

copy of the

LEASE

between

the Town of Chilmark
&
the Chilmark Town Association, Inc.

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L E A S E

To Town

WHEREAS, the Town of Chilmark, Dukes County, Massachusetts, needs a Town Beach for the use of its residents; and

WHEREAS, the Chilmark Town Association, Inc., a Massachusetts civic charitable corporation with its principal place of business in Chilmark, Dukes County, Massachusetts, formed and existing for the benefit of the Town of Chilmark, acquiring property owned by the Estate of Lucinda P. Vincent for a Town Beach, and leasing such Beach, access road, parking area and appurtenant premises to the Town for the benefit thereof and of its residents; and

WHEREAS, the Town of Chilmark and the Chilmark Town Association, Inc. wish to protect and preserve the Beach and appurtenant surrounding premises in the existing natural condition thereof, including the fragile features of the Beach, the cliffs, dunes, dune grass, trees and other flora and fauna thereon and of the appurtenant and surrounding premises and in connection therewith to preserve and protect the ecological features of the Beach and appurtenant and surrounding premises.

NOW, THEREFORE,

CHILMARK TOWN ASSOCIATION, INC. (hereinafter referred to as Landlord, both in its capacity as lessor and sublessor) hereby leases to the Town of Chilmark, a municipal body politic

located in said Dukes County (hereinafter referred to as Tenant) both in its capacity as tenant and subtenant) certain premises (hereinafter referred to as the Premises) described in Exhibit A hereto, located in said Chilmark and shown on the plan entitled "Plan of Land in Chilmark, Mass. as surveyed for Estate of Lucinda P. Vincent", dated October, 1970, revised February 11, 1972 by Schofield Bros. Associates, Inc., a copy of which is attached hereto as Exhibit B, consisting of the Beach Tract of land No. 3 on said Plan owned by Landlord together with the access road, parking area and footpath shown on said plan leased by Landlord, for a term of Ninety-nine (99) years, commencing January 1, 1972 and expiring December 31, 2070 (hereinafter, as and if extended as provided in Section F of this Lease, referred to as the Term) unless sooner terminated as hereinafter provided.

Tenant shall pay to Landlord at least 30 days before the last day real estate taxes may be paid without penalty or interest, an amount or amounts equivalent to the real estate taxes, if any, assessed during the Term of this Lease on all or any part of the Premises.

Section A.

Tenant warrants that it has any and all requisite authority to enter into this Lease and covenants that during the Term it shall:

1. Pay the rent, if any, at the times and in the

manner specified;

2. Use the Premises for recreation purposes only and maintain them in their existing natural condition subject to the provisions of this Lease;

3. Prohibit the erection of any structure or commercial facility, including, without limitation, foodstands, bathhouses, etc. or use of the Premises for any commercial activity, except as expressly provided in this Lease.

4. Limit the use and enjoyment of the Premises to residents of the Town of Chilmark who have purchased a Beach Permit and members of their immediate families and their guests;

5. Annually determine, through its Board of Selectmen, a charge for beach permits (hereinafter referred to as Beach Permits) provided that in no event shall voting residents or their families pay less than \$5.00 per year and non-voting residents or their families less than \$5.00 per month for the months of June and September and \$10.00 per month for the months of July and August for a Beach Permit in each case in each year. All charges will be subject to periodic upward or downward adjustment within the discretion of the Board of Selectmen to reflect increases or decreases in maintenance and other costs of operation of the Premises but in no event shall such charges be less than the above specified minimums. No

inn, boarding house, hotel or motel operating within the Town shall be entitled at any one time to more than 15 Beach Permits for all its guests. Anything to the contrary hereinabove provided, the Board of Selectmen shall have the right to grant upon payment of charges equal to those applicable to non-residents, not more than 6 permits each year for use of the Beach to employees of, or other persons connected with or related to, the Town who are nonresidents and who the Board of Selectmen determine should be allowed to use the Beach because of their special connection or relationship to the Town.

