 30, 2025, seconded by Ms. Kavanagh. Vote 5:0 in favor.

G. Discussion Select Board Committee Liaisons

Ms. Anderson noted that the packet has a list of Committees and the present liaisons. She asked Board members to review the list and notify her by June 9th of which Committees they would be interested in.

H. Review and take action on G.L., c. 268A, Section 23(b)(3) Disclosure of Appearance of Conflict of Interest Form - Ann Clark Tucker, Planning Board

Mr. Powers noted the Disclosure that is in the packet. It is for the Board to confirm that they have received it and see no reason or conflict as to why the individual could not continue to serve.

Mr. Handler moved to review and take action on the Disclosure as presented, that there is no problem and the Board supports her position, seconded by Mr. Howell. Vote 5:0 in favor.

**OLD BUSINESS:**

A. Town Administrator's update on ongoing projects

Mr. Powers referred to a memorandum and attachment in the packet relating to a process that began immediately following Town Meeting. He reviewed the items in the documents in detail, procurements, funding sources and necessary actions. He is creating a spreadsheet for the Select Board.

Board members asked questions regarding timelines and the Town Administrator's expectations.

May 30, 2023



Mr. Powers replied with answers.

Mr. Chorey asked what dates and information will be included on the list.

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

Mr. Powers announced that he has appointed a Program Specialist III on the Harwich Council on Aging, Jen Anderson starting on June 12th. Also Laura Falletti has been appointed as Executive Assistant in the Harwich Building Department and expects to start next week.

#### **SELECT BOARD MEMBER REPORTS:**

Mr. MacAskill offered a Public Comment for Cindy Williams, Director of the Chamber of Commerce. The BBQ competition Beef and Bones will be held June 10th from 4:00 to 8:00. Contact Ms. Williams for tickets.

Mr. Handler announced that he dropped off an application for someone interested in getting involved in some capacity. He also announced that Allen Thompson had been sworn in and that it would be his last 3 year term after many decades. As of this date there were nomination papers turned in for Mr. Allen Thompson to enter into the Harwich Hall of Fame. He commended Mr. Thompson on his service to Harwich since 1965 and expressed his excitement to see what the Committee recommends to honor him. All Committee members expressed their appreciations.

Mr. Thompson spoke and noted how many of his family members have been involved and how they contributed. He commented that it has been rewarding and encouraged everyone to get involved. He shared his thoughts, reflected on some memories and expressed his thanks.

Mr. Howell commented on the over 300 people who attended the Memorial Day Ceremony. It was a small town America moment and heartwarming.

Ms. Anderson commented that Mr. Howell did an excellent job delivering the proclamation. She also acknowledged the speakers, the Boy Scouts, the bugler and the High School group that sang.

#### **CORRESPONDENCE:**

No correspondence.

#### **ADJOURNMENT:**

Mr. Howell moved to adjourn, seconded by Ms. Kavanagh. Vote 5:0 in favor.

Meeting adjourned.

Respectfully submitted,

May 30, 2023

Judith R. Moldstad  
Board Secretary

DRAFT

May 30, 2023

# **NEW BUSINESS**

## OFFICE OF THE TOWN ADMINISTRATOR

Joseph F. Powers, *Town Administrator*  
Meggan M. Eldredge, *Assistant Town Administrator*

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



May 24, 2023

Ms. Ashley Symington

Dear Ms. Symington,

It is my pleasure to offer you the position of Director of Youth and Family Services for the Town of Harwich. I look forward to your positive contributions to the Town.

This conditional offer letter confirms our understanding of your pre-employment terms with the Town.

- Pursuant to the Town Charter, the Town Administrator makes the appointment for this position subject to confirmation by the Select Board. Your name will be put forth for confirmation on Monday, June 5, 2023. Successful confirmation will be needed to finalize appointment;
- The Town will arrange for a Pre-Employment Physical and Drug Test that must be successfully completed;
- Your employment is contingent upon a successful background and C.O.R.I. check;
- Your probation period is six months from your start date, July 3, 2023. The town reserves the right, if necessary, to extend the probationary period by an additional three (3) months.

In addition to the pre-employment terms above, I would like to outline our understanding regarding your transition from private practice. As you know, the State Ethics Commission has strict standards on conflict of interest when it comes to public employment. As our Youth and Family Services Director, you will not be able to provide any type of counselling to Harwich or Chatham residents outside of your position with the Town. Your current caseload will be required to be referred out to other practitioners or absorbed into your new caseload as our Director.

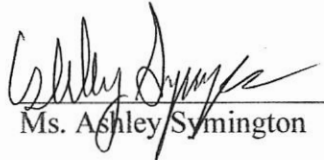
Your position title will be Director of Youth and Family Services and is included in the Management Employees Association/SEIU 888 contract and your employment is subject to the rights and obligations included in it. Your starting annual salary is \$80,784.46 (Grade M2, Step 1). Upon starting, you will receive a one time, lump-sum, non-pensionable stipend of \$750.00. After successful completion of six months of employment, a second stipend of \$750.00 will be provided.

Please read this letter and confirm your understanding of the terms of your employment by signing the bottom of the letter and returning a copy to us for your personnel file.

I am pleased that you are continuing your professional career with us. Please feel free to contact me if you have any questions.

Sincerely,

Joseph F. Powers  
Town Administrator

  
Ms. Ashley Symington

5/25/2023  
Date

cc: Meggan Eldredge, Assistant Town Administrator  
Accounting  
Payroll  
Personnel File

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039



**Joseph F. Powers**, *Town Administrator*  
**Meggan Eldredge**, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645

# MEMO

TO: Select Board

FROM: Joseph F. Powers, Town Administrator

CC: Meggan M. Eldredge, Assistant Town Administrator

RE: Fiscal Year 2024 Holiday Calendar

DATE: June 2, 2023

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Below is the proposed holiday calendar for Fiscal Year 2024.

- Independence Day..... Tuesday, July 4, 2023
- Labor Day..... Monday, September 4, 2023
- Columbus Day..... Monday, October 9, 2023
- Veterans’ Day (Observed)..... Friday, November 10, 2023
- Thanksgiving..... Thursday, November 23, 2023
- Day after Thanksgiving ..... Friday, November 24, 2023
- Christmas Day ..... Monday, December 25, 2023
- New Year’s Day ..... Monday, January 1, 2024
- Martin Luther King Day ..... Monday, January 15, 2023
- Presidents Day..... Monday, February 19, 2024
- Patriots Day ..... Monday, April 15, 2024
- Memorial Day ..... Monday, May 27, 2024
- Juneteenth Day ..... Wednesday, June 19, 2024



*732 Main Street*  
*Harwich, MA 02645*  
**CONSERVATION COMMISSION**

**CONSERVATION COMMISSION**

**(508)-430-7538 FAX (508)430-7531**

June 1, 2023

The Harwich Select Board  
732 Main Street  
Harwich, MA 02645

At their meeting on May 24, 2023, the Harwich Conservation Commission requested I write the Select Board this letter on their behalf in support of the request of the Harwich Conservation Trust to put Conservation Restrictions (CRs) on two properties, and the Restrictions to be held by the Cape Cod Compact of Conservation Trusts.

The first is a 1.3 acre property at 2 Old Chatham Road on White Pond. It has several hundred feet of shoreline along the pond, on which Plymouth Gentian, a state-listed rare plant, grows. It is also in a Mapped Zone II Wellhead Protection Area.

The second is a 2.3 acre property at 115 Sears Road and 8 Salt Meadow Lane. It would abut existing Harwich Conservation Trust land. The property has sensitive wetland resource areas, and is also in the Flood Zone to the Herring River. The topography is low and gradual enough to support inland migration of salt marsh as climate change happens. It has few if any invasive plant species on it; it is in pristine natural condition.

Putting a Conservation Restriction on a property gives it double protection as well as oversight. The Commission encourages the Select Board to grant Conservation Restrictions on these two properties.

Amy Usowski  
Conservation Administrator  
Town of Harwich



P.O. Box 101, South Harwich, MA 02661  
Ph. 508-432-3997 • E-mail: [info@harwichconservationtrust.org](mailto:info@harwichconservationtrust.org)  
[www.harwichconservationtrust.org](http://www.harwichconservationtrust.org)

June 1, 2023

Town of Harwich Select Board  
732 Main Street  
Harwich, MA 02645

To the Select Board,

The Harwich Conservation Trust (HCT) respectfully asks that the Town of Harwich Select Board review the two attached Conservation Restrictions (CRs) at your June 5, 2023 meeting. We hope that the Select Board will vote to approve these CRs.

The following CRs are attached:

- 1) White Pond CR – 2 Old Chatham Road, Harwich. This 1.3-acre property includes 300 feet of shoreline on White Pond, hosting a colony of Plymouth Gentian (*Sabatia kennedyana*), a state-listed plant Species of Special Concern within rare coastal plain pond shore habitat. The property is also mapped as Zone II Wellhead Protection Area as identified by the Mass DEP, the protection of which is critical to maintaining the public groundwater drinking water supply.
- 2) Herring River Marsh View and Coastal Resilience CR – 115 Sears Road and 8 Salt Meadow Lane, Harwich. The 2.3-acre area to be protected abuts the 12+ acre A. Janet DeFulvio Wildlife Sanctuary, owned by HCT, and is located directly opposite a wheelchair accessible boardwalk and viewing deck with views of the Herring River Marsh and osprey nesting platform. The property lies within the FEMA 100-year Special Flood Hazard Area along the Herring River Marsh and is identified as an area of above average coastal resilience with high potential to support inland migration of salt marsh and other coastal habitats in the face of climate change over the coming century.

Both of these properties are being acquired by HCT and the CRs will be granted to The Compact of Cape Cod Conservation Trusts, Inc. The conservation restrictions outline the ecological values (e.g., wildlife habitat, water resource protection, biodiversity, trail connectivity, climate resiliency), prohibited and permitted acts and uses, public access, and legal descriptions of the premises. Preserving these properties will ensure many conservation benefits as described in each document. Please let me know if you have any questions. We appreciate your consideration and approval of these CRs.

Sincerely,

*Michael W. Lach*

Michael W. Lach  
Executive Director

cc: The Compact



Property Address: 2 Old Chatham Road, Harwich, MA 02645

**GRANTOR: Trustees of the Harwich Conservation Trust**  
**GRANTEE: The Compact of Cape Cod Conservation Trusts, Inc**  
**ADDRESS OF PREMISES: 2 Old Chatham Road, Harwich, MA**  
**FOR GRANTOR’S TITLE SEE:** Barnstable County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.  
**FOR GRANTOR’S PLAN SEE:** Barnstable County Registry of Deeds at Plan Book 502, Page 97.

