



**AGENDA \*AMENDED\***  
**SELECT BOARD**  
**MONDAY, JUNE 26, 2023**  
**WAQUOIT MEETING ROOM**  
**MASHPEE TOWN HALL**  
**16 GREAT NECK ROAD NORTH**  
**MASHPEE, MA 02649**

**\*Broadcast Live on Local Cable Channel 18\***

**\*Streamed Live on the Town of Mashpee Website: <http://www.mashpeema.gov/channel-18>**

**6 p.m. – Convene Meeting in Open Session**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**CONVENE JOINT MEETING WITH THE AFFORDABLE HOUSING TRUST**

- Discussion and Approval of Community Preservation Application-\$500,000

***Town Planner Evan Lehrer:***

- Discussion of Affordable Housing Trust Mission & Goals with Consideration of the Update of the Housing Production Plan
- Discussion and Possible Vote to Authorize a Traffic Impact Assessment for 209 Old Barnstable Road
- Discussion of Possible Approval of a Request for Quotes" for a Feasibility Analysis of an Affordable Housing Development at the "VFW Site" (Map 62, Parcel 67)

**ADJOURN JOINT MEETING WITH THE AFFORDABLE HOUSING TRUST**

**MINUTES:**

Approval of the Following: Monday, June 5, 2023 Regular Session

**APPOINTMENTS & HEARINGS**

- Status of Wastewater Management and Planning: *Marc Drainville (GHD); Sewer Commission Chair Chad Smith, Town Manager Rodney Collins*
- Public Comment
- Administrative Investigation Status: *Town Manager Rodney Collins*
- Updates on the Residential Tax Exemption and Setting the Tax Rate: *Assessing Director Joseph Gibbons*
- Discussion and Approval of End of Year Transfers: *Finance Director Dawn Thayer*
- Discussion and Certification of the Hiring Process for the Following as Firefighter/EMTs:  
*Keith Birch, Jessica O'Kane, Nicholas Hill, Corey Celeste: Fire Chief John Phelan*
- 6:50 pm Public Hearing: New Annual All Alcoholic Beverages Restaurant License: *Chen 1688, Inc. D/B/A Saga Hibachi 36 South Street, Mashpee, MA: Hui Ling Chen, Attorney Theodore Schilling*
- Discussion and Approval of the Following Resignations and Appointments:
  - Resignation from the Mashpee Community Garden Advisory Committee: *Lynn Harris (Term Expires June 30, 2025)*
  - Appointment to the Zoning Board of Appeals (Member-at-Large): *Sharon Sangeleer (Term Expires June 30, 2024)*
  - Appointment of Deputy Shellfish Constables: *Richard Santangelo, Tyler Grady, Christopher Lucier (Terms Expire June 30, 2026)*

*(Continued on next page)*

**MASHPEE TOWN CLERK**  
**JUN 22 '23 PM2:50**

**APPOINTMENTS & HEARINGS (CON'T)**

- Discussion and Approval of the Following Special Events, Temporary Sign Permits, One Day Liquor Licenses:
  - La Tavola: August 4, 2023, 5-9 pm, Steeple Street: *Mashpee Chamber of Commerce*
  - Annual Mashpee Chamber of Commerce Christmas Parade: December 9, 2023, 5:30-7:30 pm: *Mashpee Chamber of Commerce*
  - Head of the Ponds Regatta: September 10, 2023, 5:30-10:30 am, Attaquin Park: *Alan Robinson*

**COMMUNICATIONS & CORRESPONDENCE**

AMENDED ITEM \*\*Petition with Regard to Mashpee Neck Road Speed Limit\*\*

**OLD BUSINESS**

- 2023-2024 Select Board Liaison Assignments: *Select Board Chair John Cotton*
- Nomination, Discussion and Approval of the Select Board Representative to the following:
  - *Community Preservation Act Committee ("CPC")*
  - *Capital Improvement Program Committee ("CIP")*
  - *Environmental Oversight Committee ("EOC")*
  - *Economic Development Industrial Corporation ("EDIC")*

**NEW BUSINESS**

**ADDITIONAL TOPICS**

(This space is reserved for topics that the Chair did not reasonably anticipate would be discussed)

**LIAISON REPORTS**

**WATER QUALITY UPDATES**

**TOWN MANAGER UPDATES**

**EXECUTIVE SESSION**

- Discussion of Strategy with Respect to the Following Personal Service Contracts Pursuant to M.G.L. C. 30A §21 (a) (2):
  - *Police Captain Thomas Rose*
  - *Fire Chief John Phelan*
  - *Deputy Fire Chief Joseph Peltier*

**RECONVENE OPEN SESSION**

- Discussion, Approval and Ratification of Personal Service Contracts for the Following:
  - *Police Captain Thomas Rose*
  - *Fire Chief John Phelan*
  - *Deputy Fire Chief Joseph Peltier*

MASHPEE TOWN CLERK  
JUN 22 '23 PM2:50

**ADJOURNMENT**



**AGENDA**  
**AFFORDABLE HOUSING TRUST**  
**MONDAY, JUNE 26, 2023**  
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**CONVENE JOINT MEETING WITH THE SELECT BOARD**

- Discussion and Approval of Community Preservation Application-\$500,000  
*Town Planner Evan Lehrer:*
- Discussion of Affordable Housing Trust Mission & Goals with Consideration of the Update of the Housing Production Plan
- Discussion and Possible Vote to Authorize a Traffic Impact Assessment for 209 Old Barnstable Road
- Discussion of Possible Approval of a Request for Quotes” for a Feasibility Analysis of an Affordable Housing Development at the “VFW Site” (Map 62, Parcel 67)

**ADJOURN JOINT MEETING WITH THE SELECT BOARD**

**MASHPEE TOWN CLERK**  
**JUN 22 '23 PM2:19**



**COMMUNITY PRESERVATION FUNDING APPLICATION**  
**Town of Mashpee**

Submit **(12)** copies to:  
And (1) email copy to: [tmcook@mashpeema.gov](mailto:tmcook@mashpeema.gov)

Town of Mashpee  
Community Preservation Committee  
c/o Office of the Select Board & Town Manager  
16 Great Neck Road North, Mashpee MA 02649  
508-539-1401

For application questions, email CPC Secretary Kathleen Soares at [ksoares@mashpeema.gov](mailto:ksoares@mashpeema.gov)

**Category (check all that apply)**

Open Space\_\_\_\_ Recreation\_\_\_\_ Historic Preservation\_\_\_\_ Affordable Housing **X**

Name of Applicant: **Mashpee Affordable Housing Trust**

Co-Applicant; if applicable: \_\_\_\_\_

Contact Person: **Wayne Taylor, Assistant Town Manager**

Daytime Phone: **508-539-1401** Email: **wtaylor@mashpeema.gov**

Mailing Address: **16 Great Neck Road N**

Town: **Mashpee** State: **MA** Zip Code: **02649**

What is your authority to submit this application? Please document.  
At the request of Chair David Weeden

Proposal Title: **Affordable Housing Trust Fund**

Project Address (or Assessor's parcel ID) **N/A**

Amount of CPA Funding request: \$ **500,000**

Total Cost of Proposed Project: \$ **500,000**

Date: **04/06/2023**

A. If the proposal is being submitted by a Town Department, Committee, Board or Commission, the application requires acknowledgment of awareness of submission by the Town Manager.

Town Manager signature: \_\_\_\_\_

Town Manager Approval Date: April 6, 2023

B. If the proposal involves town-owned land, has the Town approved the use of said Town-owned land?

Yes: N/A Please document.

No: N/A What are the plans to secure approval?

C. If this proposal has been permitted, reviewed or discussed at a Town Committee, Commission or Board meeting, include copies of the minutes of meeting where this proposal was discussed.

### **Project Description:**

Answer the following questions; be brief, but complete and include any supporting materials.  
All questions must be answered.

#### **1. Control of Site:**

A. Indicate if applicant owns or has a purchase agreement for the property.

- Attach the current deed/title to the application.
- If under agreement, attach a copy of agreement.
- If applicant does not own the site, what is the relationship between applicant and owner?

B. If this is a land acquisition request, is the property currently listed for sale?

C. Are there any Deed Restrictions/other Restrictions on the land?

#### **2. Goals:** What are the goals of the proposed project?

#### **3. Community Need:**

A. Why is this project needed? How does it reflect the criteria as defined by the CPC Committee?  
(See attached criteria)

B. Describe and quantify the need: number of people who will directly benefit from the project once it is completed; and /or resources that will be protected as a result of this project.

C. Is this part of an approved Town Plan, for example the Local Comprehensive Plan.

#### **4. Community Support:**

A. What is the nature and level of support for this project? Please see Information Checklist re: letters of support and petitions.

B. Has there been any communication with project abutters? Yes: \_\_\_\_\_ No: \_\_\_\_\_

**10. Maintenance:** CPA funds may not be used for maintenance. If ongoing maintenance is required for this project, how will it be funded?

**11. Coordination with Town Departments:** If your project requires coordination with another Town Department or entity, complete the following:

A. Identify by name each department, committee, board, or commission that will play a role in the implementation of your project.

B. Define in detail the role to be played by each specific governmental body.

C. Obtain the signature of the director or department head of the identified department/board/committee/commission to assure acknowledgment of the details of the application and the department's role.

\_\_\_\_\_  
Department Head Signature

**12. Coordination with Other Town(s):** If your project requires coordination with other Town(s), please explain.

#### **INFORMATION CHECKLIST:**

The application should contain the following supplemental information in order to be reviewed:

N/A Site plan

N/A Assessor's Field Card

N/A Title and/or Deed to the property; Purchase and Sale; Exclusive Option Purchase

N/A Photographs or renderings of existing site and conditions

N/A Architectural plans and specifications if applicable

\_\_\_\_ Letters of support

**FOR OPEN SPACE ACQUISITIONS: Due Diligence Checklists.**

\_\_\_\_ Written report from the Conservation Agent on the environmental quality of the site.

\_\_\_\_ Good Standing Statement from Town and State

\_\_\_\_ Appraisal(s) on the property.

\_\_\_\_ Possible letters of support from Conservation Commission

**FOR RECREATION PROJECTS:**

\_\_\_\_ letter of recommendation from the Recreation Director

**FOR AFFORDABLE HOUSING PROJECTS:**

sought letter of recommendation from the Affordable Housing Committee

**FOR HISTORIC RESOURCES:**

\_\_\_\_ Documentation of historical significance from one or more of the following sources:

a. the Massachusetts Historical Commission

b. the National Register of Historic Places

c. the Mashpee Historical Commission

\_\_\_\_ Letter of recommendation from Mashpee Historical Commission

**COMMUNITY PRESERVATION FUNDING APPLICATION**  
**Town of Mashpee**

**Project Description:** Affordable Housing Trust Request for funding.

**1. Control of Site:**

Not applicable. This is not a land acquisition request and does not pertain to any one property or properties in Mashpee.

**2. Goals: What are the goals of the proposed project?**

The goal of this project is to allow for a more efficient procedure to enable the acquisition of land and subsequent development of affordable housing projects in the Town of Mashpee as well as enhance the potential for converting existing homes to affordable units by re-funding the Affordable Housing Trust. In short, the primary goal is to facilitate the production and preservation of needed affordable housing units. The Affordable Housing Trust is the authority who may purchase, hold, and make decisions regarding development of affordable units. The primary goals of maintaining a healthy balance year over year in the Affordable Housing Trust Fund are to utilize any funds from the CPC for the following activities at a minimum to benefit the production of and access to affordable housing for the Town:

- Provide financial support for the construction of affordable homes by private developers (non-profit or for-profit)
- Rehabilitate existing homes and apartments to convert to affordable housing
- Increase affordability in existing and future housing developments
- Develop surplus municipal property for affordable housing
- Planning and due diligence such as feasibility analyses to support affordable housing developments
- Preserve properties faced with expiring affordability restrictions
- Create programs to assist low- and moderate-income homebuyers
- Create programs to help low- and moderate-income families make health and safety repairs
- Educate and advocate to advance affordable housing initiatives

**3. Community Need:**

Given the significance of the housing affordability and attainability problem in Mashpee and on Cape Cod, it is crucial that Mashpee's decision makers are best equipped to take advantage of affordable housing opportunities as they arise. Access to stable, attainable, and affordable housing is shrinking across income levels. Those lower income households earning less than 80% of average median income continue to be the most impacted by the state of Cape Cod's housing marketplace but also moderate income earners above 80%, 100%, and above 120% of AMI are experiencing difficulties retaining and/or securing stable housing.

Housing costs have substantially grown since 2010. Even then nearly 20% of households earning more than 100% of AMI were cost-burdened. Impacts of the COVID-19 Pandemic on the Cape Cod Housing market where, more year-round units were lost to seasonal homeowners and zoning regulations continue to incentivize the production of a housing type that has fully saturated the market means that there are more households competing for less units. This shift in supply and growth in demand has made the marketplace essentially unattainable for those earning moderate incomes of greater than 100% AMI.

The Mashpee Affordable Housing Committee estimates a shortfall of nearly 1,000 units for those households with incomes less than 80% AMI. It is unclear exactly what the housing unit shortfall may be for households earning more than 80% of AMI (Presentation attached from Affordable Housing Committee Chairman, Alan Isbitz). The Mashpee Housing Authority reports the following number of applicants on their waitlists:

- Massachusetts Public Housing M.G.L Chapter 667 Elderly/Handicap Waitlist – 2,707 waiting for a total of 80 units after submitting Common Housing Application for Massachusetts programs (CHAMP). There are 24 1 BR units at Homeyer Village and 56 units at Asher's Path Apartments.
- Massachusetts Public Housing M.G.L Chapter 705 Family Housing Waitlist – 3,624 waiting for only 16 units between the Breezy Acres and Great Cove Community developments after submitting CHAMP.
- Massachusetts Rental Voucher Program – 289 waiting. These waitlists are staggering.
- The Mashpee Village, a project managed by the Community Builders, reports a waitlist of 75 households

Considering the need current Mashpee residents have for attainable affordable housing and a shortfall of 1,000 units for those earning below 80% AMI it seems imprudent not to fund the Trust to the maximum extent possible..

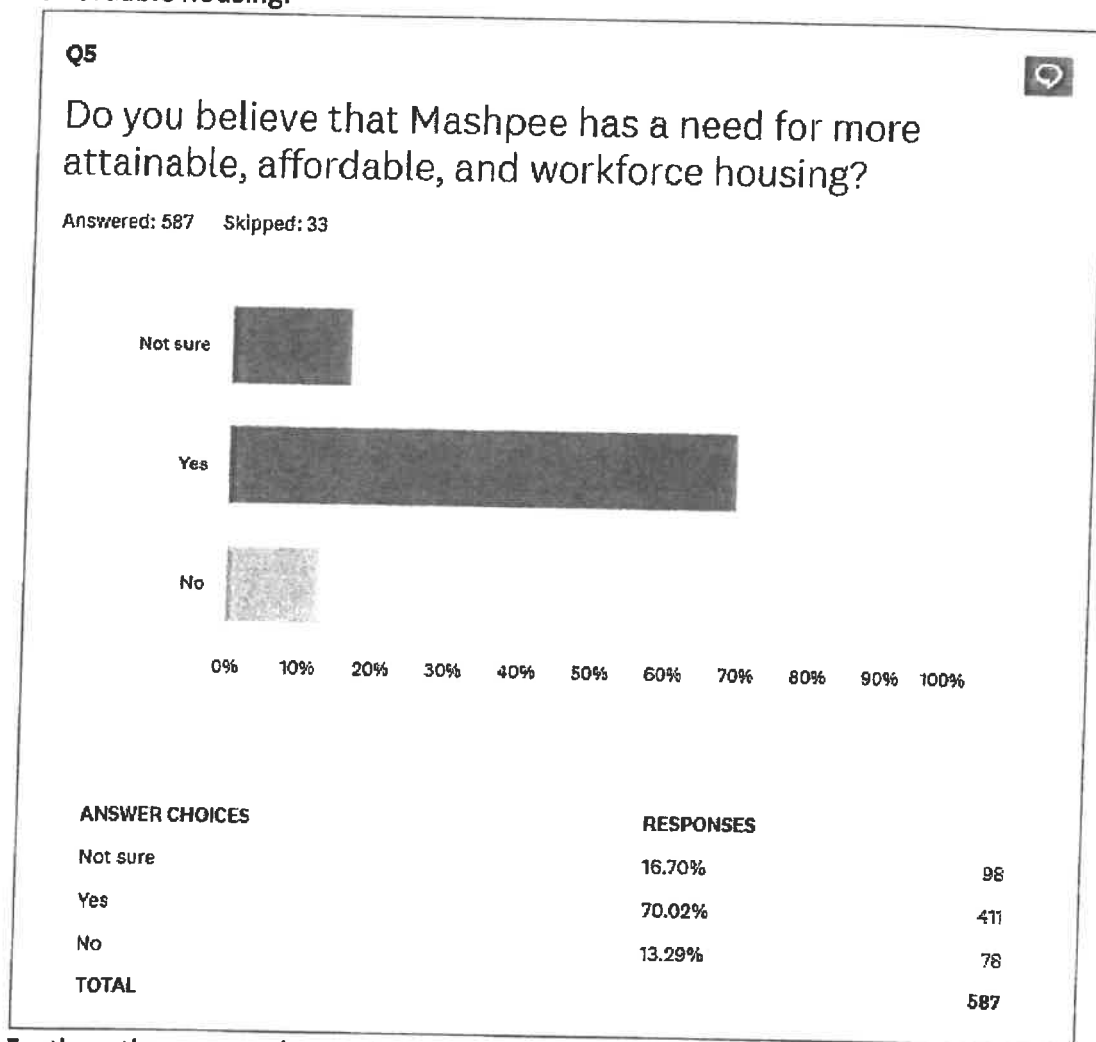
The community would greatly benefit from a more efficient process where the Trust could take action on opportunities as they arise such as the acquisition of foreclosed properties to be converted to an affordable units, the acquisition of substandard (undersized) lots for donation to nonprofit developers like Habitat For Humanity, and further to enhance local commitments in support of affordable housing projects completed by private-sector and nonprofit real estate developers. Currently the Town is not in an advantageous position to capitalize on these conceptual opportunities because the Trust is not currently funded (\$300,000 is under consideration for the May 1, 2023 Town Meeting)

It should be a priority to create systems that allow the municipality to more proactively care for its housing stock. Currently, only 5.2% of Mashpee dwelling units reside on the Subsidized Housing Inventory. Granting an additional \$500,000 to the Affordable Housing Trust empower

the trust to more readily achieve its mission and is the most efficient way to care for Mashpee's stock of affordable housing.

#### 4. Community Support:

As this request is not connected to any one particular property is not possible to identify any abutters. As such, there has been no such communication. In the most recent public opinion survey conducted in support of the update to Mashpee's local comprehensive plan a clear majority of the Town recognizes the need for more attainable, affordable, and workforce housing. 70% of respondents to the public opinion survey recognized the need for more affordable housing.



Further, the survey shows that the Town has an appetite for utilizing town-owned property to produce affordable housing with more than 50% of respondents either supporting or strongly supporting strategies that the Trust has the authority to take advantage of with appropriate funding.

	STRONGLY SUPPORT ▼	SUPPORT ▼	NEUTRAL ▼	OPPOSE ▼	STRONGLY OPPOSE ▼	TOTAL ▼
Donation of town-owned lands to non-profit organizations for the construction of affordable housing projects	22.80% 132	28.32% 164	18.13% 105	15.37% 89	15.37% 89	579
Redevelopment of existing buildings/properties into housing	33.39% 194	43.55% 253	13.43% 78	4.30% 25	5.34% 31	581
Height and density provided that a significant portion of the units are attainable, affordable, and/or workforce housing	27.05% 155	32.98% 189	17.45% 100	12.74% 73	9.77% 56	573

The recommendation of the Affordable Housing Committee will be sought on their upcoming agenda on Tuesday April 11, 2023 as requested in the application.

#### 5. Timeline:

The Town is about to embark on an update to its Housing Production Plan where implementation of specific actions will be codified with accountability mechanisms. The plan should prioritize investments by the Trust in affordable housing projects accordingly over time and thus a timeline will be established within an overall program. There is no specific timeline directly attached to this request for funding however

Real milestones shall be determined by projects in the pipeline in the future. The priority is to make these funds available to the entity empowered to negotiate with developers and execute real estate transactions. There may be permitting requirements attached to specific projects that funds may be used for, however no permitting requirements are directly connected to this request.

#### 6. Community Partners or sponsors

None identified at this time however the Trust would look to nurture its productive relationships with nonprofit developers like Habitat for Humanity, Housing Assistance Corp, and Preservation of Affordable Housing. Generally speaking, any project to be awarded to any partner previously identified would require a MGL Ch. 30 B compliant procurement process.

#### 7. Success Factors:

Short term success is freeing up CPA monies for the entity empowered to make decisions regarding affordable housing. Long-term success will be measured by the progress generated towards the 10% minimum housing units listed on the SHI over time.

#### 8. Experience/Credentials:

Town employees, members of Board and Committees, and community partners with experience in real estate, development, and affordable housing are in place to ensure these funds are used efficiently and beneficially towards the goal of increasing the availability of affordable housing

for every future generation. The Town voted to create the Affordable Housing Trust by vote under Article 19 at the May 1, 2006 Annual Town Meeting. For the purpose of providing for the creation and preservation of affordable housing in Mashpee for the benefit of low and moderate income households and for the funding of community housing. The Board of Affordable Housing Trustees consists of nine members that include all of the members of the Select Board and the remaining members appointed by the Select Board who generally represent the Economic Development Industrial Corporation, Finance Committee, Affordable Housing Committee, and the Mashpee Housing Authority. Declaration of Trust is attached to this application. Only with funding can the Trust carry out its purpose which could and would address the numerous criteria for affordable housing project eligibility pursuant to the Community Preservation Act:

- Contribute to the goal of achieving 10% affordable housing;
- Promote a socioeconomic environment that encourages diversity;
- Provides housing that is harmonious in design and scale with the surrounding community;
- Ensure long-term affordability;
- Promote use of existing buildings or construction on previously developed or Town-owned sites.
- Convert market-rate to affordable units; or
- Give priority to local residents, Town employees, and employees of local businesses to the extent allowed by law.

As a Town agency, the Affordable Housing Trust is audited annually by a third-party agency and information relative to those audits can be sought from the Accounting Department.

**9. Budget:**

\$500,000 for transactions the Trust is empowered to engage in towards the benefit of the affordable housing landscape in Mashpee. Monies would be spent on items including but not limited to those listed in Section 2: Goals, of this application

**10. Other Funding:**

No other funding sources are proposed for this project at this phase.

**11. Coordination with Town Departments**

There is no requirement to coordinate with any Town Departments with regard to funding the Affordable Housing Trust. As funds, if awarded, are dedicated for a specific purpose by the Trust, to fund a feasibility study for example, the Trust will require coordination with the Town Manager's office who would delegate appropriately to ensure procurement is completed lawfully and thoroughly.

Evan Lehrer  
Town Planner  
(508) 539-1414  
elehrer@mashpeema.gov



Planning Department  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

To: Mr. John Cotton, Chair  
Honorable Members of the Affordable Housing Trust  
From: Evan R. Lehrer, Town Planner  
Date: June 20, 2023  
Re: Housing Production Plan and the "VFW Site"

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### **Affordable Housing Trust Mission & Goals**

It has been expressed to the Planning Department that a thoughtful discussion about the Affordable Housing Trust's mission and goals is warranted so that the Trust can prioritize its investments consistently year over year. The Trust's "mission" is defined in its declaration of Trust recorded at the Barnstable County Registry of Deeds in Book 31779 Page 31. Section 2.1: Purpose of the Declaration reads, "The Purpose of the Trust is to provide for the creation and preservation of affordable housing in the Town of Mashpee for the benefit of low and moderate income households and for the funding of community housing."

As the Trust's purpose is established, I felt it important to discuss with you the upcoming update to the Housing Production Plan (HPP), which is just getting underway. The HPP is intended to prioritize actions the Town will take to 1.) achieve its mandated minimum of 10% of Mashpee's housing stock be included on the State's Subsidized Housing Inventory; and 2.) provide housing that meets the needs of the community beyond that 10% mandate. Participation by the Trust in this process will be critical and there will be more information to come after the July 11, 2023 meeting of the Affordable Housing Committee where the community engagement process will be shared and discussed in more detail.

The purpose of the HPP is largely to define goals and objectives for affordable housing that establish a direction and clear awareness of what the Town of Mashpee hopes to accomplish – they provide guidance for community decisions. Further, it defines an implementation program that specifies the policies and actions Mashpee intends to carry out to meet the Town's desired goals and objectives for affordable housing. The update to the Town's HPP should serve as your roadmap to both create and preserve affordable community housing in Mashpee.

I anticipate completing and submitting to the Executive Office of Housing and Livable Communities (EOHLC), formerly Department of Housing and Community Development (DHCD), the updated HPP by December 31, 2023. The HPP will require acceptance by both the Planning Board and the Select Board. I suggest scheduling a joint meeting of the two Boards for this purpose sometime before Christmas.

The HPP, like all long term planning processes, is a community-led participatory process. At the end of the engagement, my Department will work with our consultants to ensure that the community's housing vision and priorities are supported with an implementation plan that the Trust can rely on as it's confronted with decisions relative to where to invest resources.

**Attachments:** *Declaration of Trust, 2019*

*Housing Production Plan, 2015*

Evan Lehrer  
Town Planner  
(508) 539-1414  
elehrer@mashpeeema.gov



Planning Department  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

### **209 Old Barnstable Road Traffic Impact Assessment**

I am reiterating some of the points I made to you in my February 28, 2023 memo requesting the Trust authorize staff to procure a consultant for the purposes of completing a Traffic Impact Assessment (TIA) for a 48 bedroom affordable housing development at 209 Old Barnstable Road.

My engagement efforts with the neighborhood have identified traffic related impacts as the number one concern shared by many residents in that area. I want to be clear that traffic was not the only concern or issue presented, but it is one area that we can analyze more deeply right now with a TIA performed by a qualified transportation consultant.

#### **Request:**

VOTE TO AUTHORIZE A TRAFFIC IMPACT ASSESSMENT FOR THE PURPOSES OF UNDERSTANDING TRAFFIC IMPACTS CREATED OR EXACERBATED BY A 48 BEDROOM AFFORDABLE HOUSING DEVELOPMENT AT 209 OLD BARNSTABLE ROAD AND FURTHER TO PROPOSE SOLUTIONS TO MITIGATE THOSE IMPACTS BY MAKING RECOMMENDATIONS THAT ARE INTENDED TO IMPROVE VEHICULAR AND PEDESTRIAN SAFETY ON OLD BARNSTABLE ROAD BETWEEN ROUTE 151 AND GREAT NECK ROAD NORTH AND LOWELL ROAD TO OLD BARNSTABLE ROAD.

#### **Attachments:**

*February 28, 2023 memo from Town Planner to the Trust*

### **Feasibility Work for the "VFW Site"**

The "VFW Site" is a Town-owned parcel of land located south of Route 28 across from the Sea Oaks Condominiums and just east of Orchard Road. The Commonwealth Electric easement bisects the parcel from east-west (locus attached).

As LeClair Village construction is underway and community engagement efforts around 209 Old Barnstable Road have commenced, it is prudent for the Town to begin feasibility analyses on another property in the Town's 'pipeline' of projects. The VFW Site is a logical choice given its size and proximity to the wastewater treatment facility.

Staff would like to begin due diligence for affordable housing development on this site with a feasibility analysis similarly as has been done in support for LeClair Village and 209 Old Barnstable Road. If authorized and if the site is found to be feasible for development, the property should be transferred into the care and control of the Trust.

#### **Attachments:**

*Locus Map*

## **DECLARATION OF TRUST**

### **Mashpee Affordable Housing Trust**

The Town of Mashpee, by vote under Article 19 at the May 1, 2006 Annual Town Meeting, accepted the provisions of MGL Chapter 44 Section 55C in order to establish the Mashpee Affordable Housing Trust for the purpose of providing for the creation and preservation of affordable housing in Mashpee for the benefit of low and moderate income households and for the funding of community housing, as defined in and in accordance with the provisions of G.L. chapter 44B.

#### **SECTION ONE**

##### **NAME**

1.1 This Trust is created pursuant to MGL Chapter 44, Section 55C and shall be known as the Mashpee Affordable Housing Trust (hereinafter, "the Trust"), and all of the business of the Trust shall be conducted and transacted under said name.

#### **SECTION TWO**

##### **PURPOSE**

2.1 The purpose of the Trust is to provide for the creation and preservation of affordable housing in the Town of Mashpee for the benefit of low and moderate income households and for the funding of community housing.

#### **SECTION THREE**

##### **TRUSTEES**

3.1 There shall be a Board of Trustees ("the Trustees") consisting of nine (9) members, including all duly qualified members of the Board of Selectmen, with the remaining members to be appointed by the Board of Selectmen. A quorum of the Board of Trustees shall be five (5) members.

3.2 Trustees shall serve for a term not to exceed two (2) years. There shall be no limit on the number of terms a Trustee may serve. The Trustees shall receive no compensation for serving as a Trustee of the Trust.

3.3 The Trustees are designated as public agents for purposes of the Constitution of the Commonwealth.

3.4 The Trust is a public employer and shall be deemed a municipal agency of the Town of Mashpee. The Trustees are public employees for purposes of Massachusetts General Laws Chapter 258 and special municipal employees for purposes of Massachusetts General Laws Chapter 268A. The Trustees shall not be deemed to be employees for purposes of Massachusetts General Laws Chapters 32 and 32B.

NORTH MASHPEE

3.5 The Trust is a governmental body for purposes of Massachusetts General Laws Chapter 30A, Sections 19 through 25, the so called Open Meeting Law.

3.6 The Trust is a board of the Town of Mashpee for purposes of Massachusetts General Laws Chapter 30B and Chapter 40, Section 15A. However, agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the Town shall be exempt from the provisions of said Chapter 30B.

3.7 A majority of all members of the Board of Trustees may execute any and all instruments and certifications necessary to carry out the provisions of the Trust, unless the Trustees designate a trustee or trustees constituting less than a majority of said board to do so by an appropriate instrument filed in the Office of the Town Clerk and recorded with the Barnstable County Registry of Deeds.

3.8 No Trustee shall be required to furnish a bond. No Trustee hereunder shall be liable for any error of judgment nor for any loss arising out of any act or omission in the execution of the Trust so long as such action is taken in good faith and is within the scope of the Trustees' powers and authority, but shall be responsible only for his/her own willful breach of trust. Pursuant to Chapter 258 of the Massachusetts General Laws, the Trustees shall be indemnified by the Town of Mashpee for their actions and omissions, except as aforesaid. No license of court shall be requisite to the validity of any transaction entered into by the Trustee.

3.9 Any person dealing with the trust property or the Trustees may always rely without further inquiry on a certificate signed by the person or persons appearing from the records of said Registry of Deeds to be Trustees, as to who are the Trustees to act or as to the authority to execute any documents or instruments including but not limited to those recited in paragraph 3.7 hereof or as to the existence or non-existence of any fact or facts which constitute conditions precedent to action by the Trustees or which are in any other manner germane to the affairs to the Trust. Execution, delivery or recording of such certificate shall not be a condition precedent to the validity of any transaction of the Trust.

## **SECTION FOUR**

### **BENEFICIARIES**

4.1 The beneficiaries of the Trust shall be low and moderate income households in the Town of Mashpee (the "Beneficiaries"). The meaning of the term low and moderate income household shall be defined in the bylaws and/or regulations adopted from time to time by the Trustees.

## **SECTION FIVE**

### **POWERS OF TRUSTEES**

5.1 The Trustees shall hold the principal of this Trust, and receive the income therefrom for the benefit of the Beneficiaries, and shall transfer, convey and pay over the principal and income thereof pursuant to their powers and the Trust purposes for the benefit of the Beneficiaries, as the Trustees shall deem advisable.

5.2 The Trustees shall have the following powers:

- 5.2.1 to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any ordinance or bylaw or any general or special law or any other source, including money from MGL Chapter 44B ("Community Preservation"); provided, however, that any such money received from Chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that Chapter when expended by the Trust, and such funds shall be accounted for separately by the Trust; and provided further, that at the end of each fiscal year, the Trust shall ensure that all expenditures of funds received from said Chapter 44B are reported to the Community Preservation Committee of the Town for inclusion in the community preservation initiatives report, form CP-3, to the Department of Revenue;
- 5.2.2 to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- 5.2.3 to sell, lease, exchange, transfer or convey any personal, mixed or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as to the Trustees deem advisable notwithstanding the length of any such lease or contract;
- 5.2.4 to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
- 5.2.5 to employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;
- 5.2.6 to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
- 5.2.7 to apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- 5.2.8 to participate in any re-organization, re-capitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage purchase or sale of property, by or between any corporation and any other corporation or person;

- 5.2.9 to deposit any security with any protective re-organization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust Estate, such portion of expenses and compensation of such committee as the Treasurer may deem necessary and appropriate;
- 5.2.10 to carry property for accounting purposes other than acquisition date values;
- 5.2.11 to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge trust assets as collateral;
- 5.2.12 to make distributions or divisions of principal in kind;
- 5.2.13 to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the Trustees may deem appropriate;
- 5.2.14 to manage or improve real property; and to abandon any property which the Trustees determined not to be worth retaining;
- 5.2.15 to hold all or part of the uninvested Trust Estate for such purposes and for such time as the Trustees may deem appropriate;
- 5.2.16 to extend the time for payment of any obligation to the Trust; and;
- 5.2.17 to adopt and amend policies, regulations and by-laws for the conduct of the affairs of the Trust.

5.3 Any persons or entities extending credit to, contracting with or having any claim against the Trustees shall look only to the funds and property of this Trust for payment of any contract, or claim, or for the payment of any debt, damage, judgment, or decree, or for any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the Beneficiaries shall be personally liable therefor. If any Trustee shall at any time for any reason (other than the willful breach of trust) be held to be under any personal liability as such Trustee, then such Trustee shall be held harmless and indemnified by the town of Mashpee, against all loss, costs, damage, or expense by reason of such liability to the greatest extent permitted under the provisions of Massachusetts General Laws Chapter 258.

## **SECTION SIX**

### **TRUST PROPERTY**

6.1 Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any provision of the Town's Zoning Bylaw or other Bylaw, comprehensive permit condition, special permit condition, provision of a decision of a Town board or committee, exaction fee, or private contributions shall be paid directly into the Trust and need not be appropriated or accepted by the Town and approved into the Trust. General revenues appropriated into the Trust become Trust property and to be expended these funds need not be further appropriated. All monies remaining in the Trust at the end of any fiscal year, whether or not expended by the Trustees within one year of the date they were appropriated into the Trust shall remain Trust property.

## **SECTION SEVEN**

### **EXEMPTION FROM TAXES**

7.1 The Trust is exempt from the provisions of Massachusetts General Laws Chapters 59 and 62, and from any other provisions of law concerning payment of taxes imposed by the Commonwealth or any political subdivision thereof, including the Town of Mashpee, based upon or measured by property or income.

## **SECTION EIGHT**

### **ANNUAL AUDIT**

8.1 The books and records of the Trust shall be audited annually by an independent auditor in accordance with generally accepted accounting principles.

8.2 A copy of each annual audit report shall be filed with the Town's Board of Selectman and in the Office of the Town Clerk.

## **SECTION NINE**

### **TERMINATION**

9.1 This Trust may be terminated by the Town's rescission of its acceptance of the provisions of MGL Chapter 44 Section 55C by majority vote at an annual meeting of the Town pursuant to Massachusetts General Laws Chapter 4, Section 4B. Upon any such termination of the Trust, a certification of termination, executed by a majority of all members of said board of trustees, shall be recorded with said Barnstable Registry of Deeds.

9.2 The common law Rule Against Perpetuities and the provisions of Massachusetts General Laws Chapter 184A shall not apply to the Trust.

9.3 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Town of Mashpee, provided however, the Trustees may retain such portion thereof as in their opinion necessary to discharge any expense or liability, determined or contingent, of the Trust.

## **SECTION TEN**

### **AMENDMENTS**

10.1 This Declaration of Trust may be amended from time to time by an instrument in writing signed by a majority of all members of said Board of Trustees, provided in each case that the amendment shall not become effective until a certificate setting forth the terms of such amendment, signed by the Trustees, is filed in the Office of the Town Clerk and recorded with said Registry of Deeds.

## **SECTION ELEVEN**

### **RESIGNATION AND SUCCESSOR TRUSTEES**

11.1 Any Trustee hereunder may resign at any time by an instrument in writing, signed and acknowledged by such Trustee and delivered to the Town's Board of Selectmen, the Office of Town Clerk and all remaining Trustees. Such resignation shall take effect on the later of the date specified therein or the date of the recording of such instrument with said Registry of Deeds.

11.2 Trustees may be removed at any time for cause by a majority vote of the Board of Selectmen following a properly noticed public hearing. Cause shall include, but not be limited to, violation of any local, state, or federal law, non-participation in business of the Trust; incapacity to perform the duties of a Trustee; acts of the Trustee that in the opinion of the Board of Selectmen are negligent or detrimental to the Town of Mashpee or the Trust.

11.3 Succeeding or additional Trustees may be appointed or any Trustee may be removed by an instrument in writing signed by a majority of all members of the Board of Selectmen, provided in each case that a certificate signed by any Trustee naming the Trustee or Trustees appointed or removed and, in the case of an appointment, the acceptance in writing by the Trustee or Trustees appointed, shall be recorded in the Office of the Town Clerk and in said Registry of Deeds. Upon the recording of such instrument, the legal title to the Trust Estate shall, without the necessity of any conveyance, be vested in said succeeding or additional Trustee or Trustees, with all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

## SECTION TWELVE

### GOVERNING LAW

12.1 This Declaration of Trust shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

Witness our hands and seals this 7th day of January, 2019.

BOARD OF TRUSTEES OF THE MASHPEE AFFORDABLE HOUSING TRUST

Carol A. Sherman

John J. Cahalane

Thomas F. O'Hara

Allan B. Isbitz

Andrew R. Gottlieb

Richard Halpern

COMMONWEALTH OF MASSACHUSETTS

On this 7th day of January 2019, before me, the undersigned notary public, personally appeared

The Board of Trustees of the Mashpee Affordable Housing Trust:

Carol A. Sherman, John J. Cahalane, Andrew R. Gottlieb,

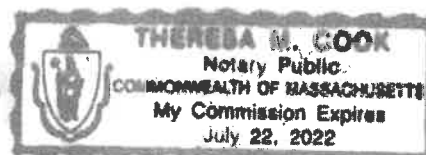
Thomas F. O'Hara, John J. Cotton, Richard Halpern, Allan B. Isbitz

proved to me through satisfactory evidence of identification, which were a Massachusetts driver's license and personal recognition, to be the persons whose names are signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Theresa M. Cook

Theresa M. Cook - Notary Public

My Commission Expires: July 22, 2022



*Current Plan - Being revised*

*Town of Mashpee*  
**Affordable Housing & Planned Production Plan**  
*Meeting the needs of 760 CMR 56.03(4), Comprehensive Permit;  
Low or Moderate Income Housing Regulations*

**Approved by Affordable Housing Committee 8-4-15**

**Approved by Planning Board 8-5-15**

**Approved by Board of Selectmen 11-16-15**

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# **I. Overview & Purpose**

## ***Overview:***

Diverse affordable housing is important for all communities. After covering the expenses of housing, families must have enough income left to meet the basic costs of food, healthcare, utilities and transportation. Housing is generally considered to be affordable when households spend no more than 30 percent of their gross income on housing costs. Because Mashpee's subsidized affordable housing stock falls short of the state's 10% target, there is an understandable concern about affordability and the choices that are available as the community moves into the next decade.

More than 17 years have passed since Mashpee's Comprehensive Plan was produced and some ten years from the time the 2005 Affordable Housing & Planned Production Plan was accepted by the state Department of Housing and Community Development. A great deal of its approach to meeting the demand for affordable housing was based on the results of a 1992 public opinion survey conducted when the town's population was less than 8,000. The 2010 census placed the town's population at 14,006, with a 2015 Planning Department estimate of 14,995 year-round residents. Thus, this growth must be reflected in any Comprehensive Plan update, and more implicitly in the affordable housing element, as well as this update of the Town's Affordable Housing & Planned Production Plan. To assist in this update, a new opinion survey was prepared and released in November, 2009, with responses collected through March, 2010.

The Local Comprehensive Plan regulations of the Cape Cod Commission (CCC) suggest municipal plans be entirely revised at 10 year intervals. The DHCD requires the AH&PPP to be updated every 5 years. It is therefore past time for an update to both plans. This document is intended to update of the Town's Affordable Housing & Planned Production Plan, and will also be the basis for an update to the Affordable Housing element of our Comprehensive Plan.

## ***Purpose:***

This document provides a detailed summation of housing availability and affordability in Mashpee that builds on and updates the work of the Town's 2005 Affordable Housing & Planned Production Plan, as well as a version of the Plan completed in 2012 but not submitted to DHCD. Specifically, the Affordable Housing and Planned Production Plan encompasses the following sections:

1. Goals and objectives for affordable housing that establish a direction and clear awareness of what the Town of Mashpee hopes to accomplish – they provide guidance for community decisions;
2. Current community demographic trends;
3. An inventory and assessment of Mashpee's current housing supply;

4. Development constraints and limitations to the growth of housing
5. An evaluation of the town's current and anticipated affordable housing, including the identity of existing organizations with responsibility for developing and managing affordable housing projects;
6. An assessment of housing affordability in terms of how effective the town has been in providing adequate affordable housing choices for low, moderate, and middle income individuals and households;
7. Projection of demand for both owner and renter occupied housing to the year 2020;
8. A target plan for the production of affordable housing to the year 2020, extended to 2023 to demonstrate the proposed target date for reaching 10% affordable housing;
9. Identification of barriers to the production of affordable housing and possible mitigation measures, and
10. An implementation program that specifies the policies and actions Mashpee intends to carry out to meet the desired goals and objectives for affordable housing.

Population and housing stock counts primarily from the official 2010 U.S. Census have been used in preparing this report. There has been only a small increase in both counts as of 2015.

## **II. Goals and Objectives**

Goals are the first-order of policy that in a general manner state the desired results of the Plan's implementation. Objectives are the second order of translation that advances action toward each goal. Together, they provide the public with a basis for understanding the Affordable Housing Plan's intent as well as a framework for its planned production strategy and implementation.

Development of these goals and objectives was based in part on those originally adopted as part of the 1998 Comprehensive Plan and the results that emerged from the 2010 Comprehensive Plan Public Opinion Survey.

**Goal 1:** Promote the development of affordable housing for both rental and purchase that meets the needs of present and future residents of Mashpee.

### ***Objectives:***

- A. Increase the town's affordable housing stock to ten percent of all year-round housing based on the 2010 census. It is intended that this be done consistent with the DHCD .5% per year standard. Specifically, Mashpee will make every effort to produce at least 32 units annually.
- B. Provide for a balance of affordable rental and ownership units to meet the needs of low and moderate income households.
- C. Ensure the distribution of affordable housing throughout the town's residential neighborhoods as opposed to groupings or concentrations in one area.
- D. Identify and begin the task of addressing the barriers to the development of affordable housing.

**Goal 2:** Encourage a mix of housing densities, ownership patterns, prices, and building types to serve diverse households consistent with the small town character of the community.

### ***Objectives:***

- A. Continue to seek opportunities for mixed-use development within the town's commercial center and commercial corridors to add to the vitality of these areas as well as providing housing for small households within easy access to services.
- B. Analyze development and redevelopment opportunities in locations appropriate for increased density where the expansion of multifamily housing may be considered.
- C. Identify and promote innovative wastewater management technologies that would allow higher densities in selected residential areas.
- D. Expand the Town's zoning bylaw inclusionary provisions to encourage the development of affordable housing units in all new residential construction and redevelopment projects.

- E. Explore the provision of zoning incentives for the creation of affordable housing for households that work in the local economy

**Goal 3:** Provide regulatory and financial incentives that maximize affordability for the most vulnerable segment of Mashpee's population, including but not limited to families in poverty, the very low income (50% of median income), single heads of households and others with special needs.

***Objectives:***

- A. Continue to identify and evaluate the use of surplus town-owned property for the development of "friendly" 40B affordable housing projects.
- B. Utilize appropriate funding sources in combination with town donated land to provide affordable rental housing opportunities (e.g. Ashers Path Apartments).
- C. Maintain a revolving loan fund to assist special needs families with the move-in costs (first and last months rent plus security fee) for an affordable rental housing unit.
- D. Assure all contributions from the development of housing projects are placed in the Affordable Housing Trust Fund to be used to further affordable housing initiatives.
- E. Create an Accessory Affordable Apartment bylaw that meets the state requirements for inclusion on the subsidized housing inventory.
- F. Seek opportunities to convert existing properties, motels and seasonal homes to more productive, long-term use as affordable year-round housing.

**Goal 4:** Pursue joint ventures with the development community and collaborations with local and regional agencies who are resources for information, public financing and technical assistance

***Objectives:***

- A. In collaboration with the town's Affordable Housing Committee and the Mashpee Housing Authority, establish a plan framework and design guidelines for the development of future "friendly" 40B projects.
- B. Work with regional agencies such as the Cape Cod Commission, Housing Assistance Corporation and the Barnstable County's HOME Consortium and Soft Second Loan Program as well as private entities like Habitat for Humanity to develop cooperative arrangements and projects to benefit those in need of affordable housing
- C. Engage the community in discussions on affordable housing to bring attention to the issue, offering information on housing needs and strategies to help attract community support.

### III. Community Demographics

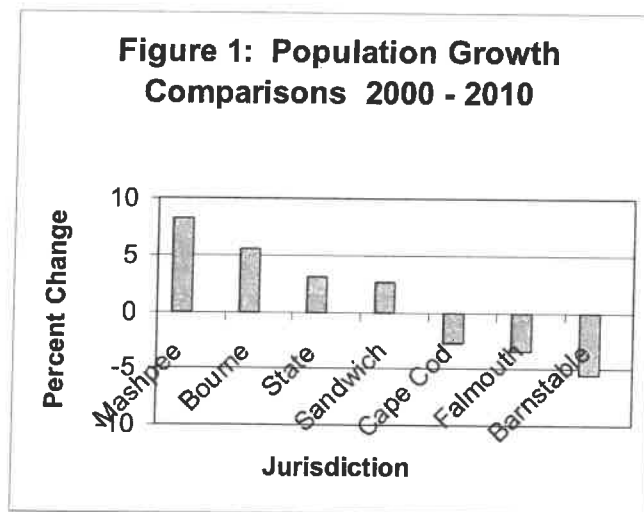
#### *Population Change*

Mashpee's population has consistently exceeded the growth rate of the other 15 towns on the Cape as well as that for Barnstable County. Population more than doubled in both the 1970s and 1980s and, although the growth (64.2%) in the 1990s occurred at a slower rate, it was still more than double that recorded by any other town on the Cape. During the summer months, the seasonal influx of population results in a near doubling of the population, occupying the large number (3700) of seasonal homes present in Mashpee. The Census Bureau reported that the Town's year-round population for 2010 was 14,006, an increase of nearly 8.2% since 2000. (It should be noted that the 2015 estimate by the Planning Department is 14,995, a 7.06% increase since 2010.)

**Table 1: Population Change – Mashpee**

Year	Total	Numeric Change	Percent Change
1980	3,700	2,412	187.26%
1990	7,884	4,184	113.08%
2000	12,946	5,062	64.20%
2010	14,006	1,060	8.18%

*Source: US Census Bureau*



*Source: U.S. Census Bureau*

As can be seen from Figure 1 above, Mashpee's population continued to grow during the economic downturn, while other communities like Falmouth, Barnstable and the Cape region were losing population. Retirees and second home buyers from throughout New England and to a lesser extent the Northeast have fueled much of the town's growth. This is placing increasing pressure on existing infrastructure and the environment as well as new demands for increased health care services.

## ***Age Characteristics***

Mashpee continues to be a destination for retirees. Condominium developments like Windchime Point, Stratford Ponds and the Southport Retirement Community have been enormously successful in attracting older adults. The Jobs/Whiting and East Steeple Street neighborhoods, planned as an extension of Mashpee Commons, will feature a variety of housing choices likely to further attract retirees.

According to the 2000 census, 18.65% of the population or 2,411 persons were aged 65 years or older. The 2010 Census shows growth in this population to 3298 out of 14,006, or 23.5%, thus increasing the town's median age to 45.9. This in line with the Cape as a whole, where the median age of residents (48.1 years) is the highest of all regions in the Commonwealth and significantly higher than the median age for the state (38.5 years). Of those 683 residents who completed the town's Public Opinion Survey, 49% were over the age of 65 and nearly 45% were retired.

**Table 2: Age Demographics**

<b>Town of Mashpee</b>				<b>Barnstable County</b>
<b>Age Group</b>	<b>1990 % of Total</b>	<b>2000 % of Total</b>	<b>2009 % of Total</b>	<b>2009 % of Total</b>
< 5	9.4	5.9	4.0	4.4
5 – 17	15.8	19.2	13.8	13.0
18 – 24	6.7	4.0	8.8	7.6
25 – 44	36.3	28.4	19.3	18.2
45 – 64	17.1	23.6	28.9	32.2
65 >	14.5	18.6	24.9	24.3

*Source: U.S. Census Bureau & estimates for 2009*

The 2010 U.S. Census indicated age breakdowns as follows: <18=2697 (19.26%), 20-24=594 (4.24%), 25-34=1270 (9.07%), 35-49=2675 (19.10%), 50-64=3160 (22.56%), >64= 3298 (23.55%)

Further supporting this trend is the fact that family households with children under the age of 18 shrank from 32.7% in 2000 to 19.26 % in 2010. Moreover, those in the 25-44 (family) age groups have declined by nearly 47% since 1990. Indeed, much of the town's recent growth is made up of new retirees who have relocated to Mashpee or those who have decided to make their seasonal homes their permanent residence. Conversely, it supports a Cape trend that points to a growing loss of young adults and families.

## ***Median Household Income***

Mashpee has experienced steady income growth since 1990, but the 2009 estimates showed its growth had begun to decline relative to other jurisdictions. Through 2000, the town's median income had not only kept pace with the County and state, but exceeded three of the four towns

which constitute the Upper Cape region. Based on Census 2009 estimates, the town's median household income of \$59,856 was more than 13% less than the average for its neighboring towns and significantly less than that for the Commonwealth.

**Table 3: Mashpee Median Income with Comparisons**  
**1990 – 2009**

Subdivision	1990	2000	2009
Falmouth	33,944	48,191	62,686
Sandwich	43,500	61,250	79,369
Bourne	34,159	45,113	61,914
Mashpee	32,524	50,871	59,856
County	31,766	45,933	60,096
Massachusetts	36,952	50,502	64,496

Source: U.S. Census & 2009 Census Estimates

Further deterioration is evident when data from the 2000 Census is compared to town estimates for 2009. The number of households earning less than the median income increased by approximately 470 or 18.6 percent. This change is also obvious when comparisons are made for those households earning 80 percent or less of median income. Households affected by the meager change in median income jumped by 25.2 percent. Mashpee was hit hard by the nation's recession, suffering numerous job losses and unemployment rates that exceeded 10 percent.

HUD's analysis of the 2007-2011 American Community Survey Census data, released in 2014, indicated that, of a total of 5755 households in Mashpee, 760 (13.2%) earned 30% or less of the median family income, 665 (11.6%) earned greater than 30% but less than 50% of the median family income, 1,005 (17.5%) earned between 50 and 80% of median family income, 565 (9.8%) earned between 80 and 100% of median family income and 2750 (47.8%) earned more than the median family income. Thus 24.8% of Mashpee households earn less than 50% of median family income and 42.2% earn less than 80% of the median.

### *Conclusions:*

- *Mashpee's population growth continues to outpace all other Cape towns including that for Barnstable County.*
- *Based on census estimates for 2010, the 65+ age group has risen to nearly 23.5% of the town's total population, thus increasing the town's median age to nearly 46, well above the state's 38.5 median age -- but less than the Cape's median of 48.1.*
- *The town's estimated median household income for 2009 fell below that recorded by neighboring towns and the County average, increasing the income gap for affordable housing.*

## IV. Housing Inventory

This section summarizes Mashpee's housing characteristics, including housing type, age, tenancy and the status of subsidized housing. The information presented here comes primarily from the 2009 U.S. Census estimates and 2010 data on population and housing, as well as Mashpee Planning Department 2015 estimates.

### *Housing Supply*

Mashpee's total housing stock for the period 2000–2010 increased by 18.7% from 8,325 units to 9,882, of which 6,473 were year-round units. Table 4 provides a breakdown of the Town's housing stock for the period 1980 to 2010 per the Census. (The Planning Department estimate for 2015 is 6,451 year-round and 3,595 seasonally-occupied units, with 3.6% vacant, for sale etc. totaling 10,421 units.) The explosive increase in population during the 80s produced a doubling of housing units, with significant continuing growth experienced in the 90s. Since 1980, seasonal housing as a percentage of the town's total housing stock has declined, although this trend was somewhat interrupted by the housing market crisis, which led to fewer low or moderate priced year-round homes while high-end seasonal homes continued to be built. More and more new residents are obviously making Mashpee their new year-round residence.