6. Collect all sums for Beach Permits and keep them in a segregated account and use such sums exclusively for the improvement, maintenance and policing of the Premises and of the premises leased to the Tenant at Squibnocket so long as those premises are leased to the Tenant and furnish Landlord, an annual accounting of such sums within a reasonable time after the close of Tenant's fiscal year; and provide any additional funds, if required, to carry out its undertakings contained in this Lease;

7. Permit no person on the Premises without showing a Beach Permit unless such person is a guest and accompanied by a person having and showing such Permit;

8. Limit the use of the Premises to the hours between 9:00 A.M. and 6 P.M. except that Tenant's Police

Chief may grant special permission at other times for beach parties, fishing, birdwatching and nature studies, provided no more than 30 persons shall be given such permits for any single early morning or late evening period; and permit the use of the Premises from October 1 to May 31 only by special written permits issued by the Police Chief of Tenant in accordance with rules and regulations to be determined by the Board of Selectmen of Tenant, no more permissive than those provided for in Section 11 below.

9. Grant no special permission for beach parties beyond 11 P.M.;

10. Permit no fire on the Premises without obtaining a special permit therefor from Tenant's Fire Chief with all fires to be only between high and low water on the beach at least 600 feet or more from the westerly end of the Premises, no permit for any fire to be issued without a \$20 deposit to assure cleanup and removal of all debris and litter resulting from the fire and beach party; and a sign to be erected on the beach at such 600 foot line;

11. Take the steps necessary, including without limitation, the policing of the Premises and levying of fines for violators to prevent:

a. Use of the Premises, except by Special Permission, after 6 P.M. and before 9 A.M.;

b. Use of the Premises by those who have not ob-

- tained a Beach Permit unless they are the guest of a person with a Beach Permit and accompanied by such person;
- c. Parking of vehicles on South Road within 1 mile of the entrance from South Road to the Premises or anywhere on the Premises except diagonally on the two 16-foot strips on either side of the 20 foot traveled way on that portion of the Premises located and designated on Exhibit B as "Parking Area and Way" and consisting of two strips of land, each about 900 feet long and 16 feet wide on both sides of said 20-foot traveled way, said "Parking Area and Way" being along the stone wall on the northerly side of the Premises;
 - d. Public or tour buses or campers entering upon the Premises;
 - e. Motor vehicles, jeeps and bicycles from traveling and parking on the Premises except in the Parking Area and motorcycles, beach buggies and campers from traveling and parking anywhere on the Premises and except for vehicles required (a) in an emergency and (b) for construction by the Town on the Premises authorized by the Lease while such construction is in process;
 - f. Accumulation of litter on or near the Premises;
 - g. Dogs, Horses or any other domestic animals coming on to the Premises;
 - h. Damage to the flora and fauna on the Premises;
 - i. Damage to the cliffs, knoll, dunes and beach

- caused by people and particularly the climbing upon the cliff face , the knoll arising between the beach and the pond, or the removal of sand or clay therefrom;
- j. Trespassing on property adjacent to the Premises to the best of Tenant's ability, including prompt and effective action upon complaints of trespassing;
 - k. Damage or defacing of the structures erected by Tenant as hereinafter provided;
 - l. Driving on the road included in the Premises at more than 10 miles per hour or otherwise in a dangerous or reckless manner;
 - m. Use of the Premises by anyone under the influence of alcohol or drugs;
 - n. Having dust arising from cars on the road and parking area by not spreading calcium chloride or oil or otherwise;
 - o. Surfing, fishing or motor or other boating from the Premises except as authorized by rules and regulations established pursuant to Paragraph 23 of this Section A below; and
 - p. The launching of motorboats from the Premises into Chilmark Pond and the use of motorboats in Chilmark Pond as a means of access to any portion of the Premises;
12. Provide uniformed employees with radio equipment to police the entire Premises adequately, as set

forth in Paragraph 11 of this Section A above, including extra personnel on weekends and holidays;