**GRANT OF CONSERVATION RESTRICTION**

**I. STATEMENT OF GRANT**

A majority of **THOMAS M. EVANS, COLIN A. LEONARD, DONNA J. PETERSON, JONATHON IDMAN, PATTI A. SMITH, ANDREA SILBERT, MATTHEW CUSHING, BRUCE NIGHTINGALE, and NANCY POOR, as TRUSTEES of and acting as such on behalf of the HARWICH CONSERVATION TRUST**, established under Declaration of Trust dated September 24, 1988 and recorded in the Barnstable County Registry of Deeds in Book 6456, Page 222, and in the Barnstable County Land Registry District as Document No. 615918, as amended, with an office address at 947 Route 28, South Harwich, MA and a mailing address of P.O. Box 101, South Harwich, MA 02661, being the owner of the Premises as defined herein, constituting all of the owner(s) of the Premises as defined herein, for its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to **THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office address at 36 Red Top Road, Brewster, MA 02631 and a mailing address of P.O. Box 443, Barnstable, MA 02630, its permitted successors and assigns (“Grantee”), as a gift, for nominal consideration, **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following Conservation Restriction on land located in the Town of Harwich, Barnstable County, Commonwealth of Massachusetts containing the entirety of a ±1.3-acre parcel of land (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

## II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**Conservation Partnership.** The fee interest in the Premises was acquired utilizing, in part, assistance from the Conservation Partnership program which requires, pursuant to Section 2A of Chapter 286 of the Acts of 2014, the conveyance of this Conservation Restriction.

**The Conservation Values protected by this Conservation Restriction include the following:**

- Open Space. The Premises contributes to the protection of the scenic and natural character of Harwich and the protection of the Premises will enhance the open-space value of these and nearby lands. The conservation of the Premises provides public access to approximately 300 feet shoreline on White Pond, a Great Pond (greater than 10 acres) that previously has had no public access. Extensive areas of open space exist on the north side of White Pond, including Dennis Water District’s Highline Wellfield, and the Meeting House Road Conservation Area.
- Soils and Soil Health. The Premises includes a majority of Forest Land of Statewide Importance as identified by the USDA Natural Resources Conservation Service (source MassGIS MassMapper). The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.
- Public Access. Public access to the Premises will be allowed for, passive outdoor recreation activities such as walking, photography, bird watching, education, and nature study. The public will also have access to 300 feet of previously inaccessible pond shoreline on White Pond (a Great Pond).
- Biodiversity. The Premises (and the shoreline of White Pond generally) hosts multiple colonies of Plymouth Gentian (*Sabatia kennedyana*), a state-listed plant Species of Special Concern, protected under the Massachusetts Endangered Species Act, on rare coastal plain pondshore habitat; this part of Cape Cod is also considered a focus area for habitat protection for the New England Cottontail by MassWildlife.
- Water Quality. Protection of the Premises will protect water quality of White Pond which it abuts with 300 feet of shoreline. The Premises is within the pond recharge area, contributing groundwater flow to the pond. Protection of the forested landscape can help maintain water quality for public drinking water.

*White Pond Conservation Restriction, Harwich MA*

- Water Supply. Approximately 70% of the Premises is mapped as Zone II Wellhead Protection Area as identified by the MA Department of Environmental Protection, the protection of which is critical to maintaining the public groundwater drinking water supply for the Town of Dennis.
- Wetlands. The White Pond shoreline and bordering vegetated wetlands on the Premises provide valuable habitat for a diverse array of wildlife species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).
- Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act ( Chapter 716 of the Acts of 1989), adopted a Regional Policy Plan ("RPP"), amended in 1996, 2002, 2009, 2012, 2018, and 2021 which provided, inter alia (references are to the 2018 RPP amended March 2021):
  - "To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity" (Wildlife and Plant Habitat Goal, p. 61); and
    - "Maintain existing plant and wildlife populations and species diversity."
  - "To conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems" (Open Space Goal, p. 61);
    - "Protect and preserve natural, cultural, and recreational resources;"
    - "Maintain or increase the connectivity of open space;"
    - "Protect or provide open space appropriate to context."

This Conservation Restriction will advance each of these objectives. The Wildlife and Plant Habitat Goal will be served because the protection of the Premises will protect important pond shoreline and buffer that provides valuable habitat for a diverse array of wildlife species. The Open Space Goal will be served by providing public access to approximately 300 feet shoreline on a Great Pond that previously had no public access.

- Consistency with Clearly Delineated Town of Harwich Open Space and Recreation Plan. Protection of the Premises will further the Town of Harwich's documented goals regarding conservation of land. The Town of Harwich's Open Space Plan 2017 provides guidance for preserving and protecting Harwich's open space, recreational areas, and water resources. The Open Space and Recreation Plan also prioritizes conservation of land that promotes natural resource protection, maintains the quality and quantity of Harwich 's groundwater, preserves the ecological integrity of marine and freshwater, protects inland wetlands, and prevents the loss of critical wildlife and plant habitats (Goals V through VI, pp. 63-64). The protection of the Premises will meet these goals in, preserving native species, protecting ground and surface water resources, and enabling passive recreational opportunities.
- Consistency with the Town of Harwich's Conservation Restriction Policy. Town of Harwich has adopted a Conservation Restriction Program, consisting of policies and

guidelines approved by the Board of Selectmen, Assessors and Conservation Commission in 1991, which specified that purposes of a conservation restriction could include the following:

- to protect groundwater quality for drinking purposes;
  - to prevent the cutting of trees or forests;
  - to preserve important natural habitats and rare species; and,
  - to limit or prevent construction on land of natural resource value.
- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife and aquatic habitats; and protect ground and surface water quality.

### **III. PROHIBITED and PERMITTED ACTS AND USES**

#### **A. Prohibited Acts and Uses**

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, wind turbine, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;

6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
10. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
11. Residential, Commercial, or Industrial Uses. Using the Premises for residential, commercial or industrial purposes;
12. Inconsistent Uses. Using the Premises for any other uses or activities that are inconsistent with the Purposes of this Conservation Restriction, or that would materially impair the Conservation Values.

**B. Permitted Acts and Uses**

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A, the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV), including, subject to any local, state and federal regulations, the right to carry out vista pruning to maintain a view of the pond through the existing natural vegetation from the footprint of the demolished dwelling (as shown on the plan in Exhibit B), provided that no activities disturb or take any state-listed rare species along the pondshore, the width of the vista

- pruning area shall be no greater than thirty (30) feet, and shall be limited to minimize damage to natural vegetation and the Conservation Values;
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
  3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that there is no stockpiling or composting within 100 feet of a wetland;
  4. Natural Habitat and Ecosystem Improvement. Conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
  5. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
  6. Trails. Maintaining and constructing trails as follows:
    - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to six (6) feet in width overall, with a treadway up to four (4) feet in width. Conducting routine maintenance of the existing dirt pervious vehicle access way on the eastern side of the property to be used for vehicle access solely when conducting land management activities as permitted herein. This vehicle access may be maintained at a width of up to fifteen (15) and a length of up to one-hundred and fifty (150) feet when measured from the property line at Old Chatham Road;
    - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the trail width limitations above. The allowance for new and relocated trails does not include a new or relocated vehicle access way;
    - c. Trail Features. With prior written approval of the Grantee, constructing boardwalks, footbridges, railings, steps, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
  7. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation

Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;

8. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments or as necessary for engaging in land management activities as permitted herein;
9. Outdoor Passive Recreational and Educational Activities Hiking, snowshoeing, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities, so long as no activities disturb or take any state-listed rare species along the pondshore;
10. Fencing. The erection and maintenance of wooden split-rail or comparable open-faced (i.e., sight-pervious) fencing no more than six (6) feet in height and designed to allow for the passage of small wildlife, in connection with the creation and maintenance of foot trails, for public passive recreational access, and private property demarcation.

### **C. Site Restoration**

Upon completion of any Permitted Acts and Uses, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

### **D. Compliance with Permits, Regulations, Laws**

The exercise of any Permitted Acts and Uses under Paragraph III.B shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

### **E. Notice and Approval**

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
  - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
  - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;

- c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
  - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
  3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

#### **IV. INSPECTION AND ENFORCEMENT**

##### **A. Entry onto the Premises**

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

##### **B. Legal and Injunctive Relief**

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment



of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.

3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

#### **C. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the sole discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

#### **D. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

#### **E. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

#### **V. PUBLIC ACCESS**

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph III.B.9, provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the Purposes and Conservation Values. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the

Premises not authorized in Paragraph III.B.9. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

## **VI. TERMINATION/RELEASE/EXTINGUISHMENT**

### **A. Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

### **B. Grantor’s and Grantee’s Right to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VI.C, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

### **C. Grantee’s Receipt of Property Right**

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, for the purpose of enforcing this Conservation Restriction, but does not entitle Grantee, upon extinguishment, release, or termination, to any proceeds received by the Grantor from the subsequent sale, exchange or involuntary conversion of the Premises. Any proceeds that result from any such extinguishment, release, or termination will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

### **D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph VI.B and Paragraph VI.C. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee

shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

## **VII. DURATION and ASSIGNABILITY**

### **A. Running of the Burden**

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

### **B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VIII. SUBSEQUENT TRANSFERS**

### **A. Procedure for Transfer**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Any transfers shall receive prior approval by Grantee to assure that the Premises is transferred to a qualified conservation organization. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record it in the Barnstable County Registry of Deeds, and at the Grantor's expense, a notice of this Conservation

Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **B. Grantor's Liability**

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **IX. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **XI. AMENDMENT**

### **A. Limitations on Amendment**

Grantor and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or

6. alter or remove the provisions described in Paragraph VI (Termination /Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive

## **B. Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Harwich and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the Barnstable County Registry of Deeds.

## **XII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the Barnstable County Registry of Deeds.

## **XIII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Trustees of the Harwich Conservation Trust  
P.O. Box 101  
South Harwich, MA 02661

To Grantee: The Compact of Cape Cod Conservation Trusts, Inc.  
P.O. Box 443  
Barnstable, MA 02630

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

## **XIV. GENERAL PROVISIONS**

### **A. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

### **B. Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in order to effect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

**C. Severability**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction shall not be affected thereby.

**D. Entire Agreement**

This instrument sets forth the entire agreement of the Grantor and Grantee with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

**XV. BASELINE DOCUMENTATION REPORT**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) titled “*Baseline Documentation Report, White Pond Conservation Restriction*”, dated \_\_\_\_\_, 2023 prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and included by reference herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

**XVI. MISCELLANEOUS**

**A. Pre-existing Public Rights**

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary, is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

**B. Subordination**

The Grantor shall record at the Barnstable County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**C. Executory Limitation**

If Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then Grantee's rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

**D. Prior Encumbrances**

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

**E. The following signature pages are included in this Grant:**

Grantor - Trustees of the Harwich Conservation Trust

Grantee Acceptance - The Compact of Cape Cod Conservation Trusts, Inc.

Approval of the Town of Harwich Select Board

Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

**F. The following exhibits are attached and incorporated herein:**

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of Premises

*White Pond Conservation Restriction, Harwich MA*

At a meeting duly held on \_\_\_\_\_, 2023, the Harwich Conservation Trust voted to grant the foregoing Conservation Restriction to The Compact of Cape Cod Conservation Trusts, Inc.

