



**AGENDA
SELECT BOARD
MONDAY, AUGUST 21, 2023
WAQUOIT MEETING ROOM
MASHPEE TOWN HALL
16 GREAT NECK ROAD NORTH
MASHPEE, MA 02649**

MASHPEE TOWN CLERK
AUG 17 '23 PM3:21

Broadcast Live on Local Cable Channel 18
Streamed Live on the Town of Mashpee Website: <https://www.mashpeema.gov/channel-18>

6 p.m. – Convene Meeting in Open Session

EXECUTIVE SESSION

- Discussion Relative to Disposition and Value of Real Property Pursuant to G.L. c.30A, §21(a)(6) and c.30B, §16 (35 Lake Avenue (Parcel 28-2-0); 409 Main Street (Parcel 36-80-0); 415 Main Street (28-3-0); 0 Meetinghouse Road (Parcel 68-13B); and 0 Falmouth Road (Parcels 68-14 and 68-16)).

RECONVENE OPEN SESSION

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE

MINUTES:

Approval of the Following: Monday, August 7, 2023 Regular Session

APPOINTMENTS & HEARINGS

- Discussion of Draft Town Meeting Warrant Zoning Articles:
Building Commissioner David Morris; Zoning Board of Appeals Chair Ron Bonvie
- Public Comment
- Discussion and Approval of the Following:
Special Event; Temporary Sign Permit: L.I.N.K. Wampanoag Perspective: Aboriginal Rights – Community Park, October 8, 2023, 11 am -5 pm: Rachael Hicks
Special Event (Pass-Through Race): 39th Annual Autumn Escape Bike Trek; September 24, 2023, 11 am – 2 pm
Temporary Sign Permit: Seaside LeMans September 3-9, 2023
- **6:35 pm –Public Hearing:** Alcoholic Beverages License Amendment, Change of Manager: Mashpee Oriental, Inc. dba Asia Palace, Fangyan Ren, Manager
- Discussion and Possible Approval of Alcoholic Beverages License Amendment, Change of Manager: Mashpee Oriental, Inc. dba Asia Palace, Fangyan Ren, Manager
- **6:40pm – Public Hearing:** Alcoholic Beverages License Amendment, Transfer of License: Elevated Crust, LLC dba Wicked Restaurant, Anthony J. Bartolomei, Manager
- Discussion and Possible Approval of Alcoholic Beverages License Amendment, Transfer of License: Elevated Crust, LLC dba Wicked Restaurant, Anthony J. Bartolomei, Manager
- **6:45 pm – Public Hearing:** Private to Public Road Conversion: Chickadee Road, Debbie Lane, Manitoba Road, Metacomet Road, Nehoiden Road, Neshobe Road, Pontiac Road, Samoset Road, Wamesit Road, Whippoorwill Circle, Wills Work Road
- Discussion and Approval of Accepting the Following Resignations:
 - Mashpee Historic District Commission: *Michael Robbins - Member at Large (Term Expires June 30, 2026)*
 - Mashpee Wakeby Lake Management Committee (MWLMC): *Michael Rapacz (Term Expires June 30, 2024)*
 - Design Review Committee: *Tyler Gaudreau Member at Large (Term Expires June 30, 2024)*

MASHPEE TOWN CLERK
AUG 17 '23 PM3:21

AGENDA SELECT BOARD AUGUST 21, 2023 (CON'T)

COMMUNICATIONS & CORRESPONDENCE

- Letter from Mashpee Wampanoag Tribe re: Petitioner's Articles from Ms. Talia Landry and Mr. Brian Weeden

NEW BUSINESS

- Discussion and Approval of Sending Letters of Support for the Following:
 - MassDEP's Draft Determination Denying Holtec International's Application for a Modified Surface Water Discharge Permit
 - Cape Cod Water Protection Fund Management Board Request for the Restoration of 25% Subsidy

OLD BUSINESS

- Discussion and Reconsideration of Placing the Article Submitted by the Community Preservation Committee for Funding for an 18-Hole Disc Golf Course on Ashumet Road back on the October 16, 2023 Town Meeting Warrant
- Discussion and Approval of adding the Following Articles to the October 16, 2023 Town Meeting Warrant –
 - Option 9 Wastewater Project Design and Engineering Funding
 - Reduction of Community Preservation Act Surcharge
 - Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge
- Discussion and Approval of November 7, 2023 Special Town Election (Ballot Questions for Option 9, CPC & WIIF)
- Discussion and Approval of the Following Ballot Questions for the November 7, 2023 Special Town Election:
 - Option 9 Wastewater Project Design and Engineering Funding
 - Reduction of Community Preservation Act Surcharge
 - Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge
- Discussion, Approval and Recommendations of Draft #3 of the October 16, 2023 Town Meeting Warrant

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

ADJOURNMENT



AGENDA
SELECT BOARD
MONDAY, AUGUST 7, 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, July 17, 2023 Regular Session; Monday, July 24, 2023 Regular Session

APPOINTMENTS & HEARINGS

- Public Comment
- Update on Stormwater Catch Basins: *DPW Director Catherine Laurent*
- Discussion and Approval of Contract for Implementation of Revaluation Program – Fiscal Year 2024 through Fiscal Year 2026: *Director of Assessing Joseph Gibbons*
- 6:50 pm – Public Hearing-Amendment to Weekday and Sunday Entertainment Licenses:
Barnstable Pizza and Pasta Co Inc dba Finally Dino's
- Discussion and Possible Approval of Amendment to Weekday and Sunday Entertainment Licenses:
Barnstable Pizza and Pasta Co Inc dba Finally Dino's

COMMUNICATIONS & CORRESPONDENCE

NEW BUSINESS

- Discussion and Approval of adding the Following Articles to the October 16, 2023 Town Meeting Warrant –
 - Option 9 Wastewater Project Design and Engineering Funding
 - Reduction of Community Preservation Act Surcharge
 - Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge
- Discussion and Approval of November 7, 2023 Special Town Election
- Discussion and Approval of the Following Ballot Questions for the November 7, 2023 Special Town Election:
 - Option 9 Wastewater Project Design and Engineering Funding
 - Reduction of Community Preservation Act Surcharge
 - Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge

OLD BUSINESS

- Discussion with Regard to Pickleball: *Marie Cheung-Truslow*
- Discussion of Amending Select Board Policy 001:
Appointment Policy for Boards, Commissions, Committees & Councils
- Discussion with Regard to Articles Submitted by the Planning Board for the October 16, 2023 Town Meeting Warrant: *Town Planner Evan Lehrer; Planning Board Chair Karen Faulkner*
- Discussion, Approval and Recommendations of Draft #2 of the October 16, 2023 Town Meeting Warrant

ADDITIONAL TOPICS Historical Commission, Special Presentation

(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
August 7, 2023

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

Absent: Selectman Thomas F. O'Hara

Meeting Called to Order by Chairman Cotton at 6:33 p.m.
Mashpee Town Hall, Waquoit Meeting Room

MINUTES:

Monday, July 17, 2023 Regular Session:

Monday, July 24, 2023 Regular Session:

Motion made by Selectman Sherman to approve the minutes of Monday, July 17, 2023 Regular Session and Monday, July 24, 2023 Regular Session as presented.

Motion seconded by Selectman Wyman-Colombo.

VOTE: Unanimous. 4-0.

Roll Call Vote:

Selectman Cotton, yes	Selectman Sherman, yes	Selectman Weeden, yes
Selectman Wyman-Colombo, yes	Opposed, none	

APPOINTMENTS & HEARINGS

Public Comment:

Nancy Horn a resident of Pine Grove Circle indicated that pickleball has positively impacted her life. It is a unique sport in need of partners. A team makes a social sport to be enjoyed outdoors year-round, at any age, and any skill level. Pickleball is a sport for multigenerational groups where no special gear is required. Rather than use technology there is connection with others, family, friends, and out of towners. Ms. Horn stated that it is important to encourage our out of towners to recreate in Mashpee. There has been a 28% increase in non-resident programing signups this year. Pickleball is a way to connect and to make memories. Ms. Horn urged the Select Board to please reopen the sport on Sundays to encourage local pickleball for residents and for guests.

Mashpee Select Board
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APPOINTMENTS & HEARINGS

Public Comment: (continued)

Richard DeSorgher commended the Select Board for the spending plan for next stage of sewer work. And, as a community there is a need to come together to put back the path for the natural paradise we have in Mashpee. In support of the Community Preservation Committee Mr. DeSorgher indicated the CPC has already dropped from 3% to 2%. What makes Mashpee, Mashpee is our historical, and our open space and recreation. Several projects of note funded by the CPA Act is the historic One Room Schoolhouse, the honor stones in the Veterans Garden, the Veterans War Monument and the (4) ancient burying grounds slated to be restored with upcoming CPC funding. Mr. DeSorgher indicated that it is a difficult task to take care of all the needs of the community. Our best possible plan is keeping the CPC, while dealing with the water quality sword. It was recommended that state officials be called in on a regular basis as wastewater is really a regional problem. Mr. DeSorgher suggested the different Select Boards work together on this issue. It is hopeful the Town of Mashpee can support the wastewater initiative while continuing to support CPC funding at 2%. In closing Mr. DeSorgher stated that water quality is the heart of our existence, to save and to pass along to future generations.

Ken Debrowski gave an update on the tax exemption and the percentage of properties receiving the abated tax reduction. In 2022, homes with an assessed value of over \$1 million received a 26.1% tax cut, 329 properties. Single family homes with an assessed value of under \$1 million received a 2.5% reduction. Single family homes represent 2/3rds of the Town's tax base. Mr. Debrowski indicated if we are giving a tax break, someone else is picking up the load. There is an inequity on how we are building this assessment process. The result is inconsistent and we are working at counter purposes to what we are advocating. Mr. Debrowski stated that homes assessed over \$1 million should not receive a tax cut.

Drew McManus was in attendance representing the Cape Cod Disc Golf Club. Mr. McManus was not in attendance at the last Select Board meeting; however, he watched the meeting and the vote made to remove this article from the warrant. For clarification Mr. McManus indicated this is a stand-alone proposal. Understanding that water quality is at the forefront, this is separate. The Disc Golf course proposal was removed from the previous town meeting as it was felt the optics would be less this time around. The estimated cost is up to \$200,000 in CPA funding. The actual cost could be substantially less. There was also a comment regarding tree clearing. Mr. McManus is the Tree Warden. It was stated the tree removal for the Disc Golf course proposal is planned to be highly selective, with no clear cutting. There will not be any incident of running afoul with the Tree Bylaw as this project is very much in-line with the Tree Bylaw. Mr. McManus respectfully requested the Select Board not remove this project from the warrant. There was a great deal of time and effort spent preparing for this project and answering questions. All respective boards voted in support of this project. It was highly recommended the Select Board ask the voters to decide on this project at the October Town Meeting.

Leah Gray a 20-year Mashpee resident stated the pickleball complaint is the most exaggerated and ridiculous situation from only (1) neighbor. Recently while walking her dog a neighbor stated the courts are not bothersome. It was requested the courts be open 7 days per week to keep the pickleball as it was.

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APPOINTMENTS & HEARINGS

Public Comment: (continued)

Terry Ronhock of DeGrass Road offered comment on draft warrant Article 4 and applauded the Planning Board for their hard work to set up the article to expand the accessory apartments, and their usage. With regards to the proposed period of the lease to 12 consecutive months Ms. Ronhock indicated there are visiting medical personnel, and scientists, etc. that need to rent on a shorter timeframe. Ms. Ronhock conveyed concern to those who would like to have accessory income while helping to provide housing on a smaller footprint. It was recommended the article be modified to reach concession.

Surf Drive resident Lynne Barbee indicated at the last Select Board meeting two members of the Affordable Housing Trust castigated the Community Preservation Committee stating the Committee does not care about affordable housing. The CPC to date has dedicated \$3,440,512 to affordable housing. And, in 2019 the Affordable Housing Trust received a \$300,000 award and in May of 2023 the Community Preservation Committee awarded an additional \$550,000 to the Trust. The CPC also granted funds to the Affordable Housing Trust for the Mashpee Housing Assistance Program; \$330,000 and an additional \$100,000 for the acquisition of 12 Cypress Circle identified for affordable housing, thousands of dollars that have not yet been expended. Ms. Barbee stated it is a shame the Select Board decided to delete the warrant article authorizing \$60,000 for eminent purposes. It was suggested the Affordable Housing Trust meet jointly with the Community Preservation Committee. In closing Ms. Barbee indicated if CPA surcharge is reduced to 1% there will be less money for affordable housing.

Arden Russell Sturgis Lane indicated that it is clear the Select Board's priorities and hopefully the community's priority is clean waters and we are all concerned about the significant upcoming expenses. However, reducing CPC revenue is short sighted and misguided. Mashpee has received \$9,122,379 in State contributions. This money is a grant that is not competitive, we do not need to apply, and we automatically get those funds as long as we simultaneously raise local revenue. In 2022, our revenue was matched by the State by 51% or \$400,000. Do we have other funds that are that attractive? Ms. Russell indicated the CPC has funded many strategies in the Comprehensive Wastewater Management Plan, and has used funding for many projects that support the clean water goal. The CPC was the Land Bank at first. With the CPC and the Land Bank, the Town has purchased hundreds of acres of open space. To date, \$15,300,000 has been expended on the debt service associated to those land purchase including an additional \$8,800,000; over \$23 million expended for the Open Space category. The CPC has also funded wetland restoration projects; abandoned cranberry bogs to improve water quality in Santuit Pond and Shoestring Bay, the successful Upper Childs River restoration project, and the restoration of the Upper Quashnet River system. CPC funds also purchased the Chopchaque bogs and surrounding properties to improve water quality in Santuit Pond and Shoestring Bay. The CPC has funded stormwater improvements at three boat landings, and funded shellfish propagation and estuary restoration. This is a strategy in the CWMP plan, but not funded in the general budget. The CPC has also funded the Solar Bees in Santuit Pond to improve water quality. Without CPC funds it is unlikely these initiatives would have proceeded. It is premature to reduce this revenue source that can financially assist in so many clean water initiatives. Ms. Russell indicated the CPC will be holding their annual Public Hearing on the needs, possibilities and resources of the Town of Mashpee as they relate to historic preservation, recreation, affordable housing and open space on Thursday, September 14, 2023 at 6:30 p.m. The public is invited to attend.

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Public Comment: (continued)

Colton Atkinson a resident of Algonquin Avenue expressed appreciation to the Select Board for voting on a traffic study on Old Barnstable Road. Acknowledgement was also given to the Planning Board on the proposed new Tree Bylaw to preserve and further beautify the Town of Mashpee.

Gerri Riley of Pond Circle voiced support for recreational pickleball. Ms. Riley indicated the sport has greatly improved her mental health and of those who play as well. The Board was respectfully requested to re-open the courts on Sundays.

Menemsha Way resident Greg McKelvey stated that pickleball is not a new issue. It is one person complaining regularly, and the Town has tried multiple ways to try to help him with sound mitigation, new balls and maintaining a forest in between his house and the courts. At the last meeting the opposing abutter was nothing short of closing the courts. Mr. McKelvey indicated the taxpayers have paid for the courts and the courts should be open on Sunday and available to the public 7 days per week. The courts are noted to be most active in the morning and in the afternoon and then, very little or no play. During the winter months the courts are very quiet. Mr. McKelvey requested the courts remain open for use.

Mary Waygan, Ashumet Road and member of the CPC urged the Select Board to not to reduce the percentage. Ms. Waygan stated the CPC has brought in millions to Mashpee. This did not require a grant writer, nor competition with other towns for funding. This is a match from State generated funds. State matching funds are vitally important for the Town for its needs to offer a higher quality of life in support of affordable housing, open space, historic, and recreation in a comprehensive approach. Ms. Waygan stated there is no other funding for these programs. And, the Town cannot replace the positive and beneficial impacts with sewer financing. Ms. Waygan requested the Select Board take a more comprehensive approach with Community Preservation Act funds. In other business, Ms. Waygan expressed appreciation to the Town staff members who provided a list of addresses for potential and future affordable housing to be decided upon by the Affordable Housing Trust.

Update on Stormwater Catch Basins: DPW Director Catherine Laurent:

Catherine Laurent, Director of Public Works was in attendance to update the Select Board on stormwater management practices. Funds within the operating budget are earmarked for road improvements and with road conversions stormwater is addressed. Typically, stormwater is captured before entering private property and waterways. Work was recently conducted in John's Pond Estates eliminating some discharge.

Last year, \$100,000 was allocated from the DPW operating budget. In FY24 it is expected that \$160,000 would be dedicated to stormwater improvements. Ms. Laurent explained this is an ongoing process. Catch basins are generally cleaned one to two times per year capturing sediments, metals and other debris.

With regards to areas of high groundwater such as Monomoscoy Ms. Laurent indicated added infrastructure is required to capture contaminants. With paving projects, porous paving is added to high groundwater locations. It was noted there was a recent comment regarding runoff on Lake Avenue. The Town is planning to retrofit Attaquin Park and runoff from abutting properties on Lake Avenue. With regards to private property areas, public funds cannot be used on private areas. If there is detriment, additional options could be explored if permissible.

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APPOINTMENTS & HEARINGS

Update on Stormwater Catch Basins: DPW Director Catherine Laurent: (continued)

Consultants are currently conducting a Stormwater Management Report that is expected to be finalized within the next few months. Upon completion, results of the study are anticipated to be discussed further with the Select Board. This would include the evaluation of existing culverts and methods to incorporate green elements into infrastructure. Findings are part of the DEP/EPA Asset Management Program.

In closing, Ms. Laurent indicated as we identify areas, the Town would be in a better position to secure grant funding. Currently most of the stormwater management funding comes from Chapter 90 and from the DPW operating budget.

ADDITIONAL TOPICS

Historical Commission – Special Presentation:

Motion made by Selectman Sherman to add to the agenda; the Historical Commission special presentation as an item not anticipated to be discussed.

Motion seconded by Selectman Weeden.

VOTE: Unanimous. 4-0.

Roll Call Vote:

Selectman Cotton, yes	Selectman Sherman, yes	Selectman Weeden, yes
Selectman Wyman-Colombo, yes	Opposed, none	

Mashpee Historical Commission members Richard DeSorgher and Ava Costello recognized Catherine Laurent as an individual who was very much involved in the Veterans War Memorial project over the past four years. Ms. Laurent who often does not get the credit was clearly the Clerk of the Works for this project remaining unbreakable and calm during the process. Ms. Laurent and the Department of Publics worked diligently to get everything prepared for the unveiling ceremony. The Director and the Department of Public Works was highly regarded for this project and for the many services they provide. A print of the photograph of the War Memorial designed by Karen Rinaldo was specially presented to Ms. Laurent.

Wayne E. Taylor, Assistant Town Manager was also recognized for his expertise and guidance assisting with the War Memorial project and for his organizational skills preparing for the Town parade and ceremony. Administrative staff members Terrie Cook and Stephanie Coleman were also highly regarded for their efforts in this Town wide project.

Town Manager Rodney C. Collins expressed appreciation to Historical Commission member Richard DeSorgher for his worthy contributions to the Town of Mashpee.

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APPOINTMENTS & HEARINGS

Discussion and Approval of Contract for Implementation of Revaluation Program – Fiscal Year 2024 through Fiscal Year 2026: Director of Assessing Joseph Gibbons:

The Select Board met with Joseph Gibbons, Director of Assessing to discuss the award of valuation services for Fiscal Years 2024 through 2026. Acting on a request from the Board of Assessors Mr. Gibbons recommended the Select Board approve and execute a three-year contract with the PK Valuation Group.

Mr. Gibbons indicated Paul Kapinos & Associates have been awarded this contract since 2001 as a result of their performance history and familiarity with the Town of Mashpee. The PK Group was noted to service all of Cape Cod with the exception of the Towns of Barnstable and Falmouth.

The valuation services include real estate data collection, ongoing data and field review of all real property, business personal property collection and valuation consulting to ensure statutory and regulatory compliance with mandates imposed by the Department of Revenue. The cost for this service is \$210,000.

In discussing the bid process, Mr. Gibbons indicated the PK Valuation Group, the sole bidder for this project has been satisfactory. If the Town was to consider changing vendors, there may be increased costs due to additional time to gain knowledge of the services to be provided. Additional firms typically do not solicit bids unless a Town is dissatisfied. The Revaluation Program is noted to be time sensitive.

Motion made by Selectman Sherman to approve a three-year contract (FY 24-26) with the PK Valuation Group for the Implementation of the Revaluation Program as recommended.

Motion seconded by Selectman Wyman-Colombo.

VOTE: Unanimous. 3-0-1.

Roll Call Vote:

**Selectman Cotton, yes Selectman Sherman, yes Selectman Weeden, abstained
Selectman Wyman-Colombo, yes Opposed, none**

Public Hearing-Amendment to Weekday and Sunday Entertainment Licenses:

Barnstable Pizza and Pasta Co Inc dba Finally Dino's:

Discussion and Possible Approval of Amendment to Weekday and Sunday Entertainment Licenses:

Barnstable Pizza and Pasta Co Inc dba Finally Dino's:

The Select Board opened the Public Hearing by reading aloud the notice to consider modifications to the Weekday and Sunday Entertainment Licenses of Barnstable Pizza & Pasta Co., Inc. d/b/a Finally Dino's located at 401 Nathan Ellis Highway, Mashpee. The modifications would allow amplified, live and/or recorded music using up to two speakers on the outdoor premisses, Wednesday through Sunday, from 4:00 p.m. to 8:00 p.m.

Constantinos Mitrokostas, applicant and manager of record was in attendance to review the license request with the Select Board and interested public. Mr. Mitrokostas currently holds a Weekday Entertainment License; TV, Live and/or Recorded music and Dancing by patrons. Outdoor Entertainment restricted to acoustic/non-amplified entertainment outdoors and outdoor entertainment must cease at 10:00 p.m. The Sunday Entertainment License includes Dancing by patrons, DJ/Live entertainment and coin operated devices from 10:00 a.m. to 1:00 a.m.

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Public Hearing-Amendment to Weekday and Sunday Entertainment Licenses:
Barnstable Pizza and Pasta Co Inc dba Finally Dino's:
Discussion and Possible Approval of Amendment to Weekday and Sunday Entertainment Licenses:
Barnstable Pizza and Pasta Co Inc dba Finally Dino's: (continued)

Mr. Mitrokostas expressed appreciation to the Select Board to consider the proposed entertainment for Dino's on Deck; outdoor amplified acoustic music. At the last meeting, Mr. Mitrokostas was noted to have connected with the neighbors to move forward and alleviate the contention.

After sending a letter to the neighbors, a meeting was held on July 17, 2023 at Dino's to review the proposed entertainment, a 2-piece group with amplification similar to what would be performed on site. Sound checks, a walk around the perimeter, an opening and closing of the awnings, a change in the speaker direction, etc. were considered to obtain the most favorable scenario to control the sound.

After listening to the input from the neighbors, Mr. Mitrokostas has proposed with appreciation to the Select Board, to have outdoor entertainment, (2) evenings per week; Thursday a primarily solo act and dependent upon availability a solo or a duo would perform on Saturday or Sunday. Mr. Mitrokostas indicated there are approximately 4 weeks left in the season.

Roberta Giangrasso, a resident of Mohican Avenue stated that it is not just the music. There are problems at Finally Dino's that involve socializing and talking loudly over the music. Ms. Giangrasso indicated Mr. Mitrokostas started his business selling pizza and subs, then he added the sports bar. He has card tournaments, and football running the establishment as an atmosphere of a night club, especially with the more popular and louder bands. It was not what was visualized.

Duncan Campbell expressed appreciation to the Select Board for hearing this matter. Mr. Mitrokostas was noted to have calmed down with a two-piece band pointing in the direction of the main street. In his opinion, it is not how many nights, but how loud is this going to be.

Virginia Scharfenberg of Mohican Avenue stated she feels Dino is sincere, and it was always felt there is some wiggle room. The proposed change in license is to have acoustic music for up to 2 nights. It was suggested the Select Board revisit this matter after 4 weeks to gain a true demonstration period and discuss this further after this time.

Being no further comment, the Select Board motioned as follows;

Motion made by Selectman Sherman to close the Public Hearing.

Motion seconded by Selectman Wyman-Colombo.

VOTE: Unanimous. 4-0.

Roll Call Vote:

Selectman Cotton, yes	Selectman Sherman, yes	Selectman Weeden, yes
Selectman Wyman-Colombo, yes	Opposed, none	

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Public Hearing-Amendment to Weekday and Sunday Entertainment Licenses:

Barnstable Pizza and Pasta Co Inc dba Finally Dino's:

Discussion and Possible Approval of Amendment to Weekday and Sunday Entertainment Licenses:

Barnstable Pizza and Pasta Co Inc dba Finally Dino's: (continued)

Discussion followed amongst the Select Board members. Mr. Mitrokostas is asking for amplified acoustic music, up to two pieces changing the direction to face Route 151. It was recommended the Board consider the proposal; 2 nights per week as a temporary trial period. Under consideration is Thursday and Saturday or Sunday dependent upon the availability of talent.

Motion made by Selectman Weeden to approve the modifications to the Weekday and Sunday Entertainment Licenses of Barnstable Pizza & Pasta Co., Inc. d/b/a Finally Dino's, 401 Nathan Ellis Highway, Mashpee. The modification shall allow amplified, live and/or recorded music using up to two speakers on the outdoor premises, not to exceed (2) days per week from 4:00 p.m. to 8:00 p.m. The temporary Entertainment License for Weekday and Sunday Entertainment is valid to September 26, 2023, to be reviewed by the Select Board on September 26, 2023.

Motion seconded by Selectman Sherman.

VOTE: Unanimous. 4-0.

Roll Call Vote:

**Selectman Cotton, yes Selectman Sherman, yes Selectman Weeden, yes
Selectman Wyman-Colombo, yes Opposed, none**

NEW BUSINESS

Discussion and Approval of adding the Following Articles to the October 16, 2023 Town Meeting Warrant:

Option 9 Wastewater Project Design and Engineering Funding:

Reduction of Community Preservation Act Surcharge:

Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge:

Discussion and Approval of November 7, 2023 Special Town Election:

Discussion and Approval of the Following Ballot Questions for the November 7, 2023 Special Town Election:

Option 9 Wastewater Project Design and Engineering Funding:

Reduction of Community Preservation Act Surcharge:

Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge:

Due to the lack of a full voting quorum as well as information regarding the proposed reduction in the CPA surcharge, and proposed increase to the WIIF, the Select Board agreed to table the above referenced discussion. It was disclosed that all three topics if approved would require Ballot Questions. Additional information will be reviewed at the next meeting to address the debt exclusion for Option #9.

Motion made by Selectman Sherman to table the above (3) topics, ALL topics under New Business as listed to the next Select Board meeting.

Motion seconded by Selectman Weeden.

VOTE: Unanimous. 4-0.

Roll Call Vote:

**Selectman Cotton, yes Selectman Sherman, yes Selectman Weeden, yes
Selectman Wyman-Colombo, yes Opposed, none**

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OLD BUSINESS

Discussion with Regard to Pickleball: Marie Cheung-Truslow:

The Select Board met with litigating attorney's Marie Cheung-Truslow and Rick Martin who were present with Jill Alpert USA Pickleball Ambassador for the Town of Mashpee to honorably request the Select Board vote to lift the restriction and Sunday play of pickleball.

An online petition opposing to any closing or reduction of hours for play at the Mashpee Pickleball Courts and urge that the Sunday closure be lifted immediately. The online petition was noted to have received overwhelming support to make known the positive power of pickleball is strongly represented. They don't just play and leave, there are impacts to the community and local businesses. Any closure or reduction of hours of play adversely impact the pickleball community's ability to enjoy the sport, socialize and maintain an active lifestyle.

Rick Martin, a resident of the Town of Mashpee and pickleball player indicated Mashpee was the first community on the Cape in August of 2018 to have dedicated pickleball courts in an area where parks and recreation would occur.

Mr. Martin made note of the measures taken by the Town of Mashpee to mitigate sound. This includes the installation of the acoustic block in April 2020, and the soundproofing report received in October 22, 2020 from New England Soundproofing. In 2020 the Town also made the effort to increase the vegetative buffer and reduce the hours of play.

Mr. Martin indicated the acoustic blockers used in other towns have been successful. Results from the study found that adding the barrier does reduce the noise from the pickleball courts to the neighboring homes. With the barrier, noise levels were between 38 and 52 decibels at the property line. Without the barrier noise levels were found between 50 to 60 decibels with a max of 62.5 decibels at the halfway point and between 40 to 55 decibels at the property line.

Noise laws stipulate that it is ...unlawful for any person or persons...cause or suffer or allow between the hours of 10:00 p.m. to 8:00 a.m. any unnecessary loud,..

And, A source of sound will be considered to be violating the Department's noise regulation if the source: Increases the broadband sound level by more than 10 dBA above ambient.

New England Soundproofing conclusion; October 20, 2020;

It was noticed during the test that between the background noise and the results with having the barrier up, we did not go above 10 dBA above the background ambient noise. Background ambient noise is the noise of the area during the day without anyone playing pickleball. It is a baseline on how much noise is usually within that area on a normal day.

The ANSI S12.9, a national standard for quantifying annoyance caused by sound, appropriate for assessing the noise impact of sounds such as pickleball impacts. Part 5 of the standard recommends a maximum day-night level of 55 dBA for single family homes and 60 dBA for multi-unit housing. This equates to 55 and 60 dBA adjusted equivalent-continuous sound pressure level limits for daytime activities.

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OLD BUSINESS

Discussion with Regard to Pickleball: Marie Cheung-Truslow: (continued)

Aerial photographs were reviewed in the presentation depicting the existing pickleball courts, the forested area and the home of the objecting neighbor, a distance of 264'. It was disclosed the complaints from the objecting neighbor will be never ending. No other petitions or complaints have been received.

Discussion followed with respect to the meeting held with Mr. Barrows, the Town Manager and with Selectman Weeden on July 26, 2023 to attempt to reach a compromise. At the meeting it was asserted by Mr. Barrows for the Town to close the pickleball courts down completely and effective immediately. There was no middle ground, shut down or no compromise. The Town Officials listened with empathy. Without going to the full Select Board, the demands were beyond their control, and ended the discussion. Subsequently, Mr. Barrows was noted to call the Town Manager stating he would cooperate and consent to a noise measuring test.

Discussion followed. Selectman Cotton made full disclosure, he is an avid pickleball players, and feels there is no conflict of interest in voting on this matter. There is no financial gain. He enjoys outdoor sports.

Motion made by Selectman Sherman to reinstate the Sunday pickleball, and move forward with an additional sound test with the condition Mr. Barrows would consent to the sound test on his property.

Motion seconded by Selectman Wyman-Colombo.

VOTE: Unanimous. 3-0-1.

Roll Call Vote:

Selectman Cotton, yes	Selectman Sherman, yes	Selectman Weeden, abstained
Selectman Wyman-Colombo, yes	Opposed, none	

Discussion of Amending Select Board Policy 001:

Appointment Policy for Boards, Commissions, Committees & Councils:

The Select Board conducted the final review of Policy 001; Appointment Policy for Boards, Commissions, Committees and Councils (Appointed by the Select Board) as amended. A brief discussion followed.

Motion made by Selectman Wyman-Colombo to approve Select Board Policy 001 as written with the appendix; Preliminary Evaluation Form.

Motion seconded by Selectman Weeden.

VOTE: Unanimous. 4-0.

Roll Call Vote:

Selectman Cotton, yes	Selectman Sherman, yes	Selectman Weeden, yes
Selectman Wyman-Colombo, yes	Opposed, none	

Mashpee Select Board
Minutes
August 7, 2023

Discussion with Regard to Articles Submitted by the Planning Board for the October 16, 2023 Town Meeting
Warrant: Town Planner Evan Lehrer; Planning Board Chair Karen Faulkner:

The Select Board met with Evan Lehrer, the Town Planner and Karen Faulkner, Chair of the Planning Board to review proposed Articles 1 through 4 of the Annual October Town Meeting warrant.

Article #1: To amend the Zoning Bylaws by adding new subsections into Article XI: Floodplain Zone Overlay.

It was noted Town Counsel has been asked to review the verbege under Prohibitions; Last sentence: For the purposes of this Section any lot which is partially impacted by the 100 Year floodplain shall be considered within the 100 Year floodplain.

Minor changes have been incorporated into the language to provide clarity to those impacted by the article.

The article requires the utilization of either a solid-wall foundation with flood vents or pilings for new homes or redeveloped homes. It also required floodplain properties to install an Innovative/Alternative septic system unless served by a public or private wastewater treatment facility. The Bylaw does not propose to remove the rights of any property owner to build or re-build a new dwelling on lots in the floodplain.

*It was recommended that a representative from the Board of Health review the enforcement of the I/A septic at the next meeting.

Article #2: To amend the Zoning Bylaw to allow property owners who construct accessory apartments to live in their accessory apartment and rent their principal dwelling to tenants. Current Bylaw language restricts a property owner from residing in the accessory apartment while renting their principal dwelling.

This article provides the flexibility to allow a homeowner to rent a home and live in the accessory apartment. Both units may not be rented at the same time.

Article #3: To amend the Zoning Bylaw to clarify the allowed size of an accessory apartment to within a defined range. This article is intended to place a firm minimum and a maximum unit size of not less than 450' and not more than 900'.

Article #4: To amend the Zoning Bylaw to require that any accessory apartment that is created be rented year-round requiring the property owner to rent to tenants occupying either the principal dwelling or accessory apartment for a period of not less than 12 months.

The purpose of this bylaw is to provide year-round rental housing and increase housing stock.

*It was recommended the Building Commissioner attend the next Select Board meeting to discuss the enforcement of the rentals.

Article #5: To add a new Chapter; Tree Preservation Bylaw

It was disclosed the Planning Board has not discussed Article #5. Review was thus deferred the next meeting.

Mashpee Select Board
Minutes
August 7, 2023

Discussion, Approval and Recommendations of Draft #2 of the October 16, 2023 Town Meeting Warrant:

Deferred for a full voting quorum.

LIAISON REPORTS

CapeOne Summit: At the annual CapeOne Summit it was made clear that every town on the Cape is dealing with issues regarding affordable and workforce housing and water quality realizing the importance of sewerage and providing affordability in terms of housing.

Special Events: The annual LaTavola, a fundraiser for the Mashpee Chamber scholarship was a noted successful event.

Grant Initiatives: Ashley Fisher, the Director of Natural Resources, Catherine Laurent, the Director of Public Works, and Andrew McManus, the Conservation Agent were recognized on their achievements for attaining grant funding the assist with municipal vulnerability, restoration, and clean waters. All grants were achieved in collaboration with the Mashpee Wampanoag Tribe.

TOWN MANAGER UPDATES

Wastewater: The Town Manager is scheduled to meet with GHD, Inc. project engineers to review critical information and deadlines regarding Option #9 of the Phasing Plan of the Town approved Watershed Nitrogen Management Plan to meet the deadline of the SRF application on August 11, 2023.

Residential Exemption: Copies of the Town of Provincetown Residential Tax Exemption have been distributed to the Select Board via intermunicipal mail.

Housing Assistance Program: The Town Manager is presently conducting dialogue with the Mashpee Housing Authority on behalf of the Affordable Housing Trust to consider the re-establishment of the Housing Assistance Program.

ADJOURNMENT

Motion made by Selectman Sherman to adjourn at 9:35 p.m.

Motion seconded by Selectman Wyman-Colombo.

VOTE: Unanimous. 4-0.

Roll Call Vote:

Selectman Cotton, 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

OFFICE OF THE SELECT BOARD

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

MEMORANDUM

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

From: Stephanie A. Coleman, Administrative Secretary 

Re: Date Change for Special Event, Temporary Sign Permits: L.I.N.K. Wampanoag Perspective:
Aboriginal Rights

★ REVISED ★

8/18/2023 ★

➤ Special Event, Temporary Sign Permits

L.I.N.K. Wampanoag Perspective: Aboriginal Rights, October 1, 2023, 11:00 am – 5:00 pm, Mashpee Community Park: Rachael Hicks

The L.I.N.K. Wampanoag Perspective: Aboriginal Rights event was originally scheduled for October 8, 2023, the applicant had put in a request to change the date to **October 1, 2023**, same location and time, pending approval of the DPW, Board of Health, Building, Fire Department and the Police Department.

DPW, Board of Health and Building have approved the new date with no changes to their recommendations, please see attached emails. The Fire Chief has confirmed that this event has no Fire Department requirements.

The new date is pending approval of the Police Department.

The Wampanoag History of Aboriginal Rights Past & Present

REVISED

**Save the Date
Sunday October 1st
1pm - 3:30pm
(Location TBD)**

**Panelists include
Members of Mashpee Wampanoag Tribe
Natural Resources Committee**

David Green

Alan Maxim

Buddy Pocknett

Sherry Pocknett

Moderated by: Jason Steiding



Temporary Sign

Learn About Aboriginal Rights Today 1pm-3:30pm

Re: Special Event Application #117539 - Date Change, Please Review ASAP

Catherine Laurent

Mon 8/21/2023 12:24 PM

To: Stephanie Coleman <SColeman@mashpeema.gov>

Hi Stephanie.