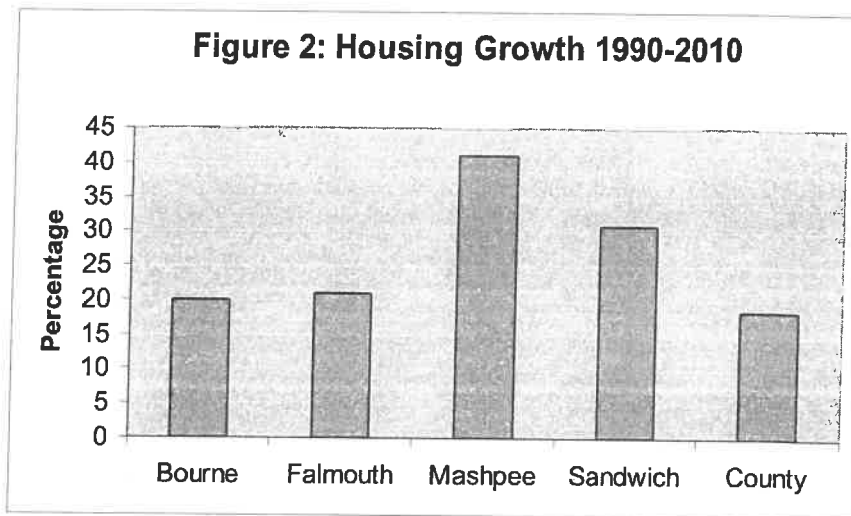
**Table 4: Mashpee Housing Stock**

Year	Year-Round Units	Seasonal Units	Total
1980	1,756	1,989	3,582
1990	3,787	3,212	7,002
2000	5,578	2,747	8,325
2010	6,473	3,409	9,882

*Source: US Census & Adjusted Estimate for 2010*

Data supplied by the assessor's office for the 1999 to 2008 period indicated that some 1,414 housing units were built. Nearly 41% of these dwellings (579) were condominiums, largely constructed as part of the continued development of the Southport Retirement Community, Stratford Ponds and Windchime Point projects (the latter two now completed). Single-family construction occurred throughout the town primarily as part of previously approved subdivisions. Building Department records indicate an additional 224 single-family and 219 condominium units built from 2008 to 2014, while 66 single-family homes were demolished. The latter figure indicates both that there were actually more condominiums than single-family homes added to our housing stock, while a significant number of the latter were tear-down and rebuild situations creating larger and more expensive housing.

As illustrated in Figure 2 below, Mashpee's housing growth exceeded that of its three neighboring towns and the County in the 20 year period between 1990 and 2010. Contributing factors to this trend included a significant number of previously-approved, but unfinished development projects, Mashpee's attractiveness as a prime retirement community and the continued growth of its resort developments like New Seabury and Willowbend for seasonal homes.



Source: U.S. Census

### ***Housing Type and Age***

Housing in Mashpee consists primarily of single-family homes (see Table 5). According to the 2000 U.S. Census, 83.2 percent of Mashpee housing units were single-family residences, and while this category grew by more than 1,300 units as of the 2010 Census, the percentage declined slightly. Replacing the single-family home were condominiums and townhomes that nearly doubled in number. They were built primarily to house the expanding senior population. This trend has continued through 2014. The rest of the town's housing mix is comprised of a small supply of duplexes, multifamily buildings and two mobile-home parks.

**Table 5: Housing Characteristics, 1990, 2000 & 2010**

Year	Total Units	Single Family	Two Family	Townhouses / Condos	Multifamily 5 + Units	Mobile Homes
1990	7,002	82.0%	1.1%	4.3%	9.5%	2.8%
2000	8,325	84.5%	1.2%	4.3%	8.3%	1.5%
2010	9,882	83.2%	1.4%	5.2%	8.2%	1.9%

Source: US Census

When compared to other nearby Cape towns, Mashpee provides more housing choices. But given the decline in multifamily development, this diversity may not be enough to meet some of the needs and affordability levels of its residents. Since 2000, Ashers Path, a 56 unit rental project for age 55+ adults and two second floor buildings in Mashpee Commons, are the only multifamily rental projects with five or more units built in Mashpee, although Mashpee Commons has broken ground for an additional 52 apartments in 8 buildings to be completed in 2016 and 2017 as part of their Jobs/Whitings Road 40B project.

Mashpee was one of the last towns on the Cape to develop. In addition, a 1976 suit by the Wampanoag Tribe claiming that the incorporation of the town violated the Indian Non-

Intercourse Act of 1793 effectively put a hold over any real estate development until the Supreme Court ruled in 1983 against the tribe. Not surprisingly, therefore, 81.5 percent of the homes in Mashpee were built since 1970, and only 2.5 percent of the town's homes were constructed before 1940. Thus, many of the problems that are typically seen with older communities, like lead paint, are virtually non-existent.

## ***Housing Tenancy***

Housing tenancy refers to whether a house is occupied by a renter or homeowner. As shown in Table 6, most of Mashpee's housing units were owner-occupied (82.2%), while only 17.8% of the units were renter-occupied in 2010. The 2014 HUD analysis of 2007-11 ACS Household data shows 13.9% of households renting and 86.1% as homeowners. This high level of homeownership suggests that most people who live in or move to Mashpee can afford to buy a home in the town.

Mashpee, like its neighbor to the north, Sandwich, has fewer renter occupied units than Falmouth and Bourne, the other two towns that constitute the Upper Cape area. With the exception of Mashpee Village and Ashers Path, multifamily rental housing in Mashpee as a choice for low to moderate income families is limited, although, until recently, the large number of condominium townhouses in Mashpee, many of the older of which were fairly affordable, provided an alternate multifamily rental market. That market has dwindled as the owners of condominiums which were held as an investment with the intent of their serving as a retirement home, have been increasingly occupied by the owners as they retired, leaving many fewer available for rent. A similar trend has occurred with single-family homes formerly rented out, or used solely as summer homes and rented out in the winter.

**Table 6: Comparison of Housing Tenure – 2010**

<b>Town</b>	<b>Total Units</b>	<b>Owner-Occupied Total - Percentage</b>		<b>Renter-Occupied Total – Percentage</b>	
Mashpee	6118	5030	82.2%	1088	17.8%
Falmouth	14069	10705	76.0%	3364	23.9%
Sandwich	7776	6729	86.5%	147	1.9%
Bourne	7866	5951	75.6%	1915	24.3%

*Source: 2010 U.S. Census Estimates*

## ***Current Housing Market***

The housing slump together with a tight credit market resulting from the "Great Recession" slowed new housing development. This issue was evident with the multiple start date extensions approved for the Mashpee Commons 40B housing project (involving 382 units of which 96 are to be affordable) plus its withdrawal of plans for the Trout Pond neighborhood, a mixed-use development that would have added 78 more housing units. Until recently, Southport had put its plans for construction of the final 250 condo units on hold, but have now resumed construction and sold or pre-sold almost all of their remaining new units. New home construction in Mashpee bottomed out in 2011 with only 34 units built (and 6 demolished), but has rebounded back to 94 units (11 demolitions) in 2014.

Mashpee also saw a significant number of foreclosures during the recession. In 2006, Mashpee ranked 10<sup>th</sup> in the state for foreclosure petitions with 17.9 / 1000 housing units. This rate increased to 26.7 in 2007 then fell to 22.1 per 1000 units in September 2009. This works out to roughly 215 homes in foreclosure. As more of these units returned to the market, the supply of available housing increased, putting some downward pressure on housing values.

### ***Subsidized Housing & Progress Since 2005 Plan***

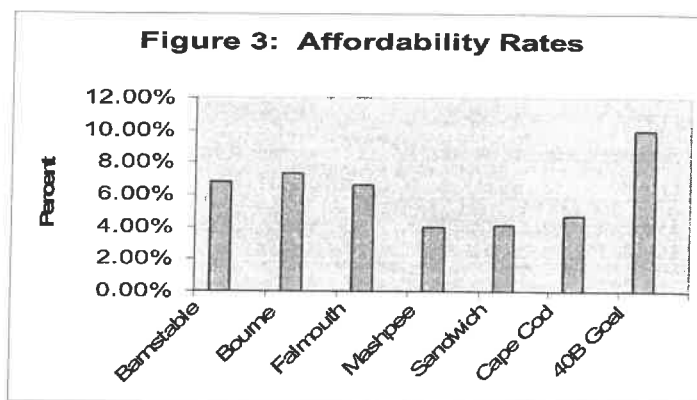
As of December 11, 2014, Mashpee is credited with a total 298 affordable units on the DHCD subsidized housing inventory. This provides an affordability rate of 4.6 percent of the town's 6473 year round housing units per the 2010 Census. Mashpee's percentage has increased from 3.55% at the time of our 2005 Affordable Housing Plan, increasing from 198 units credited in January of 2005. As that is still less than half of the 40B goal, concerns have been raised with respect to whether enough has been done to address this issue. A 2006 Housing Poll conducted by the University of Massachusetts Donohue Institute for the Cape and Islands showed that 1) A clear majority of residents believe cost of housing prevents young families from living in the community in which they were raised and 2) Cost of housing hurts the economy and prevents elderly residents from remaining in their communities. These findings are further supported by the results of Mashpee's 2010 Comprehensive Plan Public Opinion Survey in which nearly 42% of the respondents indicated the Town needed more affordable housing, and where 40% singled out housing affordability as a major factor in keeping families and young people from leaving the Town.

**Table 7: Affordable Housing Units – 2014**

Status	Ownership	Rental	Total
Existing	36	262	298
Approved	72	26	98

*Source: Mashpee Planning Dept.*

Mashpee is not alone in this quandary about what to do about the lack of affordable housing. Most of Mashpee's neighboring towns also have affordable housing levels below the state target, and, many, like Mashpee, face significant challenges in meeting the 10% state target. The level of housing affordability in each of the surrounding towns is illustrated in Figure 3 below.



*Source: DHCD December 22, 2010*

Affordable housing in Mashpee is comprised of five primary rental projects and a number of scattered affordable ownership units. Mashpee Village, constructed in 1975, includes fourteen 2-story walk-up apartment buildings containing 110 rental units and 35 single-family rental homes located on Old Barnstable Road across from the Southport Retirement Community. A six acre project, known as Asher's Path, was developed for the Housing Authority in 2007 with 56 one-bedroom rental apartments for persons aged 55 and older. The 10 unit "Great Coves" project (5 duplex buildings), adjacent to the Mashpee Housing Authority's 1980s "Breezy Acres" property (3 duplexes) was completed in late 2014. A 24 unit private 40B project (8 single family and 16 condominium units) named "Main Street Village" was built in 2006, with an additional 8 single-family homes approved (permit has expired, but developer is planning to seek a new permit for the 8 homes). Another privately-built 11-unit (all single-family) 40B project, River Hill, was completed in 2005.

Land donations by the town have also contributed to the supply of affordable units. 16 lots have been donated to Habitat for Humanity, of which 14 are now occupied with owner units. More recently, a 10-unit housing complex ("Great Coves" noted above), financed in part by Community Preservation funds and consisting of five duplexes, was built adjacent to the Mashpee High School on Housing Authority land originally donated by the Town. This was a joint effort by the Mashpee Housing Authority and the Housing Assistance Corporation.

**Table 8: Existing Affordable Housing Units**

<b>Subsidized Housing</b>	<b>Rental Units</b>	<b>Ownership Units</b>	<b>Total</b>
Mashpee Village	145	-0-	145
Asher's Path	56	-0-	56
Homeyer Village	24	-0-	24
Breezy Acres	6	-0-	6
Great Cove Comm.	10	-0-	10
Other Qualified Units	1	19	20
CCC HOR Program	-0-	3	3
Habitat for Humanity	-0-	14	14
DDS Group Homes	20	-0-	20
<b>Total</b>	<b>262</b>	<b>36</b>	<b>298</b>

*Source: DHCD, Mashpee Housing Auth., Cape Cod Commission, Mashpee Planning Dept.*

Four subsidized housing projects are administered and managed by the Mashpee Housing Authority. They are Homeyer Village (24 apartments), Breezy Acres (6 family units), Great Coves Community (10 family units) and the Ashers Path Apartments (56 senior apartments). 21 elderly tenants (62+) and three disabled people live at Homeyer Village. All developments have lengthy waiting lists: as of May 2015, 93 people for Homeyer Village, 56 families for Breezy Acres, 87 families for Great Cove and 35 individuals for Ashers Path. It is expected that waiting lists would be much longer, except that when people are told that the wait time for these developments is between 5 and 10 years, they withdraw their application for assistance. The Housing Authority also has a waiting list of 238 people for their subsidized housing voucher programs under the Massachusetts Rental Voucher Program.

Under the rules of Chapter 40B, a community's affordability rate is based on the last census count for year-round housing stock. Using housing data from the 2010 census for Mashpee, the town's target is now 647 units, leaving us deficient by 349 affordable units to meet the 10% goal (Mashpee is currently at 4.6%). This shortfall would be measurably improved by the build-out of the already-permitted Mashpee Commons 40B project which includes 96 affordable units (and another 16 rentals as originally permitted) and the proposed 52-unit Wampanoag Village project by the Wampanoag Tribe (for which roads, utilities and a wastewater treatment plant have been completed, although no 40B application for the housing units has yet been filed).

### ***Public & Private Establishments that Plan, Develop or Manage Affordable Housing in Mashpee***

Town Planning & Zoning: A dispersal of affordable housing throughout the town is favored over a concentration in one area. As such, additional zoning and bylaw amendments are recommended to encourage affordable housing development. The town will continue to promote mixed-use style developments, similar to the standard already established in Mashpee Commons, through its transfer-of development rights (TDR) zoning provisions. Other measures such as development of an accessory affordable (subsidized) apartment bylaw (accessory apartments are currently allowed, but without affordability restrictions) and a search for opportunities where density requirements can be raised to accommodate multifamily housing projects appear warranted in light of the challenges before Mashpee. It should be noted that for new subdivisions over 10 lots, Mashpee zoning currently requires that 10% of units be affordable, providing additional market rate units to compensate the developer. One such subdivision was approved in 2014, although construction has not yet begun and the affordable unit is not yet built (the developer's intent is to donate the lot to Habitat for Humanity).

Mashpee Housing Authority: The Mashpee Housing Authority was established in 1982. Administered by an Executive Director and a Board of Commissioners consisting of five members, four elected and one appointed by the Governor, the Authority seeks to provide stable, quality affordable housing for low and moderate income persons, deliver these services with integrity and mutual accountability, create living environments which serve as catalysts for the transformation from dependency to economic self-sufficiency and continuously pursue the development of additional affordable housing units whenever financial or regulatory opportunities may exist. Currently, the Mashpee Housing Authority manages Homeyer Village, Breezy Acres, the adjacent Great Coves Community and the Asher's Path senior apartment project. The Authority also administers MRVP Mobile vouchers, MRVP Project Based vouchers, Alternative Housing vouchers, Section 8 vouchers and the Mashpee Housing Assistance Program. The Authority can also assist with the process of securing qualified applicants for affordable housing units.

As a developer of 40B projects, the Housing Authority should be expected to achieve a minimum 50% affordability of all housing units created. Those units built on town-donated land should have at least 75% of the units affordable with a first preference for occupancy given to income qualified Mashpee residents. Under 40B regulations, towns may be allowed to set-aside up to 70% of the affordable units available in a 40B development for those who have a connection to the community, subject to approval by the granter / funder of the project. 100% of current Housing Authority housing units are affordable.

Mashpee Affordable Housing Committee: The Affordable Housing Committee was created in 1999 as a recommendation of the 1998 Comprehensive Plan. It included eight regular members and two liaison members, one from the Board of Selectmen and the other from the Cape Cod Five Bank. In 2004, the Committee conducted a survey of Mashpee residents to ascertain their opinions on the need for affordable housing. In 2010, the Committee was reconstituted as a five member group with a liaison member from the Board of Selectmen. The Committee has been an effective advocate for affordable housing, has assisted with development of this Affordable Housing & Planned Production Plan Update and provides recommendations to Selectmen on LIP 40B projects and to the Zoning Board of Appeals on 40B proposals. The Committee also works with the Planning Department and Selectmen to identify Town land parcels on which to solicit development of affordable housing projects. The Town is currently preparing to put out requests for proposals from private affordable housing apartment developers for two large parcels with the potential for approximately 64 two bedroom units, and has also identified 21 other tax-taken lots which may be suitable for affordable housing development.

Mashpee Affordable Housing Trust: The Trust was created in 2006 to collect funds for housing, and to own and manage real estate. Its membership consists of the five Selectmen and four other members, including members of the Housing Authority, Affordable Housing Committee, Finance Committee and Economic Development Industrial Corporation. The Trust has not undertaken any projects to date.

Habitat for Humanity: Habitat for Humanity of Cape Cod's mission is to help change the lives of families on the Cape who currently have inadequate housing. It accomplishes this by working in partnership with families in need of housing. Founded in 1988 as an independent affiliate of Habitat for Humanity International, it has built homes in all fifteen towns on Cape Cod and have dedicated 93 homes to date. Every home is deed restricted to be affordable, upon any future resale, in perpetuity. In Mashpee, sixteen homes have been completed to date, 14 on lots donated by the Town (another 2 lots have been provided by the Town for homes to be built in 2015). The May 2015 Town Meeting also voted to provide \$70,000 in Community Preservation Act funds to assist in construction of the next two homes.

Private Developer 40B Projects: While the majority of affordable housing on the Cape has been built by qualified 40B developers, they have not yet had a major presence in Mashpee. The Main Street Village and River Hill (Meetinghouse Hill) projects consisted of 35 units, of which 19 units are on the DHCD Subsidized Housing Inventory. 8 additional units have been proposed at Main Street Village. The Jobs / Whittings 40B project at Mashpee Commons and the potential private development on the two Town parcels noted above will significantly increase this total. In anticipation of more activity in the future, the principles listed below should be followed when possible:

- Town or commercial centers are the appropriate locations for higher density multi-family housing. Chapter 40B developments that are sited in such locations should have higher density allowances than in surrounding locales, provided proper wastewater treatment facilities are available or provided, and should be compensated for redeveloping vacant, idle or underutilized buildings.
- Developments that are proposed in residential neighborhoods should have lower density allowances to lessen the impacts on traffic and roads, infrastructure, and the natural environment and character of these areas.

- Preference is given to the development of affordable apartment units that meet the needs of young adults and families as well as the most vulnerable segments of the population.

Housing Assistance Corporation (HAC): HAC offers a continuum of housing programs that have evolved with the changing needs of the community. In addition to its earliest programs in rental subsidies, HAC offers housing consumer education, training and assistance; emergency and ongoing shelter for individuals and families; homelessness prevention; weatherization and energy rehab; and affordable housing development. In the last few years, HAC has developed over 400 affordable housing units. HAC is also a willing partner or consultant on efforts to assist with the process of securing qualified applicants for affordable housing units. HAC was involved with the Housing Authority as the developer of 10 affordable duplex units on Authority land at Great Coves adjacent to the Authority's Breezy Acres project.

Cape Cod Commission: The Commission works in partnership with the fifteen towns in Barnstable County to help secure funding, provide technical assistance, serve as an information clearinghouse, and lead innovative efforts for the creation of affordable housing. Staff works with towns in both developing affordable housing zoning bylaws and encouraging and providing funding for the development of Housing Production Plans that are consistent with the state's Chapter 40B (Comprehensive Permit) regulations. The Housing Production Plans can then serve as the basis for the affordable housing sections of town Local Comprehensive Plans.

#### *Conclusions:*

- *At 38%, seasonal housing or vacant units remain an important feature of Mashpee's housing stock.*
- *Approximately 524 units, or 5% of the town's housing units are apartment rentals (although there are a significant, but shrinking number of single-family homes rented), with an additional 2,596 townhouse condominiums (24.7% of 2015 housing). Since 2000, only Ashers Path and apartments on second and third floors of three buildings in Mashpee Commons have been built.*
- *Housing foreclosures impacted and depressed the housing market in Mashpee during the "Great Recession". Both new home construction and housing values have rebounded in recent years, but have not reached pre-recession levels.*
- *The Department of Housing & Community Development only recognizes 298 units of affordable housing in Mashpee. This provides an affordability rate of 4.6%, well under Chapter 40B's 10% goal.*
- *Private 40B developers will likely become a larger source of affordable housing in Mashpee.*

## **V. Development Constraints and Limitations**

Land: At this point, over 52% of Mashpee's land area has been developed, with another 40% protected as open space or recreation land. Based on 2014 Assessors' records, there were only 637 remaining developable privately-owned lots or parcels zoned for residential use, totaling 625.74 acres. The large majority of this land is in existing subdivision lots scattered around the town, with the highest concentration being in the expensive New Seabury development. There are only a handful of "raw land" parcels large enough for further subdivision. With over 92% of its land area either developed or protected as open space, Mashpee is approaching build-out and, as such, must carefully evaluate the future development of its last remaining land. In its Public Opinion Survey, more than 57 % of respondents favored protection of at least half of the remaining land for open space.

Currently, the vast majority of the town is zoned for residential uses. The upper portion lying west and north of Route 28 is zoned for 2-acre (80,000 sf.) lot development devoted primarily to detached single-family dwellings due to concerns about water quality in the town's public water supply wells (the Town has no sewer system). Attached dwellings or duplexes and mixed residential uses are allowed by special permit under the Open Space Incentive Development (OSID) bylaw and by transfer of development rights under the Commercial Center by-law. The lower portion of town, south of Route 28, includes the high-end New Seabury and Willowbend developments and residential lots are restricted to 1-acre (40,000 sf.), again primarily for single-family use. The OSID provisions are applicable here as well. In addition, Cluster Development (including zero setback lot lines allowing for townhouse style development) is allowed by special permit in both residential zones, with 10% of the lots required to be permanently deed-restricted for affordable units.

Circulation: Route 28, a state highway, and to a lesser extent Routes 151 and 130, are the primary roadways in Mashpee providing traffic movement in and through the town. Great Neck Road is the major collector distributing traffic from local access roads to the arterial highway system. According to the Cape Cod Metropolitan Planning Organization, both Routes 28 and 151, and Great Neck Road carry on average between 10,000 and 25,000 vehicles daily. All three intersect at the Mashpee Rotary, which is part of the state highway system and is located at the town's geographical center. The rotary is a major concern, especially during the summer months when heavy traffic flows entering the town on Route 151 and/or passing through the town on Route 28 experience significant delays that may result in temporary gridlock. Summer average daily traffic on Route 28 alone can reach volumes exceeding 22,000 vehicles per day.

Transportation engineers use the term LOS or "level of service" to determine what percentage of the roadway capacity is occupied and the level of delays to traffic flow. Level of Service "A" is the best, and level of service "F" represents the worst. While most of the roadway system operates smoothly, there are a few critical segments. Great Neck Road South near the rotary, Route 28 west and east of the rotary, and Route 151 west from the rotary to Old Barnstable Road operate at Level F during peak hours, meaning traffic flow is unstable and small increases in volume cause substantial delays. The second most serious road segments, operating at Level D during peak hours, include Great Neck Road North near Route 130, Route 130 between Great Neck Road North and South Sandwich Road, Route 28 East of Quinaquisett Ave. and Route 151 from Old Barnstable Road west to the Falmouth boundary.

Wastewater: In the absence of public sewerage, developers in town turned to private wastewater systems for projects with flows in excess of 10,000 gallons per day (gpd). There are now eight private wastewater treatment plants in Mashpee, located at Mashpee Commons, Mashpee High School, New Seabury, Willowbend, South Cape Village, Southport, Stratford Ponds and Windchime Point. In 1987, the Mashpee Sewer Commission was established with the intention of taking over some or all of these private treatment facilities. In the approvals for two large projects (Willowbend and Windchime Point) the Planning Board specifically required in the permit conditions that these treatment plants be turned over to the town once the community was ready to take them over. A ninth treatment plant has been completed at the Wampanoag Tribe's proposed Wampanoag Village on Meetinghouse Road, although not yet in use, and a tenth plant has been approved and will soon be constructed at Mashpee Village. There is also a community wastewater system at Main Street Village, and at a number of non-residential projects with flows under 10,000 gpd.

Pollution, specifically nutrient inputs from septic systems and land use practices, will continue to be a concern given the town's fragile environment. A Comprehensive Wastewater Management Plan has recently been completed and submitted to the state and Cape Cod Commission for review and approval. It recommends both wastewater facilities and management options, including development of a significant shellfish propagation program, stormwater management improvements and fertilizer controls to meet nitrogen loading targets set by the EPA for Popponesset and Waquoit Bays. Respondents to the town's Survey strongly supported (58.9%) a publicly-owned wastewater collection and treatment facility, with 53% favoring its development by the Mashpee Water District. Legislation was passed regarding a Water & Sewer District, but a reversal of support by the Selectmen led to defeat of an accompanying ballot measure in May 2015, so the Town will have to develop its own wastewater utility, along with the shellfish propagation program and stormwater management projects. The Town already has strong stormwater management zoning requirements for new projects, and in October 2014 adopted a stringent fertilizer management by-law.

Water: The first public water system was developed in 1961 for the New Seabury resort project. It eventually supplied water to approximately 1,500 residents. More than 25 years later, in response to concerns about groundwater contamination from the Massachusetts Military Reservation and the town landfill, the town voted to establish a Water District in 1987, which absorbed the New Seabury system in 1991.

The Mashpee Water District's system has gradually expanded its service area, and now encompasses more than 85% of Mashpee as well as a small portion of Sandwich. Some 9,061 residences and 411 businesses are currently connected to the system (May 2015). Seven wells have been developed. The increase in water usage has slowed considerably in recent years due to the decline in building activity.

While the advent of a public water system has allowed the development of some smaller lots in older subdivisions which had previously been restricted by state and Town health regulations, there still remain small pockets of residential development, particularly in the northern part of the town near Mashpee and Santuit Ponds, that continue on private wells. At the same time, the establishment of "Zone II" wellhead protection areas associated with the District's wells has restricted, per DEP regulations, the number of allowed bedrooms on a large number of parcels to one per 10,000 sq. ft. of lot area. The latter restriction, which cannot be overcome by a 40B

Comprehensive Permit, has had and will have a significant impact on the number of bedrooms that can be included in proposed affordable housing projects.

*Conclusions:*

- *Land is in short supply for future residential use. What is available must be used more efficiently for the development of apartments and family housing.*
- *Mixed use developments in and near Mashpee Commons and South Cape Village may offer the best opportunity for siting more affordable housing.*
- *During the summer months when heavy traffic flows enter the town on Route 151 and/or pass through the town on Route 28, significant delays frequently occur at the rotary.*
- *Mashpee remains dependent on private treatment facilities for pollution control at large, more dense developments and septic systems for lower-density residential areas, but has begun the process of developing a municipal sewer system.*
- *Most developed areas in town are served by public water. Only a few older residential areas near Mashpee and Santuit Ponds remain on private wells.*

## VI. Housing Costs and Affordability

This section examines the cost of housing in Mashpee for renters and owners, and the degree to which housing is affordable to individuals and families of different incomes. Low income households are considered to be those households earning up to 50 percent of the area-wide median income and moderate-income households are those earning up to 80 percent. Households earning up to 150 percent of the area-wide median income are defined as middle-income. Mashpee's median household income was \$59,856 according to the 2009 census estimates.

Housing is generally defined to be "affordable" when households spend no more than 30 percent of their gross income on housing costs. For renters, housing costs include rent and utilities. For homeowners, housing costs include mortgage principal and interest, hazard insurance and property taxes. Households that spend over 30 percent of their income on housing are considered to be "cost-burdened."

To determine whether a family at the median income level can afford housing in Mashpee, a comparison of incomes with home values and rents is required. For the most part, data from the Census 2009 estimates will be used in conjunction with current estimates where possible to compare housing costs to median household incomes.

### *Home Values and Rent*

Provided in Table 9 is a comparison of housing values and rents reported for the 2000 Census and 2009 Census estimates. Table 10 breaks down home values by number and percentage. According to this information, the median value of owner-occupied homes in Mashpee more than doubled (115.2 %) between 2000 and 2009, increasing from \$168,900 to \$363,500. As of 2009, 50 % of the town's owner-occupied homes were valued between \$300,000 and \$500,000. Another 20.2 % ranged in value from \$200,000 to \$300,000. Only 6.1% were valued under \$150,000. As the housing market moved into the early to mid-2000s, home values literally exploded, as they did throughout the Cape, more than doubling by 2009.

A similar, but not quite as dramatic an increase occurred with median rents for the few units available in Mashpee. Between 1990 and 2000, rents increased by 27.37% from \$643 to \$819, and based on census estimates for 2009, jumped again by 31 percent to \$1,073 per month. Such relative high rates reflect a strong demand for rental units with a scarce supply of such housing available.

**Table 9: Median Home Prices & Rents**  
**2000 & 2010 Estimate**

Home 2000	Values 2010	Percent Change	Rents 2000	2010	Percent Change
\$168,900	\$361,100	113.80	\$819.00	\$1,206	47.3

*Source: 2000 Census and 2010 American Community Survey Estimates*

**Table 10: Home Values – 2010**

Housing Value	Number	Percent
Less than \$50,000	113	2.2
\$50,000 to \$99,999	106	2.0
\$100,000 to \$149,999	75	1.4
\$150,000 to \$199,999	254	4.9
\$200,000 to \$299,999	1153	22.2
\$300,000 to \$499,999	2445	47.1
\$500,000 to \$999,999	7584	15.1
\$1,000,000 or more	256	4.9
Total – Owner-Occupied	5186	

Source: 2010 Census Estimates

## Housing Costs

The 2010 American Community Survey Census Estimates reported the monthly costs, and costs relative to income, for 5,186 owner-occupied homes and 700 rental housing units in Mashpee. Some 3,625 owner-occupied homes had mortgages while 1,561 units did not. The monthly costs include mortgage payments (if any), home insurance (rates have more than tripled since 2000 due to concerns about the potential for storm damage related to global warming), and property taxes. Homeowner costs can vary considerably depending on whether the home is mortgaged. For example, the median monthly total housing cost for homes without mortgages was \$693, and the median total cost for homes with mortgages was \$1,748, more than 2.5 times as great. As shown in Table 11, more than 90 percent of homeowners with mortgages have expenditures that exceed \$1,000 or more per month.

Mashpee's rental housing in 2010 consisted of 700 units, a decline of 167 units since 2000, largely due to the conversion of homes and condominiums from income properties to retirement residences by their owners. Housing cost, on the other hand, rose to \$1,206 per month, an increase of almost 50% since 2000. As seen in Table 12 below, estimated costs for rental housing in Mashpee have a wide range, varying from \$200 to \$1,500 or more. More than two-thirds (68.6%) of the units have monthly costs of \$1000 or more. With the exception of Sandwich, Mashpee's monthly rental costs were higher than the surrounding towns of Bourne, Falmouth and Barnstable.

**Table 11: Monthly Owner Costs - 2010**

Monthly Owner Cost	Number	Percentage
< \$400	0	0
\$400 to \$499	14	0.4%
\$500 to \$699	47	1.3%
\$700 to \$999	294	8.1%
\$1,000 to \$1,499	975	26.9%
\$1,500 to \$1,999	736	20.3%
\$2,000 or more	1,559	43.0%
Median cost = \$1,748		
Not mortgaged	1,561	30.1%

Source: 2010 U.S. Census Estimates

**Table 12: Monthly Renter Cost – 2010**

Gross Rental Cost	Number	Percent
Less than \$200	16	2.3
\$200 - \$299	13	1.9
\$300 - \$499	33	4.7
\$500 - \$749	104	14.9
\$750 - \$999	54	7.7
\$1000 - \$1499	279	39.9
\$1500 or more	201	28.7
Median Cost	\$1,206	

Source: 2010 Census Estimates

### ***Housing Affordability***

This section assesses Mashpee's housing prices and costs in terms of how affordable housing is for residents, based on household income. Guidelines provided by the U.S. Department of Housing and Development suggest that owner-occupied housing is affordable if not more than 30% of a household's gross income is spent on a mortgage payment including condominium fees, property taxes and hazard insurance. For rental units, the HUD standard is that no more than 30% of a renter household's income should be spent on rent and utilities. The Census estimate of median household income was \$62,645 for 2010.

Provided in Table 13 are estimates of the number of Mashpee households in each income category, based on a range of incomes reported in the 2010 Census Estimates. Using the definitions above, 40%, or some 2,370 Mashpee households, were at or below the 80% median income level of \$50,116 annually. This is the group where affordability matters. It ranges from young newly forming households and those of an elderly age to growing families with school age children. Only 27% of Mashpee's households in 2009 were at the median to middle income level, which normally consist of middle age families with older children and elderly age groups who are now empty-nesters.

**Table 13: Number of Extremely Low, Very Low, Low, Moderate, and Middle-Income Households – 2010**

2010 Households	A-30% of Median Income	B – 50% of Median Income	C – 80% of Median Income	D – 100% of Median Income	E – 150% of Median Income
(5925)	(\$18,794)	(\$31,323)	(\$50,116)	(\$62,645)	(\$93,967)
Number	585	616	1169	594	1314
Percent	9.9	10.4	19.7	10.0	22.2

Source: 2010 Census Estimates

A comparison of household income changes between 2000 and 2010 reveals that the town's prosperity was slowly falling behind that of other communities on the Upper Cape, including Barnstable. Its median income increased by only 23.1% from \$50,871 to \$62,645 in that period.

Mashpee actually ranked last among its neighbors and more than \$10,000 less the median income for the “Barnstable Town, MA Metropolitan Statistical Area” (MSA), which includes all of Barnstable County, and on which income limits to qualify for affordable housing units are based.

Table 14 estimates the affordable housing price by household income and the level of housing affordability for owner housing costs as of 2009. At the 150% median (or middle) income level, there is no housing affordability shortfall. For median to low-income households, however, they are completely priced out of the market for owner housing. Moreover, only those households at the top of the moderate income bracket could afford the \$363,500 median priced home. It is estimated that nearly 75% of households fell under the required income and would not qualify unless the 30% standard was extended.

**Table 14: Affordability Assessment - Owner Housing**

Range of Median Income	A 50%	B 80%	C 100%	D 150%
Annual Household Income	\$29,928	\$47,885	\$59,856	\$89,784
Monthly Household Income	\$2,494	\$3,990	\$4,988	\$7,482
Percent of Income for Housing	30%	30%	30%	30%
Affordable Home Mortgage Payment	\$748	\$1,197	\$1,496	\$2,245
Affordable Home Price (2009)	\$123,300	\$200,100	\$247,000	\$367,700
Median Price Home (2009)	\$363,500	\$363,500	\$363,500	\$363,500
Affordable Price Difference from Median	(\$240,200)	(\$163,400)	(\$116,500)	\$4,200
Number of Units at or Below Affordable Price	290-5.5%	553-10.6%	1078-20.6%	2483-47.5%

For renter households, based on 2010 Census estimates, Table 15 shows that households at the 30% and 50% median income level were unable to afford the \$1,206 monthly median rent payment. In fact, these households fall far short of what would be required. Approximately 53%, or some 371 rental units, would be affordable to households at or above 80% median income. All rental units were affordable at 100% of median income or above.

**Table 15: Affordability Assessment - Rental Housing**

Percent of Median Income	A-30%	B – 50%	C – 80%	D – 100%	E – 150%
Annual Household Income	\$18,794	\$31,323	\$50,116	\$62,645	\$93,967
Monthly Household Income	\$1,566	\$2,610	\$4,176	\$5,220	\$7,831
Percent of Income for Housing	30%	30%	30%	30%	30%
Affordable Rent Payment (2009)	\$470	\$783	\$1,253	\$1,566	\$2,349
Median Rent Payment (2009)	\$1,206	\$1,206	\$1,206	\$1,206	\$1,206
Difference from Median	(\$736)	(\$423)	\$47	\$360	\$1,143
Approximate Number of Units at or Below Affordable Rent	72	176	371	All	All

More recent data made available by the Cape Cod Commission and a recently-completed HUD analysis of the 2007-2011 American Community Survey Census Data indicate that of 5,755 total households in Mashpee, 2,430, or 42.2% are at or below 80% of HUD area median income.

**Table 16: Income by Cost Burden (Owners and Renters)**

<b>Cost burden</b>	<b>&gt;30%</b>	<b>&gt;50%</b>	<b>Total</b>
Household Income <=30% HAMFI	675	595	760
Household Income >30 - <= 50% HAMFI	480	310	665
Household Income >50% - <=80% HAMFI	480	55	1,005
Household Income >80% - <=100% HAMFI	330	70	570
Household Income >100% HAMFI	520	25	2,750
<b>Total</b>	<b>2,485</b>	<b>1,055</b>	<b>5,755</b>

### *Conclusions:*

- *As of the 2010 Census estimates, median home values since 2000 jumped by 117.8% to \$361,100 and median rents rose by 47.3% to \$1,206*
- *Of Mashpee's 5,186 owner occupied housing units in 2010, only 32.8% were valued at \$300,000 or less.*
- *63.3% of the monthly owner costs (mortgage, taxes, insurance) were \$1,500 or more.*
- *Some 31.5% of the town's rental units required a monthly payment of \$1,000 or less. The remaining units averaged well above the town's median rent level of \$1,206.*
- *Only households at 150% or higher of median income could afford the 2009 median price home of \$363,500.*
- *Households at 80% or more of median income could afford the median rent for the limited supply of rental housing.*

## VIII. Future Housing Demand

This section is focused on the demand for future housing. The methodology to be used is known as the Housing Needs Assessment. Of greatest interest in the HNA model are household estimates which are derived from a projection of future population by age. Since household formation rate by age over the projection horizon is assumed to be a constant, the active component of the household estimation process is population. For the purposes of this demand estimation, a forecast of 2020 population will be utilized.

The 2010 Census reported that Mashpee's population was 14,006. This number is the point from which to project Mashpee's population for 2020. The reason for selecting only a ten year projection is that, as with the weather, accurate long-range forecasting of population levels is near impossible. Furthermore, a new assessment of affordable housing needs for Mashpee will be necessitated in 2020 when new census data becomes available. The five steps are as follows:

### **S-1: Develop a Projection of 2020 Future Population based on the 2010 Census Number using Trend Line Analysis.**

- Prior to the Census release of the 2010 population for Mashpee, a number of projections for that date had been proposed. The Planning Department, based on housing counts from the Assessors Office, had estimated 15,785 year-round residents by 2010 with a seasonal estimate of 31,578. MISER, the Massachusetts Institute for Social and Economic Research, suggested an even higher figure of 17,604 for 2010. As is now evident, both overstated the actual count of 14,006, which represented only an 8.19% increase.
- The Trend Line Analysis is a method of projecting future populations based upon changes during a specified period of time. Using this method, two steps are required: a) compute the average growth rate between the 2000 base year and the 2010 launch year provided by the Census, and b) extrapolate this rate to produce a projected population for the 2020 target year.
  1. 2000 base year of 12,946 less the 2010 launch year of 14,006 provides a growth rate of 8.19 percent for the 10 year period.
  2. Apply this growth rate to the 2010 population estimate to obtain the 2020 projection year population.  $14,006 \times (1 + 0.0819) = 15,153$
  3. The resulting increase in population between 2010 and 2020 is 1,147.

### **S-2: Project 2020 Population by Age-Groups.**

- The age distribution of the population serves as the basis for projecting the number of households and other aspects of housing demand. This is a fundamental assumption and the estimates and projections of population by age are a crucial component of the AHNA methodology.

- The age-group population from the Town's 2009 census was converted to percentages then applied to the population increase for 2020.

2009 Age Group	Number by Age Group	Percent of Total	2020 Population Increase	2020 Age Group Population
< 15	2001	14.08	1147	161
15-24	1788	12.58	1147	144
25-34	1192	8.39	1147	96
35-44	1551	10.92	1147	125
45-54	2187	15.39	1147	177
55-64	1929	13.57	1147	156
65 +	3565	25.09	1147	288

**S-3: Using 2009 Census Estimates of Population by Age Groups, determine Headship Rates for Owner-occupied and Renter-occupied households.**

- Headship rates or the propensity of persons in an age group to be household heads is thought to remain at a fairly constant rate. Age groups based on the 2009 census estimate were applied to the number of householders by owner and renter for 2000 to calculate the headship rates for 2009.

Age Groups	2009 Population	Number of Householders		Headship Rates	
		Owner	Renter	Owner	Renter
< 15	2286	NA	NA	NA	NA
15-24	1733	16	66	0.009	0.038
25-34	910	305	111	0.335	0.153
35-44	2033	880	248	0.433	0.122
45-54	2119	1066	155	0.503	0.073
55-64	1954	1000	96	0.512	0.049
65 +	3230	1854	200	0.574	0.062

**S-4: Apply Headship Rates to 2020 Population Increase by Age-Group to Determine New Households by Tenure**

- Households are the basic unit of demand for housing. They are the way in which the population divides itself to occupy housing units. One member of a household is considered the representative of that household and is referred to as the householder. The percentage of the population in a given age group that are householders is the headship rate in that age group, or the propensity of persons in that age group to be household heads. Therefore, headship rates allow the conversion of the population of an age group into households. Different age groups have different propensities for

forming households, so that as the age structure of the population shifts, the number of households that a given population would yield would also change.

Age Group	Headship Rate Owner / Renter		2020 Population Increase	Households by Tenure Owner / Renter	
< 15	NA	NA	161	NA	NA
15-24	0.009	0.038	141	1	5
25-34	0.335	0.153	96	32	15
35-44	0.433	0.122	125	54	15
45-54	0.503	0.073	177	89	13
55-64	0.512	0.049	156	80	8
65 +	0.574	0.062	288	165	18
Total Households by Tenure:				<b>421</b>	<b>74</b>

#### **S-5. Convert Results of 2020 Household Formation into Affordable Housing Need**

- From S-4, the resulting households by tenure can be thought of as the number of housing units needed to meet the new demand for housing in the 10 year period from 2010 to 2020. Owner housing need is forecasted at 421 units, while the need for 74 rental units is anticipated.
- Currently, Mashpee's affordable housing numbers 298 units based on the DHCD Subsidized Housing Inventory. The 2010 Census count for year-round housing was 6,473 units providing a 10% goal of 647 of which 349 units remain to be built.

## IX. Production Plan for Affordable Housing

Summarized below are the criteria and assumptions regarding the planned production of new affordable housing units in Mashpee through the year 2020 (and extended to 2023).

1. As a result of changes to Mass GL Chapter 40B, annual goals for affordable housing changed from 0.75% of the community's year-round housing stock to 0.50% of its year-round units. Based on the 2010 Census count of year-round housing units (6,473), Mashpee will be required to produce at least 32 affordable units annually to demonstrate continued progress (our 10% target is 647 units).

With an approved Housing Production Plan (HPP), the town will be eligible for DHCD certification of compliance. A decision by the Zoning Board of Appeals to deny a Comprehensive Permit application will be deemed "Consistent with Local Needs" under MGL Chapter 40B and upheld by the Housing Appeals Committee. Certification lasts for one year if the community has produced 0.5% of year round housing units (32) or two years if it has produced 1.0% (65).

2. The Housing Demand for the period 2010–2020 establishes a projection of all new housing (495 units) that is likely to be produced in Mashpee during that time. With 298 affordable units as of 2015, some 39.8% or 197 units of the new housing construction must be affordable – that is, they should be subsidized housing that meets the SHI standard, if the town was to meet the 10% target by 2020.
3. Continued progress in meeting the town's fair share of affordable housing is critical to retaining its young adults and families and meeting the needs of the most vulnerable segment of the population. Therefore, the goal of this HPP will be to produce at least 32 affordable housing units annually. At that rate, we would achieve a 7.1% affordability rate by 2020, a substantial move forward. If successful in achieving the more aggressive targets of our Planned Production Plan, the town would raise its affordability rate to 8.5% by 2020 and exceed the 2010 10% target by 2023.
4. In furtherance of the goal of improving housing opportunities for families, the various state housing agencies entered into an interagency agreement effective January 17, 2014 that they will require that at least 10 per cent of all units in Affordable Production Developments (40B projects) funded, assisted or approved by a State Housing Agency shall have 3 or more bedrooms, excepting projects for age-restricted housing, assisted living, supportive housing for individuals, single room occupancy or other developments in which the policy is not appropriate for the intended residents. In addition, the State Housing Agency may waive this requirement where there is insufficient demand for such units, where it will render a development infeasible, or for projects of less than 10 units where specific factors applicable to the project make a waiver reasonable.

A number of assumptions are factored into the Planned Production Plan, all of which have been in play for some time. Mixed-use development has been established by Mashpee Commons and its traditional neighborhood concept with a mix of commercial and residential uses is the

accepted plan for continued expansion. With less than 1000 acres of developable land remaining (including commercially-zoned land available for mixed-use development), Mashpee's continued growth will be constrained, adding more pressure to assure that it is done in a way that maximizes potential. Completion of the Southport Retirement Community will be accomplished by 2017, while the Wampanoag Tribe's proposed 52 unit Wampanoag Village affordable housing project should be completed in the next few years. The Mashpee Housing Authority / HAC 10 unit "Great Coves Community" project was recently completed.

Implementation strategies incorporate the adoption of a number of actions and the continued involvement of organizations that have played a big part in the town's development of its existing affordable housing units. These strategies include:

1. Adoption of an Affordable Accessory Apartment bylaw that meets the state requirements for inclusion in the subsidized housing inventory.
2. Utilization of suitable town-owned properties that can be committed for the issuance of requests for proposals to develop "friendly" 40B affordable housing projects. The Town is preparing a Request for Proposals from developers for approximately 64 units of affordable apartment housing on two larger parcels of tax-taking land in anticipation of securing Town Meeting approval of a sale or lease of the land at the October 2015 Town Meeting. A Town Lands Working Group has also reviewed all tax-taking lands for appropriate disposition and has identified 21 additional parcels which may be suitable for affordable housing units.
3. Development of the Mashpee Commons 40B housing project or "Jobs/Whiting Residential Neighborhoods", on 60.7 acres. As originally permitted, it included the following housing choices:

20 Patio Homes:	10 affordable rental
32 Rental Units:	16 affordable rental
78 Single Family:	9 affordable ownership
12 Duplex Units:	6 affordable ownership
151 Townhouse Units:	35 affordable ownership
58 Loft-Style Condos:	20 affordable ownership

A total of 96 affordable units – 26 rental and 70 ownership – were planned. This project was approved and permitted in February 2007 by the Zoning Board of Appeals. The permit has been extended a number of times and construction of the first phase was begun in November 2014. Under a modification of the Comprehensive Permit, Phase 1A now includes 52 apartments, of which 13 will be affordable. Proposed "live-work" units above shops have been eliminated. How the remainder of the project builds out may change depending on market demand and financing issues.

4. Collaboration with the Mashpee Housing Authority and Habitat for Humanity in their search for appropriate sites to build both affordable rental and ownership housing units.

5. Identification of zoning districts or residential areas in the town where modification of current regulations, including density, could be considered for the purpose of creating more opportunities for multifamily housing development. At this point, apartment buildings are only allowed in an OSID or Commercial Center projects, requiring a special permit.
6. Continue to work with housing developers of private or non-profit 40B developments to maximize their responsiveness to community interests and its need to increase their affordability.
7. Implementation of regulatory and tax incentives that will provide the highest feasible level of affordability and access by the most vulnerable segments of the community.
8. According to current DHCD rules, if Mashpee has achieved certification within 15 days of the opening of the local hearing for a Comprehensive Permit, the ZBA shall provide written notice to the Applicant, with a copy to DHCD, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes has been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the ZBA's assertion, it must do so by providing written notice to the DHCD, with a copy to the Board, within 15 days of its receipt of the ZBA's notice, including any documentation to support its position. DHCD shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The ZBA shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the DHCD to issue a timely decision shall be deemed a determination in favor of the Town. This procedure shall toll the requirement to terminate the hearing within 180 days.

## Housing Production Plan: 2015 – 2023

<b>Production Strategy</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021*</b>	<b>2022*</b>	<b>2023*</b>
(1) Affordable Accessory Apartments / Rental Units	0	0	2	2	2	2	2	2	2
(2) Habitat for Humanity / Ownership Units	2	2	2	2	2	2	2	2	2
(3) Mashpee Housing Authority / Rental Units	0	0	0	0	20	0	0	20	0
(4) Friendly 40B Projects Rental & Ownership Units	0	26	26	24	20	20	10	0	10
(5) Private 40B Projects Rental / Ownership Units	3	11	16	16	16	16	16	10	10
(6) Multifamily Afford- able Developments / Rental Units	0	0	0	0	0	0	20	0	20
2010 Total Year- round Housing Units	6,473.....								
Gap (in affordable units)	344	305	259	215	155	115	65*	31*	-3*
Number for 0.5%	32	32	32	32	32	32	32	32	32
Number for 1.0%	65	65	65	65	65	65	65	65	65
<b>Total Annual Units Produced</b>	<b>5</b>	<b>39</b>	<b>46</b>	<b>44</b>	<b>60</b>	<b>40</b>	<b>50</b>	<b>34</b>	<b>44</b>

(1) Assumes a new zoning bylaw allowing Accessory Affordable Apartments as a special permit will be developed by the Planning Board and adopted by Town Meeting

(2) Habitat for Humanity has been active in the community and there is every reason to believe they will continue to provide affordable ownership housing when and where possible

(3) Mashpee Housing Authority will continue to seek opportunities where town-owned land and tax incentives can be combined to produce affordable rental units

(4) Includes the proposed 52 unit Wampanoag Village project by the Mashpee Wampanoag Tribal Council and the 24 and 40 unit apartment projects being proposed on Town lands

(5) Assumes the Mashpee Commons previously approved and permitted 382 unit 40B housing project will be built during this timeframe, with affordable units including 26 rental units and 70 ownership units. Affordable units counted do not include the full number of apartments proposed under the 40B, which may count on the DHCD 40B inventory, only those designated for affordable rentals.

(6) Assumes development of a new multifamily zoning bylaw following completion of a study to determine best locations for higher density residential use. If not a 40B project, these units must be locally assisted or funded under the Community Preservation Act or involve some other qualifying "local action" to count toward Mashpee's 10% goal, such as a special permit or provisions of an inclusionary housing by-law.

\*Reflects 2010 10% target, which will be increased once 2020 US Census data becomes available.

## **X. Barriers to Affordable Housing**

Chapter 40B has resulted in the development of over 5,400 affordable housing units on the Cape, providing an affordability rate of 5.4 percent. It is estimated that there remains a current unmet demand for an additional 4,600 units. None of the Cape's 15 towns have yet to achieve the 10% goal, though Orleans was closest with 8.9% of its year-round housing affordable. As of January 2015, Mashpee's affordability rate, per the DHCD 40B inventory, stood at 4.6% (298 units) vs. 3.55% (198 units) in January 2005 at the time of the Town's previous Affordable Housing Planned Production Plan. Overcoming the challenges of Chapter 40B varies by community. In Mashpee, the dominant barriers to the production of affordable housing include the following:

- *Land Availability* – One of the major barriers to developing affordable housing in Mashpee is its lack of developable land. A 2009 report assessing the success of the town's 1998 Comprehensive Plan noted that only about 1150 acres or 8.27% of the town remained available for future development, a number which has decreased since then. As of 2014 (based on Assessors' records), only 625.74 privately-owned developable acres distributed over 637 parcels are zoned for residential uses. With minimum lot sizes at 40,000 to 80,000 square feet, the production of future affordable housing is expected to be limited by land availability and density limitations. This has led the town to undertake a serious assessment of the suitability of town-owned land to meet the rising need for affordable housing development.

*Mitigation Measures* – Two measures should be considered in overcoming to some extent the decline in prime sites for the development of affordable housing. First, staff needs to re-evaluate the town's zoning pattern for opportunities where increased density can be allowed for the expansion of multifamily housing. As part of that study, the Town should coordinate any zoning density increases with its recently completed Watershed Nitrogen Management Plan and recommendations for sewerage, as well as promote the use of innovative wastewater management technologies that would permit higher residential densities for sites not to be sewerage in the near future. Secondly, surplus town-owned property can be utilized further as was done with the Ashers Path age-restricted rental project.

- *Infrastructure* – A major impediment has and continues to be the lack of a town-wide sewer system. Large developments like Mashpee Commons, New Seabury, Willowbend and the Southport Retirement Community rely completely on private facilities for wastewater treatment and disposal. While there remains unused capacity in some of these facilities, expanding the use of private treatment facilities is not an adequate answer for the future.

*Mitigation Measures* – The Mashpee Watershed Nitrogen Management Plan, initiated in 2001 and recently finalized (subject to state and Cape Cod Commission approval), is designed to address the Town's need for reducing nitrogen impacts to its coastal embayments and to evaluate all options for restoring those embayments. The plan recommends a cost-effective means to address the nitrogen loading problem, as well as nutrient overloading of fresh water ponds, through a combination of shellfish aquaculture, traditional sewerage, upgrades to existing private treatment plants, innovative/alternative septic systems, stormwater management and fertilizer reduction.

- *Property Taxes* – Rising property taxes can be a burden to those families at the low to moderate income levels, and also to those on fixed incomes. The current (FY15) tax rate/\$1000 valuation is \$9.56 (including the Water District tax and 3% CPA tax), but it has fluctuated over recent years from a low of \$5.84 in 2007 to the current high. At the same time, median home sale prices dropped from a peak of \$659,000 in 2007 to \$357,961 in 2011 due to the recession. For the first 4 months of Mashpee home sales in 2015, the median was up to \$390,600 (average of the 54 sales was \$463,426). Based on the January-April 2015 median sales price, the annual property tax would be \$3,734, the equivalent of \$311.18 per month. Proposition 2½ has provided a check on dramatic increases, but most communities have offset this requirement by maintaining assessed valuations at or near 100% market rates. Also working against affordability are the taxes attributed to the Community Preservation Act (which, on the other hand, has become an increasingly important source of affordable housing funds) and the looming costs of developing municipal wastewater facilities to mitigate the water quality impacts of existing and future development.

*Mitigation Measures* – the amount of local aid available from the state to cities and towns has only gradually recovered from the impacts of the Great Recession on the state's budget. Mashpee only experienced a slight drop in tax revenue over the late 2000s, but has recovered gradually over the last few years. For these reasons, the Town has adopted a fiscal austerity policy to maintain a balanced budget where service and personnel expenses are matched with available revenue.