**Grantor: Harwich Conservation Trust**  
**By its Trustees:**

\_\_\_\_\_  
Thomas M. Evans, President/Trustee

\_\_\_\_\_  
Colin A. Leonard

\_\_\_\_\_  
Donna J. Peterson

\_\_\_\_\_  
Jonathon Idman

\_\_\_\_\_  
Patti A. Smith

\_\_\_\_\_  
Andrea Silbert

\_\_\_\_\_  
Matthew Cushing

\_\_\_\_\_  
Bruce Nightingale

\_\_\_\_\_  
Nancy Poor

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss: \_\_\_\_\_, 2023

Then personally appeared \_\_\_\_\_,  
\_\_\_\_\_, and proved to me through  
satisfactory evidence of identification, which was personal knowledge of identity, to be the persons  
whose names are signed on the document, and acknowledged they are duly authorized to act on  
behalf of said Trust, and further acknowledged the foregoing instrument to be their free act and  
deed on behalf of said Trust, before me.

\_\_\_\_\_  
Mark H. Robinson, Notary Public  
My Commission Expires: 8 July 2027



**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from the Harwich Conservation Trust was accepted by The Compact of Cape Cod Conservation Trusts, Inc., this \_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Leonard W. Johnson

Its: President, duly authorized

By: \_\_\_\_\_  
Henry Lind

Its: Treasurer, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Leonard W. Johnson, President of The Compact of Cape Cod Conservation Trusts, Inc., and Henry Lind, Treasurer of The Compact of Cape Cod Conservation Trusts, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Mark H. Robinson Notary Public  
My Commission Expires: 8 July 2027

**APPROVAL OF TOWN OF HARWICH SELECT BOARD**

We the undersigned, being a majority of the Select Board of the Town of Harwich, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2023, the Select Board voted to approve the foregoing Conservation Restriction from the Harwich Conservation Trust to The Compact of Cape Cod Conservation Trusts, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF HARWICH SELECT BOARD

\_\_\_\_\_  
Michael MacAskill

\_\_\_\_\_  
Mary E. Anderson

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

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

\_\_\_\_\_  
Jeffrey F. Handler

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

**APPROVAL OF SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS OF  
THE COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby approves the foregoing Conservation Restriction from the Harwich Conservation Trust to The Compact of Cape Cod Conservation Trusts, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Rebecca L. Tepper  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Rebecca L. Tepper, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

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

**EXHIBIT A**

Description of the Premises

The land in Town of Harwich, Barnstable County, Massachusetts, containing 1.3 acres, +/-, shown as "Lot 3" on a plan of land titled *Plan of Land in Harwich, MA for Timothy T. Lynch*, dated January 21, 1994 , by R.J. O'Hearn, Surveyor, 35 Route 134, Swan River Plaza, South Dennis, MA 02660, recorded at the Barnstable County Registry of Deeds Plan Book 502, Page 97.

A sketch plan from the above referenced plan is attached hereto in Exhibit B.

For Grantors Title, see deed dated \_\_\_\_\_ recorded in the Barnstable Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

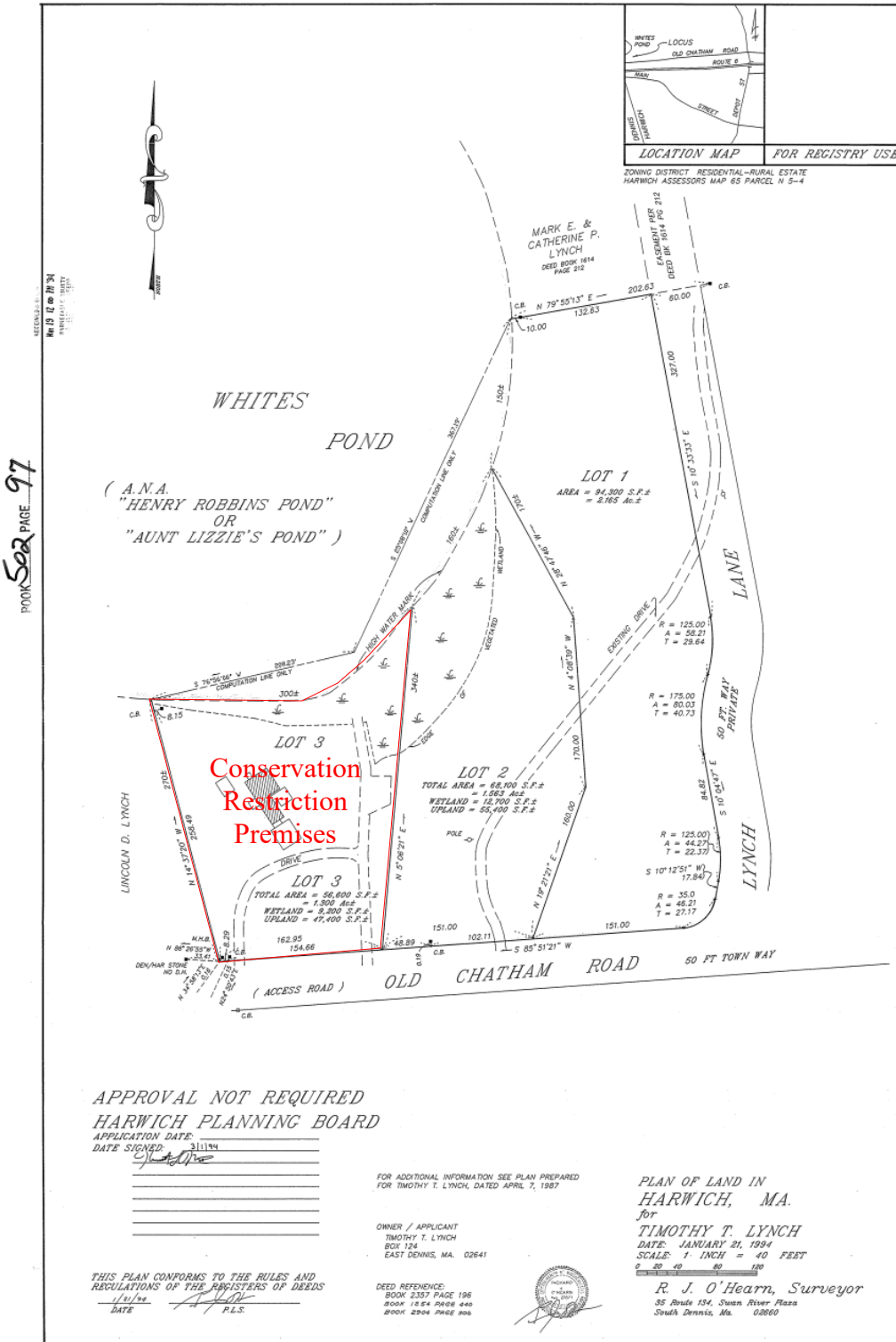
Street Address: 2 Old Chatham Road, Harwich

Town of Harwich Assessor's Map 65, Lot N6-3

**EXHIBIT B**

Sketch Plan of Premises

For official full size plan see Barnstable County Registry of Deeds Plan Book 502 Page 97.



BOOK 502 PAGE 97

**GRANTOR: Trustees of the Harwich Conservation Trust**

**GRANTEE: The Compact of Cape Cod Conservation Trusts, Inc.**

**ADDRESS OF PREMISES:** 115 Sears Road and 8 Salt Meadow Lane, Harwich, MA

**FOR GRANTOR’S TITLE SEE:** Barnstable County Registry of Deeds at Book \_\_\_\_\_,

Page \_\_\_\_\_.

**GRANT OF CONSERVATION RESTRICTION**

**I. STATEMENT OF GRANT**

A majority of **THOMAS M. EVANS, COLIN A. LEONARD, DONNA J. PETERSON, JONATHON IDMAN, PATTI A. SMITH, ANDREA SILBERT, MATTHEW CUSHING, BRUCE NIGHTINGALE, and NANCY POOR**, as **TRUSTEES of and acting as such on behalf of the HARWICH CONSERVATION TRUST**, established under Declaration of Trust dated September 24, 1988 and recorded in the Barnstable County Registry of Deeds in Book 6456, Page 222, and in the Barnstable County Land Registry District as Document No. 615918, as amended, with an office address at 947 Route 28, South Harwich, MA and a mailing address of P.O. Box 101, South Harwich, MA 02661, being the sole owner of the Premises as defined herein, for its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with **QUITCLAIM COVENANTS**, to **THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office address at 36 Red Top Road, Brewster, MA 02631 and a mailing address of P.O. Box 443, Barnstable, MA 02630, its permitted successors and assigns (“Grantee”), for nominal consideration, **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following Conservation Restriction on the entirety of four (4) parcels of land located in the Town of Harwich, Barnstable County, Commonwealth of Massachusetts together containing a total of 2.3-acres, more or less, (“Premises”), which Premises is more particularly

described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

## **II. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition and available for passive outdoor recreational use, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**Conservation Partnership.** The fee interest in the Premises was acquired utilizing, in part, assistance from the Conservation Partnership program which requires, pursuant to Section 2A of Chapter 286 of the Acts of 2014, the conveyance of this Conservation Restriction.

**The Conservation Values protected by this Conservation Restriction include the following:**

- **Open Space.** The Premises contributes to the protection of the scenic and natural character of Harwich and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts 12+ acres of open space area owned by Harwich Conservation Trust (HCT) and protected in perpetuity, called the A. Janet DeFulvio Wildlife Sanctuary. Protection of the Premises will further the Town of Harwich's documented goals regarding conservation of land. The Town of Harwich's Open Space Plan 2017 provides guidance for preserving and protecting Harwich's open space, recreational areas, and water resources. The Open Space and Recreation Plan also prioritizes conservation of land that promotes natural resource protection, maintains the quality and quantity of Harwich 's groundwater, preserves the ecological integrity of marine and freshwater, protects inland wetlands, and prevents the loss of critical wildlife and plant habitats (Goals V through VI, pp. 63-64). The protection of the Premises will meet the goals preserving the ecological integrity of coastal wetlands by protecting core habitat and its buffer, and expanding existing passive recreational opportunities.
- **Floodplain.** The entirety of the Premises lies within the FEMA 100-year Special Flood Hazard Area with Base Flood Elevation of 11 feet along the Herring River Marsh. The protection of the Coastal Floodplain can slow down flood waters and allow them to flow across a natural landform surface, providing frictional resistance and reducing their energy and destruction potential, allow flood waters to spread over a wide area without obstructions, (obstructions can cause the channelization of flood waters and storm-wave overwash and an increase in the velocity and volume of flow to adjacent or landward areas.), allow flood waters to be detained, absorbed into the ground, or evaporated into the atmosphere, and protect the land from storm erosion by providing a substrate for vegetation that helps to stabilize sediments and slow down flood waters.
- **Soils and Soil Health.** The Premises includes Prime Forest Land of Statewide Importance as identified by the USDA Natural Resources Conservation Service. The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined

in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.

- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, education, and nature study. The Premises is located directly opposite HCT’s wheelchair accessible boardwalk and viewing deck with views of the Herring River Marsh and osprey nesting platform.
- Biodiversity. The Premises includes areas designated as Aquatic Core Habitat, and Critical Natural Landscape, including Aquatic Core Buffer, Tern Foraging Habitat, and Coastal Adaptation Area, as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap, published in 2010 and updated in 2022, was designed to guide strategic biodiversity conservation in Massachusetts by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
- Water Quality. Protection of the Premises will preserve the forested landscape and avoid development of additional septic system discharges. The Herring River is a significant alewife migration and spawning area. Protection of a riparian corridor to Herring River can help maintain water quality which is vital to this cold water fishery;
- Wetlands. The salt marsh and Bordering Vegetated Wetlands on the Premises provide valuable habitat for a diverse array of wildlife species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).
- Climate Change Resiliency. The Premises is identified as an area of above average Coastal Resilience according to The Nature Conservancy’s (TNC) Resilient Land Mapping Tool. TNC’s Resilient Land Mapping Tool was developed in order to map ‘climate-resilient’ sites that are ‘more likely to sustain native plants, animals, and natural processes into the future.’ The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.
- Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a Regional Policy Plan ("RPP"), amended in 1996, 2002, 2009, 2012, 2018, and 2021 which provided, inter alia (references are to the 2018 RPP amended March 2021):
  - “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 61); and
    - “Protect wetlands and their buffers from vegetation and grade changes”



- “Protect wetlands from changes in hydrology”
- “Protect wetlands from stormwater discharges”
- "To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity" (Wildlife and Plant Habitat Goal, p. 61); and
  - "Maintain existing plant and wildlife populations and species diversity."
- "To conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems" (Open Space Goal, p. 61);
  - "Protect and preserve natural, cultural, and recreational resources;"
  - "Maintain or increase the connectivity of open space;"
  - "Protect or provide open space appropriate to context."
- “To prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise, including but not limited to that associated with climate change” (Coastal Resiliency Goal, p.62); and
  - “Minimize development in the floodplain”
  - “Plan for sea level rise, erosion, and floods”
  - “Reduce vulnerability of built environment to coastal hazards”

This Conservation Restriction will advance each of these objectives. The Wetland Resources Goal will be served by protecting salt marsh and bordering vegetated wetlands and their buffers from detrimental impacts of development. Wildlife and Plant Habitat Goal will be served because the protection of the Premises will protect important aquatic core habitat and its buffer, as well as tern foraging habitat. The Open Space Goal will be served by expanding existing protected open space at the A. Janet DeFulvio Wildlife Sanctuary and connecting to a wheelchair accessible boardwalk and viewing deck with views of the Herring River Marsh and osprey nesting platform. The Coastal Resiliency Goal will be met by preventing development in the floodplain, and protecting an area that has been found to have high potential to support inland migration of salt marsh and other coastal habitats in the face of climate change over the coming century.

- Consistency with the Town of Harwich's Conservation Restriction Policy. Town of Harwich has adopted a Conservation Restriction Program, consisting of policies and guidelines approved by the Board of Selectmen, Assessors and Conservation Commission in 1991, which specified that purposes of a conservation restriction could include the following:
  - to protect groundwater quality for drinking purposes;
  - to prevent the cutting of trees or forests;
  - to preserve important natural habitats and rare species; and,
  - to limit or prevent construction on land of natural resource value.
- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife and aquatic habitats; and protect ground and surface water quality.

### **III. PROHIBITED and PERMITTED ACTS AND USES**

#### **A. Prohibited Acts and Uses**

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, wind turbine, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;

9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
10. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
11. Residential, Commercial, or Industrial Uses. Using the Premises for residential, commercial or industrial purposes;
12. Inconsistent Uses. Using the Premises for any purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values.

**B. Permitted Acts and Uses**

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A, the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV);
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that no stockpiling or composting shall take place within 100 feet of any wetland.
4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate

successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;

6. Trails. Maintaining and constructing trails as follows:
  - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to six (6) feet in width overall, with a treadway up to (4) feet in width.
  - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
  - c. Trail Features. With prior written approval of the Grantee and subject to wetlands regulations permitting, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, including pervious surfaced paths meeting Americans with Disability Act guidelines, together with the use of motorized equipment to construct such features;
7. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;
8. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments, and as necessary for engaging in land management activities as permitted herein.
9. Outdoor Passive Recreational and Educational Activities. Hiking, horseback riding, cross-country skiing, snowshoeing, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities;
10. Fencing. The erection and maintenance of wooden split-rail or comparable open-faced (i.e., sight-pervious) fencing no more than six (6) feet in height, and designed to allow for the passage of small wildlife, in connection with public passive recreational access, and private property demarcation;
11. Viewing Platform and elevated walkway. With prior written approval of the Grantee, the right to install a viewing platform and elevated walkway boardwalk thereto over the wetland resource area to provide a view of the Herring River Marsh, provided that all such activities are subject to wetlands regulations permitting.
12. Encroachment Management. Encroachments by the abutting property owners at 198 Route 28 (5,200± ft<sup>2</sup>) and 202 Route 28 (2,500± ft<sup>2</sup>) exist along the south property boundary of the Premises at the time of acquisition by Harwich Conservation Trust. These encroachments consist of cleared vegetation and residential landscaping.

Following acquisition of the Premises, Harwich Conservation Trust will reclaim and manage this encroachment by installing property boundary markers and revegetating the area with native plant species, working with the abutting property owners.

**C. Site Restoration**

Upon completion of any Permitted Acts and Uses, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

**D. Compliance with Permits, Regulations, Laws**

The exercise of any Permitted Acts and Uses under Paragraph III.B shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

**E. Notice and Approval**

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
  - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
  - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
  - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
  - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.

3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

#### **IV. INSPECTION AND ENFORCEMENT**

##### **A. Entry onto the Premises**

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

##### **B. Legal and Injunctive Relief**

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

**C. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the sole discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

**D. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

**E. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

**V. PUBLIC ACCESS**

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph III.B.9 provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the Purposes and Conservation Values. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph III.B.9. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

**VI. TERMINATION/RELEASE/EXTINGUISHMENT**

**A. Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the

Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

**B. Grantor’s and Grantee’s Right to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VI.C, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

**C. Grantee’s Receipt of Property Right**

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, for the purpose of enforcing this Conservation Restriction, but does not entitle Grantee, upon extinguishment, release, or termination, to any proceeds received by the Grantor from the subsequent sale, exchange or involuntary conversion of the Premises. Any proceeds that result from any such extinguishment, release, or termination will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

**D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph VI.B and Paragraph VI.C. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

**VII. DURATION and ASSIGNABILITY**

**A. Running of the Burden**

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

**B. Execution of Instruments**



The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VIII. SUBSEQUENT TRANSFERS**

### **A. Procedure for Transfer**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Any transfers shall receive prior approval by Grantee to assure that the Premises is transferred to a qualified conservation organization. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record it in the Barnstable County Registry of Deeds, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

### **B. Grantor's Liability**

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **IX. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **XI. AMENDMENT**

### **A. Limitations on Amendment**

Grantor and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive

### **B. Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Harwich and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

**XII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

**XIII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Trustees of the Harwich Conservation Trust  
P.O. Box 101  
South Harwich, MA 02661

To Grantee: The Compact of Cape Cod Conservation Trusts, Inc.  
P.O. Box 443  
Barnstable, MA 02630

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

**XIV. GENERAL PROVISIONS**

**A. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

**B. Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in order to effect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

**C. Severability**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction shall not be affected thereby.

**D. Entire Agreement**

This instrument sets forth the entire agreement of the Grantor and Grantee with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

**XV. BASELINE DOCUMENTATION REPORT**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) titled “\_\_\_\_\_”, dated “\_\_\_\_\_” prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and included by reference herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

**XVI. MISCELLANEOUS**

**A. Pre-existing Public Rights**

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary, is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

**B. No Surety Interest**

The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**C. Executory Limitation**

If Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then Grantee’s rights and obligations under this Conservation

Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

**D. Prior Encumbrances**

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

**E.** The following signature pages are included in this Grant:

Grantor – Trustees of the Harwich Conservation Trust

Grantee Acceptance – The Compact of Cape Cod Conservation Trusts, Inc.

Approval of Town of Harwich Select Board

Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

**F.** The following exhibits are attached and incorporated herein:

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of Premises

At a meeting duly held on \_\_\_\_\_, 2023, a majority of the Trustees of the Harwich Conservation Trust voted to grant the foregoing Conservation Restriction to The Compact of Cape Cod Conservation Trusts, Inc.

**Grantor: Harwich Conservation Trust**  
**By its Trustees:**

\_\_\_\_\_  
Thomas M. Evans, President/Trustee

\_\_\_\_\_  
Colin A. Leonard, Trustee

\_\_\_\_\_  
Donna J. Peterson, Trustee

\_\_\_\_\_  
Jonathon Idman, Trustee

\_\_\_\_\_  
Patti A. Smith, Trustee

\_\_\_\_\_  
Andrea Silbert, Trustee

\_\_\_\_\_  
Matthew Cushing, Trustee

\_\_\_\_\_  
Bruce Nightingale, Trustee

\_\_\_\_\_  
Nancy Poor, Trustee

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss: \_\_\_\_\_, 2023

Then personally appeared \_\_\_\_\_  
\_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document, and acknowledged they are duly authorized to act on behalf of said Trust, and further acknowledged the foregoing instrument to be their free act and deed on behalf of said Trust, before me.

\_\_\_\_\_  
Mark H. Robinson, Notary Public  
My Commission Expires: 8 July 2027

**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from the Trustees of the Harwich Conservation Trust was accepted by The Compact of Cape Cod Conservation Trusts, Inc., this \_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Leonard W. Johnson

Its: President, duly authorized

By: \_\_\_\_\_  
Henry Lind

Its: Treasurer, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Leonard W. Johnson, President of The Compact of Cape Cod Conservation Trusts, Inc., and Henry Lind, Treasurer of The Compact of Cape Cod Conservation Trusts, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Mark H. Robinson Notary Public  
My Commission Expires: 8 July 2027

**APPROVAL OF TOWN OF HARWICH SELECT BOARD**

We the undersigned, being a majority of the Select Board of the Town of Harwich, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2023, the Select Board voted to approve the foregoing Conservation Restriction from the Trustees of the Harwich Conservation Trust to The Compact of Cape Cod Conservation Trusts, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF HARWICH SELECT BOARD

\_\_\_\_\_  
Michael MacAskill

\_\_\_\_\_  
Mary E. Anderson

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

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

\_\_\_\_\_  
Jeffrey F. Handler

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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



**APPROVAL OF SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS OF  
THE COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby approves the foregoing Conservation Restriction from the Trustees of the Harwich Conservation Trust to The Compact of Cape Cod Conservation Trusts, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Rebecca L. Tepper  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Rebecca L. Tepper, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

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

**EXHIBIT A**

Description of the Premises

The land in Harwich, Barnstable County, Massachusetts, containing 2.3 acres, +/-, shown as Lot 1, Lot 1A, Lot 2, and Lot 2A on a plan of land titled *Plan of Land in Harwich, MA prepared for Sebastian E. & Diana E. Giner*, dated April 12, 2004, by Moran Engineering, Inc, 941 Main Street, South Harwich, MA 02661, recorded at the Barnstable County Registry of Deeds in Plan Book 591, Page 12.