13. Not erect any building or structure on the Premises, except for a small, wooden, one-story comfort station in the Parking Area within not more than 200 feet from the north-east end thereof with space therein for first aid, telephone, lifesaving and police equipment used to carry out the provisions of this Lease, and wooden stairs from the lowest practical point on the cliff down to the beach, all of which shall be constructed at Tenant's expense; and at Tenant's option to construct rip-rap protection where required of the Beach;

14. At its expense, construct and maintain an adequate sanitary system for the comfort station in order to prevent pollution of the natural ground water and the adjoining pond and stream;

15. At its expense, construct and maintain the access road and Parking Area from South Road to the circle and the walking path to the beach as located and shown on Exhibit A and all of which has been so located to follow the contours of the land for safety, convenience and protection of its natural condition;

16. At its expense, place all utility lines on the Premises, if any, underground, provided that the Tenant shall have the right to connect with any utility lines installed or caused to be installed by the owner of any lot in Parcel 1 as such Parcel is shown on said plan so long as such connection can be made without adverse

effect upon such owner's utility lines and without expense to the owner or upon payment of all such expense;

17. At its expense, construct and maintain a six-foot wide meandering path within the twenty-foot way between the circle and the stone wall as shown on Exhibit B;

18. At its expense, construct and maintain locking gate, chain or other reasonable means to prevent unauthorized access to the Premises and to be located at the entrance on South Road or the entrance to the Parking Area at a site to be agreed upon jointly by the Tenant and the Owners of the above described Access Road, Parking Area, and Footpath;

19. At its expense, erect and maintain signs delineating the boundary between the Premises and adjacent private properties (including, without limitation, signs between the "Town Beach" and "Private Beach" areas) and forbidding persons from trespassing and climbing or defacing the cliffs;

20. At its expense, provide adequate trash receptacles;

21. At its expense, plant and maintain trees and shrubs in order to provide attractive dense planting to screen the road, parking area, circle, footpath and comfort station from adjoining properties and prevent trespassing on adjacent private properties, which planting

shall be along both 15-foot sides of the access road, the 18-foot southerly side of the Parking Area strip, for 15 feet all around the comfort station, for the 15 feet on both sides of the approach to the circle, in the center of the circle itself, along both sides of the footpath, and along the stone wall boundary line of the Premises to the cliff or in lieu of such planting rebuild the stone wall to a height of 4 feet more or less; and restore promptly planting and/or surface cover to the extent possible as a result of road or parking lot construction or other subsequent damage.

22. Not park or store any road equipment or materials on the Premises, except those temporarily parked or stored for short periods of time while being used, and except construction equipment while in use;

23. Provide and erect signs setting forth rules and regulations for the use of the Premises in accordance with the provisions of this Lease;

24. Keep the comfort station, sanitary system, stairs, signs and any other structures incidental thereto, well painted and in good order, condition and repair;

25. Prevent litter accumulation on or near the Premises and maintain the premises in a neat and clean appearance;

26. Comply with all laws, ordinances, rules and regulations of the United States, the Commonwealth of

Massachusetts, the County of Dukes, and any other public authority lawfully exercising jurisdiction, if any, over the Premises;

27. Not sublet the Premises or any portion thereof;

28. Not hold Landlord and the landlord of the portion of the Premises sublet by this Lease responsible for any loss or damage to persons or property on the Premises unless caused by wrongful act or negligence of Landlord or landlord of the portion of the Premises sublet, respectively;

29. Save Landlord and landlord of the portion of the Premises sublet by this Lease harmless and indemnified from any liability for injury, loss, accident or damage to any persons or property and from any claims, actions, proceedings and cost in connection therewith, including reasonable counsel fees, arising from wrongful act or negligence of Tenant, or arising from any use made or thing done on or about the Premises or otherwise occurring thereon, and not due to any omission, fault, negligence or other misconduct of Landlord or landlord of the portion of the Premises sublet by this Lease, respectively, provided, however, that the Tenant shall determine to what extent, if any, it will carry insurance other than that specified in the next succeeding paragraph.