It's approved with the same conditions. I approved in PermitEyes.

Thanks.

Catherine

*Catherine Laurent, Director
Mashpee DPW
350 Meetinghouse Road
Mashpee, MA 02649
508-539-1420
508-539-3894 (fax)
www.mashpeema.gov*

From: Stephanie Coleman <SColeman@mashpeema.gov>

Sent: Monday, August 21, 2023 9:18 AM

To: Catherine Laurent <claurent@mashpeema.gov>; Zackary Seabury <zseabury@mashpeema.gov>; David Morris <DMorris@mashpeema.gov>; Thomas A. Rose <trose@mashpeema.gov>; Chief Jack Phelan <jphelan@mashpeema.gov>

Cc: Meaghan Jackimowicz <mjackimowicz@mashpeema.gov>; Christine Willander <cwillander@mashpeema.gov>; Tamara Gray <TGray@mashpeema.gov>; Bryan Burke <bburke@mashpeema.gov>; J Peltier <jpeltier@mashpeema.gov>

Subject: Special Event Application #117539 - Date Change, Please Review ASAP

Good Morning:

My apologies for the late notice however the applicant for the above mentioned application has changed the date of their event for **October 1, 2023**. Please respond to this email letting me know if you approve the application with the same requirements or if there are any changes to your recommendations.

Thank you.

Stephanie Coleman | Administrative Secretary

Town of Mashpee

Office of the Town Manager and Select Board

16 Great Neck Road North, Mashpee, MA 02649

Office: 508.539.1401 | Fax: 508.539.1004



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Warning: The content of this message and any response may be considered a Public Record pursuant to Massachusetts General Law.

Re: Special Event Application #117539 - Date Change, Please Review ASAP

Christine Willander

Mon 8/21/2023 09:31 AM

To: Stephanie Coleman <SColeman@mashpeema.gov>

BOH has no issues.

Thank you.

Christine A. Willander | Assistant Health Agent

Board of Health

16 Great Neck Road North, Mashpee, MA 02649

Office: 508.539.1426 | Fax: 508.477-0496



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Thank you.

Stephanie Coleman | Administrative Secretary

Town of Mashpee

Office of the Town Manager and Select Board

16 Great Neck Road North, Mashpee, MA 02649

Office: 508.539.1401 | Fax: 508.539.1004

Re: Special Event Application #117539 - Date Change, Please Review ASAP

David Morris

Mon 8/21/2023 10:20 AM

To: Stephanie Coleman <SColeman@mashpeema.gov>

Building dept. approves with the same requirements.

Thank you,

David Morris

Building Commissioner

Mashpee Building Department

16 Great Neck Road, North

Mashpee, MA 02649

508-539-1406

From: Stephanie Coleman <SColeman@mashpeema.gov>

Sent: Monday, August 21, 2023 9:18 AM

To: Catherine Laurent <claurent@mashpeema.gov>; Zackary Seabury <zseabury@mashpeema.gov>; David Morris <DMorris@mashpeema.gov>; Thomas A. Rose <trose@mashpeema.gov>; Chief Jack Phelan <jphelan@mashpeema.gov>

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Subject: Special Event Application #117539 - Date Change, Please Review ASAP

Good Morning:

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Thank you.

Stephanie Coleman | Administrative Secretary

Town of Mashpee

Office of the Town Manager and Select Board

16 Great Neck Road North, Mashpee, MA 02649

Office: 508.539.1401 | Fax: 508.539.1004



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SPECIAL EVENT PERMIT APPLICATION

REVISED

Application packet must be received no later than **45 days prior to the event.**

APPLICATION DETAILS

Application #:	<i>SE-23-117239</i>	Date Issued:	<i>08/21/23</i>	Permit #:	<i>SE-23-0016</i>	Date Paid:	
Fee Payable: (\$)	<i>0.00</i>	Fee Paid: (\$)	<i>0.00</i>	Receipt #:			

SECTION 1 - SITE INFORMATION

Street Name	<i>GREAT NECK RD NORTH</i>	Map Block Lot	<i>36-0-7</i>
Street Number	<i>13</i>	Zone	<i>C2</i>
Unit No.			

SECTION 2 - BUSINESS OWNER INFORMATION

Business Owner Name	<i>Rachael M. Hicks/ L.I.N.K., Inc.</i>		
Street Number		Street Name	
City		State	
		Zip Code	
Telephone		Email	<i>linkcapecod@gmail.com</i>

SECTION 3 - APPLICANT INFORMATION

Applicant Name	<i>Rachael M Hicks</i>		
Street Number		Street Name	
City	<i>Mashpee</i>	State	<i>MA</i>
		Zip Code	<i>02649</i>
Business Telephone		Email	<i>linkcapecod@gmail.com</i>

SECTION 4 - MAILING ADDRESS

Street Number		Street Name	
City		State	<i>MA</i>
		Zip Code	

Telephone _____

SECTION 5 - PRIMARY CONTACT INFORMATION

Primary
Contact
Name _____

Non-Profit Organization /
Event ☐ Yes ☐ No

Day Phone _____ Email linkcapecod@gmail.com

Cell Phone _____ Website _____

REVISED

SECTION 6 - EVENT INFORMATION

Event Name Wampanoag Perspective : Aboriginal Rights Event Producer L.I.N.K.

Physical location if no
address and description of
area being used Mashpee Community Park

Starting Date 10/08/23 Time 11am Ending Date 10/08/23 Time 5 pm

Total Attendance Expected 50-100 Rain Plan n/a

List any streets to be
closed for special event n/a

Summary of Event - Please describe in full detail the special features of the event within the box below. After application is submitted, you may attach a flyer to your application from the home page.

Panel discussion on Wampanoag Aboriginal Rights (panel of 4 + moderator), under a tent, sound system, folding chairs for seating, with 2 non-profit vendor tables, sale of t-shirts, light refreshments, will need a port-o-potty.

Applicant to confirm they are applying for an event
on city property ☐ Yes ☐ No

Will Food be
served? ☐ Yes ☐ No If so please
explain Box of Joe, water, baked goods

SECTION 7 - RELEASE/HOLD HARMLESS/INDEMNIFICATION AGREEMENT (REQUIRED FOR USE OF TOWN PROPERTY ONLY)

We/I, L.I.N.K., Inc. (name of individual[s], partnership, or corporation) hereby agree and promise to release, hold harmless and indemnify the Town of Mashpee, including employees, officials, board members, etc., from all liability of any kind or nature arising or resulting from the activity entitled Wampanoag Perspective : Aboriginal Rights (name of event) to be held on 10/08/23

The undersigned represents that he/she has the authority to execute this Agreement.

Signed on 07/25/23

on behalf of L.I.N.K.

the event's

coordinator

X Rachael Hicks

8/18/23
REVISED

SECTION 8 - DECLARATION

✓ I do hereby certify under the pains & penalties of perjury that the information provided above is true and correct.

Date 07/25/23

Please contact the Selectmen's Office at (508) 539-1401 if you have any question regarding this application form.




TOWN OF MASHPEE

OFFICE OF THE SELECT BOARD

16 Great Neck Road North
Mashpee, Massachusetts 02649
Telephone – (508) 539-1401
bos@marshpeema.gov

MEMORANDUM

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

From: Stephanie A. Coleman, Administrative Secretary 

Re: Special Event, Temporary Sign Permit

SEE REVISIONS

Discussion and approval of the following Special Event and Temporary Sign Permits

➤ **Special Event, Temporary Sign Permits**

L.I.N.K. Wampanoag Perspective: Aboriginal Rights, October 8, 2023, 11:00 am – 5:00 pm, Mashpee Community Park: Rachael Hicks

The L.I.N.K. Wampanoag Perspective: Aboriginal Rights event is a panel discussion regarding the history of Wampanoag Aboriginal Rights both past and present hosted by L.I.N.K., Inc. The applicant is requesting to erect a 20' x 20' tent located on the field in front of the gazebo. 50 to 100 people are expected to attend the event. Set up for the event will begin at 11 am and breakdown will be at 5 pm.

The applicant is also requesting to erect three 2' x 3' free standing temporary signs located at Great Neck Road North, Route 130 and the Town Hall. Attached is an informational flyer and the proposed sign for the event.

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 portable toilets (there is a fee). 3. DPW will provide access to electrical upon request.

Fire: Approved.

Police: Approved. No details are required for the event.

➤ **Special Event**

39th Annual Autumn Escape Bike Trek 11:00 am – 2:00 pm

This is an annual pass through event where cyclists will utilize 4.9 miles of Town road from Old Barnstable Road to Cotuit Road. Attached is the route information and map for the Town of Mashpee.

Board of Health: Approved.

Building: Not Applicable.

DPW: Applicant shall pick up route signage after the event. FYI. Construction on Route 151 will resume after Labor Day. While there will not be work activity on the 23rd/24th, the intersection of Old Barnstable Road and Route 151 is a work zone so participants should use caution biking through.

Fire: Approved. No Fire Department requirements

Police: Approved. One Detail Officer will be required for this event to assist participants at the intersection of Route 130 and South Sandwich Rd.

➤ **Temporary Sign Permit**

Annual Seaside LeMans Race

The applicant is requesting to erect up to seven 20 square foot temporary signs located on Route 151 and Route 28 in front of both entrances to the Mashpee Commons from September 3, 2023 to September 9, 2023, for the annual Seaside LeMans Race. Attached is a sample of the proposed signage.

The Wampanoag History of Aboriginal Rights Past & Present

Save the Date
Sunday October 1st
1pm - 3:30pm
(Location TBD)

REVISED
TO 10/1/23
on 8/18/23

Panelists include
Members of Mashpee Wampanoag Tribe
Natural Resources Committee

David Green
Alan Maxim
Buddy Pocknett
Sherry Pocknett
Moderated by: Jason Steiding



AUTUMN ESCAPE BIKE TREK

Go (Mile)	To (Mile)	Signs	Direction	Location (roads of travel in Bold)	Landmarks	
0	36.4		right	onto Surf Drive		
0.3	36.7		right	onto Clinton Ave.		
0.5	37.2		left	onto Scranton Ave.		
0.6	37.8		right	onto Robbins Road		
0.1	37.9		right	onto Falmouth Heights Road	Island Queen Ferry to MV	
0.4	38.3		bear right	onto Grand Ave.		
0.4	38.7		left	on Grand Ave.	along water	
0.7	39.4		bear right	onto Menauhant Road		
0.9	40.3		bear left	on Menauhant Road	Ocean Ave on right	
1	41.6	Sign	left	onto Davisville Road		
1.9	43.5	lights	straight	onto Meetinghouse Rd.		
0.4	43.9		bear right	onto Crocker Road	cross Route 28	
0.2	44.1	ss	right	onto Old Barnstable Road		
1	45.1	4 ss	straight	on Old Barnstable Road	cross Carriage Shop Rd	
0.4	45.5	4 ss	straight	on Old Barnstable Road	cross Hayway Rd	
1.1	46.6		straight	on Old Barnstable Road	town line	10:48 1:06
Mashpee						
1.2	47.8	lights	straight	on Old Barnstable Road		
1.1	48.9		straight	onto Lowell Road	cross Route 151 after H.School	10:51 1:12
0.9	49.8	lights	left	onto Great Neck Road North	Old Barnstable goes right	
0.9	50.7	lights	right	onto Route 130 or Bike Path	(no street sign)	
0.3	51	Sign	left	onto South Sandwich Road	not easy from bike path	
1.5	52.5		left	onto Cotuit Road (3rd exit of rotary)	town line	11:06 1:42
Sandwich						
1.2	53.7		right	onto John Ewer		
0.8	54.5		right	onto Farmersville Road	new for 2021 (short cut)	11:10 1:48
0.1	54.6	Sign	left	onto Stowe Road	sign to Camp Burgess	
0.5	55.1		straight	on Stowe Road	Pinkham Rd on left (dirt)	
0.3	55.4	Sign	left	into Camp Burgess, 75 Stowe Road, Sandwich, MA 02563	enter access road	11:16 2:00

AUTUMNESCAPE BIKE TRAIL

Go (Mile) Sandwich	To (Mile)	Signs	Marshall	Direction	Location (roads of travel in Bold)	Landmarks	Fastest	Slowest
0	0			start	Exit Camp Burgess, 75 Stowe Road, Sandwich, MA 02563	cafeteria area	8:30	8:30
0.1	0.1			right	onto Stowe Rd			
0.8	0.9	ss	M - 2	right	onto Farmersville Rd			
1.2	2.1	ss		bear right	onto Cotuit Rd			
1.4	3.5	ss		right	onto MA-130 N			
1.5	5			straight	on MA-130 N			
1.5	6.5			bear left	on MA-130 N			
0.1	6.6		M - 1	right	onto Tupper Rd	at Rt 6, Mid-Cape Hwy at Main St	8:48	9:06
0.4	7	lights		straight	on Tupper Rd			
0.5	7.5	sign	M - 2	right	onto Freezer Rd	at Rt 6A then cross RR		
0.3	7.8				into Rest Stop #1, Sandwich Recreation Area 77 Freezer Rd., Sandwich, MA 02563	at end of road	8:54	9:18
0	7.8			straight	onto Cape Cod Canal Bike Way			
Bourne								
2	9.8			straight	on Canal Bike Way			
3.2	13			straight	on Canal Bike Way		9:00	9:30
1.5	14.5		M - 1	left	onto Bell Rd. Ext (just after RR tracks)	under Sagamore Bridge under Bourne Bridge		
0.2	14.7	ss		right	onto Shore Road	end of bike way	9:12	9:54
0.9	15.6			bear left	on Shore Road			
1.2	16.8			bear right	on Shore Road			
1.6	18.4				Walk bikes over steel bridge or use sidewalk			
1.1	19.5			right	onto County Road			
1	20.5			right	into Rest Stop #2, Daily Brew 1356 Route 28A, Cataumet, MA 02534	Corner of County Road & 28A		
0	20.5			right	onto Route 28A Caution beware of traffic	town line	9:30	10:30

Go (Mile)	To (Mile)	Signs	Marshall	Direction	Location (roads of travel in Bold)	Landmarks		
Falmouth								
0.4	20.9			bear right	onto Old Main St			
0.5	21.4	4ss S		left	on County Road	new for 2021	9:33	10:36
0.2	21.6	Sign		right	onto Shining Sea Bike Way	Rt 151 on left		
0.3	21.9			straight	on Shining Sea Bike Way	at R/R tracks		
0.2	22.1	ss		straight	on Shining Sea Bike Way	mile marker 10.4		
0.4	22.5			straight	on Shining Sea Bike Way	at Winslow Rd		
0.4	22.9	ss		straight	on Shining Sea Bike Way	under Curley Blvd		
1.2	24.1	ss		straight	on Shining Sea Bike Way	at Wing Rd		
0.6	24.7	ss		straight	on Shining Sea Bike Way	at Chase Rd		
0.3	25	ss		straight	on Shining Sea Bike Way	at Old Dock Rd, parking		
0.4	25.4	ss		straight	on Shining Sea Bike Way	at Chapoquoit Rd		
1.1	26.5			straight	on Shining Sea Bike Way	at Quahog Pond Ln		
0.5	27			straight	on Shining Sea Bike Way	under Saconneset Rd		
0.5	27.5			straight	on Shining Sea Bike Way	under Palmer Ave		
0.2	27.7	Sign	M - 1	right	onto paved path at play ground	under Palmer Ave (again)		
0	27.7	Sign		right	onto Carlson Lane	mile marker 4.5	9:50	12:18
0.2	27.9	ss		left	onto Palmer Ave			
0.3	28.2	Sign	M - 3	left	onto Sippewisset Road			
2.9	31.1	4 ss		straight	onto Quissett Ave			
1.4	32.5	Sign		right	onto Buzzards Bay Ave (do not turn on Whitman Rd)	new for 2022		
0.2	32.7	ss		left	onto Gardiner Road	return to old route		
0.1	32.8			straight	on Gardiner Road	Buzzards Bay Ave on left		
0.1	32.9			bear left	on Gardiner Road	Gosnold on right		
0.1	33	4 ss		straight	on Gardiner Road becomes Albatross St.	cross Spencer Baird		
0.2	33.2			left	onto Water Street			
0.2	33.4			straight	Over new bridge			
0.1	33.5			right	onto Luscombe Ave.			
0.1	33.6	Sign		bear left	then Immediate R onto Shining Sea Bike Way			
0.6	34.2			straight	on Shining Sea Bike Way	starts out thru parking lot		
1.4	35.6	Sign		right	onto Surf Drive	leave path		
0.8	36.4			right	into Rest Stop #3, Surf Drive Beach		10:18	12:06
					54 Surf Drive, Falmouth, MA 02540			

AUTUMN ESCAPE BIKE TREK





Seaside LeMans

The Race For The Cape Cod Community

TEMPORARY SIGN PERMIT



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

Pursuant to Massachusetts General Laws Chapter 138, § 16A, the Select Board, acting as the Local Licensing Authority for the Town of Mashpee, will conduct a public hearing on the Alcoholic Beverages License Amendment application of Mashpee Oriental, Inc. dba Asia Palace for a change of Manager; located at 3 Greene Street, Mashpee, MA 02649.

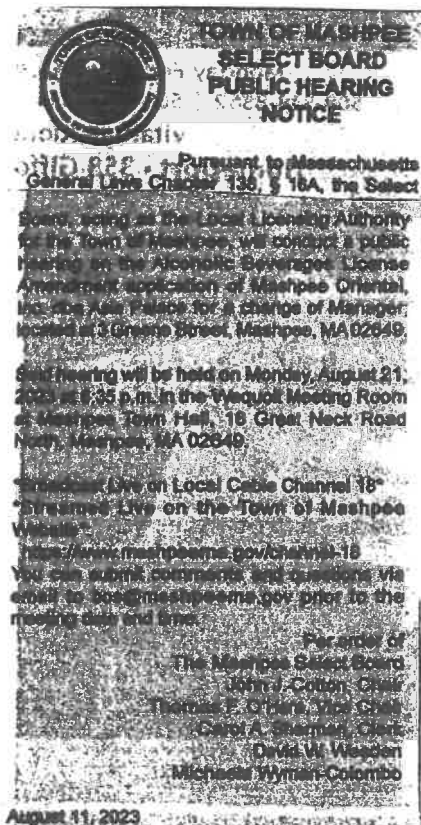
Said hearing will be held on Monday, August 21, 2023 at 6:35 p.m. in the Waquoit Meeting Room at Mashpee Town Hall, 16 Great Neck Road North, Mashpee, MA 02649.

Broadcast Live on Local Cable Channel 18

***Streamed Live on the Town of Mashpee Website*:**

<https://www.mashpeema.gov/channel-18>

You can submit comments and questions via email to 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@marshpeema.gov

MEMORANDUM

Date: August 17, 2023

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

From: Stephanie A. Coleman, Administrative Secretary

PH

★ POSTPONED ★

Re: Public Hearing: Alcoholic Beverages License Amendment, Change of Manager: Mashpee
Oriental Inc. dba Asia Palace

Pursuant to Massachusetts General Laws Chapter 138, § 16A, the Select Board, acting as the Local Licensing Authority for the Town of Mashpee, will conduct a public hearing on the Alcoholic Beverages License Amendment application of Mashpee Oriental, Inc. dba Asia Palace for a change of Manager;

The current manager listed on the ABCC License is Mei Na Ko, the proposed manager is Fangyan Ren.

Attached for the Select Boards review is the completed Alcoholic Beverages License Amendment Application.

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.



Payment	Mashpee Oriental Inc	\$200.00
		\$200.00

Total Convenience Fee: \$0.35

Total Amount Paid: \$200.35

Date Paid: 7/18/2023 2:56:02 PM EDT

Payment On Behalf Of

License Number or Business Name:
Mashpee Oriental Inc

Fee Type:
Payment

Billing Information

First Name:
Lina

Last Name:
Yang

Address:

City:
East Falmouth

State:
MA

Zip Code:
02536

Email Address:



The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

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

AMENDMENT-Change of Manager

ECRT CODE: RETA

Please make \$200.00 payment here:

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)

00073-RS-0670

ENTITY/ LICENSEE NAME Mashpee Oriental, Inc.

ADDRESS 3 Greene Street

CITY/TOWN Mashpee

STATE MA

ZIP CODE 02649

For the following transactions (Check all that apply):

- | | | | |
|--|---|---|---|
| <input 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 checked="" 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/
Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest
(LLC Members/ LLP Partners,
Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder | <input type="checkbox"/> Change of Hours |
| | | <input type="checkbox"/> Other <input type="text"/> | <input type="checkbox"/> Change of DBA |

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

TOWN MANAGERS OFFICE
AUG 9 '23 PM 12:15

AMENDMENT-Change of Manager

☒ **Change of License Manager**

1. BUSINESS ENTITY INFORMATION

Entity Name

Municipality

ABCC License Number

Mashpee Oriental, Inc.

Mashpee

00073-RS-0670

2. APPLICATION CONTACT

The application contact is the person who should be contacted with any questions regarding this application.

Name

Title

Email

Phone

Wei Jia

Attorney

jiawei2001@msn.com

6175421548

3A. MANAGER INFORMATION

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

Proposed Manager Name Fangyan Ren

Date of Birth

SSN

Residential Address

Mashpee, MA 02649

Email

Phone

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

40+

Last-Approved License Manager

Mei Na Ko

3B. CITIZENSHIP/BACKGROUND INFORMATION

Are you a U.S. Citizen?*

☒ Yes ☐ No *Manager must be 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

3C. EMPLOYMENT INFORMATION

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

Start Date	End Date	Position	Employer	Supervisor Name
09/01/2014	10/01/2018	Waiter	Mashpee Oriental, Inc.	Mei Na Ko
10/01/2018	present	Assistant Manager	Mashpee Oriental, Inc.	Mei Na Ko

3D. 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

FANGYAN REN.

Date

7/26/2023

APPLICANT'S STATEMENT

I, Mei Na Ko the: ☐ sole proprietor; ☐ partner; ☒ corporate principal; ☐ LLC/LLP manager
Authorized Signatory

of Mashpee Oriental, 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: Mei Na Ko

Date: 7/16/2023

Title: President

ENTITY VOTE

The Board of Directors or LLC Managers of

Mashpee Oriental, Inc.

Entity Name

duly voted to apply to the Licensing Authority of

Town of Mashpee

City/Town

and the

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on

06/29/2023

Date of Meeting

For the following transactions (Check all that apply):

☒ Change of Manager

☐ Other

"VOTED: To authorize

Mei Na Ko

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

Fangyan Ren

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,

Meina Ko
Corporate Officer /LLC Manager Signature

Meina Ko
(Print Name)

For Corporations ONLY

A true copy attest,

Meina Ko
Corporation Clerk's Signature

Meina Ko
(Print Name)



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)	73	LICENSEE NAME:	Mashpee Oriental, Inc.	CITY/TOWN:	Mashpee
--	----	----------------	------------------------	------------	---------

APPLICANT INFORMATION

LAST NAME:	Ren	FIRST NAME:	Fangyan	MIDDLE NAME:				
MAIDEN NAME OR ALIAS (IF APPLICABLE):	N/A	PLACE OF BIRTH:	Fuzhou China					
DATE OF BIRTH:		SSN:		ID THEFT INDEX PIN (IF APPLICABLE):				
MOTHER'S MAIDEN NAME:	Wanjin Lin	DRIVER'S LICENSE #:		STATE LIC. ISSUED:	Massachusetts			
GENDER:	MALE	HEIGHT:	6	1	WEIGHT:	200	EYE COLOR:	Brown
CURRENT ADDRESS:								
CITY/TOWN:	Mashpee	STATE:	MA	ZIP:	02649			
FORMER ADDRESS:								
CITY/TOWN:	E. Falmouth	STATE:	MA	ZIP:	02536			

PRINT AND SIGN

PRINTED NAME:	Fangyan Ren	APPLICANT/EMPLOYEE SIGNATURE:	FANGYAN REN.
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NOTARY INFORMATION

On this July 26, 2023 before me, the undersigned notary public, personally appeared Fangyan Ren
(name of document signer), proved to me through satisfactory evidence of identification, which were driver's license
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

WEI JIA
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires On
November 23, 2023

DIVISION USE ONLY

REQUESTED BY: _____
SIGNATURE OF CORI-AUTHORIZED EMPLOYEE: _____
The DCII Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identify Theft N Number by the DCII. 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 DCII via mail or by fax to (617) 660-4634.



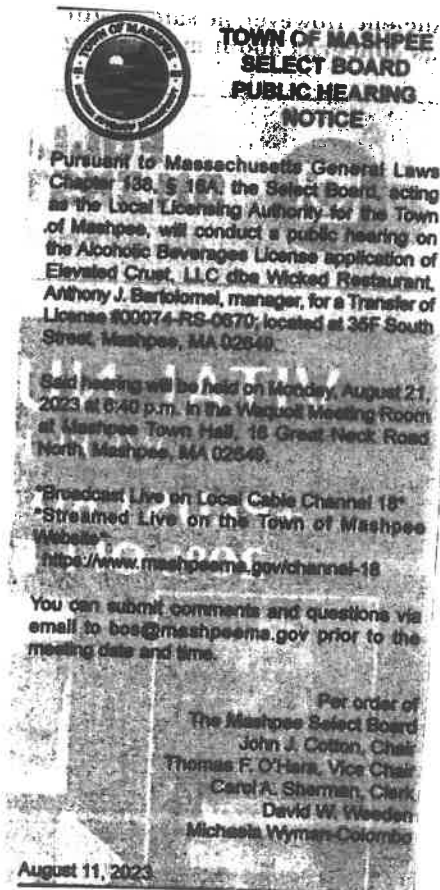
**TOWN OF MASHPEE
SELECT BOARD
PUBLIC HEARING NOTICE**

Pursuant to Massachusetts General Laws Chapter 138, § 16A, the Select Board, acting as the Local Licensing Authority for the Town of Mashpee, will conduct a public hearing on the Alcoholic Beverages License application of Elevated Crust, LLC dba Wicked Restaurant, Anthony J. Bartolomei, manager, for a Transfer of License #00074-RS-0670; located at 35F South Street, Mashpee, MA 02649.

Said hearing will be held on Monday, August 21, 2023 at 6:40 p.m. in the Waquoit Meeting Room at 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>

You can submit comments and questions via email to 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

August 11, 2023



TOWN OF MASHPEE


OFFICE OF THE SELECT BOARD

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

MEMORANDUM

Date: August 17, 2023

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

From: Stephanie A. Coleman, Administrative Secretary 

Re: Public Hearing: Alcoholic Beverages License Amendment, Transfer of License: Elevated Crust,
LLC dba Wicked Restaurant

Pursuant to Massachusetts General Laws Chapter 138, § 16A, the Select Board, acting as the Local Licensing Authority for the Town of Mashpee, will conduct a public hearing on the Alcoholic Beverages License application of Elevated Crust, LLC dba Wicked Restaurant, for a Transfer of License.

The license will be operating under a new LLC but will continue to do business as Wicked Restaurant.

Attached for the Select Boards review is the completed Alcoholic Beverages License Amendment Application.

Receipt from nCourt

customerservice@nCort.com <customerservice@nCort.com>

Sun 7/30/2023 8:57 PM

To: ---

YOUR RECEIPT >>**Please include the payment receipt with your application. Thank you.****Paid To**

Name: Massachusetts Alcoholic Beverages Control Commission - Retail
Address 1: 95 Fourth Street, Suite 3
City: Chelsea
State: Massachusetts
Zip: 02150

Payment On Behalf Of

First Name: John Last Name: Bartolomei
Address 1:
City: State/Territory: Zip:
Phone:

Description	ID	Service Fee	Amount
FILING FEES-RETAIL	000-74-RS-0670	\$4.70	\$200.00

Receipt Date: 7/30/2023 8:57:42 PM EDT**Invoice Number:** 96d51680-7c4d-4d98-b5ea-2017358586eb**Total Amount Paid:** \$204.70

Billing Information	Credit / Debit Card Information
First Name john	Card Type MasterCard
Last Name bartolomei	Card Number *****
Address 1	
City	
State/Territory	
Zip	
Email	

IMPORTANT INFORMATION >>

Please include the payment receipt with your application. Thank you.

Please verify the information shown above. Your payment has been submitted to the location listed above.



The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

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

APPLICATION FOR A TRANSFER OF 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)

000-74-RS-0670

ENTITY/ LICENSEE NAME Elevated Crust, LLC.

ADDRESS 4631 Falmouth Rd.

CITY/TOWN Cotuit

STATE Ma.

ZIP CODE 02635

For the following transactions (Check all that apply):

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



William Francis Galvin
Secretary of the
Commonwealth

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

August 8, 2023

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

ELEVATED CRUST, LLC

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **July 17, 2023**.

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation; that there are no proceedings presently pending under the Massachusetts General Laws Chapter 156C, § 70 for said Limited Liability Company's dissolution; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **JOHN J. BARTOLOMEI, JR.**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **JOHN J. BARTOLOMEI, JR.**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **JOHN J. BARTOLOMEI, JR.**



In testimony of which,

I have hereunto affixed the

Great Seal of the Commonwealth

on the date first above written.

William Francis Galvin

Secretary of the Commonwealth



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

Maura Healey
GOVERNOR

Kim Driscoll
LT. GOVERNOR



433039354

Lauren E. Jones
SECRETARY

Katie Dishnica
DIRECTOR

WICKED RESTAURANT INC.
Attn: Robert Catania
35 F SOUTH STREET
MASHPEE, MA 02649

EAN: 96515480
August 11, 2023

Certificate Id:73378

The Department of Unemployment Assistance certifies that as of 8/11/2023 ,WICKED RESTAURANT INC. is current in all its obligations relating to contributions, payments in lieu of contributions, and the employer medical assistance contribution established in G.L.c.149,§189.

This certificate expires in 30 days from the date of issuance.

Katie Dishnica, Director

Department of Unemployment Assistance



The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

APPLICATION FOR A TRANSFER OF LICENSE

Municipality

1. TRANSACTION INFORMATION

- ☒ Transfer of License
☐ Alteration of Premises
☐ Change of Location
☐ Management/Operating Agreement
- ☐ Pledge of Inventory
☐ Pledge of License
☐ Pledge of Stock
☐ Other
- ☐ Change of Class
☐ Change of Category
☐ Change of License Type
(\$12 ONLY, e.g. "club" to "restaurant")

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.

2. LICENSE CLASSIFICATION INFORMATION

ON/OFF-PREMISES

On-Premises-12

TYPE

\$12 Restaurant

CATEGORY

All Alcoholic Beverages

CLASS

Annual

3. BUSINESS ENTITY INFORMATION

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

Current or Seller's License Number

FEIN

Entity Name

DBA

Manager of Record

Street Address

Phone

Email

Add'l Phone

Website

4. 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. If this application alters the current premises, provide the specific changes from the last approved description. You must also submit a floor plan.

Total Sq. Footage

Seating Capacity

Occupancy Number

Number of Entrances

Number of Exits

Number of Floors

APPLICATION FOR A TRANSFER OF LICENSE

5. CURRENT OFFICERS, STOCK OR OWNERSHIP INTEREST

Transferor Entity Name

By what means is the license being transferred?

List the individuals and entities of the current ownership. Attach additional pages if necessary utilizing the format below.

Name of Principal	Title/Position	Percentage of Ownership
<input type="text" value="Robert Catania"/>	<input type="text" value="President"/>	<input type="text" value="100"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

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, LLC Members, 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	Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text" value="John J. Bartolomei Jr."/>	<input type="text" value="a. 02649"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="CEO/President"/>	<input type="text" value="100"/>	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> Yes <input type="radio"/> No
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<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
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<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
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<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

ADDENDUM A

6. PROPOSED OFFICER, STOCK OR OWNERSHIP INTEREST (Continued...)

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.).

Entity Name

Elevated Crust, LLC.

Percentage of Ownership in Entity being Licensed
(Write "NA" if this is the entity being licensed)

NA

Name of Principal

John J. Bartolomei Jr.

Residential Address

SSN

DOB

Title and or Position

CEO/President

Percentage of Ownership

100

Director/ LLC Manager US Citizen

☒ Yes ☐ No

☒ Yes ☐ No

MA Resident

☒ Yes ☐ No

Name of Principal

Residential Address

SSN

DOB

Title and or Position

Percentage of Ownership

Director/ LLC Manager US Citizen

☐ Yes ☐ No

☐ Yes ☐ No

MA Resident

☐ Yes ☐ No

Name of Principal

Residential Address

SSN

DOB

Title and or Position

Percentage of Ownership

Director/ LLC Manager US Citizen

☐ Yes ☐ No

☐ Yes ☐ No

MA Resident

☐ Yes ☐ No

Name of Principal

Residential Address

SSN

DOB

Title and or Position

Percentage of Ownership

Director/ LLC Manager US Citizen

☐ Yes ☐ No

☐ Yes ☐ No

MA Resident

☐ Yes ☐ No

Name of Principal

Residential Address

SSN

DOB

Title and or Position

Percentage of Ownership

Director/ LLC Manager US Citizen

☐ Yes ☐ No

☐ Yes ☐ No

MA Resident

☐ Yes ☐ No

Name of Principal

Residential Address

SSN

DOB

Title and or Position

Percentage of Ownership

Director/ LLC Manager US Citizen

☐ Yes ☐ No

☐ Yes ☐ No

MA Resident

☐ Yes ☐ No

Name of Principal

Residential Address

SSN

DOB

Title and or Position

Percentage of Ownership

Director/ LLC Manager US Citizen

☐ Yes ☐ No

☐ Yes ☐ No

MA Resident

☐ Yes ☐ 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

APPLICATION FOR A TRANSFER OF LICENSE

6. PROPOSED OFFICERS, STOCK OR OWNERSHIP INTEREST (Continued...)

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/ LLC Manager	US Citizen
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
			MA Resident
			<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/ LLC Manager	US Citizen
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
			MA Resident
			<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/ LLC Manager	US Citizen
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
			MA Resident
			<input type="radio"/> Yes <input type="radio"/> No

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

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.

Name	License Type	License Name	Municipality
Danny Kay's Culinary Productions Inc.	annual	John J. Bartolomei Jr.	cotuit

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	
6966 Inc.	annual	John J. Bartolomei Jr.	

APPLICATION FOR A TRANSFER OF LICENSE

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. CORPORATE STRUCTURE

Entity Legal Structure

Date of Incorporation

State of Incorporation

Is the Corporation publicly traded? ☐ Yes ☒ No

8. 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

Landlord Name

Landlord Phone

Landlord Email

Landlord Address

Lease Beginning Date

Rent per Month

Lease Ending Date

Rent per Year

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

☐ Yes ☒ No

9. APPLICATION CONTACT

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

Name:

Phone:

Title:

Email:

APPLICATION FOR A TRANSFER OF LICENSE

10. FINANCIAL DISCLOSURE

A. Purchase Price for Real Estate	0
B. Purchase Price for Business Assets	375,000.00
C. Other* (Please specify)	0
D. Total Cost	375,000.00

*Other: (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
Total:	0

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.
Cambridge Savings Bank	375,000.00	SBA	<input checked="" type="radio"/> Yes <input type="radio"/> No
			<input type="radio"/> Yes <input 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.

--

11. 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?

--

12. 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

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
2014	present	Bartender / Chef	Villaggio Prime Bar & Grille	John Bartolomei

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

13. MANAGEMENT AGREEMENT

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

If yes, please fill out section 13.

☐ 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.*

13A. 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

13B. EXISTING MANAGEMENT AGREEMENTS AND INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 13A, 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

13C. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 13A, 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

13D. PREVIOUSLY HELD MANAGEMENT AGREEMENT

Has any individual or entity identified in question 13A, 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

13E. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Have any of the disclosed licenses listed in question section 13B, 13C, 13D 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

13F. 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.

APPLICANT'S STATEMENT

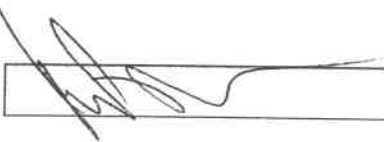
I, John J. Bartolomei Jr. the: ☐ sole proprietor; ☐ partner; ☐ corporate principal; ☒ LLC/LLP manager
Authorized Signatory
of Elevated Crust, LLC.
Name of the Entity/Corporation

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: July 31, 2023

Title:

CEO/President

CORPORATE VOTE

The Board of Directors or LLC Managers of

Elevated Crust, LLC.

Entity Name

duly voted to apply to the Licensing Authority of

Mashpee

City/Town

and the

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on

July 31, 2023

Date of Meeting

For the following transactions (Check all that apply):

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

"VOTED: To authorize

John J. Bartolomei Jr.

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

Anthony J. Bartolomei

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,

Corporate Officer /LLC Manager Signature

John J. Bartolomei Jr.

(Print Name)

For Corporations ONLY

A true copy attest,

Corporation Clerk's Signature

John J. Bartolomei Jr.