A sketch plan from the above referenced plan is attached hereto in Exhibit B.

For Grantor's Title, see deed dated \_\_\_\_\_ recorded in the Barnstable County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

Street Address: 115 Sears Road and 8 Salt Meadow Road, Harwich, MA

Town of Harwich Assessors Map 11, Parcel T5-2-0 and Parcel T5-1-0.

I certify that this plan has been prepared in conformity with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts.

*Stephen T. Moran*  
PROFESSIONAL LAND SURVEYOR



FOR REGISTRY USE ONLY

**PLAN NOTE:** Lots 1A, 2A and 3A are for conveyance purposes only and are not to be considered as separate building lots. Lot 1A is to be deeded to and become a part of Lot 1. Lot 2A is to be deeded to and become a part of Lot 2. Lot 3A is to be deeded to and become a part of Lot 3.

**TOTAL AREAS**

**LOTS 1 & 1A**

Upland 41,112 s.f.  
0.94 Ac.±  
Wetland 5,100 s.f.  
0.12 Ac.±  
Total Area: 46,212 s.f.  
1.06 Ac.±

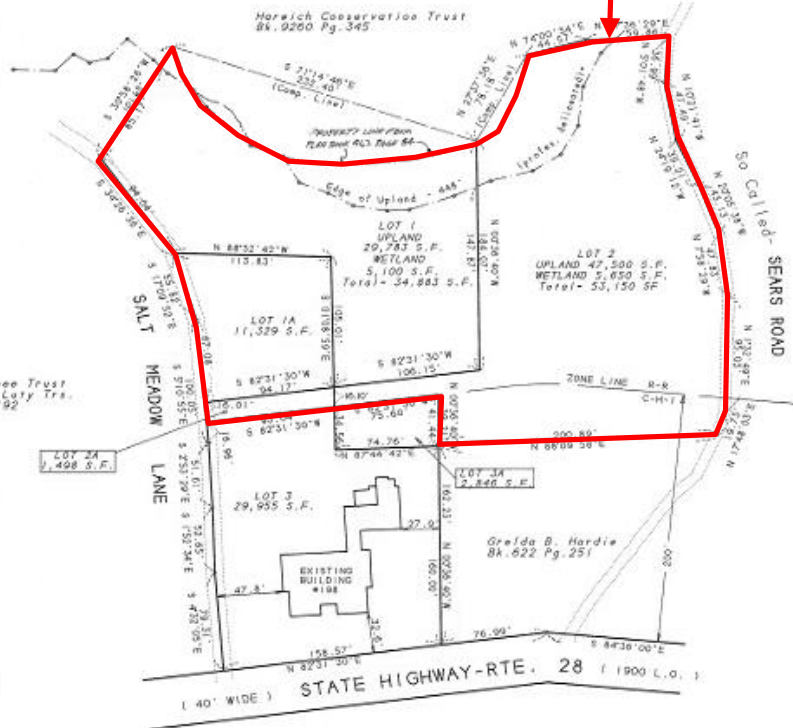
**LOTS 2 & 2A**

Upland 48,998 s.f.  
1.12 Ac.±  
Wetland 5,650 s.f.  
0.13 Ac.±  
Total Area: 54,648 s.f.  
1.25 Ac.±

**LOTS 3 & 3A**

32,801 s.f.  
0.75 Ac.±

The SLL Napoleone Trust  
Stephanie L. Lory Trs.  
Bk. 14952 Pg. 192



**Conservation  
Restriction  
Premises**



2004 RECORDED  
BOOK 591 PAGE 12



LOCATION MAP

Assessors Map 11  
Parcels T4, T5, C-8  
Zone: R-R & C-H-1

Deed Reference: Bk. 6975 Pg. 33  
Bk. 4338 Pg. 10  
Bk. 4299 Pg. 17

Plan References: Pl. Bk. 463 Pg. 1  
Pl. Bk. 430 Pg. 1

Owners of Record: Sebastian E. Giner  
& Diana E. Giner  
165 Old Post Rd.  
Bedford Corners,  
01549

G. Rockwood Clark  
Bk. 7519 Pg. 232

Edge of Upland Delineation is  
File at Harwich Cons. Com.  
Delineation Performed by  
Hamlyn Consulting and  
Peter Fletcher, CPSS

APPROVAL UNDER THE SUBDIVISION  
CONTROL LAW IS NOT REQUIRED.  
HARWICH PLANNING BOARD

*Robert W. Jones*  
*Anna Nightingale*  
*Robert W. Jones*  
*Richard Henry*  
*Thomas C. Burt*

DATE APPROVED: 5-11-04  
DATE SIGNED: 5-11-04

**PLAN OF LAND IN HARWICH, MA**  
PREPARED FOR  
SEBASTION E. & DIANA E. GINER  
PLAN BY: Moran Engineering, Inc  
941 Main Street  
So. Harwich, MA 02661  
(508) 432-2878

SCALE: 1" = 40' DATE: April 12, 2004

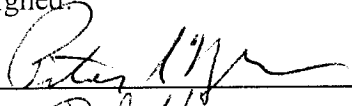


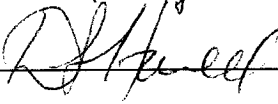


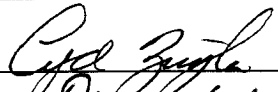
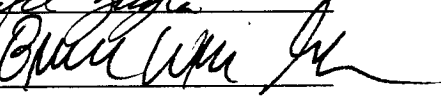
**Board of Selectmen  
Policy Relative to Approval of Streetlight Installation**

At a Public Meeting of the Board of Selectmen held on Monday, March 3, 2003, the Board voted to adopt a policy concerning the installation of streetlights in the Town. It was voted to observe a moratorium on the installation of streetlights until the Town is found to be in a better fiscal position.

Signed:

  
\_\_\_\_\_

  
\_\_\_\_\_

  
  
\_\_\_\_\_

Harwich Board of Selectmen

**TOWN OF HARWICH  
STREET LIGHTING POLICY**

ARTICLE 12: (April, 1982 Annual Town Meeting)

To see if the Town will vote to adopt the following policy relative to street lighting in order to provide for the most effective and economical use of street lighting in the Town, no street light shall hereafter be approved for installation or maintenance by the Board of Selectmen except as follows:

- 1) Streetlighting for roadways adjacent to municipal facilities where the vehicular and pedestrian safety of employees and the public will be served, or where the lighting will aid in the protection of municipal facilities from vandalism, theft or other damage.
- 2) Streetlighting for all crosswalks throughout both business districts and residential locations are subject to evaluation, need for community improvement and public safety. Installation may be authorized by the Board of Selectmen at their discretion. Input and recommendation may be sought from the Harwich Streetlighting Committee.
- 3) Streetlighting for major intersections, where well-traveled access roads meet or cross main thoroughfares. Subject to public safety need, investigation, approval and support of the Harwich Streetlighting Committee.
- 4) Streetlighting for intersections, curves, or sidewalks with a history of past (or potential for future) pedestrian or vehicular traffic mishaps which can be directly attributed to a lack of adequate street lighting.
- 5) Streetlighting for roadways adjacent to public buildings such as stores, post offices, churches and libraries, where it has been shown that there are general traffic and pedestrian problems because of the building's usage.
- 6) Streetlighting on public ways near any industrial or commercially zoned area where it is proved that such lighting is needed for public safety.
- 7) Streetlighting for public roadways within residential subdivision(s) of the Town that are heavily traveled locations which have proven to be of public safety concern in terms of walking, bicycling traffic and have sufficient year-round residents to warrant and justify the long-term installation and commitment of lighting a specific area. Roadways which are private and haven't been accepted by Town Meeting vote will not be considered for new installations, unless exceptional circumstances for public safety exist.
- 8) Streetlighting for public roadways within the Town and locations that have experienced and documented consistent and unusually high levels of vandalism(s), larcenies and breaking and entering(s), where enhanced streetlighting would be a deterrent to crime.

and further, to authorize the Board of Selectmen to appoint a committee of not less than three (3) nor more than five (5) members to advise the Selectmen, and from time to time, Town Meeting concerning future modifications to the Street Light Policy. The policy set forth herein may, from time to time, be modified by the Selectmen if, in the opinion of the Board, public safety and convenience requires such modification, and to act fully thereon. By request of the Board of Selectmen.

Street Light Policy adopted at the April, 1982 Annual Town Meeting.  
Revised at a Public Meeting of the Board of Selectmen, February 27, 1996.

## Patience Smith-Cabrera

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**From:** Danielle Freiner  
**Sent:** Thursday, June 1, 2023 3:33 PM  
**To:** Patience Smith-Cabrera  
**Subject:** FW:

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**From:** Eric Beebe <ebeebe@harwich-ma.gov>  
**Sent:** Wednesday, May 24, 2023 10:37 AM  
**To:** Danielle Freiner <dfreiner@harwich-ma.gov>  
**Subject:**

Hi Danielle, I know the BOS was looking for a opinion from the recreation commission on the Cahoon lighting issue. It was discussed at the Recreation commission meeting last night and the commission said that they would support a light fixture on the current light pole that would face the beach parking lot but they also said that the decision was not theirs ultimately to make since the pole is out of their jurisdiction. They would not support a new light pole/fixture in the Cahoon parking lot. The motion made said – motion to support the concept of a light fixture being added to current street light pole to illuminate beach parking lot with the understanding that light pole is out of the recreation commission jurisdiction.—this motion was unanimously voted yes by the commission.