30. At its own expense, purchase and maintain

public liability insurance in amounts not less than \$1,000,000/\$3,000,000 and other insurance, if any, to assure the obligations of Landlord and landlord of the portion of the Premises sublet by this Lease provided in the preceding paragraph 29 or such other greater coverage as the Board of Selectmen may from time to time determine, in its discretion, to be appropriate to adjust for inflation, naming both Landlords and Tenant as insureds, provide both Landlords at their request with certificates of such insurance and endorse the policy so that it may not be cancelled without 30 days' prior written notice being sent to both Landlords;

31. Permit Landlord to examine the Premises at reasonable times;

32. At its option at the expiration of the Term, either remove the comfort station, stairs, signs and any other structures incidental thereto or leave them upon the Premises and peaceably and quietly surrender possession of the Premises to Landlord and release all right, title and interest of all such property not removed at the option of the Tenant from the Premises;

33. Protect and preserve the Premises in their existing natural condition, except to the extent otherwise hereinabove specifically provided, including, without limitation, the fragile features of the Premises, the cliffs, dunes, dune grass and other flora in order

to prevent damage thereto from all persons including those authorized to use the Premises; and

34. Cooperate in enforcing complaints by property owners adjoining the Premises against trespassers.

35. Not recommend or participate in any proceedings or take any action for the acquisition or establishment by any governmental authority of any public beach to the westward between the Premises and Squibnocket Point and to the eastward between the Premises and the Beach at the easterly end of Chilmark Pond.

Section B.

Landlord covenants that during the Term it shall warrant and defend Tenant's right to quiet enjoyment and possession of the Premises so long as Tenant shall have faithfully observed all of the terms and conditions of this Lease subject only to:

1. The right of the beneficiaries under the Will of Lucinda P. Vincent, Dukes County Probate No.

D7/4355; namely:

Natalie A. Vincent of Schenectady, New York;
Robert W. Vincent of Quincy, Massachusetts;
Almeda Reed of Tisbury, Massachusetts;
Rodney Reed of Athens, Georgia;
Charlotte C. and Theodore Joseph of Falmouth, Massachusetts;
Monroe Joseph of West Yarmouth, Massachusetts;
Alice M. Swartz of said Tisbury;
Faye N. Gilmour of Stuart, Florida;
Harriet Malone of Cranston, Rhode Island;
William Mosher of Providence, Rhode Island;
William E. B. Vincent of Schenectady, New York; and
Florence L. Flanders of Tisbury, Massachusetts,

to use the Premises to the same extent as any holder of

a Beach Permit, whether a resident of Chilmark or not and without having to purchase a Beach Permit but otherwise subject to rules and regulations provided in this Lease;

2. Federal, State, County and Town laws, by-laws and regulations affecting the use of the Premises; and

3. The provisions of a Lease of a portion of the Premises by Ralph H. Meyer, Robert S. McNamara, Richard Hodgson and David Ginsburg, as Tenants in Common, to Chilmark Town Association, Inc., dated the date hereof and which is recorded immediately prior to the recording of this Lease.

Section C.

This Lease is upon the condition that in the event of any breach of any covenant to be observed by Tenant, or in the event the Premises are taken from Landlord by eminent domain, Landlord may immediately or at any time thereafter terminate this Lease without prejudice to any other remedies or claims in favor of the Landlord arising prior thereto under this Lease, provided, however, that prior to any termination of this Lease for any breach by Tenant thereof, Landlord shall give written notice of the breach by registered mail to Tenant and to each of the incumbent Selectmen of the Town and shall not be entitled to terminate this Lease if Tenant shall either have cured or remedied the breach within thirty days after receipt of such notice thereof, or if the Tenant shall have commenced, but shall not have completed the curing or remedying of such breach