- *Zoning Restrictions* – The Open Space Incentive Development (OSID) by-law, the transfer-of-development rights provisions of the Commercial Center by-law and the Cluster by-law are the only provisions within the town's zoning for the development of two-family, townhouses and apartment buildings. They are largely intended for the preservation of open space and natural resource areas. The OSID is further limited by its restriction to parcels of land totaling at least 20 acres (although it can be composed of individual parcels as small as 5 acres), and the fact that there are no requirements for a set-aside of lots or units as affordable (although the large projects envisioned under OSID and the Commercial Center by-law are subject to the 10% affordability requirements of the Cape Cod Commission). Within the Cluster bylaw, there is a provision that 10% of the lots be deed-restricted as affordable, but since a Comprehensive permit is not required, they would not qualify as subsidized units. The Town also permits accessory apartments, but does not require an affordability restriction.

*Mitigation Measures* – To provide some additional zoning flexibility, this plan recommends the adoption of an Accessory Affordable Apartment bylaw that meets the state requirements for inclusion on the subsidized housing inventory. In addition, it advocates the allowance of multifamily housing developments in areas where densities can be increased without any detriment to the environment.

- *Use of Community Preservation Funds* – A three percent surcharge is collected on local property taxes collected and placed in the Town's Community Preservation Fund. When the CPA program first started, the state supplied a 100% match, which has been reduced to about 35 percent. The Town had originally adopted the Cape Cod Land Bank, under which extensive open space properties were acquired, and then switched to the CPA when it became available, providing funds for affordable housing and historic preservation projects.

The town continues to pay annually against the debt incurred under the Land Bank, limiting funds available for new projects. Almost no CPA money has been spent for new open space purchases, with those funds used to pay down the debt, while \$300,000 has typically been earmarked for affordable housing.

*Mitigation Measures* – With limited developable land available, it may be possible in the near future to rethink priorities such that a greater percentage of CPA funds are devoted to affordable housing production, or provided to the Housing Authority to purchase, rehabilitate, rent and manage single family homes, with the Housing Authority paying the remaining mortgage and managing the properties from the rents received.

- *Dedicated Senior Housing* – the town's elderly population, age 65 and over, now accounts for nearly 25% of the total with strong indications that it will continue to grow well into 2020. It is important to have suitable and affordable housing options, such as senior housing, for this growing population segment. There is demand among today's residents, as expressed in the Opinion Survey for affordable senior housing that meets the needs of Mashpee. It may not be feasible for some residents to stay in their homes as they get older. However, the Housing Authority indicates that there is not a large need for additional senior rental projects similar to Ashers path.

*Mitigation Measures* – Today there are no zoning provisions that specifically allow the development of age-restricted Adult Residences. Such an option could provide an affordable, accessible, lower maintenance housing alternative compared to normal sized single-family homes. Senior housing could also count towards the state's 10 percent affordable housing goal under Chapter 40B if it meets the requirements for a Comprehensive Permit and is targeted for low and moderate income seniors.

- *Community Resistance* – Resistance to higher density housing development has traditionally reduced the potential affordable housing market. This resistance is often tied to perceptions about the increases in municipal services and negative impacts on property values. Most notably it shows up at public hearings on proposed 40B projects where nearby residents criticize the size of the project, argue that it will increase traffic and also add too many children to a school system already over burdened. Others claim loss of housing value due to the presence of a low-income housing project. These objections usually end with the point that such housing is ill-suited for their neighborhood.

*Mitigation Measures* – Through its Affordable Housing Committee, Mashpee can do more to play down these fears by promoting community discussions on affordable housing to bring attention to the issue, offering information on housing needs and strategies to help attract community support. In addition, Committee members, if possible, should participate in initiatives that seek to revise Chapter 40B to make it more responsive to community constraints and the need for additional resources. Promotion of a variety of housing types, equally spread in all parts of town, can also build confidence and trust of local affordable housing initiatives.

## **XI. Implementation Program**

The proposed Implementation Program recommends four policy areas and a number of actions to help address the town's affordable housing needs, re-establish working relationships with all organizations involved in promoting housing, give special consideration to meeting the housing needs of the disadvantaged and take the initiative to explore a regional solution to the affordable housing crisis. This program adopts the Cape Cod Commission Regional Policy Plan goals for affordable housing and supports the region's Minimum Performance Standards.

### **Policy 1: Community Commitment**

Most people agreed in the 2010 Comprehensive Plan Public Opinion Survey that there is a need for more affordable housing in Mashpee. But to be successful in addressing this issue, there must be a commitment by elected officials to publicly demonstrate their support. In addition, the town's leadership must utilize its resources to fully embrace the goal of 40B and begin work to overcome the barriers to supplying the community with improved housing choices and affordability.

*Action – 1:* As the chief elected officials of Mashpee, the Board of Selectmen should formally adopt and publicize the Affordable Housing & Planned Production Plan as a means of validating that affordable housing continues to be one of the Town's top priorities.

*Completion Time:* 2015

*Responsible Agency:* Board of Selectmen and the Town Manager

*Action – 2:* Design and implement an outreach program to educate Mashpee residents about the importance of affordable housing

*Completion Time:* 2016

*Responsible Agency:* Mashpee Affordable Housing Committee

*Action – 3:* Continue to assess opportunities for the donation of town-owned lands to the Housing Authority or nonprofit organizations for the development of affordable housing projects

*Completion Time:* 2015 – 2020

*Responsible Agency:* Affordable Housing Committee, Board of Selectmen, Town Manager and Town Planner in consultation with affordable housing providers

*Action – 4:* Establish a mechanism to ensure that all eligible affordable housing units are reported to the Department of Housing and Community Development for inclusion on the Subsidized Housing Inventory

*Completion Time:* 2015

*Responsible Agency:* Town Manager, Planning Dept., ZBA and Inspections Dept.

*Action – 5:* Consider allocating up to 50% of uncommitted Community Preservation Act funds for the production of affordable housing

*Completion Time:* 2016

*Responsible Agency:* Community Preservation Committee and Town Meeting

*Action – 6:* Restore a revolving loan program, which was funded initially through an appropriation from the CPA for three years and administered by the Mashpee Housing Authority, to assist qualified households with covering the move-in costs for affordable housing

*Completion Time:* 2016

*Responsible Agency:* Community Preservation Committee, Town Meeting and Housing Authority

*Action – 7:* Provide ongoing and continuing staff support to the Town's Affordable Housing Committee

*Completion Time:* Ongoing

*Responsible Agency:* Town Manager

*Action – 8:* Update the Affordable Housing Production Plan every 5 years and present for approval to the Planning Board and Board of Selectmen for submission to DHCD

*Completion Time:* 2020

*Responsible Agency:* Planning Dept. and Affordable Housing Committee

### *Policy 2: Production of Affordable Housing*

Under the requirements of Chapter 40B, cities and towns must provide their fair share of affordable housing. This goal is 10% of the town's total year-round housing stock. As of May 2015, Mashpee was credited with 298 units providing an affordability rate of only 4.6 percent. Based on the 2010 Census, the unmet demand for affordable housing is 349 units. While every effort will be made to reach this number, Mashpee will explore all avenues to assure progress is made each year.

*Action – 1:* As a minimum, add 0.50% of need, or 32 units of affordable housing, annually through 2020

*Completion Time:* 2015 - 2020

*Responsible Agency:* Board of Selectmen, Planning Board, Affordable Housing Committee, Housing Authority, Town Meeting, private and non-profit developers

*Action – 2:* Encourage the dispersal of affordable housing in Mashpee such that each of the town's residential neighborhoods are represented.

*Completion Time:* 2015 - 2020

<i>Responsibility:</i>	Affordable Housing Committee and Zoning Board of Appeals
<i>Action – 3:</i>	Grant a reduction in permitting fees to contribute to the financial feasibility of the conversion of existing housing units to affordable rental units
<i>Completion Time:</i>	2016
<i>Responsible Agency:</i>	Board of Selectmen and Building Department
<i>Action – 4:</i>	Develop an expedited permitting process for all housing projects that include a specified percentage of affordable housing units
<i>Completion Time:</i>	2016
<i>Responsible Agency:</i>	Planning Board in collaboration with the Planning Dept.
<i>Action – 5:</i>	Explore feasibility of tax abatement on existing homes for income eligible households who agree to a permanent affordability agreement.
<i>Completion Time:</i>	2016
<i>Responsible Agency:</i>	Board of Selectmen, Town Manager and Board of Assessors
<i>Action – 6:</i>	Develop a plan to identify privately owned land and buildings that might be purchased for affordable housing use
<i>Completion Time:</i>	2016
<i>Responsible Agency:</i>	Assessor's Office, Planning Dept., Affordable Housing Committee and Housing Authority
<i>Action – 7:</i>	Develop a friendly 40B proposal for private and non-profit developers that would provide substantially more affordable units than the required 25%. This might include such incentives as donated land, waiver of fees, relaxation of certain parking standards and assistance with wastewater collection and disposal.
<i>Completion Time:</i>	2015-16
<i>Responsible Agency:</i>	Affordable Housing Committee, Town Manager, Board of Selectmen, ZBA
<i>Action – 8:</i>	Monitor the progress in implementing this Affordable Housing Plan and track the status of the town's affordable housing inventory on a semi-annual basis
<i>Completion Time:</i>	2015 - 2020
<i>Responsible:</i>	Affordable Housing Committee in collaboration with the Building Department
<i>Action – 9:</i>	Search for opportunities where Town-owned properties can be used to provide additional affordable rental housing
<i>Completion Time:</i>	2015 - 20
<i>Responsible Agency:</i>	Affordable Housing Committee, Town Lands Working Group, and Selectmen with input from affordable housing providers

*Action – 10:* Seek opportunities to convert unused properties and lodging accommodations plus seasonal homes to long-term use as affordable year-round housing

*Completion Time:* 2015 - 2020

*Responsible Agency:* Affordable Housing Committee, Assessing Department, Town Planner, ZBA and Inspections Department with input from affordable housing providers

### *Policy 3: Planning and Zoning*

The Town has approved several zoning provisions to promote housing choice and greater affordability. The OSID and Commercial Center by-laws allow mixed housing / commercial uses as well as apartment buildings/garden apartments, while the cluster bylaw contains an inclusionary provision stipulating that 10% of a project's total units must meet the affordability requirements of 40B. Accessory apartments have also been added as another housing choice. Despite these advancements, more remains possible.

*Action – 1:* Steer large affordable housing projects to locations near or adjacent to already built areas where the required infrastructure is more readily available.

*Completion Time:* 2015 – 2020

*Responsible Agency:* Planning Board, ZBA and Staff

*Action – 2:* Create an Accessory Affordable Apartment by law modeled after the town of Barnstable's program and adopted by a number of other Cape communities. The objective is to use existing owner-occupied dwellings for the creation of affordable apartments meeting the LIP/LAU guidelines within the unit or within an existing detached structure on the property.

*Completion Time:* 2016

*Responsible Agency:* Planning Board, ZBA and Town Planner

*Action – 3:* Consider creation of a zoning overlay district that is adaptable to both R3 and R5 residential districts for multifamily rental housing (six units or more) development by special permit

*Completion Time:* 2016

*Responsible Agency:* Planning Board and Town Planner

*Action – 4:* Consider establishment of a zoning overlay district adaptable to both residential districts for the development of studio and one bedroom residences that has an affordable home component of at least 25%

*Completion Time:* 2016

*Responsible Agency:* Planning Board and Town Planner

<i>Action – 5:</i>	Evaluate the town’s density requirements in the R3 and R5 districts for opportunities to upzone (higher density) certain areas to achieve a better fit with actual development densities and, more importantly, to create financial incentives for the potential conversion of units to affordable status
<i>Completion Time:</i>	2016
<i>Responsible Agency:</i>	Planning Board and Town Planner
<i>Action – 6:</i>	Explore the provision of linkage fees, if found to be legal, whereby developers of non-residential projects contribute housing or fees for the construction of new housing units at affordable prices / rents
<i>Completion Time:</i>	2017
<i>Responsible Agency:</i>	Planning Board and Town Planner
<i>Action – 7:</i>	Consider density bonuses in appropriate locations for developments that provide the highest level of affordability and serve the most vulnerable segments of the community.
<i>Completion Time:</i>	2015-20
<i>Responsibility:</i>	Planning Board
<i>Action – 8:</i>	Consider the use of alternative septic technologies to offset impacts of higher density housing projects where connection to existing treatment facilities is not feasible.
<i>Completion Time:</i>	2015 - 2020
<i>Responsibility:</i>	Planning Board, Board of Health

Evan Lehrer  
Town Planner  
(508) 539-1414  
elehrer@mashpccema.gov



Planning Department  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

To: Mr. David Weeden, Chair  
Honorable Members of the Affordable Housing Trust  
From: Evan R. Lehrer, Town Planner  
Date: February 28, 2023  
Re: 209 Old Barnstable Road Update

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### **209 Old Barnstable Road Update**

- Kicked-off engagement process with neighborhood representatives where the engagement process was contemplated and discussed on January 18, 2023
- The neighborhood presented the findings of a survey the Quashnet Valley Homeowners Association distributed in preparation for our kick-off
- Unsurprisingly a majority of residents in the HOA do not yet support an affordable housing project at this site, however there does exist support in the neighborhood. I believe 11% of respondents stated support for affordable housing onsite.
- Concerns brought forth by the neighborhood include:
  - Too much of the Town's affordable housing stock is clustered in this area in the opinion of the HOA representatives with 209 being discussed here and Mashpee Village up the street.
  - Some expressed safety and security concerns
  - The most notable concerns that are related to measurable impacts are relative to traffic on this street.
- Wanting to start this process off with a commitment of good faith I suggested to the neighborhood that I would write to the Trust and recommend the Town engage a consultant for a Traffic Impact Assessment for an affordable housing project not to exceed 48 bedrooms at the subject parcel.

### **209 Request:**

VOTE TO AUTHORIZE A TRAFFIC IMPACT ASSESSMENT FOR THE PURPOSES OF UNDERSTANDING TRAFFIC IMPACTS CREATED OR EXACERBATED BY A 48 BEDROOM AFFORDABLE HOUSING DEVELOPMENT AT 209 OLD BARNSTABLE ROAD AND FURTHER TO PROPOSE SOLUTIONS TO MITIGATE THOSE IMPACTS BY MAKING RECOMMENDATIONS THAT ARE INTENDED TO IMPROVE VEHICULAR AND PEDESTRIAN SAFETY ON OLD BARNSTABLE ROAD BETWEEN ROUTE 151 AND GREAT NECK ROAD NORTH AND LOWELL ROAD TO OLD BARNSTABLE ROAD.

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Planning Department  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

**Next Steps:**

- Once data is collected from the TIA and there are options to be considered for transportation mitigation we will host public accessible and participatory workshops with the neighborhood to ascertain levels of support for various mitigation options to be built into any RFP that is issued for this particular site.
- Additionally, we will work towards identifying site design criteria that will be desirable and supported by the neighborhood regarding aspects like landscaping, screening/buffering/access and circulation, etc.
- Lastly we would hope to work towards an identification of architectural considerations, specifically building typologies that would be supported by the neighborhood. Ideally at this stage we would engage with an architecture firm to produce three dimensional conceptual renderings for the neighborhoods consideration if funds are available.
- Assuming general consensus can be generated I would work towards drafting an RFP alongside the neighborhood and representatives from the Trust consistent with the findings of this process.

**Notes:**

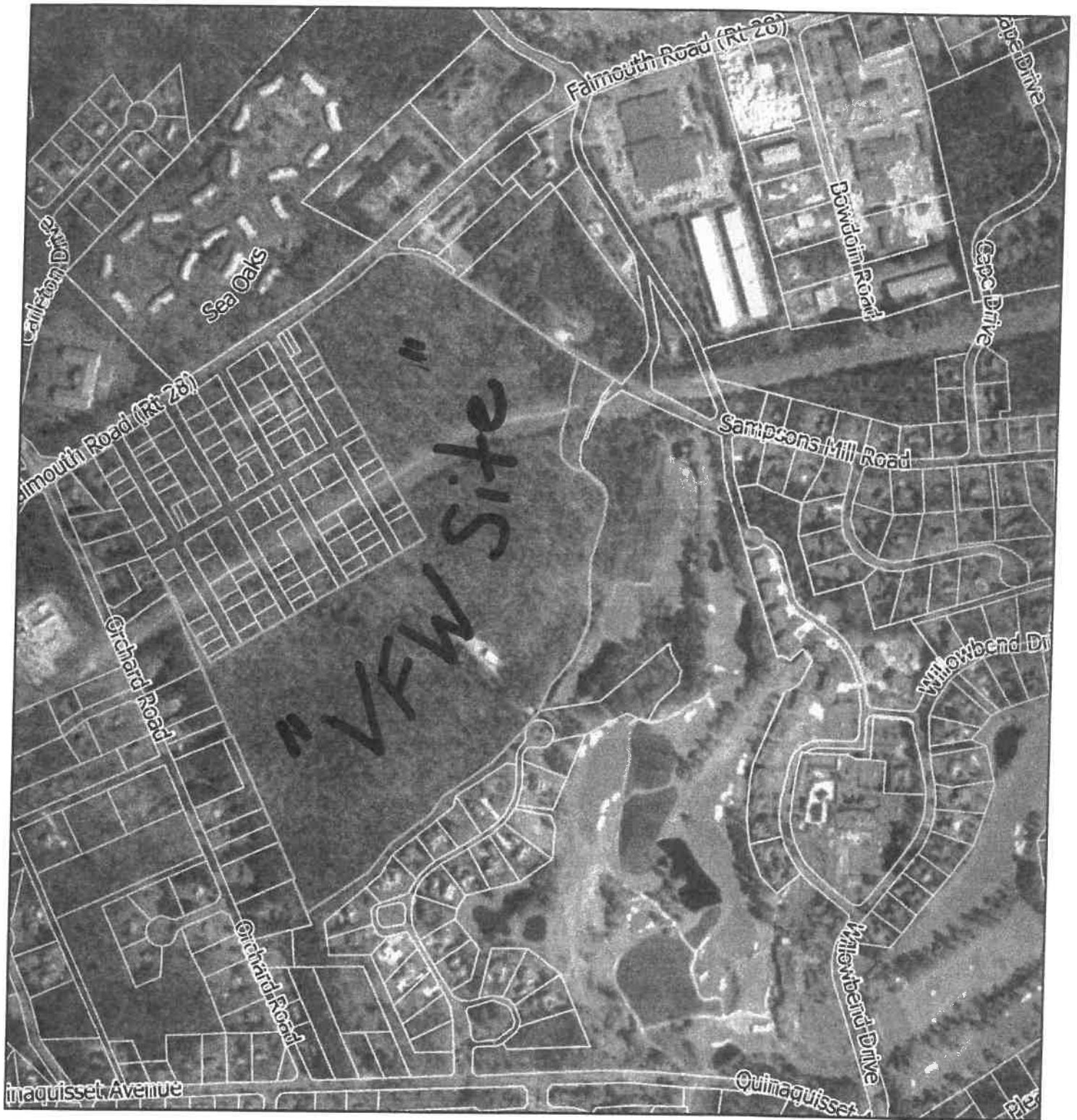
- Planning Department has created a dedicated webpage for the 209 project and can be found here:

<https://www.mashpeema.gov/planning-department/pages/209-old-barnstable-road-affordable-housing>




- I have not defined a very specific timeline for milestones here as to ensure no stakeholder feels rushed through this deliberative process.

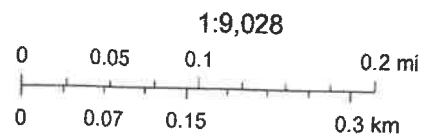
Cc: Rodney Collins, Town Manager

# ArcGIS Web Map



6/20/2023, 1:19:21 PM

-  Parcel Lines
-  Address Numbers (Public)
-  Mashpee\_Boundary



MassGIS, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/  
NASA, EPA, USDA



**AGENDA  
SELECT BOARD  
MONDAY, JUNE 5, 2023  
WAQUOIT MEETING ROOM  
MASHPEE TOWN HALL  
16 GREAT NECK ROAD NORTH  
MASHPEE, MA 02649**

**\*Broadcast Live on Local Cable Channel 18\***

**\*Streamed Live on the Town of Mashpee Website: <https://www.mashpeema.gov/channel-18>\***

**6:30 p.m. – Convene Meeting in Open Session**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**MINUTES:** Approval of the Following: Monday, May 15, 2023 Regular and Executive Sessions

**APPOINTMENTS & HEARINGS**

- Public Comment
- *Department of Public Works Director Catherine Laurent:* Discussion and Approval of the Following:
  - Award of Department of Public Works Contracts for Annual Bids (New)
  - Award of Department of Public Works Contracts for Annual Bids (Extension)
  - Award of Annual Contract for Purchase of Diesel and Gasoline
  - Award of Annual Contract for Operation of the Transfer Station; Hauling of Recyclables
- Update on Status of Cesspools; Sewer Connections: *Health Agent Zachary Seabury*
- Discussion and Approval Interim Loan Notes with State Revolving Fund: *Treasurer Craig Mayen*
- Discussion and Certification of the Hiring Process for Firefighter/EMT Connor Peltier: *Fire Chief Jack Phelan*
- Discussion and Certification of the Hiring Process for Police Office Riley LaCroix: *Police Captain Thomas Rose*
- Discussion and Approval of Appointment to the Zoning Board of Appeals:  
*Sharon Sangeleer Member at-Large (Term Expires June 30, 2024)*
- Discussion and Approval of the Following One-Day Liquor Licenses:
  - Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 6/20-7/17/2023: *Peter Murner*
  - Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 7/18-8/14/2023: *Jeff Conley*
  - Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 8/15-9/11/2023: *Jennifer Conley*
  - Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 9/12-10/9/2023: *Melissa Murner*
  - Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 10/10-11/6/2023: *Margaret Murner*
  - Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 11/7-12/4/2023: *Leif Rotsaert*
- Discussion and Approval of the Annual Proclamation: Race Amity Day
- Discussion and Approval of Proclamation to Declare the Week of June 11-17, 2023 as "Mashpee Veterans Appreciation Week" and June 17, 2023 as "Mashpee Veterans Appreciation Day"

**COMMUNICATIONS & CORRESPONDENCE**

**OLD BUSINESS**

**NEW BUSINESS**

- Assignment of Select Board Liaisons 2023-2024: *Chair John J. Cotton*
- Discussion and Possible Approval of Annual Reappointment List Boards, Commissions, Committees, and Councils

**ADDITIONAL TOPICS**

(This space is reserved for topics that the Chair did not reasonably anticipate would be discussed)

**LIAISON REPORTS**

**WATER QUALITY UPDATES**

**TOWN MANAGER UPDATES**

**EXECUTIVE SESSION**

**ADJOURNMENT**

Mashpee Select Board  
Minutes  
June 5, 2023

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Present: Selectman John J. Cotton, Selectman Thomas F. O'Hara, Selectman Carol A. Sherman,  
Selectman David W. Weeden, Selectman Michaela Wyman-Colombo  
Town Manager Rodney C. Collins  
Assistant Town Manager Wayne E. Taylor

Meeting Called to Order by Chairman Cotton at 6:30 p.m.  
Mashpee Town Hall, Waquoit Meeting Room

**MINUTES:**

Monday, May 15, 2023 Regular and Executive Sessions:

**Motion made by Selectman Weeden to approve the Regular and Executive Session minutes of Monday; May 15, 2023 as presented.**

**Motion seconded by Selectman O'Hara.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

**APPOINTMENTS & HEARINGS**

Public Comment:

Susan Dangel a resident of Cotuit Road indicated she is anxious and agitated about the conditions of Mashpee waters. Recently she was asked if it is okay to swim in Mashpee-Wakeby Pond. With cyanobacteria bloom, the water is unsafe for people and for pets. A recent video of the ponds taken on May 26, 2023 showed severe signs of nitrogen fed algae in the Mashpee River. This is in May when it is cool and cold. No one is here yet. A drone photographer also took photographs of the Mashpee Neck Marina and Shoestring Bay of the active scum layers. Waquoit Bay was also noted to be in poor condition. There is a need to video the Quashnet River, however it is necessary to obtain clearance from Joint Base Cape Cod. Ms. Dangel indicated this is very distressing. The Town of Mashpee is a toxic stew. Ms. Dangel called for leadership. The residents have not received any information about progress related to securing a Watershed Permit nor information regarding Phase II of the Wastewater Plan. Ms. Dangel indicated the Town needs action and we as residents call for action. What will happen when tourists come, they will never come back.

Mary Adams Oleksak as resident of Capstan Circle stated that it has been just under three years requesting attention to this matter and we got it. Collectively as a Town we have educated ourselves and we have begun to address the problem. Phase I has been approved. This is a tiny step forward. Ms. Oleksak indicated it is very clear this is a serious problem that will multiply. We need to work on Phase II. We cannot continue to delay this yearly as the problem will get worse and endanger our habitat and our economy. This is about the community, the staff, and the scientists. Ms. Oleksak asked for the Select Board's help to get this done, and to give this problem the urgency that it deserves.

Mashpee Select Board  
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## **APPOINTMENTS & HEARINGS**

### Public Comment: (continued)

Former Select Board member Andrew Gottlieb indicated the Select Board has rallied in the past and there is a need to do this again. The timeline necessary to gain SRF funding imposes a deadline of August 11, 2023 for applications to receive 0% financing. With approval and a vote of Town Meeting construction might commence in 2025 taking three years for completion. Conceivably additional connections and the start of Phase II would commence in 2028. Water quality would not begin to improve until 2030.

Mr. Gottlieb stated if the Town does not apply for SRF funding, it will cost an additional year. What you thought is disgusting will get worse until sometime in the 2030's. Mr. Gottlieb requested the Select Board discuss and vote on this matter at their next meeting with the intent to fund Phase II of the Wastewater Plan in May 2024. To meet the deadline of August 11<sup>th</sup> it is necessary to direct staff members to prepare for the October Town Meeting, and for construction authorization in May 2024 with a financing plan to fund Phase II. If you wait until it bubbles up, it is never going to happen. Mr. Gottlieb indicated there is plenty of time to discuss the details. It was recommended the Select Board tell the staff we are moving forward and this is the schedule.

J. Marie Stevenson, Chair of the Mashpee Inclusion & Diversity Committee spoke about the projects exploring diversity through stories and photographs in a joint initiative with the MM/MHS Human Rights club and other students an intended legacy project. The second series is now in the public library until August. Of interest is the hallow flag on display at the middle/high school, a project representing 14 different countries.

At a recent Local Comprehensive Plan meeting the desire for boards and committees to cross over was discussed. In an effort to move forward, it is requested the Select Board, School Committee and Department Heads meet jointly at the Mashpee Library to gather and to read and to see the stories that have evolved. The exhibit is also planned to be on display at the Cotuit Center for the Arts. This is something the whole Town should be proud of. In closing Ms. Stevenson made note of Race Amity Day on June 11, 2023 inviting all members of the public to attend.

In other business, Ken Debrowski offered comment on tax policy and encouraged the Select Board to be more proactive in the management of tax policy in future years. Mr. Debrowski discussed the need to be attentive to real estate tax policy as it is the Town's main source of revenue with the largest impact to the community. Adopting the residential tax exemption at 5% has shifted the tax burden. If we had not adopted the 5% residential exemption residents below the median would have seen a 5.4% tax increase and non-residents a 2.7% decrease. Residents above the median would have seen a modest increase of 0.9% increase.

Mr. Debrowski asked if the results would remain as voted or does the Town want to consider using the residential exemption to mitigate the impact that was seen this year. As analysis indicates market forces will change how the tax burden is distributed. Mr. Debrowski indicated he is willing to further discuss this with Town Officials.

Mashpee Select Board  
Minutes  
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## **APPOINTMENTS & HEARINGS**

Department of Public Works Director Catherine Laurent: Discussion and Approval of the Following:

Award of Department of Public Works Contracts for Annual Bids (New):

Catherine Laurent, Director of Public Works recommended the Select Board award the contracts for the Annual Bids (New) for FY24. This includes the following;

Catch Basin Cleaning  
Cold Planing  
Purchase of Drainage Structures  
Electrical Services  
Equipment Rental  
Fire Suppression  
Guardrail Pulverizing  
Stone

This is the first year of a 2-year bid for service contracts awarded to the lowest, most responsive bidders. The contracts are used on an as needed basis

**Motion made by Selectman O'Hara to award the contracts for the (New) Annual Bids as referenced for Fiscal Year 2024.**

**Motion seconded by Selectman Sherman.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Award of Department of Public Works Contracts for Annual Bids (Extension):

The Select Board was recommended to award the contracts for the Annual Bids (Extension) for FY24. The bids are the last year of a two- or three-year bid. The following bid items include;

Alarm Monitoring/Inspection  
Chip Seal  
Cracksealing  
Elevator Inspections and Service  
Generator PM and Service  
HVAC Service and Repair  
Line Painting  
Paving & Related Work  
Plumbing  
Purchase & Delivery of Sand  
Street Sweeping  
MMHS WWTF (wastewater treatment facility)

Mashpee Select Board  
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June 5, 2023

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## **APPOINTMENTS & HEARINGS**

Department of Public Works Director Catherine Laurent: Discussion and Approval of the Following:

Award of Department of Public Works Contracts for Annual Bids (Extension): (continued)

**Motion made by Selectman O'Hara to award the contracts for the Annual Bids (Extension) as referenced for Fiscal Year 2024.**

**Motion seconded by Selectman Sherman.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Award of Annual Contract for Purchase of Diesel and Gasoline:

Through a regional bid, the Town solicits quotations for the purchase of fuel. Contracts are awarded annually for the purchase of diesel and gasoline for the fuel depot located at the Department of Public Works. All Town vehicles utilize the fuel depot.

The quote is for supply and delivery only. The Town is responsible for paying state taxes and fees.

**Motion made by Selectman O'Hara to award the Annual Contract for the purchase of Diesel and Gasoline to Sprague Operating Resources; Gasoline at a fixed price of \$3.1107 per gallon and Diesel at a fixed price of \$2.949 per gallon.**

**Motion seconded by Selectman Sherman.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Award of Annual Contract for Operation of the Transfer Station: Hauling of Recyclables:

It is recommended that a contract be awarded to Gotta Do Contracting LLC or Jordan, NY for Operation and the Hauling of Recyclables to identified locations. The extension of the contract has escalated by 4.9% in the CPI over the FY23 contract. There are no changes to the scope of services.

**Motion made by Selectman O'Hara to approve the Annual Contract for the Operation of the Transfer Station and Hauling of Recyclables to Gotta Do Contracting LLC for Fiscal Year 2024.**

**Motion seconded by Selectman Sherman.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Mashpee Select Board  
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**APPOINTMENTS & HEARINGS**

Update on Status of Cesspools; Sewer Connections: Health Agent Zachary Seabury:

The Select Board met with Health Agent Zachary Seabury to review the 2023 Mashpee Cesspool Study. Per Town records there are 179 cesspools in the Town of Mashpee. This represents approximately 1.79% of the systems in Mashpee. Of the 179 cesspools, 103 are within 300' of a waterway and 43 of the 103 are within 100' of a waterway.

Cesspools are defined as a pit with open-jointed linings or holes in the bottom and/or sidewalls into which raw sewage is discharged with the liquid portion disposed of by seeping or leaching into the surrounding soils, and the solids or sludge being retained in the pit.

In the Town of Mashpee there are more than 10,000 residential locations serviced by private septic systems, shared septic systems or sewer plants. This includes single family homes, multi-family homes, apartment buildings, assisted living buildings, etc.

Regarding cesspools, to date the number has been decreased by ten, with several on the docket to be replaced. Regulations went into effect April 4, 2023. New regulations dictate under the Mashpee Code; Chapter 172 systems within 300' of waterways are required to be upgraded to an I/A system. This includes systems no longer being used, considered abandoned. The abandonment regulation is a state regulation. Mr. Seabury indicated the Town has been making great strides. Since the implementation of the regulations, there are no more Title V systems within the 300' buffer.

Discussion followed with respect to the dire need to replace the cesspool systems to be mindful and to provide safe water quality for Mashpee residents. It was recommended the Town apply stricter standards requiring cesspool removals with home alterations. The suggestion was taken under advisement and will be reviewed with Town Counsel and the respective Building and Zoning Departments to review the legality of this recommendation. It was noted that any alternations made inside a home require a Title V septic review. Forcing an upgrade would require an opinion from Town Counsel.

In considering Phase II of the Wastewater Plan, it is conceptual. Regulations cannot be forced in areas that would be designated for treatment under Phase II.

It was agreed that an opinion would be obtained from Town Counsel regarding the above comments to include the authority of the Health Agent, ability to institute a total ban and removal timeframe. The Select Board expressed appreciation to the Health Agent for his efficiencies.

It was noted there are funding opportunities to assist with the replacement of systems such as the Septic Loan Program offered by the County.

Regarding the removal of phosphorus, a priority in fresh water bodies Mr. Seabury indicated phosphorus is more of a metal and more finicky than nitrogen. Studies have shown there is a bacterium that may consume the phosphorus.

At this time the Health Department is conducting public outreach on the I/A systems.

A brief discussion followed with respect to the installation requirements. Currently there are 20 licensed utility installers available. It is recommended that several quotes be secured as well as group quotes. All connections will be inspected by the Health Department to ensure correctness.

Mashpee Select Board  
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Discussion and Approval Interim Loan Notes with State Revolving Fund: Treasurer Craig Mayen:

The Select Board met with Treasurer/Tax Collector Craig Mayen to approve the Interim Loan Notes with the State Revolving Fund (SRF) necessary for reimbursement for Phase I of the Wastewater project; respectively at 0% interest.

**Motion made by Selectman Sherman to approve and execute the Interim Loan Notes associated to the State Revolving Fund as presented.**

**Motion seconded by Selectman Weeden.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Discussion and Certification of the Hiring Process for Firefighter/EMT Connor Peltier: Fire Chief Jack Phelan:

Correspondence was received from Fire Chief John F. Phelan dated May 19, 2023 relative to the New Hire Certified Process for candidate Connor Peltier as an entry-level Firefighter.

Town Manager Rodney C. Collins affirmed that all Town policies and procedures have been adhered to with the process being monitored and reviewed by the Department of Human Resources.

**Motion made by Selectman Sherman to certify the Hiring Process for Firefighter/EMT Connor Peltier effective June 6, 2023.**

**Motion seconded by Selectman O'Hara.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Discussion and Certification of the Hiring Process for Police Officer Riley LaCroix: Police Captain Thomas Rose:

The Select Board reviewed comment from Captain Thomas A. Rose dated May 8, 2023 affirming the patrol officer hiring process has been completed in accordance with all the policies and procedures established by the Town of Mashpee and its police department. The process has been monitored and reviewed by the Human Resources Department.

Town Manager Rodney C. Collins confirmed that all policies and procedures have been followed. It was requested the certification of the selection process with the appointment of Riley Lacroix to the position of police officer move forward.

**Motion made by Selectman Sherman to certify the selection process for the appointment of Riley Lacroix as police officer effective June 13, 2023.**

**Motion seconded by Selectman O'Hara.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Mashpee Select Board  
Minutes  
June 5, 2023

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## **APPOINTMENTS & HEARINGS**

### Discussion and Approval of Appointment to the Zoning Board of Appeals: Sharon Sangeleer Member at-Large (Term Expires June 30, 2024):

Selectman John J. Cotton respectfully requested the Select Board defer the appointment to the Zoning Board of Appeals to the next scheduled Select Board Meeting or until such time Town Counsel has given an opinion with respect to Policy No. 001 – Appointment Policy for Boards, Commissions, Committees and Councils (Appointed by the Select Board).

It was requested the Town Manager distribute Policy No. 001 to all Boards, Commissions, Committees and Councils to ensure there is a clear understanding of the process.

The Select Board agreed to defer this matter as referenced to implement the appointment with fidelity and to ensure the position has been posted to obtain the most qualified candidate. For consistency it was recommended that a matrix be incorporated into the policy based on a consistent evaluation method; Strongly Recommended, Recommended, Recommended with Hesitation, and Not Recommended.

Agenda topic: Deferred.

### Discussion and Approval of the Following One-Day Liquor Licenses:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 6/20-7/17/2023: Peter Murner:  
Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 7/18-8/14/2023: Jeff Conley:  
Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 8/15-9/11/2023: Jennifer Conley:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 9/12-10/9/2023: Melissa Murner:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 10/10-11/6/2023: Margaret Murner:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 11/7-12/4/2023: Leif Rotsaert:

The Naukabout Beer Co. LLC is applying for 28 consecutive One Day Liquor Licenses for Beer & Wine (serving beer only). In accordance with M.G.L. c. 138 §14, the Select Board acting as the Local Licensing Authority may issue special licenses to any enterprise. A special license can be granted to any person, a total of (30) days per calendar year and no more. By law this does not prohibit different individuals from a single organization from applying for more than one special license.

The Town of Mashpee One Day Beer and Wine License is \$40 for non-profit, \$1,120 per applicant.

Peter Murner, Naukabout Brewing Company was in attendance to respectfully request the Select Board approve the above referenced One-Day Liquor Licenses to allow the hosting of a pop-up beer garden at the Mashpee Commons Village Common, 4 Job's fishing Road, Mashpee.

Additional communication contained in the proposal was received from Thomas Feronti, Mashpee Commons Limited Partnership dated May 22, 2023 in support of the request submitted by Peter Murner, Naukabout Brewery to host a beer garden. Mr. Murner runs an established and successful small business with experience in hosting event-based beer gardens in Mashpee Commons.

Mashpee Select Board  
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## **APPOINTMENTS & HEARINGS**

### Discussion and Approval of the Following One-Day Liquor Licenses: (continued)

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 6/20-7/17/2023: Peter Murner:  
Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 7/18-8/14/2023: Jeff Conley:  
Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 8/15-9/11/2023: Jennifer Conley:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 9/12-10/9/2023: Melissa Murner:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 10/10-11/6/2023: Margaret Murner:

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 11/7-12/4/2023: Leif Rotsaert:

Mr. Murner indicated this is an opportunity to showcase their Mashpee products. This is a short-term test case to ensure the neighbors, the Town of Mashpee and Mashpee Commons support. With the Select Board's approval the application would be forwarded to the Alcoholic Beverages Control Commission (ABCC) for approval.

The asphalt pad would be used to leverage the beer garden under a temporary pop-up structure. At times, the event would be extended into the grassy area, mindful of other events; Church services, weddings, and when the stage is being used, etc. This would be a family friendly atmosphere attributing the Mashpee Commons experience.

Naukabout Beer is the sole alcohol of choice in a fenced area. Juice boxes, snacks and food trucks would be on site. Staff members are TIP certified; users would be required to wear a wrist badge. There will be hand washing stations, restrooms on site and trash service.

Being no comment, the Select Board moved forward with the following action;

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 6/20-7/17/2023: Peter Murner:

**Motion made by Selectman Weeden to approve the One Day Liquor License; Beer & Wine only from 6/20 – 7/17/2023 submitted by Naukabout Beer Co. LLC, Peter Murner responsible manager of record.**

**Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 7/18-8/14/2023: Jeff Conley:

**Motion made by Selectman Weeden to approve the One Day Liquor License; Beer & Wine only from 7/18 – 8/14/2023 submitted by Naukabout Beer Co. LLC, Jeff Conley responsible manager of record.**

**Motion seconded by Selectman O'Hara.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

Mashpee Select Board  
Minutes  
June 5, 2023

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## **APPOINTMENTS & HEARINGS**

### Discussion and Approval of the Following One-Day Liquor Licenses: (continued)

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 8/15-9/11/2023: Jennifer Conley:

**Motion made by Selectman Weeden to approve the One Day Liquor License; Beer & Wine only from 8/15 – 9/11/2023 submitted by Naukabout Beer Co. LLC, Jennifer Conley responsible manager of record. Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 9/12-10/9/2023: Melissa Murner:

**Motion made by Selectman Weeden to approve the One Day Liquor License; Beer & Wine only from 9/12 – 10/9/2023 submitted by Naukabout Beer Co. LLC, Melissa Murner responsible manager of record. Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 10/10-11/6/2023: Margaret Murner:

**Motion made by Selectman Weeden to approve the One Day Liquor License; Beer & Wine only from 10/10 – 11/6/2023 submitted by Naukabout Beer Co. LLC, Margaret Murner responsible manager of record.**

**Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

Beer and Wine: Naukabout Beer Co. LLC, Naukabout Gardens at the Commons, 11/7-12/4/2023: Leif Rotsaert:

**Motion made by Selectman Weeden to approve the One Day Liquor License; Beer & Wine only from 11/7 – 12/4/2023 submitted by Naukabout Beer Co. LLC, Leif Rotsaert responsible manager of record.**

**Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

Selectman Cotton, yes	Selectman O'Hara, yes	Selectman Sherman, yes
Selectman Weeden, yes	Selectman Wyman-Colombo, yes	Opposed, none

Mashpee Select Board  
Minutes  
June 5, 2023

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Discussion and Approval of the Annual Proclamation: Race Amity Day:

In recognition of Race Amity Day, the Select Board read the Proclamation into the record announcing June 11, 2023 as Race Amity Day in the Town of Mashpee. The event will be held at the Community Park on Sunday, June 11, 2023 from 12:00 p.m. to 4:00 p.m.

**Motion made by Selectman Weeden to proclaim Sunday, June 11, 2023 as Race Amity Day in the Town of Mashpee.**

**Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

Discussion and Approval of Proclamation to Declare the Week of June 11-17, 2023 as "Mashpee Veterans Appreciation Week" and June 17, 2023 as "Mashpee Veterans Appreciation Day":

The Proclamation dedicating the week of June 11, 2023 through June 17, 2023 as Veterans Appreciation Week was read into the record by the Select Board. On Saturday, June 17, 2023 a parade and a special ceremony will be held for the unveiling of the Veterans Monument at 11:00 a.m.

**Motion made by Selectman Weeden to declare the week of June 11, 2017 through June 17, 2023 as Veterans Appreciation Week.**

**Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

**NEW BUSINESS**

Assignment of Select Board Liaisons 2023-2024: Chair John J. Cotton:

Selectman John J. Cotton newly appointed Chair of the Select Board distributed a list of draft Select Board Liaison Assignments for review. Formal approval of the assignments will be acted upon at the next meeting.

Mashpee Select Board  
Minutes  
June 5, 2023

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Discussion and Possible Approval of Annual Reappointment List Boards, Commissions, Committees, and Councils:

Each year the Select Board reappoints members of Boards, Commissions, Committees and Councils for those terms ending on June 30, 2023. A list of members to be considered for reappointment was submitted to the Select Board from Terrie M. Cook, Administrative Assistant in a memorandum dated June 1, 2023.

**Motion made by Selectman Sherman to approve the Annual Reappointment List as presented.**

**Motion seconded by Selectman O'Hara.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

<b>Selectman Cotton, yes</b>	<b>Selectman O'Hara, yes</b>	<b>Selectman Sherman, yes</b>
<b>Selectman Weeden, yes</b>	<b>Selectman Wyman-Colombo, yes</b>	<b>Opposed, none</b>

**LIAISON REPORTS**

Harbor Management Committee: The Harbor Management Committee has been actively compiling data from the first public outreach meeting. Additional public meetings are being planned by the Director of Natural Resources and the Town Planner to obtain community engagement critical in the formation of the Harbor Management Plan.

With the State's approval, the plan would place the Town in a more favorable position for grant funding opportunities.

**WATER QUALITY UPDATES**

After hearing the concerns of residents during public comment about the conditions of the water at present, the Select Board agreed to take action. In considering the August 11, 2023 deadline to submit an application for State Revolving Fund (SRF) loans at 0% it is critical for the Town to move forward timely.

It was agreed the Sewer Commission having statutory authority would be consulted regarding the next course of action at their Thursday meeting. Mindful of the August 11<sup>th</sup> deadline, the recommendation from the Sewer Commission is necessary and on the specifics of what is achievable to meet this target date.

It was suggested the Town contact representatives on the State level to assist in the immediate pursuit of preliminary design grants that may be available. In an effort to call for direct action, it was recommended the Town declare a State of Emergency on Mashpee waters.

The 208 Plan is intended to be a partnership between the state and the federal governments. It was recommended the Select Board invite local politicians to hear the Town's concerns loud and clear, asking them to provide the answers. The State has responsibilities with some of the ponds. This is everyone's problem and the Town should advocate for regional funding to protect Cape Cod.

Mashpee Select Board  
Minutes  
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## **TOWN MANAGER UPDATES**

Town Manager Rodney C. Collins announced the following updates:

October Town Meeting Articles: The deadline for submission by Town Departments is Monday, July 10, 2023.

Race Amity Day: June 11, 2023 from 12:00 p.m. to 4:00 p.m.

Dedication of the Veterans Memorial: June 17, 2023 at 11:00 a.m.

DNR Presentations: Future Agenda topic with UMass Dartmouth, updated information on water quality issues including Shoestring Bay.

Dredging: A meeting will be held on Monday to review the dredge schedule for the Town of Mashpee. It is hopeful the annual dredge will be re-scheduled to an earlier date to ensure the waterways are clear. Several factors of concern include weather related issues, mechanical failures, staffing, the nesting of piping plovers and other issues that tend to cause delays.

Information Technology: The IT Department has been working to correct a malfunction in the email system.

## **ADJOURNMENT**

**Motion made by Selectman Sherman to adjourn at 8:30 p.m.**

**Motion seconded by Selectman Wyman-Colombo.**

**VOTE: Unanimous. 5-0.**

**Roll Call Vote:**

**Selectman Cotton, yes**

**Selectman O'Hara, yes**

**Selectman Sherman, yes**

**Selectman Weeden, yes**

**Selectman Wyman-Colombo, yes**

**Opposed, none**

Respectfully submitted,

Kathleen M. Soares  
Secretary to the Select Board



# Town of Mashpee

Hours: Mon. – Fri., 8:30am – 4:30pm  
Phone: (508) 539-1142  
FAX: (508) 539-1405

16 Great Neck Road North  
Mashpee, Massachusetts 02649

Assessing Department  
Joseph Gibbons, MAA  
Director of Assessing

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## MEMORANDUM

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TO: CHAIR JOHN COTTON AND THE HONORABLE MEMBERS OF THE SELECT BOARD;  
RODNEY COLLINS, TOWN MANAGER

FROM: JOSEPH GIBBONS, DIRECTOR OF ASSESSING

SUBJECT: RESIDENTIAL EXEMPTION UPDATE/REVIEW OF F.Y. 2023

DATE: JUNE 22, 2023

cc: FILE

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To the Honorable Members of the Select Board:

At your request, I will be in attendance at your 6/26/2023 meeting to give a review of the results of your adoption of the residential exemption in Fiscal Year 2023, while looking ahead to F.Y. 2024. A 5% residential exemption was adopted at last November's Tax Classification Hearing. This resulted in a 33,268 valuation (\$233.21 tax) discount for all approved domiciliary properties. This adoption by the Selectboard created an increase in the residential tax rate to 7.01 from Mashpee's natural tax rate of 6.94. Commercial, Industrial and Personal properties remained at the natural tax rate of 6.94.

Our office reviewed almost 2,600 residential exemption applications, of which 2,434 were approved for Fiscal Year 2023. Prior estimates indicated approximately 4,800 potential RX qualifiers. The Assessors recommend that taxpayers, who have not been previously approved, file their applications prior to the early fall cutoff date in order to limit potential overlay reserve shortfalls. According to DOR statisticians, an increase in the RX percentage will, most likely, result in more applicants due to the increased value of exemption.

I have enclosed a copy of a breakdown of the Fiscal Year 2023 residential exemption approvals and a copy of the new RX application for F.Y. 2024.

Joseph Gibbons, MAA  
Director of Assessing

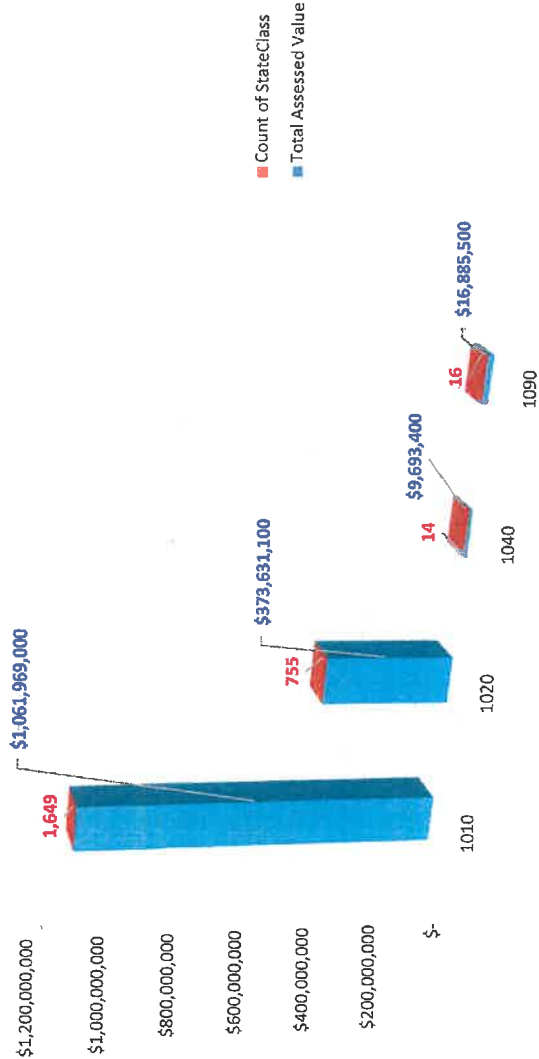
FY2023 Residential Exemption Approved Applications

State Class	Total Assessed Value	Count of StateClass
1010	\$ 1,061,969,000	1,649
1020	\$ 373,631,100	755
1040	\$ 9,693,400	14
1090	\$ 16,885,500	16
Grand Total	\$ 1,462,179,000	2,434

State Class Code:

101 : Single Family Residential
102 : Residential Condominium
104 : Two Family Residential
109 : Multiple Home Residential

Total Assessed Value by State Class  
(Approved Residential Exemptions)



RESIDENTIAL EXEMPTION  
THE COMMONWEALTH OF MASSACHUSETTSDo not write in this space.  
Date application received:FISCAL YEAR  
**2024**TOWN OF MASHPEE  
NAME OF CITY OR TOWN**APPLICATION FOR RESIDENTIAL EXEMPTION**MUST BE FILED NO LATER THAN 3 MONTHS AFTER THE DATE THE ACTUAL TAX BILL IS ISSUED.ALL TAXPAYER INFORMATION ON THIS FORM MUST BE COMPLETED IN FULL  
AND REQUIRED DOCUMENTATION ATTACHED TO BE CONSIDERED FOR THE RESIDENTIAL EXEMPTION.  
APPLICATIONS ARE FOR THE 2024 FISCAL YEAR BEGINNING JULY 1, 2023.**PARCEL ID#** \_\_\_\_\_

The undersigned hereby applies for a residential exemption for fiscal year 2024 on real estate situated at

Number # \_\_\_\_\_ Street \_\_\_\_\_

**STATEMENT OF FACTS**

1) Name(s) of record owner(s) \_\_\_\_\_

2) Name of Applicant(s) \_\_\_\_\_

3) Date Property Acquired: \_\_\_\_\_

4) Was this real estate owned and occupied by you as your principal residence (domicile) on January 1, 2023? YES: \_\_\_\_\_ NO: \_\_\_\_\_5) Please attach a copy of the Front Page AND Signature Page of your 2022 Federal Income Tax Return (form 1040) Showing the Above Real Estate Address (required). If return shows a P.O. Box, please attach copies of both pages of your tax return along with an additional piece of evidence listed in line 7.

6. If you are not required to file a tax return due to low income, we have an affidavit available in the office and on the town website. Completed affidavit requires at least 2 pieces of other evidence in line 7.

7. **Other Evidence:** Copy of Driver's License (both sides) ☐ ; Copy of Motor Vehicle Registration ☐ ; Copy of Gun Permit ☐ ;  
Copy of Other 2022 Federal Form showing address: ☐8. List the location and type of ALL other residential real estate owned by you:

8) Have you received or applied for a residential exemption in any other state, city or town for this fiscal year?

YES: \_\_\_\_\_ NO: \_\_\_\_\_ If yes, where: \_\_\_\_\_  
City/State

Signing this form under the penalties of perjury has the legal effect of swearing under oath to the truthfulness of the information contained herein. All items on this form must be completed as indicated. In addition to other sanctions provided by law, intentional misrepresentation of facts in this application may result in cancellation of this exemption and the subsequent issuance of an omitted bill for the exempted value involved for the current fiscal year.

SUBSCRIBED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ UNDER THE PENALTIES OF PERJURY

9) Signature of Applicant: \_\_\_\_\_

10) Mailing Address (if different than property location): \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Do not write below this line

GRANTED: \_\_\_\_\_ DENIED: \_\_\_\_\_ NO ACTION: \_\_\_\_\_

DATE: \_\_\_\_\_ CERTIFICATE #: \_\_\_\_\_ AMOUNT ABATED: \_\_\_\_\_



# Town of Mashpee

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*16 Great Neck Road North  
Mashpee, Massachusetts 02649*

## MEMORANDUM

Date: June 22, 2023

TO: Rodney C. Collins, Town Manager and  
Honorable Members of the Select Board

FROM: Dawn Thayer, Finance Director

RE: End of Year Transfer Requests

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Description: Request for transfer of funds within the FY 2023 Treasurer/Collector operating budget and Police Department operating budget, as well as a transfer of funds from the DPW salary budget to the Transfer Station operating budget. Please see the attached End of Year Transfer Request forms for accounts and transfer figures.