Thank you

Eric Beebe  
Recreation Director  
508-430-7552 | 508-237-8516 Mobile  
Town of Harwich  
100 Oak Street | Harwich, MA 02645



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR A SPECIAL PERMIT**

- One day Entertainment (\$25)
- One day Liquor License – All Alcohol (\$50)
- One day Liquor License – Wines & Malt (\$50)
- Craft Fair (\$50)
- Event (\$25)
- Road Race (\$50)
- Other (please specify) \_\_\_\_\_

Applicants Name Harwich Conservation Trust Phone 508-432-3997

Mailing Address PO Box 101, S. Harwich, MA 02661

Owners Name & Address Michael Lach

Email Address mike@harwichconservationtrust.org

**REQUIRED FOR ONE DAY ENTERTAINMENT – PLEASE PRINT**

- The date & time (I.E. 4 P.M. to 10 P.M.) you are requesting to have entertainment  
Saturday, June 24th from 4-6 p.m.
- Location of entertainment (Inside and/or outside) Outside *HCT Red River Preserve Fundraiser*
- Address where entertainment will be playing  
1039 Rt. 28, South Harwich

**REQUIRED FOR ONE DAY ENTERTAINMENT - ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert  Dance  Exhibition  Cabaret  Public Show  Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description

**REQUIRED FOR ROAD RACE/CRAFT FAIR/ANY OTHER EVENT**

Address of Event \_\_\_\_\_

Date & Time \_\_\_\_\_

Route/Location for Road Race \_\_\_\_\_

\_\_\_\_\_

Provide any additional information necessary for the Board of Selectmen \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Michael Faul Executive Director  
Signature of applicant & title

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of individual or corporate name

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of Manager

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of Partner

\_\_\_\_\_  
Federal I.D. #

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

J. M. ...  
Building Commissioner

...  
Board of Health

...  
Fire Department

K.M.G.  
Police Department

...  
Recreation Department

*Required signatures to be obtained by the applicant prior to submission of new applications.*

**Please note: This permit does not exempt the applicant from the Town of Harwich Chapter 189 Noise by-law**

Food Event Permits must be applied for 30 days prior to event





OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR A SPECIAL PERMIT**

- One day Entertainment (\$25)
- One day Liquor License – All Alcohol (\$50)
- One day Liquor License – Wines & Malt (\$50)
- Craft Fair (\$50)
- Event (\$25)
- Road Race (\$50)
- Other (please specify) \_\_\_\_\_

Applicants Name SK FOR THE CHILDREN Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_

Owners Name & Address ROBERT HENNEMUTH - SAME AS ABOVE

Email Address \_\_\_\_\_

**REQUIRED FOR ONE DAY ENTERTAINMENT - PLEASE PRINT**

- The date & time (I.E. 4 P.M. to 10 P.M.) you are requesting to have entertainment  
\_\_\_\_\_
- Location of entertainment (Inside and/or outside)  
\_\_\_\_\_
- Address where entertainment will be playing  
\_\_\_\_\_

**REQUIRED FOR ONE DAY ENTERTAINMENT - ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert  Dance  Exhibition  Cabaret  Public Show  Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description

**REQUIRED FOR ROAD RACE/CRAFT FAIR/ANY OTHER EVENT**

Address of Event 1 SCHOOLHOUSE RD CHAMBER OF COMMERCE HARWICH FOR.

Date & Time 10/14/23 10:00 AM - NOON

Route/Location for Road Race OUT OF SCHOOLHOUSE PARKING LOT LEFT ON PLEASANT, RIGHT ONTO SOUTH FOR SHORT GAP AND STAY RIGHT ON TO FOREST, RIGHT ON SISSON, RIGHT ON PARALLEL, RIGHT ON BANK, RIGHT ON WILES, LEFT ONTO PLEASANT, RIGHT BACK INTO LOT

Provide any additional information necessary for the Board of Selectmen NET PROCEEDS TO BENEFIT ST JUDES AND SHRINERS HOSPITALS FOR CHILDREN

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Signature of applicant & title

BK FOR THE CHILDREN

Federal I.D. #

Signature of individual or corporate name

Robert Hennemuth

Federal I.D. #

Signature of Manager

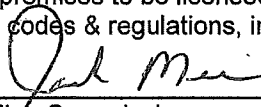
Federal I.D. #

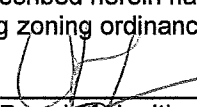
Signature of Partner

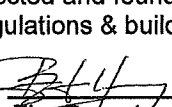
Federal I.D. #

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

  
Building Commissioner

  
Board of Health

  
Fire Department

  
Police Department

  
Recreation Department

Required signatures to be obtained by the applicant prior to submission of new applications.

**Please note: This permit does not exempt the applicant from the Town of Harwich Chapter 189 Noise by-law**

any food permits must be applied for 30 days in advance with the Health department



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR AMUSEMENT LICENSE RENEWAL - WEEKDAY**

- Batters Box (\$50)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement:
- Juke Box (\$100 each)
- Video Games (\$100 each)

Annual   
 Seasonal   
 Opening Date 5.26.23

Business Name The Trampoline Center Phone 508 432-2551

Doing Business As The Trampoline Center

Business Address 296 Route 28 West Harwich MA 02671

Mailing Address \_\_\_\_\_

Email Address \_\_\_\_\_

Managers Name & Address Danna Smith

**HOURS OF OPERATION FOR AMUSEMENTS**  
(This application does not cover Sundays).

Mon - Sun 9am - 9pm

**ADDITIONAL INFORMATION: (Check all appropriate boxes)**

- Dancing by Patrons
- Use of Amplification System
- Dancing by Entertainers or Performers
- Concert
- Recorded or Live Music
- Other (Describe)

Days/Hours of Business Operation Mon-Sunday 9am-9pm

*Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.*

*By signing below, I am certifying that the premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.*

Danna W Smith \_\_\_\_\_  
Signature of Applicant, Owner or Manager Date 5.23.23

\*Application must include payment, Certificate of Insurance showing workers comp coverage and Workers Comp Affidavit. Any application missing information or documentation will be deemed incomplete and sent back to the applicant.



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR AMUSEMENT LICENSE RENEWAL - SUNDAY**

- Batters Box (\$50)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement:
- Juke Box (\$100 each)
- Video Games (\$100 each)

Annual   
 Seasonal   
 Opening Date 5.26.23

**Please note the Commonwealth of Massachusetts fee applies for all Sunday entertainment as outlined below:**

Please make check payable to Commonwealth of Massachusetts

- Amusements starting on Sunday **after** 1:00 p.m. - \$50
- Amusements starting on Sunday **prior** to 1:00 p.m. - \$100

Business Name The Trampoline Center Phone 508 432 2551

Doing Business As The Trampoline Center

Business Address 296 route 28 West Harwich MA 02671

Mailing Address \_\_\_\_\_

Email Address \_\_\_\_\_

Managers Name & Address Dina Smith

**SUNDAY HOURS OF OPERATION FOR AMUSEMENTS**

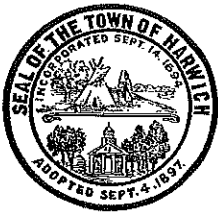
9am - 9pm

**ADDITIONAL INFORMATION: (Check all appropriate boxes)**

- |  |  |
|--|--|
| <input type="checkbox"/> Dancing by Patrons                    | <input type="checkbox"/> Use of Amplification System |
| <input type="checkbox"/> Dancing by Entertainers or Performers | <input type="checkbox"/> Concert                     |
| <input type="checkbox"/> Recorded or Live Music                | <input type="checkbox"/> Other (Describe)            |

Days/Hours of Business Operation Mon-Sun 9am - 9pm

*Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.*



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR AMUSEMENT LICENSE RENEWAL - WEEKDAY**

- Batters Box (\$50)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement:
- Juke Box (\$100 each)
- Video Games (\$100 each)

Annual   
Seasonal   
Opening Date

Business Name S & S Amusements Phone 774-722-3207

Doing Business As Bud's Mini Golf

Business Address 9 Pierson Rd. Harwichport, MA 02646

Mailing Address \_\_\_\_\_

Email Address Swari.osev@thosecompanies.com

Managers Name & Address Swari Osev Steve Gopayan

**HOURS OF OPERATION FOR AMUSEMENTS**  
*(This application does not cover Sundays).*

**ADDITIONAL INFORMATION: (Check all appropriate boxes)**

- Dancing by Patrons
- Use of Amplification System
- Dancing by Entertainers or Performers
- Concert
- Recorded or Live Music
- Other (Describe)

Days/Hours of Business Operation mon - sat 10am - 10pm

*Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.*

*By signing below, I am certifying that the premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.*

[Signature] 4/21/23  
Signature of Applicant, Owner or Manager Date

\*Application must include payment, Certificate of Insurance showing workers comp coverage and Workers Comp Affidavit. Any application missing information or documentation will be deemed incomplete and sent back to the applicant.



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR AMUSEMENT LICENSE RENEWAL - SUNDAY**

- Batters Box (\$50)
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- Juke Box (\$100 each)
- Video Games (\$100 each)

- Annual
- Seasonal
- Opening Date

**Please note the Commonwealth of Massachusetts fee applies for all Sunday entertainment as outlined below:**

Please make check payable to Commonwealth of Massachusetts

- Amusements starting on Sunday **after** 1:00 p.m. - \$50
- Amusements starting on Sunday **prior** to 1:00 p.m. - \$100 ✓

Business Name S&S Amusements LLC Phone 774-722-3207

Doing Business As Bud's mini Golf

Business Address 9 Sisson Rd, Harwichport, MA 02646

Mailing Address \_\_\_\_\_

Email Address Swavi.osev@thesecompanies.com

Managers Name & Address Swavi Osev

**SUNDAY HOURS OF OPERATION FOR AMUSEMENTS**

10am - 10pm


**ADDITIONAL INFORMATION: (Check all appropriate boxes)**

- |  |  |
|--|--|
| <input type="checkbox"/> Dancing by Patrons                    | <input type="checkbox"/> Use of Amplification System |
| <input type="checkbox"/> Dancing by Entertainers or Performers | <input type="checkbox"/> Concert                     |
| <input type="checkbox"/> Recorded or Live Music                | <input type="checkbox"/> Other (Describe)            |

Days/Hours of Business Operation \_\_\_\_\_

*Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.*

*By signing below, I am certifying that the premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.*

  
\_\_\_\_\_  
Signature of Applicant, Owner or Manager

4/21/23  
\_\_\_\_\_  
Date

\*Application must include payment, Certificate of Insurance showing workers comp coverage and Workers Comp Affidavit. Any application missing information or documentation will be deemed incomplete and sent back to the applicant.

INTERMUNICIPAL AGREEMENT FOR AN AGRICULTURAL/ENVIRONMENTAL  
EDUCATIONAL FACILITY LOCATED AT 374 MAIN STREET

ARTICLE 60: To see if the Town will vote to authorize and Direct the Board of Selectmen to enter into an Agreement with an Established Educational Facility, private party, or Not for Profit entertee, through all means necessary including yet not limited to, a Inter-municipal agreement or long term lease for purpose to create and operate an Agricultural/Environmental Educational Facility on said land acquired at the Harwich Annual Town Meeting 2000, Article 11, situated at 374 Main Street, North Harwich, shown on Harwich Assessors Map 47 as Parcel A-10 containing 33.6 acres, more or less. Being further shown on a plan recorded in the Barnstable County Registry of Deeds in Plan 460 Page 55 and further described in the deed recorded in the Barnstable Registry of Deeds of Book 10792 Page 257 being known as The Main Street Bog. Further authorize the Board of Selectmen to pursue any means necessary to accomplish this action, including yet not limited to, partition to Massachusetts State Legislature subject to Section 7 Chapter 293 of the Acts of 1998 entitled Establishment of Cape Cod Open Space Land Acquisition Program, an any other related questions of purposeful use of said land. Execute any and all instruments as may be necessary on behalf of the Town and to ack fully thereon. By request of Leo Cakounes.