within the initial thirty-day period, then, upon furnishing the Landlord with a written report of the steps taken by the Tenant during the initial thirty-day period to cure or remedy the breach, the Tenant shall have an additional thirty-day grace period to complete the curing or remedying of such breach, and if an expenditure to cure or remedy such breach shall require authorization by a Town meeting, an additional thirty-day grace period shall be available to cure or remedy the breach, provided, however, that if any such breach shall involve construction on the part of the Tenant which cannot be completed within the aforesaid periods in the exercise of due diligence, the Tenant shall have an additional forty-five day grace period to cure or remedy the breach, and provided further that if any subsequent breach hereinabove referred to in this paragraph shall occur which is the same kind of breach as shall have occurred previously and shall not have been cured or remedied by Tenant in accordance with the above-outlined provisions of this Paragraph, Landlord shall be entitled to terminate this Lease if Tenant shall not have cured or remedied such subsequent breach within thirty days after receipt of such notice thereof. No default or breach under this Lease shall be deemed to have been cured or remedied by the Tenant as the result of passage of time or change of circumstances but only shall be deemed to have been cured or remedied as the result of affirmative timely action taken by the Tenant in accordance with the above-outlined provisions of this Paragraph. Upon any breach

referred to in this Paragraph being cured or remedied as hereinabove in this Paragraph provided, this Lease shall thereafter continue in full force and effect.

Landlord shall be entitled to all damages awarded in the event of a taking, other than any damages attributable to any improvements upon the Premises constructed and maintained by the Tenant.

Section D.

Tax payments and all written communications sent to Landlord by mail shall be addressed to:

Chilmark Town Association, Inc.
c/o Joseph G. Kraetzer, President,
Wade's End,
Chilmark, Massachusetts 02535

Written communications to Tenant sent by mail shall be addressed to:

Town of Chilmark,
Town Hall,
Chilmark, Massachusetts 02535.
Attention: Board of Selectmen.

Section E.

In case any disagreement between Landlord and Tenant arises under this Lease, the matter in dispute shall, upon the request of either party, be submitted to the decision of a majority of three arbitrators, one to be appointed by Landlord, one by Tenant, and the third by the two so chosen. Landlord and Tenant agree that they will appoint their respective arbitrators within ten days of the date on which the need for

arbitration arises; that the decision by the arbitrators shall be a condition precedent to any right of legal action which either party may have in that case against the other; that except as herein otherwise expressly provided, the provisions of Chapter 251 of the General Laws of Massachusetts shall apply to the arbitration; that the decision of the arbitrators shall be filed in the Superior Court for Dukes County, Massachusetts, where a judgment shall be entered; that such judgment shall be final; that each party will do all things reasonably proper and necessary promptly to secure a decision; and that the expenses of the arbitration shall be borne equally by Landlord and Tenant.

Section F.

Tenant shall have the right and option to extend the Term of this Lease for one additional period of 99 years, from January 1, 2071 to December 31, 2169, provided:

1. No default in the obligations of Tenant under this Lease exists at the time such option is exercised, and

2. Tenant gives notice in writing to Landlord of its exercise of the option after December 31, 2060, and before December 31, 2065.

All terms and provisions of this Lease shall be applicable during the extended term hereof.

Section G.

This Lease may not be amended except by a written instrument executed by the parties hereto and approved by a three-fourths (3/4) vote of all the then members of Landlord and a three-fourths (3/4) vote of those present and entitled to vote at any annual or special Town Meeting of Tenant.

Section H.

In the event that any provision of this Agreement shall have been determined to be invalid, all of the other provisions thereof shall nevertheless remain in full force and effect.

WITNESS the execution hereof in duplicate under seal this 14th day of August, 1972.

CHILMARK TOWN ASSOCIATION, INC.

By: _____

TOWN OF CHILMARK

By: _____

Board
of
Select
men

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

1972

Then personally appeared the above-named
and acknowledged the foregoing instrument to be
the free act and deed of Chilmark Town Association, Inc.
before me,

Notary Public

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

1972

Then personally appeared the above-named Herbert R.
Hancock, Louis King and Edward Maynew, Jr., and acknowledged
the foregoing instrument to be their free act and deed as
Selectmen of the Town of Chilmark, and the free act and deed
of the Town of Chilmark, before me,

Notary Public