Background: M.G.L. Chapter 44, Section 33B allows for transfer between departmental appropriations at the end of a fiscal year, if an unanticipated deficit occurs as of 6/30/23. This transfers avoids the requirement to raise the deficit (s) on the following year's tax recap.

Recommendation: Approval of the attached end of year transfers.





## REQUEST FOR END OF YEAR APPROPRIATION TRANSFER

Chapter 44, section 33B of the Massachusetts General Laws, allows the Selectmen, with the agreement of the Finance Committee, to transfer any departmental appropriation to another appropriation within the same or other department during May, June and the first fifteen days of July. The transfer may not be used to transfer from a municipal light or school department budget.

To the Finance Director:

You are hereby authorized to perform the following appropriation transfer as approved by the Board of Selectmen and Finance Committee:

Date: 6/22/23

Amount of transfer: \$4,850

Transfer <b>FROM</b> Account:	01145102-5130	\$200 (Treasurer Overtime Salary)
	01145102-5142	\$500 (Treasurer Longevity)
	01145102-5140	\$2,400 (Treasurer Sick Buy Back Incentive)
	01145105-5380	\$1,750 (Foreclosure Expense)

Transfer <b>TO</b> Account:	01145103-5340	\$3,500 (Postage Expense)
	01145103-5380	\$1,350 (Other Purchase of Services)

Selectmen Approved:

_____	_____
_____	_____
_____	_____

Finance Committee Approved:

_____	_____
_____	_____
_____	_____
_____	_____



## REQUEST FOR END OF YEAR APPROPRIATION TRANSFER

Chapter 44, section 33B of the Massachusetts General Laws, allows the Selectmen, with the agreement of the Finance Committee, to transfer any departmental appropriation to another appropriation within the same or other department during May, June and the first fifteen days of July. The transfer may not be used to transfer from a municipal light or school department budget.

To the Finance Director:

You are hereby authorized to perform the following appropriation transfer as approved by the Board of Selectmen and Finance Committee:

Date: 6/22/23

Amount of transfer: \$20,000

Transfer FROM Account: 01210104-5110 (Dispatcher Salary)

Transfer TO Account: 01210101-5131 (Police Overtime Salary)

Selectmen Approved:

_____	_____
_____	_____
_____	_____

Finance Committee Approved:

_____	_____
_____	_____
_____	_____
_____	_____



## REQUEST FOR END OF YEAR APPROPRIATION TRANSFER

Chapter 44, section 33B of the Massachusetts General Laws, allows the Selectmen, with the agreement of the Finance Committee, to transfer any departmental appropriation to another appropriation within the same or other department during May, June and the first fifteen days of July. The transfer may not be used to transfer from a municipal light or school department budget.

To the Finance Director:

You are hereby authorized to perform the following appropriation transfer as approved by the Board of Selectmen and Finance Committee:

Date: June 22, 2023

Transfer FROM Account:	01422101-5112 (DPW Salaries /Full Time Local 888)	\$22,412
Transfer TO Account:	01433101-5309 (Transfer Station/Local Transfer Contract)	\$19,112
	01433101-5382 (Transfer Station/Recycling)	\$3,300

Select Board Approved:

_____	_____
_____	_____
_____	_____

Finance Committee Approved:

_____	_____
_____	_____
_____	_____
_____	_____



# Town of Mashpee

Fire & Rescue Department

20 Frank Hicks Drive  
Mashpee, MA 02649  
V 508.539.1457  
F 508.539.1453

**RECEIVED**

JUN 08 2023

Human Resources Department

Date: June 8, 2023

From: Fire Chief John F. Phelan

To: Rodney Collins, Town Manager

Re: New Hire Certified Process

Mr. Collins:

An entry-level Firefighter written exam process was initiated and posted on the Town website and in the newspaper. The Town Human Resources Department administered the entry-level written exam at the Mashpee Public Library on October 12, 2022. The HR Department received 16 applicants, with 14 attending the exam.

The ten candidates who received a passing score of 70% or greater were selected for an interview. The ten candidates were set up for an interview by a three-person panel that was held on November 8, 2022. The three-person panel comprised the Assistant Town Manager, Human Resources Director, and the Town of Sandwich Deputy Fire Chief. The same set of interactive questions was asked of each candidate. After the interviews, the panel further scored candidates and ranked them into four categories. These consisted of the list below.

1. Highly Recommended
2. Recommended
3. Recommended with hesitation
4. Not recommended.

The final ranking list was given to the Fire Chief, and the top four Candidates were selected and participated in an Appointing Authority interview.

Candidates *Keith Birch, Jessica O'Kane, Nicholas Hill, and Corey Celeste* were granted a final interview with the Fire Chief on *March 9, 2023*, and given a conditional offer for hire. The conditional offer consists of the list below.

- Comprehensive background investigation
- Physical examination by the Town Appointed Physician
- Psychological assessment by the Town Appointed Psychologist

I affirm that all phases of the entry-level selection process have been completed. These candidates are under the Staffing for Adequate Fire and Emergency Services (SAFER) Grant received through FEMA. The entry-level process was monitored and reviewed by the Department of Human Resources.

John F. Phelan, Fire Chief

**TOWN OF MASHPEE POSITION APPOINTMENT/REAPPOINTMENT REQUEST**

Effective: September 1, 2016

JOB TITLE: Firefighter/EMT DEPARTMENT: Fire  
EMPLOYEE: Keith Birch UNION/UNIT: Local 2519

STATUS: Regular Full-time ☒ Temporary Full-time ☐ Temporary Part-time ☐  
Standard Part-time ☐ Non-Standard Part-time ☐ Seasonal ☐

LABOR GRADE: N/A STEP: 1 RATE OF PAY: \$28.6094 Per Hour  
Per Week \$62,483.00 Per Year/Base

I attest that this position was posted and/or advertised through the following:

Existing Eligibility List ☒ Town Posting ☐ Local Employment Opportunity ☐  
Regional/State/National Opportunity ☐ Other Posting ☐

I also attest that all policies and procedures of the Town have been satisfied regarding this appointment, including: application review ☒ written examination ☒ oral interview ☒ appointing authority interview ☒  
physical agility exam ☒ medical examination ☒ psychological examination ☒ comprehensive background investigation, including a CORI check ☒ or other \_\_\_\_\_.

I further attest that the search and initial screening for this position was based upon minimum requirements, knowledge, skills, abilities, essential functions and responsibilities outlined in a job description approved by the Town Manager. (Attach job description) I further attest that the employee's driver's license status, if applicable to the position, was verified.

[Signature] 6-16-23  
Human Resources Director Signature Date

I request this appointment/promotion to be effective on: July 3, 2023  
[Signature] 6/20/23  
Appointing Authority Signature Date

This position may be filled upon confirmation and/or certification of this selection process, if a full-time new employee; or compliance with Town policies and procedures, if a promotion.

[Signature] 6/20/23  
Town Manager Signature Date

\_\_\_\_\_  
Chairman of Board of Selectmen (or Designee) Signature Date  
Review of Appointment and Certification of Selection Process

Copies To: White – Human Resources Canary – Town Clerk Pink – Town Manager

**TOWN OF MASHPEE POSITION APPOINTMENT/REAPPOINTMENT REQUEST**

Effective: September 1, 2016

JOB TITLE: Firefighter/EMT DEPARTMENT: Fire  
EMPLOYEE: Jessica O'Kane UNION/UNIT: Local 2519

STATUS: Regular Full-time ☒ Temporary Full-time ☐ Temporary Part-time ☐  
Standard Part-time ☐ Non-Standard Part-time ☐ Seasonal ☐

LABOR GRADE: N/A STEP: 1 RATE OF PAY: \$28.6094 Per Hour  
Per Week \$62,483.00 Per Year/Base

I attest that this position was posted and/or advertised through the following:

Existing Eligibility List ☒ Town Posting ☐ Local Employment Opportunity ☐  
Regional/State/National Opportunity ☐ Other Posting ☐

I also attest that all policies and procedures of the Town have been satisfied regarding this appointment, including: application review ☒ written examination ☒ oral interview ☒ appointing authority interview ☒  
<sup>pending</sup> physical agility exam ☒ medical examination ☒ psychological examination ☒ comprehensive background investigation, including a CORI check ☒ or other \_\_\_\_\_.

I further attest that the search and initial screening for this position was based upon minimum requirements, knowledge, skills, abilities, essential functions and responsibilities outlined in a job description approved by the Town Manager. (Attach job description) I further attest that the employee's driver's license status, if applicable to the position, was verified.

Kim Landry 6-16-23  
Human Resources Director Signature Date

I request this appointment/promotion to be effective on: July 3, 2023  
[Signature] 6/20/23  
Appointing Authority Signature Date

This position may be filled upon confirmation and/or certification of this selection process, if a full-time new employee; or compliance with Town policies and procedures, if a promotion.

[Signature] 6/20/23  
Town Manager Signature Date

\_\_\_\_\_  
Chairman of Board of Selectmen (or Designee) Signature Date  
Review of Appointment and Certification of Selection Process

Copies To: White – Human Resources Canary – Town Clerk Pink – Town Manager

**TOWN OF MASHPEE POSITION APPOINTMENT/REAPPOINTMENT REQUEST**

Effective: September 1, 2016

JOB TITLE: Firefighter/EMT DEPARTMENT: Fire

EMPLOYEE: Corey Celeste UNION/UNIT: Local 2519

STATUS: Regular Full-time [ ☒ ] Temporary Full-time [ ☐ ] Temporary Part-time [ ☐ ]  
Standard Part-time [ ☐ ] Non-Standard Part-time [ ☐ ] Seasonal [ ☐ ]

LABOR GRADE: N/A STEP: 1 RATE OF PAY: \$28.6094 Per Hour  
Per Week \$62,483.00 Per Year/Base

I attest that this position was posted and/or advertised through the following:

Existing Eligibility List [ ☒ ] Town Posting [ ☐ ] Local Employment Opportunity [ ☐ ]

Regional/State/National Opportunity [ ☐ ] Other Posting [ ☐ ]

I also attest that all policies and procedures of the Town have been satisfied regarding this appointment, including: application review [ ☒ ] written examination [ ☒ ] oral interview [ ☒ ] appointing authority interview [ ☒ ] physical agility exam [ ☒ ] medical examination [ ☒ ] psychological examination [ ☒ ] comprehensive background investigation, including a CORI check [ ☒ ] or other Pending.

I further attest that the search and initial screening for this position was based upon minimum requirements, knowledge, skills, abilities, essential functions and responsibilities outlined in a job description approved by the Town Manager. (Attach job description) I further attest that the employee's driver's license status, if applicable to the position, was verified.

Kim Landry 6-16-23  
Human Resources Director Signature Date

I request this appointment/promotion to be effective on: July 3, 2023

J. Seal 6/20/23  
Appointing Authority Signature Date

This position may be filled upon confirmation and/or certification of this selection process, if a full-time new employee; or compliance with Town policies and procedures, if a promotion.

[Signature] 6/10/23  
Town Manager Signature Date

Chairman of Board of Selectmen (or Designee) Signature  
Review of Appointment and Certification of Selection Process

Date

Copies To: White – Human Resources Canary – Town Clerk Pink – Town Manager

**TOWN OF MASHPEE POSITION APPOINTMENT/REAPPOINTMENT REQUEST**

Effective: September 1, 2016

JOB TITLE: Firefighter/EMT DEPARTMENT: Fire

EMPLOYEE: Nicholas Hill UNION/UNIT: Local 2519

STATUS: Regular Full-time ☒ Temporary Full-time ☐ Temporary Part-time ☐  
Standard Part-time ☐ Non-Standard Part-time ☐ Seasonal ☐

LABOR GRADE: NIA STEP: 1 RATE OF PAY: \$28.6094 Per Hour  
Per Week \$62,483.00 Per Year/Base

I attest that this position was posted and/or advertised through the following:

Existing Eligibility List ☒ Town Posting ☐ Local Employment Opportunity ☐  
Regional/State/National Opportunity ☐ Other Posting ☐

I also attest that all policies and procedures of the Town have been satisfied regarding this appointment, including: application review ☒ written examination ☒ oral interview ☒ appointing authority interview ☒ physical <sup>physical</sup> agility exam ☒ medical examination ☒ psychological examination ☒ comprehensive background investigation, including a CORI check ☒ or other \_\_\_\_\_.

I further attest that the search and initial screening for this position was based upon minimum requirements, knowledge, skills, abilities, essential functions and responsibilities outlined in a job description approved by the Town Manager. (Attach job description) I further attest that the employee's driver's license status, if applicable to the position, was verified.

Kim Landry 6-16-23  
Human Resources Director Signature Date

I request this appointment/promotion to be effective on: July 3, 2023  
[Signature] 6/24/23  
Appointing Authority Signature Date

This position may be filled upon confirmation and/or certification of this selection process, if a full-time new employee; or compliance with Town policies and procedures, if a promotion.

[Signature] 6/24/23  
Town Manager Signature Date

\_\_\_\_\_  
Chairman of Board of Selectmen (or Designee) Signature Date  
Review of Appointment and Certification of Selection Process

Copies To: White – Human Resources Canary – Town Clerk Pink – Town Manager



**TOWN OF MASHPEE  
SELECT BOARD  
PUBLIC HEARING NOTICE**

Pursuant to Chapter 138 of the Massachusetts General Laws, the Select Board, acting as the Local Licensing Authority for the Town of Mashpee, will conduct a public hearing on the application of Chen 1688, Inc. dba Saga Hibachi for a New Annual All Alcoholic Beverages Restaurant License located at 36 South Street, Mashpee MA 02649.

Said hearing will be held on Monday, June 26, 2023 at 6:50 p.m. in the Waquoit Meeting Room at Mashpee Town Hall, 16 Great Neck Road North, Mashpee, MA 02649.

You can submit comments and questions via email to [bos@mashpeema.gov](mailto:bos@mashpeema.gov) prior to the meeting date and time.



Per order of  
The Mashpee Select Board

John J. Cotton, *Chair*  
Thomas F. O'Hara, *Vice Chair*  
Carol A. Sherman, *Clerk*  
David W. Weeden  
Michaela Wyman-Colombo



# TOWN OF MASHPEE


## OFFICE OF THE SELECT BOARD

16 Great Neck Road North  
Mashpee, Massachusetts 02649  
Telephone – (508) 539-1401  
[bos@mashpeema.gov](mailto:bos@mashpeema.gov)

### MEMORANDUM

Date: June 20, 2023

To: Rodney C. Collins, Town Manager and  
Honorable Members of the Select Board

From: Stephanie A. Coleman, Administrative Secretary 

Re: **6:50 Public Hearing: New Annual All Alcoholic Beverages Restaurant License: Chen 1688, Inc.  
dba Saga Hibachi**

---

#### Description

Pursuant to Chapter 138 of the Massachusetts General Laws, the Select Board, acting as the Local Licensing Authority for the Town of Mashpee, will conduct a public hearing on the application of Chen 1688, Inc. dba Saga Hibachi for a New Annual All Alcoholic Beverages Restaurant License located at 36 South Street, Mashpee MA 02649.

The applicant is applying for an Annual On-Premises §12 Restaurant All Alcoholic Beverages License. The licensed premises is described as 36 South Street, Mashpee MA 02649; one floor containing a 4,589 square foot dining room and bar seating 65; full kitchen and storage area in rear of the building; patio seats 24. Please refer to attached ABCC License Application and floor plan. All supporting documents have been submitted and are attached for your review with the exception of any confidential information (i.e. financial statements).

## Payment Confirmation

### YOUR PAYMENT HAS PROCESSED AND THIS IS YOUR RECEIPT

Your account has been billed for the following transaction. You will receive a receipt via email and via text message.



Transaction Processed Successfully.

INVOICE #: 6c65de35-b0f0-4445-877c-ba7a3c2eacfc

Description	Applicant, License or Registration Number	Amount
FILING FEES-RETAIL	Chen1688INC dba Saga Hibachi	\$200.00
		<b>\$200.00</b>

Total Convenience Fee: \$0.35

Date Paid: 5/1/2023 4:00:01 PM EDT

Total Amount Paid: \$200.35

#### Payment On Behalf Of

**License Number or Business Name:**  
Chen1688,INC dba Saga Hibachi

**Fee Type:**  
FILING FEES-RETAIL

#### Billing Information

**First Name:**  
Theodore

**Last Name:**  
A Schilling

**Address:**

**City:**  
Osterville

**State:**  
MA

**Zip Code:**  
02655

**Email Address:**  
om



*The Commonwealth of Massachusetts*  
**Alcoholic Beverages Control Commission**  
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

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

**APPLICATION FOR A NEW LICENSE**

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

**ECRT CODE: RETA**

Please make \$200.00 payment here: [ABCC PAYMENT WEBSITE](#)

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE  
PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

Mashpee

ENTITY/ LICENSEE NAME

CHEN 1688, INC.

ADDRESS

36 South Street

CITY/TOWN

Mashpee

STATE

MA

ZIP CODE

02649

For the following transactions (Check all that apply):

- |  |   |   |   |
|--|---|---|---|
| <input checked="" type="checkbox"/> New License                        | <input type="checkbox"/> Change of Location   | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal)         | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License                           | <input type="checkbox"/> Alteration of Licensed Premises  | <input type="checkbox"/> Change of License Type (i.e. club / restaurant)  | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock)    |
| <input type="checkbox"/> Change of Manager                             | <input type="checkbox"/> Change Corporate Name  | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement               |
| <input type="checkbox"/> Change of Officers/<br>Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest<br>(LLC Members/ LLP Partners,<br>Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder       | <input type="checkbox"/> Change of Hours                              |
|  | <input type="checkbox"/> Other  |   | <input type="checkbox"/> Change of DBA                                |

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS  
APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL:

**Alcoholic Beverages Control Commission**  
95 Fourth Street, Suite 3  
Chelsea, MA 02150-2358



*The Commonwealth of Massachusetts*  
**Alcoholic Beverages Control Commission**  
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

**APPLICATION FOR A NEW LICENSE**

Municipality

MASHPEE

**1. LICENSE CLASSIFICATION INFORMATION**

ON/OFF-PREMISES

On-Premises-12

TYPE

\$12 Restaurant

CATEGORY

All Alcoholic Beverages

CLASS

Annual

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation. Attach additional pages, if necessary.

Chinese/Japanese fusion restaurant with full pouring license; sushi and hibachi services.

Is this license application pursuant to special legislation?



Yes



No

Chapter

Acts of

**2. BUSINESS ENTITY INFORMATION**

The entity that will be issued the license and have operational control of the premises.

Entity Name

CHEN 1688, INC.

FEIN

92-2125310

DBA

SAGA HIBACHI

Manager of Record

Hui Ling Chen

Street Address

36 South Street

Phone

Email

Alternative Phone

Website

[www.sagamashpee.com](http://www.sagamashpee.com)

**3. DESCRIPTION OF PREMISES**

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

36 South Cape Village, one floor containing 4,589 s.f. dining room and bar seating 65; full kitchen, storage area in rear, patio seating for 24.

Total Square Footage:

4589

Number of Entrances:

2

Seating Capacity:

120

Number of Floors

1

Number of Exits:

3

Occupancy Number:

122

**4. APPLICATION CONTACT**

The application contact is the person whom the licensing authorities should contact regarding this application.

Name:

Theodore A. Schilling

Phone:

508-775-0700

Title:

Attorney At Law

Email:

[tas@lawcapecod.com](mailto:tas@lawcapecod.com)

## APPLICATION FOR A NEW LICENSE

### 5. CORPORATE STRUCTURE

Entity Legal Structure	<div>Corporation</div>	Date of Incorporation	<div>02/01/2023</div>
State of Incorporation	<div>Massachusetts</div>	Is the Corporation publicly traded? <input type="radio"/> Yes <input checked="" type="radio"/> No	

### 6. PROPOSED OFFICERS, STOCK OR OWNERSHIP INTEREST

List all individuals or entities that will have a direct or indirect, beneficial or financial interest in this license (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.). Attach additional page(s) provided, if necessary, utilizing Addendum A.

- The individuals and titles listed in this section must be identical to those filed with the Massachusetts Secretary of State.
- The individuals identified in this section, as well as the proposed Manager of Record, must complete a CORI Release Form.
- Please note the following statutory requirements for Directors and LLC Managers:  
**On Premises (E.g. Restaurant/ Club/Hotel) Directors or LLC Managers** - At least 50% must be US citizens;  
**Off Premises (Liquor Store) Directors or LLC Managers** - All must be US citizens and a majority must be Massachusetts residents.
- If you are a Multi-Tiered Organization, please attach a flow chart identifying each corporate interest and the individual owners of each entity as well as the Articles of Organization for each corporate entity. Every individual must be identified in Addendum A.

Name of Principal	Residential Address	SSN	DOB
<div>Hui Ling Chen</div>	<div>1A 02571</div>	<div></div>	<div></div>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<div>Pres., Treas., Secretary &amp; Director</div>	<div>100%</div>	<div><input checked="" type="radio"/> Yes <input type="radio"/> No</div>	<div><input checked="" type="radio"/> Yes <input type="radio"/> No</div>
MA Resident			<div><input checked="" type="radio"/> Yes <input type="radio"/> No</div>

Name of Principal	Residential Address	SSN	DOB
<div></div>	<div></div>	<div></div>	<div></div>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<div></div>	<div></div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>
MA Resident			<div><input type="radio"/> Yes <input type="radio"/> No</div>

Name of Principal	Residential Address	SSN	DOB
<div></div>	<div></div>	<div></div>	<div></div>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<div></div>	<div></div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>
MA Resident			<div><input type="radio"/> Yes <input type="radio"/> No</div>

Name of Principal	Residential Address	SSN	DOB
<div></div>	<div></div>	<div></div>	<div></div>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<div></div>	<div></div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>
MA Resident			<div><input type="radio"/> Yes <input type="radio"/> No</div>

Name of Principal	Residential Address	SSN	DOB
<div></div>	<div></div>	<div></div>	<div></div>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<div></div>	<div></div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>
MA Resident			<div><input type="radio"/> Yes <input type="radio"/> No</div>

Name of Principal	Residential Address	SSN	DOB
<div></div>	<div></div>	<div></div>	<div></div>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<div></div>	<div></div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>	<div><input type="radio"/> Yes <input type="radio"/> No</div>
MA Resident			<div><input type="radio"/> Yes <input type="radio"/> No</div>

Additional pages attached? ☐ Yes ☒ No

### CRIMINAL HISTORY

Has any individual listed in question 6, and applicable attachments, ever been convicted of a State, Federal or Military Crime? If yes, attach an affidavit providing the details of any and all convictions.

☐ Yes ☒ No

## APPLICATION FOR A NEW LICENSE

### 6A. INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 6, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes ☒ No ☐ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

See attached additional page

Name	License Type	License Name	Municipality
Hui Ling Chen	All Alcoholic	Saga Steakhouse Inc.	Wareham
Hui Ling Chen	All Alcoholic	Ling & K Inc.	Barnstable
Hui Ling Chen	All Alcoholic	Ken & L Inc.	Lakeville

### 6B. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 6, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes ☐ No ☒

If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

### 6C. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Have any of the disclosed licenses listed in question 6A or 6B ever been suspended, revoked or cancelled?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

## 7. OCCUPANCY OF PREMISES

Please complete all fields in this section. Please provide proof of legal occupancy of the premises.

- If the applicant entity owns the premises, a deed is required.
- If leasing or renting the premises, a signed copy of the lease is required.
- If the lease is contingent on the approval of this license, and a signed lease is not available, a copy of the unsigned lease and a letter of intent to lease, signed by the applicant and the landlord, is required.
- If the real estate and business are owned by the same individuals listed in question 6, either individually or through separate business entities, a signed copy of a lease between the two entities is required.

Please indicate by what means the applicant will occupy the premises

Lease

Landlord Name Adrex Diversified II Master Tenant LLC

Landlord Phone

Landlord Email myles@charterrealty.com

Landlord Address Ares Real Estate Income Trust Inc., 1200 17th St Ste 2900, Denver, CO 80202

Lease Beginning Date 03/21/2023

Rent per Month 7,047.00

Lease Ending Date 03/20/2033

Rent per Year 84,564.00

Will the Landlord receive revenue based on percentage of alcohol sales?

☐ Yes ☒ No

## APPLICATION FOR A NEW LICENSE

### 8. FINANCIAL DISCLOSURE

A. Purchase Price for Real Estate	0.00
B. Purchase Price for Business Assets	0.00
C. Other * (Please specify below)	\$485,303.00
D. Total Cost	\$485,303.00

\*Other Cost(s): (i.e. Costs associated with License Transaction including but not limited to: Property price, Business Assets, Renovations costs, Construction costs, Initial Start-up costs, Inventory costs, or specify other costs):"

### SOURCE OF CASH CONTRIBUTION

Please provide documentation of available funds. (E.g. Bank or other Financial institution Statements, Bank Letter, etc.)

Name of Contributor	Amount of Contribution
Hui Ling Chen (Home Equity line of Credit)	\$365,303.00
Hui Ling Chen ( see note Listed below)	\$120,000.00
Total:	\$485,303.00

### SOURCE OF FINANCING

Please provide signed financing documentation.

Name of Lender	Amount	Type of Financing	Is the lender a licensee pursuant to M.G.L. Ch. 138.
TD Bank	\$365,303.00	Home Equity Line of credit	<input checked="" type="radio"/> Yes <input type="radio"/> No
RI Hai Zeng	\$120,000.00	See Promissory note to Cousin RI Hai Zeng	<input type="radio"/> Yes <input checked="" type="radio"/> No
			<input type="radio"/> Yes <input type="radio"/> No
			<input type="radio"/> Yes <input type="radio"/> No

### FINANCIAL INFORMATION

Provide a detailed explanation of the form(s) and source(s) of funding for the cost identified above.

See documentation for Equity Line of Credit Loan on 16 Quarker Lane, Bourne , MA 02532 owned by Hui Ling Chen and Xingkeng Chen wife and husband .  
See promissory note to RI Hai Zeng ( cousin to Hui Ling Chen)

### 9. PLEDGE INFORMATION

Please provide signed pledge documentation.

Are you seeking approval for a pledge? ☐ Yes ☒ No

Please indicate what you are seeking to pledge (check all that apply) ☐ License ☐ Stock ☐ Inventory

To whom is the pledge being made?

## 10. MANAGER APPLICATION

### A. MANAGER INFORMATION

The individual that has been appointed to manage and control the licensed business and premises.

Proposed Manager Name

Date of Birth

SSN

Residential Address

Email

Phone

Please indicate how many hours per week you intend to be on the licensed premises

### B. CITIZENSHIP/BACKGROUND INFORMATION

Are you a U.S. Citizen?\*

☒ Yes ☐ No \*Manager must be a U.S. Citizen

If yes, attach one of the following as proof of citizenship US Passport, Voter's Certificate, Birth Certificate or Naturalization Papers.

Have you ever been convicted of a state, federal, or military crime?

☐ Yes ☒ No

If yes, fill out the table below and attach an affidavit providing the details of any and all convictions. Attach additional pages, if necessary, utilizing the format below.

Date	Municipality	Charge	Disposition
	see attached certificate	of naturalization and US Passport	

### C. EMPLOYMENT INFORMATION

Please provide your employment history. Attach additional pages, if necessary, utilizing the format below.

Start Date	End Date	Position	Employer	Supervisor Name

### D. PRIOR DISCIPLINARY ACTION

Have you held a beneficial or financial interest in, or been the manager of, a license to sell alcoholic beverages that was subject to disciplinary action? ☐ Yes ☒ No If yes, please fill out the table. Attach additional pages, if necessary,utilizing the format below.

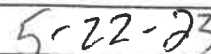
Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Manager's Signature



Date



## 11. MANAGEMENT AGREEMENT

Are you requesting approval to utilize a management company through a management agreement?

If yes, please fill out section 11.

☐ Yes ☒ No

Please provide a narrative overview of the Management Agreement. Attach additional pages, if necessary.

**IMPORTANT NOTE:** A management agreement is where a licensee authorizes a third party to control the daily operations of the license premises, while retaining ultimate control over the license, through a written contract. *This does not pertain to a liquor license manager that is employed directly by the entity.*

### 11A. MANAGEMENT ENTITY

List all proposed individuals or entities that will have a direct or indirect, beneficial or financial interest in the management Entity (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.).

Entity Name	Address	Phone		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
Name of Principal	Residential Address	SSN	DOB	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
Name of Principal	Residential Address	SSN	DOB	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
Name of Principal	Residential Address	SSN	DOB	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
Name of Principal	Residential Address	SSN	DOB	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

#### CRIMINAL HISTORY

Has any individual identified above ever been convicted of a State, Federal or Military Crime?

If yes, attach an affidavit providing the details of any and all convictions.

☐ Yes ☐ No

### 11B. EXISTING MANAGEMENT AGREEMENTS AND INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 11A, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages; and or have an active management agreement with any other licensees?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

### 11C. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 11A, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

### 11D. PREVIOUSLY HELD MANAGEMENT AGREEMENT

Has any individual or entity identified in question 11A, and applicable attachments, ever held a management agreement with any other Massachusetts licensee?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Licensee Name	License Type	Municipality	Date(s) of Agreement

### 11E. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Has any of the disclosed licenses listed in questions in section 11B, 11C, 11D ever been suspended, revoked or cancelled?

Yes ☐ No ☐ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

### 11F. TERMS OF AGREEMENT

a. Does the agreement provide for termination by the licensee?

Yes ☐ No ☐

b. Will the licensee retain control of the business finances?

Yes ☐ No ☐

c. Does the management entity handle the payroll for the business?

Yes ☐ No ☐

d. Management Term Begin Date

e. Management Term End Date

f. How will the management company be compensated by the licensee? (check all that apply)

☐ \$ per month/year (indicate amount)

☐ % of alcohol sales (indicate percentage)

☐ % of overall sales (indicate percentage)

☐ other (please explain)

**ABCC Licensee Officer/LLC Manager**

Signature:

Title:

Date:

**Management Agreement Entity Officer/LLC Manager**

Signature:

Title:

Date:

## **ADDITIONAL INFORMATION**

Please utilize this space to provide any additional information that will support your application or to clarify any answers provided above.

6A. Interest In An Alcoholic Beverages License - continued from Page 3.

Name: Hui Ling Chen; License Type: All Alcoholic; License Name: Saga Yarmouth Inc.; Municipality: Yarmouth.

10. Manager Application

B. Citizenship

Attached are copies of (1) Certificate of Naturalization No.

(2) US Passport No.

(3) Social Security Card No.

## **Resume of Manager**

Hui Ling Chen

Wareham, MA 02571

Telephone:

Email:

Social Security No

- 06/2006 to 07/2010 worked at Grand Asia Buffet, Marietta, GA as a waitress and bartender.
- 09/2010 to 07/2011 worked at Hibachi Grill & Supreme Buffet in Virginia as a waitress and bartender.
- 10/2011 to 08/2013 worked at Zen Restaurant in Wareham, Massachusetts as a waitress and bartender.
- 09/18/2014 to 09/15/2015 worked at Saga Fusion Restaurant in Marstons Mills, Massachusetts as the Manager.
- 09/16/2015 working at Saga Steakhouse in Wareham, Massachusetts as the Manager and waitressing.
- 03/18/2018 working at Ken & L, Inc. d/b/a Saga Sushi, 9 Harding St., Lakeville, MA 02347 as Manager.
- 06/02/2021 working at Saga Yarmouth, Inc. d/b/a Saga Sushi, 521 Route 28, Yarmouth, MA 02673 as Manager.

## APPLICANT'S STATEMENT

I, Hui Ling Chen the: ☐ sole proprietor; ☐ partner; ☒ corporate principal; ☐ LLC/LLP manager  
Authorized Signatory

of CHEN 1688, INC.  
Name of the Entity/Corporation

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

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

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature: 

Date: 5-22-23

Title: President and Treasurer

## ENTITY VOTE

The Board of Directors or LLC Managers of

Hui Ling Chen

Entity Name

duly voted to apply to the Licensing Authority of

MASHPEE

and the

City/Town

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on

04-03-2023

Date of Meeting

For the following transactions (Check all that apply):

- |  |   |   |   |
|--|---|---|---|
| <input checked="" type="checkbox"/> New License                        | <input type="checkbox"/> Change of Location   | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal)         | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License                           | <input type="checkbox"/> Alteration of Licensed Premises  | <input type="checkbox"/> Change of License Type (i.e. club / restaurant)  | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock)    |
| <input type="checkbox"/> Change of Manager                             | <input type="checkbox"/> Change Corporate Name  | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement               |
| <input type="checkbox"/> Change of Officers/<br>Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest<br>(LLC Members/ LLP Partners,<br>Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder       | <input type="checkbox"/> Change of Hours                              |
|  | <input type="checkbox"/> Other  |   | <input type="checkbox"/> Change of DBA                                |

"VOTED: To authorize

Hui Ling Chen

Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

"VOTED: To appoint

Hui Ling Chen

Name of Liquor License Manager

as its manager of record, and hereby grant him or her with full authority and control of the premises described in the license and authority and control of the conduct of all business therein as the licensee itself could in any way have and exercise if it were a natural person residing in the Commonwealth of Massachusetts."

A true copy attest,

For Corporations ONLY

A true copy attest,



Corporate Officer /LLC Manager Signature



Corporation Clerk's Signature

Hui Ling Chen President 7 Treasurer

Hui Ling Chen Clerk

(Print Name)

(Print Name)



**THE COMMONWEALTH OF MASSACHUSETTS**

**Town of Mashpee  
Business Certificate**

License Number: 2023-092  
License Fee: \$40

Business Name

Saga Hibachi  
36 South Street, #270

Corporation Name

Chen 1688, Inc.  
36 South Street, #270

Type of Business

Restaurant

Owner(s) of Record

Hui Ling Chen  
20 Rosebrook Place  
Wareham, MA 02571

Date Granted: 05/24/2023  
Expiration Date: 05/31/2027

  
Deborah F. Kaye  
Mashpee Town Clerk



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Minimum Fee: \$250.00

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**Articles of Organization**

(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

**Identification Number:** 001634450

**ARTICLE I**

The exact name of the corporation is:

CHEN 1688, INC.

**ARTICLE II**

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Please specify if you want a more limited purpose:

**ARTICLE III**

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding
		<i>Num of Shares</i>	<i>Total Par Value</i>	
CWP	\$0.00000	200	\$0.00	200

G.L. C156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. C156D Section 6.21 and the comments thereto.

**ARTICLE IV**

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the Business Entity must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

**ARTICLE V**

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

**Note: The preceding six (6) articles are considered to be permanent and may be changed only by filing appropriate articles of amendment.**

#### ARTICLE VII

The effective date of organization and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a *later* effective date is desired, specify such date, which may not be later than the 90th day after the articles are received for filing.

**Later Effective Date: Time:**

#### ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

**a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:**

Name: HUI LING CHEN  
No. and Street: 36 SOUTH STREET  
City or Town: MASHPEE State: MA Zip: 02649 Country: USA

**c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):**

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
PRESIDENT	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA
TREASURER	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA
SECRETARY	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA
DIRECTOR	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA

**d. The fiscal year end (i.e., tax year) of the corporation:**  
December

**e. A brief description of the type of business in which the corporation intends to engage:**

TO OPERATE A RESTAURANT

**f. The street address (post office boxes are not acceptable) of the principal office of the corporation:**

No. and Street: 36 SOUTH STREET

City or Town:

MASHPEE

State: MA

Zip: 02649

Country: USA

which is

☒ its principal office

☐ an office of its secretary/assistant secretary

☐ an office of its transfer agent

☐ its registered office

**Signed this 1 Day of February, 2023 at 5:01:26 PM by the incorporator(s).** *(If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)*

HUI LING CHEN

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

February 01, 2023 04:58 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive style with a large, stylized 'G' at the end.

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*

**Secretary of the Commonwealth of Massachusetts**

William Francis Galvin

**Business Entity Summary****ID Number: 001634450**[Request certificate](#)[New search](#)**Summary for: CHEN 1688, INC.****The exact name of the Domestic Profit Corporation:** CHEN 1688, INC.**Entity type:** Domestic Profit Corporation**Identification Number:** 001634450**Date of Organization in Massachusetts:**  
02-01-2023**Last date certain:****Current Fiscal Month/Day:** 12/31**The location of the Principal Office:**

Address: 36 SOUTH STREET

City or town, State, Zip code, MASHPEE, MA 02649 USA

Country:

**The name and address of the Registered Agent:**

Name: HUI LING CHEN

Address: 36 SOUTH STREET

City or town, State, Zip code, MASHPEE, MA 02649 USA

Country:

**The Officers and Directors of the Corporation:**

Title	Individual Name	Address
PRESIDENT	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA
TREASURER	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA
SECRETARY	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA
DIRECTOR	HUI LING CHEN	36 SOUTH STREET MASHPEE, MA 02649 USA

**Business entity stock is publicly traded:**

**The total number of shares and the par value, if any, of each class of stock which this business entity is authorized to issue:**

Class of Stock	Par value per share	Total Authorized		Total issued and outstanding
		No. of shares	Total par value	No. of shares
CWP	\$ 0.00	200	\$ 0.00	200

☐ Consent

☐ Confidential Data

☐ Merger Allowed

☐ Manufacturing

**View filings for this business entity:**

ALL FILINGS  
 Administrative Dissolution  
 Annual Report  
 Application For Revival  
 Articles of Amendment

[View filings](#)

**Comments or notes associated with this business entity:**

[New search](#)



Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, MA 02150

JEAN M. LORIZIO, ESQ.  
CHAIRMAN

**CORI REQUEST FORM**

The Alcoholic Beverages Control Commission ("ABCC") has been certified by the Criminal History Systems Board to access conviction and pending Criminal Offender Record Information ("CORI"). For the purpose of approving each shareholder, owner, licensee or applicant for an alcoholic beverages license, I understand that a criminal record check will be conducted on me, pursuant to the above. The information below is correct to the best of my knowledge.

**ABCC LICENSE INFORMATION**

ABCC NUMBER: (IF EXISTING LICENSEE)	LICENSEE NAME: Chen 1688, Inc. dba Saga Hibachi	CITY/TOWN: Mashpee
--	---	--------------------

**APPLICANT INFORMATION**

LAST NAME: Chen	FIRST NAME: Hui Ling	MIDDLE NAME:
MAIDEN NAME OR ALIAS (IF APPLICABLE):	PLACE OF BIRTH: China	
DATE OF BIRTH:	SSN:	ID THEFT INDEX PIN (IF APPLICABLE):
MOTHER'S MAIDEN NAME: Chen	DRIVER'S LICENSE #:	STATE LIC. ISSUED:
GENDER: FEMALE	HEIGHT: 5 5	WEIGHT: 118 EYE COLOR: Brown
CURRENT ADDRESS:		
CITY/TOWN: Wareham	STATE: MA	ZIP: 02571-1567
FORMER ADDRESS:		
CITY/TOWN: Wareham	STATE: MA	ZIP: 02571

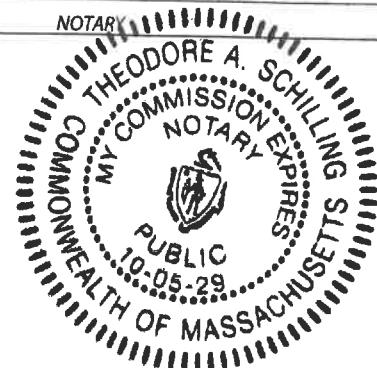
**PRINT AND SIGN**

PRINTED NAME: Hui Ling Chen	APPLICANT/EMPLOYEE SIGNATURE: <i>Hui Ling Chen</i>
-----------------------------	--

**NOTARY INFORMATION**

On this <u>May 22, 2013</u>	before me, the undersigned notary public, personally appeared Hui Ling Chen
(name of document signer), proved to me through satisfactory evidence of identification, which were MA Driver's License	
to be the person whose name is signed on the preceding of attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.	
<i>Theodore A. Schilling</i>	
Theodore A. Schilling	

NOTARY



**DIVISION USE ONLY**

REQUESTED BY:	SIGNATURE OF CORI-AUTHORIZED EMPLOYEE:
---------------	--

The DCI Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identity Theft PIN Number by the DCI. Certified agencies are required to provide all applicants the opportunity to include this information to ensure the accuracy of the CORI request process. ALL CORI request forms that include this field are required to be submitted to the DCI via mail or by fax to (617) 660-4614.

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is dated as of March 13, 2023 (the "Effective Date") and is entered into by and between ADREX DIVERSIFIED II MASTER TENANT, a Delaware limited liability company ("Landlord") and CHEN 1688, INC., a Massachusetts corporation ("Tenant") with reference to the following facts:

A. Landlord and Tenant entered into that certain Lease dated as of February 21, 2023, (the "Lease"), pursuant to which Landlord leased unto Tenant, and Tenant leased from Landlord, those certain premises located at South Cape Village 650 Falmouth Road Mashpee, MA 02649 (the "Premises").

B. Landlord and Tenant desire to modify and amend the Lease to correct the square footage as specified in the Lease and modify the rent schedule as a result thereof, as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt whereof and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Scope of First Amendment; Defined Terms; Incorporation of Recitals. Except as expressly provided in this Amendment, the Lease shall remain in full force and effect in all respects and the term "Lease" shall mean the Lease as modified by this Amendment. Capitalized terms used but not otherwise defined in this Amendment have the respective meanings given to them in the Lease. The preamble and recitals set forth above are hereby incorporated into this Amendment by this reference in their entirety.

2. Modifications and Amendments to Lease. Notwithstanding anything in the Lease to the contrary, the Lease is hereby modified and amended as follows:

(a) Section 1 (b) of the Lease is hereby modified as follows: All references to "Leased Premises" or "Premises" in the Lease shall refer to square feet in the amount of approximately 4,698.

(b) Section 1(g) of the Lease is hereby deleted in its entirety and replaced with the following:

"Base Rent": Base Rent shall be payable during each Lease Year, commencing on the Commencement Date, in accordance with the following:

Initial Term:	Lease Years	Annual Amount	Monthly Amount	PSF
	1	\$84,564.00	\$7,047.00	\$18.00
	2	\$87,100.92	\$7,258.41	\$18.54
	3	\$89,713.95	\$7,476.16	\$19.10
	4	\$92,405.37	\$7,700.45	\$19.67
	5	\$95,177.53	\$7,931.46	\$20.26

6	\$98,032.85	\$8,169.40	\$20.87
7	\$100,973.84	\$8,414.49	\$21.49
8	\$104,003.05	\$8,666.92	\$22.14
9	\$107,123.15	\$8,926.93	\$22.80
10	\$110,336.84	\$9,194.74	\$23.49

Extension Term(s):	Lease Years	Annual Amount	Monthly Amount	PSF
	1	\$113,646.94	\$9,470.58	\$24.19
	2	\$117,056.35	\$9,754.70	\$24.92
	3	\$120,568.04	\$10,047.34	\$25.66
	4	\$124,185.08	\$10,348.76	\$26.43
	5	\$127,910.64	\$10,659.22	\$27.23

3. Waiver. No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Amendment, or to exercise any right, power or remedy hereunder shall constitute a waiver of the same or any other term of this Amendment or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.

4. Ratification. As amended hereby the Lease is hereby ratified and shall remain in full force and effect. As of the execution hereof, Tenant represents, acknowledges and confirms to Landlord that Landlord has performed all obligations on its part under the Lease, there exists no breach, condition, state of facts or event that constitutes, or with the passing of time or the giving of notice, or both, would constitute a default by either Landlord or Tenant under the Lease and that the Lease, and all of its terms, conditions, covenants, agreements and provisions, except as modified hereby, are in full force and effect with no defenses or offsets (including any offsets against any rents or other sums payable by Tenant under the Lease) thereto.

5. Authority. This Amendment shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors and assigns. Each party hereto warrants that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Amendment.

6. Attorneys' Fees and Costs. In the event of any action at law or in equity between the parties to enforce any of the provisions hereof, the substantially non-prevailing party to such litigation shall pay to the substantially prevailing party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the substantially prevailing party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment.

7. Entire Agreement: No Amendment. This Amendment constitutes the entire agreement and understanding between the parties with respect to the subject of this amendment and shall supersede all prior written and oral agreements concerning this subject matter. This

Amendment may not be amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of Landlord and Tenant. Each party acknowledges that it has read this Amendment, fully understands all of this Amendment's terms and conditions, and executes this Amendment freely, voluntarily and with full knowledge of its significance. Each party to this Amendment has had the opportunity to receive the advice of counsel prior to the execution hereof.

8. Severability. If any provision of this Amendment or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Amendment and the application of such provision to other persons or circumstances, other than those to which it is held invalid, shall not be affected and shall be enforced to the furthest extent permitted by law.

9. Counterparts. This Amendment may be executed in counterparts and in facsimile or by PDF, and such counterparts together shall constitute but one original of the Amendment. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each party who has executed it.

10. Agreement to Perform Necessary Acts. Each party agrees that upon demand, it shall promptly perform all further acts and execute, acknowledge, and deliver all further instructions, instruments and documents which may be reasonably necessary or useful to carry out the provisions of this Amendment.

11. Captions and Headings. The titles or headings of the various paragraphs hereof are intended solely for convenience of reference and are not intended and shall not be deemed to modify, explain or place any construction upon any of the provisions of this Amendment

12. No Offer. The submission of this Amendment by Landlord to Tenant is not an offer to modify or amend the Lease and is not effective until execution and delivery by both Landlord and Tenant.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment as of the date first above written.

**LANDLORD:**

**ADREX DIVERSIFIED II MASTER TENANT LLC**, a  
Delaware limited liability company,

By: ADREX Master Tenant LLC, a Delaware limited  
liability company, its sole member

By: AREIT Operating Partnership LP, a Delaware  
limited partnership, its sole member

By: Ares Real Estate Income Trust Inc., a Maryland  
corporation, its general partner


By:   
578C55EC1B98463...

Name: Eliot Fierberg

Title: Principal

**TENANT:**

**CHEN 1688, INC.**,  
a Massachusetts corporation

By: 

Name:

Title: Owner

03/13/2023

## **GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by (i) Huiling Chen, an individual, and (ii) Xinkang Chen, an individual (collectively, jointly and severally, the "Guarantor"), in favor of ADREX Diversified II Master Tenant LLC, a Delaware limited liability company ("Landlord"), in connection with that certain Shopping Center Lease Agreement dated the date hereof (the "Lease"), pursuant to which Landlord leases to [TENANT] ("Tenant"), that certain premises generally referred to as Space No. 270, (the "Premises") in the Shopping Center known as South Cape Village, located in the City of Mashpee, Commonwealth of Massachusetts (the "Shopping Center").

1. Guarantor does hereby absolutely, unconditionally and irrevocably guarantee and promise to Landlord the due, punctual and full performance by Tenant of each and all of the agreements, covenants, obligations, liabilities and promises of Tenant to be performed during the Lease Term (as hereinafter defined) and the truth and accuracy of each and all of the representations and warranties of Tenant contained in the Lease, including without limitation, the payment of Base Rent, Percentage Rent (if any), Operating Expenses and all items of Additional Rent (as defined in the Lease) and any and all other sums payable thereunder. For the purposes of this Guaranty, the term "Lease Term" refers not only to the Lease Term as defined in the Lease, but also to any renewals, extensions, modifications, reinstatements and holdings over thereof.

2. Guarantor does hereby agree that, without the consent of or notice to Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) any term, covenant or condition of the Lease may be amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of Tenant under the Lease as so amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease, this Guaranty or any other instrument or agreement may be exercised, not exercised, impaired, modified, limited, destroyed, or suspended; (d) Landlord or any other Person (hereinafter defined in Paragraph 11 below) may deal in any manner with Tenant, any guarantor, any party to the Lease or any other Person; and (e) all or any part of the premises or of Tenant's rights or liabilities under the Lease may be sublet, assigned or assumed.

3. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant or any other Person or to pursue any other remedy before proceeding against Guarantor; (b) the defense of any statute of limitations in any action under or related to this Guaranty or the Lease; (c) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other Person; (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election or remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement; and (e) the benefits of any statutory provision or procedural rule limiting the liability of a surety.

4. Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increases

the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

5. Guarantor does hereby agree that if claim is ever made upon Landlord for repayment or recovery of any amount or amounts received by Landlord in payment or on account of the amounts hereby guaranteed and Landlord repays all or part of such amount by reason of (a) any judgment, decree or order or of any court or administrative body having jurisdiction or (b) any settlement or compromise of any such claim effected by Landlord with any such claimant (including Tenant or any other guarantor), then in such event Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon Guarantor, notwithstanding the expiration or termination of the Lease or other instrument evidencing any of the amounts hereby guaranteed and Guarantor shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by Landlord.

6. Guarantor does hereby agree that for Landlord's benefit and the benefit of Tenant and to the fullest extent permitted by law, Guarantor irrevocably and unconditionally waives any and all rights of subrogation, reimbursement, indemnification, contribution, or similar rights against Tenant or its assets (arising by contract or by law or otherwise) as a consequence of this Guaranty, including, without limitation, the payment or performance of any obligations hereby guaranteed, and further agrees that Guarantor will not assert any such right of subrogation, reimbursement, indemnification, contribution or similar right at any time in respect to the Lease. It is agreed that Landlord's rights under this Paragraph 6 are such that the remedy at law for breach thereof would be inadequate, and that Landlord shall be entitled to specific performance and enforcement thereof, including, without limitation, the imposition of a restraining order or injunction. Nothing in this Paragraph 6 shall diminish or relieve any obligations or liabilities of Tenant to Landlord. Landlord and Tenant and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements made in this Paragraph and Landlord's rights under this Paragraph 6 shall survive the expiration or termination of the Lease.

7. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and the liability and obligations of Tenant and all rights, powers and remedies of Landlord under the Lease and under this Guaranty shall be in addition to all rights, powers and remedies given to Landlord by law.

8. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns (including any purchaser at judicial foreclosure or trustee's sale or a holder of a deed in lieu thereof). This Guaranty may be assigned by Landlord voluntarily or by operation of law without reducing or modifying the liability of Guarantor hereunder.

9. This Guaranty shall constitute the entire agreement between Guarantor and Landlord with respect to the Guarantor's guaranty of performance of all of Tenant's obligations under the Lease. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer, director, trustee or partner of Landlord.

10. If more than one Person signs this Guaranty, each such Person shall be deemed a Guarantor and the obligation of all such Guarantors shall be joint and several. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "Person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

11. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

12. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof.

13. If either Landlord or Guarantor participates in an action against the other arising out of or in connection with this Guaranty, the one prevailing shall be entitled to have and recover from the other reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the actions.

14. Guarantor agrees that all questions with respect to this Guaranty shall be governed by and decided in accordance with the laws of the state in which the Shopping Center is located.

15. If Guarantor executes this Guaranty as a partnership, each individual executing this Guaranty on behalf of the partnership represents and warrants that he or she is a general partner of the partnership and that this Guaranty is binding upon the partnership in accordance with its terms. If Guarantor executes this Guaranty as a corporation, each of the Persons executing this Guaranty on behalf of the corporation covenants and warrants that the corporation is a duly authorized and existing corporation, that the corporation has and is qualified to transact business in the state in which the Shopping Center is located, that the corporation has full right, authority and power to enter into this Guaranty and to perform its obligations hereunder, that each Person signing this Guaranty on behalf of the corporation is authorized to do so and that this Guaranty is binding upon the corporation in accordance with its terms.

16. In the event Tenant shall become insolvent or shall be adjudicated a bankrupt, or shall file a petition for reorganization, arrangement or other relief under any present or future provisions of the United States Bankruptcy Code, or if such a petition be filed by creditors of Tenant, or if Tenant shall seek a judicial readjustment of the rights of its creditors under any present or future Federal or State law, or if a receiver of all or part of Tenant's property or assets is appointed by the State or Federal court, no such proceeding or action taken therein shall modify, diminish, or in any way affect the liability of Guarantor under this Guaranty, and the liability of Guarantor with respect to the Lease shall be of the same scope as if Guarantor had itself executed the lease as the named Tenant therein, and no "rejection" and/or "termination" of the Lease in any of the proceedings referred to in this Paragraph 16 shall be effective to release and/or terminate the continuing liability of Guarantor to Landlord under this Guaranty. If, in connection with any of the circumstances referred to in this Paragraph 16, Landlord should request that Guarantor execute a new lease for the balance of the Lease Term (unaffected by any such "rejection" and/or "termination" in any of such proceedings), but in all other respects identical with the Lease, Guarantor shall do so as the named tenant under such new lease (irrespective of the fact that the Lease

may have been "rejected" or "terminated" in connection with any of the proceedings referred to in this Paragraph 16). Should Guarantor fail or refuse to execute such a new lease, without limiting any of the legal or equitable remedies available to Landlord on account of such failure or refusal, Guarantor acknowledges and agrees that Landlord may seek specific performance of the covenant of Guarantor contained in this Paragraph 16 to execute such a new lease.

17. Any legal action or proceeding with respect to this Guaranty may be brought in the courts of the state in which the Shopping Center is located or, if the requisites of jurisdiction are obtained, of the United States of America for the District in which the Shopping Center is located and, by the execution and delivery of this Guaranty, Guarantor hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforementioned courts. Nothing herein shall, however, affect the right of Landlord to commence legal action or otherwise proceed against Guarantor in any other jurisdiction. Guarantor shall and does hereby waive trial by jury, and Landlord, by accepting this Guaranty shall be deemed to have waived trial by jury, in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Guaranty or the Lease.

18. Notwithstanding the foregoing to the contrary, after the first five (5) Lease Years and provided that during such 5-year period there was no occurrence of an Event of Default, Guarantor's maximum liability until the end of the Lease Term (including any Extension Term, if exercised) and any extension thereof shall not exceed the sum of total amount of Rent due under the Lease for the twelve (12) month period immediately following the Event of Default giving rise to liability hereunder, plus any Rent or other sums owed by Tenant to Landlord under the Lease that have accrued but have not yet been paid prior to the occurrence of any Event of Default.