*Finance Committee Recommendation: The Finance Committee recommends this article be accepted and adopted to assist the Selectmen in developing an educational use of this property.*

**FINANCE COMMITTEE RECOMMENDS THIS ARTICLE BE ACCEPTED AND ADOPTED. VOTE: YES-8, NO-0**

**ROLL CALL VOTES:**

**Board of Selectmen:**

To accept and adopt:

Yeas: 5 (Four): Michael MacAskill, Mary Anderson, Donald Howell, Larry Ballantine,  
Julie Kavanagh

Nays: 0 (Zero): None

**Finance Committee:**

To accept and adopt:

Yeas: 8 (Eight): Peter Hughes, Dana DeCosta, Karen Doucette, Mark Kelleher, Mark Ameres,  
Daniel Tworek, Robert McCready, Michele Gallucci

Nays: 0 (Zero): None



# **OLD BUSINESS**

# **CONTRACTS**

## The Office of Cultural Affairs

Kara Mewhinney, Director of Cultural Affairs, Harwich Cultural Districts

[kmewhinney@harwich-ma.gov](mailto:kmewhinney@harwich-ma.gov)

774-212-3482

Office: 204 Sisson Road, Harwich MA 02645



# MEMO

To: Meggan Eldridge, Assistant Town Administrator  
From: Kara Mewhinney, Director of Cultural Affairs  
RE: 204 Sisson Road, RFP, License Agreements for Signature  
Date: June 1, 2023

Dear Meggan,

Below is a compiled list of the License Agreements received for the Boards signature. Thank you for your help throughout this RFP process.

- A-04, Tim Johnson
- A-07 Natalie Stafford
- A-09 Janna Powell
- 103-Erika Nickerson
- 105-Carolyn Dunford
- 106-Georgene Reidl
- 107A Joanne Patukonis
- 108 Nina Gagarin
- 109 Stichology-Jane Bessette
- 110 Cape Cod Makers
- 111 Nick Nickerson
- 112 Heather Pilchard
- 114 Heather MacKenzie
- 115 Deborah Greenwood
- 201 Anne Flash
- 202A Anne Morse
- 204 Roe Osborn
- 205 Bernadette Waystack
- 206B Alla Zbinvosky
- 208B Jodi French
- 209A Kim Gagne
- 212 Taylor Fox
- 213 Ellen Davies
- 214 Gail Hickey
- 215 Martha Little Fuentes

Regards,

Kara Mewhinney  
Director of Cultural Affairs

## LICENSE AGREEMENT

This License Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the **Town of Harwich**, a Massachusetts municipal corporation, with an address of 732 Main Street, Harwich Center, MA 02645 (the “Town”), and \_\_\_\_\_, a \_\_\_\_\_, with an address of \_\_\_\_\_ (the “Licensee”). The Town and the Licensee are at times referred to hereinafter individually as “Party” and collectively as the “Parties.”

### Recitals

Whereas, the Town is the owner of certain property located at 204 Sisson Road, Harwich, Massachusetts (the “Property”), which includes the Licensed Premises (defined below); and

Whereas, the Property is the location of the 204 Cultural Arts Municipal Building (the “Building”), which contains a number of studios for individuals and organizations to use for arts and cultural purposes; and

Whereas, the Licensee desires to occupy space within the Building identified as \_\_\_\_\_, and containing \_\_\_\_\_ square feet, more or less, all as more specifically described in Exhibit A attached hereto and incorporated herein (the “Licensed Premises”), and the Town agrees to license the Licensed Premises to Licensee on the terms and conditions set forth herein.

Now, Therefore, for good and valuable consideration, the parties hereby agree as follows:

### Agreement

1. Licensed Premises. The Town hereby grants to the Licensee an exclusive license to use and occupy the Licensed Premises for the Permitted Use (defined below). As appurtenant to the Licensed Premises, the Licensee shall have the non-exclusive use and occupancy of the common areas associated with the Building, including, but not limited to, the parking areas, walkways, common corridors, restrooms and access ways.

2. Term. The initial term of this License shall be three (3) years, beginning on \_\_\_\_\_, 2023 (the “Commencement Date”) and expiring one day prior to the third anniversary of the Commencement Date (the “Initial Term”). The Licensee shall have the right to extend the term of this License for periods of one (1) year (the “Extension Term” and, together with the Initial Term, the “Term”) by giving the Town written notice of extension at least sixty (60) days prior to the expiration of the Initial Term or the Extension Term, as the case may be, subject to the Town and Licensee mutually agreeing to the rent to be paid under this License.

3. Rent. The Town shall pay Licensor the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_) per month for the Initial Term of this License.

4. Permitted Use. The Licensee shall use the Licensed Premises for the purpose of a

studio for the creation, teaching and promotion of visual, performing and/or literary arts.

Licensee agrees to utilize the Licensed Premises continuously, year-round, for the Permitted Use, with no more than four (4) weeks during which the Licensed Premises are unoccupied.

5. Alterations. The Licensee shall have the right to make such minor and/or cosmetic changes to the Licensed Premises as are reasonably necessary or appropriate to using the Licensed Premises for the Permitted Use, all at the Licensee's sole cost and expense. The Licensee shall not make any structural changes and/or any alterations to the Licensed Premises, the Building or the Building systems serving the Licensed Premises without Licensor's prior written consent, which may be withheld in the Town's sole and absolute discretion. Upon the expiration or termination of this License, any structural changes and/or alterations shall belong to the Town, unless the same can be removed without damage to the existing structure.

6. Utilities. The Town agrees to pay and any all charges for utilities serving the Licensed Premises, including but not limited to heat, air conditioning, water/sewer, electricity, directly to the utility providers. Currently, there is a wifi network open to all occupants of the Building, however, the Town reserves the right to charge a "technology fee" for the use thereof in the future.

7. Signs. The Licensee agrees not to affix any sign, display, lettering, awning, or ornamentation to the exterior of the Licensed Premises or to the inside of the Building in such a way as to be conspicuously visible from the outside of the Licensed Premises without the Town's prior written consent, which may be withheld in the Town's sole and absolute discretion.

8. Noxious Use. The Licensee shall not cause nor permit to exist in any portion of the Licensed Premises any nuisance, offensive noise, odor or fumes, or any conditions reasonably likely to prove hazardous to health or a violation of any legal requirements, especially the quiet enjoyment of other tenants, licensees and occupants of the Building. In addition to being an event of default, if found in violation of this provision, the Licensee shall be responsible for the elimination of such nuisance or interference and for the costs of the repair of any damage and expenses of the Town related to any violations.

9. Compliance. The Licensee shall use the Licensed Premises in compliance with all applicable federal, state, and local laws, rules, regulations and bylaws, and agrees to obtain any and all permits, approvals and other licenses applicable to its use of the Licensed Premises. Without limiting the foregoing, the Licensee agrees that it shall not bring upon, release or discharge any hazardous, toxic or dangerous materials on, in or under, or around the Licensed Premises, in violation of any applicable law or regulation. If the Licensee becomes aware of any such hazardous, toxic or dangerous materials, the Licensee shall promptly notify the Town of the type and location of such materials in writing. The Licensee shall indemnify and hold harmless the Town for any and all claims, demands, actions, proceedings, damages, fines, costs, expenses, and liabilities (including, without limitation, any cleanup obligations and reasonable attorneys' fees) for the release or discharge of any hazardous, toxic or dangerous materials on, in or around the Licensed Premises by the Licensee.

10. Maintenance. The Licensee shall be responsible for maintaining the Licensed Premises in the condition they were as of the Commencement Date, reasonable wear and tear and damage from casualty excepted, including, without limitation, for removing trash and debris therefrom.

11. Insurance. (a) The Licensee shall, at its own cost and expense, and shall require all contractors and vendors on site (if and as applicable), maintain, throughout the Term of this License, a policy of general public liability insurance, unless waived or modified by the Town, insuring against claims for personal injury or property damage, with such limits as may reasonably be requested by the Town from time to time, but not less than \$500,000 per occurrence and \$1,000,000 in the aggregate;

(b) All insurance provided for in this License shall be effected under enforceable policies issued by insurers of recognized responsibility licensed to do business in the Commonwealth of Massachusetts. At least thirty (30) days prior to the expiration date of any policy, the original renewal policy for such insurance shall be delivered by the Licensee to the Town. Within thirty (30) days after the premium on any policy shall become due and payable, the Town shall be furnished with satisfactory evidence of its payment.

(c) If the Licensed Premises or Building shall be injured, lost or damaged by theft, fire, in any other way or manner, whether similar or dissimilar to the foregoing, no part of said injury, loss or damage is to be borne by the Town unless the same is caused by or attributable to the gross negligence or intentional misconduct of the Town and/or its agents, employees, representatives, agents, boards or commissions (collectively, with the Town, the "Town Parties"). The Licensee agrees that the Town shall not be liable to the Licensee or anyone claiming under the Licensee for any injury, loss or damage to the extent caused by or resulting from the fault or negligence of any persons occupying adjoining premises or any other part of the Building.

(e) In the event that the Licensee fails to provide such insurance and the same is not cured within twenty (20) days from written notice from the Town, the Town may in its sole discretion, but is under no obligation to, purchase such insurance and the Licensee agrees that within thirty (30) days following demand of the Town it will pay to the Town the cost thereof, and if it shall default in such payment, the Town shall have the remedies provided herein.

(f) Except as otherwise provided herein, the Licensee agrees to use and occupy the Licensed Premises at its own risk, and that Licensee shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of the Licensee.

12. Indemnification. The Licensee agrees to save the Town harmless from, and indemnify the Town against any and all injury, loss or damage and any and all claims for injury, loss or damage, of whatever nature (a) caused by or resulting from any act, omission or negligence of the Licensee and/or any Licensee's agents, representatives, contractors and employees (the "Licensee Parties"), or (b) occurring upon the Licensed Premises or the Property, except to the extent the same may be caused by or attributable to the gross negligence or

intentional misconduct of the Town and/or the other Town Parties. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in connection with any such injury, loss or damage or any such claim, or any proceeding brought thereon or the defense thereof. This obligations hereunder shall survive the expiration or termination of this License.

13. Default. In the event that the Licensee fails to comply with any of the material terms of this License and the same is not cured within thirty (30) days from written notice from the Town specifying the failure, or, if the default is such that it cannot with the use of good faith and diligent efforts be cured within said thirty (30) day period, if the Licensee fails to commence the cure and to complete the same within sixty (60) days from the date of the Town's notice, the Town shall have the right to terminate this License, and the Licensee shall vacate the Licensed Premises within thirty (30) days from written notice of termination from the Town.

14. Termination. The Town shall have the right to terminate this License for no reason whatsoever, without recourse, provided that the Town gives the Licensee at least thirty (30) days prior written notice thereof. The Licensee shall have the right to terminate this License for no reason, without recourse, by giving the Town at least thirty (30) days prior written notice thereof.

15. Surrender. At the expiration or earlier termination of this License, the Licensee shall vacate the Licensed Premises, remove all its personal property therefrom, repair any damage caused to the Licensed Premises, and restore the Licensed Premises to the condition they were in as of the Commencement Date, reasonable wear and tear and damage from casualty excepted. The obligations hereunder shall survive the expiration or termination of this License.