(Print Name)



The Commonwealth of Massachusetts

William Francis Galvin

Secretary of the Commonwealth

One Ashburton Place, Room 1717, Boston, Massachusetts 02108-1512

Limited Liability Company

Certificate of Organization

(General Laws Chapter 156C, Section 12)

Federal Identification No.: 93-2423280

- (1) The exact name of the limited liability company:

ELEVATED CRUST, LLC

- (2) The street address of the office in the commonwealth at which its records will be maintained:

35 F South Street, Mashpee, MA 02649

- (3) The general character of the business:

To conduct business and operate a restaurant retail/wholesale food service operation

- (4) Latest date of dissolution, if specified: _____

- (5) The name and street address, of the resident agent in the commonwealth:

NAME

ADDRESS

John J. Bartolomei, Jr.

35 F South Street
Mashpee, MA 02649

- (6) The name and business address, if different from office location, of each manager, if any:

NAME

ADDRESS

John J. Bartolomei, Jr.

35 F South Street
Mashpee, MA 02649

From:

To:16176243891

07/17/2023 10:39

#029 P.003/004

- (7) The name and business address, if different from office location, of each person in addition to manager(s) authorized to execute documents filed with the Corporations Division, and at least one person shall be named if there are no managers:

NAME

John J. Bartolomei, Jr.

ADDRESS

35 F South Street
Mashpee, MA 02649

- (8) The name and business address, if different from office location, of each person authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property recorded with a registry of deeds or district office of the land court:

NAME

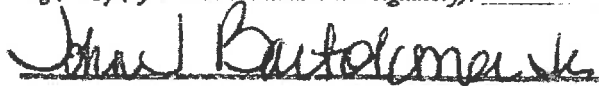
John J. Bartolomei, Jr.

ADDRESS

35 F South Street
Mashpee, MA 02649

- (9) Additional matters:

Signed by (by at least one authorized signatory):



Consent of resident agent:

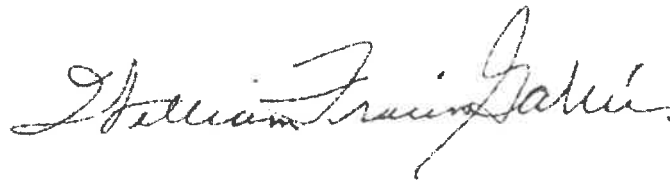
1 John J. Bartolomei, Jr.

resident agent of the above limited liability company, consent to my appointment as resident agent pursuant to G.L. c 156C § 12*

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:

July 17, 2023 10:42 AM

A handwritten signature in cursive script, reading "William Francis Galvin". The signature is written in dark ink and is centered on the page.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth



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: <small>(IF EXISTING LICENSEE)</small>	00074-RS-0670	LICENSEE NAME:	Elevated Crust, LLC	CITY/TOWN:	mashpee
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APPLICANT INFORMATION

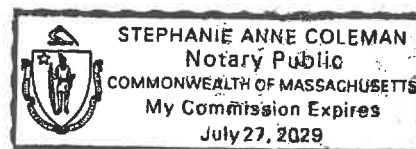
LAST NAME:	bartolomei	FIRST NAME:	john	MIDDLE NAME:					
MAIDEN NAME OR ALIAS (IF APPLICABLE):		PLACE OF BIRTH:	falmouth						
DATE OF BIRTH:		SSN:		ID THEFT INDEX PIN (IF APPLICABLE):					
MOTHER'S MAIDEN NAME:		DRIVER'S LICENSE #:		STATE LIC. ISSUED:	Massachusetts				
GENDER:	MALE	HEIGHT:	5	10	WEIGHT:	245	EYE COLOR:	brown	
CURRENT ADDRESS:									
CITY/TOWN:	mashpee	STATE:	ma	ZIP:	02649				
FORMER ADDRESS:									
CITY/TOWN:	mashpee	STATE:	ma	ZIP:	02649				

PRINT AND SIGN

PRINTED NAME:	John J Bartolomei	APPLICANT/EMPLOYEE SIGNATURE:	
---------------	-------------------	-------------------------------	--

NOTARY INFORMATION

On this	9 th	day of August, 2023	before me, the undersigned notary public, personally appeared	John J. Bartolomei
(name of document signer), proved to me through satisfactory evidence of identification, which were				Driver License
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.				
				NOTARY



DIVISION USE ONLY

REQUESTED BY:	
SIGNATURE OF CORI-AUTHORIZED EMPLOYEE	

The DCJ Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identity Theft PIN Number by the DCJ. 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 DCJ via mail or by fax to (617) 660-4634.



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)	00074-RS-0670	LICENSEE NAME:	Elevated Crust, LLC	CITY/TOWN:	mashpee
--	---------------	----------------	---------------------	------------	---------

APPLICANT INFORMATION

LAST NAME:	bartolomei	FIRST NAME:	Anthony	MIDDLE NAME:				
MAIDEN NAME OR ALIAS (IF APPLICABLE):		PLACE OF BIRTH:	falmouth					
DATE OF BIRTH:		SSN:		ID THEFT INDEX PIN (IF APPLICABLE):				
MOTHER'S MAIDEN NAME:		DRIVER'S LICENSE #:		STATE LIC. ISSUED:	Massachusetts			
GENDER:	MALE	HEIGHT:	5	8	WEIGHT:	185	EYE COLOR:	brown
CURRENT ADDRESS:								
CITY/TOWN:	mashpee	STATE:	ma	ZIP:	02649			
FORMER ADDRESS:								
CITY/TOWN:	mashpee	STATE:	ma	ZIP:	02649			

PRINT AND SIGN

PRINTED NAME:	Anthony Bartolomei	APPLICANT/EMPLOYEE SIGNATURE:	
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NOTARY INFORMATION

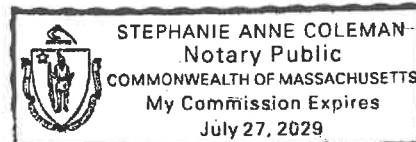
On this 9th day of August 2008 before me, the undersigned notary public, personally appeared Anthony J. Bartolomei
(name of document signer), proved to me through satisfactory evidence of identification, which were Driver License
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

NOTARY

DIVISION USE ONLY

REQUESTED BY:	
SIGNATURE OF CORI-AUTHORIZED EMPLOYEE	

The DCJ Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identify Theft PIN Number by the DCJ. 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 DCJ via mail or by fax to (617) 660-4614.



ASSET PURCHASE AGREEMENT

by and between

WICKED RESTAURANT, INC.

AND

ELEVATED CRUST LLC

Dated as of July __, 2023

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) dated as of July ___, 2023 is entered into by and between WICKED RESTAURANT, Inc., a Massachusetts corporation (“**Seller**”), and ELEVATED CRUST LLC, a Massachusetts limited Liability company with principal place of business located at 35 F South St., Mashpee, Ma 02649 or his nominee (, the “**Buyer**”).

RECITALS:

WHEREAS, Seller is engaged in the business of operating a certain restaurant known as the “Wicked Restaurant and Wine Bar” located at 35F South Street, Mashpee, Massachusetts 02649 (the “**Business**”);

WHEREAS, Seller is a tenant operating its Business under a lease for a portions of the premises at said location; and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the Business, including certain assets related thereto, and assume the lease for the premises occupied by the Business, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller’s right, title and interest in, to and under all of the tangible and intangible assets, properties and rights of every kind and nature (other than the Excluded Assets as hereinafter defined), which relate to, or are used or held for use in connection with, the Business (collectively, the “**Purchased Assets**”), as reflected on **Exhibit A**, including the following:

(a) all furniture, fixtures, equipment, cooking equipment, dining equipment refrigerators, freezers, preparation table(s), and kitchen furniture and fixtures and other tangible personal property and related to the operation of the Business (the “**Tangible Personal Property**”);

(b) all Inventory, meaning food products, service products and alcohol, not listed as furniture, fixtures or equipment at the Business as of the Closing to be purchased by Buyer from Seller at Seller’s cost;

(c) the liquor license used by Seller in the operation of the Business for transfer to Buyer subject to all necessary government approvals (“**ABCC License**”); and

(d) trademarks, service marks, trade names, brand names, logos, trade dress, any website(s), URL’s, password(s), domain name(s) and all other social medial used in connection with the operation of the Business (collectively, the “**Wicked Brand Rights**”); and

(e) customer lists, price lists, supplier lists, mailing list(s), email list(s), phone and fax number(s), to the extent assignable all software and computer programs related to the operation of the business; and

(f) all goodwill of the Business associated with any of the assets described in the foregoing clauses.

Section 1.02 Excluded Assets. Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, the Excluded Assets. For purposes of this Agreement, “**Excluded Assets**” means those certain assets and rights of Seller and its affiliates as set forth on Schedule 1.02 annexed hereto.

Section 1.03 Assumed Liabilities.

(a) Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due any and all Liabilities of Seller arising out of or relating to the Business or the Purchased Assets on or after the Closing, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”), including, but not limited to, all Liabilities for (A) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period (or any portion thereof) beginning on or after the Closing Date, but not taxes imposed as a result of the sale contemplated hereby, and (B) Taxes for which Buyer is liable pursuant to Section 5.02.

For purposes of this Agreement, “**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

(b) Buyer shall not assume and shall not be responsible to pay, perform or discharge any of the following Liabilities of Seller (collectively, the “**Excluded Liabilities**”):

(i) any Liabilities relating to or arising out of the Assumed Liabilities related to the Seller prior to closing, and the Excluded Assets;

(ii) all trade accounts payable of Seller to third parties in connection with the Business that accrue prior to the Closing Date;

(iii) any Liabilities for (a) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period (or any portion thereof) ending prior to the Closing Date and (b) any other Taxes of Seller or any stockholders or Affiliates of Seller (other than Taxes allocated to Buyer under Section 5.02) for any taxable period (or any portion thereof) ending prior to the Closing Date; and

(iv) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents

and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers and others.

(v) any obligations payable to officers, shareholders, employees, affiliated companies or other parties related to Seller;

(vi) any and all tax liabilities incurred as of or prior to the Closing Date, including but not limited to all claims for income taxes, meals and sales taxes, employee wage taxes and unemployment insurance claims; and

(vii) any liability of Seller for any employee wage, vacation, sick days or other obligations incurred through the Closing Date, all employee benefit plans or contributions to said plans; any

(viii) All obligations and liabilities owed to the Seller's vendors, service providers, repair persons and other parties incurred as of or prior to the Closing Date.

For purposes of this Agreement: (i) "**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such Person; and (ii) "**control**" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Section 1.04 Purchase Price. The aggregate purchase price for the Purchased Assets shall be Three Hundred Seventy-five Thousand and 00/100 Dollars (\$375,000), plus the Closing Inventory Value (collectively, the "**Purchase Price**"). Buyer shall pay the Purchase Price to Seller in the following manner:

(a) the sum of One Thousand and 00/100 Dollars (\$1,000), previously paid to Seller with the Offer to Purchase;

(b) the sum of Forty-nine Thousand and 00/100 Dollars (\$49,000) to be paid by wire transfer or certified funds to Seller of immediately available funds upon execution of this Agreement, which is to be held in non-interest bearing escrow by the broker along with the previous deposit and referred to in Section 1.04(a) above (herein, collectively referred to as the "**Deposit**"), which Deposit shall be paid over to Seller as a credit against the Purchase Price at Closing;

(c) the sum of Three Hundred Twenty-five Thousand and 00/100 Dollars (\$325,000) plus the cost of Inventory to be paid by wire transfer to Seller of immediately available funds including attorney's IOLTA check upon delivery of the Bill of Sale at Closing,

Section 1.05 Allocation of Purchase Price. The Purchase Price and the Assumed Liabilities shall be allocated among the Purchased Assets for all purposes (including Tax

and financial accounting) as shown on the allocation schedule set forth on **Exhibit B** attached hereto (the “**Allocation Schedule**”) shall be mutually agreed upon at time of closing. The Allocation Schedule shall be prepared in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended. Buyer and Seller shall file all returns, declarations, reports, information returns and statements and other documents relating to Taxes (including amended returns and claims for refund) (“**Tax Returns**”) in a manner consistent with the Allocation Schedule.

Section 1.06 Non-Assignable Assets.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a sale, assignment or transfer of any Purchased Asset if such sale, assignment or transfer: (i) violates applicable Law; or (ii) requires the consent or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement and such consent or waiver has not been obtained prior to the Closing.

(b) Following the Closing, Seller and Buyer shall use commercially reasonable efforts, and shall cooperate with each other, to obtain any such required consent or waiver, or any release, substitution or amendment required to novate all Liabilities under any and all Assumed Liabilities or to obtain in writing the unconditional release of all parties to such arrangements, so that, in any case, Buyer shall be solely responsible for such Liabilities from and after the Closing Date; *provided, however*, that neither Seller nor Buyer shall be required to pay any consideration therefor. Once such consent, waiver, release, substitution or amendment is obtained, Seller shall sell, assign and transfer to Buyer the relevant Purchased Asset to which such consent, waiver, release, substitution or amendment relates for no additional consideration. Applicable sales, transfer and other similar Taxes in connection with such sale, assignment or transfer shall be paid by Buyer in accordance with Section 5.02.

ARTICLE II CLOSING

Section 2.01 Closing. Subject to the terms and conditions of this Agreement, including the satisfaction or waiver of each of the conditions to closing set forth in Article VI, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Seller or remotely by exchange of documents and signatures (or their electronic counterparts), at the earlier of either: (i) seven (7) Business Days following Buyer’s receipt of all licenses and permits necessary to operate the Business, except for the ABCC License, or (ii) 1:00 pm Eastern on September 15, 2023 (the “**Closing Date**”), or at such other time or place or in such other manner as Seller and Buyer may mutually agree upon in writing.

Section 2.02 ABCC License. If the Buyer has not received the transferred alcohol license from the ABCC, then the parties shall enter into an Interim Beverage Service Agreement for the continuation of the alcohol under Seller’s license. See Exhibit C.

Section 2.03 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale in the form of **Exhibit D** attached hereto (the "**Bill of Sale**") and duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Buyer that is free and clear of all liens and encumbrances. To enable the SELLER to make conveyance as herein provided, the SELLER shall at the time of delivery or the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said Bill of Sale.

(ii) an assignment and assumption agreement in the form of **Exhibit E** attached hereto (the "**Assignment and Assumption Agreement**") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) a certificate of the Secretary (or equivalent officer) of Seller (the "**Seller Certificate**") certifying as to (A) the resolutions of the board of directors and the stockholders of Seller, which authorize the execution, delivery and performance of this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Buyer License Agreement and the other agreements, instruments and documents required to be delivered in connection with this Agreement or at the Closing (collectively, the "**Transaction Documents**") and the consummation of the transactions contemplated hereby and thereby and (B) the names and signatures of the officers of Seller authorized to sign this Agreement and the other Transaction Documents;

(iv) an Assignment of the Lease as reflected in **Exhibit F**; and

(v) such other customary instruments of transfer or assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to the transactions contemplated by this Agreement.

(vi) A Certificate of Good Standing from: the Massachusetts Secretary of State Corporations Division; Mass DOR and the Mass DUA within 15 days of execution herein and may need to be then currently updated prior to closing and/or prior to licensing application(s).;

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Purchase;

(ii) the Assignment and Assumption Agreement duly executed by Buyer;

(iii) an Assumption of the Lease where the Business operates and is located as more particularly described in Section 6.01 below; and

(iv) a certificate of the Secretary (or equivalent officer) of Buyer (the “**Buyer Certificate**”) certifying as to (A) the resolutions of the board of directors of Buyer, which authorize the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby and (B) the names and signatures of the officers of Buyer authorized to sign this Agreement and the other Transaction Documents.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date hereof and will remain true and correct as of Closing .

Section 3.01 Organization and Authority of Seller. Seller is a corporation duly organized, validly existing and in Good Standing under the Laws of the Commonwealth of Massachusetts. Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement and the Transaction Documents constitute legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.02 No Conflicts or Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or breach any provision of the certificate of incorporation or by-laws of Seller; (b) violate or breach any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; (c) require the consent, notice or other action by any Person under, conflict with, violate or breach, constitute a default under or result in the acceleration of any agreements to which Seller is a party; or (d) require any consent, permit, Governmental Order, filing or notice from, with or to any Governmental Authority by or with respect to Seller in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby; except, in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to obtain consent or give notice

would not have a Material Adverse Effect and, in the case of clause (d), where such consent, permit, Governmental Order, filing or notice which, in the aggregate, would not have a Material Adverse Effect. For purposes of this Agreement: (i) "**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law or other requirement or rule of law of any Governmental Authority; (ii) "**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority; (iii) "**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity; and (iv) "**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is materially adverse to the business, results of operations, financial condition or assets of the Business, taken as a whole.

Section 3.03 Title to Tangible Personal Property. Seller has good, clear and valid and marketable title to all Tangible Personal Property included in the Purchased Assets, free and clear of any lien, charge, claim, pledge, security interest or other similar encumbrance (each, an "**Encumbrance**"), except for Encumbrances that would not have a Material Adverse Effect.

Section 3.04 Legal Proceedings; Governmental Orders.

(a) There are no claims, actions, suits, investigations or other legal proceedings (collectively, "**Actions**") pending or, to Seller's knowledge, threatened against or by Seller relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities, which if determined adversely to Seller would result in a Material Adverse Effect.

(b) There are no outstanding Governmental Orders against, relating to or affecting the Business or the Purchased Assets, which would have a Material Adverse Effect.

Section 3.05 Compliance with Laws. Seller is in material compliance with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, except where the failure to be in compliance would not have a Material Adverse Effect.

Section 3.06 Taxes.

(a) Except as would not have a Material Adverse Effect, Seller has filed (taking into account any valid extensions) all material Tax Returns with respect to the Business required to be filed by Seller for any tax periods prior to Closing and has paid all Taxes shown thereon as owing. Seller is not currently the beneficiary of any extension of time within which to file any material Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business.

(b) The representations and warranties set forth in this Section 3.06 are Seller's sole and exclusive representations and warranties regarding Tax matters.

(c) The term “**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, withholding, payroll, employment, unemployment, excise, severance, stamp, occupation, premium, property (real or personal), customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto.

Section 3.07 Brokers. Except for The Realty Advisory, Inc., no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller. Seller shall be responsible for the payment of the brokerage fee owed to The Realty Advisory, Inc. at Closing pursuant to the terms of a separate agreement by and between Seller and The Realty Advisory, Inc. which shall then pay Commercial Realty pursuant to their agreement.

No Other Representations and Warranties. Except for the representations and warranties contained in this Article III, neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information, documents or material regarding the Business and the Purchased Assets furnished or made available to Buyer and its Representatives in any form (including any information, documents, or material made available to Buyer), or as to the future revenue, profitability, or success of the Business, or any representation or warranty arising from statute or otherwise in Law. For purposes of this Agreement, “**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date hereof and true and correct as of closing.

Section 4.01 Organization and Authority of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of The Commonwealth of Massachusetts. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement and the Transaction Documents constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or breach any provision of the certificate of incorporation or by-laws of Buyer; (b) violate or breach any provision of any Law or Governmental Order applicable to Buyer; (c) require the consent, notice or other action by any Person under, conflict with, violate or breach, constitute a default under or result in the acceleration of any agreement to which Buyer is a party; or (d) require any consent, permit, Governmental Order, filing or notice from, with or to any Governmental Authority by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby; except, in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to

obtain consent or give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and, in the case of clause (d), where such consent, permit, Governmental Order, filing or notice which, in the aggregate, would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

Section 4.03 Solvency; Sufficiency of Funds. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all Liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 4.04 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 4.05 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 4.06 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in Article III of this Agreement; and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in Article III of this Agreement.

ARTICLE V COVENANTS

Section 5.01 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 5.02 Transfer Taxes. All transfer, sales, use, registration, documentary, stamp, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents, if any, shall be borne and paid by Buyer and Seller applicably when due. Buyer and Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

Section 5.03 Liquor License. From the date of the execution of this Agreement, Buyer shall including Seller cooperation , diligently and in good faith pursue and obtain from all Government agents and approvals the issuance and/or transfer of a liquor license for operation of the Business consistent with its current operations or as otherwise allowed. Seller shall cooperate as reasonably necessary in such process with the aim of facilitating a liquor license in favor of Buyer for the Business in time for Closing.

Section 5.04 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VI CONDITIONS TO CLOSING

Section 6.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement at the Closing shall be subject to the Buyer's assumption at Closing of that certain lease (hereinafter, the "**Lease**") as currently in effect between Seller, as tenant, and _____, a copy of which is attached hereto.

At Closing, Buyer shall assume the Lease and all obligations thereunder starting from the Closing Date forward, and Seller shall thereupon be released from and indemnified against any and all obligations thereunder from that point forward.

Section 6.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

- (a) But for the ABCC License, Buyer shall have obtained all permits and licenses necessary to allow Buyer to operate the Business as is currently operated;

(b) The representations and warranties of Seller contained in Article III shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(c) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(d) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) including, but not limited to, an assignment and assumption of the Lease, and such other documents and deliveries set forth in Section 2.03(a).

(e) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 6.02(a) and Section 6.02(c) have been satisfied,

(f) Buyer shall have received the Seller Certificate(s) of Good Standing from the Sec of Sate office, the Mass DOR and Mass DUA .

(g) Absence of Agreements: Seller represents that there are no undisclosed employment, supply, vendor, service or other agreements or other contracts that cannot be terminated on twenty (20) days' prior notice

(h) Transfer of Licenses: Seller shall cooperate with Buyer in the transfer of the licenses (including without limitation, the Liquor License), all costs and expenses of such transfer to be borne by Buyer

(i) Title to and Condition of Subject Assets. Subject to Section 2.03 (a) Seller shall at Closing have good and marketable title in fee simple to the Subject Assets, free and clear of any liens, encumbrances and charges of any kind or nature

(j) Payment of Liabilities. Except as set otherwise set forth herein, there are no liabilities of Seller which will not be paid on or prior to Closing or if not paid will be or may create a lien upon the Subject Assets or interfere with Buyers' ability to operate a restaurant or bar on the Premises (e.g., bills for alcoholic beverage deliveries

(k) Payment of Taxes. All transfer, excise or other taxes payable by reason of the sale and transfer of the Subject Assets pursuant to this Agreement shall be paid or provided for by Seller after the Closing out of the consideration payable by Buyer hereunder. Seller has filed all federal, state and local income, excise or franchise tax returns, real estate and personal property tax returns, sales and use tax returns and other tax returns required to be filed by it and has paid all taxes owing by it except taxes which have not yet accrued or otherwise become due for which adequate provision has been made. Adequate provision has been made for the payment of taxes which have not yet

accrued or otherwise become due and such taxes shall be paid promptly when due. No taxing authority is now asserting or threatening to assert against Seller any deficiency or claim for additional taxes or interest thereon, or penalties in connection therewith

(l) **Payment of All Outstanding Liens:** Notwithstanding the foregoing, to facilitate the transaction contemplated hereby, the Buyer's closing agent may, at the time of Closing, disburse the proceeds of the sale, or any portion thereof, to remove any liens or encumbrances on any one or more of the Subject Assets, including but not limited to outstanding amounts owed to alcoholic beverage purveyors and vendors and amounts owed to lenders with security interests in the License. The Seller shall be solely responsible for any costs, expenses and legal fees associated with removing any such liens or encumbrances, which amounts shall also be disbursed from Seller's proceeds of the sale. Upon consummation of the transaction contemplated hereby, Buyer will have good and marketable title in and to, the Subject Assets, free and clear of all encumbrances.

(m) **Conduct of Business.** The Seller hereby warrants to obtain any and all renewals and to continue to operate in compliance with all licenses and permits, up to and including the Closing Date. Seller shall pay all fees and renewal fees associated with all permits and licenses, including the License, and shall use its best efforts to keep all permits and licenses, including the License in good standing. The cost of any extension or renewal of the permits or licenses shall be prorated at Closing.

(n) **Financial Information.** Seller states that all financial information and documentation previously provided to Buyer is to the best of Seller's actual knowledge, true, accurate and complete.

(o) **License Compliance and Renewal.** The Seller represents that each of the licenses associated with the Business (including the Liquor License) (collectively, the "**Operating Licenses**") is now and at the time of Closing shall be validly existing and in compliance with the required standards of any and all local, state and federal governmental agencies including but not limited to proper renewals of the same. Notwithstanding the foregoing, the Seller represents that to the extent the transaction is not completed prior to the time for any annual or other renewals, the Seller shall successfully complete the renewals of each of the Operating Licenses with the applicable authorities of the Town and with the authorities of the ABCC on or before the required deadline and shall furnish to the Buyer written proof of the same, provided that the cost of such renewal shall be prorated over the term of each such renewal periods as of the date of the Closing.

(p) **Operation Pending Closing.** From and after the date of this Agreement and until Closing, Seller agrees to operate the Business in substantially the same manner as currently operated and shall carry on the Business diligently in the ordinary course, shall use reasonable efforts to preserve the goodwill of the Business's suppliers, customers and others having a business relationship with Seller and shall do nothing to impair the value of the Subject Assets. The Buyer understands and acknowledges the inventory which includes all liquor and food and other items to be purchased in addition to the purchase price herein, will be purchased and/or has to be purchased at certain time(s) and at certain level(s) applicable to the business' required and/or seasonal timing, and will be greater during certain seasonal and other best pricing and/or purchasing periods and/or coming

into certain periods of time. And the inventory will be applicably significant at said time will reflect same.

Buyer covenants and agrees to use commercially reasonable efforts to diligently pursue and obtain all necessary licenses and permits on or before the Closing Date. If Buyer shall fail to so obtain such licenses and permits timely for the Closing and/or any extension thereto and despite exercising diligent efforts, then the Buyer may declare this agreement void and all deposits made hereunder shall be returned to the Buyer and this agreement shall be null and void and without recourse to either party. If Buyer refuses to close the transaction contemplated hereby on the Closing Date and/or any extension thereto for a reason other than a failure of Seller to meet and satisfy its closing obligations as set forth in Section 6.03, yes leave this Seller may retain the Deposit as liquidated damages and all obligations hereunder shall terminate and this Agreement shall be void. This shall be the seller's sole remedy at law or in equity.

Section 6.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in Article IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Purchase Price, duly executed counterparts to the Transaction Documents including, but not limited to, the Seller Note, the assumption of the Lease, and such other documents and deliveries set forth in Section 2.03(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 6.03(a) and Section 6.03(b) have been satisfied.

(e) Seller shall have received the Buyer Certificate.

ARTICLE VII INDEMNIFICATION

Section 7.01 Survival. Subject to the limitations and except as expressly provided otherwise pursuant to any other express provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is nine (9) months following the Closing Date.

None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

Section 7.02 Indemnification by Seller. Subject to the other terms and conditions of this Article VII, from and after the Closing, Seller shall indemnify Buyer against, and shall hold Buyer harmless from and against, any and all losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees (collectively, "**Losses**"), incurred or sustained by, or imposed upon, Buyer based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; or
- (c) any Excluded Asset or any Excluded Liability;
- (d) operation of the Business prior to the Closing Date.

Section 7.03 Indemnification by Buyer. Subject to the other terms and conditions of this Article VI, from and after the Closing, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of or with respect to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or
- (c) any Assumed Liability;
- (d) operation of the Business as of the Closing Date and thereafter.

Section 7.04 Certain Limitations. The party making a claim under this Article VI is referred to as the "**Indemnified Party**," and the party against whom such claims are asserted under this Article VI is referred to as the "**Indemnifying Party**." The indemnification provided for in Section 7.02 and Section 7.03 shall be subject to the following limitations:

(a) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 7.02 or Section 7.03, as the case may be, shall not exceed the Purchase Price.

(b) In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(c) Seller shall not be liable under this Article VII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had knowledge of such inaccuracy or breach prior to the Closing.

Section 7.05 Indemnification Procedures. Whenever any claim shall arise for indemnification hereunder, the Indemnified Party shall promptly provide written notice of such claim to the Indemnifying Party. Such notice by the Indemnified Party shall: (a) describe the claim in reasonable detail; (b) include copies of all material written evidence thereof; and (c) indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense, subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any claim, including: (i) making available records relating to such claim; and (ii) furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such claim. The Indemnifying Party shall not settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 7.06 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 7.07 Exclusive Remedies. The parties acknowledge and agree that from and after the Closing their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth

herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article VI. In furtherance of the foregoing, each party hereby waives, from and after the Closing, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VI. Nothing in this Section 7.07 shall limit any Person's right to seek and obtain any equitable relief to which such Person shall be entitled.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Deposit. The Deposit shall be paid over to Seller at Closing and credited against the Purchase Price. In case of any Buyer breach or default hereunder, the Deposit shall be paid to Seller, which Deposit shall constitute liquidated damages.

Section 8.02 Expenses. Except as otherwise expressly provided herein (including Section 5.02 hereof), all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses; *provided, however*, Seller shall pay any broker commission payable to The Realty Advisory, Inc.

Section 8.03 Notices. All notices, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.03):

If to Seller: WICKED RESTAURANT, Inc.
Robert Catania
35 South Street
Mashpee, MA 02649
Email:

With a copy to: David Nunheimer
540 Main Street
Hyannis, MA 02601
508-775-4700
dnunheimer@ourwealthplan.net

If to Buyer: Jay Bartolomei
4631 Falmouth Road, Route 28
Cotuit, MA 02635
Email: chefj@villagio.com

With a copy to Frederick C Grosser , Esq
fcg@grosserlaw.com

Section 8.04 Interpretation; Headings. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

Section 8.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents and the Exhibits, the statements in the body of this Agreement will control.

Section 8.07 Successors and Assigns; Assignment. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 8.08 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

Section 8.09 Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other

jurisdiction). Any legal suit, action, proceeding or dispute arising out of or relating to this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby may be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Massachusetts in each case located in the county of Barnstable, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, proceeding or dispute.

Section 8.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.11 Gift Certificates: The Seller shall credit the Buyer toward the Purchase Price for seventy-five (75%) percent of the total value of the outstanding gift cards as of the Closing.

SECTION 9. COVENANT NOT TO COMPETE.

The Seller, Robert Catania ("Catania") agree that they shall each execute a Covenant Not to Compete at the closing pursuant to which the Catania shall agree not to engage in the Restaurant and Wine Bar business or as owner, partner, stockholder, employee or in any other capacity for a period of 1 year within a radius of Ten (10) miles of the Business; further, the Catania agree not to use the name "Wicked Restaurant " or any variant thereof in connection with any business competing directly or indirectly with the Buyer.

SECTION 10. RISK OF LOSS.

The Seller assumes all risks of destruction, loss or damage due to fire or other casualty up to the Closing Date. If the destruction, loss or damage is such that the Business is substantially interrupted or curtailed, or if the amount of the damage is reasonably estimated to exceed the sum of Ten Thousand and 00/100 (\$10,000) Dollars, then the Buyer shall have the option to terminate this Agreement, and all Deposits made hereunder shall be forthwith refunded and all other obligations of all Parties hereto shall cease and this Agreement shall be void and without recourse to the Parties hereto. If the destruction, loss or damage is such that the Business is neither interrupted nor curtailed, the purchase price shall be adjusted by mutual agreement of the Buyer and Seller at the closing to reflect such destruction, loss or damage.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first above written.

BUYER:

ELEVATED CRUST LLC

By: 

John J. Bartolomei Jr., Manager

SELLER:

WICKED RESTAURANT, INC.

By: 

Name: Robert Catania

Title: President

EXHIBIT A
ASSETS

(See attached)

EXHIBIT B
PURCHASE PRICE ALLOCATION

(See attached)

EXHIBIT C
BILL OF SALE

(See attached)

EXHIBIT D
ASSIGNMENT AND ASSUMPTION AGREEMENT

(See attached)

Schedule 1.02
EXCLUDED ASSETS

The following assets are expressly excluded from the scope of the Purchased Assets:

Seller hereby expressly reserves from the Purchased Assets

EXHIBIT E

RETAIL LEASE AGREEMENT

Between

Landlord: MASHPEE INVESTORS, L.L.C.
a Massachusetts limited liability company

and

Tenant: WICKED RESTAURANT, INC.

Dated: September 5, 2008

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BASIC LEASE PROVISIONS

The following sets forth some of the Basic Provisions of the Lease. In the event of any conflict between the terms of these Basic Lease Provisions and the referenced Sections of the Lease, the referenced Sections of the Lease shall control. In addition to the following Basic Lease Provisions, all of the other terms and conditions and sections of this Retail Lease Agreement hereinafter set forth are hereby incorporated as an integral part of this Summary.

- | | | |
|----|------------------------------|---|
| 1. | Shopping Center : | South Cape Village
Mashpee, Massachusetts, as depicted on
Exhibit A. |
| 2. | Premises : | Unit F2-2 |
| | Rentable | Area of Premises: Approximately 4,803
rentable square feet. Notwithstanding the
foregoing or any other provision of this
Lease to the contrary, during the first two
(2) Lease Years only and for the purpose of
calculating Tenant's Tax Share and Tenant's
Expense Share only, the Premises shall be
deemed to contain 4,200 square feet of
rentable space. |
| 3. | Term: | Ten (10) years, plus the partial month, if
any, immediately following the Term
Commencement Date. |
| | Option Period, if applicable | Two (2) periods of five (5) years each |
| 4. | Minimum Rent: | |

Rent Lease Year	Rate Per Rentable	Monthly	Annual
	Square Foot of Premises		
1	\$20.13	\$ 8,057.03	\$ 96,684.39
2	\$21.13	\$ 8,457.28	\$101,487.39
3	\$25.36	\$10,150.34	\$121,804.08
4	\$26.63	\$10,658.66	\$127,903.89
5	\$27.96	\$11,190.99	\$134,291.88
6	\$29.08	\$11,639.27	\$139,671.24
7	\$30.24	\$12,103.56	\$145,242.72
8	\$31.15	\$12,467.79	\$149,613.45
9	\$32.08	\$12,840.02	\$154,080.24
10	\$33.04	\$13,224.26	\$158,691.12

Increases in the Minimum Rent shall occur on each anniversary of the Rent Commencement Date.

5. **Percentage Rental Rate:** Five percent (5%) (See Section 6)

 Minimum Gross Sales: The Minimum Gross Sales per year will be determined by using the Natural Breakpoint (applicable Minimum Rent divided by the Percentage Rental Rate).
6. **Fixed Improvement Rent:** \$2.00 per square foot of rentable space
7. **Rent Payment Address:** MASHPEE INVESTORS, LLC
 c/o C. Talanian Realty Co.
 137 Newbury Street, 9th Floor
 Boston, MA 02116
8. **Tenant's Tax Share:** That percentage which the rentable area of the Premises bears to the total rentable area of all buildings located in the Shopping Center as of the first (1st) day of each tax year; provided, however, that the rentable area of any buildings located in the Shopping Center which are now or hereafter separately owned or assessed, at the Landlord's option, shall be excluded from the denominator of such fraction.
9. **Tenant's Expense Share:** That percentage which the rentable area of the Premises bears to the total rentable area of all buildings located in the Shopping Center as of the first (1st) day of each Lease Year.
10. **Security Deposit (See Section 10):** One (1) month's rent.
11. **Tenant Buildout Allowance
(See Exhibit B.):** Up to \$55.00 per rentable square feet.
12. **Tenant's Permitted Use:** Only as a first-class, high-quality restaurant selling brick oven pizza, gourmet burgers and related cuisine and serving alcoholic beverages; as an ancillary use, Tenant may sell ice cream, gelato, take-out foods, The Wine Enhancer, prepared foods and products such as those sold under the brand

name Wicked Fire Kissed Pizza; no other use; in connection with the Permitted Use, Tenant shall have the right to have up to 125 restaurant seats in the Premises and may have up to 20 seats in the patio area, all subject to obtaining all Town of Mashpee permits. All operations of Tenant in the Premises shall be in conformance with all applicable laws and related regulations. The Premises shall be used for no other purpose or purposes.

13. Tenant's Trade Name: Wicked Restaurant
14. Tenant's Liability Insurance: See Section 26.
15. Landlord's Broker: The Dartmouth Company
Tenant's Broker: N/A
16. Notice Address:

<u>Landlord</u>	<u>Tenant</u>
Mashpee Investors, L.L.C. c/o C. Talanian Realty Co. 137 Newbury Street, 9 th Floor Boston, MA 02116 Web Address:	E-Mail Address: Fax No.:
17. Guarantors: Robert V. Catania
18. Plan Delivery Date: The earlier to occur of (i) that date which is thirty (30) days following the execution of this Lease; or (ii) that date which is fifteen (15) days after the Term Commencement Date.
19. Term Commencement Date: That date on which Landlord delivers the Premises to Tenant in the condition required by this Lease.
20. Lease Year: In the case of the first (1st) Lease Year, the period starting on the Commencement Date and ending on the next succeeding December 31st; thereafter, a Lease Year

shall be each successive twelve (12) month period commencing on January 1st and ending on the next succeeding December 31st.

21. Landlord's Work:

The work, if any, described in Exhibit B.

22. Rent Commencement Date:

That date which is the first to occur of (i) the date Tenant opens for business to the public in the Premises or (ii) March 1, 2009.

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter called the "Lease") is made and entered into as of the date appearing on the first page hereof by and between the Landlord and Tenant identified above.