[Remainder of page intentionally left blank; Signature page to follow]

IN WITNESS WHEREOF, the Guarantor has signed and delivered this Guaranty.

GUARANTOR:



Huling Chen

GUARANTOR:



Xinkang Chen

LEASE

BETWEEN

**ADREX DIVERSIFIED II MASTER TENANT LLC,**  
a Delaware limited liability company

and

**CHEN 1688, INC.,**  
a Massachusetts corporation

LOCATION:

**SOUTH CAPE VILLAGE  
650 FALMOUTH ROAD,  
MASHPEE, MA 02649**

DATED

February 21, 2023

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## SHOPPING CENTER LEASE AGREEMENT

THIS SHOPPING CENTER LEASE AGREEMENT (this "Lease") is made on the 21 day of February, 2023 (the "Effective Date"), by ADREX Diversified II Master Tenant LLC, a Delaware limited liability company (herein called "Landlord"), and Chen 1688, Inc., a Massachusetts corporation d/b/a Saga Hibachi (herein called "Tenant").

### 1. Summary of Defined Basic Lease Provisions.

(a) "Shopping Center": South Cape Village, located at 650 Falmouth Road, Mashpee, Massachusetts 02649 (as same may be modified from time to time). Landlord reserves the right to add to or sever the ownership of or title to any portion of the Shopping Center at any time.

(b) "Leased Premises" or "Premises": That portion of the Shopping Center with an address of 36 South Street, Mashpee, Massachusetts 02649 and commonly known as "Unit 270" consisting of approximately 4,814 square feet identified by the shaded or cross-hatched area as shown on the Site Plan attached hereto as Exhibit A (as expanded, supplemented, altered, amended or otherwise modified from time to time, the "Site Plan"). The Site Plan is used solely for the purpose of identifying the approximate location and size of the Premises. Tenant acknowledges and agrees that Landlord makes no representations or warranties with respect to the Site Plan or the contents thereof. The Premises includes any alterations, additions or repairs made thereto.

(c) "Gross Leasable Floor Area": the actual number of square feet of floor space on all floors (exclusive of any non-selling mezzanines, except for when determining the Gross Leasable Floor Area of the Leased Premises, which shall include any selling or non-selling mezzanine, interior storage and interior loading areas approved by Landlord in its sole discretion) of any leasable premises within the Shopping Center (whether or not actually occupied), based on BOMA Retail Standard. Gross Leasable Floor Area will not include the area of: outside sales areas; the upper levels of any deck/platform areas used for storage of merchandise (including mezzanine areas).

(d) "Commencement Date": The date Landlord delivers the Leased Premises to Tenant with Landlord's Work (as hereinafter defined) substantially completed. The term "substantially completed" or "substantial completion", as the case may be, shall mean that Landlord's Work has been substantially completed to the extent that Tenant can commence construction of Tenant's Work and proceed without material interruption due to any incomplete aspect of Landlord's Work. Notwithstanding anything herein to the contrary, Landlord shall have until the date that is ninety (90) days after the Commencement Date to install the New HVAC (as hereinafter defined).

(e) "Rent Commencement Date": The first to occur of (i) one hundred eighty (180) days after the Commencement Date; or (ii) the date on which Tenant opens for business to the public.

(f) "Lease Term":

(i) "Initial Term": The Initial Term shall commence on the Commencement Date and shall expire ten (10) Lease Years (as hereinafter defined) following the Rent Commencement Date,

unless sooner terminated in accordance with the terms and conditions of this Lease. The Lease Term shall expire on the last day of the last month of the tenth (10<sup>th</sup>) Lease Year.

(ii) "Extension Term": one (1) - five (5) year extension option.

(iii) "Expiration Date": means the last day of the Lease Term. If the Lease Term has been extended or this Lease has been renewed, then the Expiration Date shall be the last day of the Lease Term as so extended or renewed. If this Lease is cancelled or terminated prior to the originally fixed Expiration Date in accordance with the terms and conditions of this Lease, then the Expiration Date shall be the date on which this Lease is so cancelled or terminated; provided, however, if this Lease is cancelled or terminated prior to the originally fixed Expiration Date by reason of Tenant's default, then Tenant's liability under this Lease shall continue until the date the Lease Term would have otherwise expired had such cancellation or termination not occurred.

(g) "Base Rent": Base Rent shall be payable during each Lease Year, commencing on the Rent Commencement Date, in accordance with the following:

Initial Term:	Lease Years	Annual Amount	Monthly Amount	PSF
	1	\$86,652.00	\$7,221.00	\$18.00
	2	\$89,251.56	\$7,437.63	\$18.54
	3	\$91,929.11	\$7,660.76	\$19.10
	4	\$94,686.98	\$7,890.58	\$19.67
	5	\$97,527.59	\$8,127.30	\$20.26
	6	\$100,453.42	\$8,371.12	\$20.87
	7	\$103,467.02	\$8,622.25	\$21.49
	8	\$106,571.03	\$8,880.92	\$22.14
	9	\$109,768.16	\$9,147.35	\$22.80
	10	\$113,061.21	\$9,421.77	\$23.49
Extension Term(s):	Lease Years	Annual Amount	Monthly Amount	PSF
	1	\$116,453.04	\$9,704.42	\$24.19
	2	\$119,946.63	\$9,995.55	\$24.92
	3	\$123,545.03	\$10,295.42	\$25.66
	4	\$127,251.38	\$10,604.28	\$26.43
	5	\$131,068.92	\$10,922.41	\$27.23

(h) "Lease Year": In the case of the first Lease Year, the twelve (12) consecutive full calendar months beginning on the Rent Commencement Date, plus the partial month, if any, from the Rent Commencement Date to the last day of such partial month. Thereafter, each succeeding Lease Year shall be for a period of twelve (12) consecutive full calendar months.

(i) "Permitted Use": The Leased Premises shall be used and occupied solely for the operation of a first class, high quality, Asian Sit-Down Restaurant primarily serving sushi and hibachi, including the sale of alcoholic beverages for on-premises consumption, subject to the Exclusive and Prohibited Uses (as hereinafter defined), including, without limitation, the exclusive granted to Walgreen Eastern Co., Inc., a New York corporation, as set forth on Exhibit E, and for no other use or purpose (the "Permitted Use"). "Sit Down Restaurant" means a restaurant where customers: (a) place orders with wait-staff from their table; (b) are served their meal at their table by wait-staff; and (c) pay upon completion of their meal.

(j) "Tenant's Trade Name": Saga Hibachi.

(k) "Tenant's Tax I.D. Number": 92-2125310

(l) "Security Deposit": \$51,088.58 (Tenant's \$1,000.00 application fee that Tenant previously paid to Landlord shall be credited against this amount).

(m) "Total Amount Due at Lease Execution": the Security Deposit less the previously paid application fee, (\$50,088.58) which amount shall be paid by Tenant in certified funds, wire transfer or cashier's check simultaneously with the execution of this Lease by Tenant.

(n) "Landlord's Notice Address":

Ares Real Estate Income Trust Inc.  
1200 17th Street, Suite 2900  
Denver, CO 80202  
Attention: Real Estate Counsel

With a copy to:

Ares Real Estate Income Trust Inc.  
1200 17th Street, Suite 2900  
Denver, CO 80202  
Attention: Asset Manager

With a copy to:

(before June 1, 2023)

Brownstein Hyatt Farber Schreck, LLP  
410 17th Street, Suite 2200  
Denver, CO 80202  
Attention: Robert Kaufmann

(after June 1, 2023)

Brownstein Hyatt Farber Schreck, LLP

675 15th Street, Suite 2900  
Denver, CO 80202  
Attention: Robert Kaufmann

(o) "Tenant's Notice Address":

Huling Chen  
20 Rosebrook Place  
Wareham, MA 02571

(p) "Minimum Tenant Business Hours": Monday through Saturday 10:00 a.m. – 6:00 p.m. and Sunday 12:00 p.m. – 5:00 p.m.

(q) "Broker":

(i) Landlord's Broker: Blackline Retail Group LLC.

(ii) Tenant's Broker: The Realty Advisory Inc.

(r) "Address for Payment of Rent":

ADREX Diversified II Master Tenant LLC  
PO Box 809144  
Chicago, IL 60680-9144

(s) "If by ACH or Wire Transfer": Attached hereto as Exhibit I.

(t) "Guarantor" Together, Jointly and Severally: (i) Huling Chen, an individual, and (ii) Xinkang Chen, an individual.

(u) "Tenant's Share": A fraction, the numerator of which is the Gross Leasable Floor Area of the Leased Premises, and the denominator of which is the Gross Leasable Floor Area of the Shopping Center (which may change from time to time). Tenant acknowledges that Tenant's Share of Operating Expenses under this Lease shall be calculated as provided herein, but is subject to change based upon, among other things, changes to the Gross Leasable Floor Area of the Shopping Center. Tenant acknowledges Landlord has not made any warranty, agreement or representation of any kind as to the actual dollar amount of Taxes or Operating Expenses payable hereunder or Tenant's Share thereof. For the limited purpose of calculating Tenant's Share of Taxes, Operating Expenses and Insurance, as applicable, Landlord shall have the right to include or exclude premises within the Shopping Center, provided the calculation of Tenant's Share of Taxes, Operating Expenses or Insurance, as applicable, are adjusted accordingly.

(v) "List of Exhibits":

- A. Site Plan
- B. Shopping Center Sign Criteria

- C. Rules and Regulations
- D. Construction Rider
- E. Exclusives and Prohibited Uses
- F. Form Delivery Letter
- G. Form Commencement Date Statement
- H. Guaranty
- I. ACH and Wire Transfer Instructions
- J. Landlord's Work

**2. Leased Premises, Lease Term and Lease Year.**

(a) In consideration of the rents agreed to be paid and of the covenants and agreements made by Landlord and Tenant, Landlord hereby demises unto Tenant the Leased Premises pursuant to the terms hereof, excepting and reserving to Landlord the roof and exterior walls of the building or buildings of which the Leased Premises are a part; and further reserving to Landlord the right to place in the Leased Premises (in such manner as to reduce to a minimum the interference with Tenant's use of the Leased Premises) utility lines, pipes, and the like, to serve premises other than the Leased Premises, and to replace and maintain and repair such utility lines, pipes and the like in, over and upon the Leased Premises as may have been installed by Landlord in said building or buildings. Landlord and Tenant agree to execute and deliver a supplement to this Lease setting forth the Commencement Date in the form attached hereto as Exhibit G. Notwithstanding anything herein to the contrary, this Lease shall be effective and in full force as of the Effective Date, and Tenant shall be responsible for the performance of all terms, covenants and conditions contained in this Lease to be performed during any period that Tenant is in possession of the Leased Premises before the Rent Commencement Date save and except for the payment of any items of Rent (as hereinafter defined). The Leased Premises is located in the Shopping Center in the approximate location set forth in Exhibit A herein. The Leased Premises is deemed to contain an amount of square feet of space equal to the Gross Leasable Floor Area set forth in Section 1(b). The Lease Term shall commence on the Commencement Date. Notwithstanding the foregoing, Tenant shall pay the first month's installment of Rent on the execution hereof, in the amount set forth in Section 1(g), which amount shall be applied as a credit against such first monthly installment as and when due.

(b) **Extension Term.** Provided there is no Event of Default (as hereinafter defined) occurring on the date of exercise of the extension option(s) set forth herein and Tenant is open and operating for business in the Premises for the Permitted Use, then Tenant, by giving Landlord written notice not less than twelve (12) months prior to the expiration of the Initial Term (the "Extension Notice"), or the applicable Extension Term then in effect, shall have the right to renew and extend this Lease for an additional period of five (5) years each (such five-year period being an "Extension Term") upon the same terms, covenants and conditions as the Initial Term, except that (i) any rent free periods, rental concessions, inducements, allowances and other similar items applicable during the Initial Term will not apply during any Extension Term; (ii) Tenant will accept the Leased Premises on an "as is" basis at the commencement of any Extension Term; (iii) Landlord shall have no obligation to perform any work in the Leased Premises; (iv) the Base Rent during each Extension Term shall be as set forth in Section 1(g) of this Lease; and (v) Tenant shall have no further right to extend the Lease Term.

Notwithstanding the exercise of such Extension Terms(s) by Tenant, if as of the commencement date of any such previously exercised Extension Term, Tenant is in default of this Lease beyond applicable cure periods, or any event shall have occurred which, with the passage of time or the giving of notice, would constitute an Event of Default under this Lease, Landlord shall have the right to declare such Extension Term null and void and the Lease Term expired in accordance with its terms as of the Expiration Date of the Initial Term or the then ending Extension Term, as the case may be. In the event any right to renew and extend the Lease Term is not exercised by Tenant, then all succeeding options to renew and extend the Lease Term shall automatically expire and be null and void. For purposes of this Lease, all references to the "Lease Term" shall be deemed to be a reference as well to such additional period of time for which the Initial Term shall be so extended. Notwithstanding anything to the contrary contained herein, if Tenant has made three (3) or more late payments of Rent at any time during the Initial Term or then expiring Extension Term, as the case may be, then from and after the date of such third late payment, this Section 2(b) and Tenant's right to exercise any option(s) to renew shall, at Landlord's sole option exercisable at any time before or after Tenant's purported exercise of its option to renew, be automatically null and void. No option granted to Tenant to renew this Lease, nor the exercise of any such option by Tenant, shall prevent Landlord from exercising any right granted or reserved to Landlord in this Lease or which Landlord may have by virtue of any law to terminate this Lease, either during the original Lease Term or during the Extension Term. Any termination of this Lease shall serve to terminate any renewal option whether or not Tenant shall have exercised same. Any right on the part of Landlord to terminate this Lease shall continue during the Extension Terms, and no option granted to Tenant to renew this Lease shall be deemed to give Tenant any further option to renew beyond the second Extension Term.

(c) Failure of Landlord to deliver possession of the Leased Premises in the manner and condition as provided for in this Lease will not give rise to any claim for damages by Tenant against Landlord, or Landlord's contractor, or permit Tenant to rescind or terminate this Lease. Tenant's taking possession of the Leased Premises shall be conclusive evidence that the Leased Premises were then in good and satisfactory condition and that Landlord, up to the time of such possession, has performed all of its obligations hereunder.

### **3. Use of Leased Premises.**

(a) Permitted Use. The Leased Premises will be used and occupied by Tenant and/or any permitted assignees, sublessees or other occupants (which reference to assignees, sublessees and other occupants shall not be deemed to give Tenant any rights to assign or sublet not specifically set forth in this Lease) only for the Permitted Use under Tenant's Trade Name, and for no other use or purpose whatsoever without the prior written consent of Landlord, which consent may be withheld or granted in Landlord's sole and absolute discretion. Tenant shall not change the Trade Name of the business operated in the Leased Premises as specified herein without the prior written consent of Landlord. Tenant hereby warrants and covenants that Tenant is duly authorized and licensed to use the Trade Name and any other marks and symbols of the business operated in the Leased Premises. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant, before occupying the Leased Premises, shall procure and maintain such license or permit and Tenant shall at all times comply with the terms of any such license or permit Tenant acknowledges and

agrees that the Permitted Use of the Leased Premises set forth herein is a critical element of the bargain of Landlord and Tenant hereto and that actual and substantial detriment will result to Landlord and the other tenants and occupants of the Shopping Center in the event that a change or deviation in such use shall occur or be permitted without the express written consent herein required. Tenant covenants that, notwithstanding anything herein to the contrary, Tenant shall in no event use the Leased Premises for any of the exclusive or prohibited uses set forth on Exhibit E attached hereto (the "Exclusive and Prohibited Uses").

(b) In the event Tenant violates the Exclusive and Prohibited Uses, in addition to all other remedies available to Landlord, Tenant shall pay to Landlord the sum of two hundred percent (200%) of the monthly installment of Base Rent plus additional costs incurred by Landlord as a result of Tenant's violation for each month or portion thereof during which the Permitted Use clause is violated. Payment of the foregoing amounts shall not be interpreted to mean that Tenant has any right whatsoever to continue to operate the Premises in violation of any of the Exclusive and/or Prohibited Uses.

(c) Tenant's Exclusive Use.

(i) Provided (A) this Lease is in full force and effect; (B) named Tenant is in possession of the Leased Premises and, from and after the date that is ninety (90) days after Rent Commencement Date, is open and operating same solely for the Permitted Use; and (C) Tenant is not in default under this Lease, then and in such event Landlord agrees that, from and after the execution of this Lease, it will not enter into a lease of other space within the Shopping Center which expressly authorizes or permits as its principal use a full-service Asian Sit-Down Restaurant that serves sushi and hibachi (the "Exclusive Covenant"). For purposes of clarity, but without limitation, the foregoing shall not prohibit the operation within the Shopping Center of a quick-service restaurant serving Asian cuisine (by way of example, a quick-service restaurant operating as a "Boba Tea" or "Poke Concepts"). The Exclusive Covenant shall be subject to the rights of tenants under existing leases at the Shopping Center.

(ii) Tenant agrees to defend, indemnify and hold Landlord harmless from and against any claims, damages (including punitive or other exemplary damages), costs and attorneys' fees which Landlord may suffer or incur as a result of, or in any way arising out of, the Exclusive Covenant. The foregoing indemnification shall include, without limitation, the alleged violation of any federal or state anti-trust law or similar statute.

(iii) The Exclusive Covenant shall lapse and be of no further force or effect in the event any action or proceeding is commenced against Landlord under a federal or state anti-trust law or similar statute based on the Exclusive Covenant and the Exclusive Covenant is held to be invalid or illegal by any court, statute or agency.

(iv) Notwithstanding that the Exclusive Covenant shall lapse pursuant to subsection (iii) above, subsection (ii) above shall remain in full force and effect.

(d) Tenant's Business Operations. Tenant shall (i) from and after the date that is ninety (90) days after the Rent Commencement Date, keep the Leased Premises open and operating continuously for business during the Minimum Tenant Business Hours; (ii) conduct Tenant's business in

the Leased Premises at all times in a first class, high grade manner consistent with reputable business standards and practices and in a manner which will further the good reputation of the Shopping Center; (iii) keep the Leased Premises at all times fully staffed with a sufficient complement of adequately trained managers and personnel for efficient service and so as to achieve maximum profitable sales; (iv) keep the Leased Premises at all times fully equipped and fixtured with all necessary displays, decorations, shelving, racks and trade fixtures; and (v) keep the Leased Premises at all times adequately stocked with merchandise. No merchandise will be kept, displayed or sold or business solicited in the Shopping Center outside the Leased Premises; no nuisance will be permitted; nothing shall be done which is unlawful, offensive or contrary to any law, ordinance, regulation or requirement of any public authority, or which may be injurious to or adversely affect the quality of the Leased Premises or the Shopping Center, or which might invalidate or increase the insurance rate thereof; no part of the Leased Premises (including, the electric and plumbing systems, the floor and walls) will be overloaded, damaged or defaced; no holes will be drilled in the stone or brickwork or in concrete; Tenant shall not suffer or permit the water in any pipe or plumbing fixture within the Leased Premises to freeze; no emission of any objectionable odors, sounds or vibrations will be permitted. Tenant shall procure all licenses and permits required for the use or occupancy of the Leased Premises and the business being conducted therein; the storefront, show windows and signs will be repaired, kept clean and in good condition and be illuminated during those days and hours that the Shopping Center is open for business; all merchandise and other property will be delivered to or removed from the Leased Premises only at such reasonable times and by the permitted delivery entrance (to the extent one exists) as may be reasonably designated for such purposes by Landlord. Tenant shall have full responsibility for protecting the Leased Premises and the property located therein from theft and/or robbery, and Tenant shall keep all doors and windows securely fastened when not in use.

If Tenant's operations include sound production equipment, such equipment shall be programmed so to never generate within the Leased Premises a noise level that exceeds the lesser of 115dBA or that which is required by applicable laws, codes, or regulations, or by matters of record, including, but not limited to, live, play-back music or instructor voices (as measured within five (5) feet from any demising wall). Tenant shall not attach sound system speakers or other sound production equipment to the concrete slab or shared walls of the Leased Premises. Doors and windows of the Leased Premises shall remain closed during operating hours if the sound level inside the Leased Premises exceeds the lesser of 60dBA or that which is required by applicable laws, codes, or regulations, or by matters of record. Sound and vibration from activities and equipment in the Leased Premises shall not cause sound levels in any adjacent space or the Common Areas to exceed the lesser of 50dBA or that which is required by applicable laws, codes, or regulations, or by matters of record. In the event Landlord receives a complaint from any adjacent or nearby tenant, resident, or occupant regarding noise originating from the Leased Premises (a "Complaining Tenant") that cannot be resolved amicably within five (5) days after Landlord's receipt of the complaint, Tenant shall retain a licensed acoustical engineer reasonably satisfactory to Landlord (the "Engineer") to perform a survey (the "Survey"), at Tenant's sole cost and expense. If the sound-levels measured by the Engineer exceed the permissible levels provided in this paragraph, Tenant shall take all steps necessary to reduce the level of its sound production in the Leased Premises so that the sound generated by Tenant's business does not exceed the levels authorized by this paragraph ("Mitigation Measures") and then provide a certification from the Engineer to Landlord that the operation of Tenant's business in the Leased Premises no longer exceeds the sound-levels permitted

by this paragraph. Notwithstanding the foregoing, Landlord shall at all times reserve the right to perform a Survey of the sound and vibration at the Leased Premises. Such Survey shall be at Landlord's cost and expense, unless such Survey indicates that the Leased Premises are not in compliance with the limitations provided in this paragraph, in which case, regardless of the limits set forth elsewhere in this paragraph, Tenant shall pay for the actual and reasonable cost of the Survey; and Tenant within one business day commence and diligently undertake all necessary Mitigation Measures.

Because of the difficulty or impossibility of determining Landlord's damages by way of loss in value of Landlord's interest in the Shopping Center, if Tenant fails to take possession of the Leased Premises or fails to open for business on or before the date established pursuant to Section 1(e)(i) hereof, or if Tenant vacates, abandons or deserts the Leased Premises, or if Tenant ceases to operate its business therein as provided in this Lease, then in any such event Landlord shall have, in addition to all other remedies available to Landlord, in addition to any of its other remedies, Landlord shall have the right at its option to collect from Tenant Base Rent at the rate of two hundred (200%) percent of the Base Rent otherwise due under this Lease for each and every day that the Tenant shall fail to open for business or remain open as required by this Lease as well as the right to treat such failure of Tenant as a default under this Lease and Landlord shall nevertheless have all of the rights and remedies provided in this Lease in the case of a default by Tenant. No contention of Landlord that Tenant has vacated, abandoned or deserted the Leased Premises will be defeated merely by reason of Tenant having left all or any part of its trade fixtures or other personal property in the Leased Premises.

(e) **Landlord's Right of Recapture.** If at any time during the Lease Term, all or substantially all of the Leased Premises is not open to the public for business (i) for a period of thirty (30) days in any one (1) year period, or (ii) for a period of seven (7) consecutive days for reasons other than remodeling (not to exceed sixty (60) days), damage and destruction, eminent domain or a change in the occupancy of the Leased Premises resulting from an assignment or sublease entered into pursuant to Article 19 of this Lease (provided that such assignee or sublessee must reopen the Leased Premises for business by the end of the one hundred eightieth (180th) consecutive day following the effective date of such assignment or sublease), Landlord shall have the right to recapture the Leased Premises in accordance with the provisions of the immediately succeeding paragraph.

At any time after the event set forth in the immediately preceding paragraph has occurred, Landlord may, but shall be under no obligation to give to Tenant, a notice (hereinafter "Notice of Recapture"). Landlord, in its Notice of Recapture, shall set forth a date not sooner than thirty (30) days nor more than one (1) year after such notice, as the date for the termination of this Lease, and upon such date, this Lease shall terminate as if such date were the date originally set forth in this Lease as the expiration date of the Lease Term, and upon such date this Lease shall be null and void and of no further force or effect, except for accrued liabilities and those obligations intended to survive termination of this Lease. Landlord's rights under this Section 3(e) shall be continuing rights and shall not be exhausted by any number of failures to exercise.

(f) **Tenant's Covenants.** Tenant shall, at its sole cost and expense, comply with all laws, rules, statutes, ordinances and regulations now and hereafter affecting the Leased Premises, including, without limitation, all environmental statutes, all regulations, codes, ordinances and the Americans With

Disabilities Act ("ADA"). In addition, Tenant shall, at its sole expense, in doing any work, making any installations, or in using, occupying or conducting business at the Leased Premises, comply with all present and future laws, regulations, ordinances, building codes and/or fire codes, including the ADA, that are applicable to the Leased Premises or to Tenant's use or occupancy or business operations, including those that relate to installation, maintenance, upgrading, repair or replacement of sprinkler systems. Tenant agrees to comply with all requirements of the ADA and state and local law applicable to the Leased Premises to accommodate its employees, invitees and customers and will be responsible for any accommodations or alterations which need to be made to the Leased Premises to accommodate Tenant's employees, invitees and customers. Tenant shall not permit the release, emission, disposal, dumping or storage of Hazardous Materials (as hereinafter defined) anywhere in the Shopping Center or the Leased Premises, and the provisions of this sentence shall survive the expiration of this Lease Term. Tenant shall keep the Leased Premises free of rodents, vermin, insects and other pests, and provide regular exterminator services at its own expense. Tenant agrees that nothing will be done or omitted which may either prevent the obtaining by Landlord or other tenants of insurance on any part of the Shopping Center or on any personal property thereon, or which may make void or voidable any such insurance, or which may create any extra premiums for any insurance carried by Landlord or other tenants. Tenant agrees to pay to Landlord as Additional Rent any increase in the cost of insurance on the Leased Premises or the Shopping Center as a result of any unauthorized use of the Leased Premises by Tenant or as a result of any violation by Tenant of any provision of this Article 3 or of any other provision of this Lease, but such payment shall not constitute in any manner a waiver by Landlord of its rights to enforce all of the covenants and provisions of this Lease. Tenant will comply with all requirements and recommendations of Landlord's and Tenant's insurance companies and any rating bureau or similar organization, including maintaining and servicing fire extinguishers. Tenant agrees to stock only merchandise Tenant intends to offer for sale at retail at the Leased Premises, use for office or other non-selling purposes only incidental space required for Tenant's Permitted Use conducted at the Leased Premises, not permit the Leased Premises or any portion thereof to be used for lodging purposes, and not permit preparation of food or any cooking in the Leased Premises (unless same is included in the Permitted Use). Tenant shall keep the sidewalks, curbs and ramps (if any) adjacent to the Leased Premises (and also all delivery areas, ramps, loading areas and docks used exclusively by Tenant, if any) in good and safe condition and free from rubbish, snow and ice. Tenant will not make or suffer any waste of the Leased Premises. Landlord shall not be liable for the act of any other tenant or person who may cause damage to or who may interfere with Tenant's use or occupancy of the Leased Premises or Tenant's business.

(g) **Food Use Restrictions.** If gas is used at that Leased Premises, Tenant shall install and maintain gas cut-off devices (manual and automatic) as shall be approved by Landlord. If performing cooking or food preparation in the Leased Premises, Tenant shall (i) install and maintain an automatic dry chemical extinguishing device approved by the fire insurance rating organization having jurisdiction or other similar body over all hoods, ducts, deep frying, baking and all other cooking equipment, if any, and shall keep such devices under service as required by such organization; (ii) install and maintain an "Ansul" exhaust system, appropriate filters and grease traps to prevent accumulation of grease in the ducts used to exhaust fumes and vapors resulting from the preparation of food at the Leased Premises and to prevent the blockage of the Shopping Center waste system; (iii) keep all range hoods and ducts therefrom clean and free of grease so as to avoid a fire hazard; (iv) clean out the range exhaust ducts

(horizontal and vertical) periodically as required by governmental regulations or governmental, public or quasi-public authorities and, in any event, whenever required to avoid a fire hazard. Tenant acknowledges and agrees that Tenant shall, as part of the Tenant's Work, waterproof that portion of the floor of the Leased Premises used for cooking or food preparation by installing a rubber floor covering or some other form of waterproofing reasonably acceptable to Landlord. Tenant shall maintain such waterproof floor covering throughout the Term and shall otherwise be responsible for any and all leaks or water seepages from the Leased Premises caused by Tenant or Tenant's Agents.

(h) **Quiet Enjoyment.** Upon payment by Tenant of the Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the Lease Term hereby demised without hindrance or interruption by Landlord, subject, nevertheless, to the terms and conditions of this Lease.

(i) **Rules and Regulations.** Tenant shall comply with and observe all rules and regulations which Landlord shall from time to time promulgate for the management and use of the Shopping Center (including, without limiting the generality of the foregoing, the rules as set forth in Exhibit C and rules relating to the designation of smoking and non-smoking areas in, around or throughout the Shopping Center, and rules which prohibit or limit smoking in order to fully comply with any applicable governmental ordinance, law or regulation), and Tenant shall cause Tenant's Agents and their respective officers, employees, agents, customers, suppliers, deliverymen and invitees to comply with and observe such rules and regulations. Landlord shall have the right from time to time to amend, rescind or supplement any rules and/or regulations theretofore promulgated if and to the extent Landlord, in its sole judgment, deems same to be necessary or advisable for the safety, care and cleanliness of the Shopping Center and/or the conduct of high standards of merchandising and services therein. Tenant agrees to conform to any and all new or amended rules promulgated from time to time by Landlord upon receiving written notice of the same. Landlord reserves the right, in its absolute and unfettered discretion, to waive any rule in any particular instance or as to any particular person or occurrence. In the event that Tenant shall violate any of the rules or regulations, and in the event that such violation shall continue uncured for a period of five (5) days following notice thereof to Tenant, then, without limiting, or prejudice to, any other right or remedy available to Landlord by reason of such default by Tenant, whether at law, and/or in equity, and/or pursuant to this Lease, Tenant shall be obligated, commencing on such fifth (5<sup>th</sup>) day, to pay to Landlord Fifty and 00/100 Dollars (\$50.00) per violation for each day such violation shall continue uncured. Anything in the foregoing to the contrary notwithstanding, it is specifically understood and agreed that no grace or cure period shall be afforded Tenant in the case of any violation which shall involve (A) any actual or threatened injury or damage to any person or property; (B) any violation of applicable law or other restriction which might subject Landlord to any loss or liability; or (C) any interference with the rights or business operations of any other tenant of the Shopping Center.

#### 4. **Rent.**

(a) **Base Rent.** Tenant shall pay Base Rent as specified in Section 1(g) in equal monthly installments paid in advance on the first (1<sup>st</sup>) day of each calendar month. At Landlord's election and

upon notification to Tenant, Tenant's payment of Rent shall be made via an automatic clearing house (ACH) or electronic funds transfer (EFT). If the Rent Commencement Date is not the first (1st) of the month, the Base Rent for that month shall be prorated on a per diem basis (calculated on the basis of a thirty (30) day month). Should any Lease Year contain more or less than twelve (12) months, Base Rent and other charges for such Lease Year shall be appropriately prorated. All other payments to be made by Tenant pursuant to this Lease are in addition to Base Rent. Tenant shall pay Base Rent and Additional Rent to Landlord or its designated agent at the Address for Payment of Rent as specified in Section 1(r) (or such other address as Landlord may designate from time to time) without Landlord giving any prior notice or demand and without any right of deduction or set-off whatsoever. The obligation to pay Base Rent and Additional Rent is an independent, unconditional covenant. Landlord shall not become or be deemed a partner or a joint venture with Tenant by reason of the provisions of this Article 4.

(b) **Change of Payment Instructions; Wire Fraud Prevention.** Landlord will notify Tenant of any changes to its Rent payment address or ACH account (collectively, "New Payment Instructions") only in accordance with the notice requirements of Article 27 of this Lease. If Tenant receives any instruction, or request to change (whether oral, electronic, or in writing) its method of payment of Rent or any other amounts due pursuant to this Lease (including receipt of New Payment Instructions), Tenant shall not respond to, provide any information, make any change or take any other action in response to such request, EXCEPT that Tenant shall promptly contact Landlord's DPF Property Accounting Group Lead by telephone at the number specified under Landlord's Address for Notices in Section 1(n) above to confirm the New Payment Instructions. Verbal confirmation by Landlord's DPF Property Accounting Group Lead of such New Payment Instructions are referred to herein as "Landlord's Telephonic Confirmation". Tenant shall not make any change to its method of payment unless and until Tenant has received both (i) New Payment Instructions; and (ii) Landlord's Telephonic Confirmation. Any Rent paid in any manner other than in compliance with both the New Payment Instructions and Landlord's Telephonic Confirmation shall be deemed "Redirected Rent", and Tenant assumes all risk associated with paying Redirected Rent. If Landlord does not receive Rent for any reason (including because Tenant has paid Redirected Rent), Tenant will be deemed to have failed to pay Rent and such failure to pay Rent will be treated as unpaid Rent and such failure will constitute an Event of Default by Tenant in accordance with Article 16 of this Lease.

(c) **Definition of Gross Sales.** "Gross Sales" means the aggregate selling prices of all merchandise sold at, on or from any part of the Leased Premises and the charges for all services of any sort (including net receipts from vending machines paid to Tenant), sold or performed in, at, on or from any part of the Leased Premises, pursuant to mail, telegraph, telephone, internet, computer, or other similar orders received or filled at or from the Premises, including, without limitation, the sales of Tenant's subtenants, licensees and concessionaires. Gross Sales includes sales and charges for cash or credit and regardless of collection in the case of the latter. Gross Sales excludes (A) refunds made by Tenant to its customers for merchandise returned to Tenant provided the amount of the refund was previously included in Gross Sales; (B) exchange of merchandise between stores of Tenant where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale at another location which has been made, in fact, at, in, on or from the Leased Premises; (C) the amount of any federal, city, county or state value added or sales tax on such sales paid to a taxing authority by Tenant (but not by any vendor of Tenant); (D) sums or credits received in

settlement of claims for loss or damage to merchandise sold; (E) accommodation sales such as postage stamps and tickets where no charge is added by Tenant; (F) returns of merchandise to manufacturers or suppliers; (G) sales of trade fixtures or equipment used in the Leased Premises; (H) service and interest charges for time payment accounts and charge accounts, and charges and fees paid to credit card companies by Tenant; (I) services such as assemblage, repairs and deliveries, rendered at cost; (J) the amount of gift certificates redeemed in cash or merchandise, provided the sales of the gift certificates were included in Gross Sales; (K) merchandise or other items of value issued in redemption of trading stamps in connection with any sales promotion program; (L) bad debts owing from customers for goods sold by Tenant and previously included in Gross Sales; (M) discounted sales to employees, not exceeding two percent (2%) of Gross Sales; and (N) bulk sales not in the ordinary course of business. A sale shall be deemed to be made in the Leased Premises: (aa) if an order therefor is secured or received in the Leased Premises or elsewhere; or (bb) if, pursuant to mail, telephone, email or other similar means, orders are received or filled at or from the Leased Premises.

(i) Sales Reports. Tenant shall submit to Landlord a quarterly annual report not later than the fifteenth (15<sup>th</sup>) day of each quarterly annual period of the Lease Term (such report shall be certified as complete and correct by an officer of Tenant). The report shall set forth the amount of Gross Sales for the preceding quarter, itemized on a monthly basis. Tenant shall require any licensees and subtenants to furnish similar statements.

(ii) Radius. Within the meaning of Section 4(c) "Radius" shall mean the area within five (5) miles of any point in the Shopping Center. Tenant agrees (insofar as and to the extent it lawfully may so agree) that during the Lease Term neither Tenant, nor any affiliated or subsidiary companies, directly or indirectly, will own, lease or operate another store, department within a store, or any structure or site for business within the Radius. If Tenant violates the foregoing restriction Gross Sales shall include the aggregate sales price of all merchandise sold in, at or from, and any charges for any services performed in, at or from or in connection with any such other store, department of a store, structure or site within the Radius and all of the provisions of Section 4(c) shall be applicable thereto.

(d) Additional Rent. All payments, other than Base Rent, required to be made by Tenant (including, but not limited to, Sales Tax (if any), Taxes, Operating Expenses, and Late Rent) shall collectively be referred to as "Additional Rent", and shall be due and payable within ten (10) days after demand or together with the next installment of Base Rent, whichever first occurs, unless another time is expressly provided for payment. Landlord shall have the same rights and remedies for non-payment of any Additional Rent or any Security Deposit as for a non-payment of Base Rent. Base Rent and Additional Rent shall be collectively referred to as "Rent."

(e) Sales Tax and other Assessments. Tenant shall pay, as Additional Rent, (i) all sales, use, rental, gross receipts or other rent tax or sales tax, service tax, transfer tax or value added tax, business tax or any other applicable tax on the rent or services herein or otherwise respecting this Lease and other taxes assessed by any governmental authority against the Base Rent and Additional Rent (or otherwise related to the Leased Premises), as applicable, stated herein ("Sales Tax"); (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration,

settlement of claims for loss or damage to merchandise sold; (E) accommodation sales such as postage stamps and tickets where no charge is added by Tenant; (F) returns of merchandise to manufacturers or suppliers; (G) sales of trade fixtures or equipment used in the Leased Premises; (H) service and interest charges for time payment accounts and charge accounts, and charges and fees paid to credit card companies by Tenant; (I) services such as assemblage, repairs and deliveries, rendered at cost; (J) the amount of gift certificates redeemed in cash or merchandise, provided the sales of the gift certificates were included in Gross Sales; (K) merchandise or other items of value issued in redemption of trading stamps in connection with any sales promotion program; (L) bad debts owing from customers for goods sold by Tenant and previously included in Gross Sales; (M) discounted sales to employees, not exceeding two percent (2%) of Gross Sales; and (N) bulk sales not in the ordinary course of business. A sale shall be deemed to be made in the Leased Premises: (aa) if an order therefor is secured or received in the Leased Premises or elsewhere; or (bb) if, pursuant to mail, telephone, email or other similar means, orders are received or filled at or from the Leased Premises.

(i) **Sales Reports.** Tenant shall submit to Landlord a quarterly annual report not later than the fifteenth (15<sup>th</sup>) day of each quarterly annual period of the Lease Term (such report shall be certified as complete and correct by an officer of Tenant). The report shall set forth the amount of Gross Sales for the preceding quarter, itemized on a monthly basis. Tenant shall require any licensees and subtenants to furnish similar statements.

(ii) **Radius.** Within the meaning of Section 4(c) "Radius" shall mean the area within five (5) miles of any point in the Shopping Center. Tenant agrees (insofar as and to the extent it lawfully may so agree) that during the Lease Term neither Tenant, nor any affiliated or subsidiary companies, directly or indirectly, will own, lease or operate another store, department within a store, or any structure or site for business within the Radius. If Tenant violates the foregoing restriction Gross Sales shall include the aggregate sales price of all merchandise sold in, at or from, and any charges for any services performed in, at or from or in connection with any such other store, department of a store, structure or site within the Radius and all of the provisions of Section 4(c) shall be applicable thereto.

(d) **Additional Rent.** All payments, other than Base Rent, required to be made by Tenant (including, but not limited to, Sales Tax (if any), Taxes, Operating Expenses, and Late Rent) shall collectively be referred to as "Additional Rent", and shall be due and payable within ten (10) days after demand or together with the next installment of Base Rent, whichever first occurs, unless another time is expressly provided for payment. Landlord shall have the same rights and remedies for non-payment of any Additional Rent or any Security Deposit as for a non-payment of Base Rent. Base Rent and Additional Rent shall be collectively referred to as "Rent."

(e) **Sales Tax and other Assessments.** Tenant shall pay, as Additional Rent, (i) all sales, use, rental, gross receipts or other rent tax or sales tax, service tax, transfer tax or value added tax, business tax or any other applicable tax on the rent or services herein or otherwise respecting this Lease and other taxes assessed by any governmental authority against the Base Rent and Additional Rent (or otherwise related to the Leased Premises), as applicable, stated herein ("Sales Tax"); (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration,

repair, use or occupancy by Tenant of the Leased Premises or any portion of the Shopping Center; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Leased payment of all Sales Tax shall be made by Tenant on a monthly basis, concurrently with payment of the Base Rent. In addition, Tenant shall also pay before delinquency in its entirety all taxes and assessments on the furniture, fixtures, equipment, and other property of Tenant located in the Leased Premises; all taxes and assessments on additions and improvements in the Leased Premises belonging to Tenant; all taxes and assessments attributable to its signs, personal property and leasehold interests; all occupancy taxes or other taxes on its right to occupy the Leased Premises; and other taxes imposed on tenants generally.

(f) **Late Rent.** If any payment of Rent is not paid when due under this Lease, then, in addition to the payment then due, Tenant shall pay Landlord, as Additional Rent, a late charge ("Late Rent Charge"), which shall be the greater of (i) One Hundred and 00/100 Dollars (\$100.00); or (ii) five percent (5%) of the amount then due. In the event Landlord provides Tenant written notice that Tenant has failed to pay an amount due under this Lease more than two (2) times in any Lease Year, the amount of such Late Rent Charge shall be the greater of: (i) Three Hundred and 00/100 Dollars (\$300.00), or (ii) ten percent (10%) of the amount then due. Any payment of Rent which is not paid when due shall also bear interest on the payable amount from the date when due until paid at the Default Interest Rate (as hereinafter defined). If any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason not attributable to Landlord, Tenant shall pay an administrative charge to Landlord of Fifty and 00/100 Dollars (\$50.00). Tenant recognizes and agrees that these charges represent, at the time this Lease is made, a fair and reasonable estimate and liquidation of the costs of Landlord resulting from the events described. Should Tenant's check be so returned or dishonored on more than one occasion during the Lease Term, then, from and after the dishonor or return of the second of Tenant's checks, all subsequent payments due hereunder during the remainder of the Lease Term shall be tendered to Landlord by certified or cashier's check or ACH. The assessment or non-assessment of a Late Rent Charge pursuant to the terms hereof shall be in Landlord's sole discretion and is in addition to all other rights and remedies Landlord may have under this Lease.

(g) **Unconditional Obligation.** It is the purpose and intent of Landlord and Tenant that this Lease be construed and treated as a so-called "Triple Net Lease" which shall, except as hereinafter expressly provided to the contrary, yield net to Landlord the Base Rent and Percentage Rent (if any) to be paid by Tenant in each year during the Lease Term, and that all costs and expenses including, but not limited to taxes, insurance, utilities, maintenance, repairs and obligations of every kind or nature whatsoever relating to the Leased Premises which may arise or become due during the Lease Term, shall be paid by Tenant. Notwithstanding any alleged defense, counterclaim or offset against Rent, Tenant's obligation to pay Rent hereunder is an independent covenant and Tenant shall continue to pay Landlord all Rent faithfully when due, including during the continuance of any dispute or legal action, subject to reimbursement if directed by a court of competent jurisdiction. Tenant hereby consents to the entry in any court action of an order requiring Tenant to make Rent payments during the pendency of a lawsuit. All Rent due to Landlord under this Lease shall, unless and to the extent expressly otherwise provided herein, be due and payable without any notice, demand, offset, credit, deduction or abatement.

5. **Taxes.**

(a) **Taxes Defined.** "Taxes" shall mean and include: real estate taxes for the Shopping Center; special and general assessments (including any community association fees and building improvement district assessments) and any payments in lieu of taxes ("PILOT") made to any governmental authority having jurisdiction over the Shopping Center pursuant to any "PILOT" agreement entered into with such governmental authority; water and sewer rents and charges including connection or hookup charges; governmental license and permit fees; charges for public or private easements benefiting the Shopping Center; taxes on other areas made available for the common use or benefit of tenants; and all other governmental impositions and charges (extraordinary as well as ordinary, foreseen and unforeseen) which are either a lien on the Shopping Center or any part thereof or which are charged, levied or assessed on, or imposed in connection with, the use, occupancy or possession of the Shopping Center, and/or which appear as a charge on the tax bill given to Landlord by any official taxing authority, and also interest on Tax installment payments; and costs, expenses and fees (including attorneys' and other experts' fees) incurred by Landlord in contesting the validity of, or seeking a reduction in, or seeking to prevent an increase in any such Taxes or assessments, or attempting to obtain any refund thereof or reassessment in the value of the Shopping Center. In the event Tenant installs or constructs a mezzanine or similar structure that increases the Taxes for the Shopping Center, Tenant shall pay the entire increase attributable to such structure. If any method of taxation prevailing on the date of this Lease is altered, so as a substitute for, or in addition to, the whole or any part of Taxes there is levied or assessed a different kind of tax, the different tax shall be deemed included in "Taxes". However, "Taxes" shall not include any inheritance, estate, succession, transfer, gift, franchise or corporation tax, or any net income tax, profit tax or capital tax imposed on Landlord. A copy of any official tax bills with respect to a governmental tax or assessment shall be conclusive evidence of the amount of Taxes.

(b) **Tenant's Share of the Taxes.** On the first day of each month in advance commencing on the Rent Commencement Date, Tenant shall pay to Landlord as Tenant's sole charge for Taxes, in equal monthly installments, one-twelfth (1/12th) of Tenant's Share of Taxes. Landlord estimates that Tenant's Share of Taxes for the first calendar year of the Lease Term shall be equal to Two and 48/100 Dollars (\$2.48) per square foot of Gross Leasable Floor Area in the Leased Premises per annum. The foregoing estimate shall not be binding upon Landlord and is subject to change.

6. **Common Areas.**

(a) **Right to Use.** Subject to subparagraph (c) below, Tenant, Tenant's Agents and Tenant's customers shall have the non-exclusive right to the use or benefit of the Common Areas of the Shopping Center to the extent and in the manner reasonably designated by Landlord. Except as otherwise specified in this Lease, Landlord agrees to make all necessary repairs and maintenance to the Common Areas and to keep same in good condition. Landlord shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to the Common Areas.

(b) **Definition.** "Common Areas" is hereby defined as the areas, equipment and facilities of the Shopping Center or of any other land or property made available by Landlord, from time to time, for the safety, benefit or convenience of tenants or their employees, subtenants, customers or invitees, and

all portions of the buildings not available for lease by tenants (i.e., roof, walls, etc.) including (as illustrations and not in limitation): parking areas, driveways, truck service ways, sidewalks and curbs; escalators and elevators; loading docks; entrances and exits from the adjacent streets; traffic lights, traffic islands, landscaped areas; meter rooms outside individual stores; fencing; lighting facilities; sprinkler system serving landscaped areas or buildings; waste water treatment facilities; corridors; retention basins; monument or directional signs, and fire, exit and safety signs; tenant directories; Landlord's pylon signs (but not individual tenant panels) and sign panels which identify the Shopping Center.

(c) **Changes to Common Areas/Parking.** Subject to Section 6(a) herein, Landlord reserves the right at any time and from time to time to change or reduce or add to the Common Areas. Common Areas shall be under the exclusive control and management of Landlord. Tenant and its employees shall park their vehicles only in areas Landlord designates for employee parking, and in this connection, Tenant agrees that Tenant shall from time to time furnish Landlord with state motor vehicle license numbers assigned to Tenant's vehicles, and to the vehicles of Tenant's employees. Tenant shall not permit trucks or delivery vehicles used by it to be parked in the Common Areas except where Landlord permits. Overnight truck parking is strictly prohibited. Landlord may close parts of the Common Areas for such time necessary in its opinion to prevent a dedication or accrual of rights in other persons, or to discourage non-customer parking.

(d) **Operating Expenses.** "Operating Expenses" shall include but are not limited to: (i) all costs and expenses incurred by Landlord in managing the Shopping Center or in making installations, alterations, replacements or additions to the Shopping Center that are made: (A) with the intent of maintaining and/or reducing Operating Expenses, and/or greenhouse gas emissions, or (B) in accordance with applicable governmental requirements, or (C) to achieve the objectives of maintaining or reducing the environmental impact and/or the carbon footprint of the Shopping Center; (ii) the cost of utilities; (iii) parking lot and sidewalk sweeping; (iv) common area trash removal; (v) cleaning and maintenance; (vi) maintenance of any grease trap collection system and associated tanks, including but not limited to the routine cleaning thereof, pumping and removal of used grease; (vii) parking lot restriping, sealing, painting and resurfacing; (viii) providing project identification signs and the repair and maintenance of any tenant directories, pylons and all signs thereon; (ix) full or part time personnel allocable to the Shopping Center (including salaries and employee benefits); (x) personal property taxes; (xi) roof repair and replacement; (xii) repair and replacement of canopies, awnings and/or frames; (xiii) capital improvements required by law or reasonably anticipated to reduce Operating Expenses; (xiv) marketing; (xv) supplies; (xvi) snow removal from roof, sidewalks and parking lots; (xvii) security (although Landlord does not represent that there will or will not be security); (xviii) holiday decor; owners association fees; (xix) lighting facilities; (xx) non-reimbursed hurricane, storm or other natural disaster related expenses, including but not limited to security, emergency, clean-up and repair, all other costs of operating and maintaining the Shopping Center; and (xxi) an administrative fee equal to fifteen percent (15%) of all such Operating Expenses. The preceding list is for definitional purposes only and shall not impose any obligation upon Landlord to incur such expenses or provide such service. Landlord shall have the right with regard to any and all management and maintenance obligations of Landlord under this Lease, to contract with such person(s) or entity or entities for the performance and

accomplishment of such of the obligations as Landlord shall deem proper, including entities in which Landlord may hold an ownership or other interest.

(e) **Payment of Operating Expenses.** As Additional Rent for each calendar year of this Lease, Tenant shall pay to Landlord on the first day of each month in advance commencing on the Rent Commencement Date, one-twelfth (1/12th) of Tenant's Share (as defined in Section 1(u)) of the Operating Expenses, which costs shall be based upon Landlord's estimates. Landlord estimates that Tenant's Share of the Operating Expenses for the first calendar year of the Lease Term shall be equal to Four and 61/100 Dollars (\$4.61) per square feet of Gross Leasable Floor Area in the Leased Premises. The foregoing estimate shall not be binding upon Landlord and is subject to change. Tenant's Share of the Operating Expenses shall be prorated for any partial calendar month during the Lease Term. With respect to any partial calendar year during the Lease Term, Tenant's Share of Operating Expenses shall be an amount equal to the product of (i) Tenant's Share of Operating Expenses for the entire calendar year; and (ii) a fraction the numerator of which shall, with respect to the first calendar year, the number of days during such calendar year following the Rent Commencement Date and, with respect to the last calendar year of the Lease Term, the number of days from January 1 of such calendar year through the Expiration Date, and the denominator of which shall be three hundred and sixty-five (365). Landlord may exclude from the total floor area of the Shopping Center those portions leased to or used by other parties who are not required to pay a full pro rata share of Operating Expenses, and Landlord will also deduct from Operating Expenses all amounts received from the parties occupying such excluded areas. If an occupant of the Shopping Center directly pays for any items otherwise includable in Operating Expenses, then for purposes of calculating Tenant's Share of such items of Operating Expenses, the floor area of such occupant will be excluded from the total floor area of the Shopping Center. Landlord may determine separately and allocate items of Operating Expenses between different groups within the Shopping Center in accordance with sound accounting and property management principles, in which event Tenant's Share for such items of Operating Expenses will be based on the ratio that the area of the Premises bears to the floor area for which Landlord separately determines and allocates Operating Expenses. Additionally, for the limited purposes of calculating Operating Expenses, Taxes and Insurance, Landlord will have the right to include or exclude premises within the Shopping Center, so long as the calculation of Tenant's Share is adjusted accordingly.

(f) **Reconciliation.** Within a reasonable time after the end of each calendar year, or other accounting period as determined by Landlord, Landlord shall furnish to Tenant a statement of the actual Operating Expenses for the preceding calendar year or other accounting period. If the statement shows that the aggregate of Tenant's monthly installments of Operating Expenses paid by Tenant during such year was less than the actual amount due, Tenant shall pay the balance due to Landlord within twenty (20) days after receipt of the statement. If such statement shows that the aggregate amount paid by Tenant for such year exceeded the actual amount, such excess shall be applied by Landlord to the next monthly installment(s) due (or shall be refunded to Tenant if there shall be no further monthly installments due). Tenant's failure to give Landlord written notice to any objection to the statement within sixty (60) days after the statement is sent shall constitute a waiver of any objection or inquiry Tenant may have about the statement or for any examination of Landlord's records, and such statement(s) shall be conclusively deemed to be correct as between Landlord and Tenant. Tenant acknowledges that Landlord's ability to budget and incur expenses is dependent on the finality of such

statement, and accordingly agrees that time is of the essence with respect to Tenant's objection to the aforementioned statement. Notwithstanding any such objection or inquiry by Tenant, Tenant shall nonetheless be obligated to timely remit to Landlord payment reflected on such statement. Tenant shall remain liable for and shall pay its Proportionate Share of the year-end reconciliation of Operating Expenses owed by Tenant and payable hereunder, notwithstanding the expiration or earlier termination of this Lease.

**7. Operation of the Shopping Center.**

The Shopping Center is, and shall at all times be, subject to the exclusive control, management and operation of Landlord. Landlord expressly reserves the right at any time, and from time to time to (i) enlarge, remove, reduce, reconfigure, make alterations to or add to, and to build additional stories on, the building in which the Leased Premises is located or other buildings within the Shopping Center; (ii) construct other buildings and improvements in the Shopping Center, including any modifications of the Common Areas in connection therewith; (iii) enclose any mall; (iv) enlarge or reduce the Shopping Center; (v) add, relocate or remove Shopping Center parking areas; (vi) sell or lease any part of the land comprising the Shopping Center; (vii) obstruct or close off all or any part of the Shopping Center for the purpose of maintenance, repair or construction; (viii) change the identity and type of stores and tenancies and the dimensions thereof; (ix) change the name of the Shopping Center; (x) change the address or designation of the Leased Premises; (xi) to change the Common Areas, add to or subtract from their shape and size; and (xii) change the means of access to and egress from the Shopping Center and/or the Leased Premises. Tenant hereby consents to the exercise by Landlord of the rights set forth in this Article 7 and agrees that the exercise of such rights by Landlord shall not diminish Tenant's obligations under this Lease and shall not be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises and shall not entitle Tenant to any set off or abatement of Rent or any other claim. In the exercise of its rights under this Article 7, Landlord will use its commercially reasonable efforts to ensure that traffic ingress and egress to and from the Leased Premises is not unreasonably interfered with, and Landlord will proceed as expeditiously as reasonably possible to complete its work and other activities so as to minimize interference with the Tenant's business.