16. Fire or Other Casualty; Eminent Domain Taking. In the event that the Licensed Premises, the Building or the Property are damaged by fire or other casualty, or in the event that the Licensed Premises, the Building or the Property are taken by eminent domain by an entity other than the Town of Harwich, the Licensee shall have the right to terminate this License by written notice to the Town, without recourse.

17. Miscellaneous.

(a) Town's Access Rights. The Town shall have the right to enter upon the Licensed Premises at all reasonable times with not less than twenty-four (24) hour notice and in case of emergency, at any time, to inspect the same, to make or facilitate any repairs, alterations, additions, or improvements to the Licensed Premises (but nothing herein contained shall obligate the Town to make any repairs, alterations, additions or improvements); or to show the Licensed Premises to insurance agents, other professional consultants, and future tenants. Forcible entry shall not be made by the Town unless such entry shall be reasonably necessary to prevent serious injury, loss or damage to person or property.

(b) Assignment. The Licensee agrees that the rights granted hereby are personal to the Licensee and the Licensee shall not assign this License or sublease the Licensed Premises

without the Town's prior written consent, which may be withheld in its sole and absolute discretion.

(c) No Waiver. The failure of any party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this License shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No provision of this License shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be bound thereby.

(d) Modifications. No modifications to this License shall be made except by written agreement between the Town and the Licensee. This License represents the entire agreement between the parties.

(e) Severability. In the event that a provision of this License is deemed to be unlawful, the balance of this License shall continue in full force and effect.

(f) Construction. This License shall be construed in accordance with and shall be governed by the laws of the Commonwealth of Massachusetts, and all matters pertaining hereto shall be brought in the courts of the Commonwealth of Massachusetts. The captions of this License are for convenience and reference only and in no way define, limit or describe the scope or intent of this License nor in any way affect this License.

IN WITNESS WHEREOF, the parties have hereto set their duly authorized hands and seals on the date subscribed.

TOWN OF HARWICH,  
By its Select Board

LICENSEE

\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_

\_\_\_\_\_



Exhibit A

Licensed Premises

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“**MOA**”) is made and entered into by and between the Massachusetts Department of Transportation, having offices at 10 Park Plaza, Boston, Massachusetts 02116 (“**MassDOT**”) and the CITY/TOWN of \_\_\_\_\_, a municipal corporation within the Commonwealth of Massachusetts, having offices at \_\_\_\_\_ (“**Municipality**”). Municipality and MassDOT may hereafter sometimes be collectively referred to as the “Parties” and individually as the “Party.”

**WHEREAS**, MassDOT has developed a program by which it provides municipalities with bike passage signage described in Exhibit A (“**Signage**” or “**Signs**”) for installation in *municipally owned public roadways* as a tool to reduce vulnerable road user fatalities; and

**WHEREAS**, Municipality desires to participate in the program and has requested Signage to install in the municipally owned roadway(s) identified in Exhibit B (the, “**Locations**”); and

**WHEREAS**, Municipality has agreed to install and maintain the Signage at the Locations in accordance with the terms provided herein (“**Project**”); and

**WHEREAS**, MassDOT and Municipality seek to confirm their respective rights and obligations in connection with the Project as set forth in this MOA.

**NOW, THEREFORE**, in consideration of the promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Signage.**

- (a) MassDOT will provide Municipality with the Signage described in Exhibit A. MassDOT will fund the entire cost of the Signage, including the cost of delivery to Municipality. Title to the Materials will pass to Municipality upon delivery.
- (b) It is understood and agreed that MassDOT’s procurement of the Signage is contingent upon availability and continued appropriation of federal and/or state funds, and if for any reason whatsoever, such funds are terminated or reduced or otherwise become unavailable, MassDOT may terminate this MOA in whole or in part.

2. **Installation.**

- (a) Municipality, at its sole expense, shall install the Signage at the Locations. Aside from

the materials provided by MassDOT, Municipality shall provide all necessary labor, materials, equipment, and other services necessary to install the Signs in accordance with vendor specifications.

- (b) Each Sign must be installed in conformance with the requirements of Section 2 of the 2009 *Manual of Uniform Traffic Control Devices (MUTCD)*.
- (c) Municipality is solely responsible for evaluating the specific site constraints for each Location and for providing all necessary traffic control devices and/or police details necessary to safely complete the Project.
- (d) Municipality agrees and acknowledges that the Signage must be installed within the public layout on a municipally owned roadway. Municipality shall obtain, at its sole cost and expense, any and all applicable permits, approvals, including local approvals, and/or clearances required by local and state agencies, commissions, or bodies necessary for the completion of the Project prior to installing the Signage.
- (e) Municipality shall install each Sign within ninety (90) days of its delivery to Municipality. If Municipality cannot complete the installation within the ninety-day period, Municipality shall promptly, at its sole expense, return the uninstalled Signs to MassDOT by delivering the Signage to the location designated by MassDOT.
- (f) Upon the completion of the Project, Municipality shall provide MassDOT with photographic documentation of the installed Signage, along with documentation evidencing the date of installation for each Sign.

**3. Future Maintenance.**

Municipality shall, at its sole expense, be responsible for the maintenance and upkeep of the Signage used for the Project. Municipality shall maintain the installed Signs in good repair throughout the Signs' useful life. MassDOT shall not be responsible for the replacement of the Signs at the end of their useful life. Notwithstanding anything contained herein to the contrary, Municipality's maintenance obligations shall survive the expiration or termination of this MOA.

**4. Term.**

This MOA shall be effective as of the date of full execution by Municipality and MassDOT and, unless terminated earlier as provided herein, shall expire on **August 31, 2025.**

**5. Termination.**

This MOA may be terminated by mutual agreement of the Parties, upon such terms and conditions as the Parties may mutually agree upon. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this MOA, except to the extent that the mutual agreement terminating this MOA so specifies.

MassDOT may, by written notice to the Municipality, also terminate this MOA if the Municipality neglects or fails to comply with any provision of this MOA in accordance with its terms or within the time specified for performance herein. In the event this MOA is terminated pursuant to this provision or Section 1(b) above, MassDOT shall not be liable to the Municipality for any costs incurred or burdens assumed upon or subsequent to, and associated with, such termination.

**6. Compliance with Laws.**

Municipality, in meeting its obligations hereunder, shall comply with all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.

**7. Indemnification.**

To the extent permitted by the laws of the Commonwealth, Municipality shall indemnify, defend (at Municipality's sole expense and with counsel reasonably acceptable to MassDOT), and hold harmless MassDOT and all of MassDOT's officers, agents, and employees, from and against any and all suits, claims, proceedings, liabilities, losses damages, penalties, charges and expenses (including attorneys' fees and experts' fees) of every name and nature, based on or arising out of any actual or alleged loss or injury (including death) to persons or damage to real or tangible property that are caused or alleged to be caused, in whole or in part, by, or to arise out of the acts or omissions of, Municipality, or its employees, contractors, subcontractors, or agents, in its performance of the obligations set forth herein. The foregoing indemnification obligations shall survive the expiration of this MOA.

**8. Successors and Assigns.**

This MOA shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. This MOA may not be assigned without the prior written consent of MassDOT.

**9. Notice.**

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified or registered mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such notices shall be addressed as follows:

If to MassDOT: Massachusetts Department of Transportation  
Highway Division of Traffic & Safety Engineering  
10 Park Plaza  
Boston, MA 02116  
Attention: Neil Boudreau  
Assistant Administrator for Traffic & Safety

If to Municipality: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or to such other address as either Party may from time to time specify in writing to the other Party. Any notice shall be effective only upon delivery.

**10. Authority.**

The individuals executing this MOA represent that they are empowered and duly authorized to so execute this MOA on behalf of the Parties they represent.

**11. Miscellaneous.**

This MOA represents the entire agreement between the Parties with respect to the subject matter hereof, superseding any prior oral or written agreements or understandings regarding the same, and any modification amendment or change to the terms and conditions hereof shall be binding only when expressed in writing and signed by both Parties hereto. This MOA may be signed in multiple counterparts each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. This MOA shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its choice of law rules. If any provision or condition of this

MOA shall be deemed invalid or unenforceable, the remaining provisions and conditions shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK  
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Municipality and MassDOT have caused this MOA to be executed by their duly authorized officers or representatives as of the date first above written.

MASSACHUSETTS DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
Name:  
Title:  
Date:

MUNICIPALITY

\*Please use a digital signature if available to you. If not available, please print and sign the completed form, scan, and email an attachment of the signed copy.

By: Name: \_\_\_\_\_  
Title:  
Date:

# Exhibit A



bike passing - under 35 mph;  
 2.0" Radius, 0.5" Border, 0.3" Indent, Black on White;  
 "MOTORISTS", C 2K 75% spacing;  
 "GIVE 4 FT", C 2K;  
 "TO PASS", C 2K;  
 Bicycle;



bike passing 35 mph +;  
 2.0" Radius, 0.5" Border, 0.3" Indent, Black on White;  
 "MOTORISTS", C 2K;  
 "GIVE 4 FT", C 2K;  
 "TO PASS", C 2K; Bicycle;

Signs shall be mounted on single 2.25 inch by 2.25 inch square tube posts conforming to Subsections 840.60 and M8.18.3 of the MassDOT Standard Specifications. Signs shall be installed in accordance with the requirements and guidance provided in Section 2A.16 and Figure 2A-2 of the MUTCD.



## Exhibit B: Sign Delivery Information

Town \_\_\_\_\_  
Total Small Signs \_\_\_\_\_  
Total Large Signs \_\_\_\_\_

### Delivery Point of Contact

Name \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email Address \_\_\_\_\_

### Delivery Location

Address \_\_\_\_\_  
Town \_\_\_\_\_  
Zip code \_\_\_\_\_

Anticipated Installation Location Street Name List:

1.
2.
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22.
23.

# **CORRESPONDENCE**

**Town of Harwich  
Board of Selectmen Committee Vacancies  
June 1, 2023**

Agricultural Commission (3 Full / 1 Alternate)	4
Capital Outlay Committee (Board of Selectmen/Town Administrator Appointee)	2
Community Center Facilities Committee	1
Conservation Commission (1 Alternate/1 Full as of 6/30/23)	1
Council on Aging	2
Community Preservation Committee	2
Harwich Accessibility Rights Committee ( 2 Alternate)	2
Harwich Cultural Council	1
Harwich Energy and Climate Action Committee (2 Alternate)	2
Harwich Housing Committee	1
Historic District/Historical Commission (2 Full Member - 1 Associate Members)	3
Local Planning Committee	1
Planning Committee - (1 Alternate)	1
Real Estate and Open Space Committee	1
Voter Information Committee	3
Youth Services (1 Full/1 Alternate)	2
Zoning Board of Appeals (2 Alternate)	2

**Citizen's Committee Vacancy Forms are available on our website**

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