A. PREMISES/TERM/CONSTRUCTION

1. **Premises.** Landlord does hereby lease to Tenant and Tenant does hereby lease from Landlord, the Premises located in the Shopping Center and shown by diagonal lines on the plan attached hereto as Exhibit A, reserving and excepting to Landlord the use of the roof and exterior walls (other than store fronts) and the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, and appurtenant fixtures, through the Premises in locations which will not materially interfere with Tenant's use thereof. Appurtenant to the Premises shall be Tenant's exclusive right to use the patio area shown on Exhibit B. Tenant shall have no right or interest in the land beneath the Premises or the improvements below floor slab level or above the interior surface of the ceiling.

2. **Lease Term.** Tenant shall have and hold the Premises for the Term commencing on the Term Commencement Date and terminating at midnight on the last day of the full month in which the tenth (10th) anniversary of the Term Commencement Date shall occur (the "Expiration Date"), unless sooner terminated or extended as hereinafter provided.

If this Lease is still in full force and effect, then the Tenant shall have the right and option to extend the Term for two Option Periods, provided that (i) the Tenant shall give written notice (the "Option Notice") to the Landlord of the exercise of such option not later than six (6) months prior to the expiration of the initial (or extended) Term hereof, time being of the essence thereof and (ii) Tenant shall not be in default of any of its obligations hereunder after the expiration of applicable periods of notice and grace on the date of the Option Notice and on the last day of the initial (or extended) Term hereof. If said option is duly exercised as aforesaid and no such uncured default exists, then the term of this Lease shall be extended for the Option Period without the requirement of any further instrument upon all of the same terms and provisions contained in this Lease, except that annual Minimum Rent shall be at the Fair Market Rent computed in accordance with the provisions of Exhibit G. However, in no event shall such Fair Market Rent be less than the Minimum Rent in effect at the expiration of the initial (or extended) Term.

3. **Construction and Acceptance of Premises.** (a) Tenant shall accept the Premises on the delivery date in its then "As Is" condition without any further obligation whatsoever on the part of the Landlord with respect thereto, except as may be specifically described as Landlord's Work in Exhibits B and B-1. Tenant shall have no right to enter or occupy the Premises until the Term Commencement Date. If Landlord shall for any reason fail to complete that part of Landlord's Work which is required to be completed in the Premises prior to Landlord's Work Scheduled Completion Date (as defined in Exhibit B), Landlord shall not be deemed to be in default hereunder or otherwise liable in damages to Tenant nor shall the Term or

any provision of this Lease be affected, excepting only as expressly set forth in Exhibit B attached hereto.

(b) Tenant agrees to submit to Landlord on or before the Plan Delivery Date Tenant's Plans (as defined in Exhibit B). Tenants' Plans shall comply with all requirements set forth in Exhibit B. Tenant shall not commence any work in the Premises until Landlord has approved in writing the Final Plans (as defined in Exhibit B).

(c) Upon the Term Commencement Date, Tenant agrees to proceed with due diligence, to perform Tenant's Work, as described in the Final Plans, and to install its fixtures, furniture, and equipment in the Premises. In the event of any dispute concerning work performed or required to be performed in the Premises by Landlord or Tenant, the matter in dispute shall be submitted to Landlord's architect for determination and his certificate with respect thereto shall be binding on Landlord and Tenant.

Prior to the commencement of Tenant's Work, Tenant shall obtain, at Tenant's sole cost and expense, all governmental permits and the like which are necessary for Tenant to perform Tenant's Work. If requested by Tenant, Landlord agrees to use reasonable efforts to cooperate with Tenant in obtaining the same, provided that Landlord shall have no obligation (i) to incur any costs and expenses in connection therewith (ii) to provide any information which is not then in Landlord's possession.

(d) Unless delayed by circumstances described in Section 19 hereof, Tenant agrees to open the Premises to the public for business, fully fixtured, stocked and staffed for the Permitted Use no later than the Rent Commencement Date.

4. **Quiet Enjoyment.** Tenant, upon payment in full of Rent and full performance of the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the Term hereof without hindrance or ejection by any persons lawfully claiming under Landlord. Landlord shall not be responsible for the acts or omissions of any other tenant or third party that may interfere with Tenant's use and enjoyment of the Premises.

B. MINIMUM RENT/PERCENTAGE RENT/TAXES/COMMON AREA EXPENSES/SECURITY DEPOSIT.

5. **Minimum Rent.** Commencing on the Rent Commencement Date Tenant shall pay to Landlord, at the address stated in the Basic Lease Provisions or at such other place as Landlord shall designate in writing to Tenant, Minimum Rent in the amounts set forth in the Basic Lease Provisions plus, simultaneously with such payments of Minimum Rent, the Fixed Improvement Rent. The Minimum Rent and the Fixed Improvement Rent for each Rent Lease Year shall be payable in equal monthly installments, due on the first day of each calendar month, in advance, without abatement, demand, deduction or offset whatsoever, except as may be expressly provided for in this Lease. One full monthly installment of Minimum Rent and the Fixed Improvement Rent shall be due and payable on the date Tenant executes and delivers this Lease and shall be applied to the first month's Minimum Rent and the Fixed Improvement Rent

(provided, that if the Rent Commencement Date should be a date other than the first day of a calendar month, the monthly Minimum Rent installment paid on the date of execution of this Lease by Tenant shall be prorated to that partial calendar month, and the excess shall be applied as a credit against the next monthly installments of Minimum Rent and Fixed Improvement Rent). Tenant shall pay, as Additional Rent, all other sums due from Tenant under this Lease (the term "Rent", as used herein, means all Minimum Rent, Fixed Improvement Rent, Percentage Rent, Tenant's Expense Share of Shopping Center Expenses, Tenant's Tax Share of Taxes (as each of such terms are hereinafter defined), and all other amounts payable hereunder from Tenant to Landlord).

6. **Percentage Rent/Gross Sales/Sales Reports and Records.**

(a) In addition to the Minimum Rent, Tenant shall pay to Landlord Percentage Rent for each Lease Year or portion thereof during the Term of this Lease, in an amount equal to the product of the Percentage Rental Rate (as set forth in the Basic Lease Provisions) multiplied by the difference between Tenant's Gross Sales during such Lease Year or portion thereof and Minimum Gross Sales. Percentage Rent shall be paid without demand in monthly installments when and in the manner described in Section 6(c) hereof. If this Lease commences on a date other than the first day of a Lease Year, or terminates on a date other than the last day of a Lease Year, Percentage Rent for the fractional part of the Lease Year following the Term Commencement Date or preceding the Expiration Date, as the case may be, shall be an amount equal to the product of the Percentage Rental Rate multiplied by the difference between Tenant's Gross Sales during such fractional part of a Lease Year, and Minimum Gross Sales prorated for such fractional period, such Percentage Rent to be paid in monthly installments as provided with respect to a full Lease Year. In addition, if Tenant is not open for business during the days and hours required pursuant to this Lease, the Minimum Gross Sales shall be proportionately reduced.

(b) The term "Tenant's Gross Sales" as used herein, shall be deemed to mean the gross proceeds, whether cash or otherwise, from business done in or from the Premises, including the entire sales price of merchandise (including gift and merchandise certificates) sold, charges for services, the entire sales price of merchandise sold as a result of orders originated or taken at the Premises but delivered elsewhere, the entire sales price of merchandise delivered from the Premises as a result of orders taken elsewhere and the gross sales prices of merchandise sold pursuant to telephone, electronic, computer or other technology-based systems in connection with orders made, received, filled or performed at or from the Premises. The gross proceeds from business done by any permitted concessionaire or licensee or otherwise in or from the Premises, the gross proceeds from business done through vending machines or other devices located in the Premises, and gross proceeds from business done in or from the Premises with employees shall also be deemed to be a part of Tenant's Gross Sales. A credit card sale shall be treated as a sale at the full sales price in the month during which such sale is made. No deduction from Tenant's Gross Sales shall be allowed for uncollected or uncollectible credit accounts. Tenant's Gross Sales shall be deemed to exclude: (a) any sums collected from customers and paid out for a sales or excise tax imposed by any duly constituted governmental authority if the amount of such tax is separately charged to the customer and paid by Tenant directly to the governmental authority, or to a member of the Federal Reserve Bank System for the benefit of

the governmental authority; (b) the amount of returns to suppliers or manufacturers; (c) the amount of any cash or credit refund made upon any sale if the merchandise sold, or some part thereof, is returned by Tenant's customer and accepted by Tenant; and (d) sales of Tenant's fixtures not in the ordinary course of Tenant's business. For purposes of this Section 6, the term "Tenant" shall include any of the Tenant's sub-tenants, concessionaires, and licensees.

(c) Within thirty (30) days following the end of each calendar quarter during the Term, Tenant shall prepare and deliver to Landlord a statement of Tenant's Gross Sales (such statement may be in the form of Tenant's State Sales Use Tax Form if applicable) during the preceding calendar quarter. No Percentage Rent shall be payable for any Rent Lease Year until Tenant's Gross Sales during that Rent Lease Year exceed the applicable Minimum Gross Sales amount. Tenant agrees that, without notice or demand from the Landlord, within fifteen (15) days after the end of the quarter in each Lease Year during which Tenant's Gross Sales so exceed the Minimum Gross Sales during that Lease Year and after each ensuing quarter during that Lease Year (accompanied by the quarterly statement showing Tenant's Gross Sales for such preceding month), to pay to the Landlord a sum equal to the Percentage Rental Rate multiplied by the amount by which Tenant's Gross Sales during the portion of that Lease Year which had expired as of the end of such immediately preceding quarter exceed the applicable Minimum Gross Sales, less amounts theretofore paid hereunder for and with respect to that Lease Year on account of Percentage Rent. In addition, within ninety (90) days after the expiration of each Lease Year, Tenant shall prepare and deliver to Landlord a statement of Tenant's Gross Sales during such Lease Year, certified to be correct by a Certified Public Accountant, if so required by Landlord. Tenant shall keep in the Premises an accurate set of books reflecting Tenant's Gross Sales and, with respect thereto, shall preserve all cash register tapes, federal and state tax returns, banking records, and such other records as may be needed for an effective audit of Tenant's Gross Sales. All such books and records shall be retained for a period of at least thirty-six (36) months after the end of the Lease Year to which they relate, or if Landlord shall have begun a special audit as hereinafter provided, for such longer period as may be required to complete such special audit. All such books and records shall be subject to inspection and audit by Landlord at all reasonable times. If Landlord is not satisfied with the statement of Tenant's Gross Sales as submitted by Tenant, Landlord shall have the right to have auditors of Landlord's choice make a special audit of all books and records, wherever located, pertaining to Tenant's Gross Sales. If Tenant's Gross Sales, as so determined by such special audit, exceed the figures submitted by Tenant by more than three (3%) percent, then (i) Tenant shall pay the cost of such audit; and (ii) the amount of any Percentage Rent unpaid as a result of such understatement of Tenant's Gross Sales with interest at the Lease Interest Rate (hereinafter defined). Landlord shall promptly refund to Tenant any overpayment in Percentage Rent which is established by such special audit.

Notwithstanding the foregoing, if Tenant shall reasonably and in good faith, dispute the results of such special audit, Tenant may cause the dispute to be submitted to binding arbitration by an arbitrator chosen by the Boston office of the American Arbitration Association. Tenant shall be solely responsible for the costs of such arbitration unless the arbitrator finds that the results of the special audit were in error to the extent that no additional Percentage Rent is due from Tenant in which event the costs of the arbitrator shall be divided evenly by the parties.

7. **Taxes; Promotional Fund; Shopping Center Expenses.**

(a) Tenant shall be liable for and shall pay directly to the taxing authority all taxes levied against personal property, fixtures, and Tenant's Work in the Premises. If such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of any such items and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand, as Additional Rent, that part of such taxes for which Tenant is liable hereunder.

Tenant further agrees to pay, as Additional Rent, Tenant's Tax Share of all general and special taxes, tax consultant fees, assessments, and governmental charges (of every kind and nature) from time-to-time assessed, imposed or levied against all or any portion of the Shopping Center (hereinafter called the "Taxes"). The Taxes shall be appropriately prorated during the first and last years of the Lease Term, if such years are less than full Lease Years. Payments in respect to Taxes received by Landlord from the tenants of any pad sites or out-parcels shall be deducted from the Taxes for which Tenant is liable hereunder. Landlord may, at its option, require Tenant to make monthly or other periodic payments based upon the estimated annual Taxes, payable in advance but subject to adjustment after receipt of the tax statement by Landlord. Tenant agrees to pay as Additional Rent any rent tax or other tax imposed upon rent payments or imposed upon Landlord based upon rent payments by Tenant to Landlord, however Tenant shall not be required to pay any income tax of Landlord.

(b) In the event that Landlord establishes a marketing or promotional fund for the Shopping Center, Tenant will pay, as Additional Rent, Tenant's Expense Share of such fund, as determined by Landlord from time to time in connection therewith. Tenant's Expense Share for purposes of this Section 7(b) shall be one dollar (\$1.00) per square foot of rentable area in the Premises during the first (1st) Lease Year and increases thereafter shall not exceed five (5%) percent; provided, however, that the rentable area occupied by a "major tenant" which is not obligated to participate in such fund shall not be considered when calculating Tenant's Expense Share. For purposes of this Section 7(b), a "major tenant" shall be any tenant occupying at least 25,000 square feet of rentable area in the Shopping Center.

(c) Tenant also agrees to pay, as Additional Rent, Tenant's Expense Share of all costs and expenses incurred by Landlord in the operation, management, maintenance and/or repair of the Common Areas of the Shopping Center (hereinafter called the "Shopping Center Expenses"). As used herein, the term "Common Areas" shall mean those areas of the Shopping Center, including all parking areas, which are from time to time available for use by the tenants of Shopping Center or by the public, all driveways, truckways, delivery passages, walkways, concourses, malls, planted areas, landscaped areas, and public restrooms and common truck loading and receiving areas which are not leased to or reserved for individual tenants. Shopping Center Expenses shall include, without limitation, management fees paid to a management company, costs incurred for lighting, heating, air conditioning, painting, cleaning, removal of trash, garbage, debris and other refuse, central trash disposal (if Landlord elects to provide same), traffic control, fire protection, sewer, septic or private wastewater treatment system (as

applicable) and not separately metered to and paid for directly by tenants, compliance with governmental and other regulatory authority applicable to the Shopping Center, policing, inspecting, landscaping and repairing and replacing the Common Areas, or any part thereof, costs of all roof and other maintenance, repairs and replacements performed by Landlord, Landlord's share of costs incurred in the maintenance and repair of any offsite retention/detention facilities serving the Shopping Center and any offsite accessways burdened by an easement benefiting the Shopping Center, including expenses reimbursable to a property manager, depreciation of maintenance equipment, costs of all insurance, including any hazard, public liability and property damage insurance, and business interruption or rent insurance, including appraisals and consultants' fees and premiums in connection with such insurance and deductible amounts paid in connection with any insurance claim, reasonable and appropriate reserves, costs of all water consumed in the Shopping Center which is not separately metered to tenants (single or multiple), and an administrative fee of fifteen percent (15%) of the foregoing costs, but excluding depreciation of Landlord's original investment in the Shopping Center. All capital expenditures included in operating costs (including, but not limited to, the replacement of the roof and resurfacing the parking areas) shall be treated as if said expenditures have been capitalized over their useful life, and Tenant's Expense Share shall in no event include the cost of initial construction or expansion of the Shopping Center and the Common Areas.

Landlord shall have the right to estimate Shopping Center Expenses for each Lease Year and to require Tenant to make monthly payments of estimated Shopping Center Expenses simultaneously with Tenant's payments of Annual Minimum Rent. Within sixty (60) days after the end of each Lease Year, Landlord shall provide Tenant with a statement setting forth the actual Shopping Center Expenses for such Lease Year, together with reasonable supporting documentation. If Tenant's estimated payments of Shopping Center Expenses exceed Tenant's Expense Share of the actual Shopping Center Expenses, Landlord shall either refund such excess to Tenant or allow Tenant a credit in the amount of such excess towards subsequent estimated payments of Shopping Center Expenses. If Tenant's estimated payments shall have been less than Tenant's Expense Share of the actual Shopping Center Expenses, Tenant shall pay the difference within ten (10) days of a request therefor.

Notwithstanding the foregoing or any other provision in this Lease to the contrary, increases in those Shopping Center Expenses which are under Landlord's reasonable control (e.g. landscaping, maintenance, janitorial) will be capped at five (5%) but such cap shall not apply to insurance, snow removal, the cost of utilities and other expenses not within Landlord's control.

8. **Late Charges.** Without limiting any other rights and remedies of Landlord for non-payment of Rent, if any monthly installment of Minimum Rent or Percentage Rent or Additional Rent is not received by Landlord on or before the date due, or if any payment due Landlord by Tenant which does not have a scheduled due date is not received by Landlord on or before the tenth (10th) day following the date Tenant was invoiced therefor, a late charge of five percent (5%) of such past due amount shall be immediately due and payable as Additional Rent hereunder and interest shall accrue on all delinquent amounts from the date past due until paid at the lower of (i) a rate of one and one-half percent (1-1/2%) per month or fraction thereof from the date such payment is due until paid (Annual Percentage Rate = 18%), or (ii) the highest rate permitted by applicable law (the "Lease Interest Rate").

9. **Partial Payment.** No payment by Tenant or acceptance by Landlord of an amount less than the Rent herein stipulated shall be deemed a waiver of any other Rent due. No partial payment or endorsement on any check or any letter accompanying such payment of Rent shall be deemed an accord and satisfaction, but Landlord may accept such payment without prejudice to Landlord's right to collect the balance of any Rent due under the terms of this Lease or any late charge assessed against Tenant hereunder.

10. **Security Deposit.** Tenant shall pay Landlord the amount identified as the Security Deposit in the Basic Lease Provisions (hereinafter referred to as "Security Deposit") as security for the performance by Tenant of all of Tenant's obligations under this Lease. The Security Deposit shall be held by the Landlord during the Term of this Lease and any extension or renewal thereof. Under no circumstances will Tenant be entitled to any interest on the Security Deposit. The Security Deposit may be used by Landlord, at its discretion, to apply to any Rent or other amounts owing to Landlord hereunder, to pay the expenses of repairing any damage to the Premises which Tenant is obligated to repair or to cure any other unsatisfied obligation of Tenant hereunder and, upon any such application or applications of the Security Deposit, Tenant shall, upon demand, pay to Landlord a sum to be added to the Security Deposit equal to the amount(s) so applied, provided, however, that such right of Landlord shall not be construed to limit Landlord's right to recover additional sums from Tenant for damages. In addition to any other rights available to Landlord hereunder, the Security Deposit shall be forfeited in any event if Tenant fails to occupy the Premises and conduct business therein for the full Term of this Lease, or if this Lease should for any reason whatsoever be terminated prior to the Expiration Date of the Term, or of any extension or renewal thereof. If there are no payments to be made from the Security Deposit pursuant to this paragraph, or if there is any balance of the Security Deposit remaining after all payments have been made, then such balance remaining, will be refunded to Tenant within thirty (30) days after fulfillment by Tenant of all obligations hereunder. In no event shall Tenant be entitled to apply the Security Deposit to any Rent due hereunder. In the event of an act of bankruptcy by or insolvency of Tenant, or the appointment of a receiver for Tenant or a general assignment for the benefit of Tenant's creditors, then the Security Deposit shall be deemed immediately assigned to Landlord. The right to retain the Security Deposit shall be in addition to and not an alternative to Landlord's other remedies under this Lease or as may be provided by law and shall not be affected by summary proceedings or other proceedings to recover possession of the Premises. Upon sale or conveyance of the Premises, Landlord may transfer or assign the Security Deposit to any new owner of the Premises, and upon such transfer all liability of Landlord for the Security Deposit shall terminate. Landlord shall be entitled to commingle the Security Deposit with its other funds.

C. USE/RETAIL OPERATING COVENANTS/LAWS/RULES.

11. Use of Premises and Common Areas/Hazardous Materials.

(a) Tenant shall (subject to the circumstances described in Section 19 hereof) open for business to the public by not later than sixty (60) days after the Term Commencement Date, and thereafter shall, in good faith and continuously throughout the Term of this Lease, conduct and carry on in the entire Premises the Permitted Use, using Tenant's Trade Name. The

Premises shall not be used for any other purpose. Tenant specifically agrees that its use of the Premises shall never violate any of the restrictions set forth on Exhibit D attached hereto. Tenant shall not sell, display or solicit sales in the Common Areas nor use or permit the use of any vending machines or public telephones on, at, or about the Premises without the prior written consent of Landlord. Tenant shall not commit waste, perform any acts or carry on any practices which may injure the Premises or the Shopping Center or be a nuisance or menace to other tenants in the Shopping Center. Tenant shall keep the Premises properly equipped with fixtures, stocked with an adequate supply of merchandise and attended by adequate trained personnel. Tenant shall, at Tenant's expense, comply with all laws and ordinances and all valid rules and regulations and all directives, orders and citations of federal, state, county and municipal authorities having jurisdiction over the Premises, including without limitation the Americans with Disabilities Act and all requirements of any insurance company and any public or private agency having authority over insurance rates.

(b) Tenant shall not cause or permit the receipt, storage, use, location or handling in the Shopping Center (including the Premises) of any product, material or merchandise which is explosive, highly inflammable, or a "hazardous or toxic material," as that term is hereafter defined. "Hazardous or toxic material" shall include all materials or substances which have been determined to be hazardous to health or the environment and are regulated or subject to all applicable laws, rules and regulations from time to time, including, without limitation hazardous waste (as defined in the Resource Conservation and Recovery Act); hazardous substances (as defined in the Comprehensive Emergency Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act) and in Massachusetts General Laws Chapters 21C and 21E, respectively; gasoline or any other petroleum product or by-product or other hydrocarbon derivative; toxic substances, (as defined by the Toxic Substances Control Act); insecticides, fungicides or rodenticide, (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act); asbestos and radon and substances determined to be hazardous under the Occupational Safety and Health Act or regulations promulgated thereunder. Notwithstanding the foregoing, Tenant shall not be in breach of this provision as a result of the presence in the Premises of amounts of hazardous or toxic materials which are in compliance with all applicable laws, ordinances and regulations and which are customarily present in a general retail use (e.g., computer chemicals and janitorial supplies).

(c) Tenant shall be solely responsible for providing security to the Premises and Landlord shall have no obligations or liabilities of any kind, in connection therewith. Tenant shall provide Landlord with master keys, access cards, security codes, and all other necessary means of access to all locks and security systems within or serving the Premises.

(d) Tenant acknowledges that there is a wastewater treatment plant (the "WWTP") serving the Shopping Center as well as certain off-site users. Tenant further acknowledges that the continued and effective operation of the WWTP requires full compliance with the WWTP Use Regulations attached hereto as Exhibit I and that any loss of effectiveness by the WWTP will result in significant economic harm to Landlord and all other users of the WWTP. Accordingly, Tenant agrees that it will fully comply with such Use Regulations.

12. **Compliance with Laws.** Tenant shall operate the Premises in compliance with all applicable federal, state, and municipal laws, ordinances and regulations (including, without limitation, the Americans with Disabilities Act) and shall not make any use of the Premises or Shopping Center which is prohibited by any such laws, ordinances or regulations.

13. **Tenant Retail Operating Covenants.** (a) Tenant shall not, nor shall Tenant at any time permit any occupant of the Premises to: (i) conduct or permit any fire, bankruptcy or auction sale (whether real or fictitious) unless directed by order of a court of bankruptcy or of other competent jurisdiction, or conduct or permit any fictitious "Going Out of Business" sale; (ii) use, or permit to be used the malls or sidewalks adjacent to the Premises, or any other area outside the Premises for the sale or display of any merchandise or for any other business, occupation or undertaking, or for outdoor public meetings, circus or other entertainment (except for promotional activities in cooperation with the management of the Shopping Center); (iii) use or permit to be used any sound broadcasting or amplifying device which can be heard outside of the Premises.

(b) Tenant: (i) will keep all mechanical apparatus free of vibration or noise which may be transmitted beyond the confines of the Premises; (ii) will not cause or permit unpleasant odors to emanate from the Premises (odors being conclusively deemed to be unpleasant if any other tenant in the Shopping Center complains in writing about such odors); (iii) will not load or unload or permit the loading or unloading of merchandise, supplies or other property except within the area designated by Landlord from time to time; and (iv) will not permit the parking or standing of trucks, trailers or other vehicles or equipment engaged in such loading or unloading except in designated areas.

(c) Tenant: (i) will keep clean the inside and outside of all glass in the doors and windows of the Premises; (ii) will replace promptly at its own expense with glass of like kind and quality any cracked or broken plate or window glass; (iii) will replace doors or door hardware of the Premises which may for any reason become cracked or broken; (iv) will maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests; (v) will not permit undue accumulation of garbage, trash, rubbish or other refuse in the Premises; (vi) will keep the sidewalks and walkways in front of the Premises free of trash, litter, refuse, snow, ice and other hazardous conditions; (vii) will keep all refuse in proper containers inside the Premises until such time as the same is removed from the Shopping Center; and (viii) shall regularly pump, maintain, and repair (but not replace) the grease trap exclusively serving the Premises. If Tenant maintains its own dumpster, it shall do so only in a location approved by Landlord and shall cause the same, at Tenant's expense, to be emptied regularly and more often when necessary. If Tenant uses a common dumpster provided by Landlord, the costs of emptying and maintaining the same shall be included in the Shopping Center Expenses. Tenant will maintain plate glass insurance reasonably satisfactory to Landlord if any plate glass is contained in the storefront of the Premises.

(d) Tenant shall keep the Premises open for business during all hours when the Shopping Center is open for business, as such hours are determined by Landlord.

(e) Tenant will light any electric signs and keep the display windows in the Premises well lighted during such times as Landlord shall require, except that Tenant shall not be required to keep its electric signs and windows lighted more than one hour following the store closing hour.

14. **Rules and Regulations.** The rules and regulations with respect to the Shopping Center, a copy of which are attached hereto as Exhibit E, are hereby incorporated in and made a part of this Lease, and Tenant agrees to comply with and observe the same. Tenant's failure to keep and observe the rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the same were contained herein as covenants. Landlord reserves the right from time to time to amend or supplement said rules and regulations and to adopt and promulgate additional rules and regulations applicable to the Premises and the Shopping Center. In no event shall Landlord have any liabilities or obligations to Tenant arising out of or resulting from the failure of any other tenant or occupant to comply with such rules and regulations.

D. UTILITIES.

15. **Utilities.** (a) Landlord agrees to cause to be provided such mains, conduits and other facilities necessary to supply electricity, water, sewer, telephone and gas (if available) to the Premises.

(b) Tenant shall promptly pay all charges for electricity, water, sewer, telephone, gas (where applicable), chilled water service (where applicable) and other utilities and services furnished to the Premises, directly to the provider of the service, if such service is separately metered or charged.

(c) Landlord shall in no way be liable or responsible for any loss, damage, or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption, or defect in the supply or character of electricity or other utilities furnished to the Premises, and no such change, failure, defect, unavailability, or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease.

16. **Signs.** Tenant shall not, without the prior written consent of Landlord: (i) paint, decorate or make any changes to the storefront of the Premises; (ii) install any exterior lighting, awning, or protrusions, or any exterior signs, advertising matter, decoration or painting; (iii) install any drapes, blinds, shades or other coverings on exterior windows and doors; (iv) affix any window or door lettering, sign decoration or advertising matter to any window or door glass; or (v) erect or install any signs, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises. Tenant shall, if requested by Landlord as part of Tenant's Work, install, at Tenant's expense, exterior signs conforming to the general appearance and quality of other signs in the Shopping Center. Tenant shall, at all times, keep all signs in good condition, in proper operating order and in accordance with all applicable government regulations. Use of the roof of the Premises is reserved to Landlord.

17. **Parking.** Landlord may require that automobiles owned or operated by Tenant, its licensees, concessionaires and employees be parked in specific portions of the Common Areas or other parking areas outside the Shopping Center which are in reasonable proximity thereto. Upon request by Landlord, Tenant shall furnish to Landlord a complete list of the license numbers of all automobiles operated by Tenant, its licensees, concessionaires and employees. If Tenant, its licensees, concessionaires and employees fail to park their cars in the designated Common Areas, Landlord shall have the right in its sole discretion to (i) charge Tenant Fifty and No/100 Dollars (\$50.00) per day per car parked in any Common Areas other than those designated, or (ii) have such car(s) physically removed from the Shopping Center at Tenant's expense without any liability whatsoever to Landlord, or Landlord may elect both of (i) and (ii). Tenant shall not interfere with the rights of other persons to use the Common Areas. Notwithstanding any provision of this Lease to the contrary, Landlord may temporarily close any part of the parking facilities or other portions of the Common Areas for such periods of time as may be necessary.

18. **Storage.** If Landlord makes available to Tenant any storage space outside the Premises, anything stored therein shall be wholly at the risk of Tenant, and Landlord shall have no responsibility or liability for the items stored therein.

19. **Force Majeure.** In the event of a strike, lockout, labor trouble, civil commotion, an act of God, or any other event beyond Landlord's or Tenant's reasonable control (a "Force Majeure Event") which results in either party being unable to timely perform its obligations hereunder then, so long as the non-performing party diligently proceeds to perform such obligations after the end of such Force Majeure Event, such non-performing party shall not be in breach or default hereunder, this Lease shall not terminate, and Tenant's obligation to pay any Rent shall not be abated, reduced or otherwise excused, provided, however, that Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from Rent thereafter due and payable, but shall look solely to the Landlord for satisfaction of such claim. The foregoing shall, under no circumstances, excuse the timely payments of Rent or any other sum due from tenant hereunder.

E. REPAIRS/ALTERATIONS/CASUALTY/CONDEMNATION.

20. **Repairs By Landlord.** Landlord shall keep the foundation, the roof and the exterior walls of the Premises (except plate glass, doors, door closers, door frames, store fronts, windows and window frames located in exterior building walls) in good repair, provided, however, that Tenant shall pay, as Additional Rent, the cost of any such repairs occasioned by the act or neglect of Tenant, its assignees, sublessees, servants, agents, employees, invitees, licensees, or concessionaires, or any damage caused by break-in, burglary, or other similar acts in or to the Premises ("Tenant Cost Repairs"), within ten (10) days after demand for payment by Landlord. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give written notice thereof to Landlord, and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after the giving of such written notice. Landlord may elect to require Tenant to make any Tenant Cost Repairs that Landlord is required to make and, in such event, Tenant shall not be required to pay the cost thereof to Landlord as Additional Rent.

21. **Repairs By Tenant.** Tenant shall, at its sole cost and expense, keep the Premises in good repair and in a neat, safe, sightly, and serviceable condition and free from any infestation by insects, rodents, or other pests, and, except as provided in Section 20 hereof, shall make all needed maintenance, repairs, and replacements for the proper operation of Tenant's business within the Premises, including all maintenance, repairs, and replacements to: (i) the heating, ventilating, and air conditioning systems serving the Premises; (ii) the exterior and interior portion of all doors, windows, window frames, plate glass, door closures, door frames and store fronts; (iii) all plumbing and sewage facilities within the Premises, including free flow up to the connection to the main sewer line; (iv) all fixtures within the Premises; (v) all electrical systems within or exclusively serving the Premises (whether or not located within the Premises); (vi) all sprinkler systems serving the Premises; (vii) all interior walls, floors, and ceilings; (viii) any of the Tenant's Work; (ix) all repairs, replacements, or alterations required by any governmental authority; (x) all necessary repairs and replacements of Tenant's trade fixtures required for the proper conduct and operation of Tenant's business; and (xi) the grease trap exclusively serving the Premises, provided that Landlord shall be responsible for any replacement of the grease trap. If at any time and from time to time during the Term, and any extensions and renewals thereof, Tenant shall fail to make any maintenance, repairs, or replacements in and to the Premises as required in this Lease, Landlord shall have the right, but not the obligation, to enter the Premises and to make such maintenance, repairs, and replacements for and on behalf of Tenant, and all sums expended by Landlord for such maintenance, repairs, and replacements shall be deemed to be Additional Rent hereunder and shall be payable to Landlord upon demand. At the termination of this Lease, Tenant shall surrender the Premises as required by Section 36 hereof, reasonable wear and tear and loss by fire or other casualty alone excepted. Tenant shall keep records of all maintenance performed on the mechanical and other systems serving the Premises and shall keep in force a standard maintenance agreement(s) on all heating, ventilating, and air conditioning systems serving the Premises with a reputable heating and air conditioning service organization which shall be subject to Landlord's approval and shall provide copies of such records and maintenance agreement(s) to Landlord upon request therefore.

22. **Alterations and Improvements.** (a) Tenant shall not make any alterations, additions, improvements or replacements to the Premises, without the prior written consent of Landlord, except for Tenant's Work and the installation of unattached moveable fixtures which may be installed without drilling, cutting, or otherwise damaging the Premises. All alterations, additions, and improvements made in and to the Premises including all floor covering that is cemented or adhesively fixed to the floor and all fixtures (other than trade fixtures) which are installed in the Premises shall be removed by Tenant at the expiration or sooner termination of this Lease and all damage caused by such removal shall be repaired by Tenant, at Tenant's expense. So long as Tenant is not in default hereunder, Tenant shall have the right to remove its trade fixtures from the Premises, provided that Tenant shall repair and restore any damage to the Premises caused or occasioned by such removal.

(b) All of Tenant's Work and all repairs, alterations, additions and improvements done by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all governmental laws, ordinances and requirements, and at such times and in such manner as will cause the least interference with other construction

in progress and with the transaction of business by others in the Shopping Center. Whenever Tenant proposes to make any improvements within the Premises, Tenant shall first furnish to Landlord plans and specifications covering such improvements in such detail as Landlord may reasonably request. Such plans and specifications shall comply with such requirements as Landlord may from time to time prescribe for construction within the Shopping Center. In no event shall any construction or improvements be commenced within the Premises without Landlord's written approval of such plans and specifications. The approval by Landlord of such plans and specifications shall not constitute an agreement, representation, or warranty by Landlord that such plans and specifications comply with applicable codes, laws, ordinances, regulations, or by-laws and Landlord shall have no liability, of any kind, in connection therewith.

(c) Tenant shall not suffer or permit any materialmen's, mechanics', or other liens to be filed or placed or exist against the Premises or the Shopping Center (or any part thereof), by reason of work, services or materials supplied or claimed to have been supplied to Tenant. If any such lien should, at any time, be filed, Tenant shall cause the same to be discharged of record promptly after the date of such filing.

23. Destruction or Damage by Casualty.

(a) Tenant shall give immediate written notice to Landlord of any damage to the Premises caused by fire or other casualty, and if Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises to the condition it was in on the Term Commencement Date. Notwithstanding the foregoing, in the event that: (i) the insurance proceeds payable in connection with such damage and destruction shall be insufficient to make such restoration; (ii) the building in which the Premises are located shall be destroyed or substantially damaged by casualty not covered by standard fire or extended coverage insurance; (iii) such building shall be destroyed or rendered untenable by any casualty to the extent of fifty percent (50%) or more of the rentable area of such building; (iv) the holder of any mortgage or other instrument in the nature thereof which encumbers Landlord's interest hereunder shall require that such proceeds shall be applied against any indebtedness owed to such holder; or (v) there shall be less than two (2) years remaining in the Term, or any extension or renewal thereof, then, in any of such events, Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Premises. Landlord shall give written notice to Tenant of such election within ninety (90) days after the occurrence of such casualty.

(b) Tenant agrees that, promptly after the completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to restore Tenant's Work and all alterations, additions and improvements done by Tenant within the Premises to substantially the condition in which the same existed prior to the casualty.

(c) During the period from the occurrence of a casualty until Landlord's repairs are completed, the Minimum Rent (but not Percentage Rent) shall be reduced and abated in proportion to the amount of rentable area of the Premises which is rendered untenable as a result of such casualty; provided, however, that if such damage or destruction is caused by the intentional or negligent acts or omissions of Tenant, its assignees, sublessees, servants, agents,

employees, invitees, licensees, or concessionaires, then, and in that event, the Minimum Rent shall not abate. Tenant shall not be entitled to and hereby waives, releases, and relinquishes any and all claims against Landlord for any compensation or damage for loss of use of all or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, repair, or restoration of the Premises. Tenant agrees that Landlord's obligation to restore, and the abatement of Rent provided herein, shall be Tenant's sole remedy and recourse in the event of such damage, and waives any other rights Tenant may have under any applicable law to terminate this Lease by reason of damage to the Premises and/or Shopping Center.

(d) Tenant agrees at all times at its expense to keep its merchandise, fixtures, Tenant's Work, all alterations, additions and improvements done by Tenant within the Premises and Tenant's other property situated within its Premises insured by "All Risk" insurance in an amount equal to its full replacement value. Such insurance shall be carried with companies reasonably satisfactory to Landlord.

(e) In the event that fifty percent (50%) or more of the rentable area of the Shopping Center shall be destroyed or substantially damaged by any casualty, notwithstanding that the Premises may be unaffected by such casualty, Landlord may terminate this Lease by giving Tenant thirty (30) days prior written notice of Landlord's election to do so, which, notice shall be given, if at all, within ninety (90) days following the date of such occurrence. Rent shall be adjusted as of the date of such termination.

24. Eminent Domain.

(a) If more than fifty percent (50%) of the rentable area of the Premises is taken for any public or quasi-public use, this Lease shall terminate upon the election of either party effective on the date possession of the portion of the Premises is taken by the condemning authority.

