PERMITTED MORTGAGE AGREEMENT

This Agreement is made by and among:

Martha’s Vineyard Savings Bank (“Mortgagee”),

Town of Chilmark (“Lessor”), and

Gerald Caton (“Lessee/Mortgagor”)

**Whereas**:

1. Lessor and Lessee have entered, or are entering, into a ground lease (“the Ground Lease”), conveying to Lessee a leasehold interest in the premises located at 11 Ridge Hill Road, Chilmark, MA 02535, as further described in the Ground Lease (“the Leased Premises”); and Lessee has purchased, or is purchasing, the improvements located on the Leased Premises (“the Improvements”)..
2. The Mortgagee has been asked to provide certain financing to the Lessee, and is being granted from Mortgagor concurrently herewith a mortgage and security interest (the “Mortgage”) in the leased premises and Unit, all as more particularly set forth in the Mortgage recorded herewith in the principal amount of $243,000.00.
3. The Ground Lease states that the Lessee may mortgage the Leased Premises only with the written consent of Lessor. The Ground Lease further provides that Lessor is required to give such consent only if the terms of the mortgage and related documentation include certain conditions that are stipulated in the Ground Lease (“the Stipulated Conditions”).
4. The Lessor would be unwilling to consent to the Mortgage unless the Lessee/Mortgagor and the Mortgagee agree to the inclusion of the Stipulated Conditions among the terms and conditions of the Mortgage.

**Now, therefore,** the Lessee/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below, and the Lessor hereby consents to the Mortgage with the Stipulated Conditions and confirms that the Mortgage with such conditions is a Permitted Mortgage and that the holder of the Mortgage is a Permitted Mortgagee and shall have all of the rights granted to a Permitted Mortgagee by the Ground Lease.

**Stipulated Conditions:**

1) In the event of a default in any of the Mortgagor’s obligations under the Mortgage, the holder of the Mortgage shall notify Lessor of such fact and Lessor shall have the right (but not the obligation) within 120 days after its receipt of such notice, to cure such default in the Mortgagor’s name and on Mortgagor’s behalf, provided that current payments due the holder during such 120-day period (or such lesser time period as may have been required to cure such default) are made to the holder. Said holder shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by the Mortgage or to commence to foreclose under the Mortgage on account of such default.

2) If, after such cure period, the holder intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Ground Lease, the holder shall first notify Lessor of its intention to do so and Lessor shall have the right, but not the obligation, upon notifying the holder within thirty (30) days of receipt of said notice from said holder, to pay off the indebtedness secured by the Mortgage and to acquire the Mortgage.

3) In the event of acquisition of title to the Improvements and the Lessee’s interest in the Leased Premises by the Mortgagee by foreclosure sale or the delivery of an instrument of transfer and assignment of the Lease to the Mortgagee in lieu of foreclosure, the holder shall give the Lessor written notice of such acquisition and the Lessor shall have an option to purchase the Improvements and Lessee’s interest in the Leased Premises from the Permitted Mortgagee for the full amount owing to the holder of the Mortgage; provided, however, that the Lessor notifies the holder in writing of the Lessor’s intent to make such purchase within thirty (30) days following the Lessor’s receipt of the holder’s notice of such acquisition of the Improvements and Lessee’s interest in the Leased Premises; further provided that Lessor shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the Lessor does not complete the purchase within such period, the holder of the Mortgage shall be free to sell the Improvements and Lessee’s interest in the Leased Premises to another person;

4) Nothing in the Mortgage shall be construed as rendering Lessor or any subsequent holder of the Lessor’s interest in and to the Ground Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.

5) The holder of the Mortgage shall not look to Lessor or Lessor’s interest in the Leased Premises, but will look solely to Lessee, Lessee’s interest in the Leased Premises, the Improvements, or such other buildings and improvements which may from time to time exist on the Leased Premises, for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that Lessor’s consent to the Mortgage shall be without any liability on the part of Lessor for any deficiency judgement).

6) In the event that any part of the leased premises is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the holder of the Mortgage in accordance with the provisions of the Ground Lease.

7) Nothing in the Mortgage obligates Lessor to execute an assignment of the Ground Lease Fee or other rent payable by Lessee under the terms of this Lease.

[Remainder of page intentionally left blank. Signature page follows.]

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Mortgagee Date: \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Lessee/Mortgagor Date: \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Lessee/Mortgagor Date: \_\_\_\_\_\_\_\_\_\_\_\_

BOARD OF SELECTMEN:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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COMMONWEALTH OF MASSACHUSETTS

County of Dukes County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose on behalf of the said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Notary Public/ print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_]

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**AFFIX**

**NOTARIAL**

**SEAL**

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County, ss.

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Notary Public/ print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_]

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Notary Public/ print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_]

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**AFFIX**

**NOTARIAL**

**SEAL**