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August 18, 2022

William D. Crowell, Esq.  
466 Main Street  
P O Box 185  
Harwich Port MA 02646

Re: Main Street HP, LLC

Dear Attorney Crowell,

I have been consulted by the Beach Side Condominium Association, of 567 Route 28, Harwich Port, regarding the proposed development of # 569, 571 and 575 Route 28, Harwich Port, by Main Street HP, LLC, who I understand you represent. In particular, I have been asked to review the scope of the easement encumbering the Condominium property, which benefits your client's adjoining property.

I have been provided with a copy of an email from Mr. Miller to the Harwich Planning office, dated July 18, which included emails from you expressing your opinion regarding this easement, along with the attached copies of the instruments. I have also reviewed the plan for the proposed development and the plans of record for these respective properties. I have not yet performed a full title examination of either property; I assume your title information is correct and that these are the controlling documents. I understand that the Planning Board is scheduled to review this proposed development next week, and has asked the applicant to provide verification of its rights to utilize the Condominium's property in this development. For the reasons stated below, it is my opinion, at this time, that the proposed use of the Condominium's property would not be permitted and would exceed the scope of the easement granted to your client's property.

\* Each Attorney in this office is an independent practitioner  
who is not responsible for the practice or liabilities of any  
other attorney in the office. Rule 7.5 (d)

As you indicated in your communications with Mr. Miller, in 1981 an easement was granted by the unit owners of the Condominium to the predecessor in title to lot 7 on Land Court Plan 23643-E. That lot 7 is the property now referred to as #569 Route 28. The easement was granted for the express purpose of providing a shared "parking area for the use of Lot 7". The easement, as later modified, includes the full width of the lot at 567 Route 28, to a depth of 70 feet back from the street line.

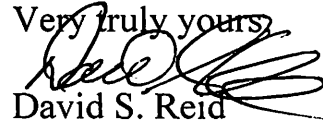
On this basis, I concur with your opinion that your client, as owner of said Lot 7, holds the rights under this easement, and could use this portion of the condominium's property (in common with the unit owners of the condominium) to provide parking for whatever enterprise were proposed for lot 7. I do not agree, however, that this easement grants your client the right to use the property at 567 Route 28 merely as a point of access from Route 28 to his property, where parking would be provided. The grant is specific; the right granted includes only the right to use the area for "parking", in common with the unit owners. What is currently proposed is not "parking" on our lot, but a "way" across our lot to get to your client's property.

However, while your "opinion" provided in the above-references email only addresses Lot 7, of even greater concern to my client is the fact that the parking spaces that would be accessed from our property are not in fact being provided for the use of Lot 7. They are being provided for the customers and patrons of the improvements to be provided on the adjoining properties, #571 and 575 Route 28. The grant is limited to providing parking "for the use of Lot 7". It may not be used for the benefit of other properties, beyond this original dominant estate ( Lot 7) that was intended to be benefitted. The rights encumbering my client's property may only be used to benefit Lot 7, not your client's other properties that are included in this development proposal. This has been a clear and inflexible rule in the Commonwealth for many years, and was recently confirmed by the Supreme Judicial Court in the case of Taylor v. Martha's Vineyard Land Bank Commission, 475 Mass. 682 (2016). The court stated in part that the "use of an easement to benefit property located beyond the dominant estate constitutes an over[load]ing of the easement" and may not be done without the permission of the owners of the servient (encumbered) estate.

As a result, it is my opinion that the Planning Board may not approve this plan which is dependant on your client's use of the Condominium's property for parking or access to Lot 7, #569 Route 28, and beyond, as proposed, and further that your client's proposed use would constitute an unlawful over use of the

easement and an actionable trespass.

Very truly yours,

A handwritten signature in black ink, appearing to read "David S. Reid", written over the typed name below.

David S. Reid

CC: Harwich Planning Board

Via email to: Elaine Banta - [ebanta@town.harwich.ma.us](mailto:ebanta@town.harwich.ma.us)

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