(b) If less than fifty percent (50%) of the rentable area of the Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase under threat thereof, this Lease shall not terminate, or if more than fifty percent (50%) of the rentable area of the Premises is so taken and this Lease is not terminated in accordance with the preceding paragraph, then in either of such events, the Minimum Rent (but not Percentage Rent) payable hereunder during the unexpired portion of the Term shall be reduced by the percentage which the rentable area taking bears to the rentable area of the Premises prior to the date possession of such portion of the Premises is taken by the condemning authority.

(c) If any portion of the Common Areas should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase under threat thereof, this Lease shall not terminate, nor shall the rent payable hereunder be reduced, nor shall Tenant be entitled to any part of the award made for such taking, except that Landlord may terminate this Lease if the total of the area of the Common Areas remaining following such taking, plus any additional parking area provided within a

reasonable time by Landlord in reasonable proximity to Shopping Center, shall be less than seventy percent (70%) of the original area of the Common Areas.

(d) Any election to terminate this Lease following condemnation shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date by which both Landlord and Tenant are notified of such taking or such sale, and, in the event that neither Landlord nor Tenant shall so exercise such election to terminate this Lease, then this Lease shall continue in full force and effect.

(e) If this Lease is not terminated following any condemnation, Landlord shall make all necessary repairs or alterations necessary to make the Premises an architectural whole, and Tenant agrees that, promptly after completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to make all necessary repairs or alterations within the scope of Tenant's Work and all alterations, additions and improvements done by Tenant within the Premises necessary to make the Premises an architectural whole.

(f) All compensation awarded for any taking (or the proceeds of private sale under threat thereof), whether for the whole or a part of the Premises, shall be the property of Landlord, whether such award is compensation for damages to Landlord's or Tenant's interest in the Premises, and Tenant hereby assigns all of its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for moving expenses, loss of business or for the taking of Tenant's fixtures and personal property within the Premises if a separate award for such items is made to Tenant.

25. **Damage or Theft of Personal Property.** All personal property brought into the Premises shall be at the risk of Tenant only and Landlord shall not be liable for theft thereof or any damage thereto occasioned by any acts of co-tenants, or other occupants of the Building, or any other person, except to the extent caused by the grossly negligent or willful acts of the Landlord, its employees and agents (but subject to the insurance and waiver of subrogation provisions set forth in Section 28 below).

F. INSURANCE/INDEMNITIES/WAIVERS/ESTOPPEL.

26. Insurance.

(a) Tenant covenants and agrees that from and after the Term Commencement Date Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) Commercial General Liability ("CGL") Insurance written on an occurrence basis, covering the Premises and all operations of the Tenant in or about the Premises and the Common Areas against claims for bodily injury, property damage and product liability and to include contractual liability coverage insuring Tenant's indemnification obligations under this Lease, to be in combined single limits of not less than \$2,000,000 each occurrence and a general aggregate limit of not less than \$3,000,000 (per location).

(ii) Insurance covering all of the items included in Tenant's leasehold improvements, heating, ventilating and air conditioning equipment maintained by Tenant, trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and alterations, additions or changes made by Tenant in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term.

(b) All policies of insurance provided for in Section 26(a) above shall be issued in form and by companies reasonably acceptable to Landlord. Each and every such policy shall name Landlord as an additional insured (as well as any mortgagee of Landlord and any other party reasonably designated by Landlord), and shall contain a provision that the insurer will give to Landlord and such other parties in interest at least thirty (30) days notice in writing; a certificate thereof shall be delivered to Landlord prior to the Term Commencement Date, and thereafter within five (5) days after the inception (or renewal) of each new policy; and notwithstanding anything to the contrary set forth hereinabove, each such policy shall include a waiver of all rights of subrogation by the insurance carrier against the other party, its agents and employees with respect to property damage covered by the applicable "all risks" fire and casualty insurance policy.

27. **Indemnities/Waiver of Subrogation[Intentionally Deleted]**

28. **Estoppel.** Tenant shall, from time to time, upon not less than ten (10) days prior written request by Landlord, execute, acknowledge and deliver to Landlord a commercially reasonable estoppel certificate.

G. **NOTICES/DEFAULT/REMEDIES/SURRENDER/HOLDING OVER.**

29. **Notices.** Any notice which is required or permitted to be given by either party under this Lease shall be in writing and must be given only by certified mail, return receipt requested, by hand delivery or by nationally recognized overnight courier service at the addresses set forth in the Basic Lease Provisions. Each party shall use reasonable efforts to provide the other party with a courtesy copy of any notice by fax and by electronic mail. Any such notice shall be deemed given the date of actual receipt thereof if given by hand, one (1) business day after delivery to such an overnight courier service, if such method is used or two (2) business days after posting, if delivered by certified mail, provided that receipt of notice solely by fax or electronic mail shall not be deemed to be delivery of notice hereunder. Refusal to accept delivery or inability to accomplish delivery because the party can no longer be found at the then current notice address, shall be deemed receipt. Either party may change its notice address by notice to the other party in accordance with the terms of this Section 29. The initial notice addresses for each party are set forth in the Basic Lease Provisions.

30. **Default.** If Tenant shall default in the payment of Rent herein reserved when due or if Tenant shall be in default in performing any of the terms or provisions of this Lease other than the provisions requiring the payment of Rent, and fails to cure such non-monetary default within thirty (30) days after written notice of such default is given to Tenant by Landlord, (provided, however, that if such non-monetary default is of such a nature that it cannot through

the exercise of diligent and reasonable efforts be cured within thirty (30) days, then Tenant shall not be in default in such instance if Tenant promptly commences and diligently pursues the cure of such non-monetary default to completion as soon as possible and in all events within ninety (90) days after such notice); or if Tenant is the subject of a bankruptcy or insolvency petition or proceeding; or if a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after appointment thereof; or if, whether voluntarily or involuntarily, Tenant takes advantage of any debtor relief proceedings under any present or future laws, whereby the Rent or any part thereof, is, or is proposed to be, reduced or payment thereof deferred; or if Tenant's effects should be levied upon or attached and such levy or attachment is not satisfied or dissolved within thirty (30) days after such levy or attachment; or, if Tenant is an individual, in the event of the death of the individual and the failure of the executor, administrator or personal representative of the estate of the deceased individual to have assigned the Lease within three (3) months after such death to an assignee approved by Landlord; or if Tenant shall abandon the Premises or fail to be open for business to the public for more than three (3) days when required to be open in any one Lease Year, or for more than an aggregate of ten (10) such days during the Lease Term, except for refurbishment of the Premises or for any other causes specifically provided for herein; then, and in any of such events, Landlord, at its option, may exercise any or all of the remedies set forth in Section 31 below.

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord specifying wherein Landlord has failed to perform any such obligation.

The Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from Rent thereafter due and payable, but shall look solely to the Landlord for satisfaction of such claim.

31. **Landlord's Remedies/Landlord's Lien.** (a) Upon the occurrence of any default set forth in Section 30 above which is not cured by Tenant within the applicable cure period provided therein, if any, then, in any such case, Landlord may, in addition to any remedies otherwise available to Landlord at law or in equity, immediately or at any time thereafter, in accordance with applicable law, enter into and upon the Premises and repossess the same and expel Tenant and those claiming by, through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, and/or Landlord may terminate this Lease by notice to Tenant, and upon the first to occur of (i) entry as aforesaid, or (ii) the fifth (5th) day following the sending of such notice, this Lease shall terminate and come to an end as fully and completely as if such date were the date herein originally fixed for the expiration of the Term of this Lease.

(b) Tenant covenants and agrees, notwithstanding any termination of this Lease as aforesaid or any entry or re-entry by Landlord, whether by summary proceedings, termination, or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Rent and other charges reserved as they would become due under the terms of this Lease if this Lease had not been terminated, and

whether the Premises be relet or remain vacant, in whole or in part, or for a period less than the remainder of the Term, or for the whole thereof but in the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in reletting, after deduction of all expenses incurred in reletting the Premises (including, without limitation, remodeling costs, brokerage fees, reasonable attorneys' fees and the like), and in collecting the rent in connection therewith. As an alternative, at the election of Landlord, Tenant will upon such termination pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total Rent and other benefits which would have accrued to Landlord under this Lease for the remainder of the Lease Term if the lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for what would have been the balance Lease Term if the same had remained in effect. For purposes of this Section 33, if Landlord elects to require Tenant to pay damages in accordance with the immediately preceding sentence, the total amount due shall be computed by assuming that Percentage Rent and Tenant's Expense Share of Shopping Center Expenses and Tenant's Tax Share of Taxes would be, for the balance of the Lease Term, the amount thereof respectively for the calendar year in which such termination, entry or re-entry shall occur.

(c) In case of any default of Tenant, re-entry, entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the Lease Term and (ii) make such alterations, repairs and decorations in the Premises as Landlord, in its sole judgment, considers advisable or necessary for the purpose of reletting the Premises; and no action by Landlord in accordance with the foregoing shall operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting, and Tenant hereby waives, to the extent permitted by applicable law, any obligation Landlord may have to mitigate Tenant's damages.

(d) Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy, insolvency, or like proceedings by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above.

(e) Tenant hereby grants to Landlord a third priority security interest in all of Tenant's furniture, fixtures, equipment, inventory, goods, merchandise and other personal property now or hereafter located in the Premises and upon the proceeds of any insurance with respect to such property as security for rent and all other sums due and to become due under this Lease for the remainder of the Term or in connection with any default by Tenant hereunder. This security interest shall not prevent the sale by Tenant of its inventory, goods and merchandise in the ordinary course of business free of such security interest to Landlord. Upon request by Landlord, Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in form and substance sufficient to perfect the security interest granted herein.

32. **Surrender of Premises.** Whenever under the terms hereof Landlord is entitled to possession of the Premises, Tenant shall immediately surrender the Premises and the keys thereto to Landlord in the same condition as on the Term Commencement Date hereof, usual and customary wear and tear and damage by fire or other casualty only excepted, and Tenant shall remove all of its personalty therefrom and shall remove all improvements and restore the Premises to its original condition prior to the construction of any improvements which have been made therein by or on behalf of Tenant, including any improvements made prior to the Term Commencement Date. Landlord may forthwith re-enter the Premises and repossess itself thereof and remove all persons and effects therefrom, using such force as may be reasonably necessary without being guilty of forcible entry, detainer, trespass or other tort. Tenant's obligation to observe or perform these covenants shall survive the expiration or other termination of the Term of this Lease.

33. **Holding Over.** In the event Tenant remains in possession of the Premises after the expiration of the Term hereof, or of any renewal term, Tenant shall be a tenant at sufferance and may be evicted by Landlord without any notice, but Tenant shall be obligated to pay Rent for such period at the rate of 200% of the Rent in effect immediately prior to such holdover period and shall also be liable for any and all other damages Landlord suffers as a result of such holdover including, without limitation, all consequential damages and damages for the loss of a prospective tenant for such space. There shall be no renewal of this Lease by operation of law or otherwise. Nothing in this Section shall be construed as a consent by Landlord for any holding over by Tenant after the expiration of the Term hereof, or any renewal term.

34. **Attorney's Fees.** In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant, upon receipt of written notice thereof, shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation. In the event of any action, suit or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses and reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

35. **Mortgagee's Rights.**

Tenant agrees that this Lease shall be subject and subordinate: (i) to any mortgage encumbering the Shopping Center and all documents executed by Landlord in connection therewith (all of the foregoing instruments set forth in (i), (ii) and (iii) above being hereafter collectively referred to as "Security Documents"). Tenant agrees upon request of the holder of any Security Documents ("Holder") to hereafter execute any documents which Landlord or Holder may reasonably deem necessary to evidence the subordination of the Lease to the Security Documents. Within ten (10) days after request therefor, if Tenant fails to execute any such requested documents, Landlord or Holder is hereby empowered to execute such documents in the name of Tenant evidencing such subordination, as the act and deed of Tenant, and this authority is hereby declared to be coupled with an interest and not revocable.

**H. LANDLORD ENTRY/CURE TENANT DEFAULTS/
RELOCATION/ASSIGNMENT AND SUBLETTING.**

36. **Entering Premises/Cure Tenant Defaults.** (a) Landlord may enter the Premises at reasonable hours provided that Landlord's entry shall not unreasonably interrupt Tenant's business operations and that prior notice is given when reasonably possible (and, if in the opinion of Landlord any emergency exists, at any time and without notice): (a) to make repairs, perform maintenance and provide other services described in Section 20 above (no prior notice is required to provide routine services) which Landlord is obligated to make to the Premises or the Shopping Center pursuant to the terms of this Lease or to the other premises within the Shopping Center pursuant to the leases of other tenants; (b) to inspect the Premises in order to confirm that Tenant is complying with all of the terms and conditions of this Lease and with the rules and regulations hereof; (c) to remove from the Premises any articles or signs kept or exhibited therein in violation of the terms hereof; (d) to run pipes, conduits, ducts, wiring, cabling or any other mechanical, electrical, plumbing or HVAC equipment through the areas behind the walls, below the floors or above the drop ceilings in the Premises and elsewhere in the Shopping Center; and (e) to exercise any other right or perform any other obligation that Landlord has under this Lease or at law or in equity. Landlord shall be allowed to take all material and equipment into and upon the Premises that may be required to make any repairs, improvements and additions, or any alterations, without in any way being deemed or held guilty of trespass and without constituting a constructive eviction of Tenant. The Rent reserved herein shall not abate while such repairs, alterations or additions are being made and Tenant shall not be entitled to maintain a set-off or counterclaim for damages against Landlord by reason of loss from interruption to the business of Tenant because of the prosecution of any such work. Unless any work would unreasonably interfere with Tenant's use of the Premises if performed during business hours, all such repairs, decorations, additions and improvements shall be done during ordinary business hours, or, if any such work is at the request of Tenant to be done during any other hours, the Tenant shall pay all overtime and other extra costs.

(b) If at any time Tenant shall fail to perform any obligation under this Lease or fail to pay any sum to any party other than Landlord, which sum Tenant is obligated by the terms hereof to pay, Landlord may (but without any obligation to do so) perform such obligation or make such payment without waiving any rights for Tenant's failure to do so and the costs thereof shall be paid with interest at the rate of eighteen percent (18%) per annum on demand.

37. **Relocation.** INTENTIONALLY DELETED.

38. **Assignment and Subletting.** Tenant may not, without the prior written consent of Landlord, which consent may be withheld by Landlord in its sole discretion, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. In the event that Tenant is a corporation or entity other than an individual, any transfer of a majority or controlling interest in Tenant (whether by stock transfer, merger, operation of law or otherwise) shall be considered an assignment for purposes of this paragraph and shall require Landlord's prior written consent. Any subletting or assignment hereunder shall not release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall continue fully liable hereunder.

I. SALE OF SHOPPING CENTER; LIMITATION OF LIABILITY.

39. **Sale.** In the event the original Landlord hereunder, or any successor owner of the Shopping Center, shall sell or convey the Shopping Center, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner. At Tenant's request, Landlord shall execute and deliver a mutually agreeable and recordable notice of lease provided that Tenant executes and deliver to Landlord's attorney, to be held in escrow, a termination of such notice of lease.

40. **Limitation of Liability.** Landlord's obligations and liability with respect to this Lease shall be limited solely to Landlord's interest in the Shopping Center, and neither Landlord nor any partner, manager, member, officer, employee, director, shareholder, agent or attorney of Landlord shall have any individual or personal liability or obligations, of any kind whatsoever with respect to this Lease and the obligations and liabilities of the Landlord hereunder. In no event shall Tenant have the right to terminate or cancel this Lease as a result of any default by Landlord or breach by Landlord of its covenants or any warranties or promises hereunder, except in the case of a wrongful eviction of Tenant from the Premises (constructive or actual) by Landlord. In no event shall Landlord ever be liable to Tenant for any consequential, indirect or special damages, or for any lost profits or similar claims and Tenant hereby waives all rights and claims with respect thereto.

J. BROKERS/CONSTRUCTION/AUTHORITY.

41. **Broker Disclosure.** The Landlord's Broker identified in the Basic Lease Provisions, is a real estate broker licensed in the Commonwealth of Massachusetts where the Shopping Center is located, has acted as agent for Landlord in this transaction and is to be paid a commission by Landlord pursuant to a separate agreement. Tenant represents that Tenant has dealt with no broker other than Landlord's Broker. Tenant agrees that, if any other broker makes a claim for a commission based upon the actions of Tenant, Tenant shall indemnify, defend and hold Landlord harmless from any such claim.

42. **No Waiver.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant of its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof Time is of the essence of this Lease.

43. **Waiver of Jury Trial.** Landlord and Tenant shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any statutory remedy.

44. **Entire Agreement.** This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Each term and each provision of this Lease to be performed by the Tenant shall be construed to be both a covenant and a condition.

45. **Guaranty.** See Basic Lease Provisions.

46. **Time of Essence.** Time is of the essence of each of the terms and provisions of this Lease.

47. **Other Restaurants.** In recognition of the fact that this Lease provides for a Percentage Rent based upon the Gross Sales made by the Tenant in or from the Premises, the Tenant covenants and agrees (insofar as and to the extent that it is lawful so to agree) that for the period commencing with the execution of this Lease and continuing for the full Lease Term, none of the Tenant, any guarantor or principal of or partner in the Tenant, any of their affiliated, parent or subsidiary companies, or any franchisor (or licensor) or any franchisee (or licensee) of any of them, will operate, either directly or indirectly, another restaurant (including a department or concession in another store) of any kind, nature or description (other than restaurants, departments, or concessions presently being operated by it or them) within a reasonable area of the Premises, without the prior written consent of the Landlord, the Tenant acknowledging that the area within a circle having as its center the Premises and having a radius of ten (10) miles is a reasonable area for this purpose. In addition to any other remedy otherwise available to the Landlord for breach of this covenant, it is specifically agreed that the Landlord may at the Landlord's election require that any and all sales made in or from any such other store be included in the computation of the Percentage Rent due hereunder, with the same force and effect as though such sales had actually been made in or from the Premises. In addition, in the event Landlord so elects, all of the provisions of Section 6 shall be applicable to all records pertaining to such other store.

48. **Financial Statements.** At any time during the Term, Tenant shall, upon ten (10) days' prior written notice from Landlord, provide Landlord with a current financial statement and financial statements and federal income tax returns of Tenant and any Guarantor for two (2) years prior to current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant or Guarantor, shall be audited by an independent certified public accountant.

WITNESS THE EXECUTION HEREOF, under seal, as of the day and year first above written.

LANDLORD:

MASHPEE INVESTORS, L.L.C.,

By:
Its:

TENANT:

WICKED RESTAURANT, INC.

By:
Its:

Hereunto duly authorized

EXHIBIT A

This Exhibit is diagrammatic. References to tenants or occupants hereon are not, and shall not be deemed, representations of existing or future tenancies or occupancies.

EXHIBIT B

WORK LETTER AGREEMENT

To induce Tenant to enter into the Lease (to which this Exhibit B is attached) and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant agree as follows:

Re: Unit No. F2-2
South Cape Village

Gentlemen:

You (hereinafter "Tenant") and the undersigned (hereinafter "Landlord") are executing simultaneously with this Work Letter Agreement, a written lease covering the space referred to above (hereinafter the "Lease"), as more particularly described in the Lease (hereinafter "the Premises"), in the retail shopping center located at Mashpee, Barnstable County, Massachusetts (hereinafter the "Center") as more particularly described in the Lease.

To induce Tenant to enter into the Lease (the terms of which are hereby incorporated by reference to the extent that the provisions of this Agreement may apply thereto) and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant mutually agree as follows:

I. LANDLORD'S WORK

Landlord has completed all work to be performed by it at the Premises or Shopping Center except for the following items from Exhibit B-1 (Landlord's Work): (i) the demising wall, (ii) the concrete floor, (iii) sprinkler heads and (iv) HVAC (including related electrical work) ("Landlord's Work"). On the Delivery Date Tenant shall accept the Premises AS IS, subject to Landlord's completion of Landlord's Work, which Landlord may do simultaneously with Tenant's performance of Tenant's Work (in which event, each party shall use reasonable efforts to avoid) or Landlord may elect to have Tenant complete Landlord's Work and the actual cost thereof shall be reimbursed to Tenant by Landlord upon submission of reasonably satisfactory invoices therefor.

II. PROPOSED AND FINAL PLANS

A. All architectural drawings will be prepared at Tenant's sole cost and expense by a licensed architect approved by Landlord.

B. Tenant shall cause to be prepared and delivered to Landlord, for Landlord's approval, the following proposed drawings ("Tenant Plans") (Tenant's Work):

1. Architectural drawings (consisting of floor construction plan, ceiling lighting and layout, power, and telephone plan);

2. Mechanical drawings (consisting of HVAC, electrical, telephone, and plumbing);

3. Finish schedule (consisting of wall finishes and floor finishes and miscellaneous details).

C. Tenant shall deliver one set of Tenant Plans to Landlord on or before the Plan Delivery Date identified in the Basic Lease Provisions.

D. Within ten (10) business days after receipt of the Tenant Plans, Landlord shall advise Tenant in writing of any changes required to obtain Landlord's approval and the specific reasons for such changes.

E. If Landlord disapproves of the Tenant Plans, Tenant shall review and revise the Tenant Plans disapproved by Landlord and resubmit such plans to Landlord within five (5) business days after notice of such disapproval. Landlord shall, within five (5) business days after receipt of revised Tenant Plans, advise Tenant of any additional changes which may be required to obtain Landlord's approval. In no case may Landlord's approval be unreasonably withheld. This process shall continue until Landlord has approved the revised Tenant Plans. "Final Plans" shall mean the Tenant Plans, as revised, which have been approved by Landlord and Tenant in writing.

III. BIDDING REVIEW AND CONTRACT AWARD

A. The Tenant shall issue the Final Plans and specifications therefor to qualified contractors designated by the Tenant and approved by the Landlord, for the purpose of preparing bids for the proposed work.

B. The Tenant shall review the bids and select a contractor to perform Tenant's Work.

IV. TENANT'S PERFORMANCE OF WORK

A. Tenant shall submit to Landlord not less than ten (10) days prior to commencement of construction the following:

1. The name and address of the general contractor and the names and addresses of the mechanical and electrical contractors, subcontractors, and subsubcontractors.

2. The scheduled commencement date of construction, the estimated date of completion of construction work, fixturing work, and date of occupancy by Tenant.

3. Certified copies of insurance policies or certificates of insurance as hereinafter described.

B. Access To Premises:

Tenant, its employees, designers, contractors and workmen shall have access to and primary use of the Premises to perform Tenant's Work therein on and after the Possession Turnover Date identified on Schedule II attached hereto.

C. Landlord's Right to Perform:

Landlord shall have the right, but not the obligation upon prior reasonable written notice (except in the event of an emergency) to Tenant, and upon granting the Tenant a 24 hour period to cure the problem, except in the event of an emergency, to perform, on behalf of and for the account of Tenant, subject to reimbursement by Tenant, any of Tenant's Work which (a) Landlord reasonably deems necessary to be done on an emergency basis, (b) pertains to structural components or the general Center systems, or (c) pertains to the erection of temporary safety barricades or signs during construction.

D. Warranties:

On completion of Tenant's Work, Tenant shall provide Landlord with warranties of at least one (1) year duration on all Tenant's Work relating to the structure or systems of the Center. At Landlord's request, Tenant shall enforce, at Tenant's expense, all guarantees and warranties made and/or furnished to Tenant with respect to Tenant's Work.

E. Compliance by all Tenant Contractors:

Tenant shall impose and enforce all terms hereof on Tenant's Contractors and its designers, architects and engineers.

F. Required Insurance:

Tenant shall secure, pay for and maintain or shall cause Tenant's Contractors to secure, pay for, and maintain during the performance of Tenant's Work, Comprehensive General Liability Insurance (including Owners and Contractor's Protective Liability), All Risk Builder's Risk Insurance, Workman's Compensation Insurance and such other insurance in amounts reasonably requested by Landlord. All such insurance shall be in a form and from companies reasonably acceptable to Landlord. :

I. Utilities:

Utility costs or charges for electrical service to the Premises shall be the responsibility of Tenant from the date Tenant commences Tenant's Work. Tenant shall apply for and pay for all electrical utility meters and use charges required in connection with Tenant's Work.

J. Quality of Work:

Tenant's Work shall be performed in a first class workman-like manner using only good grades of material and in compliance with the Final Plans, all insurance requirements, applicable laws and ordinances and rules and regulations of governmental departments or agencies.

K. "As-Built" Plans

Upon completion of Tenant's Work, Tenant shall furnish Landlord with contractor's "as built" plans for the Premises (i.e., the Final Plans, as marked with the contractor's changes), final waivers of lien and contractors affidavits for Tenant's Work and evidence of payment reasonably satisfactory to Landlord.

V. PAYMENT OF COSTS OF TENANT'S WORK

A. Tenant's Work shall be installed at Tenant's sole cost and expense.


Notwithstanding the foregoing or any other provision in the Lease and this Work Letter Agreement to the contrary, upon receiving reasonably satisfactory invoices totalling at least \$300,000.00, for actual hard costs incurred and paid by Tenant in the performance of Tenant's Work, Landlord shall reimburse Tenant the sum of \$100,000.00. Thereafter, Landlord shall reimburse Tenant on a monthly basis, based on such invoices up to a maximum amount equal to \$55.00 per square foot of rentable space in the Premises, inclusive of the first \$100,000.00 described above.

LANDLORD:

MASHPEE INVESTORS, L.L.C.,

By: 
Its: _____

TENANT:


By: Robert V. Catania
Its: President
Hereunto duly authorized

**EXHIBIT B-1
LANDLORD'S WORK**

**South Cape Village
Building Scope Description**

Base Building:

- Structural frame, roof, exterior walls, windows, aluminum/ glass storefront doors (with closer), utilities to space, rear doors where applicable.
- Architectural form: wood clapboard, wood single, masonry or stone veneer
- Window systems: aluminum storefront and individual clad wood windows
- Mechanical system: Rooftop HVAC equipment at 1 ton per 380 sf of floor space; Landlord will increase the size of the existing HVAC rooftop equipment as is reasonably necessary to accommodate Tenant's use, if this increase is determined to be needed by an HVAC engineer.
- Plumbing: Roof drains & rough-in plumbing for toilet rooms in each tenant space. Gas meter with gas supply to each rooftop unit.
- Electrical: 25watts per sf of area; meter for each tenant space, panel(s) in each tenant space, wiring and controls to HVAC equipment.
- Fire Protection: Buildings fully sprinklered (code compliant) and tied into a zoned fire alarm system.
- Landlord will reimburse Tenant for the reasonable costs to have the existing sprinkler heads turned down, following installation of Tenant's ceiling system.
- Landlord will reimburse Tenant for the reasonable costs to have a cement slab poured, following the installation of Tenant's in-floor drainage and plumbing.

EXHIBIT B-2
TENANT'S SIGNAGE

EXHIBIT C- [INTENTIONALLY DELETED]

EXHIBIT D

USE RESTRICTIONS AND EXCLUSIVE USES

Notwithstanding any other provision of this Lease, and without in any way expanding the use of the Premises permitted hereunder, Tenant acknowledges and agrees that its use of the Premises is subject to and will not violate the restrictions and exclusives set forth hereinbelow:

Unit F2-2 shall not be utilized for:

- Retail Food sales – including Bakery, Meat, Produce, Dairy, or any other combination thereof, except as ancillary to the Permitted Use.
- Health Club
- Day Care Center
- Residential Use
- Non-Retail Use
- Entertainment
- Sales of Used or Second Hand merchandise
- Sales or Display of Pornographic materials
- Sales of ice cream and ice cream related products
- Fine Dining Restaurant
- Retail Bank

EXHIBIT E

RULES AND REGULATIONS

The use of the Common Area by Tenant and Tenant's agents, employees, servants, visitors and invitees shall be subject to the following rules and regulations:

- (1) Landlord shall have the right and authority to designate specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles and other transportation vehicles owned by Tenant, Tenant's employees, servants, agents, licensees and concessionaires shall be parked. Tenant shall furnish to Landlord upon request a complete list of all license numbers of all automobiles and other transportation vehicles operated by Tenant, Tenant's employees, servants, agents, licensees or concessionaires.
- (2) All loading and unloading of goods shall be done only at such times, in the areas and through the entrances as shall be designated from time to time; for such purposes by Landlord.
- (3) The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the sole discretion of Landlord shall be necessary for the proper operation of the Shopping Center.
- (4) No person shall use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designed.
- (5) Except as permitted in a Tenant's lease of the Premises or except as permitted by Landlord's prior written consent, no person shall within the Common Area:
 - (a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever,
 - (b) Exhibit any sign, placard, banner, notice or other written material;
 - (c) Distribute any circular, booklet, handbill, placard or other materials;
 - (d) Solicit membership in any organization, group or association or contribution for any purpose;
 - (e) Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Area by Landlord or any occupant or any employee, or invitee of any occupant of the Shopping Center, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interests of any business establishments within the Shopping Center.

- (f) Use the Common Area for any purpose when none of the business establishments within the Shopping Center is open for business or employment;
 - (g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind (Tenant agrees to crush boxes and deposit in trash container);
 - (h) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvements within, or property situated within the Common Area or the Shopping Center, and
 - (i) Solicit any other business or display any merchandise.
- (6) The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision, shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.
- (7) All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition.
- (8) No portion of the Common Area or the Shopping Center shall be used for any lodging or illegal purposes.
- (9) The sidewalks, halls, passages, exits, entrances, elevators, shopping malls, escalators and stairways of the Common Area or the Shopping Center shall not be obstructed by any Tenant or used by any Tenant for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, exits, entrances, elevators, shopping malls, escalators and stairways are not for the use of the general public and Landlord shall at all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interest of the Shopping Center and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No Tenant and no employee or invitee of any Tenant shall go upon the roof of any building in the Shopping Center except for the sole purpose of servicing its air conditioning units or rooftop equipment.
- (10) In the case of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's sole discretion, Landlord reserves the right to prevent access to the Common Area and Shopping Center during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Shopping Center and Common Area.
- (11) No Tenant shall place or permit any radio or television antenna, loudspeaker, amplifier or other device in the Common Area or where the same can be seen or heard in the Common Area without the prior written consent of landlord.

(12) No person shall use any part of the Common Area for any purpose other than those for which the Common Area is intended.

(13) No part of the Common Area shall be used for storage or maintaining any material or property, whether on a temporary basis or otherwise;

(14) Any repairs, maintenance or replacements to the Common Area required to be made by Landlord which are occasioned by the act of negligence of any Tenant, its agents, employees, sub-tenants, licensees and concessionaires, shall be paid for by Tenant upon demand to the extent not covered by insurance proceeds paid to Landlord therefor.

(15) No Tenant shall make any alteration, addition or improvement to or remove any portion of the Common Area, and no Tenant shall make any changes to or paint any portion of the Common Area, or install any lighting, decorations or paintings in or to the Common Area, or erect or install any signs, banners, placards, decorations or advertising media of any type in the Common Area;

(16) Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or lessee, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or lessee, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all other the tenants of the Shopping Center.

Landlord shall at all times have the right to change these rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care, or cleanliness of the Shopping Center, for preservation of good order therein, or for other purposes, all of which rules and regulations, changes and amendments shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance with these rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. In the event any provisions of these rules and regulations shall conflict with any specific provisions of the Lease to which this Exhibit D is attached, the provisions of the Lease shall control.

EXHIBIT F

GUARANTY

The undersigned, Robert V. Catania, hereby requests Mashpee Investors, LLC, a Massachusetts limited liability company ("Landlord") to enter into that certain Lease dated August ____, 2008, between Landlord and Wicked Restaurant, Inc., a ("Tenant") (the "Lease"), and as an inducement to Landlord to do so, and as an additional consideration therefore, the undersigned hereby (a) guarantees unconditionally to Landlord the full, faithful and punctual performance, fulfillment and observance of all of the obligations and liabilities of Tenant under said Lease (the "Tenant Obligations") throughout the Term, as defined therein, including the payment of all amounts that may be or become payable by Tenant to or for the benefit of Landlord under the Lease; (b) subject to the other terms and provisions of this Guaranty, waives notice of and consents to any and all amendments, extensions and renewals of said Lease, any and all assignments, subleases and other action that may be permitted thereunder by Tenant or Landlord, any and all other amendments, extensions, and renewals, any and all other advances, extensions, settlements, compromises, favors and indulgences, any and all other receipts, substitutions, additions and releases of persons primarily or secondarily liable, any and all acceptances by Landlord of negotiable instruments, commercial paper and other property, and agrees that none of the foregoing, should there be any, shall discharge or affect in any way the liability of the undersigned hereunder; (c) agrees that all rights and remedies of Landlord under said Lease and hereunder shall survive and not be affected by any such discharge, moratorium or other relief granted any person primarily or secondarily liable in any proceeding under federal or state law relating to bankruptcy, insolvency or the relief or rehabilitation of debtors, or any disaffirmance or rejection of the Lease in such proceedings, and any consent by Landlord to, or participation by Landlord in the proceeds of, any assignment, trust or mortgage for the benefit of creditors, or any composition or arrangement of debts, may be made without the undersigned being discharged or affected in any way thereby; (d) waives any right to require marshaling or exhaustion of any right or remedy against any person, collateral or other property; (e) subject to the other terms and provisions of this Guaranty, waives presentment, demand, protest and notice of default, nonpayment and protest and all demands, notices and suretyship defenses generally; and (f) agrees that upon the existence and continuance of a default under the Lease, Landlord may have and maintain an action upon this Guaranty against the undersigned and in like manner may have and maintain successive actions upon this Guaranty for each and every other such continuing default; the undersigned expressly agreeing hereby that its obligation hereunder shall not be exhausted by any such action or by any number of such successive actions until and unless each of the Tenant Obligations shall have been fully performed.

This Guaranty shall be absolute and continuing. Landlord shall not be required to pursue any remedies that it may have against Tenant or pursue any security or other parties as a condition to the enforcement of this Guaranty. It is understood and agreed that Guarantor may be joined in any action against Tenant and that recovery may be had against Guarantor in such action, or in any independent action against Guarantor. This Guaranty shall not in any way be affected or impaired by reason of Landlord asserting against Tenant any rights or remedies reserved to the Landlord pursuant to the Lease, or available at law or in equity, including any

termination of the Lease or re-entry into the Premises. If at any time payment of any of the Tenant Obligations under the Lease is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Tenant, the obligations of the Guarantor with respect to such payment shall be reinstated at such time as though such payment had not been made.

Until all Tenant Obligations under the Lease are fully paid and satisfied, Guarantor (a) shall have no right of subrogation against Tenant by reason of Guarantor's performance under this Guaranty or monies or obligations owed by Tenant to Guarantor; (b) waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant by reason of Guarantor's performance under this Guaranty and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by or owed to Guarantor to the Tenant Obligations.

This Guaranty and the obligations of the Guarantor under this Guaranty shall not be modified, discharged, waived or terminated except by an agreement in writing signed by Guarantor and Landlord.

This Guaranty shall bind Guarantor and the successors and assigns of Guarantor. This Guaranty may be freely assigned, transferred or hypothecated by Landlord and shall run in favor and inure to the benefit of Landlord, its successors and assigns, and each subsequent holder of Landlord's interest under the Lease. References to the term "Tenant" shall be deemed to include Tenant's successors and assigns.

This Guaranty shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Guarantor agrees to be subject to the jurisdiction of the courts of Massachusetts. If this Guaranty is enforced by suit or otherwise, Guarantor shall reimburse Landlord, upon demand, for all reasonable expenses incurred in connection therewith, including reasonable attorney's fees.

Notices to the Guarantor shall be sent by certified or registered mail to the address below, and shall be effective upon being deposited in the United States mail, postage prepaid. Alternatively, notices may be sent by Federal Express or other recognized delivery service and shall be effective upon delivery to Guarantor. Guarantor may change its address by giving written notice to Landlord in accordance with this provision.

Guarantor: Robert V. Catania

with a copy to: Melanie J. O'Keefe, Esq.
La Tanzi, Spaulding & Landreth, P.C.
8 Cardinal Lane
Orleans, MA 02653

Guarantor represents and warrants that it has the legal right and capacity to execute this Guaranty, and each person executing this Guaranty on behalf of Guarantor covenants and warrants that he is duly authorized by the board of directors of Guarantor to execute and deliver this Guaranty on behalf of the Guarantor.

WITNESS the execution hereof under seal as of the 3 day of August, 2008.


