

APPENDIX D

OFFER TO PURCHASE

1. **PARTIES AND MAILING ADDRESSES.** The **TOWN OF CHILMARK**, a Massachusetts municipal body politic, with a principal place of business and mailing address of c/o Tim Carroll, Town Administrator, 401 Middle Road, P.O Box 119, Chilmark, MA 02535, e-mail of townadministrator@chilmarkma.gov, hereinafter called the SELLER, agrees to SELL and Frederick N. Khedouri, with a mailing address of Box 499 Chilmark, MA 02535 and e-mail of fkhedouri@peakedhill.com, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the premises described in Paragraph 2 hereof.
2. **DESCRIPTION.** The land with the improvements thereon situated at 4 North Ridge Road, Chilmark, County of Dukes County, Massachusetts, more particularly described in Certificate of Title No. 14447 on file with the Dukes County Registry District Office of the Land Court (the "Premises" or "said premises"). The Premises are shown approximately as Parcel 32 on Chilmark Tax Assessor Map 18.
3. **INCLUDED IN THE SALE.** Included in the sale as a part of the Premises are the fences, gates, trees, shrubs and plants.
4. **TITLE DEED.** The Premises are to be conveyed by a good and sufficient quitclaim deed, in substantially the form of the deed attached hereto as Exhibit "A", running to the BUYER, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:
 - (a) Provisions of existing building and zoning laws;
 - (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
 - (c) Any liens for municipal betterments assessed after the date of this Agreement;
 - (d) Construction of Ways and Utilities Covenant, dated September 8, 1980, registered in the Dukes County Registry District Office of the Land Court ("Registry") as Document No. 13751;
 - (e) Release of Covenant, dated December 7, 1981, registered in the Registry as Document No. 20015;
 - (f) Utility Easement dated April 20, 1981, registered in the Registry as Document No. 13865;

- (g) Declaration of Restrictive Covenants, dated September 8, 1980, registered in the Registry as Document No. 14423, as amended and restated by Amendment and Restatement of Declaration of Restrictive Covenants, dated March 18, 1986, registered in the Registry as Document No. 19877, as affected by Notice of Extension of Term, registered in the Registry as Document No. 82015; and
- (d) Easements, restrictions and reservations of record, if any.

5. **PLANS.** If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. **REGISTERED TITLE.** In addition to the foregoing, if the title to the Premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of the Premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

7. **PURCHASE PRICE.** The agreed purchase price for the Premises is Eight Hundred Thirty-one Thousand Eight Hundred **AND 00/100 (\$831,800.00) DOLLARS**, of which

\$ 10,000.00 have been paid as a deposit previously; and

\$ 73,180 are to be paid as a deposit within four business days of SELLER notifying BUYER that SELLER has executed this Offer, by certified, cashier's, treasurer's, or bank check(s) payable to the Town of Chilmark (the "Second Deposit") (the amount of this deposit plus the \$10,000.00 deposit referenced above shall together equal ten percent of the total purchase price to be paid hereunder);

\$ 748,620 are to be paid at the time of delivery of the deed by certified, cashier's, treasurer's, or bank check(s), or federal funds wire to the Seller's attorneys, Reynolds, Rappaport, Kaplan & Hackney, LLC, at SELLER's election.

831,800 TOTAL

8. **TIME FOR PERFORMANCE; DELIVERY OF DEED.** Such deed is to be delivered at a date and time that is mutually agreeable to BUYER and SELLER, and that is not more than ninety days after SELLER notifying BUYER that SELLER has executed this Offer (as such date may be extended pursuant to the terms hereof or by agreement of the parties, the "Time of Closing" or "time of the delivery of the deed"), at the office of Reynolds, Rappaport, Kaplan & Hackney, LLC, 106 Cooke Street, Edgartown, Massachusetts, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this Offer to Purchase. All documents and funds are to be delivered in escrow subject to a prompt rundown of title and recording.