**8. Construction and Condition of Leased Premises and Tenant's Work; Landlord's Work.**

(a) **Tenant's Work.** Promptly following the Commencement Date, Tenant shall, at its sole cost and expense, (subject to the provisions of Exhibit D, the rules and regulations as may be adopted by Landlord from time to time, and all other relevant provisions of this Lease) fixture and do all other work in order to prepare the Leased Premises for business operation (collectively referred to as "Tenant's Work"). Prior to opening for business from the Leased Premises or otherwise commencing operations from the Leased Premises, Tenant shall obtain a permanent certificate of occupancy (or local equivalent) for the Leased Premises from the local government agency having jurisdiction and obtain final lien waivers for all work performed by or on behalf of Tenant and forward copies to Landlord. Tenant acknowledges that neither Landlord nor Landlord's employees, agents or contractors have made any representations or warranties as to the condition of the Leased Premises or the suitability for the conduct of Tenant's business, and that Tenant's determination of the suitability of the Leased Premises

for its intended purposes is based solely on its own inspections, and not based on any representation or warranty of Landlord, its agents, brokers or employees, and Tenant accepts the Leased Premises subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Leased Premises, and without any representation or warranty by Landlord. Anything in this Lease to the contrary notwithstanding, Landlord does not warrant the compliance of the Leased Premises with the ADA or such state or local laws as relates to Tenant's proposed use or occupancy of the Leased Premises, or as relates to any alterations, additions or improvements made, or proposed to be made, therein by Tenant, or otherwise.

Tenant shall employ, or cause to be employed, only such labor, contractors or subcontractors, as will not result in: (i) jurisdictional disputes with any labor union; (ii) strikes against or involving Landlord, the Leased Premises or the Shopping Center; or (iii) cause any conflict with any union contract now or hereafter formed in which Landlord, its contractors or subcontractors may be a party. Tenant's failure to comply with the provisions of this Section 8(a) shall be an Event of Default under this Lease.

All of Tenant's Work shall be performed in a good and workmanlike manner and in accordance with any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all governmental authorities having jurisdiction over Landlord or other persons or entities or the Shopping Center or any street, road, avenue or sidewalk comprising a part of or lying in front of the Shopping Center, or any vault in or under the Shopping Center including, without limitation: (i) the ADA and any of the foregoing relating to handicapped access or parking, the building code of the municipality in which the Shopping Center is located, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions; (ii) the certificates of occupancy issued for the Shopping Center as then in force; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Landlord; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations or other indentures, documents or instruments of record (collectively, "Legal Requirements") and Tenant's plans approved by Landlord in accordance with Exhibit D. Tenant shall be responsible for ensuring that its plans comply with Legal Requirements, which may include obtaining at its cost any necessary variance or other exemption from Legal Requirements.

Any inspection, approval or review of the proposed plans and specifications, Tenant's contractor and/or subcontractors, or any of Tenant's Work, shall not constitute an approval of architectural or engineering design, compliance with any building codes or other restrictions and limitations, or otherwise constitute any assumption of liability or responsibility by Landlord or its agents or contractors for the quality or adequacy of any design of, or work performed by Tenant's contractors or subcontractors, whether with respect to labor, material or otherwise. Tenant hereby expressly acknowledges that no such inspection, approval or review shall in any way limit the obligations of Tenant or the rights of Landlord under this Lease, and, without limiting the generality of the foregoing, Tenant's obligations under all indemnity provisions of this Lease shall apply to any claims arising or alleged to have arisen in connection with Tenant's Work.

As part of Tenant's Work, Tenant may: (i) make penetrations in the roof directly above the Leased Premises in locations approved by Landlord (in its sole discretion), and (ii) install new exhaust fans (provided the make and model of such fans shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld) for operation of Tenant's hibachi tables (the "Hibachi Installation"). Tenant shall, at its sole cost and expense, be responsible for the Hibachi Installation, including, without limitation, any structural support to the roof or other part of the Shopping Center deemed necessary by Landlord (in its sole discretion) related to the Hibachi Installation. Tenant further acknowledges and agrees to use a contractor selected by Landlord (in its sole discretion) for the Hibachi Installation.

(b) **AS-IS.** Except for the work specifically set forth in Exhibit J ("Landlord's Work"), Landlord is not obligated with respect to either the Leased Premises or the Shopping Center to make any improvements, changes, installations, do any work, make any alterations, repairs or replacements, clean out the Leased Premises, obtain any permits, licenses or governmental approvals, or spend any money either to put Tenant in possession or to permit Tenant to open for business and Tenant accepts the Leased Premises and all the equipment, apparatus, plumbing, heating, air conditioning, electric, water, waste disposal and other systems relating thereto in absolutely "AS IS," "WHERE-IS" condition, with any and all existing defects and faults. All work (other than that to be performed by Landlord as specifically set forth on Exhibit J, if any) shall be accomplished by Tenant. Except for signs, merchandise counters or other easily removable similar trade fixtures installed by Tenant at Tenant's expense, all alterations, decorations, additions and improvements made by Tenant to the Leased Premises and including all heating and air-conditioning units, equipment and apparatus at the Leased Premises and other fixtures such as ceiling tiles and grids, lighting fixtures, electric panel boxes, plumbing, boilers, floor and wall coverings, alarm systems, lights, toilet fixtures, partitions, doors and utilities shall be deemed attached to the freehold and be Landlord's property. Notwithstanding anything herein to the contrary: (i) Landlord shall have until the date that is ninety (90) days after the Commencement Date, to install new twenty-one and one-half (21.5) ton heating, ventilating and air conditioning units (the "New HVAC") servicing the Leased Premises, and (ii) Tenant shall cooperate with Landlord to facilitate the installation of the New HVAC, including, without limitation, permitting Landlord access to the Leased Premises after the Commencement Date.

(c) **Tenant Improvement Allowance.**

If and when (i) Tenant's Work shall have been completed in accordance with the plans and specifications approved by Landlord; (ii) Tenant shall have opened the Leased Premises for business with the public; (iii) Tenant shall have paid its first monthly installment of Base Rent; (iv) Tenant shall have furnished Landlord with a written certification of the actual cost of Tenant's Work excluding Tenant's trade fixtures and other personal property, together with paid invoices and such other evidence of such cost and the payment in full thereof, as Landlord shall require; (v) at or prior to Tenant's opening for business at the Leased Premises, Tenant shall have, at its sole cost and expense, obtained and delivered to Landlord a final certificate of occupancy for the Leased Premises and final unconditional lien waivers from all contractors and suppliers furnishing goods and services in connection with Tenant's Work together with applicable equipment operation and maintenance manuals and copies of manufacturers warranties; (vi) Tenant shall have delivered to Landlord the contact information for all contractors,

subcontractors and materialmen who performed work at the Leased Premises, together with a computer flash or thumb drive containing all such information; (vii) Tenant shall have closed out all open permit applications pertaining to Tenant's Work; and (viii) Guarantor shall have delivered an executed copy of the guaranty to Landlord, then, within thirty (30) days after Tenant provides written notice to Landlord that each condition contained in the foregoing items (i) through (viii), inclusive hereof shall have been complied with in full (which notice must be received by Landlord within one hundred twenty (120) days following the Rent Commencement Date), Landlord shall reimburse Tenant for the cost of Tenant's Work (subject to the limitations set forth in the following paragraph), provided, however, that such reimbursement shall not exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Allowance"). If Landlord does not receive the aforementioned notice within said one hundred and twenty (120)-day period, Tenant shall be deemed to have forever forfeited any and all rights to the Allowance. Tenant hereby expressly grants to Landlord an offset and deduction against the Allowance for all costs, payments and expenses Tenant is obligated to pay to Landlord pursuant to this Lease or otherwise due and owing to Landlord, at the time the Allowance shall be due.

Landlord and Tenant acknowledge that Tenant's Work shall constitute the property, including, without limitation, any furniture, fixtures or equipment installed by or placed in the Premises by Tenant, of Landlord to the extent that Tenant performs Tenant's Work using the proceeds of the Allowance as provided in this Section 8(c) subject, nevertheless, to Tenant's rights to use such Tenant's Work as part of the Leased Premises during the Lease Term in accordance with the terms of this Lease. The Allowance may only be used to reimburse Tenant for the cost of physical alterations to the Leased Premises and for no other purpose. No portion of the Allowance shall be used to pay for any of Tenant's inventory. Tenant, during the Lease Term, shall not remove Tenant's Work (or a portion thereof) that Tenant performs using the proceeds of the Allowance [or future alterations that replace such Tenant's Work (or such portion thereof)] unless Tenant replaces Tenant's Work (or such portion thereof), or such other future alterations, as the case may be, with future alterations that have a fair value that is equal to or greater than the Allowance, it being understood that such future alterations that Tenant performs to replace Tenant's Work (or such portion thereof), or such other future alterations, as the case may be, shall constitute the property of Landlord as contemplated by this Section 8(c). Nothing contained in this Section 8(c) limits Landlord's right to require Tenant to remove any trade fixtures, equipment and other personal property as provided in this Section 8(c) hereof. Notwithstanding that Tenant's Work shall remain the property of Landlord, Tenant shall be required to maintain insurance on Tenant's Work in accordance with the terms of this Lease.

Landlord and Tenant agree that the monies to be paid by Landlord to Tenant pursuant to this Section 8(c) are being paid to Tenant for the purpose of Tenant's constructing or improving qualified long-term real property as defined in Section 110(c)(1) of the Internal Revenue Code of 1986, as amended, for use in such Tenant's trade or business at the Leased Premises, which Leased Premises Landlord and Tenant acknowledge constitutes retail space. It is the intent of Landlord and Tenant that Landlord and Tenant shall consider any such payment as made in accordance with Section 110 of the Internal Revenue Code of 1986, as amended, and Landlord and Tenant shall provide the Internal Revenue Service any and all information concerning such payments as may be required by the Internal Revenue Service.

If Tenant shall be in Event of Default under any of the terms and provisions of this Lease, Tenant shall pay to Landlord, immediately upon receipt of written demand therefor from Landlord, or Landlord's designated agents or representatives, the unamortized portion of the Allowance. Such unamortized portion shall be calculated by amortizing the Allowance on a straight-line basis over the Initial Term. The rights of Landlord under the terms and provisions of this Section 8(c) shall be in addition to, and not in limitation of, any other rights and remedies available to Landlord upon an Event of Default by Tenant, under the terms and provisions of this Lease, or otherwise available to Landlord at law or in equity.

9. **Utilities.**

(a) From and after the Commencement Date, Tenant shall provide and pay for its own heat, air conditioning, water, gas, electricity, sewer, sprinklers, telephone, cable or other communication services and other utilities, including application deposits and installation charges for meters, and for consumption or use of utilities. If Tenant receives utilities through a meter which supplies utilities to other tenants, Tenant will pay to Landlord Tenant's proportionate share (based on the relative square footage of the Leased Premises) of the total meter charges within ten (10) days after invoice from Landlord. Landlord shall notify Tenant of the procedures for removal of trash from the Leased Premises and Tenant shall be responsible for all costs and expenses associated with same. All such removal shall be completed in strict accordance with all local governmental requirements and any refuse disposal program (including any waste recycling program) that Landlord reasonably imposes. Tenant shall be responsible for, and shall pay all connection fees, tap fees, meter fees, hook-up fees, water and sewer impact fees and water and sewer development and resource fees which may be levied or assessed against the Leased Premises or any part thereof before or after the Commencement Date or otherwise in respect of Tenant's occupancy of the Leased Premises. Landlord shall not be liable in damages or otherwise for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, interruption or defect in the utility services provided to the Leased Premises. No such change, failure, interference, interruption or defect shall entitle Tenant to terminate this Lease or abate the payments Tenant is required to make under this Lease.

(b) **Septic; Waste Water Treatment Plant.** Tenant acknowledges that: (i) the Shopping Center is not connected to a public sewage system, and that the sanitary wastewater generated at the Shopping Center is treated by an on-site sewerage treatment plant (the "Plant") and is discharged to groundwater; (ii) it has been advised by Landlord that the operation of the Plant allows for the discharge from the Plant of treated sanitary sewage wastes; and (iii) the placement of any material other than sanitary waste into the Plant may result in violations of regulations defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response Compensation and Liability Act, as amended, and the Clean Water Act, as amended, or other applicable federal, state or local environmental Laws, regulation, ordinance or rule, whether existing as of the date of this Lease or subsequently enacted (collectively, the "Environmental Laws"), subjecting Landlord to substantial penalties and the potential of Plant shutdown.

Tenant represents, covenants and agrees that it shall not in any manner emit, discharge, release or distribute or cause or permit the emission, discharge, release or distribution of any substances or

materials, into any facilities at the Shopping Center (including but not limited to toilets, sinks, dishwashers, washing machines or floor drains) that discharge into the Plant.

Tenant acknowledges that Landlord has advised Tenant that the use of products containing ammonia or ammonium have adverse effects on the Plant. Tenant represents, covenants and agrees that it shall not utilize any cleaning products or other products containing ammonia or ammonium, either by itself or in combination with soaps, detergents, scouring powders or other substances. In the event Tenant determines that it is an absolute necessity that it utilize a products containing ammonia or ammonium in the operation of its business, Tenant covenants, agrees and represents that the use of such products shall only be permitted upon receipt by Tenant of Landlord's written consent, which consent shall be in Landlord's sole discretion (and, if Landlord deems necessary, with the approval of appropriate governmental entities) and without limiting the foregoing, shall in no event be granted by Landlord unless Tenant satisfies the following conditions: (i) Tenant provides to Landlord proof satisfactory to Landlord that any such ammonia or ammonium product utilities and all waste generated therefrom shall not be discharged or permitted in any manner to enter any facility at the Shopping Center that could discharge into the Plant, but shall be disposed of off-site in compliance with all applicable Legal Requirements; and (ii) Tenant agrees to indemnify and hold Landlord harmless in the event Landlord incurs any damages due to Tenant's use of a product containing ammonia or ammonium, including damages arising from a violation of the Environmental Laws.

Tenant acknowledges that events in the future may occur with respect to the Plant, including but not limited to, enactment of new Legal Requirements, more stringent effluent limitations or Permit conditions that may require Landlord to prohibit the use by Tenant of other specific products or substances at the Shopping Center in order for Landlord to remain in compliance with its Permit. Tenant represents and covenants that upon receipt of Landlord's notification to Tenant of such prohibition ("Landlord's Notice"), Tenant shall immediately cease utilizing the substance or product specified in the Landlord's Notice.

A breach by Tenant of any of the conditions, agreements or covenants of Tenant under this Section 9 shall entitle Landlord to declare Tenant in default of this Lease, and Tenant will indemnify Landlord and each of the partners of Landlord, and their shareholders, trustees, officers, employees and agents, and hold it and them harmless from any and all damages, claims, losses, penalties, fines, liabilities and expenses (including attorney and consultant fees) incurred or suffered by Landlord arising from or related to Tenant's breach under this Section 9.

**10. Repairs and Alterations.**

(a) **Landlord's Repairs and Maintenance.** Landlord agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, the foundation, roof, roof drains, the exterior of the perimeter demising walls, and the load-bearing structural columns and beams in the Leased Premises, except that if such repairs or replacements arise from (i) repairs, installations, alterations, or improvements by or for Tenant or Tenant's Agents or any subtenant, concessionaires, licensees or their respective employees, agents, invitees, licensees or contractors; (ii) any act, omission or negligence of Tenant or any subtenant, concessionaires, or their respective employees, agents, invitees, licensees or contractors; or (iii) default under this Lease by Tenant, then Tenant shall make such repairs or

replacements or, if Landlord elects, Landlord may perform the work for Tenant's account and Tenant shall reimburse Landlord for expenses incurred plus overhead and interest as set forth in Section 10(c) below. Landlord shall not be required to commence any such repair until twenty (20) days after receipt of written notice from Tenant that the same is necessary. The provisions of this paragraph shall not apply in the case of damage or destruction by fire or other casualty or a taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by the Articles of this Lease dealing therewith. Tenant waives the provision of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense.

(b) **Tenant's Repairs and Maintenance.** Except as provided in Section 10(a) above, all portions of the Leased Premises shall be kept in good repair, condition and appearance by Tenant. Tenant shall maintain and make all repairs, replacements and alterations of every kind with respect to the Leased Premises to keep it in good condition, including the storefront, glass, all interior and exterior doors, signs, ceilings, interior walls, interior side of perimeter walls, floor, floor coverings, plumbing, electric, heating and air conditioning and all duct(s), vent(s), exhaust(s) and roof curbing and flashing associated with same, sprinklers and lighting fixtures, and other non-structural interior portions of the Leased Premises, and do all repairs required by any laws, ordinances or requirements of public authorities. Beginning at the point from which they serve the Leased Premises exclusively, whether located inside or outside, Tenant shall make all repairs, replacements and alterations necessary to maintain in good condition all lines, apparatus, ducts, and equipment relating to utilities (including heating, air conditioning, water, gas, electricity and sewerage). At all times during the Lease Term, Tenant shall maintain a monthly pest control contract and a service contract with a reputable air conditioning repair firm, fully licensed to repair air conditioning units in the state where the Shopping Center is located, for the monthly maintenance of the heating, ventilating and air conditioning ("HVAC") system servicing the Leased Premises, which firm shall regularly service and inspect the air conditioning unit(s) on the Leased Premises. Landlord shall have the right at any time during the Lease Term to approve or disapprove the HVAC contractor used by Tenant and to require Tenant to use only an air conditioning firm approved by Landlord. Promptly following receipt of Landlord's written request, Tenant shall provide Landlord with the most recent annual HVAC report. If Tenant shall fail to enter into or to maintain in full force and effect or to pay for such contract, then, at Landlord's option, Tenant shall be in default hereunder and Landlord shall have the right in addition, and without prejudice to all other rights and remedies available to Landlord, to contract for such services on Tenant's behalf and to pay any sums due to maintain such contract in force. Tenant shall, upon demand, pay to Landlord as Additional Rent the expenses so incurred by Landlord plus interest thereon from the date of payment at the Default Interest Rate. Tenant's sole right of recovery shall be against Tenant's insurers for loss or damage to stock, furniture and fixtures, equipment, improvements and betterments. Tenant shall also keep the sidewalks and the area immediately in front of the Leased Premises and the delivery area immediately in the rear of the Leased Premises clean and free from ice, snow, dirt and rubbish. All parts of the interior of the Leased Premises, including the storefront, shall be painted or otherwise decorated and refurbished (including, but not limited to, floor covering and wall covering) by Tenant as and when reasonably necessary, but at least once every five (5) years following the Commencement Date.

(c) **Failure to Repair.** If Tenant fails, refuses or neglects to properly and timely perform its obligations set forth in Section 10(b) above as required hereunder and to the reasonable satisfaction of

Landlord, or its representative, as soon as reasonably possible after demand, Landlord, or its representative, may make such repairs without liability to Tenant for any loss or damage that may occur to Tenant's merchandise, fixtures, or other property, or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay as Additional Rent Landlord's cost for making such repairs plus twenty percent (20%) for overhead and interest at the Default Interest Rate from the date Tenant is notified of the completion of repairs by Landlord. In the event that Landlord shall undertake any maintenance or repair in the course of which it shall be determined that such maintenance or repair work was made necessary by the negligence or willful act of Tenant or any of Tenant's Agents or that the maintenance or repair is, under the terms of this Lease, the responsibility of Tenant, Tenant shall pay Landlord's costs therefor plus overhead and interest as above provided in this Section 10(c).

(d) **Alterations.** No alterations, installations, additions or improvements will be made to the Leased Premises by Tenant without Landlord's prior written approval. Notwithstanding the foregoing, Tenant may make in a first-class manner such non-structural interior alterations to the Leased Premises as Tenant may deem necessary or desirable in connection with operation of its business in the Leased Premises so long as such alterations do not interfere with or otherwise affect the floor slab or any HVAC, plumbing, electrical, security, fire detection and protection or utility systems, except those installed by Tenant or exclusively serving the Premises. All such permitted alterations shall comply with applicable insurance requirements and governmental laws, and with all provisions of this Lease, and conform to the specification set forth in Exhibit D. All installations, alterations, additions and improvements, whether by Landlord, Tenant or any other person (except only sign panels and movable furnishings, equipment and trade fixtures installed at Tenant's cost) shall become, when made, a part of Landlord's real estate, and on termination of the Lease Term shall be surrendered with the Leased Premises in good condition. Tenant shall not have the right to remove sign boxes affixed to the exterior of the Leased Premises. For any work approved by Landlord that involves penetration of the roof surface, Tenant shall provide Landlord prior written notice and if requested by Landlord, shall employ Landlord's contractor. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no right to construct a mezzanine in the Leased Premises. All work shall be commenced promptly after Tenant has obtained all necessary permits and approvals. Tenant shall perform all work in accordance with the approved detailed specifications and working drawings and prosecute the work diligently and continuously to completion. Any work performed by Tenant, irrespective of cost, shall be subject to Landlord's inspection and approval after completion to determine whether the work complies with the requirements of this Lease. Tenant shall, promptly after the completion of any repairs or alterations, furnish Landlord with a set of "as built" plans and specifications therefor and evidence that all governmental permits and approvals have been "closed out".

(e) **Permits; Liens.** All repairs, installations, alterations, improvements and removals by Tenant will be done in a good and workmanlike manner, only after Tenant has procured all required permits. Tenant shall comply with all laws, ordinances and regulations of public authorities and with all Landlord's and Tenant's insurance requirements and with insurance inspection or rating bureaus; and the work shall not adversely affect the structure of the building. Tenant shall pay promptly when due all charges for labor and materials in connection with any work done by or for Tenant or anyone claiming under Tenant. Tenant shall remove, by payment, bonding or otherwise, within ten (10) days after notice, all liens placed on the public record or in any way against Landlord's interest or the Shopping

Center resulting from any act of Tenant or from labor or materials being alleged to have been supplied at the request of Tenant or anyone claiming under Tenant, failing which Landlord may remove such lien and collect all expenses incurred from Tenant as Additional Rent, including an administrative fee of fifteen percent (15%) of the amount of the lien. Tenant shall protect, defend, save harmless and indemnify Landlord and any fee owner of the Shopping Center from and against all losses, claims, liabilities, injuries, expenses (including legal fees), lawsuits and damages arising out of any lien described above. Notice is hereby given that Landlord is not and shall not be liable for any labor, services or materials furnished or to be furnished to Tenant or anyone holding the Leased Premises or any part thereof, and that no construction or other lien for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Leased Premises or the Shopping Center. All materialmen, contractors, laborers or other persons furnishing any services or materials to Tenant are hereby notified that they must look exclusively to Tenant to obtain payment for same. Tenant shall deliver written notice of the provisions of this Section 10(e) to all persons performing work in the Leased Premises.

**11. Signs; Painting; Displays.**

(a) No advertising or signs of any kind may be placed by Tenant or anyone claiming under Tenant on the exterior of the Leased Premises or doors other than signs that are in compliance with all laws, have been approved by Landlord and are in compliance with Exhibit B attached hereto (the "Sign Criteria"); provided, however, that Tenant may place small lettering on the door to the Leased Premises stating hours of operation. Tenant shall not utilize any banners, flashing, painted, neon or moving signs or lights without the prior written consent of Landlord. All interior signs shall be in strict compliance with all applicable laws, ordinances and regulations, and shall be professionally prepared and placed only on the interior of any windows. No signs will be placed on the exterior of any windows, doors or walls. Tenant shall not paint, decorate or mark any part of the exterior of the Leased Premises or interior of the windows of the Leased Premises. If an exterior sign panel is available on the fascia of the Leased Premises, Tenant shall, within thirty (30) days after the Rent Commencement Date, install an identification sign identifying Tenant's tradename, which sign shall be in accordance with Landlord's sign criteria set forth in Exhibit B, in compliance with applicable law and subject to Landlord's reasonable approval. Tenant shall remove its exterior signage at the end of the Lease Term and repair any damage caused by such removal; in the event Tenant does not do so, then Landlord may remove such signage (and repair any damage caused by such removal) at Tenant's expense and deduct the cost of the same from the Security Deposit. Tenant shall obtain and pay for all required permits and licenses relating to any such signs Tenant is permitted to install at the Leased Premises. Copies of all such permits and licenses shall be delivered to Landlord upon request.

(b) Notwithstanding anything to the contrary contained herein, Tenant shall install and maintain the signage on the exterior of the Leased Premises, subject to: (i) the written approval of Landlord as to location, dimensions, material and method of attachment, which approval shall not be unreasonably withheld, conditioned or delayed; and (ii) the applicable Legal Requirements.

**12. Indemnity; Insurance.**

(a) Indemnity. Tenant will indemnify Landlord and its partners, members, affiliates and subsidiaries and all of their respective officers, trustees, directors, employees, partners, representatives,

servants, insurers, agents and property managers (collectively "Landlord Indemnitees") and agrees to hold each of the Landlord Indemnities harmless from and against, and at Landlord's option, defend it from and against any and all claims, actions, damages, liabilities and expenses (including attorneys' and other professional fees) in connection with loss of life, personal injury or damage to property arising from or out of the design, use, or occupancy by Tenant of (i) the Leased Premises by Tenant or Tenant's Agents; and (ii) the Common Areas to the extent caused by the act or omission of Tenant or any of the Tenant's Agents. Landlord will indemnify Tenant and agree to save it harmless from and against any and all claims, action, damages, liabilities and expenses (including attorneys' and other professional fees) in connection with loss of life, personal injury and property damages occurring in the Common Areas to the extent occasioned by the gross negligence or willful misconduct of Landlord, its officers, agents, or employees. The obligations in this Section 12(a) will survive this Lease.

(b) Landlord Not Responsible for the Acts of Others. Landlord will not be responsible or liable to Tenant or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining the Leased Premises or adjacent to or connecting with the Leased Premises or any other part of the Shopping Center or otherwise or for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, or water, gas, sewer or steam pipes. To the maximum extent permitted by Laws, Tenant agrees to use and occupy the Premises and to use the Common Areas, at Tenant's own risk.

(c) Tenant's Insurance. Beginning on the Commencement Date and continuing throughout the Term including any holdover, Tenant will keep in full force and effect:

(i) Liability Insurance. Commercial general liability insurance insuring the Leased Premises and Tenant's use, together with contractual liability endorsements covering Tenant's obligations with a minimum limit of Two Million and 00/100 Dollars (\$2,000,000.00) on account of bodily injuries to or death or property damage for each occurrence and a minimum limit of Three Million and 00/100 Dollars (\$3,000,000.00) annual general aggregate. If Tenant sells or furnishes alcohol, it will obtain a policy of liquor liability ("dram shop") insurance with those limits. The aggregate limit may be satisfied through a combination of primary and umbrella/excess liability insurance. Such insurance will also provide that the general aggregate limits apply separately to each insured location. The policy will name Landlord and such other parties as Landlord may from time to time designate in writing to Tenant as additional insureds and will bear endorsements to the effect that the insurer agrees to notify all additional insureds not less than thirty (30) days in advance of any modification or cancellation.

(ii) Property Damage Insurance. "Special form" cause of loss insurance insuring all leasehold and building improvements in the Leased Premises which were originally constructed by Tenant, Tenant's stock-in-trade, trade fixtures, furniture, furnishings, special equipment, floor and wall coverings, and all other items of personal property of Tenant located on or within the Leased Premises, such coverage to be in an amount equal to the replacement cost and primary and non-contributory to any insurance carried by Landlord. The policy will name Landlord and such other parties as Landlord may from time to time designate in writing to Tenant as loss payee under Tenant's insurance policy and

will bear endorsements to the effect that the insurer agrees to notify all loss payees not less than thirty (30) days in advance of any modification or cancellation.

(iii) Workers' Compensation Insurance. Workers' compensation including coverage for occupational disease, and employer's liability insurance covering all employees and any volunteer and non-paid personnel of Tenant (whether or not Tenant is a sole proprietorship) will be in compliance with all Legal Requirements. Workers' compensation insurance will be in an amount not less than the statutory minimum and employer's liability insurance will be in an amount not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for each accident, Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for each employee and any volunteer and non-paid personnel of Tenant and Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for a policy limit.

(iv) Automobile Liability. Automobile liability insurance covering all owned, non-owned and hired vehicles with a combined single limit of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage liability.

(v) Business Income. Business income insurance in an amount equal to the Base Rent, Percentage Rent, if any, and any other Additional Rent payable under this Lease for a minimum period of twelve (12) months.

(d) Proof of Insurance, Quality of Carrier and Landlord's Right to Acquire Insurance. Prior to entering the Leased Premises for the completion of Tenant's Work or otherwise, Tenant will deliver to Landlord certificates of insurance evidencing the coverages required to be maintained by Tenant and thereafter a current certificate of insurance will be delivered to Landlord upon request. All policies of insurance will be in a form reasonably satisfactory to Landlord with companies having an A.M. Best Rating (or its equivalent) of A-VII or better. Landlord may, at its option, refuse to deliver possession of the Leased Premises to Tenant if Landlord has not received evidence of such insurance. If Tenant fails to maintain such insurance, Landlord may, but will not be obligated to, cause such insurance to be acquired and in such event, Tenant will pay the premium for such insurance as Additional Rent promptly upon Landlord's demand. All policies of insurance obtained by Tenant must include an endorsement that they are primary insurance as respects Landlord and that any other insurance obtained by Landlord is excess and noncontributing with Tenant's insurance.

(e) Landlord's Liability. Landlord will not be liable for any damage to Tenant's property, regardless of the cause of such damage, even if caused by Landlord's acts or omissions or the acts or omissions of Landlord's agents or representatives or other tenants in the Shopping Center.

(f) Increase in Fire Insurance Premium. Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Leased Premises any article which may be prohibited by the standard form of Special Causes of Loss property insurance policy. Tenant agrees to pay any increase in premiums for fire and extended coverage insurance that may be charged during the Lease Term on the amount of such insurance which may be carried by Landlord on the Leased Premises or Shopping Center, resulting from the type of merchandise sold by Tenant in the Leased Premises or resulting from Tenant's use of the Leased Premises, whether or not Landlord has consented to the same.

(g) **Loss and Damage of Tenant's Property.** Landlord shall not be liable for any damage to property of Tenant or of others located on the Leased Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. All property of Tenant or of others kept or stored on the Leased Premises shall be so kept or stored at the risk of Tenant only. Tenant agrees that neither Landlord nor any of the Indemnitees shall be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Leased Premises or any of the buildings on the Shopping Center, or otherwise, or for any loss or damage resulting to Tenant or those claiming by, through or under Tenant, or its or their property, from the bursting, stopping or leaking of water, gas, sprinkler, sewer or steam pipes.

13. **Access to Leased Premises.**

Landlord shall have the right (but shall not be obligated) to enter the Leased Premises at all times upon reasonable prior notice (and in case of emergency with no notice) to make any repairs, alterations, or improvements, including the installation or removal of pipes, wires and other conduits serving other parts of the Shopping Center or to inspect or to show the Leased Premises to prospective purchasers or Mortgagees. Commencing twelve (12) months prior to expiration of the Lease Term, Landlord may enter the Leased Premises pursuant to the terms hereof to show the Leased Premises to prospective tenants and/or to maintain "For Rent" signs on the front or any other part of the exterior of the Leased Premises, and Tenant agrees that Tenant shall not interfere with or remove such signs. Landlord further reserves to itself the exclusive right at any time to use the roof, foundation or exterior walls (other than Tenant's storefront) for placing of signs or equipment or for the purpose of additional construction.

14. **Fire or Other Casualty.**

(a) **Notice.** Tenant shall give prompt notice to Landlord in case of fire or other damage to the Leased Premises.

(b) **Lease Termination.** If (i) the Shopping Center buildings are damaged to the extent of more than twenty-five percent (25%) of the estimated replacement cost; (ii) such damage results from a cause not insured; (iii) the cost of repair or restoration exceeds the amount of insurance proceeds received by Landlord and available for restoration of the Leased Premises; (iv) the Leased Premises are damaged to the extent of more than fifty percent (50%) of the replacement cost (as determined by a reputable contractor selected by Landlord); (v) the Leased Premises are damaged and Tenant is not operating for business as required by Section 3(b) at the time the damage occurs; or (vi) the Leased Premises are damaged and less than two (2) years of the Lease Term remains unexpired at the time of the fire or other casualty; then in any of such events, Landlord may terminate this Lease by notice to Tenant within one hundred eighty (180) days after such event, and on the date specified in the notice this Lease shall terminate.

(c) **Replacement of Leased Premises.** If this Lease is not terminated as aforesaid, this Lease shall continue in full force and effect (Tenant waives any right conferred by any applicable law to terminate this Lease based on the damage), and Tenant shall promptly on notice from Landlord, remove

its fixtures, other property and debris as required by Landlord, and then Landlord shall rebuild the Leased Premises to the condition existing when the Leased Premises was originally delivered to Tenant exclusive of any trade fixtures or improvements installed by Tenant (but only to the extent insurance proceeds are adequate and available for such purposes); and upon Landlord providing Tenant written notice of the completion thereof, Tenant shall restore Tenant's property and within thirty (30) days following Landlord's written notice of completion reopen for business. Tenant shall use the proceeds of any recovery on Tenant's insurance policies for restoration of improvements made by Tenant to the Leased Premises, and for restoration and/or replacement of Tenant's equipment, trade fixtures and inventory, and to cover any business interruption loss. If the damage, repair or rebuilding renders the Leased Premises wholly or partially untenantable, and so long as the casualty was not caused by Tenant, there shall be a fair and equitable proportionate abatement of all Rent from the date when the damage occurred until the date when the Leased Premises have been restored by Landlord based on the proportion of the Leased Premises rendered untenantable.

(d) Tenant hereby specifically waives any and all rights it might otherwise have under any law or statute, as a result of a fire or other casualty occurring with respect to the Premises or the Shopping Center. Tenant hereby waives all rights to terminate this Lease it may have by reason of damage to the Premises as a result of fire or other casualty pursuant to any presently existing or hereafter enacted statute or other law.

**15. Eminent Domain.**

(a) **Leased Premises Taken.** If the whole of the Leased Premises is taken in connection with eminent domain, the Lease Term shall expire when Landlord shall be divested of its title, and Rent shall be apportioned as of that date. If only part of the Leased Premises is taken in connection with eminent domain, and the Gross Leasable Floor Area of the Leased Premises is reduced by twenty-five percent (25%) or more, Landlord may terminate this Lease by giving written notice to Tenant within sixty (60) days after such taking, effective as of the date possession of the taken part shall be required for public use, and Rent shall be apportioned as of that date. Tenant shall not have any claim for an award based on the loss of its leasehold estate. If this Lease is not so terminated pursuant to this provision, then Landlord shall promptly restore the Leased Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking exclusive of any trade fixtures or improvements installed by Tenant and provided that Landlord shall not be required to expend more on such restoration than an amount equal to the condemnation award received by Landlord (less all expenses, costs and legal fees incurred by Landlord in connection with such award) multiplied by a fraction the numerator of which is the number of square feet of the Gross Leasable Floor Area of the Leased Premises so taken and the denominator of which is the number of square feet of the Gross Leasable Floor Area of the Shopping Center so taken), and this Lease shall continue in full force and effect except that the Rent shall be reduced in proportion to the portion of the Leased Premises lost in the taking.

(b) **Shopping Center Taken.** If any part of the Shopping Center is taken by condemnation so as to render, in Landlord's sole judgment, the remainder unsuitable for use as a retail shopping center, Landlord shall have the right to terminate this Lease, upon notice to Tenant, within one hundred twenty

(120) days after possession is taken by such condemnation. If Landlord terminates this Lease, it shall terminate as of the date set forth in Landlord's notice to Tenant, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to such date with a proportionate refund by Landlord of any Rent which shall have been paid in advance for periods subsequent to such date.

(c) **Damages.** All awards arising from a total or partial taking of the Leased Premises or the Shopping Center or of Tenant's leasehold interest, shall belong to Landlord without any participation by Tenant. Nothing contained herein shall be construed to preclude Tenant, at its sole cost and expense, from independently prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, depreciation to, damage to, cost of removal of and for the value of stock, trade fixtures, furniture and other personal property belonging to Tenant, and any award therefor shall belong solely to Tenant.

#### 16. Defaults and Remedies.

(a) **Events of Default.** Any one of the following shall constitute an event of default by Tenant under this Lease (each an "Event of Default"): (i) if Tenant fails to pay the Security Deposit, Base Rent, Additional Rent or any other monetary amount as and when same becomes due and such failure shall continue for five (5) days after Landlord shall have given notice of the failure to Tenant; (ii) if Tenant fails to timely pay any Base Rent, Additional Rent or any other monetary amount on two (2) or more occasions in any twelve (12) consecutive month period during the Lease Term (e.g., Landlord shall only be obligated to deliver the five (5)-day notice and cure period set forth in (i) above with respect to first late payment in any twelve (12) consecutive month period); (iii) if Tenant fails to perform or observe any other agreement or condition on its part to be performed or observed pursuant to this Lease, and fails to remedy same within thirty (30) days after written notice thereof is given by Landlord to Tenant; provided, however, in the case of any default referred to in this subsection (iii) which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, if Tenant shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity (not to exceed ninety (90) days); (iv) if Tenant fails to perform or observe Tenant's obligations under Article 12 herein, and fails to remedy same within five (5) business days after written notice thereof is given by Landlord to Tenant; (v) if Tenant fails to cure, immediately after notice from Landlord, any Contamination (as defined below) or any hazardous condition which Tenant has created or suffered in violation of law or this Lease; (vi) if Tenant defaults under any other lease or agreement between Tenant and Landlord or an affiliate of Landlord; (vii) if Tenant's leasehold interest is levied on, attached or taken by any process of law; (viii) if Tenant makes an assignment of its property for the benefit of creditors; (ix) if any bankruptcy, insolvency or reorganization proceeding or arrangement with creditors (whether through court or by proposed composition with creditors) is commenced by or against Tenant or any guarantor of Tenant's obligations; (x) if a receiver or trustee is appointed for any of Tenant's property; (xi) if this Lease is transferred to or devolves on, or the Leased Premises is occupied by, anyone other than Tenant except if specifically permitted by this Lease; or (xii) if Tenant shall fail to open for business in the Leased Premises or if Tenant shall abandon, vacate or

otherwise cease doing business at the Leased Premises for more than seven (7) consecutive Shopping Center business days (except for temporary closures due to casualty).

(b) **Remedies.** If an Event of Default described in Section 16(a) occurs, then Landlord or its agent shall have any or all of the following rights:

(i) To terminate this Lease by giving Tenant written notice specifying the day of termination (which shall be not less than five (5) days from the date of the notice), on which date this Lease and all of Tenant's rights will cease as a conditional limitation, as if that date specified in Landlord's notice was the original date for expiration of this Lease; but in all cases Tenant shall remain liable as hereinafter provided;

(ii) To enter the Leased Premises and dispossess Tenant and all other occupants and their property by legal proceedings or otherwise without terminating this Lease, Tenant hereby waiving any claim it might have for trespass or conversion or other damages if Landlord exercises such remedy;

(iii) To enter the Leased Premises and remove all or any part of the Tenant's property from the Leased Premises and without notice to Tenant sell same for the sole benefit of Landlord or store same in any public warehouse or elsewhere at the cost of, and for the account of Tenant, in which case Landlord shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise, Tenant hereby waiving any claim it might have for trespass or conversion or other damages if Landlord exercises such remedy;

(iv) To, in the event of a breach or threatened breach of this Lease by Tenant, obtain an injunction against Tenant or invoke any remedy allowed at law or in equity;

(v) To declare (a) all accrued Rent, and (b) the present value of all the aggregate Rent for the accelerated balance of the Lease Term, to be immediately due and payable, and to recover immediately against Tenant all such Rent, including Base Rent, Percentage Rent (if any), Taxes, Operating Expenses and all Additional Rent, which amount shall be for the reasonable liquidated damages for default of this Lease and not a penalty. The present value of all the aggregate Rent for the accelerated balance of the Lease Term shall be calculated with a discount factor of four percent (4%) per annum of the entire amount of Base Rent, Percentage Rent (if any), all Additional Rent, charges and assessments which in Landlord's reasonable determination would become due and payable during the remainder of the Lease Term (in the absence of the termination of this Lease); and/or

(vi) Landlord, with or without terminating this Lease, may immediately, or at any time thereafter, relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the Lease Term), at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, and Landlord may make any alterations, redecorations or repairs to the Leased Premises which it may deem reasonably necessary or proper to facilitate such reletting; and Tenant shall pay all costs of such reletting including, but not limited to, the reasonable cost of any such alterations and repairs made to the Leased Premises, reasonable attorneys' fees and brokerage commissions related to obtaining possession. I making a

new lease with another tenant, free rent or concessions, lease assumptions and any other costs reasonably associated with reletting the Leased Premises. Landlord's refusal or failure to relet the Leased Premises shall not release or affect Tenant's liability hereunder and Landlord shall not be liable for failure or refusal to relet, or for failure to collect rent under such reletting. If this Lease will not have been terminated, Tenant shall continue to be liable as hereinafter provided.

Mention of any particular remedy shall not preclude Landlord from any other remedy in law or in equity and Tenant acknowledges and agrees that nothing in this Lease is intended to limit any remedies available to Landlord at law or in equity under applicable law, in the event Tenant defaults under this Lease.

(c) **Re-Entry; Continuing Liability.** No reentry or taking possession of the Leased Premises by Landlord or any other action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease or an election by Landlord to terminate this Lease. Notwithstanding any re-entry, dispossession or termination of the Lease by Landlord, Tenant will remain liable for damages to Landlord in an amount equal to the aggregate of all Rent and other charges required to be paid up to the time of such re-entry, dispossession or termination. In addition, Landlord may recover from Tenant all damages Landlord may suffer by reason of such default, including the cost of recovering the Leased Premises (which costs shall include, without limitation, court costs and reasonable attorneys' fees).

(d) **Failure of Performance by Tenant.** If Tenant shall default under this Lease, Landlord may, at its election, immediately or at any time thereafter, without waiving any claim for breach of agreement, and without notice to Tenant, cure such default or defaults for the account of Tenant, and the cost to Landlord thereof plus interest at the Default Interest Rate shall be deemed to be Additional Rent and payable on demand.

(e) **Waiver.** Tenant hereby expressly, unconditionally and irrevocably waives all of the following: (i) any and all rights Tenant may have to interpose or assert any non-compulsory counterclaim or setoff in any action brought by Landlord based in whole or in part on nonpayment of Rent, even if such counterclaim or setoff is based on Landlord's alleged breach of a duty to repair or alleged breach of quiet enjoyment (Landlord and Tenant hereby stipulate and agree that any such counterclaim shall be severed and tried separately from the action brought by Landlord for nonpayment of Rent); (ii) any and all rights Tenant may have to consequential damages incurred by Tenant, including but not limited to lost profits or interruption of business, as a result of any default by Landlord; and (iii) any and all rights Tenant may have in the Leased Premises or any goods or personal property therein in the event Tenant is evicted and dispossessed of same.

(f) **Bankruptcy.** In the event (i) Tenant shall become a debtor under Chapter 7 of the Bankruptcy Code; (ii) a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapter 11 or Chapter 13 of the Bankruptcy Code; or (iii) a proceeding is filed under Chapter 7 and is transferred to Chapter 11 or Chapter 13 then, in any such case, the trustee or Tenant, as debtor and as Debtor-In-Possession, shall, (x) within the statutory time, assume or reject this Lease; and (y) may not elect to assume this Lease, unless at the time of such assumption, the trustee or Tenant has cured or provided Landlord "Adequate Assurance" (as defined under bankruptcy law) and further provided that:

(A) within the time set forth in the Bankruptcy Code, the trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in the Lease, and actual attorneys' fees incurred as a result of the default and/or to enforce the terms hereof; (B) within the time set forth in the Bankruptcy Code, the trustee or Tenant will cure all non-monetary defaults under this Lease; and (cc) the assumption will be subject to all of the provisions of this Lease.

For the purposes of this Section 16(f), Landlord and Tenant acknowledge that, in the context of the bankruptcy proceeding of Tenant, the Leased Premises is a leased real property within a shopping center. If the trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 16(f) for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the trustee, Tenant or proposed assignee has complied with all the terms, covenants and conditions of this Lease, including without limitation those with respect to Additional Rent and the use of the Leased Premises only as permitted in Section 1(i) herein; Landlord and Tenant acknowledging that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee, shall upon request, execute and deliver to Landlord an instrument confirming such assignment and shall deposit a sum equal to three (3) months' rent and Additional Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under this Lease.

**17. Subordination.**

(a) **Subordination.** This Lease shall be subordinate to the lien of any present Mortgage which term "present Mortgage" shall be deemed to include, without limitation, any spreading agreements, renewals, modifications, consolidations, future advances, replacements and extensions thereof or future Mortgage irrespective of the time of recording of such Mortgage. Tenant acknowledges that the Premises is also subject to that certain Master Lease (the "Master Lease") dated as of April 1, 2022, by and between various parties as landlord (the "Master Lessor"), and Landlord as tenant, and that this Lease shall in all respects be subject and subordinate to the terms of the Master Lease and any other ground lease, master lease or underlying lease now or hereafter placed on the property containing the Premises. No further documentation shall be required to evidence the foregoing; provided, however, that in confirmation of such subordination, Tenant shall execute promptly any certificate, in recordable form, that Landlord may reasonably request. However, from time to time, Landlord may elect that this Lease be paramount to the lien of such Mortgage and may exercise such election by giving notice thereof to Tenant, which notice must be concurred in by such Mortgagee. The exercise of any of the elections provided in this Section 17(a) shall not exhaust Landlord's right to elect differently thereafter, from time to time. This clause shall be self-operative and no further instrument shall be required, however, upon Landlord's request, from time to time, Tenant shall (i) confirm in writing and in recordable form that this Lease is so subordinate or so paramount (as Landlord may elect) to the lien of any Mortgage or Master Lease; and/or (ii) execute an instrument making this Lease so subordinate or so paramount (as Landlord may elect) to the lien of any Mortgage

or Master Lease, in such form as may be required by an applicable Mortgagee or Master Lessor. If Tenant shall fail to return such confirmation and/or subordination instrument within ten (10) days following Landlord's request therefore, such failure shall be deemed an Event of Default hereunder without the benefit of any additional notice or cure period.

(b) In the event Master Lessor shall succeed to the rights of Landlord, or if any lessor of any underlying or ground lease shall succeed to the position of Landlord under this Lease, then Tenant will recognize such successor landlord as Landlord of this Lease and pay the rent and attorn to and perform the provisions of this Lease for the benefit of any such successor Landlord, and Master Lessor will recognize Tenant under this Lease. No documentation other than this Lease shall be necessary to evidence such attornment but Tenant agrees to execute any documents, in recordable form, reasonably requested by the successor Landlord to confirm such attornment or to otherwise carry out the intent and purposes of this Section 17(b).

The term "Mortgage" shall mean any mortgage, deed to secure debt, trust indenture, or deed of trust which may now or hereafter affect, encumber or be a lien upon the Leased Premises, the Shopping Center, the real property of which the Shopping Center forms a part, or Landlord's interest therein; and any spreading agreements, future advances made pursuant to any existing Mortgage, renewals, modifications, consolidations, replacements and extensions thereof.

The term "Mortgagee" shall mean the holder of any Mortgage, at any time.

(c) Attornment.

If the Leased Premises or the Shopping Center are encumbered by a Mortgage and such Mortgage is foreclosed, or if the Leased Premises or Shopping Center are sold pursuant to such foreclosure or by reason of a default under said Mortgage, then notwithstanding such foreclosure, such sale, or such default (i) Tenant shall not disaffirm this Lease or any of its obligations hereunder; and (ii) at the request of the applicable Mortgagee or purchaser at such foreclosure or sale, Tenant shall attorn to such Mortgagee or purchaser and execute a new lease for the Leased Premises setting forth all of the provisions of this Lease except that the term of such new lease shall be for the balance of the Lease Term.

If Landlord's interest in the Leased Premises is a leasehold interest, at any time, and if Landlord's leasehold interest is terminated for any reason; then notwithstanding such termination the dispossession of Landlord from the Leased Premises or the Shopping Center, or any default by Landlord, as lessee, under any Master Lease, (i) Tenant shall not disaffirm this Lease or any of its obligations contained within this Lease; and (ii) at the request of the Master Lessor, Tenant shall attorn to the applicable Master Lessor and execute a new lease for the Leased Premises setting forth all of the provisions of this Lease except that the term of such new lease shall be for the balance of the Lease Term.

(d) Notice and Right to Cure. Provided Tenant was given notice in writing of the names and addresses to which the notices should be sent, Tenant shall give prompt written notice of any default by Landlord to any Mortgagee and Master Lessor if the default is such as to give Tenant a right to (i)

terminate this Lease; or (ii) reduce the Rents or any other sums reserved; or (iii) credit or offset any amounts against Rents. Any Mortgagee or Master Lessor shall have the right to cure Landlord's default within sixty (60) days after receipt of Tenant's notice; and no such rights or remedies shall be exercised by Tenant until the expiration of said sixty (60) days (or such additional time reasonably required to cure such default).

**18. Waiver of Subrogation.**

Notwithstanding anything to the contrary contained herein, Tenant hereby waives and releases all claims against Landlord, and against Landlord's agents and employees, for any loss or damage sustained by Tenant to the extent such claims are or could be insured against under any standard broad form policy of fire and extended coverage insurance, or under any fire and extended casualty insurance policy maintained by Tenant under this Lease, or required to be maintained by Tenant under this Lease, regardless of whether such policy is in effect at the time of the loss. Tenant will cause its insurance carriers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with damage to the Leased Premises or any portions thereof or any personal property thereon; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Tenant will cause all other occupants of the Leased Premises claiming by, under or through Tenant to execute and deliver to Landlord a waiver of claims similar to the aforementioned waiver and to obtain such waiver of subrogation rights endorsements.

**19. Assignment or Subletting.**

(a) **Landlord's Consent.** Tenant shall not assign, convey or otherwise transfer this Lease or any interest therein, either voluntarily or by operation of law or otherwise, or sublet the whole or any part of the Leased Premises, or permit occupancy by anyone else, without obtaining on each occasion Landlord's prior written consent, in Landlord's sole discretion. The transfer of any corporate stock, partnership interest, membership interest or other interest in Tenant, or a merger, consolidation, acquisition or liquidation of or by Tenant, either voluntarily or by operation of law, shall be deemed an assignment and require Landlord's consent as stated above, except if Tenant is a public corporation and such transfer of stock is through a recognized stock exchange. In any assignment the assignee must assume this Lease in writing on Landlord's form. Any such assignment, conveyance, transfer or sublease made in violation of this Section 19(a) shall be void. Tenant may not enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of space in the Leased Premises which provides for a rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the property leased, occupied or utilized, or which would require the payment of any consideration which would not fall within the definition of "rents from real property", as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

(b) **Application.** In the event Tenant desires to assign this Lease or sublet or otherwise transfer the Leased Premises or any portion thereof, Tenant shall make written application to Landlord at least ninety (90) days prior to the proposed commencement date of such subletting or assignment, which application shall set forth the name and address of the proposed subtenant or assignee, the relevant terms of any sublease or assignment, a copy of the proposed sublease or assignment

agreement, and copies of financial reports, business experience resume and other relevant financial information of the proposed subtenant or assignee which Landlord may reasonably require, including but not limited to tax returns, credit reports and details of operating history. At Landlord's option, any document evidencing the assignment, assumption and/or consent will be prepared by Landlord or its attorneys. Landlord shall have the right, as a condition of Landlord's consent to a proposed assignment, conveyance, transfer or sublease, to require (i) that the assignee provide the Landlord with an additional security deposit (in addition to any security deposits, advance rent or other sums or security then being held by the Landlord) in such amount as is determined by Landlord in its discretion; and/or (ii) that any or all shareholders or other principals of the assignee and their respective spouses enter into a guaranty agreement on Landlord's standard form, whereby such parties jointly and severally guarantee payment of all sums and performance of all other duties and obligations on the part of the Tenant and assignee to be paid and performed under this Lease and/or that the Base Rent shall be increased to the current market rent rate. Any request for Landlord's consent to assignment or subletting shall be accompanied by the non-refundable payment of an application fee ("Application Fee"), which shall be equal to Five Hundred and 00/100 Dollars (\$500.00), to compensate Landlord for the costs and expenses to be incurred by Landlord in evaluating such assignment or subletting. In the event Landlord consents to a transfer, Tenant shall pay to Landlord a Transfer Fee in the amount of Two Thousand and 00/100 Dollars (\$2,000.00) as reimbursement to Landlord for its expenses in connection with the preparation and review of transfer related documents, provided, however, the Five Hundred and 00/100 Dollars (\$500.00) Application Fee shall be credited toward the Transfer Fee.