Robert V. Catania

EXHIBIT G

FAIR MARKET RENT

For purposes hereof, the "Fair Market Rent" shall be a rent substantially comparable to the market rate then being charged by the Landlord as fixed minimum rent for other prospective, similar retail space operations in comparable locations in the Shopping Center, and said Fair Market Rent shall be determined as follows: the Landlord's notice shall set forth the Fair Market Rent. If the Tenant agrees with the Landlord's determination, then such Fair Market Rent shall be the Fixed Minimum Rent for the Option Period. If the Tenant disagrees with the Landlord's determination and notifies the Landlord thereof specifying the Tenant's estimate of a Fair Market Rent (and the basis therefor) within ten (10) days following the Tenant's receipt of Landlord's notice, then the Landlord and the Tenant shall negotiate in good faith to reach agreement for the purposes hereof on a Fair Market Rent. If the Landlord and the Tenant do not reach agreement on a Fair Market Rent within fifteen (15) days after the Landlord's receipt of the Tenant's said notice of disagreement, then each of the Landlord and the Tenant shall promptly designate a commercial real estate broker, agent, or appraiser (each an "Appraiser") with at least ten years' experience (the majority of which experience relates to leasing of shopping centers similar in size and location to the Shopping Center) to determine said Fair Market Rent. If such Appraisers shall agree on such Fair Market Rent (and for the purposes hereof, if such Appraisers shall determine such Fair Market Rent and the higher such determination is no more than 110% of the lower such determination, then said Appraisers shall be deemed to have agreed upon a Fair Market Rent equal to the average of such determinations), then the agreement of said Appraisers as aforesaid shall be deemed to be said Fair Market Rent and shall be binding upon the parties hereto; but if said Appraisers do not agree as aforesaid within fifteen (15) days after being instructed so to do and the Landlord and the Tenant are unable promptly thereafter to agree on such Fair Market Rent, then said Appraisers shall together promptly appoint a third such appraiser (from a firm other than those with which the initial Appraisers are associated) and the determination of the third such Appraiser shall be deemed to be said Fair Market Rent and shall be binding upon the parties hereto (but in no event shall such determination be less than the lower amount or more than the higher amount of the determinations of the initial two Appraisers). Any fees and costs thus incurred shall be paid to the Appraiser designated by the designating party and shared equally by the Landlord and by the Tenant for any such third Appraiser. As soon as all pertinent facts are known and determinations made, the parties agree to execute and deliver to each other a writing confirming the Fair Market Rent and Percentage Rent for the new lease.

EXHIBIT H - [INTENTIONALLY DELETED]

CHATTEL LIEN WAIVER

EXHIBIT I

WWTP USE REGULATIONS

UNIT NO. F2-2

SOUTH CAPE VILLAGE

1. Simultaneously with the delivery of Tenant's Plans, Tenant(s) shall deliver to Landlord a list of all chemicals and other substances, which will be discharged from the Premises into the WWTP. Tenant hereby agrees that it (1) shall update the aforesaid list of chemicals and substances upon request to do so, and (2) shall notify Landlord of any changes to the last list delivered to Landlord.
2. No person(s) shall break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment, which is a part of the WWTP.
3. No person(s) shall discharge, or cause to be discharged, any of the following described liquids or solid wastes to the WWTP:
 - (a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
 - (b) Any toxic, poisonous or "hazardous" or "toxic" materials or "oil" (as such terms are defined in Section 11(b) of the Lease) nor any solids, liquids, or gases, either singly or with other wastes, without Landlord's consent unless specifically permitted to do so by the terms of the Lease.
 - (c) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sanitary sewers, or other interference with the proper operation of the WWTP such as, but not limited, to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
4. No person shall discharge, or cause to be discharged, the following substances, materials, liquids, or wastes if it appears likely, in the opinion of Landlord, that such wastes can harm either the WWTP, or otherwise endanger life, limb, property, or constitute a nuisance. The substances prohibited are:
 - (a) Any liquid or vapor having a temperature higher than one hundred fifty (150) °F (65°C).

- (b) Any liquid or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) °F (0 and 65°C).
- (c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of Landlord.
- (d) Any liquids or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- (e) Any liquids or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or wastes exerting an excessive chlorine requirement, to such degree that any such material received at the WWTP exceeds the limits established by Landlord for such materials.
- (f) Any liquids or wastes containing phenols, or other taste or odor producing substances, in concentrations which exceed limits which may be established by Landlord.
- (g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by Landlord in compliance with applicable state or federal regulations.
- (h) Any liquids or wastes having a pH in excess of (8.0).
- (i) Materials which exert or cause:
 - (i) Any concentration of suspended solids (such as, but not limited to Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) that exceeds 250 parts per million or 250 mg/L.
 - (ii) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
 - (iii) Unusual chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the WWTP.
 - (iv) Unusual volume of flow or concentration of wastes which, in a period of 15 minutes, would exceed the average flow over a 24-hour period.

5. If any liquids or wastes are discharged, or are proposed to be discharged, to the WWTP, which contain the substances or possess the characteristics enumerated above, and which in the judgment of Landlord, may have a deleterious effect upon the WWTP, its processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, Landlord may:

- (i) Reject the liquids and/or wastes.
- (ii) Require pretreatment to an acceptable condition for discharge to the WWTP.
- (iii) Require control over the quantities and rates of discharge.
- (iv) Require payment to cover added costs of handling and treating the wastes not covered by existing charges.
- (v) Require a change in the frequency of pumping grease traps and/or require pumping/cleaning records be submitted to Landlord upon request. If Landlord permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of Landlord and subject to the requirements of all applicable codes, regulations, and laws.

VIOLATIONS AND PENALTIES

1. Any violation of any provision of these regulations shall be a default under the Lease, subject to written notice from Landlord stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof.
2. Any person violating any of the provisions of these regulations shall become liable to Landlord for any expense, loss, or damage occasioned by Landlord by reason of such violation.

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (this "Amendment"), made as of this 25 day of November, 2008, by and between MASHPEE INVESTORS, L.L.C., a Massachusetts limited liability company, having a mailing address at c/o C. Talanian Realty Co., 137 Newbury Street, 9th Floor, Boston, MA 02116 (hereinafter referred to as "Landlord"), and WICKED RESTAURANT, INC., a Massachusetts corporation having a mailing address at _____ (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Retail Lease Agreement dated September 3, 2008, (the "Lease") relating to an estimated 4,803 square feet of space described as Unit F2-2 (the "Premises") located at the South Cape Village Shopping Center in Mashpee, Massachusetts (the "Shopping Center"), as more particularly described therein.

WHEREAS, Landlord and Tenant now agree that the Premises contains approximately 4,699 square feet of rentable space.

WHEREAS, Landlord and Tenant desire to amend and modify the Lease to reflect such agreement and otherwise as set forth hereinbelow.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Item 2 of the Basic Lease Provisions ("Premises") is hereby amended by deleting the number "4,803" in the first line and substituting therefor, the number "4,699".
2. Item 4 of the Basic Lease Provisions ("Minimum Rent") is hereby amended by deleting it in its entirety and substituting therefor, the following:

Rent Lease Year	Rate Per Rentable Square Foot of Premises	Monthly	Annual
1	\$20.13	\$ 7,882.57	\$ 94,590.87
2	\$21.13	\$ 8,274.15	\$ 99,289.87
3	\$25.36	\$ 9,930.55	\$119,166.64
4	\$26.63	\$10,427.86	\$125,134.37
5	\$27.96	\$10,948.67	\$131,384.04
6	\$29.08	\$11,387.44	\$136,646.92
7	\$30.24	\$11,841.48	\$142,097.76
8	\$31.15	\$12,197.82	\$146,373.85
9	\$32.08	\$12,561.99	\$150,743.92
10	\$33.04	\$12,937.91	\$155,254.96

Above figures are the square footage (4,699) x the Rate Per Rentable Square Foot.

3. Paragraph V of Exhibit B is hereby amended by adding the following new Paragraph V(B):

B: In addition to the foregoing, Landlord shall loan Tenant up to Eighty-Five Thousand Dollars (\$85,000.00) (the "Loan Amount") to be used for additional tenant improvements, to be constructed and/or installed as part of Tenant's Work. The Loan Amount shall be advanced to Tenant based on requisitions in form and substance reasonably satisfactory to Landlord, such requisitions to be accompanied by invoices evidencing costs for labor and materials incurred by Tenant in connection with Tenant's Work.

All portions of the Loan Amount advanced by Landlord shall be credited towards the \$300,000.00 referred to in Paragraph V(A) above.

All of the Loan Amount advanced by Landlord shall bear interest at the rate of six percent (6%) per annum from the day advanced until all principal and all accrued interest shall have been paid in full.

The entire Loan Amount advanced by Landlord and all accrued interest (collectively, the "Amount Owed") shall be due and payable on the earlier to occur of (i) July 31, 2009 and (ii) [ten (10) days after] that date on which the Guarantor named in the Basic Lease Provisions shall have received at least an amount equal to the Amount Owed from Quintess, LRW, the "vacation club" to which Guarantor belonged, resigned from and which now owes Guarantor approximately \$200,000.00 (the "Maturity Date"). Failure by Tenant to repay the Amount Owed on the Maturity Date shall be deemed a failure to pay Rent and a default under Section 30 of the Lease, following which, Landlord shall have all the rights and remedies available to Landlord following a default for failure to pay Rent.

4. The Lease, as hereby amended and modified, is hereby ratified, approved, and confirmed.

5. Except as amended and modified hereby, the Lease remains unchanged and unmodified, fully enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, under seal, as of the day and year first above written.

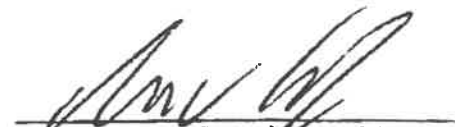
LANDLORD:

MASHPEE INVESTORS, L.L.C.


By:
Its:

TENANT:

WICKED RESTAURANT, INC.


By: Robert V. Catania, President
duly authorized

FIFTH AMENDMENT AND CONSENT TO ASSIGNMENT OF LEASE

THIS FIFTH AMENDMENT AND CONSENT TO ASSIGNMENT OF LEASE (this "**Amendment**") is dated as of _____, 2023 (the "**Effective Date**") and is entered into by and between ADREX DIVERSIFIED II MASTER TENANT LLC, a Delaware limited liability company f/k/a DPF MASHPEE LLC, a Delaware limited liability company ("**Landlord**"), WICKED RESTAURANT, INC., a Massachusetts corporation ("**Assignor**"), and ELEVATED CRUST, LLC, a Massachusetts limited liability company ("**Assignee**") with reference to the following facts:

A. Landlord's predecessor-in-interest, Mashpee Investors, LLC, a Massachusetts limited liability company, and Assignor entered into that certain Retail Lease Agreement dated as of September 3, 2008 (the "**Original Lease**"), as amended by that certain Amendment to Lease dated as of November 25, 2008, as amended by that certain Second Amendment to Lease dated April 3, 2012, as amended by that certain Settlement and Release Agreement dated July 19, 2016, as amended by that certain Third Amendment to Lease dated July 19, 2016, as amended by that certain Letter Agreement dated April 21, 2017, as amended by that certain Letter Agreement dated October 4, 2018, and as amended by that certain Letter Agreement dated April 10, 2020, as amended by that certain Fourth Amendment to Lease dated July 20, 2020 (the "**Fourth Amendment**") and collectively with the Original Lease as amended, is referred to herein as, the "**Lease**"), pursuant to which Landlord leased unto Assignor, and Assignor leased from Landlord, those certain premises located at the South Cape Marketplace, Mashpee, Massachusetts (the "**Shopping Center**"), containing approximately 5,828 rentable square feet (the "**Premises**").

B. The Lease Term is set to expire as of February 28, 2029.

C. Assignor desires to assign, and Assignee desires to assume all of Assignor's rights, obligations and interest as Tenant under the Lease (as amended hereby) pursuant to a Lease Assignment (the "**Assignment**"), a true and complete copy of which is attached hereto as **Exhibit A**;

D. Landlord has agreed to consent to such assignment subject to the terms and conditions of the Lease (as amended hereby); and

E. Landlord, Assignor and Assignee desire to modify and amend the Lease to provide, for the Assignment, the Guaranty (as defined below), modification of the Security Deposit (as defined below) and certain other terms, all 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, Assignor, and Assignee hereby agree as follows:

1. **Scope of Fifth 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. Assignment.

(a) Landlord's Consent. Landlord hereby consents to the assignment of the Lease from Assignor to Assignee subject to the terms and conditions of the Lease (as amended hereby). From and after the Effective Date, any and all references in the Lease to "Tenant" shall be deemed to include reference to Assignee.

(b) Representations and Warranties.

(i) By Assignor. Assignor represents and warrants to Landlord that Assignor: (A) has full power and authority to assign the Lease to Assignee; (B) has not transferred or conveyed its interest in the Lease to any person or entity collaterally or otherwise; and (C) has full power and authority to enter into this Amendment.

(ii) By Assignee. Assignee represents and warrants to Landlord that Assignee has full power and authority to (A) enter into this Amendment and (B) perform all the obligations as the Tenant under the Lease.

(iii) Joint Representations. Assignor and Assignee hereby represent and warrant to Landlord, jointly and severally, that: (i) there are no additional payments of rent or any other consideration of any type payable by Assignee to Assignor with regard to this Amendment other than as disclosed in this Amendment; (ii) all of the principle terms of the proposed assignment (including, without limitation, the consideration therefor) are set forth in the Assignment; (iii) the Lease is in full force and effect and has not been modified except as provided in this Amendment; (iv) all obligations under the Lease to be performed by Landlord and Tenant have been fully performed and satisfied, and no event has occurred that with the giving of notice or the passage of time, or both, would constitute a default by Landlord or Tenant under the Lease; and (v) no claim of offset, counterclaim or deductions to any rent or other sum due or to become due under the Lease exists.

(c) Liability of Assignor. Notwithstanding anything in the Lease (as amended hereby) to the contrary, this Amendment shall not release Assignor from any of its liabilities or obligations under the Lease. Assignor and Assignee each acknowledges and agrees to be liable to Landlord, primarily, jointly and severally, for the full performance of all obligations, covenants and conditions set forth in the Lease, including, without limitation, any default under or breach of the Lease whenever occurring, whether before or after the Effective Date (whether such default is caused by Assignor and Assignee or anyone claiming by, through or under either of them). In the event of a default by Tenant under the Lease, Landlord may, but shall not be obligated to, require that Assignor and Assignee or any of their respective permitted successors and assigns, cure such default. Following the Effective Date, Assignee shall make all payments due under the Lease to Landlord and shall recover directly from Assignor any amounts Assignee believes to be owed by Assignor. Landlord shall not be obligated to recover any such amounts from Assignor or to render any accounting of any prorations or other items involved with such amounts.

3. Modifications and Amendments to Lease. Notwithstanding anything in the Lease to the contrary, the Lease is hereby modified and amended as follows:

(a) Guaranty. In connection with this Amendment and the Assignment, the payment and performance of all obligations of Assignee for the Extension Term and any

extensions thereof shall be guaranteed by John Bartolomei, an individual (the "Guarantor"), in a form attached hereto as Exhibit B (the "Guaranty"). Guarantor has agreed to execute the Guaranty with respect to the Lease as modified by this Amendment and the Assignment.

(b) Security Deposit. Landlord and Assignee acknowledge and agree that Landlord currently holds a security deposit in the amount of \$8,057.03 (the "Security Deposit"). Concurrently with its execution of this Amendment, Assignee shall pay to Landlord \$9,426.97 in immediately available good funds, which amount shall be added to the Security Deposit.

(c) Legal Fees. Concurrently with its execution of this Amendment, Tenant or Assignor shall reimburse Landlord, in immediately available good funds, for the actual attorneys' fees incurred by Landlord in connection with this Amendment; provided, however, not to exceed One Thousand Five Hundred and no/100 Dollars (\$1,500.00).

(d) Operating Hours.

(i) Section 2(f) of the Fourth Amendment is hereby deleted in its entirety.

(ii) The parties to this Amendment hereby reaffirm that Section 13(d) of the Original Lease remains in full force and effect.

(e) Marijuana Prohibition. Notwithstanding anything to the contrary in the Lease, in no event shall any portion of the Premises be used for any marijuana or marijuana related business (including, but not limited to, the cultivation, manufacture, processing, storage or sale of cannabis or cannabis-related products).

(f) Notices. Notwithstanding any contrary provision in the Lease, all notices to Landlord shall be addressed to:

ADREX Diversified II Master Tenant LLC
c/o Ares Management LLC
1200 17th Street, Suite 2900
Denver, Colorado 80202
Attention: Real Estate Counsel

With a copy to:

ADREX Diversified II Master Tenant LLC
c/o Ares Management LLC
1200 17th Street, Suite 2900
Denver, Colorado 80202
Attention: Asset Manager

And:

Brownstein Hyatt Farber Schreck, LLP
Attn: Robert Kaufmann
675 15th Street, Suite 2900

Denver, Colorado 80202
Email: rkaufmann@bhfs.com; notices@bhfs.com

4. Condition of Premises. Assignor and Assignee each acknowledge that Tenant currently occupies the Premises and each agree that Assignee shall accept the Premises in its "as-is" condition, with no additional obligation on the part of Landlord to repair, remodel or refurbish the Premises beyond that set forth in the Lease.

5. Payment of Commission. In connection with this Amendment, Assignor and Assignee each acknowledge that neither Assignor nor Assignee have used the services of a broker or other real estate agent or licensee. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith based on any other relationship with or through Assignor or Assignee, Assignor or Assignee hereby agrees to protect, defend and indemnify Landlord against and hold Landlord harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Landlord may sustain or incur by reason of such claim.

6. 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.

7. Ratification. As amended hereby the Lease is hereby ratified and shall remain in full force and effect. As of the execution hereof, Assignor and Assignee each represent, acknowledge and confirm 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.

8. Governing Law. This Amendment shall be construed and governed by the laws of the State of Massachusetts.

9. 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.

10. Attorneys' Fees and Costs. In the event of litigation or arbitration arising out of or in connection with this Amendment, the non-prevailing party to such litigation or arbitration shall pay the prevailing party's costs and expenses incurred in such litigation or arbitration (and any appeal therefrom), including reasonable attorneys' fees and costs.

11. 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, Assignor and Assignee. 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.

12. 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.

13. Counterparts. This Amendment may be executed in counterparts and by email of a 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.

14. 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.

15. 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.

16. No Offer. The submission of this Amendment by Landlord to Assignor and Assignee is not an offer to modify or amend the Lease and is not effective until execution and delivery by Landlord, Assignor and Assignee.

17. Conflict. Notwithstanding anything herein or in the Assignment to the contrary, to the extent that the terms and conditions of this Amendment conflict with the terms and conditions of the Assignment, the terms and conditions of this Amendment shall control.

[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: _____

Name: _____

Its: _____

ASSIGNEE:

ELEVATED CRUST, LLC,
a Massachusetts limited liability company

By:  _____

Name:  _____

Its: _____

ASSIGNOR:

WICKED RESTAURANT, INC.,
a Massachusetts corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

Assignment

[To Be Attached.]

Assignment

EXHIBIT B

Guaranty

[Attached.]

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 John Bartolomei (the "Guarantor"), in favor of ADREX Diversified II Master Tenant LLC, a Delaware limited liability company ("Landlord"), in connection with that certain Retail Lease Agreement dated as of September 3, 2008 (the "Original Lease"), as amended by that certain Amendment to Lease dated as of November 25, 2008, as amended by that certain Second Amendment to Lease dated April 3, 2012, as amended by that certain Settlement and Release Agreement dated July 19, 2016, as amended by that certain Third Amendment to Lease dated July 19, 2016, as amended by that certain Letter Agreement dated April 21, 2017, as amended by that certain Letter Agreement dated October 4, 2018, and as amended by that certain Letter Agreement dated April 10, 2020, as amended by that certain Fourth Amendment to Lease dated July 20, 2020, as amended by that certain Fifth Amendment to Lease dated as of the date herein (the Original Lease as amended is referred to herein as, the "Lease"), pursuant to which Landlord leases to Elevated Crust, LLC, a Massachusetts limited liability company ("Tenant") certain premises located at the South Cape Marketplace, Mashpee, Massachusetts, containing approximately 5,828 rentable square feet.

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 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 10 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 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,

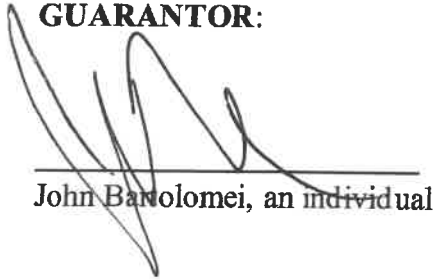
diminish, or in any way affect the liability of Guarantor under this Guaranty, and the liability of Guarantor with respect to the Lease shall be of the same scope as if Guarantor had itself executed the lease as the named Tenant therein, and no "rejection" and/or "termination" of the Lease in any of the proceedings referred to in this Paragraph 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, 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). 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 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.

[Remainder of page intentionally left blank; Signature pages to follow]

IN WITNESS WHEREOF, the Guarantor has signed and delivered this Guaranty.

GUARANTOR:

A handwritten signature in black ink, appearing to read 'John Barolomei', is written over a horizontal line.

John Barolomei, an individual



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

Pursuant to Town of Mashpee General Bylaw §150-6.D., the Select Board will conduct a public hearing on Monday, August 21, 2023 at 6:45 p.m., to address the private to public road conversion of Chickadee Road, Debbie Lane, Manitoba Road, Metacomet Road, Nehoiden Road, Neshobe Road, Pontiac Road, Samoset Road, Wamesit Road, Whippoorwill Circle and Wills Work Road, as shown on the plans entitled "Pontiac Road, Metacomet Road, Samoset Road, Manitoba Road, Neshobe Road, Neoiden Road & Wamesit Road" in Mashpee MA, dated May 31, 2023, and prepared by Cape & Islands Engineering.

Said hearing will take place in the Waquoit Meeting Room at Mashpee Town Hall, 16 Great Neck Road North, Mashpee, MA 02649.

Copies of the plans may be viewed in the Office of the Town Manager and Select Board at Mashpee Town Hall.

Broadcast Live on Local Cable Channel 18

***Streamed Live on the Town of Mashpee Website*:**

<https://www.mashpeeema.gov/channel-18>

You can submit comments and questions via email to bos@mashpeeema.gov prior to the meeting date and time.



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

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***Streamed Live on the Town of Mashpee Website*:**

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You can submit comments and questions via email to bos@mashpeeema.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

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

MEMORANDUM

Date: August 17, 2023

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

From: Stephanie A. Coleman, Administrative Secretary 

Re: Public Hearing: Private to Public Road Conversion of Chickadee Road, Debbie Lane, Manitoba Road, Metacomet Road, Nehoiden Road, Neshobe Road, Pontiac Road, Samoset Road, Wamesit Road, Whippoorwill Circle and Wills Work Road

Pursuant to Town of Mashpee General Bylaw §150-6.D., the Select Board will conduct a public hearing on Monday, August 21, 2023 at 6:45 p.m., to address the private to public road conversion of Chickadee Road, Debbie Lane, Manitoba Road, Metacomet Road, Nehoiden Road, Neshobe Road, Pontiac Road, Samoset Road, Wamesit Road, Whippoorwill Circle and Wills Work Road, as shown on the plans entitled "Pontiac Road, Metacomet Road, Samoset Road, Manitoba Road, Neshobe Road, Neoiden Road & Wamesit Road" in Mashpee MA, dated May 31, 2023, and prepared by Cape & Islands Engineering.

The estimated cost of the project including construction, processing and interest paid over a 20 year period is \$2,899,428.00. The cost per the 157 property owners will be \$18,468.00. Attached is the notice sent to the property owners, a breakdown of the estimate and the road taking plans.



TOWN OF MASHPEE

OFFICE OF THE SELECT BOARD

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

August 3, 2023

Dear Property Owner:

Pursuant to Town of Mashpee General Bylaw §150-6.D., the Select Board will conduct a public hearing on **Monday, August 21, 2023 at 6:45 p.m.**, to address the private to public road conversion of Chickadee Road, Debbie Lane, Manitoba Road, Metacomet Road, Nehoiden Road, Neshobe Road, Pontiac Road, Samoset Road, Wamesit Road, Whippoorwill Circle and Wills Work Road. The hearing will take place at Mashpee Town Hall, 16 Great Neck Road North, Mashpee, MA 02649. The Department of Public Works Director and the Select Board will be available to address any questions relating to the road taking process and the enclosed estimate.

If residents plan to move forward with the road conversion please contact this office to obtain Petition #2. The second petition must be signed by at least 50% + 1 of the affected property owners and must be received in this office by February 12, 2024, in order to be placed on the May Town Meeting Warrant or by July 8, 2024, in order to be placed on the October Town Meeting Warrant.

If Town Meeting approves the road taking and after completion of all related road work, a final betterment amount will be calculated, apportioned equally to each property owner, and assessed on an upcoming tax bill. The total betterment assessment cannot exceed the amount of the attached estimate. Residents may choose to pay in full within 30 days interest free, or make payments over a period of up to 20 years at 5% interest. For assistance determining the amortized betterment amount as it would appear on your tax bill, you may contact the Assessor's Office at 508-539-1404.

You can submit comments and questions via email to bos@mashpeema.gov prior to the meeting date and time. Please direct any other questions to this office at 508-539-1401.

Sincerely,

Stephanie A. Coleman

Administrative Secretary

Office of the Town Manager and Select Board

Encls

SOUTH CAPE	
PRIVATE TO PUBLIC ROAD CONVERSION	
ESTIMATED BETTERMENT COST	
CONSTRUCTION	\$ 2,680,625.00
PROCESSING (\$80,000 ENGINEERING, \$735 RECORDING FEES)	\$ 80,735.00
SUBTOTAL	\$ 2,761,360.00
INTEREST (5%)	\$ 138,068.00
TOTAL	\$ 2,899,428.00
ONE HUNDRED FIFTY SEVEN COST PER FIFTEEN (157) PROPERTY OWNERS	\$ 18,468.00



DATE APPROVED _____

DATE SIGNED _____

MASHPEE PLANNING BOARD

1907 TO 1914 40000000

I, _____, CLERK OF THE TOWN OF WASHPEE, HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE TOWN OF WASHPEE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND THAT NO APPEAL WAS RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

WASHFREE TOWN CLERK	DATE
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MASHPEE SELECT BOARD		TOWN MEETING
VOTED UNDER ARTICLE	OF THE	
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PLAN ELEMENT TAKING FOR ROADWAY PURPOSES
UNDER ORDER OF TAKING ADOPTED ON

INHERITANCE CERTIFICATE THAT THIS PLAN DOES CONFORM WITH THE REQUIREMENTS FOR RECORDING OF PLANS IN THE REGISTRY

MASTRELLA C. COURT 9-1-1

4.3/1/0

CERTIFY THAT THIS PLAN AND SURVEY CONFORMS TO THE ETHICAL, PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS.

10/10/10



GENERAL NOTES

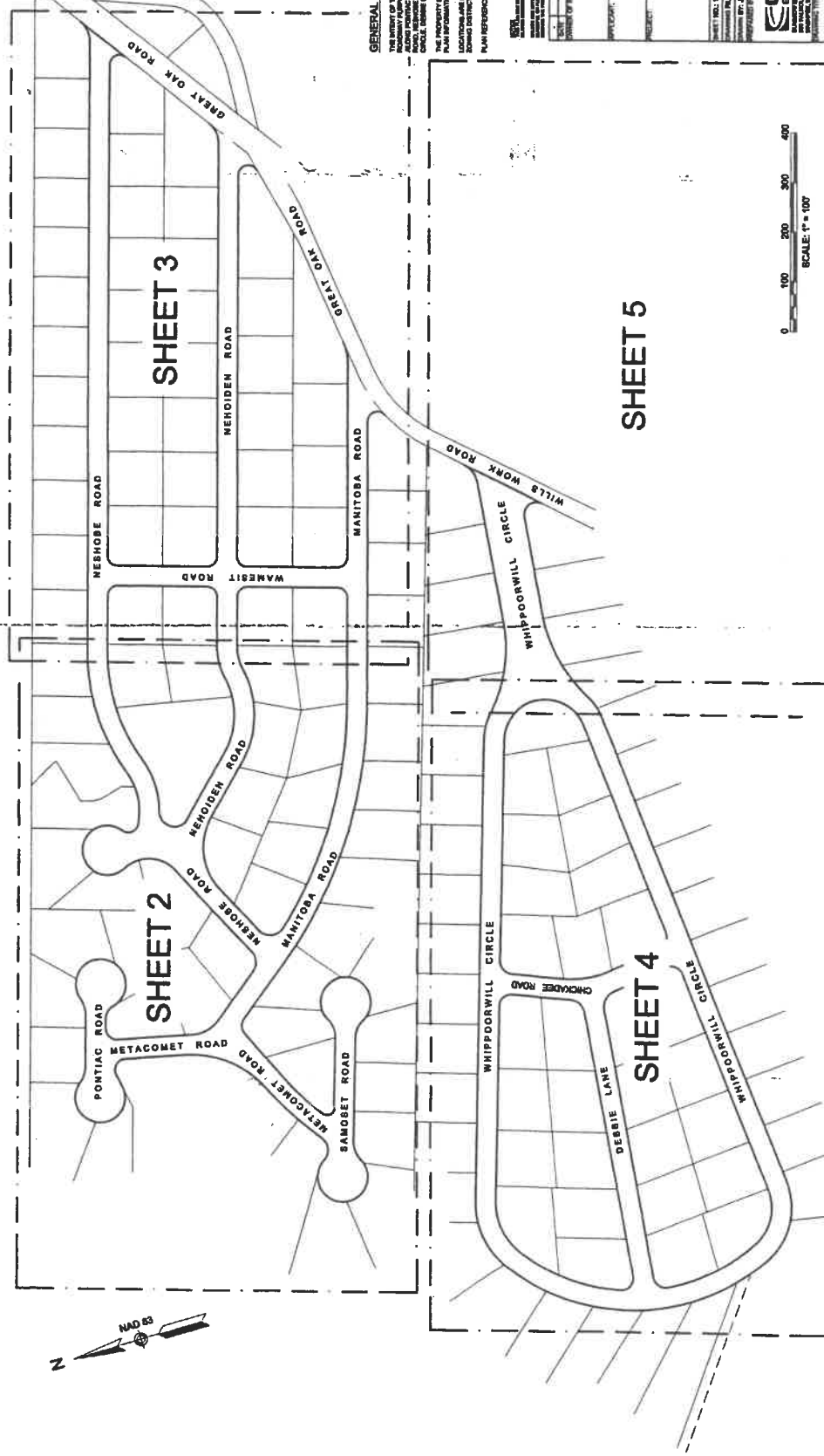
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The Washington state attorney general is expected to file a lawsuit against the state's largest health care provider, the University of Washington Medical Center, for allegedly failing to disclose the extent of its financial ties to the state's largest health care provider, the University of Washington Medical Center.

DATE	NAME OF PROJECT	LOCATION	EST. NO.	EST. NO.
	TOWN OF WASHPEE	18 GREAT NECK ROAD NORTH WASHPEE, MI 49881		
	TOWN OF WASHPEE	14 GREAT NECK ROAD NORTH WASHPEE, MI 49881		
	ROUND TARIFF PLAN	SOUTH CAPE ESTATES MI WASHPEE, MICHIGAN 49881		
	PROJECT NO. 1 OF 8			
	PROJECT NO. 2 OF 8			
	PROJECT NO. 3 OF 8			
	PROJECT NO. 4 OF 8			
	PROJECT NO. 5 OF 8			
	PROJECT NO. 6 OF 8			
	PROJECT NO. 7 OF 8			
	PROJECT NO. 8 OF 8			

CAPE & ISLANDS
ENGINEERING
1000 WILSON BLVD NW
SUITE 200
FALLS CHURCH, VA 22044
TEL: 703.271.2121 PHONE
TEL: 703.271.2122 FAX
Image Consulting
www.capeandislands.com

ROAD TAKING BEHAVIOR





NOT TO SCALE

PLANNING BOARD APPROVAL UNDER THE
BULK/AMOUNT CONTROL LAW NOT REQUIRED

DATE APPROVED _____ DATE REVISED _____

MEMBER CERTIFY THAT THE NOTICE OF THIS PLAN BY
THE TOWN OF MASHPEE, MASSACHUSETTS, IS
INCORPORATED INTO THE RECORDS OF THE TOWN
CLERK'S OFFICE AND THAT THE PLAN IS
RECORDED IN THE RECORDS OF THE TOWN
CLERK'S OFFICE.

PLAN SUBMITTAL TOWNSHIP FOR ROADWAY PURPOSES
MAJOR ORDER OF TOWNSHIP ADOPTED ON
DATE _____

MEMBER CERTIFY THAT THIS PLAN DOES CONFORM WITH THE
REQUIREMENTS FOR RECORDING OF PLANS IN THE RECORDS
OF THE TOWN OF MASHPEE, MASSACHUSETTS.

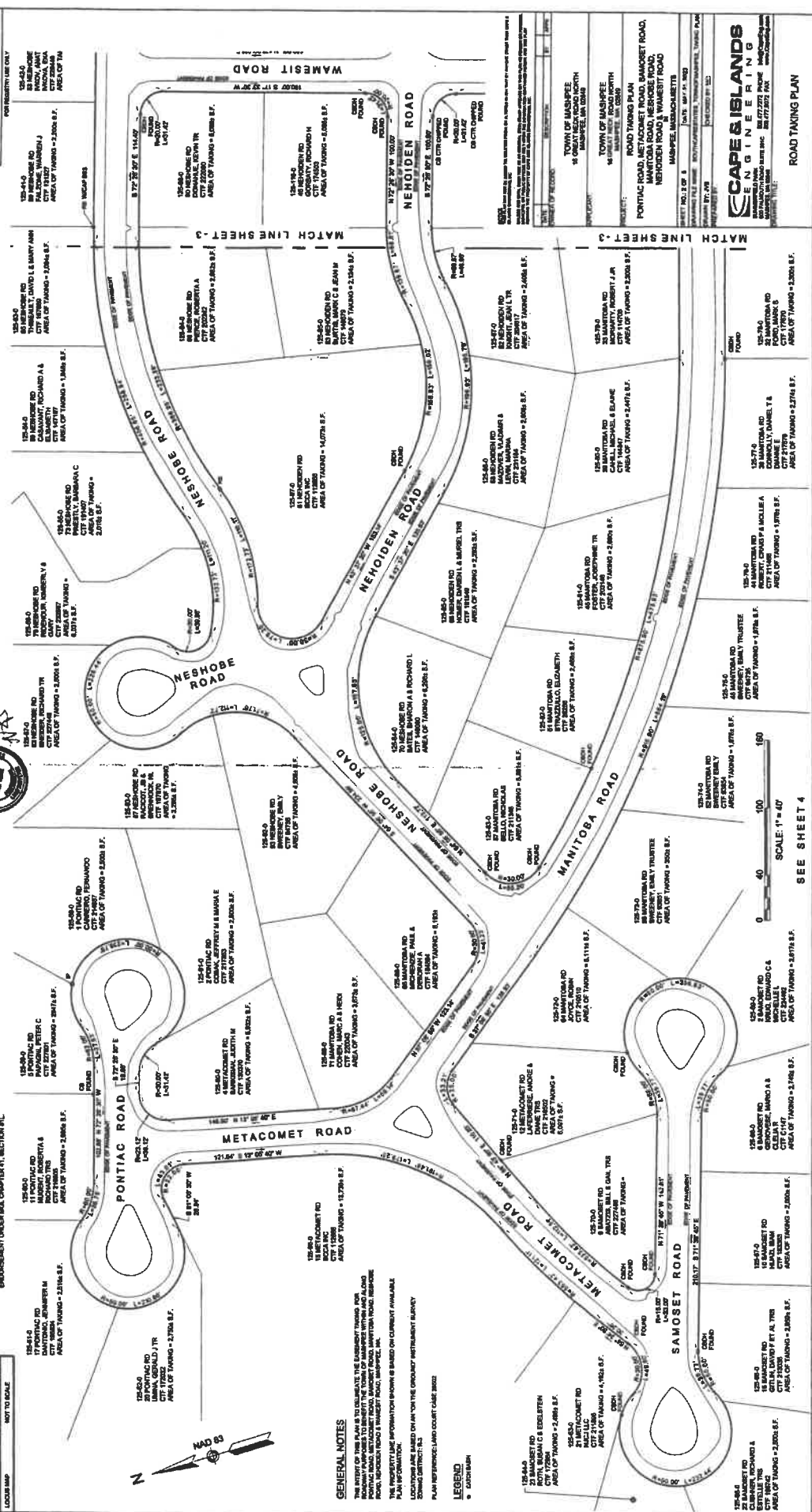
DATE _____

MASHPEE PLANNING BOARD
MEMBER CERTIFY THAT THE NOTICE OF THIS PLAN BY
THE TOWN OF MASHPEE, MASSACHUSETTS, IS
INCORPORATED INTO THE RECORDS OF THE TOWN
CLERK'S OFFICE AND THAT THE PLAN IS
RECORDED IN THE RECORDS OF THE TOWN
CLERK'S OFFICE.

MASHPEE SELECT BOARD
MEMBER CERTIFY THAT THE NOTICE OF THIS PLAN BY
THE TOWN OF MASHPEE, MASSACHUSETTS, IS
INCORPORATED INTO THE RECORDS OF THE TOWN
CLERK'S OFFICE AND THAT THE PLAN IS
RECORDED IN THE RECORDS OF THE TOWN
CLERK'S OFFICE.

MEMBER CERTIFY THAT THIS PLAN DOES CONFORM WITH THE
REQUIREMENTS FOR RECORDING OF PLANS IN THE RECORDS
OF THE TOWN OF MASHPEE, MASSACHUSETTS.