9. **POSSESSION AND CONDITION OF PREMISES.** Full possession of the Premises free of all tenants and occupants, except as herein provided, is to be delivered at the Time of Closing, the Premises to be then in the same condition as they now are, reasonable use and wear thereof excepted. The BUYER shall be entitled personally to inspect the Premises prior to the Time of Closing in order to determine whether the condition thereof complies with the terms of this paragraph.
10. **EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM.** If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then, at SELLER's election, the Time of Closing shall be extended for a period of thirty (30) days to allow the SELLER to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be.
11. **FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM ETC.** If at the expiration of any extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on the Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.
12. **BUYER'S ELECTION TO ACCEPT TITLE.** The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the Premises in their then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this paragraph, if the Premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either:
- (a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or
 - (b) if a holder of a mortgage on the Premises shall not permit the insurance proceeds or a part thereof to be used to restore the Premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.

13. **ACCEPTANCE OF DEED.** The acceptance and registration of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the Time of Closing.
14. **USE OF MONEY TO CLEAR TITLE.** To enable the SELLER to make conveyance as herein provided, the SELLER may, at the Time of Closing, 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 deed, except for a discharge or partial release of a mortgage or other security interest held by a bank or other financial institution which may be recorded within a reasonable time after the recording of the deed.
15. **REAL PROPERTY TAXES.** At the Time of Closing, BUYER shall make full payment in lieu of taxes as required by and in compliance with M.G.L. c. 44, § 63A.
16. **DEPOSIT.** All deposits referenced in Paragraph 7 above are to be held in a non-interest-bearing escrow account. All deposits made hereunder shall be held by Reynolds, Rappaport, Kaplan & Hackney, LLC, as Escrow Agent, subject to the terms of this Agreement and shall be duly accounted for at the time of performance of this Agreement; provided, however, that in the event of any disagreement, the Escrow Agent may retain said deposit, pending instructions mutually given by the SELLER and BUYER, or by final order, decree or judgment by a court of competent jurisdiction in the United States of America (and no such decree or judgment shall be deemed to be "final", unless and until the time of appeal has expired and no appeal has been perfected) or Escrow Agent, at its sole discretion, may elect to transfer the entire deposit, either to a party mutually agreeable to the BUYER and the SELLER to serve as a substitute escrow agent to hold the deposit pending the resolution of dispute between the BUYER and the SELLER, or into a court of competent jurisdiction; and in either event Reynolds, Rappaport, Kaplan & Hackney, LLC shall thereafter be entitled to represent the SELLER in such dispute as fully and completely as though Reynolds, Rappaport, Kaplan & Hackney, LLC had never been the escrow agent holding the deposit. The Escrow Agent shall not be liable for any action taken or omitted in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and it may rely, and shall be protected in acting or refraining from acting in reliance, upon an opinion of counsel and upon any directions, instructions, notice, certificate, instrument, request, paper or other documents believed by it to be genuine and to have been made, sent, signed or presented by the proper party or parties. Notwithstanding any other provisions of this Agreement, the BUYER and the SELLER jointly indemnify and hold harmless the Escrow Agent against any loss, liability or expense incurred without bad faith on its part arising out of or in connection with its services under the terms of this Agreement, including the cost and expense of defending itself against any claim or liability, and the BUYER agrees that Reynolds, Rappaport, Kaplan & Hackney, LLC shall not, by virtue of its serving as Escrow Agent, be disqualified from representing the SELLER in connection with any dispute regarding the disposition of the deposit.