(c) **Continuing Liability.** Notwithstanding an assignment or subletting or occupancy of the Leased Premises by anyone other than Tenant, Tenant shall not be released (nor shall any of Tenant's constituents, partners, or members be released) from any obligations, liabilities or covenants under this Lease and shall continue to remain responsible. Landlord shall have the right to collect Rent from any assignee, subtenant or other occupant without releasing Tenant or waiving any right against Tenant for its default under this Article 19 and without accepting the payor as a permitted tenant. In addition, Tenant shall pay to Landlord any positive difference between any rent or other amounts payable under any sublease or assignment to which Landlord grants its consent hereunder, and the Rent payable hereunder. Under any circumstances, Landlord shall not be liable for any money damages to Tenant or Tenant's proposed assignee, transferee or subtenant for refusal to consent to any assignment or transfer of this Lease or transfer of Tenant's corporate stock or sale of Tenant's business or for refusal to consent to any subletting; Tenant's sole remedy shall be specific performance.

(d) **Encumbrance.** Neither this Lease nor the Lease Term shall be mortgaged, pledged or encumbered, either voluntarily or by operation of law or otherwise, by Tenant, nor shall Tenant mortgage, pledge or encumber the interest of Tenant in and to any sublease of the Leased Premises or the rental payable thereunder, without the prior written consent of Landlord, which consent may be granted or withheld in the sole discretion of Landlord. Any such mortgage, pledge or encumbrance made in violation of this Section 19(d) shall be void.

(e) In addition to any other conditions set forth in this Article 19, any request by Tenant to assign this Lease or sublease the Leased Premises shall be subject to the following conditions:

(i) Tenant shall not be in Event of Default under this Lease at the time Landlord's consent is requested or at the effective date of the assignment or subletting.

(ii) The Leased Premises shall be used by the assignee or subtenant subject to and in accordance with the provisions of Article 3 of this Lease; and for no other purpose.

(iii) In the case of an assignment, it shall provide for the assignment of Tenant's entire interest of this Lease and the acceptance by the assignee of said assignment and its assumption and agreement to perform directly for the benefit of Landlord all of the terms and provisions of this Lease on Tenant's part to be performed.

(iv) In the case of a subletting, it shall be expressly subject to all of the obligations of Tenant under this Lease and the further condition and restriction that the sublease shall not be assigned, encumbered or otherwise transferred or the subleased premises further sublet by the sublessee in whole or in part, or any part thereof suffered or permitted by the sublessee to be used or occupied by others, without the prior written consent of Landlord in each instance.

(f) Any attempted transfer, assignment or subletting without Landlord's consent shall be void and confer no rights upon any third person. The consent by Landlord to any transfer, assignment or subletting shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future transfer, assignment or subletting. No transfer, or subletting shall be effective unless and until (i) Tenant gives notice thereof to Landlord; and (ii) the transferee, assignee or sublessee shall deliver to Landlord: (A) a written agreement in the form and substance satisfactory to Landlord pursuant to which the transferee, or assignee assumes all of the obligations and liabilities of Tenant under this Lease; and (B) a copy of the assignment agreement or sublease. Tenant may not enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of space in the Leased Premises which provides for a rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the property leased, occupied or utilized, or which would require the payment of any consideration which would not fall within the definition of "rents from real property" as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

(g) **Recapture Right.** Notwithstanding the foregoing, in the event Tenant requests Landlord's consent to assign this Lease or sublet or otherwise transfer the Leased Premises or any portion thereof, Landlord shall have the right to cancel this Lease by written notice to Tenant within ninety (90) days after receipt of Tenant's written request for Landlord's consent thereto, which termination shall be effective not less than ninety (90) days after Tenant's receipt of such notice to terminate.

## **20. Surrender and Holding Over.**

(a) **Surrender.** At the expiration or sooner termination of the tenancy hereby created, Tenant shall peaceably leave and surrender the Leased Premises to Landlord broom-clean and in good repair and condition, reasonable wear and tear arising from Tenant's Permitted Use of the Leased Premises as specified herein excepted, and Tenant shall surrender all keys for the Leased Premises to

Landlord and shall inform Landlord of all combinations on locks, safes and vaults (if any) in the Leased Premises. Prior to the expiration or sooner termination of this Lease, Tenant shall remove any and all trade fixtures, equipment, signage and other unattached items which Tenant may have installed, stored or left in the Leased Premises or elsewhere in the Shopping Center, and Tenant shall repair any damage caused by such removal. Notwithstanding the foregoing, Tenant shall not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including but not limited to wall-to-wall carpeting), walls or ceilings, all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of Landlord, nor shall Tenant remove any fixtures or machinery that were furnished or paid for by Landlord (whether initially installed or replaced). If Tenant shall fail to remove its trade fixtures or other property as provided in this Section 20(a), such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant and at the option of Landlord shall become the property of Landlord, or at Landlord's option may be removed by Landlord at Tenant's expense, or placed in storage at Tenant's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall belong to Landlord. In the event Tenant does not remove its signage or make the repairs as required by this Section 20(a), Tenant shall be liable for and agrees to pay Landlord's costs and expenses in removing such signage and making such repairs (which sum may be deducted from the Security Deposit). Tenant's obligations and covenants under this Section 20(a) shall survive the expiration or termination of this Lease.

(b) Holding Over. Landlord and Tenant recognize and agree that the damage to Landlord resulting from any failure by Tenant timely to surrender possession of the Leased Premises as aforesaid will exceed the amount of the Base Rent theretofore payable hereunder, and accurate measurement will be impossible. Tenant therefore agrees that if Tenant or anyone claiming under Tenant remains in possession of the Leased Premises after the expiration of the Lease Term, such party shall be a tenant at sufferance; and during such holding over, Base Rent and all items of Additional Rent shall be twice the rate which was in effect immediately prior to the Lease Term expiration, which Landlord may collect without admission that Tenant's estate is more than a tenancy at sufferance, and all the other provisions of this Lease shall apply insofar as the same are applicable. In the event Tenant holds over in the Leased Premises, then, whether or not Tenant is charged twice the Base Rent and Additional Rent as set forth herein, Tenant hereby relinquishes any right Tenant may have to receive a return of the Security Deposit at the end of such hold over period, and Tenant shall remain liable for all costs, expenses, claims, liabilities and damages of whatever kind and nature which arise from such holdover.

## 21. Hazardous Materials.

(a) Tenant's Compliance with Environmental Laws. Tenant, at Tenant's expense will comply with all Legal Requirements pertaining to air and water quality, Hazardous Materials (as defined below), waste disposal, air emissions and other environmental matters. Tenant will immediately notify Landlord in writing of any notice or claim which Tenant receives or of which Tenant may become aware pertaining to any environmental matter on or about the Leased Premises.

(b) Tenant's Indemnity. Tenant will not permit any Hazardous Materials to be brought on, stored, disposed of or used in or about the Leased Premises or any other portion of the Shopping Center, by Tenant or any of its agents, employees, contractors or invitees, except cleaning substances

and cleaning solutions customarily used in the ordinary course of Tenant's business, all of which will be used in compliance with all Legal Requirements. If the presence of Hazardous Materials on the Leased Premises caused or permitted by Tenant results in contamination of the Leased Premises, the Shopping Center or any other property, Tenant will indemnify, defend and hold Landlord harmless from any and all loss, liability or expense (including without limitation, diminution in the value of the Leased Premises or the Shopping Center, damages for loss or restriction on use of space or of any amenity or appurtenance of the Shopping Center, damages arising from any adverse impact on marketing of leased space or land area, sums paid in settlement of claims, reasonable attorney fees, court costs, consultant fees and expert fees) that arise during or after the Lease Term as a result of the contamination. Tenant's indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up or remedial work, removal or restoration work required by any federal, state or local governmental agency because of Hazardous Material present in the soil or groundwater on or under the Leased Premises, Shopping Center or any other property. If the presence of any Hazardous Materials on the Leased Premises or any other property caused or permitted by Tenant results in any contamination of the Leased Premises or the Shopping Center, Tenant will promptly take all actions at Tenant's sole expense as are necessary to return the such property to the condition existing prior to the introduction of any such Hazardous Materials, so long as Landlord's approval of such action is first obtained.

(c) **Definition.** "Hazardous Materials" means: any one (1) or more pollutant, toxic substance, hazardous water, hazardous material, hazardous substance, solvent or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response Compensation and Liability Act, as amended, and the Clean Water Act, as amended, or any federal, state or local environmental Laws, regulation, ordinance or rule, whether existing as of the date of this Lease or subsequently enacted.

(d) **Survival.** The representations and indemnities contained in this Section 21(d) will survive this Lease.

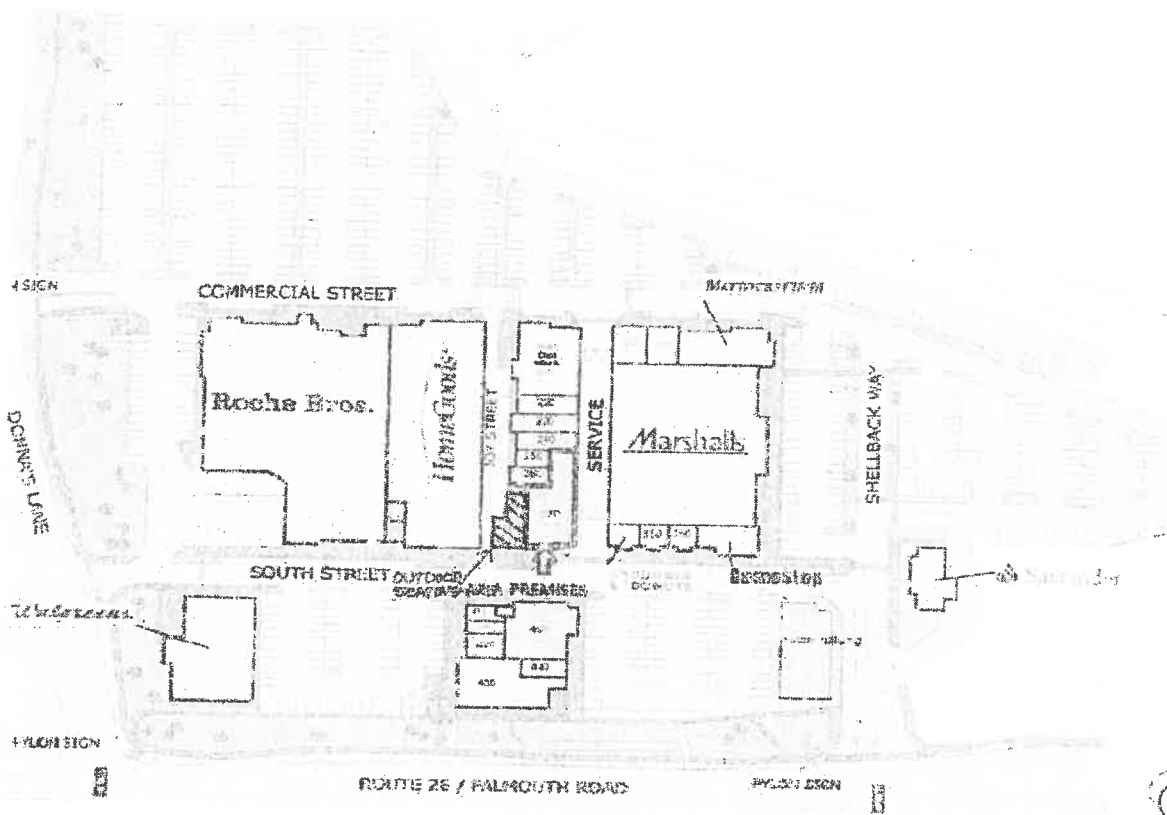
## **22. No Waivers by Landlord.**

No waiver by Landlord of any breach by Tenant or requirement of obtaining Landlord's consent shall be deemed a waiver of any other provision of this Lease or any subsequent breach of the same provision or a waiver of any necessity for further consent. No payment by Tenant or acceptance by Landlord of a lesser amount than due from Tenant shall be deemed to be anything but payment on account, and Tenant's payment of a lesser amount with a statement that the lesser amount is payment in full shall not be deemed an accord and satisfaction. Landlord may accept the payment without prejudice to recover the balance due or pursue any other remedy. Landlord may accept payments even after default by Tenant without prejudice to subsequent or concurrent rights or remedies available to Landlord under this Lease, at law or in equity. Any acceptance by Landlord of any payment by Tenant after termination or expiration of the Lease Term shall not constitute an acceptance of Rent but rather a payment to Landlord on account of Tenant's use and occupancy of the Leased Premises. All rights and remedies which Landlord may have under this Lease, at law or in equity shall be distinct, separate and

# EXHIBIT A

## SITE PLAN

NOTE: THE SITE PLAN DEPICTED BELOW IS INTENDED SOLELY AS AN APPROXIMATE DEPICTION OF THE GENERAL LAYOUT OF (a) THE SHOPPING CENTER AND CERTAIN OF THE BUILDINGS AND OTHER IMPROVEMENTS THAT COMPRISE THE SHOPPING CENTER AND (b) THE APPROXIMATE SIZE, CONFIGURATION AND LOCATION OF THE LEASED PREMISES WITHIN THE SHOPPING CENTER. TENANT ACKNOWLEDGES THAT THE PRECISE SIZE AND CONFIGURATION OF THE SHOPPING CENTER AND/OR THE PRECISE SIZE, CONFIGURATION AND/OR LOCATION OF THE LEASED PREMISES AND/OR THE BUILDINGS AND OTHER IMPROVEMENTS COMPRISING THE SHOPPING CENTER, INCLUDING ACCESS POINTS, DRIVEWAYS AND THE LIKE, MAY VARY FROM THAT DEPICTED ON THE ATTACHED SITE PLAN AND TENANT WAIVES ALL OBJECTIONS AND CLAIMS WITH RESPECT THERETO AND ACCEPTS THE LEASED PREMISES, SHOPPING CENTER AND THE BUILDINGS AND OTHER IMPROVEMENTS THAT COMPRISE THE SHOPPING CENTER, INCLUDING ACCESS POINTS, DRIVEWAYS AND THE LIKE, IN THEIR ACTUAL EXISTING CONDITION, AS SAME MAY BE ALTERED, MODIFIED, ETC. FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS OF THE WITHIN LEASE. MOREOVER, NO REPRESENTATIONS ARE MADE BY THE LANDLORD AS TO THE EXISTENCE OR CONTINUITY OF ANY OF THE TENANTS SHOWN THEREON.



## EXHIBIT B

### SHOPPING CENTER SIGN CRITERIA

Signage should be an integral feature of each storefront and designed to enhance the appearance of the Premises. All signage is required to be approved in writing by Landlord, which consent will not be unreasonably withheld. Tenant signage will be limited to the business name as stated in the Lease and the corporate logo. Other secondary identification, listing products or services is not permitted, except Tenant will have the right to add a tag line under Tenant's primary sign.

All signage is to be shop fabricated and painted with the highest quality construction techniques. Mounting clips, fasteners, brackets, labels, wiring, transformers, lamps (other than neon) and disconnects must be concealed from view. Leakage of light from seams is not permitted.

Permits for signage are the responsibility of Tenant and shall be obtained prior to signage installation.

Landlord will review all signage to confirm the proper signage and storefront design relationship. Signage must be integral to the design and not have a "stuck-on" appearance. Landlord reserves the right to at any time and in any manner permit, or require, variations from this criteria. This shall include all cases of signage design, color, illumination, quantity, and construction that, at the sole discretion and opinion of Landlord, would more appropriately serve the Shopping Center.

In the event Landlord elects to make any additions or changes to the Premises or Shopping Center, Tenant will, at its sole cost and expense, upon Landlord's request: (i) temporarily relocate or remove Tenant's signage; and (ii) modify Tenant's signage to conform to Landlord's signage criteria, then in effect, that applies to the Shopping Center, provided such requirements are uniformly applied and enforced.

Tenant shall be responsible for the full cost of all repairs necessary to the building fascia and soffit as a result of the removal or modification of the sign. This includes removal of the signs and repairs to the fascia during termination of tenancy, or any other occurrence related to signage that causes damage or discoloration to the building fascia.

#### SIGNAGE QUALITY AND SIZE

Each Tenant will be permitted that number of, and size of, signs as permitted in the Lease subject to governmental limitations. Governmental requirements and approvals, if more restrictive than the Landlord's requirements and approvals, shall take precedence.

Storefront signage will be in proportion to the overall scale of the storefront elevation.

Signage will be watertight and comply with all code requirements. Surface mounted raceways will not be permitted.

Secondary decorative signage is encouraged on awnings, blade signs, decorative architectural elements and small window signage when designed to reinforce the character of the storefront.

#### LANDLORD'S APPROVAL

Tenant will be required to provide design information on all signage submitted for approval from Landlord, which approval will not be unreasonably withheld. Final approval of Tenant's shop drawings is also required.

#### SHOP DRAWINGS

Signage shop drawings submitted by Tenant will be complete enough to understand the appearance and design of the signage. Construction and installation of Tenant's signage will not begin prior to approval by Landlord.

Submission requirements are as follows:

- Elevations of the storefront showing each dimensioned sign location
- A materials and color board
- Sections through the signs with dimensions
- Illumination, fabrication and mounting methods outlined in detail
- Height, width, and depth dimensions
- Allowable and proposed sign area calculations

#### SIGNAGE TYPES PERMITTED

- Reverse channel halo letters illuminated with neon
- Internally illuminated sign cabinet with push through letters where applicable. The appearance of the signage cabinet must be recessed and incorporated into the design of the façade
- Non-internally illuminated individual dimensional letters with external lighting
- Exposed neon signs with open faced channel letters
- Individual metal channel letters with illuminated Plexiglas face
- Blade signage

#### NON-PERMITTED SIGNAGE

- Rotating, moving or flashing signs
- Signs which do not present a professional image

- Exposed/Surface/Recess mounted cabinet type signs
- Except as otherwise set forth, temporary signage is not allowed outside the tenant's storefront
- Signs and decals on storefront glass not considered formal display or show windows

#### REVERSE CHANNEL LETTERS

- All neon tubing must be completely concealed within the letter
- The back edge of the letter must be approximately 1" from the mounting surface
- Brackets used for mounting the letters must be in the least visible location and be painted to match the background surface
- The mounting surface is to be made of a material which will not allow reflections of the lamps to be visible
- PK housing will be provided to feed the neon to each letter of the sign
- The open side of the channel letter must be closed off with Plexiglas to prevent birds nesting

#### NON-INTERNALLY ILLUMINATED SIGNS

- Including individual letters and graphic images which are applied directly to the face of the storefront each requiring external illumination
- Such individual letters and graphic will be a minimum of 1/2" thick
- Signage will not be placed on a background surface which detracts from the appearance of the architecture and/or signs
- External lighting is required for sign visibility. Such lighting will be incorporated into the design of the storefront as a design feature or as a concealed light source

#### DISPLAY OR SHOW WINDOW GRAPHICS

- Pedestrian level window decals are permitted on formal display or show windows. Approval and disapproval of display or show window graphics shall remain the sole right of Landlord.

#### BLADE SIGNAGE

- Blade signage is permitted and must have a decorative appearance
- The size and location of the signs must comply with the maximum projection requirements previously noted

- Signs must be supported with decorative brackets required for viewing blade sign as customers walk by storefront. Attractive displays using display platforms, tables, mannequins, and themed props should be utilized

#### SIGN ATTACHMENT

All fascia mounted signage will be attached to the building in compliance with the following sign attachment schematics.

#### SIGN CONNECTION

- Tenant shall provide installation of sign power from the Tenant's electrical panel to the sign location, as well as make final connections to the sign.

#### SIGN MAINTENANCE

- All signs shall be maintained and repaired throughout the Lease Term of the Lease or during and extended occupancy. Prompt attention shall be given to structural damage, paint, or non-functioning light sources. Lack of maintenance shall be considered a default under this Lease.

**EXHIBIT C**

**RULES AND REGULATIONS**

1. Tenant shall not at any time occupy any part of the Leased Premises or Shopping Center as sleeping or lodging quarters.
2. Except if expressly permitted in connection with Tenant's Permitted Use, no dogs, cats, fowl, or other animals shall be brought into or kept in or about the Leased Premises or Shopping Center, except for seeing-eye dogs.
3. None of the parking, entries, passages, doors, hallways or stairways shall be blocked or obstructed by any rubbish, litter, trash, or material of any nature placed, emptied or thrown into these areas, nor shall such areas be used by Tenant's agents, employees or invitees at any time for purposes inconsistent with their designation by Landlord.
4. Tenant shall not canvas, solicit or peddle (including the placement of flyers) in the Common Areas of the Shopping Center.
5. Tenant shall continuously operate the HVAC units in the Leased Premises to prevent the growth of Mold.
6. Tenant shall not place anything in the vestibule or entry of the Premises or on the sidewalks or other Common Areas adjacent to them without Landlord's prior written consent;
7. Tenant shall not conduct sidewalk sales in the Shopping Center unless expressly permitted per Lease.
8. Landlord reserves the right to exclude from the Shopping Center all persons reasonably believed in its sole discretion to be (a) under the influence of alcohol or drugs; (b) vagrants and loiterers; (c) peddlers; (d) solicitors; (e) creating disturbances; and (f) persons entering in crowds in such numbers as to cause inconvenience to the tenants, employees or invitees of the Shopping Center.
9. Weapons of any kind are prohibited from being brought into or stored in the Shopping Center.
10. Tenant shall maintain at all times all displays within view of the windows in a neat and attractive condition. If Tenant is a retail merchandiser, attractive displays using display platforms, tables, mannequins, and theme props will be utilized so as to present a tasteful, creative, and attractive display consistent with a high-quality shopping environment and in keeping with the character of the Shopping Center. Tenant's adherence to the display window standard will be determined in the sole discretion of Landlord.

11. Tenant shall neither load nor unload or permit the loading or unloading of merchandise, equipment or other property from any doors of the Premises that open onto the front sidewalk areas, nor from any other doors except from the rear of the Premises and to use its best efforts to prevent the parking or standing of vehicles and equipment upon Shopping Center land except when actually engaged in loading or unloading. In the event Tenant violates this covenant, Tenant will have twenty-four (24) hours following receipt of notice from Landlord (which notice may be given by personal delivery to the Premises including, but not limited to, oral notice by Landlord's representative at the Shopping Center) to cease such activity or be deemed to be in default under this Lease and Landlord will have the immediate right to invoke any legal or equitable remedies to enjoin Tenant from such activity.
12. Tenant shall not install any radio or television aerial or antennae, satellite dish, communications receiver or other similar device or equipment anywhere in or on the Premises or the Shopping Center by or for Tenant without first obtaining in each instance Landlord's consent in writing. Any such device or equipment so installed without such written consent will be subject to removal without notice at any time by Landlord at Tenant's expense.
13. Tenant shall not use loud speakers, televisions, phonographs, radios or other devices in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.
14. Tenant shall not use the plumbing facilities for any other purpose than that for which they are constructed, and not to throw any foreign substance of any kind in them. The expense of any breakage, stoppage, or damage resulting from a violation of this provision will be borne by Tenant.
15. Tenant shall establish a routine pest extermination programs for the Premises at its expense.
16. Tenant shall not burn any trash or garbage of any kind in or about the Premises or Shopping Center.
17. Tenant shall not make noises, cause disturbances, or create odors that may be offensive to other tenants of the Shopping Center or their officers, employees, agents, servants, customers or invitees.
18. In keeping with the image of a high-quality shopping center, Tenant shall take reasonable precautions to ensure that its employees, officers, agents, servants and invitees do not loiter in the storefront areas of the Shopping Center and that they smoke tobacco products only in designated areas.
19. Tenant shall lock the doors to the Premises at the close of business and will keep the doors locked when the Premises are unoccupied. Tenant will be responsible for all

injury and damage sustained by other Tenants or by Landlord resulting from such default or carelessness.

20. Tenant to keep all display windows (if any) and tenant identification signs in and on the Premises well lighted from dusk until 8:00 p.m. (local time) during each and every day of the Lease Term, excluding Sundays.

Landlord reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary, for the safety, care and cleanliness of the Shopping Center.

EXHIBIT D

Construction Rider

This Construction Rider is a part of the Lease (the "Lease") dated February 21, 2023, between ADREX DIVERSIFIED II MASTER TENANT LLC, a Delaware limited liability company ("Landlord") and CHEN 1688, INC., a Massachusetts corporation d/b/a Saga Hibachi ("Tenant").

1. Prerequisites to Commencement of Tenant's Work. Landlord consents to Tenant's construction of improvements at the Premises so long as: (i) Landlord and Tenant have agreed in writing upon plans and specifications for such construction; (ii) Landlord and Tenant have agreed in writing upon one or more general contractors (the "General Contractors", whether one or more) to be utilized by Tenant in erecting such improvements; (iii) Tenant has tendered to Landlord a copy of the "Building Permit" (meaning all required governmental, quasi-governmental, regulatory authority and other permits, consents, and permissions) for the work of Tenant and its contractors; (iv) Tenant has furnished to Landlord proof of insurance in certificate form as required by the Lease and this Construction Rider; and (v) Tenant has provided to Landlord a list of all contractors, subcontractors, laborers and materialmen performing work at the Premises in excess of Three Thousand and 00/100 Dollars (\$3,000.00) with their anticipated contract amounts. Upon the Commencement Date, Tenant will commence performance of Tenant's Work in accordance with the plans and specifications approved by Landlord. If Tenant has not satisfied these conditions, Landlord may, in its sole and absolute discretion, restrict Tenant's access to the Premises to the extent Landlord deems necessary without such actions resulting in any postponement or delay of the Rent Commencement Date. Tenant will complete Tenant's Work on or before the Rent Commencement Date.

2. Tenant's Plans. Within thirty (30) days after the date of the Lease, Tenant will prepare and deliver to Landlord a professionally prepared full set of stamped construction documents sufficient to receive a building permit for the improvements to the Premises to be constructed by Tenant. Within 15 days following Landlord's receipt of Tenant's plans and specifications Landlord will notify Tenant whether Tenant's plans and specifications are acceptable to Landlord. If Tenant's plans and specifications are not acceptable to Landlord, Landlord will advise Tenant of the required modifications to Tenant's plans and specifications. Tenant will modify and deliver to Landlord its revised plans and specifications within ten days from receipt of Landlord's required modifications. Landlord and Tenant will continue this process until Landlord has approved Tenant's plans and specifications (the "Approved Plans"). The plans, when approved by Landlord will be part of this Lease as though attached to it. Within ten days from receipt of Landlord's approval of Tenant's plans and specifications, Tenant will apply for any and all permits and other governmental approvals necessary to perform Tenant's Work and Tenant will diligently prosecute such application until approved. Tenant will not modify Tenant's plans and specifications approved by Landlord without Landlord's prior written consent.

3. Tenant Solely Responsible for Plans. Landlord will not check the Approved Plans or drawings for building code compliance. Approval of the Approved Plans by Landlord is not a representation that they are in compliance with the requirements of governing authorities, and it will be Tenant's responsibility to meet and comply with all federal, state, and local code requirements.

Approval of the Approved Plans does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant will be solely responsible for such matters.

4. Performance of Tenant's Work. Upon the Commencement Date, Tenant will enter the Premises, perform such construction work and provide and install such materials as are provided in the Approved Plans (all such work, labor and materials are collectively referred to as the "Tenant's Work") in accordance with this Exhibit D, and in all respects consistent with the Lease. Prior to the commencement of construction Tenant and its contractor will participate in a "pre-construction meeting" with Landlord's construction representative. Tenant's contractor will contain its storage of materials and its operations within the Premises. Tenant's contractor will clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials will be stored within the Premises and promptly removed from the Premises and the Shopping Center. Tenant's contractor will provide temporary utilities, portable toilet facilities, trash dumpster, and potable drinking water as required for its work within the Premises or in a location approved by Landlord's construction representative and will pay the cost of any temporary utilities and facilities provided by Tenant's contractor. Tenant's contractor will notify Landlord or Landlord's construction representative of any planned work to be done on weekends or other than normal job hours. All roof penetrations will be performed by Landlord's roofing contractor at Tenant's expense. Tenant will install walk-pads around its roof mounted equipment.

5. Inspection by Landlord. Landlord will have the right to inspect Tenant's Work both during and after the completion and will have the right to stop any work for non-compliance with this Exhibit D or the Lease after five (5) days' notice of such non-compliance and the failure of Tenant to commence and to diligently prosecute a cure of the same.

6. No Interference with Other Tenants. At all times while Tenant is performing Tenant's Work or installing its trade equipment, furniture and fixtures, Tenant will not interfere with any other business at the Shopping Center. Tenant will comply with all reasonable requests of Landlord for the purpose of avoiding such interference.

7. Tenant's Work at Tenant's Cost, Indemnity, Liens. All labor will be performed and materials furnished at Tenant's sole cost and risk. Any approval by Landlord will constitute a license authorizing Tenant to permit such labor to enter upon the Shopping Center and Premises, and Tenant agrees to indemnify and hold Landlord harmless from all claims (including costs of defending against such claims arising or alleged to arise from any act or omission of Tenant or Tenant's agents, employees, contractors, subcontractors, laborers, materialmen or invitees (collectively, the "Tenant Parties")) or arising from any bodily injury, death or property damage occurring or alleged to have occurred incident to Tenant's Work or any other activities of Tenant or the Tenant Parties. Tenant will have no authority to place any lien upon the Premises or any interest in them nor in any way bind Landlord and any attempt to do so will be void and of no effect. Landlord expressly disclaims liability for the cost of labor performed or materials furnished by Tenant. If, because of any actual or alleged act or omission of Tenant or a Tenant Party, any lien, affidavit, charge or order for the payment of money is filed against the Premises or the Shopping Center or any portion of it, whether or not such lien, affidavit, charge or order is valid or enforceable, Tenant will, at its own cost and expense, cause it to be discharged of

record by payment, bonding or otherwise, no later than twenty (20) days after notice to Tenant of the filing, but in all events, prior to the foreclosure. All of Tenant's construction at the Premises will be performed in a good workmanlike manner reasonably satisfactory to Landlord or Landlord's architect, all in accordance with applicable building codes, regulations and all other legal requirements, and will not interfere with or delay any work being done by Landlord's (for other Tenant's) contractors.

8. Tenant's Deliveries. Tenant will furnish to Landlord:

(a) within ten (10) days after completion of Tenant's Work, a Certificate of Occupancy (or other certificates evidencing inspection and acceptance of all of Tenant's construction by appropriate government authorities and otherwise evidencing full compliance with the "Building Permit");

(b) within thirty (30) days after completion of Tenant's Work, an affidavit and lien waiver with respect to the Premises and Shopping Center, in the form satisfactory to Landlord, executed by the general contractors performing Tenant's Work waiving any lien that subcontractors, laborers or material suppliers may have against the Premises and the Shopping Center and stating that all construction has been fully completed in accordance with the approved plans, and that all subcontractors, laborers and material suppliers engaged in or supplying materials for such work have been paid in full;

(c) within thirty (30) days after completion of Tenant's Work, subcontractor's lien waivers with respect to the Premises and Shopping Center, in the form satisfactory to Landlord, executed by all subcontractors, laborers and materialmen who will have furnished labor or materials for Tenant's Work in excess of Three Thousand and 00/100 Dollars (\$3,000.00), and;

(d) within thirty (30) days after Landlord's request, any documents or information reasonably required by Landlord's lenders.

9. Contractor's Required Insurance. The general contractors and each subcontractor will carry and maintain through completion and final approval of the work by Landlord:

(a) Worker's compensation and employer's liability insurance affording Landlord thirty (30) days' written notice of cancellation. The employers' liability minimum limits required are as follows: (i) \$500,000 each accident for bodily injury by accident; and (ii) each employee for bodily injury by disease.

(b) Commercial general liability insurance on an occurrence basis for an amount of One Million and 00/100 Dollars (\$1,000,000.00) each occurrence and including (i) premises and operations coverage with X, C and U exclusions deleted; (ii) products and completed operations coverage; (iii) blanket contractual coverage, including both oral and written contracts; (iv) personal injury coverage; (v) special form property damage coverage, including completed operations; (vi) an endorsement naming Landlord as additional insured; (vii) an endorsement affording thirty (30) days' written notice to contractor and Landlord in event of cancellation or material reduction in coverage; and (viii) an endorsement providing that such insurance as is afforded under policy of the general contractor is primary insurance as respects Landlord and that any other insurance maintained by Landlord is excess and noncontributing with the required insurance.

(c) Umbrella liability insurance to apply in excess of the primary policies described in subparagraph 9(b), with limits of at least One Million and 00/100 Dollars (\$1,000,000.00).

(d) The general contractor, but not a subcontractor, will be required to maintain builder's risk insurance, with full replacement cost coverage in an amount not less than the total improvement cost with a maximum deductible of Ten Thousand and 00/100 Dollars (\$10,000.00) and which name Tenant, Landlord, and Landlord's lender, if requested by Landlord, as loss payees as their interests may appear.

(e) Business auto liability insurance for an amount of One Million and 00/100 Dollars (\$1,000,000.00) combined single limit for bodily injury and/or property damage liability including owned autos, hired or borrowed autos, non-owned autos and an endorsement affording thirty (30) days' written notice of cancellation to Landlord in event of cancellation or material reduction in coverage.

(f) Insurance to cover specific risks required by Landlord or Tenant under the construction contracts or otherwise required by such construction contract.

The general contractors will immediately deliver to Landlord and Tenant proof of insurance in certificate form of the builder's risk insurance policy and the general contractor and all subcontractors will deliver all other required proof of insurance to Landlord prior to commencing any work or preparing or delivering materials to the Premises. Upon the request of Landlord or Landlord's lender, the general contractor will immediately deliver to the requesting party original duplicate copies of the insurance policies.

Each policy of insurance obtained will provide, by endorsement, certificate, or otherwise, (i) that such policy will not be canceled, endorsed, altered, or reissued to effect a change in coverage, for any reason or to any extent unless the insurer will have given Landlord and Landlord's lender and Tenant at least thirty (30) days prior written notice; (ii) that Landlord and Landlord's lender and Tenant may, but will not be obligated to, make premium payments to prevent the cancellation, endorsement, or alteration of such policy and such payment will be accepted by the insurer to prevent the same; and (iii) a waiver by the insurer of any and all rights of subrogation with respect to Landlord, Landlord's lender and Tenant.

Tenant's general contractor and subcontractors will maintain all of the foregoing insurance coverage in force until Tenant's Work is fully completed and accepted except as to Products and Completed Operation Coverage, which if not maintained on an occurrence basis is to be maintained for ten years following completion of such work and acceptance by Landlord and Tenant. All insurance, except workers' compensation, maintained by the general contractor and its subcontractors will preclude subrogation claims by the insurer against anyone insured. The requirements for the insurance will not derogate from the provisions for indemnification of Landlord by Tenant.

If Tenant fails to secure and maintain the required insurance from the general contractor or any subcontractor, Landlord will have the right (without any obligation to do so, however) to secure it in the name and for the account of the general contractor or subcontractor in which event Tenant will pay the cost and will furnish upon demand, all information that may be required.

10. Miscellaneous provisions regarding General Contractors: All general contractors will:

(a) furnish to Landlord and Tenant all manufacturers' warranties received by the general contractor or any subcontractor furnishing labor and material with respect to Tenant's Work.

(b) warrant the quality of Tenant's Work against defects and unworkmanlike quality for a period of not less than one year following the date the Work has been substantially completed. The general warranty provided by the general contractors does not limit any specific warranties granted otherwise by the general contractors, subcontractors, suppliers, manufacturers, or by Laws.

11. The relationship between Tenant and the general contractors will be that of an independent contractor and nothing will be deemed or construed (i) to make the general contractors the agent, servant, or employee of Landlord; or (ii) to create any partnership, joint venture or other association between the general contractors and Landlord or between Landlord and Tenant (other than the landlord-tenant relationship between Landlord and Tenant).

EXHIBIT E

SOUTH CAPE, MASHPEE, MASSACHUSETTS  
EXCLUSIVES, RESTRICTIONS & PROHIBITIONS

BEAUTY NAILS

EXCLUSIVE:

51. Tenant's Exclusive. Provided that Tenant is (i) not in default beyond any applicable notice, grace or cure period and (ii) is open and conducting the Permitted Use, Landlord shall not lease any other space in the Shopping Center for use as a nail salon performing manicures and pedicures but nothing herein shall restrict Landlord from leasing to or allowing occupancy by a full service spa or other tenant or occupant which, as incidental to their primary use, provide manicures and /or pedicures.

CAPEWAY CLEANERS

EXCLUSIVE:

So long as Tenant is not in default, Landlord will not lease any other portion of the Shopping Center to be used primarily for the sale of on-site or "drop off" cleaning services. Notwithstanding the foregoing, Tenant acknowledges that other tenants in the Shopping Center may offer such services on an ancillary basis.

DUNKIN DONUTS

EXCLUSIVE:

61. Tenant's Exclusive Use. Provided that Tenant is not in default beyond any applicable notice and cure period and further provided that Tenant is open for business to the public, then Landlord shall not enter into any new lease for space in the Shopping Center which allows, as a principal use, a store specializing in the sale of coffees, teas and soft drinks plus donuts, muffins and other similarly baked goods such as (by way of example only), Starbuck's,

Peebles, Honey Dew and Tim Hortons but the foregoing exclusive shall not apply to a full service restaurant, a "fast food" store such as McDonald's, Burger King or Wendy's nor to the sale of such goods in a supermarket, department store or other retail store where such goods comprise no more than fifteen (15%) percent of gross sales for said tenant.

GAMESTOP

EXCLUSIVE:

51. Exclusive Use. During the term of this Lease and provided that Tenant is not in default beyond any applicable notice or cure period and is open for business to the public for the Permitted Use (except for temporary closings due to fire, other casualty, repairs of other causes beyond Tenant's reasonable control) Landlord shall not lease any other premises in the Shopping Center to any tenant or occupant which has, as its primary use, the sale of video games and video game systems (the "Restricted Use"). For purposes of this Section 61, "primary use" shall mean the use of 150 square feet of space for such use. The Restricted Use shall not include stores renting and/or selling videos such as Blockbuster, Hollywood Video or Movie Gallery unless such video stores install their own gaming concept or advertise on the exterior of their leased premises the availability of their gaming concepts, such as GameRush or GameCrazy, within such premises. If Landlord shall violate the foregoing restriction, Tenant shall have the right to an abatement of Annual Minimum Rent equal to fifty percent (50%) thereof while the Restricted Use continues and, if such Restricted Use continues for a period of three (3) months or longer, Tenant may terminate this Lease by notice to Landlord given at any time thereafter while such Restricted Use continues. If Tenant shall so terminate this Lease, Landlord shall pay to Tenant, within thirty (30) days thereafter, an amount equal to the unamortized costs of Tenant's Work, amortized on a "straight line" basis over the Term of this Lease.

## HOMEGOODS

### **EXCLUSIVE:**

(B) Subject to the rights of tenants under existing leases, Landlord agrees that, from the date hereof until expiration of the term of this lease, no other premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of furnishings for the home including the following categories of items: linens and domestics, window treatments, floor coverings, bathroom items, bedding, furniture, wall décor, housewares, table top goods, glassware, flatware, cookware, kitchen utensils, giftware and/or closet, shelving and storage items and home accessories ("homegoods"). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of homegoods (all of the foregoing is hereinafter referred to as the "Exclusive Use" and the merchandise referred to therein as the "Protected Merchandise"). The Exclusive Use restriction and the prohibition on the sale of the Protected Merchandise shall not apply to the electronics, items that become permanent improvements or fixtures upon installation, appliances, a lighting showroom, an occupant similar to Floor & Décor, or a hardware or home improvement store, The Container Store, or one store in the shopping center primarily engaged in the sale of furniture.

### **PROHIBITIONS:**

4. (A) Subject to the rights of tenants under existing leases, Landlord agrees that the Shopping Center shall not be used (a) for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, shall be deemed retail for purposes of this lease) except that "service retail" may occupy up to 10% of the square footage of the Shopping Center, or (b) for any entertainment purposes (excluding restaurants except as restricted below) such as a bowling alley, skating rink, cinema, bar (except a bar incidental to a primary restaurant use is allowed in a location permitted by this lease so long as projected sales of beer, wine and alcohol are less than forty percent (40%) of the projected gross sales for such establishment), nightclub, discotheque, amusement gallery, poolroom, health club in excess of fifteen thousand (15,000) square feet, massage parlor, sporting event, sports or game facility, off-track betting club, or for any or the Prohibited Uses set forth in Section B of Schedule F attached hereto. The "Marshalls Premises" or the "Outparcels" shown on Schedule A, may be used as a bowling alley, health club, or cinema. No restaurants or establishments (other than a grocer) selling food prepared on premises for consumption on or off premises shall be located within one hundred (100) feet of the front door of the Demised Premises. In this lease, "service retail" operators include medical, tutoring, dance, martial arts, financial services, and restaurant operators. No restaurants or establishments selling food prepared on premises for consumption on or off premises shall be located within one hundred (100) feet of the front door of the Demised Premises (excluding a supermarket or grocery store). (Collectively the uses described herein are referred to as the "Prohibited Uses".) The term "Existing Leases" means those leases or other occupancy agreements for space in the Shopping Center that are in effect as of the date of this lease, as may be amended, modified, or extended; provided that Landlord agrees that it shall not agree in writing to expressly modify any use provision of any Existing Lease to permit a violation of the Prohibited Uses or Exclusive Use (defined below) and to prohibit any tenant under an Existing Lease from so operating to the extent prohibited by its Existing Lease.

## MARSHALLS

### EXCLUSIVE:

Landlord agrees that, during the term of this lease, no other single premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of soft goods (as defined by the trade from time to time), including in the computation of such floor area one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of soft goods.

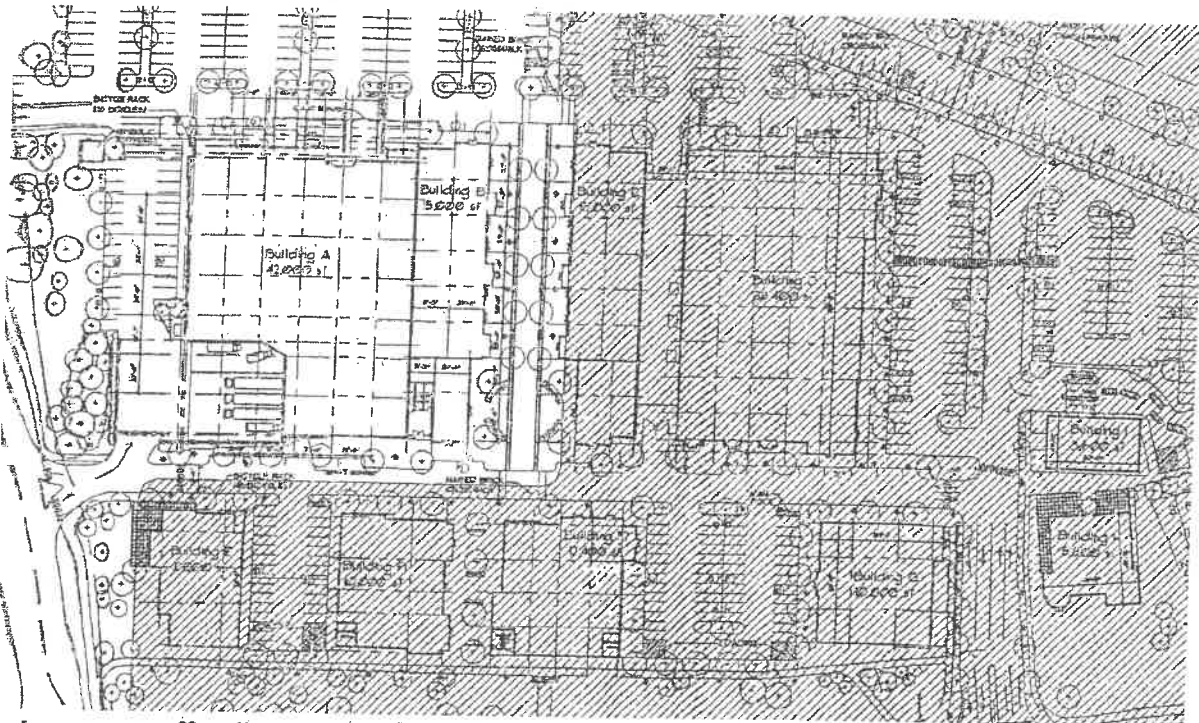
### PROHIBITIONS:

4. (A) Lessor agrees that as long as any retail sales activity shall be conducted in the Demised Premises the Shopping Center shall not be used (a) for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or (b) for any entertainment purposes such as a bowling alley, skating rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club, massage parlor, sporting event, sports or game facility, off-track betting club (c) or for any establishment which sells or displays pornographic materials or (d) for any establishment which sells or displays used merchandise or second hand goods. No restaurants or establishments selling food prepared on premises for consumption on or off premises shall be located in the Shopping Center in the corner stores of Building D, or in any part of Buildings H and I, and shall only be permitted in Building G if the entrance is located at the parking lot entrance.

## ROCHE BROTHERS

### EXCLUSIVE/PROHIBITION:

Notwithstanding anything contained in this lease, so long as this lease is in effect, the Lessor shall not lease, use or permit to be used, any other portion of the Shopping Center (other than the Premises) for any of the following uses: residential use, as a retail food store or supermarket, store selling meat and other food by the pound (other than a New York style delicatessen type restaurant, with take-out), bakery, meat store, produce store or dairy store or any combination thereof, nor shall the Lessor lease space within the Area of Critical Concern (as defined in Section 1(o)) for a restaurant or health club or for uses not customarily located in shopping centers, except that outside the Area of Critical Concern there may be uses not customarily located in shopping centers so long as such uses in the aggregate do not exceed ten thousand (10,000) square feet and except that a day care center may be located in the Shopping Center, but not in the Area of Critical Concern. Notwithstanding the foregoing, however, uses not customarily located in shopping centers may be located in Buildings H and I shown on Exhibit A in addition to such ten thousand (10,000) square foot limitation. Notwithstanding the foregoing provisions of this paragraph (a) nothing herein shall be deemed to prohibit the Lessor from leasing portions of the Shopping Center to a pharmacy or drug store selling food items (such as a Walgreens or CVS, by way of example only, so long as the exterior signs on such drug store do not indicate that such drug store is a food store, food shop or the like and so long as the pharmacy or drug store is restricted to three thousand (3,000) square feet of floor area for the sale of food products for consumption off its premises), restaurant or restaurants (sit-down, take-out or a combination thereof), donut and/or coffee shop, a Panera Bread store or equivalent, candy store, ice cream and/or yogurt store, nut store or pet store selling pet foods, notwithstanding the fact that the



Lessee may offer all or certain of such items within the broad spectrum of items commonly sold in supermarkets, and (b) the Lessor may also permit the incidental sale of food products for off-premises consumption from any business in the Shopping Center. As used herein the term "incidental" shall mean the lesser of five hundred (500) square feet or five (5) percent of the full floor area of such business.

#### SANTANDER

##### EXCLUSIVE:

61. Restrictive Covenant. Provided that Tenant is open for business to the public (except for any periods during which Tenant is permitted to be closed pursuant to the terms hereof) then, during the Term or extension thereof by any Option Period, Landlord agrees that it shall not lease, or permit, any portion of the Shopping Center for use by a retail bank branch.

#### MATTRESS FIRM

##### EXCLUSIVE:

59. Exclusive Use. During the term of this Lease and provided that Tenant is not in default beyond any applicable notice or cure period and is open for business to the public for the Permitted Use (except for temporary closings due to fire, other casualty, repairs of other causes beyond Tenant's reasonable control, remodeling and force majeure, hereinafter "Permitted Closures") Landlord shall not lease or permit any other premises in the Shopping Center or in any building adjacent to the Shopping Center owned or hereafter acquired by Landlord or any affiliate or subsidiary of Landlord to be used for the sale of mattresses or box springs or to any other tenant which uses the word "mattress" as part of its trade name (the "Restricted Use").

## WALGREENS

### EXCLUSIVE:

8. (a) (i) Landlord covenants and agrees that, except for exclusives previously granted to other tenants in the Shopping Center (a list of which is attached hereto as Exhibit G) during the Term and any extensions or renewals thereof, no other portion of the Shopping Center nor any additional property which Landlord, directly or indirectly, may now or hereafter own, lease or control, and which is contiguous to, or which is within five hundred (500) feet of any boundary of, the Shopping Center, will be used for any one or combination of the following: (i) the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; and (ii) the sale of so-called health and beauty aids or drug sundries, (iii) the sale of greeting cards, or (iv) the operation of a business where photographic processing is offered for sale. In the event that Tenant files suit against any party to enforce the foregoing restrictions, Landlord agrees to cooperate fully with Tenant in the prosecution of any such suit, and reimburse Tenant for all of the attorneys' fees and court costs incurred by Tenant in connection with such suit, notwithstanding its resolution. For purposes hereof "contiguous" shall mean property that is either adjoining the Shopping Center or separated from the Leased Premises only by a public or private street, alley or right-of-way. The foregoing shall not, however, preclude a tenant of the Landlord's Property from the uses described in items (ii), (iii), and (iv), so long as such uses are incidental to such tenant's primary business in the Landlord's Property. For purposes of subsections (ii), (iii) and (iv) of this Section 8(a), "incidental" uses shall be such uses that do not exceed one hundred (100) square feet of retail space or is a business occupying not more than 2,500 square feet of floor area.

### PROHIBITIONS:

(b) Landlord shall not permit or suffer any other occupant of the Shopping Center to use any premises or any portion thereof for purposes of a cocktail lounge, bar, any other establishment that sells alcoholic beverages for on-premises consumption (but the foregoing shall not prohibit sit down restaurants with a bar not to exceed 30% of the entire floor area), disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade (other than as an incidental use), a theater of any kind, adult book store, adult theatre, adult amusement facility, any facility selling or displaying

pornographic materials or having such displays, auction house, flea market (except on an occasional basis), educational or training facility (including, without limitation, a beauty school, barber college, school or other facility catering primarily to students or trainees rather than customers), and occupying more than 5,000 square feet of space; blood bank, massage parlor, funeral home, sleeping quarters or lodging, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a car wash, a carnival, amusement park or circus (except on an occasional basis), an assembly hall, off track betting establishment, bingo hall, a church, temple, synagogue, mosque, or other house of worship, any facility for the sale of paraphernalia for use with illicit drugs, office use (except incidental to a retail use and as permitted by Article 8(a)(ii) above), or any use which creates a nuisance.

#### PROHIBITED USES

Tenant will not use the Premises for any of these prohibited uses:

- (A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of the building in which the Premises are located or the Shopping Center.
- (B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (C) Any "second hand" store, "surplus" store, or pawn shop.
- (D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; however, this prohibition will not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (E) Any dumping, disposing, incineration or reduction of garbage; however, this prohibition will not be applicable to garbage compactors located near the rear of the building in which the Premises are located or the Shopping Center.
- (F) Any fire sale, bankruptcy or liquidation sale (unless pursuant to a court order), going-out-of-business sale or auction house operation.
- (G) Any central laundry, dry cleaning plant or laundromat; however, this prohibition will not be applicable to normal support facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

- (H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.
- (I) Any amusement or video arcade, pool or billiard hall, or any bowling alley or skating rink unless part of a restaurant or entertainment venue similar to \_\_\_\_\_, as currently operated.
- (J) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.
- (K) Any veterinary hospital or animal raising or boarding facility; however, this prohibition will not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary services provided in connection with the operation of a pet shop will only be incidental to such operation; all kennels, runs and pens will be located inside the building; and the incidental veterinary facilities will occupy no more than fifteen percent (15%) of the area of the pet shop.
- (L) Any mortuary or funeral home.
- (M) Any establishment selling or exhibiting "obscene" material.
- (N) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.
- (O) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on premises consumption exceeds fifty percent (50%) of the gross revenues of such business.
- (P) Any massage parlors or similar establishments.
- (Q) Any flea market, car wash or dance hall.
- (R) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; however, this prohibition will not be applicable to on site employee training by any tenant incidental to the conduct of its business at the Shopping Center.
- (S) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the

foregoing, this prohibition will not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by a tenant.

- (T) The operation of any coin or token-operated vending machines, kiosks, video games or similar devices;
- (U) Carnival, amusement park or circus.
- (V) Church or other place of worship.
- (W) Daycare center.
- (X) Any unlawful use.

**EXHIBIT F**  
**FORM DELIVERY LETTER**

Chen 1688, Inc.

a Massachusetts corporation d/b/a Saga Hibachi

In reference to a Lease Agreement between ADREX Diversified II Master Tenant LLC, a Delaware limited liability company ("Landlord") and Chen 1699, Inc., a Massachusetts corporation d/b/a Saga Hibachi ("Tenant") dated February 21, 2023 for those Premises identified as Space No. 270 in the Shopping Center known as South Cape Village, located in the City of Mashpee, Commonwealth of Massachusetts. Please confirm the following:

1. The Tenant has taken possession of the Premises on **February 23, 2023**.
2. The Premises have been accepted by Tenant as being substantially complete in accordance with the lease and there is no deficiency in construction (if any).
3. The "Rent Commencement Date" is the earlier of (i) one hundred eighty (180) days after the Commencement Date; or (ii) the date on which Tenant opens for business to the public, as set forth in said Lease.

Please sign below acknowledging and agreeing to the Premises delivery date.