DATE _____



GENERAL NOTES

THE MAP OF THIS PLAN IS TO ELABORATE THE SUBMITTAL TOWNSHIP FOR
THE TOWN OF MASHPEE, MASSACHUSETTS, IS
INCORPORATED INTO THE RECORDS OF THE TOWN
CLERK'S OFFICE AND THAT THE PLAN IS
RECORDED IN THE RECORDS OF THE TOWN
CLERK'S OFFICE.

LEGEND

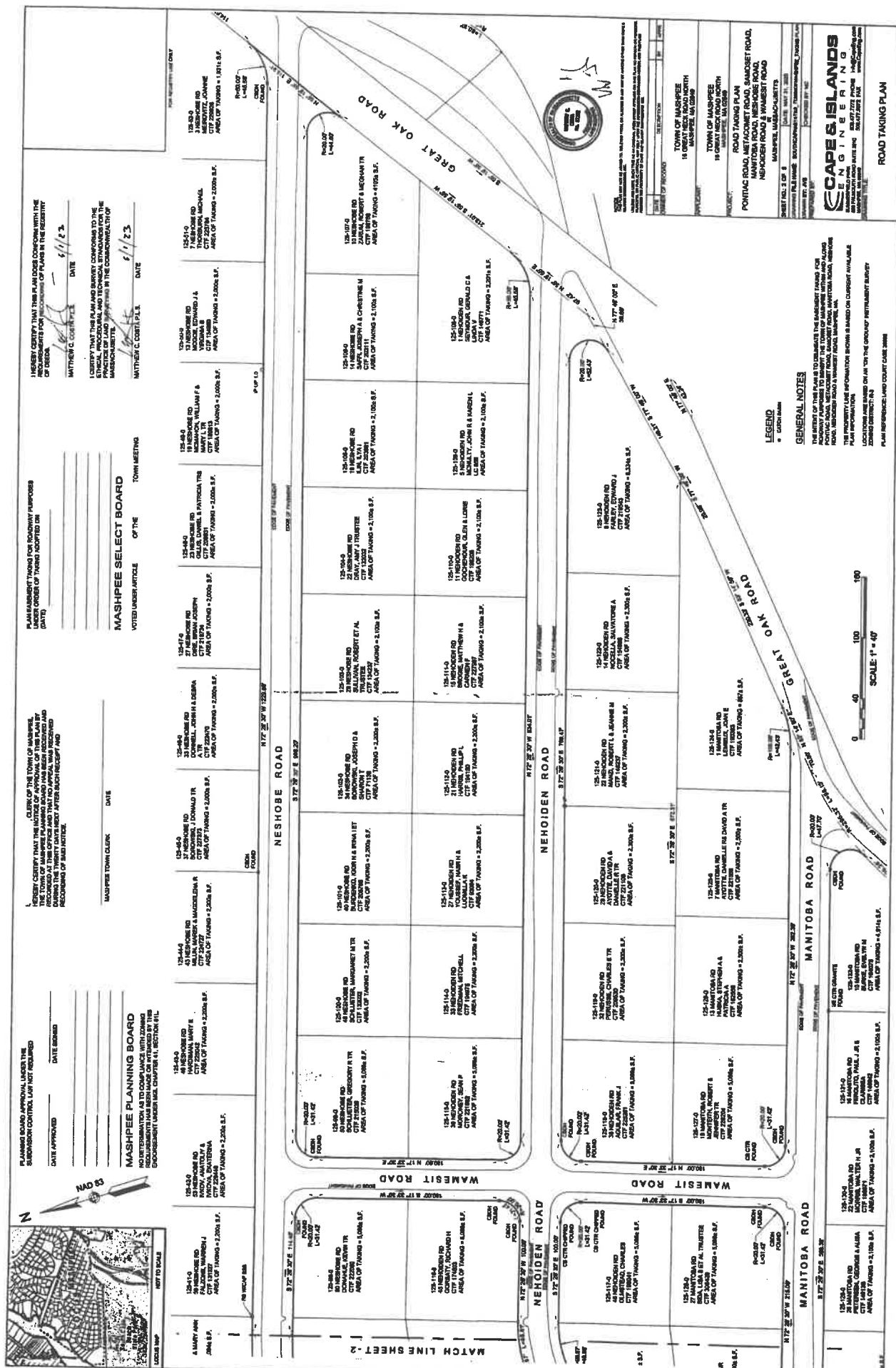
PLAN REFERENCES: LAND COURT CASE 2002

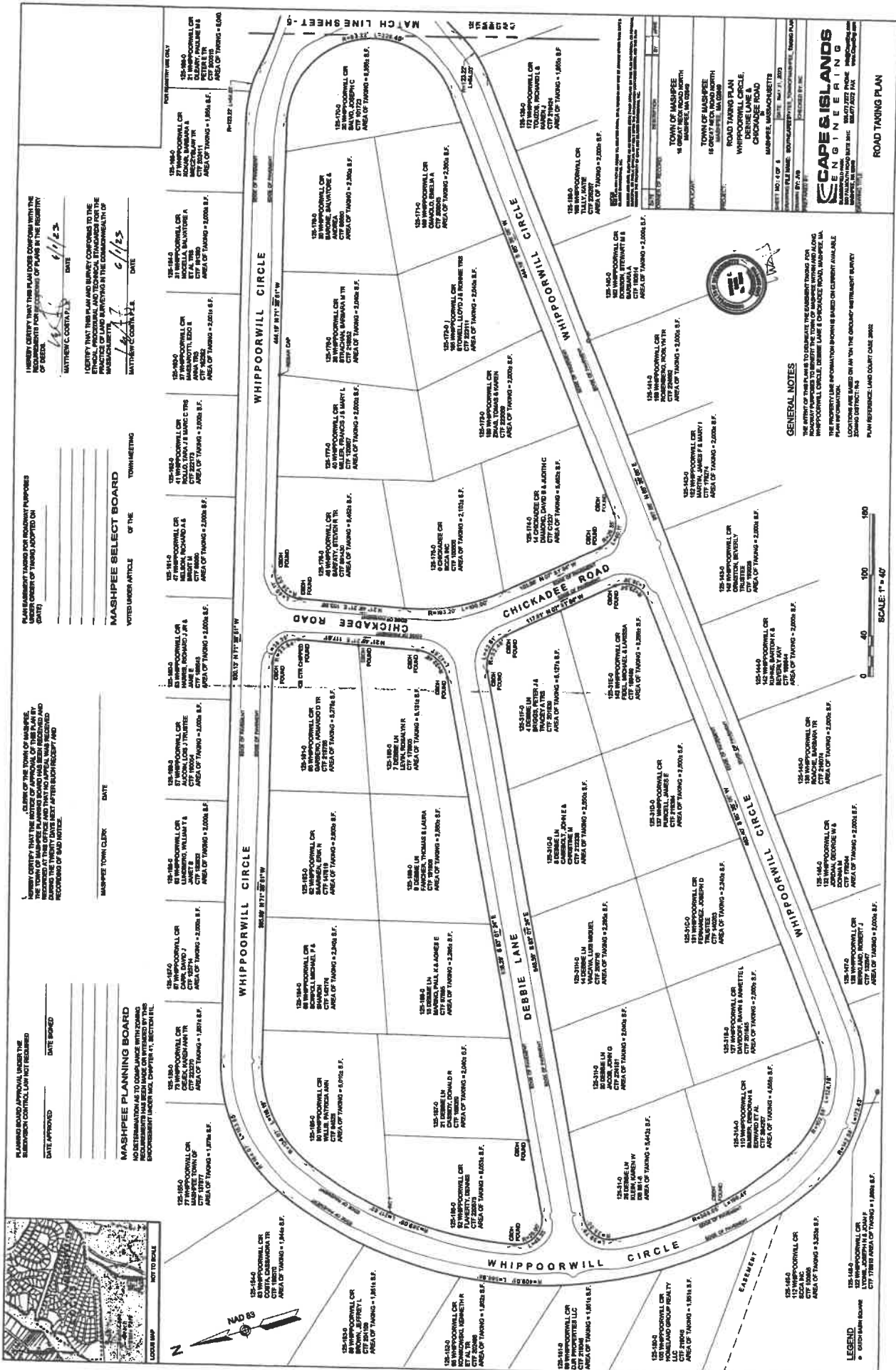
**CAPE & ISLANDS
ENGINEERING**
1000 STATE STREET, SUITE 200
MASHPEE, MASSACHUSETTS 01907
TEL: 508-548-1111
FAX: 508-548-1112
WWW.CAPEANDISLANDS.COM

ROAD TAKING PLAN

SCALE: 1" = 40'

SEE SHEET 4





GENERAL NOTES

1. THE TOWN OF MASHPEE HAS REVIEWED THE SUBMITTAL FOR THE WHIPPOORWILL CIRCLE, CHICKADEE ROAD, AND DEBBIE LANE. THE TOWN ENGINEER HAS REVIEWED THE SUBMITTAL FOR THE WHIPPOORWILL CIRCLE, CHICKADEE ROAD, AND DEBBIE LANE. THE TOWN ENGINEER HAS REVIEWED THE SUBMITTAL FOR THE WHIPPOORWILL CIRCLE, CHICKADEE ROAD, AND DEBBIE LANE.

PLANNING BOARD

DATE: 6/1/23
DATE: 6/1/23

SELECT BOARD

DATE: 6/1/23
DATE: 6/1/23

ROAD TAVING PLAN

DATE: 6/1/23
DATE: 6/1/23

CAPE ISLANDS ENGINEERING

DATE: 6/1/23
DATE: 6/1/23



TOWN OF MASHPEE

OFFICE OF THE SELECT BOARD

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

MEMORANDUM

Date: August 17, 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: Resignations

Description

Discussion of the following resignations:

- Historic District Commission, Michael Robbins, term expires June 30, 2026
- Mashpee Wakeby Lake Management Committee, Michael Rapacz, term expires June 30, 2024
- Design Review Committee, Tyler Gaudreau, term expires June 30, 2024

Attached are the letters of resignation submitted to the Select Board Office.

Michael Robbins

East Sandwich, MA 02537

April 26, 2023

To the town of Mashpee and members of the Historic District Commission,

I, Michael Robbins, offer my resignation from the Historic District Commission of Mashpee, MA effective immediately. It was an honor to serve the town as a member of the HDC since its inception. Thank you to all my fellow members both past and present it was truly a pleasure to serve with you.

Respectfully,

Michael Robbins

Mike Rapacz Resignation Mashpee Wakeby Lake Management Committee (MWLMC)

Terrie Cook <tmcook@mashpeema.gov>

Tue 8/15/2023 2:38 PM

To: Terrie Cook <tmcook@mashpeema.gov>

From: Barbara Nichols

Sent: Tuesday, August 15, 2023 12:46 PM

To: Terrie Cook

Subject: MWLMC Resignation - Mike Rapacz

From: **Mike Rapacz**

Date: Mon, Aug 14, 2023 at 10:56 AM

Subject: Re: MWLMC

To: Barbara Nichols

Barb,

I sent you an email about a month ago stating that I was dropping off of the committee. Maybe it was a text.

Sorry for the confusion.

Thanks.

Sent from my iPhone

On Aug 13, 2023, at 3:41 PM, Barbara Nichols wrote:

Hi Mike,

Have missed you at our last couple of meetings. Hope everything is going okay.

Our next meeting is August 22. Will send info when time gets closer.

Barbara

Tyler Gaudreau Resignation from Design Review Committee

Mary Ann Romero

Thu 8/17/2023 11:12 AM

To: Terrie Cook <tmcook@mashpeema.gov>

Cc: Stephanie Coleman <SColeman@mashpeema.gov>; David Morris <DMorris@mashpeema.gov>

Hi Terrie; See email below from Tyler Gaudreau.

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

From: Tyler Gaudreau

Sent: Tuesday, August 8, 2023 2:12 PM

To: Mary Ann Romero <mromero@mashpeema.gov>

Subject: RE: Agenda -Design Review dated Tuesday, August 15th

Attention!: Links contained herein may not be what they appear to be. Please verify the link before clicking! Ask IT if you're not sure.

Hi Mary Ann,

I'll be available this Tuesday but unfortunately have to resign my position as I purchased a home in Sandwich and don't believe I can hold this position any more.

It's been great getting to know everyone and I'm sure I'll see you in the future when my conservation projects cross paths, but I close on September 8th so this will be my last meeting.

Thanks

Tyler Gaudreau

Principal / Owner

Mashpee MA, 02649

Phone : (508) 539-1400

Email :

Web : www.elscapecod.com

From: Mary Ann Romero <mromero@mashpeema.gov>

Sent: Monday, August 7, 2023 3:56 PM

To: David Morris <DMorris@mashpeema.gov>

Jessica Kelley <jkelley@mashpeema.gov>; Ron Bonvici

n; Tyler Gaudreau

; Jonathan Furbush

Subject: Agenda -Design Review dated Tuesday, August 15th



Mashpee Wampanoag Tribe

483 Great Neck Road, South
Mashpee, MA 02649
Phone 508.477.0208 Fax 508.477.1218

August 10, 2023

VIA E-MAIL TRANSMITTAL

Rodney Collins
City Manager
Town of Mashpee
16 Great Neck Road, North
Mashpee, MA 02649

**Re: Petitioner Article – Mr. Brian Weeden
Petitioner Article –Ms. Talia Landry**

Dear Mr. Collins,

On behalf of the Mashpee Wampanoag Tribe, we write to extend our strong support for the following *Petitioners Articles* filed by individual Town of Mashpee citizens and Tribal members for the upcoming Special Town Meeting:

Ms. Talia Landry –To see if the Town will vote to convey Parcel No's: 28-2-0 (35 Lake Avenue), 36-80-0 (409 Main Street), 28-3-0 (415 Main Street) to the Tribe for historical, educational, and cultural uses to construct a true replica of a Wampanoag Village to accurately depict daily life and complement the adjacent Tribal historic sites within the Town's existing Historical District or take any other action relating thereto.

*Mr. Brian Weeden –To see if the Town will vote to; authorize the Select Board to convey, grant and/or release to the Mashpee Wampanoag Tribe of Mashpee, Massachusetts (the "Tribe" the Town's title, rights, or interest in the following described parcels of real property, to file such petitions with the Massachusetts General Court as may be necessary to effect this conveyance, grant or release, and to execute any and all instruments necessary to convey, grant and/or release the Town's title, interest or rights, upon such terms and conditions as the Select Board shall deem to be in the interest of the Town) **Map 68: Parcels: 13B, 14 & 16** (1.63 Acres) for the purpose of expanding the Old Indian Cemetery and support placing this parcel into trust on behalf of the Mashpee Wampanoag Tribe, or take any other action relating thereto.*

Both Petitioners Articles propose the conveyance of the described Town lands for purposes that will not only serve the Tribal Community but the Town, surrounding communities, and visitors. The Town of Mashpee has a rich history inextricably woven with the Mashpee Wampanoag Tribe – the indigenous peoples of these lands. Both Petitions propose uses for the lands that will support enduring historical, educational, and cultural uses that will help to educate the public of the Tribe's history and is supported by grant opportunities.

Neither the Tribe nor its citizens are prohibited from submitting such a request (nor is the Town prohibited from approving each Petition) and the Petitioners deserve meaningful consideration of each Petition. The Tribe applauds the efforts of these citizens to exercise their rights and voices to preserve land – our richest resource. The Tribe is poised to accept title from the Town of the described parcels and to ensure that the specified purposes are duly enforced. The Tribe will also apply for trust status for the described parcels to ensure the lands remain protected within the Tribe's reservation for the future seven generations.

Thank for your time and consideration.

Ahâpây,

A handwritten signature in cursive script, appearing to read "Brian Weeden", written in dark ink on a light background.

Brian Weeden

Chairman, Mashpee Wampanoag Tribe



TOWN OF MASHPEE

OFFICE OF THE SELECT BOARD

16 Great Neck Road North
Mashpee, Massachusetts 02649
Telephone – (508) 539-1401
bos@marshpeema.gov

August 21, 2023

APPROVED

Bonnie Heiple, Commissioner Massachusetts Department of Environmental Protection
Attn: Cathy Coniaris MassDEP Surface Water Discharge Permitting Program
100 Cambridge St., Suite 900
Boston, MA 02114
massdep.npdes@mass.gov

RE: Town of Mashpee Select Board Letter of Support for MassDEP's Draft Determination Denying Holtec International's Application for a Modified Surface Water Discharge Permit

Dear Commissioner Heiple:

At the Mashpee Select Board meeting of August 21, 2023 the Board voted to send a letter of support of the Massachusetts Department of Environmental Protection's (MassDEP) draft determination to deny Holtec International's application for a modified Surface Water Discharge Permit to discharge radioactive and chemically contaminated wastewater into Cape Cod Bay.

The MassDEP's permit denial correctly interprets the Ocean Sanctuaries Act, which explicitly states that discharges such as the one pursued by Holtec are prohibited under state law.

The Cape Cod Bay Ocean Sanctuary was created in 1971 and is a critical ecological, recreational and economic resource for the Commonwealth of Massachusetts.

The Mashpee Select Board urges MassDEP to move forward in finalizing its draft decision based on state law requirements and to issue a final permit denial to Holtec International to prevent Pilgrim Nuclear Power Station wastewater from being released into the Cape Cod Bay Ocean Sanctuary.

Thank you for your consideration.

Sincerely,

John J. Cotton, Chair
Mashpee Select Board

cc: State Senator Susan Moran; State Representative David Viera



TOWN OF MASHPEE

OFFICE OF THE SELECT BOARD

16 Great Neck Road North
Mashpee, Massachusetts 02649
Telephone – (508) 539-1401
bos@marshpeema.gov

August 21, 2023

Governor Maura Healey
Massachusetts State House
24 Beacon Street, Room 280
Boston, MA 02133

APPROVED

Dear Governor Healey,

At the Mashpee Select Board meeting on Monday, August 21, 2023, the Board voted to request your assistance in sustaining the long-term financial viability of a critical source of funding that Mashpee and other towns on Cape Cod rely upon to clean up our coastal waterways and embayments.

Since its inception in 2019, the Cape Cod and Islands Water Protection Fund ("Fund") has awarded approximately \$140 million in subsidies to Cape Cod wastewater and water quality projects. The Fund has helped spur Mashpee and other Cape Cod communities to advance their wastewater planning in earnest. As a result, the Town of Mashpee has begun construction of its first phase of a wastewater management project, building a wastewater resource recovery facility (WRRF) and collection systems.

The Fund played a major role in accelerating the pace of Mashpee's wastewater project – even at the same time of unprecedented inflation and increased project costs. This highlights the impact of the Fund subsidy on Mashpee's ability to advance pollution abatement projects with financing from the Clean Water Trust.

A cash flow model developed in 2021 by PFM Financial Advisors LLC to support administration of the Fund projects the Fund's cash flow based on certain assumptions, including annual tax collections and annual State Revolving Fund (SRF) eligible Clean Water Intended Use Plan (IUP) projects. Initial assumptions to create the model included eligible annual project costs of approximately \$60 million and annual tax collections of approximately \$20 million. The results of the model were supportive of providing a 25% subsidy to eligible projects while maintaining a Fund balance of at least 50% of annual collections.

In 2022 and 2023, the IUP included over \$108 million and \$167 million in wastewater projects from Cape Cod, respectively – which are the greatest amounts we have seen for Cape Cod in a single year. With some adjustments to the financial model, including reducing subsidies from the Fund for projects that have received additional state subsidies from the American Rescue Plan Act and reducing the set-aside for critical water quality monitoring, the Board was able to award 25% subsidies to 2023 IUP projects.

However, based on current assumptions for project costs and revenues, the Board cannot continue to award subsidies at this rate. The Cape Cod and Islands Water Protection Fund Management Board has voted to reduce the subsidy to 12% for 2024 IUP projects, absent any additional sources of funding.

PFM Financial Advisors LLC has modeled for us the additional revenue that is necessary to allow the Fund to remain solvent through FY30. The Fund needs additional revenues of \$5 million in FY24, followed by approximately \$66 million in revenue spread over the following three fiscal years, to allow the Fund to support continuing the 25% subsidy through the end of the decade.

The Town of Mashpee appreciates the Administration and the Legislature's support of the Fund and its commitment to improving water quality in Mashpee and on Cape Cod. The Town looks forward to working with you collaboratively to develop a solution to this important funding challenge.

Should you have any questions, please do not hesitate to reach out.

Sincerely,

John J. Cotton

Chair, Mashpee Select Board

cc: State Senator Susan Moran
State Representative David Vieira



TOWN OF MASHPEE

OFFICE OF THE SELECT BOARD

16 Great Neck Road North
Mashpee, Massachusetts 02649
Telephone — (508) 539-1401
bos@marshpeema.gov

MEMORANDUM

To: Chair John Cotton and the Honorable Members of the Select Board
Town Manager Rodney Collins

From: Terrie M. Cook, Administrative Assistant

Date: August 17, 2023

Re: **Reconsideration of Placing the Article Submitted by the Community Preservation Committee for Funding for an 18-Hole Disc Golf Course on Ashumet Road on the October 16, 2023 Town Meeting Warrant**

NOT RECONSIDERED ★

Reconsideration of the Town Meeting Article that appears below:

Article_

To see if the Town will vote to appropriate and transfer from the Community Preservation Fund Undesignated Fund Balance in accordance with the provisions of M.G.L. Chapter 44B, §5, the sum of \$200,000 for the purpose of funding the 18-Hole Disc Golf Course project at the site 156 Ashumet Road, Mashpee identified on Assessor's Map 26 as Parcel 10 and at the site 162 Ashumet Road identified on Assessor's Map 26 as Parcel 10 (same parcel) including necessary costs and expenses related thereto, as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: The goal of this project is to create an 18-hole disc golf course on 16 acres of Town-owned wooded land supported for use by the Select Board for added recreational opportunities. The proposed course is located within the recreational hub of the Mashpee community adjacent to the Mashpee Dog Park, Heritage Park and the Pickleball Courts. This is a low cost, year-round recreational activity enjoyed by persons of all ages and ability levels. The rules and etiquette of the game is similar to regular golf. A crosswalk and signage would be installed for safety. The noise level is minimum. The course is similar to a trail system with slight alterations. There is no clear cutting of land or turf installation. Overhead and maintenance costs are minimal.

An 18-hole disc golf course can cycle through dozens of players at any given time with little to no backups or delays. The Cape Cod Disc Golf Club would serve as the active stewards of the land and maintain the course under a Memorandum of Agreement and/or through a lease agreement with the Town. Unused funds for this project would be returned to the CPC.

The Community Preservation Committee recommends approval of this Article by a vote of 7-0-1.
(one abstention)

DRAFT OCTOBER 16, 2023 PROPOSED TOWN MEETING ARTICLES

CPC SURCHARGE RATE ADJUSTMENT

WIIF SURCHARGE RATE ADJUSTMENT

DEBT EXCLUSION – DESIGN AND ENGINEERING OF “OPTION 9” OF THE MUNICIPAL WASTEWATER SYSTEM EXPANSION PLAN

Of Note: All Proposed Articles will need approval of Bond Counsel and Town Counsel

Article __ Community Preservation Act (CPA) Surcharge Rate Reduction

X To see if the Town will vote to amend its acceptance of the Massachusetts Community Preservation Act (General Laws Chapter 44B, Sections 3-7) by reducing the annual surcharge imposed on real property in the Town for Chapter 44B purposes from the rate of two percent (2%) to the rate of one per cent (1%) of the real estate tax levy against said property; said reduction to take effect in Fiscal Year 2025, effective July 1, 2024; or take any other action relating thereto.

Submitted by the Select Board

Explanation: This Article proposes an amendment to the Town of Mashpee's acceptance of Massachusetts General Laws Chapter 44B, §§ 3-7, also known as the Community Preservation Act (the "Act"), by decreasing the surcharge imposed on real property from two percent (2%) to one percent (1%) of the tax levy, as determined annually by the Board of Assessors. The Act allows municipalities to impose a surcharge on real property to establish a dedicated source of funds for: the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation, and support of community housing; and for the rehabilitation or restoration of open space and community housing that is acquired or created with Community Preservation Funds.

(Note that for this Article to become effective acceptance of same by ballot question is also required.

See GL c.44B, §16).

Article __ Water Infrastructure Investment Fund (WIIF) Surcharge Rate Increase

X To see if the Town will vote pursuant to General Laws Chapter 40, Section 39M to increase the Municipal Water Infrastructure Investment Fund surcharge on real property in the Town from the rate of two per cent (2%) to the rate of three per cent (3%) of the real estate tax levy against said real property, commencing in Fiscal Year 2025, effective July 1, 2024; said revenues to be expended exclusively for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets, or take any other action relating thereto.

Submitted by the Select Board

DRAFT OCTOBER 16, 2023 PROPOSED TOWN MEETING ARTICLES

CPC SURCHARGE RATE ADJUSTMENT

WIIF SURCHARGE RATE ADJUSTMENT

DEBT EXCLUSION – DESIGN AND ENGINEERING OF “OPTION 9” OF THE MUNICIPAL WASTEWATER SYSTEM EXPANSION PLAN

X **Explanation:** This article proposes an amendment to the surcharge rate for the special fund for infrastructure for wastewater, stormwater and municipal drinking water. The surcharge will increase from two percent (2%) to three percent (3%) on the annual property tax assessed on real property starting in Fiscal Year 2025, which begins on July 1, 2024. Real estate properties that are fully exempt from property taxes are not subject to the surcharge. In addition, taxpayers who receive partial exemptions of the real estate taxes assessed on their domiciles, including certain seniors, veterans, blind persons and surviving spouses, are fully exempt from the surcharge. Taxpayers that receive other exemptions or abatements of their real estate taxes will receive a pro rata reduction in their surcharges.

(Note that for this Article to become effective acceptance of same by ballot question is also required.

See GL c.40, §39M (f)

Article __ (Debt Exclusion Design and Engineering of Option 9 of the Town's Municipal Wastewater System Expansion Plan)

ADDED TO TM WARRANT

To see if the Town will vote to appropriate the sum of \$7,500,000 for the design and engineering of Option 9 of the Municipal Wastewater System Expansion Project in the Town of Mashpee, including all expenses incidental and related thereto; and to meet this appropriation, the Treasurer, with the approval of the Select Board, be authorized to borrow said amount under M.G.L. Chapter 44, sections 7 and/or 8 or any other enabling authority and to issue such bonds or notes as may be necessary for such purpose; provided, however, that this appropriation and debt authorization shall be contingent upon passage of a Proposition 2^{1/2}, so-called, debt exclusion ballot question exempting from the provisions of said Proposition 2^{1/2} the amounts required to pay the principal and interest on bonds, notes or certificates of indebtedness issued for this purpose pursuant to General Laws Chapter 59, §21C(k), or take any other action relating thereto.

Submitted by the Select Board and the Sewer Commission

Explanation: This article would appropriate funds and authorize the borrowing thereof, contingent upon the successful passage of a debt exclusion ballot question, for the design and engineering of Option 9 of the Municipal Wastewater System Expansion Project in the Town of Mashpee. This project is the next step approved by the Sewer Commission and the Select Board in implementing the Town's Watershed Nitrogen Management Plan/CWMP.

(Note that for this Article to become effective authorization of the debt exclusion by ballot question is also required.)

DRAFT BALLOT QUESTIONS FOR PROPOSED NOVEMBER 7, 2023 SPECIAL ELECTION

CPC SURCHARGE RATE ADJUSTMENT;

WIIF SURCHARGE RATE ADJUSTMENT;

FUNDING FOR DESIGN AND ENGINEERING OPTION 9 WASTEWATER SYSTEM EXPANSION PROJECT

Of Note: All Proposed Ballot Questions will need final approval of Bond Counsel and Town Counsel

Proposed Ballot Question for Reduction of Community Preservation Act (CPC) Surcharge from 2% to 1%:

Shall the Town of Mashpee amend its acceptance of Sections 3 through 7, inclusive of Massachusetts General Laws Chapter 44B, also known as the Community Preservation Act, by decreasing the surcharge imposed on real property from two percent (2%) to one percent (1%) of the tax levy, as approved by its legislative body, a fair and concise summary of which action appears below?

Yes ____ No ____

Summary: This ballot question amends the Town of Mashpee's acceptance of Massachusetts General Laws Chapter 44B, §§ 3-7, also known as the Community Preservation Act (the "Act"), by proposing to decrease the surcharge imposed on real property from two percent (2%) to one percent (1%) of the tax levy, as determined annually by the Board of Assessors. The Act allows municipalities to impose a surcharge on real property to establish a dedicated source of funds for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation, and support of community housing; and for the rehabilitation or restoration of open space and community housing that is acquired or created with Community Preservation Funds. The Town Meeting has approved a decrease in said surcharge rate from two per cent (2%) to one per cent (1%) of the annual property tax assessed on real property commencing in Fiscal Year 2025, effective July 1, 2024. This rate decrease shall take effect only upon acceptance thereof by the voters of the Town.

Proposed Ballot Question for Increase of Water Infrastructure Investment Fund (WIIF) Surcharge Rate from 2% to 3%:

Shall the Town of Mashpee increase the Municipal Water Infrastructure Investment Fund water infrastructure surcharge on real property in the Town from the rate of two per cent (2%) to three per cent (3%) of the real estate tax levy against said real property, as approved by its legislative body, a fair and concise summary of which action appears below?

Yes ____ No ____

DRAFT BALLOT QUESTIONS FOR PROPOSED NOVEMBER 7, 2023 SPECIAL ELECTION

CPC SURCHARGE RATE ADJUSTMENT;

WIIF SURCHARGE RATE ADJUSTMENT;

FUNDING FOR DESIGN AND ENGINEERING OPTION 9 WASTEWATER SYSTEM EXPANSION PROJECT

X Summary: Section 39M of Chapter 40 of the General Laws of Massachusetts authorizes the establishment of a special Municipal Water Infrastructure Investment Fund and the imposition of a real property surcharge as a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater, and stormwater infrastructure assets. Town Meeting must approve the water infrastructure surcharge on real property at a rate up to, but not exceeding, three per cent (3%) of the real estate tax levy against real property, as determined annually by the Board of Assessors. The Town Meeting has approved an increase in said real property surcharge rate from two per cent (2%) to three per cent (3%) of the annual property tax assessed on non-exempt real property commencing in Fiscal Year 2025, effective July 1, 2024. This rate increase shall take effect only upon acceptance thereof by the voters of the Town.

Proposed Ballot Question for funding of Design and Engineering for "Option 9 of the Wastewater Project" as approved by the Select Board and Sewer Commission

ADDED TO 11/7/23 ELECTION

Shall the Town of Mashpee be allowed to exempt from the provisions of proposition two and one half, so called, the amounts required to pay for the bonds to be issued in order to fund the design and engineering of Option 9 of the Municipal Wastewater System Expansion Project in the Town of Mashpee, including all expenses and payment of costs incidental and related thereto?

Yes _____ No _____

Summary: If approved by the voters, this Debt Exclusion question would authorize the assessment of property taxes in excess of the amount allowed pursuant to the provisions of Proposition 2 ½, so called, to pay the principal and interest on bonds issued to pay for the design and engineering of "Option 9 of the Wastewater Project in the Town of Mashpee. This funding will continue the implementation of the Town's Watershed Nitrogen Management Plan/CWMP. The estimated cost of the subject design and engineering services is \$7,500,000. The tax increase authorized hereby will remain in effect until the subject bonds are fully paid.

Terrie M. Cook
Administrative Assistant
Tel. (508) 539-1401
tmcook@mashpeema.gov



Office of the Town Manager
Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649

MEMORANDUM

Date: August 17, 2023

To: Town Manager Rodney C. Collins;
Chair John Cotton and Honorable Members of the Select Board

From: Administrative Assistant Terrie M. Cook

Re: October 16, 2023 Annual Town Meeting Warrant – Actions to be taken by Select Board

The articles are numbered, but the numbers are "subject to change" depending upon the Board's action on various articles.

AGENDA ITEMS OLD BUSINESS

- X ➤ Discussion and Reconsideration of Placing the Article Submitted by the Community Preservation Committee for Funding for an 18-Hole Disc Golf Course on Ashumet Road back on the October 16, 2023 Town Meeting Warrant
- Discussion and Approval of adding the Following Articles to the October 16, 2023 Town Meeting Warrant –
 - Option 9 Wastewater Project Design and Engineering Funding Y
 - X - Reduction of Community Preservation Act Surcharge N
 - X - Increase of Water Infrastructure Investment Fund ("WIIF") Surcharge N
- Discussion, Approval and Recommendations of Draft #3 of the October 16, 2023 Town Meeting Warrant

The page numbers and a brief description of each article that requires action appears below:

Article #/

Page #	Description	Submitted by:	Action needed
Article 1, Page 1-2	Floodplain (Fill prohibition)	Planning	Vote to recommend/not recommend
Article 2, Page 2-3	Accessory Apt. 174.45.4(A)	Planning	Vote to recommend/not recommend
Article 3, Page 3	Accessory Apt. 174.45.4(C)	Planning	Vote to recommend/not recommend
Article 4, Page 3	Accessory Apt. 174.45.4(I)	Planning	Vote to recommend/not recommend
Article 5, Page 4-16	Gen Bylaw Tree Preservation	Planning	Vote to recommend/not recommend
Article 6, Page 16	CPC Reserves	CPC	Vote to recommend/not recommend
Article 7, Page 17	Burying Grounds (\$73,640)	CPC	Vote to recommend/not recommend
Article 8, Page 17	Road Taking-Godfrey/Barbary Petition		Vote to recommend/not recommend
Article 9, Page 17-18	Property Transfer to Tribe	Petition	Vote to recommend/not recommend
Article 10, Page 18	Special Permits 174-24	Petition	Vote to recommend/not recommend
Article 11, Page 19	Property Transfer to Tribe	Petition	Vote to recommend/not recommend

**TOWN OF MASHPEE
MASHPEE HIGH SCHOOL
500 OLD BARNSTABLE ROAD
MASHPEE, MA 02649
ANNUAL TOWN MEETING
MONDAY, OCTOBER 16, 2023**

Barnstable, ss:

Greetings to the Constables of the Town,

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and summon the inhabitants of the Town of Mashpee who are qualified to vote in the elections to meet at the Mashpee High School on Monday, the 16th day of October 2023 at 7:00 p.m. for the following purposes:

To act on the articles contained in the following Warrant:

Article 1

To see if the Town will vote to amend the Zoning Bylaws by adding the following new subsections into Article XI: Floodplain Zone Overlay as follows:

§174-67 Prohibitions

The purpose of this section is to encourage use of more resilient, safer, and more environmentally beneficial construction methods in the Floodplain Zone Overlay District. It is not intended to otherwise restrict or prevent construction of a new or redeveloped dwelling or other allowable structure.

No person shall fill, place or dump in any flood hazard area within the Floodplain Zone Overlay District any soil, loam, peat, sand, gravel, rock or other material substance, refuse, trash, rubbish, debris or dredged material for the purposes of raising their first floor elevation to be at or above the base flood elevation. Solid wall foundations with flood vents or pilings are the only acceptable construction methods within the Floodplain Zone Overlay District.

No Letters of Map Revision based on Fill (LOMR-Fs) or Letters of Map Amendment Based on Fill (LOMA-F) will be permitted.

Conventional Title V Septic System technologies shall not be permitted within the Floodplain Zone Overlay District and a Board of Health approved Innovative/Alternative septic system is required pursuant to Board of Health Regulations. For the purposes of this Section any lot which is partially located within the Floodplain Zone Overlay District shall be subject to the fill prohibitions described within §174-67.

§174-67.1 Exceptions to Prohibitions of the Use of Fill in Any Flood Zone

Landscape material up to two feet in depth at the foundation and tapered to meet grade within ten feet (10) of the foundation shall not be calculated towards grade plane and shall not be considered fill as regulated in §174-67 of this Bylaw.

The use of rock for the purposes of reconstructing a revetment or groin shall not be considered fill as regulated by §174-67 of this Bylaw. The reconstruction of such structures shall require all permits and approvals required by applicable local, state, and/or federal laws.

The use of dredged material for beach re-nourishment shall not be considered fill as regulated in §174-67 of this Bylaw but shall require all permits as required by applicable local, state, and/or federal laws.

Any material: soil, loam, peat, sand, gravel, rock or other material substance required for the installation of a Board of Health approved Innovative/Alternative Septic System shall not be considered fill as regulation in §174-67 of this Bylaw.

Submitted by the Planning Board

Explanation: This article would require new construction or redevelopment of homes in the Floodplain Zone Overlay District utilize either a solid-wall foundation with flood vents or pilings for new homes or redeveloped homes. Further it requires that properties touched by the Floodplain install Innovative/Alternative septic systems unless served by a public or private wastewater treatment facility. This Bylaw does not propose to remove the rights of any property owner to build or re-build a new dwelling on lots in the Floodplain Zone Overlay District. If your lot is buildable today, it will remain buildable following the passage of this Article.