17. **BUYER'S DEFAULT; DAMAGES.** If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be SELLER's sole and exclusive remedy at law or in equity for any default by the BUYER hereunder. SELLER and BUYER acknowledge that SELLER has no adequate remedy at law in the event of BUYER's failure to fulfill BUYER'S obligations hereunder because it is impossible to compute exactly the damages which would be incurred by SELLER in such event. BUYER and SELLER hereby agree that (i) the deposit is a reasonable forecast of the damages SELLER would incur if BUYER were to breach this Offer, and (ii) the deposit represents damages and not any penalty against the BUYER.
18. **LAND BANK FEE.** BUYER acknowledges that BUYER is responsible for payment of the appropriate fee, if any, due to the Martha's Vineyard Land Bank Commission in connection with the transaction contemplated by this Offer.
19. **ACCESS TO PREMISES.** Upon reasonable notice to SELLER (which notice need not be in writing), the BUYER, the BUYER'S designees, agents and representatives, shall have the right to enter upon the Premises at reasonable times prior to the Time of Closing to make such investigations, inspections, appraisals, surveys, tests, examinations and the like as the BUYER deems necessary or appropriate in connection with the performance of this Agreement. BUYER shall indemnify and hold SELLER harmless for all liability arising out of or in connection with such entry upon the Premises. This indemnity shall survive the Time of Closing or other termination of this Offer.
20. **MASSACHUSETTS REAL ESTATE BAR ASSOCIATION STANDARDS.** Any matter or practice arising under or related to this Agreement which is the subject of a Title Standard or a Practice Standard of the Massachusetts Real Estate Bar Association shall be governed by said Standard to the extent applicable.
21. **BUYER'S ACKNOWLEDGMENT.** BUYER hereby acknowledges and agrees that BUYER is satisfied with the condition of the Premises, and that SELLER has not made, does not make and specifically negates and disclaims any representations, warranties, promises or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) the value, nature, quality or condition of the premises, (ii) the compliance of or by the Premises or its condition with any laws, rules, ordinances or regulations of any applicable governmental authority or body, or (iii) any other matter with respect to the Premises. BUYER is relying on his own investigation of the Premises and not on any information provided by SELLER. BUYER further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Premises as provided for herein is made on an "AS IS" condition and basis. The provisions of this paragraph are intended to survive the delivery of the deed called for herein or other termination of this Offer.
22. **NOTICES.** All notices required or permitted to be given hereunder shall be in writing and shall be delivered (1) by hand, (2) mailed postage prepaid, by registered or certified mail, return receipt requested, (3) by Federal Express or another nationally recognized

overnight delivery service, or (4) by facsimile, with a copy sent simultaneously by electronic mail, addressed in the case of SELLER to the contact information listed in Paragraph 1 above, and to Karen D. Burke, Esq., Reynolds, Rappaport, Kaplan & Hackney, LLC, 106 Cooke Street, P.O. Box 2540, Edgartown, Massachusetts 02539, Fax: 508-627-3088, e-mail: kburke@rrklaw.net, and in the case of the BUYER, to the contact information noted in Paragraph 1 above and to _____

_____, Fax: _____, e-mail: _____, or in the case of either party, to such other address as shall be designated by written notice given to the other party. Any such notices shall be deemed given when so delivered by hand or if so mailed or delivered by overnight delivery service, when deposited with the U.S. Postal Service or overnight delivery service, or if so sent by facsimile when the sender receives confirmation that the facsimile was received.

23. **EXTENSIONS.** In order to facilitate the execution of such instruments extending the time for the performance of any event or of any notice that may be given under this Agreement, each of the undersigned SELLER and BUYER authorizes his or her respective attorney to assent and execute on the party's behalf, any agreements extending the time for the performance of any event or of any notice that may be given under this Agreement.
24. **FACSIMILE and ELECTRONIC SIGNATURES.** The parties hereto agree that for purposes of this Agreement a facsimile of any party's signature, or an electronic or Docusign version thereof, shall be accepted as the original thereof and shall be binding.
25. **LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY.** If the SELLER or BUYER executes this Offer in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
26. **REPRESENTATIONS RE: BROKERS.** SELLER represents and warrants to BUYER that SELLER has not obtained the services of any real estate broker in connection with the transaction contemplated by this Offer that would result in or give rise to the imposition or charge of a real estate broker fee. BUYER represents and warrants to SELLER that BUYER has not obtained the services of any real estate broker in connection with the transaction contemplated by this Offer that would result in or give rise to the imposition or charge of a real estate broker fee chargeable to or payable by the SELLER, other than NOT APPLICABLE (fill in if buyer was introduced to the premises using the services of a real estate broker who is registered and licensed with the Massachusetts Board of Registration of Real Estate Brokers and Salespersons). Each party indemnifies and holds the other harmless against any claim, loss, damage, cost or liability for any other brokerage commission or fee which may be asserted against or incurred by the other as a result of the falsity of these representations. The provisions of this clause are intended to survive the closing or termination of this Offer.