**AGREED AND ACCEPTED**

**TENANT**

Chen 1688, Inc.,

a Massachusetts corporation

By: Hui Ling Chen

Name: Hui Ling Chen

Title: HLC

EXHIBIT F

FORM DELIVERY LETTER

Chen 1688, Inc.,  
a Massachusetts corporation d/b/a Saga Hibachi

In reference to a Lease Agreement between ADREX Diversified II Master Tenant LLC, a Delaware limited liability company ("Landlord") and Chen 1688, Inc., a Massachusetts corporation d/b/a Saga Hibachi ("Tenant") dated February \_\_\_, 2023 for those Premises identified as = at Space No. 270 in the Shopping Center known as South Cape Village, located in the City of Mashpee, Commonwealth of Massachusetts. Please confirm the following:

1. The Tenant has taken possession of the Premises on [\_\_\_\_].
2. The Premises have been accepted by Tenant as being substantially complete in accordance with the lease and there is no deficiency in construction (if any).
3. The "Rent Commencement Date" is the earlier of [ ] ( ) days after the Commencement Date or the date the Tenant opens for business to the public, as set forth in Article 1 of said Lease.

Please sign below acknowledging and agreeing to the Premises delivery date.

AGREED AND ACCEPTED

TENANT

Chen 1688, Inc.,  
a Massachusetts corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT G

FORM COMMENCEMENT DATE CERTIFICATE

THIS AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2023, by and between \_\_\_\_\_ (hereinafter "Landlord") and Chen 1688, Inc., a Massachusetts corporation d/b/a Saga Hibachi (hereinafter "Tenant").

1. This Agreement is made pursuant to Article 2 of that certain Lease dated February \_\_, 2023, between Landlord and Tenant (the "Lease").

2. It is hereby stipulated that the Lease Term commenced on [Commencement Date], (being the "Commencement Date" under the Lease), and shall end and expire on [Expiration Date], unless sooner terminated or extended, as provided for in the Lease.

3. It is stipulated that the Rent Commencement Date is [Rent Commencement Date].

WITNESS the execution hereof under seal by the persons hereunto duly authorized as of the date first above written.

LANDLORD:

ADREX DIVERSIFIED II MASTER TENANT LLC, a Delaware limited liability company

By: ADREX Master Tenant LLC, a Delaware limited liability company, its sole member

By: AREIT Operating Partnership LP, a Delaware limited partnership, its sole member

By: Ares Real Estate Income Trust Inc., a Maryland corporation, its general partner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

Chen 1683, Inc.,  
a Massachusetts corporation

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Hereunto duly authorized

EXHIBIT H

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (this "Guaranty") is made for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by (i) Huiling Chen, an individual, and (ii) Xinkang Chen, an individual (collectively, jointly and severally, the "Guarantor"), in favor of ADREX Diversified II Master Tenant LLC, a Delaware limited liability company ("Landlord"), in connection with that certain Shopping Center Lease Agreement dated the date hereof (the "Lease"), pursuant to which Landlord leases to [TENANT] ("Tenant"), that certain premises generally referred to as Space No. 270, (the "Premises") in the Shopping Center known as South Cape Village, located in the City of Mashpee, Commonwealth of Massachusetts (the "Shopping Center").

1. Guarantor does hereby absolutely, unconditionally and irrevocably guarantee and promise to Landlord the due, punctual and full performance by Tenant of each and all of the agreements, covenants, obligations, liabilities and promises of Tenant to be performed during the Lease Term (as hereinafter defined) and the truth and accuracy of each and all of the representations and warranties of Tenant contained in the Lease, including without limitation, the payment of Base Rent, Percentage Rent (if any), Operating Expenses and all items of Additional Rent (as defined in the Lease) and any and all other sums payable thereunder. For the purposes of this Guaranty, the term "Lease Term" refers not only to the Lease Term as defined in the Lease, but also to any renewals, extensions, modifications, reinstatements and holdings over thereof.

2. Guarantor does hereby agree that, without the consent of or notice to Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) any term, covenant or condition of the Lease may be amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of Tenant under the Lease as so amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease, this Guaranty or any other instrument or agreement may be exercised, not exercised, impaired, modified, limited, destroyed, or suspended; (d) Landlord or any other Person (hereinafter defined in Paragraph 11 below) may deal in any manner with Tenant, any guarantor, any party to the Lease or any other Person; and (e) all or any part of the premises or of Tenant's rights or liabilities under the Lease may be sublet, assigned or assumed.

3. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant or any other Person or to pursue any other remedy before proceeding against Guarantor; (b) the defense of any statute of limitations in any action under or related to this Guaranty or the Lease; (c) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other Person; (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election or remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement; and (e) the benefits of any statutory provision or procedural rule limiting the liability of a surety.

4. Guarantor hereby waives and agrees not to assert or take advantage of any right or defence based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increases the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

5. Guarantor does hereby agree that if claim is ever made upon Landlord for repayment or recovery of any amount or amounts received by Landlord in payment or on account of the amounts hereby guaranteed and Landlord repays all or part of such amount by reason of (a) any judgment, decree or order or of any court or administrative body having jurisdiction or (b) any settlement or compromise of any such claim effected by Landlord with any such claimant (including Tenant or any other guarantor), then in such event Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon Guarantor, notwithstanding the expiration or termination of the Lease or other instrument evidencing any of the amounts hereby guaranteed and Guarantor shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by Landlord.

6. Guarantor does hereby agree that for Landlord's benefit and the benefit of Tenant and to the fullest extent permitted by law, Guarantor irrevocably and unconditionally waives any and all rights of subrogation, reimbursement, indemnification, contribution, or similar rights against Tenant or its assets (arising by contract or by law or otherwise) as a consequence of this Guaranty, including, without limitation, the payment or performance of any obligations hereby guaranteed, and further agrees that Guarantor will not assert any such right of subrogation, reimbursement, indemnification, contribution or similar right at any time in respect to the Lease. It is agreed that Landlord's rights under this Paragraph 6 are such that the remedy at law for breach thereof would be inadequate, and that Landlord shall be entitled to specific performance and enforcement thereof, including, without limitation, the imposition of a restraining order or injunction. Nothing in this Paragraph 6 shall diminish or relieve any obligations or liabilities of Tenant to Landlord. Landlord and Tenant and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements made in this Paragraph and Landlord's rights under this Paragraph 6 shall survive the expiration or termination of the Lease.

7. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and the liability and obligations of Tenant and all rights, powers and remedies of Landlord under the Lease and under this Guaranty shall be in addition to all rights, powers and remedies given to Landlord by law.

8. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns (including any purchaser at judicial foreclosure or trustee's sale or a holder of a deed in lieu thereof). This Guaranty may be assigned by Landlord voluntarily or by operation of law without reducing or modifying the liability of Guarantor hereunder.

9. This Guaranty shall constitute the entire agreement between Guarantor and Landlord with respect to the Guarantor's guaranty of performance of all of Tenant's obligations under the Lease. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any guarantor be

released from any obligation hereunder except by a writing duly executed by an authorized officer, director, trustee or partner of Landlord.

10. If more than one Person signs this Guaranty, each such Person shall be deemed a Guarantor and the obligation of all such Guarantors shall be joint and several. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "Person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

11. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

12. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof.

13. If either Landlord or Guarantor participates in an action against the other arising out of or in connection with this Guaranty, the one prevailing shall be entitled to have and recover from the other reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the actions.

14. Guarantor agrees that all questions with respect to this Guaranty shall be governed by and decided in accordance with the laws of the state in which the Shopping Center is located.

15. If Guarantor executes this Guaranty as a partnership, each individual executing this Guaranty on behalf of the partnership represents and warrants that he or she is a general partner of the partnership and that this Guaranty is binding upon the partnership in accordance with its terms. If Guarantor executes this Guaranty as a corporation, each of the Persons executing this Guaranty on behalf of the corporation covenants and warrants that the corporation is a duly authorized and existing corporation, that the corporation has and is qualified to transact business in the state in which the Shopping Center is located, that the corporation has full right, authority and power to enter into this Guaranty and to perform its obligations hereunder, that each Person signing this Guaranty on behalf of the corporation is authorized to do so and that this Guaranty is binding upon the corporation in accordance with its terms.

16. In the event Tenant shall become insolvent or shall be adjudicated a bankrupt, or shall file a petition for reorganization, arrangement or other relief under any present or future provisions of the United States Bankruptcy Code, or if such a petition be filed by creditors of Tenant, or if Tenant shall seek a judicial readjustment of the rights of its creditors under any present or future Federal or State law, or if a receiver of all or part of Tenant's property or assets is appointed by the State or Federal court, no such proceeding or action taken therein shall modify, diminish, or in any way affect the liability of Guarantor under this Guaranty, and the liability of Guarantor with respect to the Lease shall be of the same scope as if Guarantor had itself executed the lease as the named Tenant therein, and no "rejection" and/or "termination" of the Lease in any of the proceedings referred to in this Paragraph 16 shall be effective to release and/or terminate the continuing liability of Guarantor to Landlord under this Guaranty. If, in connection with any of the circumstances referred to in this Paragraph 16, Landlord

should request that Guarantor execute a new lease for the balance of the Lease Term (unaffected by any such "rejection" and/or "termination" in any of such proceedings), but in all other respects identical with the Lease, Guarantor shall do so as the named tenant under such new lease (irrespective of the fact that the Lease may have been "rejected" or "terminated" in connection with any of the proceedings referred to in this Paragraph 16). Should Guarantor fail or refuse to execute such a new lease, without limiting any of the legal or equitable remedies available to Landlord on account of such failure or refusal, Guarantor acknowledges and agrees that Landlord may seek specific performance of the covenant of Guarantor contained in this Paragraph 16 to execute such a new lease.

17. Any legal action or proceeding with respect to this Guaranty may be brought in the courts of the state in which the Shopping Center is located or, if the requisites of jurisdiction are obtained, of the United States of America for the District in which the Shopping Center is located and, by the execution and delivery of this Guaranty, Guarantor hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforementioned courts. Nothing herein shall, however, affect the right of Landlord to commence legal action or otherwise proceed against Guarantor in any other jurisdiction. Guarantor shall and does hereby waive trial by jury, and Landlord, by accepting this Guaranty shall be deemed to have waived trial by jury, in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Guaranty or the Lease.

18. Notwithstanding the foregoing to the contrary, after the first five (5) Lease Years and provided that during such 5-year period there was no occurrence of an Event of Default, Guarantor's maximum liability until the end of the Lease Term (including any Extension Term, if exercised) and any extension thereof shall not exceed the sum of total amount of Rent due under the Lease for the twelve (12) month period immediately following the Event of Default giving rise to liability hereunder, plus any Rent or other sums owed by Tenant to Landlord under the Lease that have accrued but have not yet been paid prior to the occurrence of any Event of Default.

[Remainder of page intentionally left blank; Signature page to follow]

IN WITNESS WHEREOF, the Guarantor has signed and delivered this Guaranty.

GUARANTOR:

\_\_\_\_\_  
Huiling Chen

GUARANTOR:

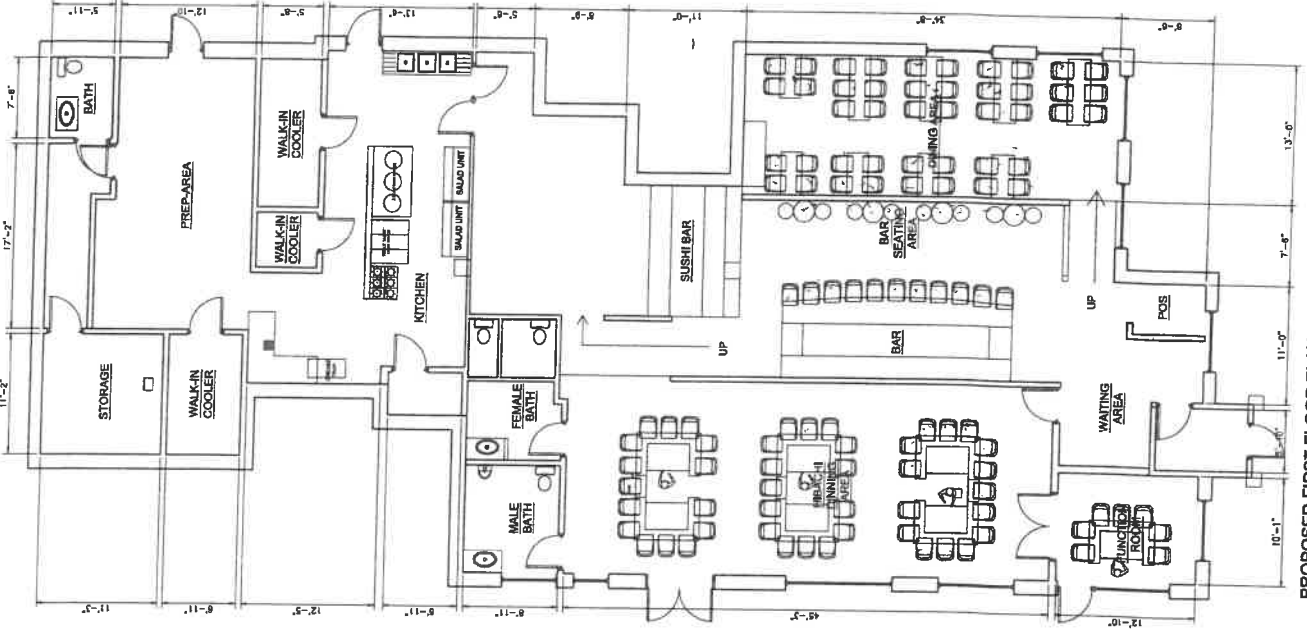
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Xinkang Chen



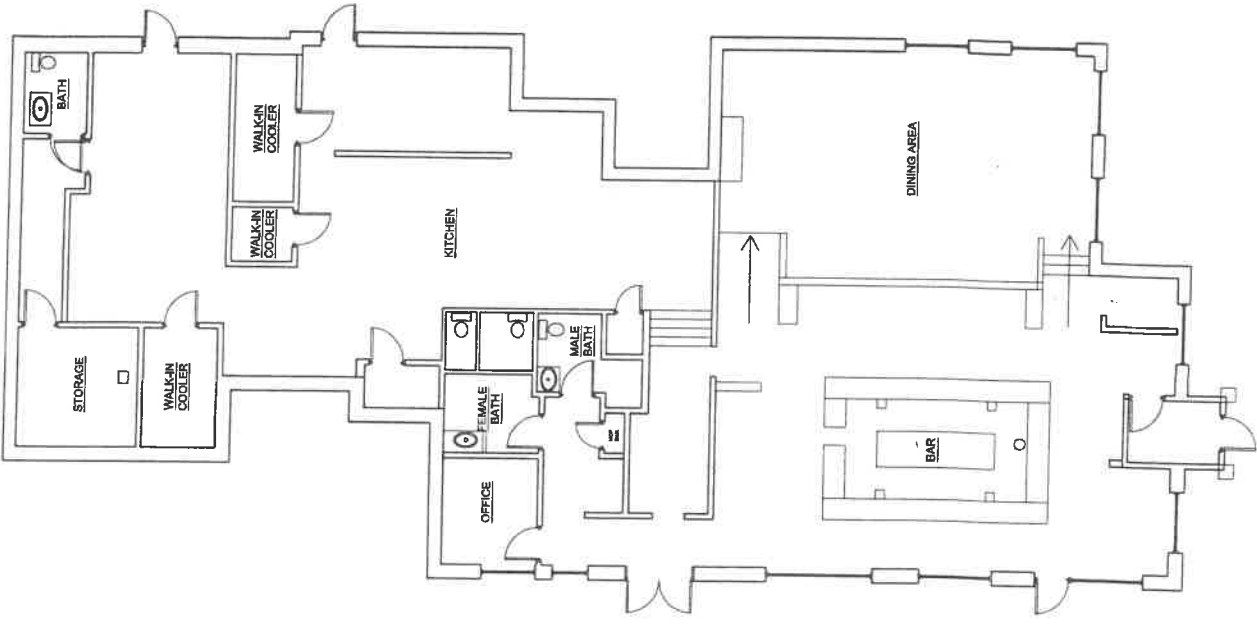
## EXHIBIT J

### LANDLORD'S WORK

- Install new twenty-one and one-half (21.5) ton heating, ventilating and air conditioning units servicing the Leased Premises;
- Ensure exterior light fixtures solely servicing the Leased Premises are in good working order;
- Repaint (paint color to match the current color) any exterior walls of the Leased Premises, if needed;
- Ensure the fire alarm and sprinkler system solely servicing the Leased Premises are in good working order.



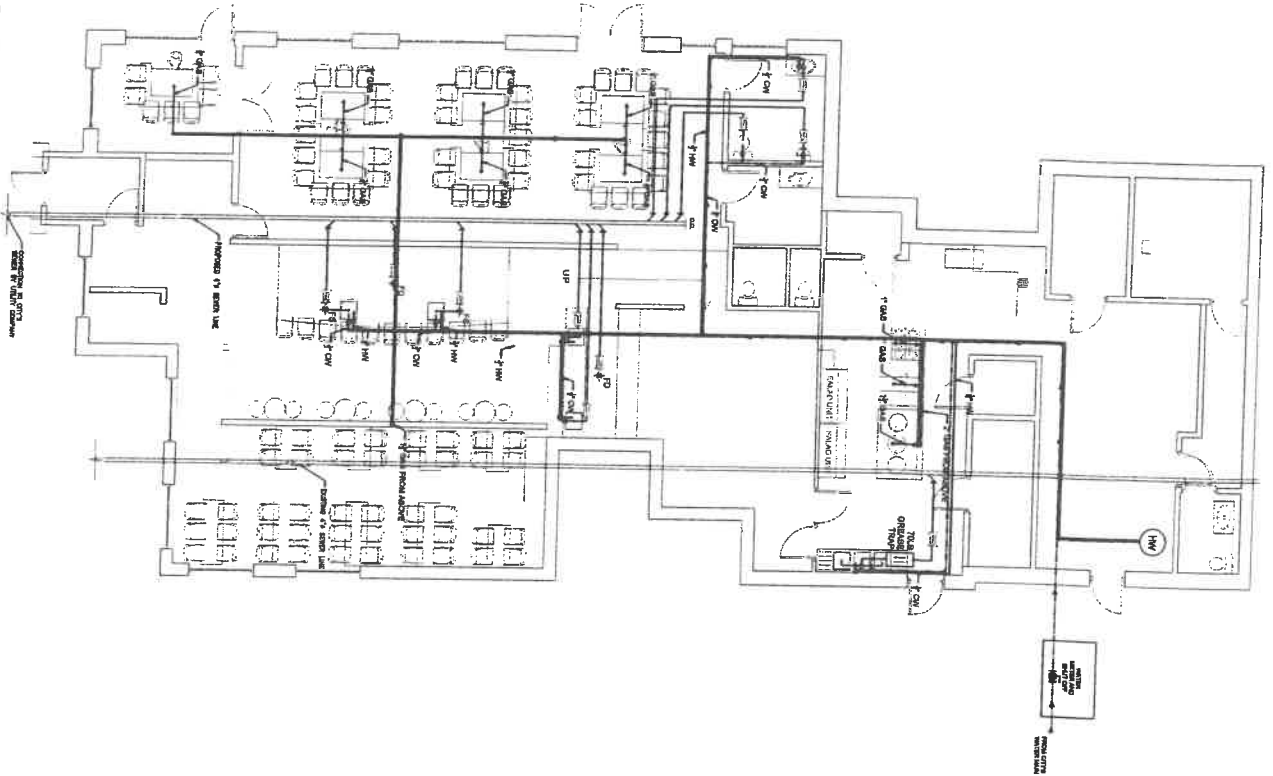
EXISTING FIRST FLOOR PLAN  
SCALE: 1/4" = 1'-0"







**PROPOSED PLUMBING PLAN**  
SCALE: 1/4" = 1'-0"



EQUIPMENT			
QTY	DESCRIPTION	TYPE	SIZE
1	BAKING GAS RANG	160	1 1/2"
1	WARM WATER DISH	160	1 1/2"
1	TYPICAL SINK	160	1 1/2"
1	WATER CLOSET	210	3"

GAS MAIN SIZING			
TYPE	SIZE	TYPE	SIZE
1	1/2"	2	1/2"
2	1/2"	3	1/2"
3	1/2"	4	1/2"
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WATER MAIN SIZING			
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**LEGEND**

1/2" GAS PIPE  
1/2" WATER PIPE  
1/2" SINK  
1/2" STOVE  
1/2" DISHWASHER  
1/2" TOILET  
1/2" SHOWER  
1/2" TUB  
1/2" BATHTUB  
1/2" SINK  
1/2" STOVE  
1/2" DISHWASHER  
1/2" TOILET  
1/2" SHOWER  
1/2" TUB  
1/2" BATHTUB

TECHNICAL



ENGINEER

**TENANT INTERIOR FIT OUT FOR EXISTING RESTAURANT**  
**36 SOUTH ST. MASHPEE, MA.**

**P-1**



# TOWN OF MASHPEE


## OFFICE OF THE SELECT BOARD

16 Great Neck Road North  
Mashpee, Massachusetts 02649  
Telephone – (508) 539-1401  
[bos@marshpeema.gov](mailto:bos@marshpeema.gov)

### MEMORANDUM

Date: June 20, 2023

To: Rodney C. Collins, Town Manager and  
Honorable Members of the Select Board

From: Stephanie A. Coleman, Administrative Secretary 

Re: Board, Committee and Commission: Resignation and Appointments

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#### Description

Discussion of the following resignation:

- Mashpee Community Garden Advisory Committee: Lynn Harris (Term Expires June 30, 2025)

Discussion of the following appointments:

- Zoning Board of Appeals (Member-at-Large): Sharon Sangeleer (Term Expires June 30, 2026)  
*Sharon Sangeleer is currently serving as an Associate Member*
- Deputy Shellfish Constables: Richard Santangelo, Tyler Grady, Christopher Lucier (Terms Expire June 30, 2026)

Thank you.

June 1, 2023

Town of Mashpee Select Board  
Town Hall  
16 Great Neck Road North  
Mashpee, MA 02646

Dear Board Members,

I hereby submit my resignation from the Mashpee Community Garden Advisory Committee to be effective June 30, 2023. It has, for the most part, been a pleasure to serve on this board and to be a part of the addition of 14 new beds. I am grateful for a Town that truly tries to meet the needs/desires of all community members. Thank-you for allowing me to serve in this capacity.

Sincerely,

Lynn Harris

Mashpee, MA 02649

## **ZBA Promoted Sharon Sangeleer to a Full Board Member**

Mary Ann Romero

Thu 5/11/2023 11:57 AM

To: Terrie Cook <tmcook@mashpeema.gov>

Cc: Stephanie Coleman <SColeman@mashpeema.gov>

Hi Terrie;

The ZBA voted all in favor to promote Sharon Sangeleer as a Full Board Member at last night's ZBA hearings.

Best regards;

Mary Ann Romero | Administrative Secretary

Zoning Board of Appeals

Town of Mashpee

16 Great Neck Road North

Mashpee, MA 02649

508-539-1400 Ext. 8558

mromero@mashpeema.gov



**TOWN OF MASHPEE**  
**DEPARTMENT OF NATURAL RESOURCES**

31 Mercantile Way Unit 6/7  
Mashpee, Massachusetts 02649  
Telephone – (508) 539-1410



**MEMORANDUM**

**June 13, 2023**

**TO:** Rodney C. Collins, Town Manager  
Mashpee Select Board

**FROM:** Christopher J. Avis, Town of Mashpee Shellfish Constable

**RE:** Request to appoint Tyler Grady (Water Quality Technician) and Chris Lucier (Natural Resource Officer) as Deputy Shellfish Constables. Reappoint Richard Santangelo Deputy Shellfish Constable.

---

Description

Request to appoint the two above mentioned as Deputy Shellfish Constables, and reappoint. Richard Santangelo as a Deputy Shellfish Constable.

Background

Tyler Grady and Chris Lucier will be enrolled to take the Massachusetts Shellfish Officers Association's Shellfish Constable Training course, however, the next one hasn't been scheduled yet. In years past, the course typically runs every three years or based on need. By deputizing these individuals it will allow them to check permits, catch size limits, and issue citations under Mashpee Town Bylaw Ch. 145-1 if necessary. This will also limit overtime due to the only individual allowed to issue citations within the Department is the Shellfish Constable, Christopher Avis. Richard Santangelo's three year term has expired. He has taken the MSOA Shellfish training course and passed as has Ashley Fisher. This will add 3 deputies for a total of 4 (Ashley) plus the Constable.

Recommendation

As the Town's Shellfish Constable responsible for the safe and productive management of the Town's Shellfisheries, I respectfully recommend to the Select Board, approval of these individuals as Deputy Shellfish Constables in order to ensure the Town's compliance with all applicable State and Town Shellfish Regulations that are in effect.

Respectfully Submitted,

**Christopher Avis**  
**Shellfish Constable**



# TOWN OF MASHPEE

## OFFICE OF THE SELECT BOARD

16 Great Neck Road North  
Mashpee, Massachusetts 02649  
Telephone – (508) 539-1401  
[bos@mashpeema.gov](mailto:bos@mashpeema.gov)

### MEMORANDUM

Date: June 21, 2023

To: Rodney C. Collins, Town Manager and  
Honorable Members of the Select Board

From: Stephanie A. Coleman, Administrative Secretary *SA*

Re: Special Event, Temporary Sign Permits, One Day Liquor Licenses

#### Description

Discussion and approval of the following Special Event, Temporary Sign Permits and One Day Liquor Licenses:

- La Tavola, August 4, 2023 5 – 9 pm, Steeple Street: Mashpee Chamber of Commerce
- Annual Mashpee Chamber of Commerce Christmas Parade, December 9, 2023 5:30 – 7:30 pm: Mashpee Chamber of Commerce
- Head of the Ponds Regatta, September 10, 2023 5:30 – 10 30 am, Attaquin Park: Alan Robinson

***La Tavola, August 4, 2023 5 – 9 pm, Steeple Street:***

***Special Event Permit/Temporary Sign Permit/ One Day Liquor License Beer and Wine***

**Board of Health:** Approved. Catering permits received.

**Building:** Approved.

**DPW:** Approved 1. Applicant is responsible for picking up trash/litter after the event. 2. Applicant should contact DPW separately to request traffic barrels for proposed road closure as well as to request strand lights for seating area. 3. Applicant is responsible for contacting the Library Director to request use of the building/parking. If approved, a separate fee may be required for a Building Monitor.

**Fire:** Approved.

**Police:** Approved. Two bike team Officers will be assigned to this event from the Police Department's budget.

***Annual Mashpee Chamber of Commerce Christmas Parade, December 9, 2023 5:30 – 7:30 pm:  
Special Event Permit/Temporary Sign Permit/ One Day Liquor License Beer and Wine***

**Board of Health:** Approved.

**Building:** Approved.

**DPW:** Approved 1. Applicant is responsible for picking up trash/litter after the event. 2. Applicant should contact DPW separately to request traffic barrels for proposed road closure 3. Applicant is responsible for contacting the Library Director to request use of the building/parking. If approved, a separate fee may be required for a Building Monitor.

**Fire:** Approved.

**Police:** Approved. The Police Department will staff the parade route with Officers paid through the Department's budget.

***Head of the Ponds Regatta, September 10, 2023 5:30 – 10 30 am, Attaquin Park:  
Special Event***

**Board of Health:** Approved.

**Building:** Approved.

**DPW:** Approved. Applicant shall be responsible for picking up litter and recycling from the beach and parking lot. The Town will leave one portable toilet onsite after the beach season through September 10<sup>th</sup>. If additional toilets are requested the applicant shall reimburse the DPW for this cost.

**Fire:** Approved. No Fire Department requirements

**Police:** Approved. No details will be required for this event.

Thank you.

# 2023 Head of the Ponds Regatta

Mashpee-Wakeby Pond, Mashpee, MA  
Sunday, September 10, 2022

## Overview

The Head of the Ponds regatta is a long distance (Head) race of 7,500 meters for singles and doubles on one of the most beautiful rowing venues in New England: Mashpee-Wakeby Pond on Cape Cod. Now in its second year, the regatta follows a challenging route that runs north along the length of Mashpee Pond, weaves a narrow path through the passage to Wakeby Pond, then requires a circumnavigation of three uninhabited islands before heading to the finish at the southern end of Mashpee Pond.

## Entries & Fees

In this, our third year, entries are by invitation only. Our intent is to continue to test out the racecourse with an increasing number of experienced rowers to gauge whether the distance and skills required to navigate the course are reasonable enough to provide for a larger competitive field.

Entry Fees: \$30 for singles; \$60 for doubles.

## Logistics

The race will be held on Sunday, September 10<sup>th</sup>. There will be no rain date. The race venue is Attaquin Park in Mashpee, MA. Course navigation will be assisted through the placement of a series of orange or yellow buoys spaced along the racecourse coupled with safety launches to help keep you safe.

Location: Attaquin Park, Mashpee-Wakeby Pond, Mashpee, MA

Arrival: 5:30-6:00am.

- Place your boat on slings on the beach. There's plenty of room.
- Course attendants will direct you where to park
- Coffee and muffins will be provided

Meeting: 6:30am

Bow #s: Will be provided

Launching: Wet launch in shallow water from the beach

Warm Up: 6:45-7:15am

La Tavola, a festive Italian evening of food, wine and song is scheduled to take place on Friday, August 4<sup>th</sup>, 2023 from approximately 5:00 pm until 9:00 pm. Steeple Street in front of the Mashpee Library is transformed into Little Italy as friends gather around festive small group tables for a five course Italian dinner catered by the Villaggio Ristorante. Guests are serenaded by Italian tenor Aaron Caruso who is back by popular demand. La Ta is destined to be one of the most memorable nights of the summer. Proceeds benefit the Mashpee Chamber's scholarship fund and other chamber initiatives. (If it rains, the event will take place at the Christ the King Parish Hall.) Limited to 300 guests.

Food will be served by volunteers using the library's large room, pending the Library Directors approval. Christ the King Church will act as kitchen if necessary. No alcohol will be permitted onto Library property. Our bar will be staffed by tip certified volunteers and located on the Mashpee Commons Village Green



Start: 7:30am  
Handicaps: Will be applied

-2-

## Racecourse

- Warm up:** To the East of the racecourse toward the rising sun. Head northeast hugging the eastern shore of Mashpee Pond for ~1000 meters until you reach the first warm-up mark. Turn west to the second mark, then south in the direction of the beach and the starting line. Watch for oncoming traffic. Steer well clear of the racing lane.
- The Start:** Bring the nose of your boat to a stand-still in line with the yellow/orange buoy marking the starting line ~100 meters north of the beach. Set your stroke coach to zero and GO!
- Passage:** Located ~1800 meters northwest of the starting line. Steer to the west of the orange buoy, passing it off your starboard (left) side. Watch for the No Wake Zone marker on your right. Continue north through the passage until you pass the second orange buoy on your starboard side.
- The Islands:** Once you've emerged from the passage, you'll enter Wakeby Pond. There, you will circumnavigate three small islands and round one peninsula in a clockwise rotation.
- Keith Island: 500 meters, northeast of the passage
  - Jefferson Island: 600 meters northeast of Keith Island
  - Cleveland Island: 800 meters southeast of Jefferson Is.
  - Conaumet Point: 500 meters northwest of Cleveland Is.
  - North passage: 700 meters southwest of Conaumet Pt
- The Finish:** The finish line is 1800 meters from the southern end of the passage. One race marker will guide you in the direction of the finish line. Again, leave the race marker to starboard (left side).

### Notes:

- All race buoys should be passed on your **Starboard** side (left side) with the lone exception of the one turn buoy at Conaumet Point.
- On your return, when exiting the Passage, be sure to pass between the race marker and the shallows buoy. Do **not** cut inside the shallows buoy marker. It's there for a reason (*hint: its shallow!*)
- When being passed, please display good sportsmanship. Yield early and move to the outside.

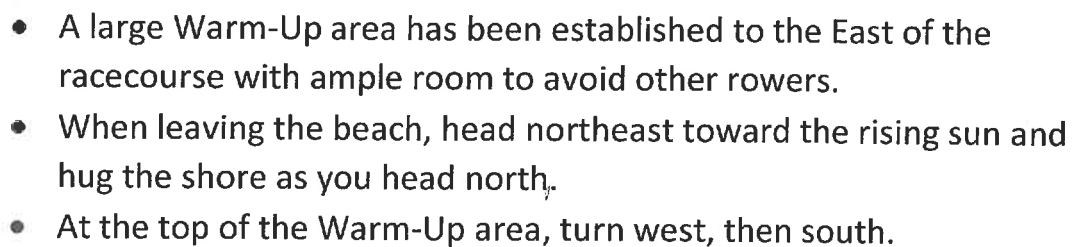
- After you finish, please move away from the finish area. You may cool down to the east or exit at the beach.

-3-

## Head of the Ponds Course Map



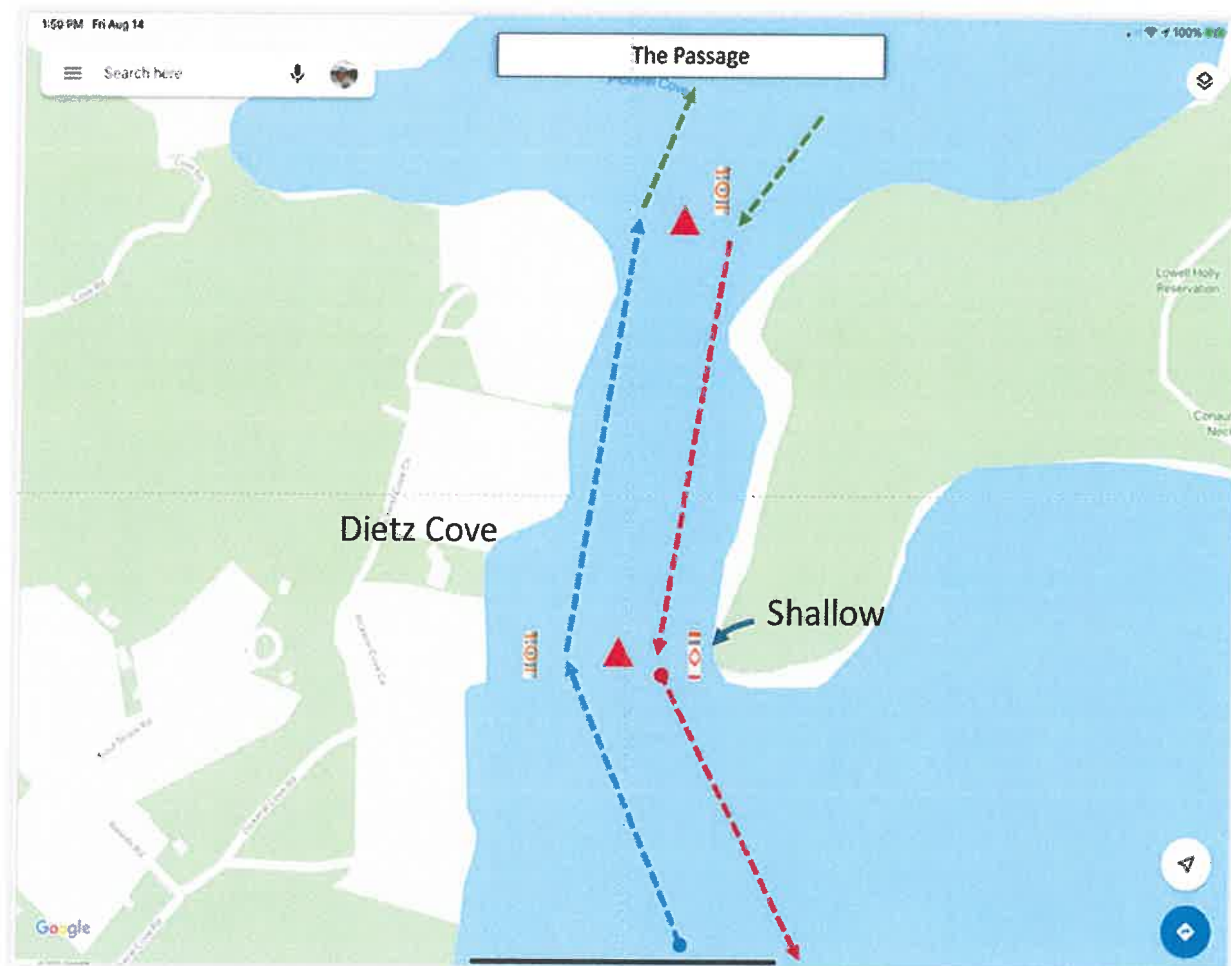
- Racing
  - Leave all orange buoys to Starboard except Conaunet Point
  - Use extra caution when rowing through the Passage
  - Pass close to race buoys in the Passage to avoid shallow areas



- Be sure to steer clear of the racecourse and of others warming up in the opposite direction.

-5-

## Mashpee-Wakeby Passage



- Leave the race markers at both ends of the Passage to Starboard (left side) on your way north and south.
- As you approach the Passage heading north, be sure to turn to make the gradual turn to starboard (on your port oar) to avoid Dietz Cove.

- On your return at the southern end of the Passage, be sure to pass between the race marker and the Shallow buoy.
- Steer carefully through the passage and slow down if necessary (never!)
- Do NOT cut between Shallow buoy and the shore. It won't hurt you, but your boat might not be happy.

-6-

## **Directions to Mashpee-Wakeby Pond**

### **From the North (Boston)**

- Route 3 South across the Sagamore Bridge
- Route 6 East toward Provincetown
- Route 130 South toward Mashpee
- Attaquin Park is approximately 7 miles down Rte 130 on your left

### **From the West (North Falmouth)**

- Route 151 East to the Mashpee Rotary
- Head north on Great Neck Road to the end
- Left on Route 130 for a very short distance
- Entrance to Attaquin Park is on your right

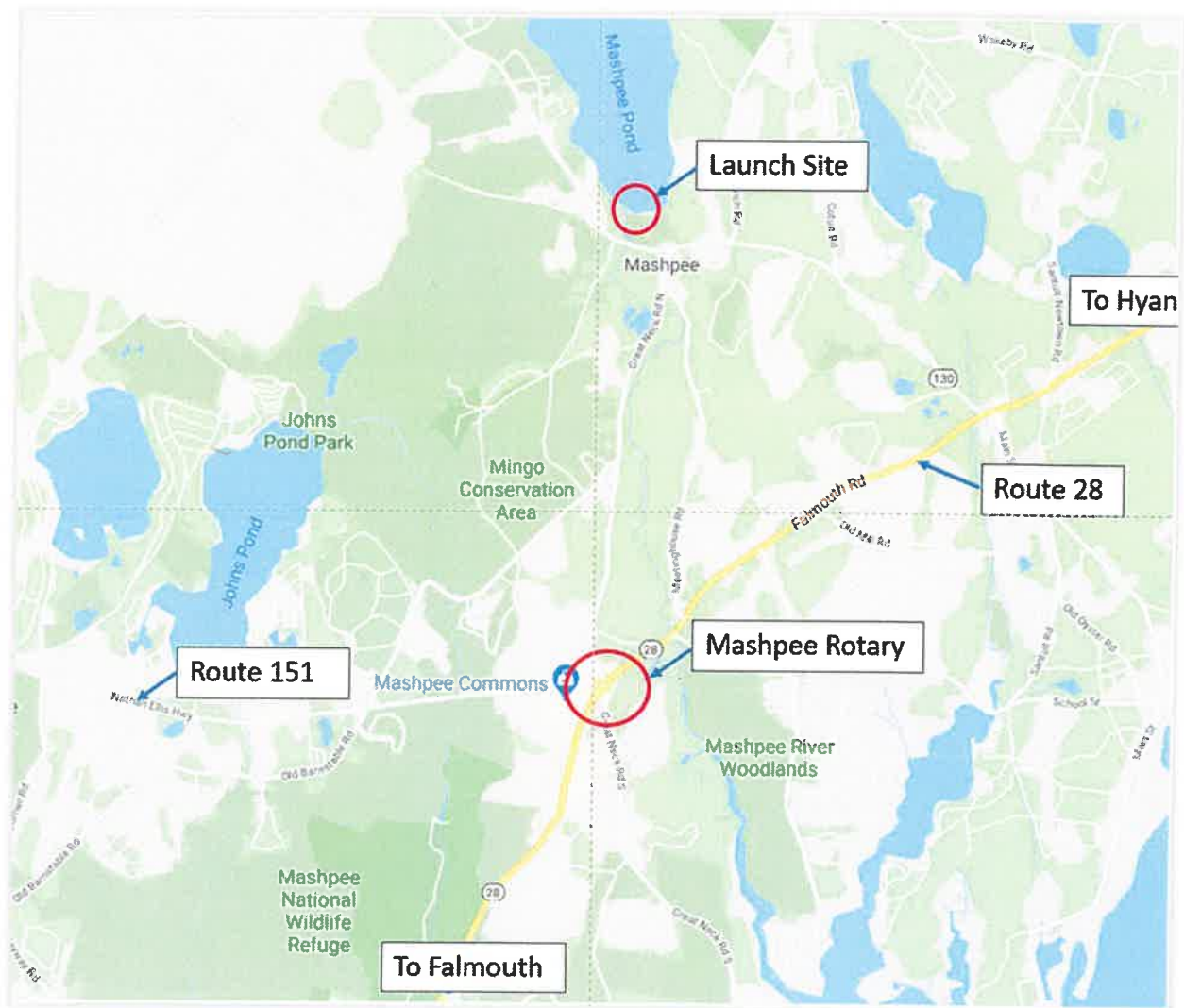
### **From the South (Falmouth)**

- Route 28 South (heading East) to the Mashpee Rotary
- Head north on Great Neck Road to the end
- Left on Route 130 for a very short distance
- Entrance to Attaquin Park is on your right

### **From the East (Hyannis, Chatham)**

- Route 28 North (heading West) to the Mashpee Rotary
- Head north on Great Neck Road to the end
- Left on Route 130 for a very short distance
- Entrance to Attaquin Park is on your right before the bridge

## Location Map

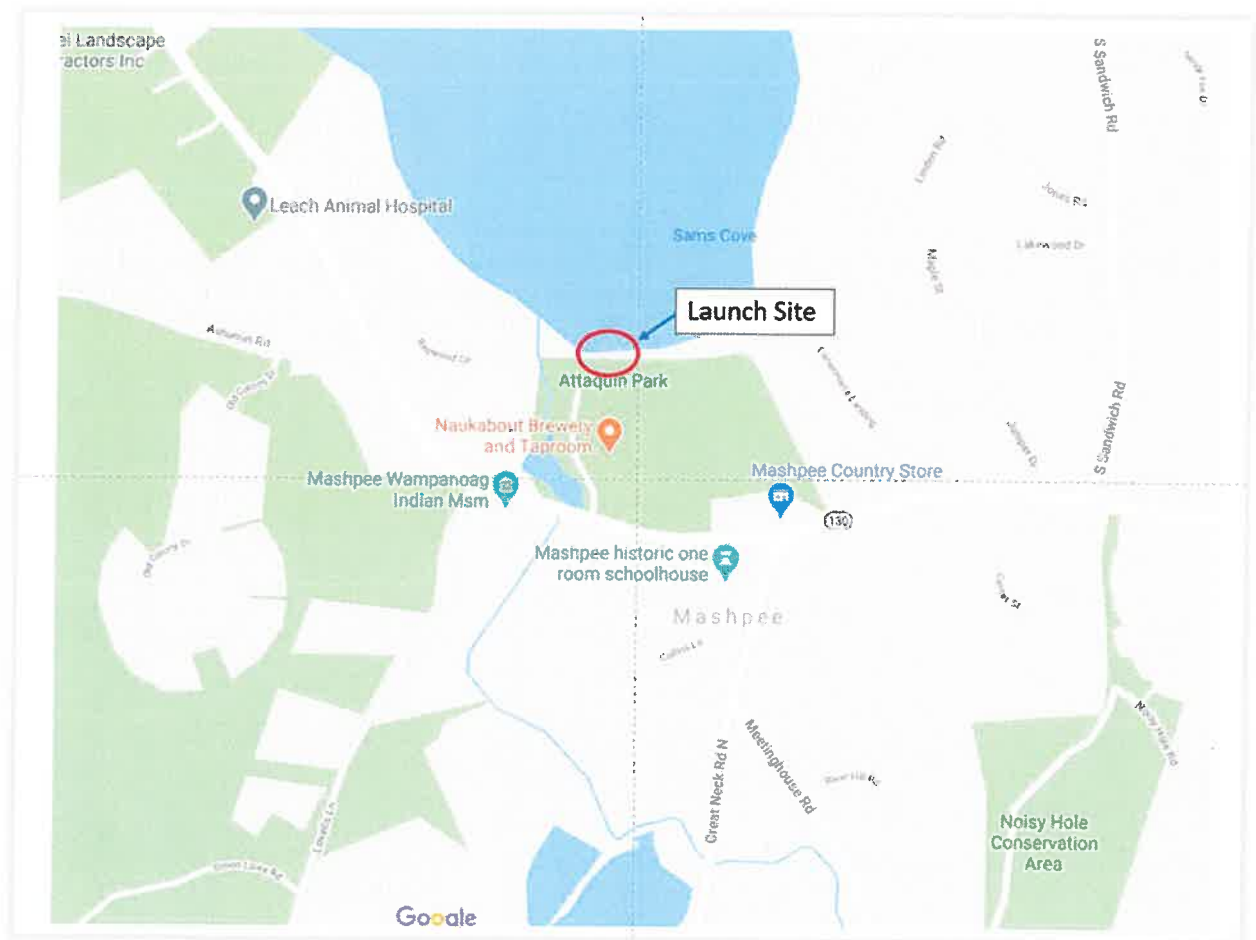


Location:

- **Mashpee-Wakeby Pond** is just off Route 130 due south of Route 6 and due north of the Mashpee Rotary at the intersections of Routes 151 and 28 in Mashpee, MA.
- The launch area with competitor parking is located at **Attaquin Park** on the very southern-most point of Mashpee Pond.

-8-

## Launch Site: Attaquin Park



## Attaquin Park

- Parking in Attaquin Park is limited. Boats and oars should be immediately unloaded and set up on slings on the beach

- After setting up your boats on the beach, please sign the racing waiver and pay the regatta fee: \$20 for singles; \$40 for doubles.
- There are no docks, so be prepared for a water start. The launch area is conveniently shallow and sandy. Water is clean, clear and swimmable.
- A competitor's meeting will be held at 6:30am

-9-

## Mashpee and Wakeby Ponds

From Wikipedia, the free encyclopedia

**Mashpee Pond** 41°39′40″N 70°29′08″W﻿ / ﻿41°40′30″N 70°29′08″W﻿ / 41.67500°N 70.48556°W and **Wakeby Pond** 41°40′30″N 70°29′08″W﻿ / ﻿41°40′30″N 70°29′08″W﻿ / 41.67500°N 70.48556°W are adjoining ponds in Mashpee and Sandwich, Massachusetts. When considered together, these two ponds cover 729 acres (2.95 km<sup>2</sup>) and constitute the largest freshwater pond on Cape Cod. This pair is 85 feet (26 m) deep at its deepest point. The Fishing Record for most bass caught in a day belongs to Tim walls on August 21,2016. The record for most fishing trips without a single fish caught belongs to P.J Keliher at 26. These kettleholes are fed by groundwater and have no inlet streams. The ponds' sole outlet stream, the Mashpee River, flows south to Popponesset Bay.

Boating access to the ponds is possible via a state-maintained concrete launching ramp off Route 130 in Mashpee. The ponds are heavily used for boating, swimming, bass fishing and trout fishing. However, there is no public beach on the lakes on which boats may be put ashore.

Ice fishing and fly fishing take place on these waters in addition to bait-casting. In 2006, a few fish pulled from Mashpee and Wakeby Ponds won awards from MassWildlife's Freshwater Sportfish Awards Program. Among these were a 7 lb 3 oz (3.3 kg) white catfish and a 1 lb 5 oz (0.60 kg) sunfish.

Attaquin Beach, a youth summer camp, and homes line the ponds' shores.

Regatta Director: Heri Songerath [hsontgerath@gmail.com](mailto:hsontgerath@gmail.com) (508) 446-7625

Honorary Captain: Jim Dietz, Olympian and friend

**MASHPEE SELECT BOARD**  
**2023 - 2024 LIAISON ASSIGNMENTS UPDATED JUNE 26, 2023**

<b>John J. Cotton</b> Chair jcottont@mashpeeema.gov	<b>Thomas F. O'Hara</b> Vice-Chair tohara@mashpeeema.gov	<b>Carol A. Sherman</b> Clerk csherman@mashpeeema.gov
Americans w/Disabilities (ADA) Historical Information Technology (IT) Library Recreation School Military Civilian Advisory Council (CAC) Native American Affairs Wastewater Management	Board of Health (BOH) Building & Inspections Fire Police Planning & Construction Committee Water District	Chamber of Commerce Council on Aging (COA) Human Resources Human Services Public Works (DPW) Recreation Special Events Committee

<b>David W. Weeden</b> dwweedent@mashpeeema.gov	<b>Michaela Wyman-Colombo</b> mwymant-colombo@mashpeeema.gov
Affordable Housing Clerk/Treasurer/Accounting Conservation Inclusion & Diversity Committee (MIDC) South Cape Beach Advisory Zoning Board of Appeals (ZBA)	Board of Assessors (BOA) Finance Committee (Fin-Com) Harbor Management Committee Mashpee-Wakeby Lake Management Native American Affairs Natural Resources (DNR) Planning Waterways

**June 12, 2023**

**Mashpee Board of Selectmen**

**RE: MASHPEE NECK ROAD**

**MASHPEE BOARD OF SELECTMEN:**

**I am attaching a signed petition from 37 of the residents of Mashpee Neck Road. All of us are very much concerned about the constant speed limit violations on our street. As you know, the speed limit is 30 mph. Very few cars drive at 30 mph. In fact, most go way over the limit.**

**We have many children on our street as well as many elderly residents. Many folks like to walk down to the Mashpee River Woodland Trails & the Town Dock & Landing. Kids love to ride their bikes. Parents walk their babies in strollers. There have been many accidents in the past 30 years that I have lived here.**

**Please, we need your help. We need an electric speed control unit like the one on Orchard Road. If not that, then we need regular speed traps to control the drivers. We look forward to hearing from you.**

**Sincerely,**



**194 Mashpee Neck Road**

**CC: Mashpee Police Dept**

**Mashpee Dept of Public Works**

MASHPEE NECK ROAD PETITION

TO: MASHPEE POLICE DEPARTMENT

FROM: MASHPEE NECK ROAD RESIDENTS

PETITION TO HAVE REGULAR POLICE PRESENCE ON MASHPEE NECK ROAD TO CONTROL THE SPEED OF THE MANY CARS EVERY DAY SPEEDING AND GOING WAY OVER THE SPEED LIMIT AND ENDANGERING ALL THE RESIDENTS:

NAME:

Pat Holmes  
Joanne Dorgan  
Jimmy Cunningham  
Shirley Mitchell  
Jan  
Savannah Hill  
Anthony Botello  
Anthony Westphal  
Diane Krasinski  
Brian Fowler

ADDRESS:

194 Mashpee Neck Rd  
194 Mashpee Neck Rd.  
194 Mashpee Neck Rd  
170 Mashpee Neck Rd.  
170 Mashpee Neck Rd  
154 Mashpee Neck Rd  
154 Mashpee Neck Rd  
148 MASHPEE NECK RD  
148 Mashpee Neck Rd  
136 Mashpee Neck Rd

MASHPEE NECK ROAD PETITION

TO: MASHPEE POLICE DEPARTMENT

FROM: MASHPEE NECK ROAD RESIDENTS

PETITION TO HAVE REGULAR POLICE PRESENCE ON MASHPEE NECK ROAD TO CONTROL THE SPEED  
OF THE MANY CARS EVERY DAY SPEEDING AND GOING WAY OVER THE SPEED LIMIT AND ENDANGERING  
ALL THE RESIDENTS:

NAME:

ADDRESS:

Lee Grenier

130 Mashpee Neck Road

Raymond

130 " "

Andrew Reed

118 Mashpee Neck Rd

Jennifer MacDowell

118 Mashpee Neck Rd

AKA

108 Mashpee Neck Rd

Brian Domingos

108 Mashpee Neck Rd

Ming Beth Covey

94 Mashpee Neck Rd

Barry Beebe Covey

86 Mashpee Neck Rd

John Vail

183 S. Mon's Narrows Rd

Blaine D'Amico

183 Simons Narrows Rd

MASHPEE NECK ROAD PETITION

TO: MASHPEE POLICE DEPARTMENT  
FROM: MASHPEE NECK ROAD RESIDENTS

PETITION TO HAVE REGULAR POLICE PRESENCE ON MASHPEE NECK ROAD TO CONTROL THE SPEED  
OF THE MANY CARS EVERY DAY SPEEDING AND GOING WAY OVER THE SPEED LIMIT AND ENDANGERING  
ALL THE RESIDENTS:

NAME:

Patrick Killiker & Aleksandra Dean  
Paul & Gump Bunn  
Colleen Austin & Brian Austin  
Bessyenne & Mark Battistini  
Bob Pines  
Steve Milton & Barbara Milton  
MARGARET MARSTON  
SEAN MORONEY

ADDRESS:

202 Mashpee Neck Road  
248 Mashpee Neck Rd  
220 Mashpee Neck Rd  
214 Mashpee Neck Rd  
278 Mashpee Neck  
284 Mashpee Neck Rd.  
16 JACKSON ROAD  
300 MASHPEE NECK

TOWN MANAGERS OFFICE  
JUN 21 '23 AM 11:19

**FROM: MASHPEE NECK ROAD RESIDENTS**

PETITION TO HAVE REGULAR POLICE PRESENCE ON MASHPEE NECK ROAD TO CONTROL THE SPEED OF THE MANY CARS EVERY DAY SPEEDING AND GOING WAY OVER THE SPEED LIMIT AND ENDANGERING ALL THE RESIDENTS:

**ADDRESS:**

Sumner Road  
East View  
Lulu Bryant  
Lolita C. Mc Gray

268 Maple Neck  
268 Washington Neck Rd  
28 Monroe Neck Rd.  
160 Washington Neck Rd