The Select Board recommends approval of Article by a vote of

The Finance Committee recommends approval of Article by a vote of 6-0

Article 2

To see if the Town will vote to amend Section 174.45.4 Subsection A of the Mashpee Zoning Bylaw to read as follows:

- A. In order for an accessory apartment to be permitted, in addition to meeting all of the requirements under subsections B-M, the principal dwelling unit or the proposed accessory apartment must be occupied by the property owner identified on the latest recorded or registered deed. The property owner may reside in either the accessory apartment or in the principal dwelling and rent the other unit to a tenant, but may not under any circumstances rent both the principal dwelling and the accessory apartment to tenants concurrently. For purposes of this Bylaw, the term "property owner" shall include: each person who alone or jointly or severally with others: a) has legal title of record to any building, structure, or property subject to this Bylaw, or; b) has care, charge, or control of any such building, structure, or property in any legal capacity, including but not limited to agent, executor, administrator, member or owner of a limited liability company, trustee or guardian of the estate of the record holder of legal title; or c) is a lessor under written agreement; or d) is the mortgagee in possession; or e) is the recognized agent, trustee or other person claiming rights under the record title holder with care, charge, or control of the property as a matter of law or as appointed by the courts. On an annual basis coinciding with the initial date of issuance of the Building Permit, the property owner shall submit to the Building Inspector sufficient evidence to demonstrate the property owner's occupancy of the principal dwelling unit or the accessory apartment.

Submitted by the Planning Board

Explanation: This Article would allow property owners who construct accessory apartments to live in their accessory apartment and rent their principal dwelling to tenants. Current Bylaw language restricts a property owner from residing in the accessory apartment while renting their principal dwelling.

The Select Board recommends approval of Article by a vote of

The Finance Committee recommends approval of Article by a vote of 6-0

Article 3

To see if the Town will vote to amend Section 174.45.4 Subsection C of the Mashpee Zoning Bylaw as follows:

C. Unit Size

The design, installation and use of an accessory apartment shall be secondary and incidental to the principal use of the structure as the owner's home. An accessory apartment may be located within the same structure as said home or constructed within a new or pre-existing detached structure. The gross floor area of the accessory apartment shall be not less than four-hundred and fifty (450') square feet and shall not exceed nine hundred (900') square feet.

Submitted by the Planning Board

Explanation: This Article clarifies the allowed size of an accessory apartment to within a defined range. Currently, the Bylaw allows accessory apartments to be not less than three hundred and fifty (350') square feet and may not exceed 40% of the gross floor area of any principal dwelling. The 40% calculation is confusing and thus this Article is intended on placing a firm minimum and maximum unit size of not less than four-hundred and fifty (450') square feet and not more than nine hundred (900') square feet.

The Select Board recommends approval of Article by a vote of

The Finance Committee recommends approval of Article by a vote of 6-0

Article 4

To see if the Town will vote to amend Section 174.45.4 Subsection I of the Mashpee Zoning Bylaw as follows:

I. An accessory apartment shall not be used for boarding and lodging, or other commercial use. Either the accessory apartment or the principal dwelling to which it is accessory must be rented for periods of at least 12 consecutive months at a time and are prohibited from any use as rental units on a weekly, daily, or monthly basis. Property owners who fail to comply with this requirement shall be subject to a three hundred dollar (\$300) fine each day that this violation persists.

Submitted by the Planning Board

Explanation: This Article would require that any accessory apartment that is created be rented year-round. Current Bylaw states that accessory apartments MAY be rented. This Article requires that they be rented. Additionally, the current rental restriction prohibits rentals of accessory apartments of less than 30 days. This Article proposes requiring property owners to rent to tenants occupying either the principal dwelling or accessory apartment for a period not less than 12 months to be more consistent with the purpose and intent of this section.

The Select Board recommends approval of Article by a vote of

The Finance Committee does not recommend approval of Article by a vote of 5-1

Article 5

To see if the Town will vote to add new Chapter 175: Tree Preservation Bylaw to the Mashpee General Bylaw as follows:

CHAPTER 175: MASHPEE TREE PRESERVATION BYLAW**§175-1 PURPOSE & INTENT**

The Mashpee Tree Preservation Bylaw encourages the preservation and protection of certain trees on residential, commercial and industrial lots during building activities as defined in this Bylaw and monitors for their survival after construction. The preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment and aesthetic character of the Town of Mashpee and its citizens. Trees serve a variety of functions that this Bylaw intends to protect and enhance. These valuable functions include but are not limited to reducing energy consumption, providing shade, improving air quality, providing vital wildlife habitat, erosion control, reducing stormwater runoff, buffering noise pollution, increasing property values, and positively contributing to the visual character of the Town. This Bylaw defines which trees are of preservation value (“Protected Trees”) and designates the area(s) of a lot or parcel where those trees should be protected (“Tree Yard”).

This Bylaw does not prohibit a landowner’s right to remove any protected tree. Removal of protected trees will be authorized so long as the property owner undertakes one of the mitigation options set forth herein. This Bylaw incentivizes the preservation of protected trees by requiring property owners to compensate for any Protected Trees that are removed, either by planting new ones or by contributing to a fund that supports the Town’s tree planting and maintenance efforts.

This Bylaw does not discourage the removal of hazardous trees (as defined herein) for reasons of public health and safety nor does this Bylaw discourage the removal of a tree(s) that by size or otherwise is not subject to the protections set forth herein.

§175-2 DEFINITIONS

The following words, terms, and phrases, when used in this Bylaw, shall have the meaning ascribed to them in this section:

AGGREGATE DIAMETER: The combined diameter of a multiple-trunk tree measured at breast height.

BUILDING ACTIVITY:

One of the following types of work performed on a lot:

- Work performed pursuant to a special permit (as defined in MGL Ch. 40A Sec. 9 and the Mashpee Zoning Bylaw);
- Work performed pursuant to site plan approval (as defined in the Mashpee Zoning Bylaw);
- Construction of a new dwelling (including after razing an existing dwelling);
- Construction of a subdivision;
- Construction of a structure or addition that increases the gross floor area of a residential, commercial, or industrial structure by 50% or more;
- Demolition of a structure(s) with a footprint of 250 square feet or greater;
- Construction of any accessory structures requiring a building permit including but not limited to sheds greater than 200 square feet, detached garages, pools, retaining walls with a height of four feet or greater; or
- Clearing, grading, or other site preparation work performed prior to undertaking any of the above.

**CERTIFICATE OF
EXEMPTION:**

Formal permission granted to proceed with building activity without the need for a tree permit.

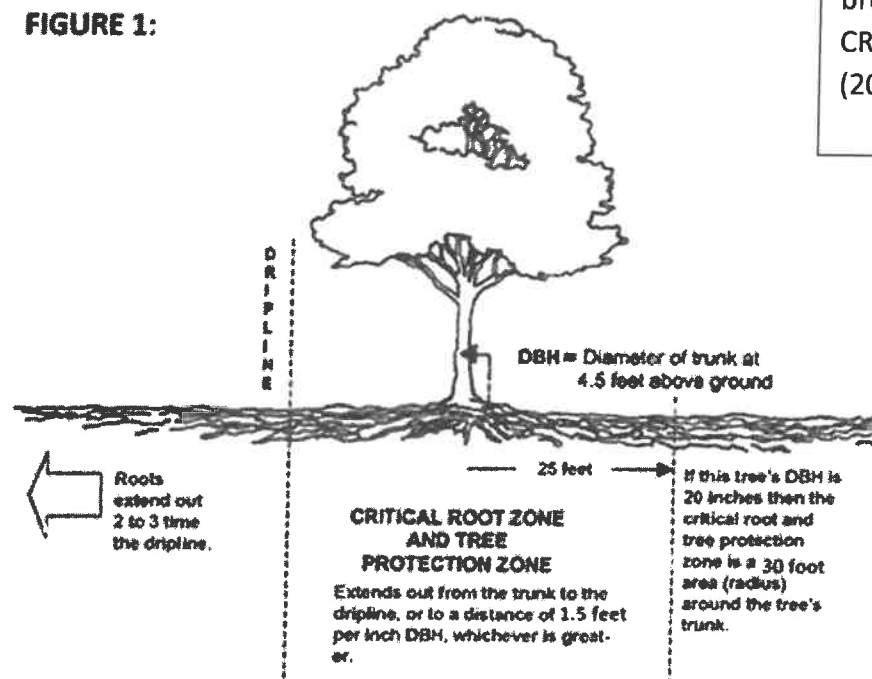
CERTIFIED ARBORIST:

An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

**CRITICAL ROOT ZONE
(CRZ):**

The minimum area beneath the tree canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a circle centering on the tree's trunk and extending outwards towards the tree's dripline. The minimum radius of the CRZ shall be determined by multiplying the tree's diameter at breast height in inches by 18 (1.5 feet per inch DBH).

See Figure 1 on the following page.

CRITICAL ROOT ZONE**FIGURE 1:**

Example: A tree with a diameter at breast height of 20 inches shall have a CRZ of 360 inches or 30'.
(20" x 18" = 360")

Calculating the CRZ:

- First you need to calculate the tree's Diameter at Breast Height (DBH). DBH can be measured using a caliper measuring tool, or for trees that are too large, DBH can be measured by dividing the tree's circumference by pi (π).

$$\text{Diameter} = \text{circumference} / \pi (3.14)$$

- The Critical Root zone extends from the trunk of the tree to its dripline, or to a distance of 1.5 feet per inch DBH, whichever is greater.

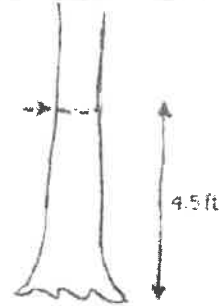
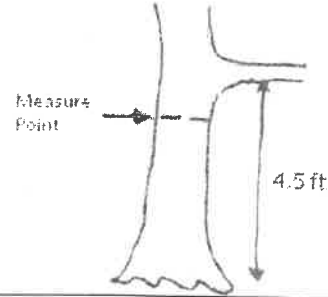
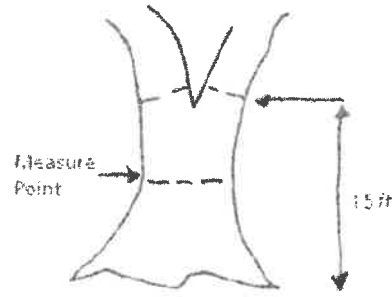
DIAMETER BREAST HEIGHT (DBH):

$$\text{CRZ} = \text{Diameter} * 1.5 \text{ feet (18 inches)}$$

The diameter of the trunk of a tree 4.5 feet above the existing grade at the base of the tree. For trees that have branches or swelling at 4.5' above grade that interferes with measurement or for multi-stemmed trees refer to Table 1 on the following page.

HAZARDOUS TREE:

A tree that is dead, diseased, injured and/or that is dangerously close to existing structures, utilities, streets, sidewalks or other existing improvements or is causing disruption of public utility service, or poses a threat to pedestrian or vehicular safety, or drainage or passage issues upon right-of-way and/or that is harming the health or condition of other trees on the same site.

TABLE 1: HOW TO MEASURE DIAMETER AT BREAST HEIGHT (DBH)	
<p>Standard Tree</p> <p>For those trees on a site that are at least 6 inches in diameter at a height of 4.5 feet above the existing grade at the base of the tree. For trees on a slope, measure on the uphill side of the tree.</p>	 <p>The diagram shows a tree trunk with a horizontal dashed line indicating the measurement point. A vertical arrow to the right of the trunk indicates a height of 4.5 ft from the ground to the measurement point.</p>
<p>Tree has branches or swelling at 4.5'</p> <p>Measure DBH below the branch or swelling immediately below where branches cease to affect diameter of the stem. Record the height at which the diameter was measured.</p>	 <p>The diagram shows a tree trunk with a branch. A horizontal dashed line indicates the measurement point below the branch. A vertical arrow to the right indicates a height of 4.5 ft from the ground to the measurement point. The label 'Measure Point' is next to the dashed line.</p>
<p>Multi-stemmed Trees</p> <p>If a tree splits into multiple trunks below 4.5' above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.</p>	 <p>The diagram shows a tree with multiple trunks splitting. A horizontal dashed line indicates the measurement point at the narrowest point below the split. A vertical arrow to the right indicates a height of 4.5 ft from the ground to the measurement point. The label 'Measure Point' is next to the dashed line.</p>

INVASIVE SPECIES:

Any tree that is listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.

OVERSTORY TREE:

A tree that will generally reach a mature height of more than 40 feet.

PROTECTED TREES:

Any tree with a diameter at breast height (DBH) of six-inches (6") or greater of any one of the species listed in Table 2 on the following page.

Table 2: List of Tree Species that are Protected Trees	
Overstory Species	Understory Species
<i>Atlantic White Cedar (Chamaecyparis thyoides)</i>	<i>American Holly (Ilex opaca)</i>
<i>Black tupelo (Nyssa sylvatica)</i>	<i>Sassafras (Sassafras albidum)</i>
<i>Gray Birch (Betula populifolia)</i>	<i>Eastern Red Cedar (Juniperus virginiana)</i>
<i>River Birch (Betula nigra)</i>	<i>Shadbush (Amelanchier Canadensis)</i>
<i>White Ash (Fraxinus Americana)</i>	<i>Flowering Dogwood (Cornus florida)</i>
<i>Green Ash (Fraxinus)</i>	<i>Cockspur Hawthorne (Crataegus crus-galli)</i>
<i>Red Maple (Acer rubrum)</i>	<i>Sweetbay Magnolia (Magnolia virginiana)</i>
<i>Willow, various species (Salix spp.)</i>	<i>Ironwood (Ostrya virginiana)</i>
<i>Atlantic White Cedar (Chamaecyparis thyoides)</i>	<i>American Hornbeam (Carpinus caroliniana)</i>
<i>Pitch Pine (Pinus rigida)</i>	
<i>White Oak (Quercus alba) and other Quercus species</i>	
<i>Hackberry (Celtis occidentalis)</i>	
<i>American Beech (Fagus grandifolia)</i>	
<i>Tulip Poplar (Liriodendron tulipifera)</i>	
<i>White Spruce (Picea glauca)</i>	
<i>Black Spruce (Picea mariana)</i>	
<i>American basswood (Tilia Americana)</i>	
<i>Black Gum/Sourgum (Nyssa sylvatica)</i>	
<i>Black Cherry (Prunus serotina)</i>	

Removal of Protected Trees shall require a permit before being removed, encroached upon, or in some cases, pruned. Invasive or likely invasive species as defined in this Bylaw are not protected trees.

**REMOVE, REMOVED,
REMOVAL or REMOVING:**

The cutting down of any Protected Tree and all other acts that directly or indirectly result in the death of a Protected Tree prior to any building activity or within two years thereafter, as determined by a certified arborist based on arboricultural practices recommended by the International Society of Arboriculture, including, but not limited to, damaging, poisoning, excessive pruning or other direct or indirect actions.

TREE FUND:

An account established by the Town Accountant to hold the mitigation funds collected under this chapter to be controlled and spent at the discretion of the DPW Director for the purposes of maintaining, acquiring and/or installing trees to beautify the Town and preserve and enhance the character of the community.

TREE YARD:

A defined area along the perimeter of a lot which is equal to the minimum setbacks defined in Section 175-31 of the Mashpee Zoning Bylaw.

TREE PERMIT:

Formal permission granted to proceed with any building activity that affects a Protected Tree(s).

§175-3 APPLICABILITY

All lots in the Town of Mashpee are subject to the Tree Preservation Bylaw unless specifically exempted under Section 175-3(A) below and the project involves at least one building activities as defined in this chapter:

No person shall commence building activity on any lot without first obtaining a Tree Preservation Permit or a Certificate of Exemption from the Planning Department via the Town Planner or his/her designee.

A. EXEMPTIONS

- (1) Properties that are pre-disturbed or previously developed may remove protected trees in the Tree Yard of their property without connection to a building activity. Applicability of this bylaw applies only to those Building Activities as defined.
- (2) Any lot or lots located within wetlands jurisdiction whereas any building activity that may impact protected trees will be subject to the review and approval of the Conservation Commission
- (3) Any building activity not within the definition of "building activity" (i.e., demolition of a shed that is less than 250 square feet).
- (4) If a Certificate of Exemption has been issued by the Planning Department, no Tree Preservation Permit shall be required. The granting of exemption shall be at the discretion of the Town Planner or his/her designee and shall be based on whether the building activity could potentially harm a Protected Tree. If the proposed building activity does not have the potential to harm a Protected Tree, the Town Planner or his/her designee shall issue a Certificate of Exemption.
- (5) Dead, Diseased, or otherwise hazardous Trees - If a Protected Tree is deemed to be imminently hazardous because it is dead, or infested with a disease or pest of a permanent nature or is an immediate danger to the public health, safety or welfare or shall cause an immediate disruption of public services, the tree may be removed without delay. An oral authorization from the Town Planner or his/her or designee to remove the tree shall be permitted and followed up with a written report. In the event that the emergency condition does not allow time to seek prior authorization then the emergency removal of the tree shall proceed with notification to the Town Planner sent by email or U.S. mail within 24 hours of said removal.
- (6) Pruning: A tree permit is not required for pruning of Protected Trees. However, excessive pruning may constitute tree removal.
- (7) Any building activity conducted by the Town or on behalf of the Town of Mashpee.

Waiver: During a period of a bonafide emergency declaration resultant of a significant weather event and/or natural disaster by local or other Act of God, state and/or federal authorities, requirements of this Bylaw shall be waived.

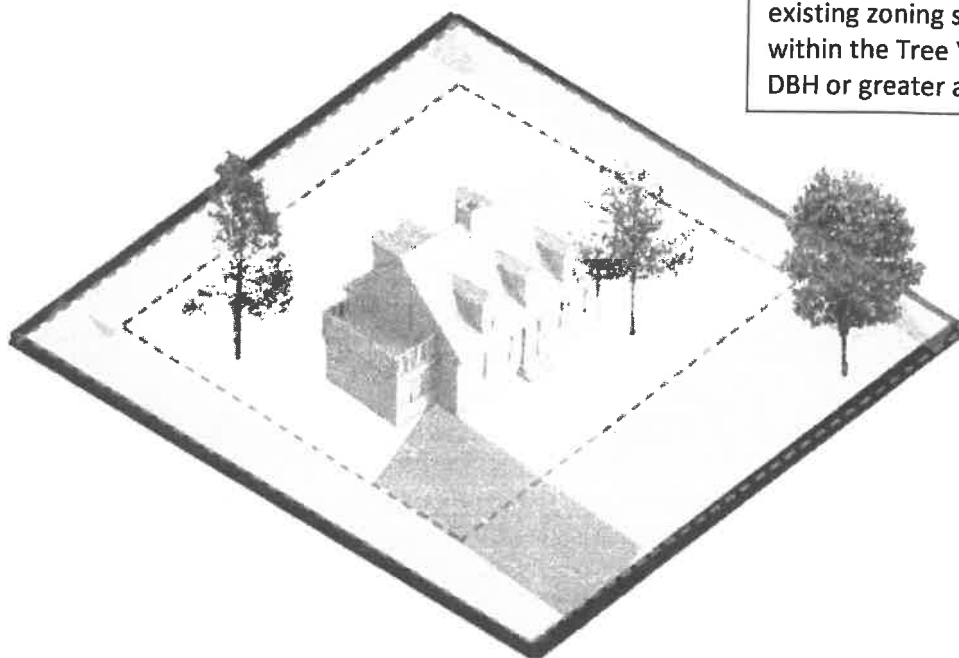
§175-4 IDENTIFYING PROTECTED TREES

The Bylaw defines the Tree Yard to be equal to the minimum front, side, and rear yard setbacks as specified in Table 1 and §175-31 of the Zoning Bylaws of the Town of Mashpee. Any tree with a Diameter at Breast Height (DBH) of 6" or greater as calculated in accordance with Table 1 and within the Tree Yard is considered to be a Protected Tree. Any Protected Trees located within the Tree Yard are to be adequately protected and any Protected Trees located in the Tree Yard proposed for removal shall require adequate mitigation plantings and/or payment to the Mashpee Tree Fund.

Table 3: Tree Yard Locations in Each Zoning District

Zoning District	Minimum Tree Yard (feet)		
	Front Setback	Side Setback	Rear Setback
R-3	40	15	15
R-5	40	15	15
C-1	40	20	40
C-2	75	20	20
C-3	75	20	20
I-1	75	30	50

***For residential parcels subject to a special permit for a cluster development, the tree yard shall be consistent with the applicable setbacks as defined in the recorded special permit decision.**

Figure 2:

Note: The shaded perimeter is the Tree Yard on this parcel - the same as existing zoning setbacks. Trees located within the Tree Yard that are 6 inches DBH or greater are Protected Trees.

§175-5 SUBMISSION REQUIREMENTS FOR A TREE PROTECTION AND MITIGATION PLAN

An approved Tree Protection and Mitigation Plan is required before commencement of any applicable building activity. The Tree Protection and Mitigation Plan is intended to define the Tree Yard and the location(s) of Protected Trees within it and define how the method with which the property owner intends on mitigating for any Protected Trees that are proposed for removal. This Plan may be part of a landscape plan or a separate plan.

All submitted plans must be drawn to a uniform scale (preferably 1"= 10', 1" =20', or 1"=30') and shall be a minimum size of 11" x 17" (preferred) and a maximum size of 24" x 36", with ¾" borders. Font sizes on plans should be no smaller than 1/8". All Tree Protection and Mitigation Plans shall be prepared, stamped, dated and signed by a Registered Land Surveyor. If a plan is submitted by a Registered Landscape Architect, the plan must also be stamped by a Registered Land Surveyor.

At a minimum, the Tree Protection and Mitigation Plan shall include the following elements:

- a) Boundaries of the subject property, including all property lines, easements, and right-of-way of public and private ways;
- b) The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
- c) The location of all planned buildings, driveways, retaining walls and other improvements;
- d) The location of the Tree Yard for projects located in the subject zoning district; and
- e) The location, height, DBH, and species of all existing Protected Trees and all Protected Trees that were removed within 12 months prior to application with an indication of those Protected Trees to be removed and those to be retained, if applicable.

§175-6 ADDITIONAL REQUIREMENTS TO BE SUBMITTED

A. If Protected Trees are intended to be preserved, protected, and retained, the following elements must be added to the Plan:

1. The Critical Root Zone and Dripline shall be shown for all Protected Trees to be retained. **(See Figure 1 above in definitions section).**
2. Submitted plans shall specify the tree protection measures to be installed around the Critical Root Zone.
3. Prior to the commencement of construction, written documentation prepared, stamped, dated and signed by a Certified Arborist must be submitted to the Planning Department confirming the protection measures have been installed correctly and in accordance with any approved plans.
4. Projects that encroach within the CRZ require a maintenance plan which shall be submitted for such trees, prepared, stamped, dated and signed by a Certified Arborist; at a minimum, the maintenance plan shall identify the course of action that will be taken to maintain the tree in good health for a period of no less than 24 months from the date of Final Inspection or issuance of Certificate of Occupancy.

B. If Protected Trees are intended to be removed and compensated for on-site by replanting new trees, the following additional elements must be added to the Plan:

1. The location, DBH, species, and planting schedule of trees to be replanted to mitigate the removal of a Protected Tree(s). New trees of one -half (0.5) inch DBH is needed to mitigate for each one-inch at breast height of Protected Trees proposed for removal. Example: The removal of a 20 inch DBH Protected Tree shall require 10, 2 inch DBH replacements.
2. Each new tree must have a minimum DBH of 2 inches.
3. Replanting must be complete prior to Final Inspection or the issuance of a Certificate of Occupancy.
4. Applicants have the ability to plant on land abutting the applicant's land, with the express written approval of the abutting property owner.
5. Overstory Tree species, if removed, must be replaced with an Overstory Tree species.
6. Invasive tree species as defined in this Bylaw shall not be replanted to mitigate the removal of a Protected Tree and no invasive species will be accepted as mitigation toward the removal of a Protected Tree.

C. If Protected Tree removal is permitted but replanting trees as defined above is not the preference of the property owner, then mitigation may be effected through contribution into the Town of Mashpee Tree Fund as follows:

1. The Town Planner or his/her designee shall determine the amount of the contribution based upon the cost to purchase and install trees. An applicant who has been granted a Tree Permit may choose, in lieu of replanting onsite, to make a contribution to this Fund in an amount equal to planting replacement tree(s). The applicant shall provide to the Board price quotes/estimates from a garden center/nursery for the purchase of trees to establish the required dollar amount as well as from a qualified landscape professional for installation.
2. All sums deposited into the Tree Replacement Fund shall be used for the sole purpose of buying, planting and maintaining trees on public property in Mashpee, and for no other purpose whatsoever.
3. At least once a year the Town Accountant shall audit the receipts and expenses of the Tree Replacement Fund to ensure accuracy and propriety of its transactions.

§175-7 COMBINATION OF OPTIONS

Any combination of Tree Retention, Tree Replanting or Tree Removal with contribution to the Tree Bank can be used. Tree mitigation for those trees removed must be clearly identified either on the submitted plan or in a written document accounting for each DBH of Protected Trees removed and the mitigation proposed. This is not required for tree retention of all trees in the Tree Yard.

§175-8 ADMINISTRATION OF BYLAW

The Town Planner or his/her designee shall administer, implement and enforce this Bylaw and any rules and regulations adopted thereunder. Any powers granted to or duties imposed upon the Town Planner may be delegated to its agents under the Board's direct supervision.

§175-9 AUTHORITY

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes.

§175-10 RULES AND REGULATIONS

The Planning Board may promulgate rules and regulations to effectuate the purposes of this Bylaw. Such rules may prescribe the size, form, contents, style and number of copies of plans for determining final compliance with these regulations. The adoption or amendment of rules and regulations shall be after a public hearing to receive comments on the proposed or amended rules and regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

§175-11 NOTICE OF VIOLATION

Any person who violates any of the provisions of this Bylaw shall be notified by the Town Planner or his/her designee of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and the date by which the Protected Tree(s) is to be mitigated, by planting a replacement tree(s) or payment to the Tree Fund, for purposes of computing the "per diem" violation rule. Any notice of violation shall also be transmitted to the Mashpee Building Commissioner.

§175-12 STOP WORK ORDER

Upon notice from the Town Planner or his/her designee that work on any lot on which a Protected Tree is located is being performed contrary to the provisions of this Bylaw, a written Stop Work Order shall be given to the owner or agent or the person performing work on the property by the Building Commissioner. The Stop Work Order shall state the conditions under which work will be permitted to resume. Upon receipt of the Stop Work Order all work on the subject property that might affect any Protected Trees must cease while a stop work order is pending.

A person, having been served with a stop work order, may be directed to perform work on the said Protected Tree property to remove a violation or unsafe condition.

§175-13 SUSPENSION OR REVOCATION

The Town Planner or his/her designee may suspend or revoke the applicant's Tree Permit at any time if the permit holder has failed to comply with either the Bylaw or the conditions of the permit. Notice may be made via certified or registered mail, return receipt requested, or hand delivered. The notice must provide the applicant an opportunity to correct the non-compliance. This may include remediation or other requirements identified by the Town Planner or authorized monitoring agent, such as the Code Compliance Inspector. Once the project is returned to compliance or remediation completed, if practicable, the applicant may apply for a renewal of the tree permit.

§175-14 IRREPARABLE DAMAGE

If the Town Planner or his/her designee determines that the applicant damaged a tree approved for Retention and Protection during construction to an extent that may significantly compromise its survival and future health, the Town Planner or his/her designee may require the applicant to provide mitigation per the terms of the Bylaw.

§175-15 NON-CRIMINAL FINES

If the Town Planner or authorized monitoring agent, such as the Code Compliance Inspector, identifies any issues of non-compliance, fines will accrue per the Bylaw if not corrected within 30 days. Each consecutive day the non-compliance continues is considered a separate offense.

§175-16 FINES AND PENALTIES

The following actions shall cause the Planning Department to issue a fine to the applicant:

- A. A Protected Tree has been removed without a Tree Permit: The fine shall be in addition to the required payment for the replacement of the tree(s).
- B. Failure to replace trees or make payment to the Tree Fund as required: Each failure to replace a tree or make a payment to the Tree Fund constitutes a separate violation of this Bylaw, subject to a fine. Each day such violation continues after the compliance date specified by the Planning Department in its notice of violation shall constitute a separate offense.
- C. Failure to comply with a condition of the Tree Permit: Each instance of failure to comply with a condition in the Tree Permit shall constitute a violation of this Bylaw which shall be subject to a fine. Each day such violation continues shall constitute a separate offense.
- D. Failure to comply with a condition in a Stop Work Order: Each instance of failure to comply with a condition in a Stop Work Order shall constitute a violation of this Bylaw which shall be subject to a fine. Each day such violation continues shall constitute a separate offense.

E. Fines for the above violations are as follows:

First offense = \$100 per day

Second Offense = \$200 per day

Third Offense = \$300 per day

F. Fines assessed pursuant to this Section shall be enforced and collected in accordance with applicable provisions of law, including the provisions of G.L. c.40, §21D providing for noncriminal disposition of bylaw violations, as implemented by Article III, §1-3 of these Bylaws.

§175-17 SEVERABILITY

The provisions of this Bylaw are severable. If any section, provision or portion of this Bylaw is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this Bylaw shall continue to be valid.

§175-18 CONFLICT OF LAWS

This Bylaw shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87, and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special-permit procedures and to the extent that any provision hereof conflicts with said special-permit procedures, such provision shall not be valid.

§175-19 COMPLIANCE WITH ALL STATE AND LOCAL REGULATIONS

Complying with the terms of this Bylaw shall not relieve the owner of the subject property from complying with any other pertinent regulation, including but not limited to all state and local wetlands-protection regulations.

§175-20 ENFORCEMENT

The Town Planner or his/her designee is hereby authorized to enforce all provisions of the Mashpee Preservation Tree Bylaw and may designate monitoring and enforcement agents to include but not be limited to the Code Compliance Officer, the Town Planner, the Conservation Agent, Building Inspector/Commissioner.

§175-21 APPEALS

Any person who has been aggrieved by refusal, order, or decision of the Town Planner or his/her designee, may appeal to the Planning Board within 20 days from the date of such refusal, order or decision.

Submitted by the Planning Board

Explanation: This Article would establish a program intended to incentivize the protection of certain trees on residential, commercial, and industrial lots in the Town of Mashpee. It would require, prior to any building activities, the submission of an application and plan to the Planning Department that identifies trees that qualify as "Protected Trees" as defined in this Article. This Article does not prohibit any property owner from removing any tree, protected or not, from their property, however if a protected tree is proposed for removal, it will require either a payment into a Town Tree Fund to be created or replacement of the protected tree with a suitable species in accordance with this chapter. This would eliminate the ability for property owners to "clear-cut" their lot prior to a building activity and or/without connection to any building activity. The Article is intended to encourage the preservation of existing trees for their environmental benefits and positive impact on the character of the community.

The Select Board recommends approval of Article by a vote of
The Finance Committee recommends approval of Article by a vote of

Article 6

To see if the Town will vote to reserve from the FY 2024 estimated Community Preservation revenues pursuant to the provisions of M.G.L. Chapter 44B, §6 the following amounts:

\$127,946	10% for Open Space/Recreational Purposes
\$127,946	10% for Historic Preservation Purposes
\$127,946	10% for Affordable Housing Purposes
\$855,615	to the FY 2024 Community Preservation Fund Budgeted Reserve

as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: This article is required annually to set aside the 10% Reserves of the estimated Community Preservation Funds for Open Space/Recreation Purposes, Historic Preservation Purposes and Affordable Housing Purposes and to fund the Budget for Appropriation Reserve.

The Community Preservation Committee voted to approve this article to set aside the 10% Reserves and Budget for Appropriation Reserve to be available for use in fiscal year 2024 as certified by the Finance Director and reflected in the FY 2024 CP-1. The total FY24 appropriation to the 10% Reserves and Budget for Appropriation Reserve is \$1,239,453.

The Community Preservation Committee recommends approval of Article_ by a vote of 6-0.

The Select Board recommends approval of Article by a vote of
The Finance Committee recommends approval of Article by a vote of

Article 7

To see if the Town will vote to appropriate and transfer from the Community Preservation Fund 10% Historic Reserve in accordance with the provisions of M.G.L. Chapter 44B, §5, the sum of \$73,640 for the purpose of funding the Ancient Burying Grounds Restoration project as follows; Avant Burial Ground, Main Street; Map 47, Parcels 7 & 7A; Attaquin Burial Ground, Main Street, Map 27, Parcel 41; Pocknett Burial Ground, Meetinghouse Road, Map 45, Parcel 12 including necessary costs and expenses related thereto, as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: The goal of the Ancient Burying Ground project sponsored by the Mashpee Historical Commission will restore and rehabilitate the historic sites adhering to the citizens of the Town of Mashpee by vote of Town Meeting on January 29, 1975, Article 29 and at the May 2, 2022 Town Meeting, Article 13 to protect and preserve all Ancient Cemeteries and Burial Grounds. As Ancient Cemeteries they would be eligible for placement on the state and national historic register.

The Community Preservation Committee recommends approval of Article__ by a vote of 8-0.

The Select Board recommends approval of Article by a vote of

The Finance Committee recommends approval of Article by a vote of 6-0

Article 8

To see if the Town will vote to authorize and empower the Select Board to prepare a plan laying out and defining **GODFREY ROAD and BARBARY CIRCLE** to accomplish said purpose and for expenses related thereto, the Town vote to appropriate and transfer from revenue available for appropriation **\$20,000** to the **GODFREY ROAD and BARBARY CIRCLE** Roadways Account, or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Steven J. Votta)

Explanation: This article authorizes the Town to layout and define Godfrey Road and Barbary Circle and to appropriate funding for this purpose.

The Select Board recommends approval of Article by a vote of

The Finance Committee recommends approval of Article by a vote of

Article 9

To see if the Town will vote to; authorize the Select Board to convey, grant and/or release to the Mashpee Wampanoag Tribe of Mashpee, Massachusetts *(the "Tribe" the Town's title, rights, or interest in the following described parcels of real property, to file such petitions with the Massachusetts General Court as may be necessary to effect this conveyance, grant or release, and to execute any and all instruments necessary to convey, grant and/or release the Town's title, interest or rights, upon such terms and conditions as the Select Board shall deem to be in the interest of the Town)* **Map 68: Parcels: 13B, 14 & 16 (1.63 Acres)** for the purpose of expanding the Old Indian Cemetery and support placing this parcel into trust on behalf of the Mashpee Wampanoag Tribe, or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Brian Weeden)

Explanation: In 2008 at Town Meeting the “Town” authorized the Selectmen release title to the “Tribe” for “Old Indian Cemetery”. This article will authorize the Select Board release parcel (Map 68 Block 13C) to The Mashpee Wampanoag Tribe for the purpose of expanding the current cemetery.

This Article will help to expand the Old Indian Cemetery located on the Mashpee Wampanoag Tribe’s Reservation located at 410 Meetinghouse Rd and support placing the parcel into trust on behalf of the Mashpee Wampanoag Tribe for future generations of Mashpee Wampanoag Tribal Citizens and families.

The Select Board recommends approval of Article by a vote of
The Finance Committee recommends approval of Article by a vote of 5-1

Article 10

To see if the Town will vote to amend the Zoning Bylaws on Special Permit Use §174-24(C)(9)(g) to strike the words “(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the zoning bylaw applicable to the land at the time of approval of said modification, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the zoning bylaw applicable to the expanded land area at the time of approval of said modification,” and replace with the words “(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the current zoning bylaw applicable to the land at the time of application for said expansion, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the current zoning bylaw applicable to the expanded land area at the time of application for said expansion,” or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Arden Russell)

Explanation: Several large-scale developments were permitted decades ago by special permit. Several important zoning bylaw changes have occurred since then. This article would require that when a development expands its land area via special permit, the expansion must comply with current zoning bylaws.

The Select Board recommends approval of Article by a vote of
The Finance Committee recommends approval of Article by a vote of

Article 11

To see if the Town will vote to convey Parcel No: 28-2-0 (35 Lake Avenue), 36-80-0 (409 Main Street), 28-3-0 (415 Main Street) to the Tribe for historical, educational, and cultural uses to construct a true replica of a Wampanoag Village to accurately depict daily life and complement the adjacent Tribal historic sites within the Town’s existing Historical District, or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Talia Landry)

Explanation: This article approves transfer of Town Parcels to the Tribe to recreate an accurate Wampanoag home site (circa 1700s) to traditionally educate the Tribal community and general public on Wampanoag history through interactive pre-contact exhibits. Such traditional structures support cultural preservation and conservation efforts encouraged by the Town’s planning efforts.

The Select Board recommends approval of Article by a vote of
The Finance Committee makes no recommendation of Article by a vote of 4-2

THIS CONCLUDES THE BUSINESS OF THE ANNUAL TOWN MEETING

And you are hereby directed to serve this Warrant by posting up attested copies thereof, one at the Town Hall, one at the Post Office, and one each on the bulletin boards, thirty days at least before said meeting.

Hereof fail not and make return of this Warrant with your doings thereon to the Town Clerk at the time and place of said meeting.

Given under our hands this 28th day of August in the year two thousand and twenty-three.

Per Order of,
Select Board

John J. Cotton, Chair

Thomas F. O'Hara, Vice-Chair

Carol A. Sherman, Clerk

David W. Weeden

Michaela Wyman-Colombo