27. **WARRANTIES AND REPRESENTATIONS.** The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth in this Offer.
28. **CONSTRUCTION OF AGREEMENT.** This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The paragraph headings are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.
29. **DEADLINES.** If any deadline called for herein falls on a Saturday, Sunday, or legal holiday, the deadline shall be at 5:00 P.M. on the next business day.
30. **SELLER'S CONTINGENCY.** SELLER's obligations hereunder are contingent upon SELLER's compliance with the terms and provisions of the Uniform Procurement Act, M.G.L. c.30B, the terms and provisions of M.G.L. c.7, § 40J regarding the disclosure of persons with a beneficial interest in the Premises, and any other laws, rules or regulations that apply to the sale of the Premises by SELLER. If SELLER discovers that SELLER has not complied with the foregoing, or a claim is made that SELLER has not complied with the foregoing, prior to the Time of Closing, then, at SELLER's option, any payments made hereunder shall be refunded forthwith and all obligations of the parties shall cease and this Offer to Purchase shall be void and without recourse to the parties hereto.
31. **ASSIGNMENT BY BUYER.** BUYER may not assign this contract.
32. **EFFECT OF FAILURE TO PAY SECOND DEPOSIT.** If BUYER does not pay the Second Deposit as required by this Offer, SELLER may terminate this Offer, which termination shall be effective immediately upon SELLER giving notice to BUYER, in which event SELLER shall keep as its sole property the initial \$10,000.00 deposit paid by BUYER hereunder, and all other obligations of the parties shall cease and this Offer shall be void and without recourse to the parties hereto.
33. **PAYMENT OF SALE PROCEEDS.** Due to the possibility of wire fraud in a real estate transaction, the balance of the sale proceeds at the Time of Closing shall be paid to the SELLER via certified, cashier's, treasurer's, bank, or federal funds wire to the Seller's attorneys, Reynolds, Rappaport, Kaplan & Hackney, LLC, at SELLER's election. In the event that the sale proceeds will be wired to Reynolds, Rappaport, Kaplan & Hackney, LLC, BUYER's attorney shall confirm the wire instructions with SELLER's attorney in person or by phone before sending the wire.

34. **MORTGAGE CONTINGENCY.**

Check here if not applicable.
 Check here if applicable and fill in amount below.

In order to help finance the acquisition of said Premises, the BUYER shall apply for a conventional bank or other institutional mortgage loan of not more than \$ _____ at prevailing rates, terms and conditions. If despite the BUYER's diligent efforts an unconditional commitment for such loan cannot be obtained, at BUYER's option, the BUYER may terminate this Offer by giving notice thereof to the SELLER, in which event: the Second Deposit paid hereunder shall be forthwith refunded; SELLER shall keep and retain as SELLER's sole property the initial deposit of \$10,000.00 paid by BUYER; and all other obligations of the parties hereto shall cease and this Offer shall be void without recourse to the parties hereto. BUYER acknowledges and agrees that BUYER shall not be refunded BUYER's initial \$10,000.00 deposit if BUYER terminates this Offer pursuant to this paragraph. The BUYER shall be deemed to have waived BUYER's rights under this clause if the SELLER has not been given notice by 5:00 on the thirtieth day after SELLER has notified BUYER that SELLER has executed this Offer, that BUYER desires to terminate this Agreement because BUYER has not obtain such a commitment letter.

35. **BROKER'S FEE.**

Check here if not applicable.
 Check here if applicable and fill in blanks below.

A Broker's fee for professional services of two and one-half percent (2 ½ %) of the purchase price paid is due from the SELLER to

_____ (Fill in Name of Broker and Firm) ("Broker"), to be paid by attorney client escrow account check, or certified, cashier's or bank check, sent via certified or registered mail, return receipt requested, to Broker at

_____ (fill in address for Broker), but only if, as and when the SELLER receives the full purchase price called for herein, and the BUYER accepts and records the SELLER's deed, and not otherwise.

36. **EXAMINATION OF TITLE.** SELLER's title to the Premises shall be deemed to meet the requirements of Paragraph 4 hereof for all purposes unless BUYER gives notice to SELLER of a claimed defect on or before 5:00 P.M. on the fourteenth (14th) day before the Time of Closing. Such notice shall specify any defects claimed in SELLER's title and BUYER shall thereafter have rights with respect to defects in SELLER's title only in respect to (a) defects in title which have been claimed in such notice and (b) defects in title arising on or after the latter of the date specified in such notice or the date of this Agreement.

NOTICE: This is a legal document that creates binding obligations. If not understood, please consult an attorney.

SELLER:

BUYER:

TOWN OF CHILMARK,



By its Board of Selectmen:

By:

William N. Rossi, Chairperson
Date: _____

Frederick N. Khedouri

Print Name:
Date: March 8, 2021

James M. Malkin, Vice Chairperson
Date: _____

Warren M. Doty, Clerk
Date: _____