

EASEMENT AGREEMENT

This Easement Agreement (“Easement Agreement” or “Agreement”) is made this ____ day of November, 2019, by and between North Winds, LLC, a Massachusetts limited liability company, having a mailing address of P.O. Box 98, 285 River Street, North Weymouth, Massachusetts 02191 (the “Grantor”) and The Town of Chilmark, a municipal corporation, acting by and through its Board of Selectmen, having a mailing address of P.O. Box 119, Chilmark, Massachusetts (the “Grantee”).

WHEREAS, Grantor is the owner of the land with the improvements thereon located at 26 Basin Road, Chilmark, Massachusetts, more particularly described in a Deed to William J. Eisen, Trustee of the North Winds Nominee Trust dated October 26, 2012 and recorded with the Dukes County Registry of Deeds (the “Registry”) in Book 1298, Page 344; said land is also shown as Parcel 125 and Parcel 126 on the 2018 Chilmark Assessor’s Map 27.1 (the “Grantor’s Property”);

WHEREAS, the Grantor wishes to grant an easement to the Grantee for the construction and public use of a sidewalk on a portion of the Grantor’s Property;

WHEREAS, the Grantee wishes to accept such easement, and has the authority to do so pursuant to a Vote of the Town of Chilmark, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference;

WHEREAS, the parties desire (a) that the Grantee construct and maintain, at Grantee’s sole cost and expense, a certain sidewalk, together with appurtenances necessary or convenient thereto, including, without limitation, stone retaining walls and landscaping, (collectively the “Easement Area Improvements”) wholly within that portion of the Grantor’s Property shown as “7’ Wide Easement” containing approximately 1,240 square feet of land, more or less (herein the “Easement Area”) on the Easement Plan (as hereinafter defined), and (b) that the Grantor grant certain easement rights to the Grantee with respect to the construction and use of the Easement Area and Easement Area Improvements, all as hereinafter set forth. The Easement Area Improvements shall be constructed in accordance with the Easement Plan and the Specifications prepared by Carly Look Design and approved by the Grantee (the “Specifications”).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

1. The Easement Plan. Reference is made to that certain “Easement Sketch Plan in Chilmark, Mass. Prepared for The Town of Chilmark” dated May 3, 2019, drawn by Vineyard Land Surveying & Engineering, Inc., and attached hereto as Exhibit B (the “Easement Plan”), the metes and bounds of the Easement Area are attached hereto as Exhibit C.

2. The Easement Area Improvements. The Grantee hereby covenants and agrees that, following the recording of this Agreement, at its sole cost and expense, it shall (a) without undue delay cause the Easement Area Improvements to be fully constructed within the Easement Area

and in accordance with the Easement Plan and Specifications and the requirements of the Town of Chilmark Conservation Commission, (b) upon completion thereof, record a Certificate of Compliance for the Orders of Conditions recorded with the Dukes County Registry of Deeds in 1488, Page 868, and (c) during the term of the easements granted hereunder, (i) maintain and promptly repair the Easement Area and Easement Area Improvements as necessary to keep them in sound and safe condition; (ii) comply with all federal, state and local laws, ordinances, rules and regulations, including, without limitation, those of the Town of Chilmark Conservation Commission, in connection with the construction, use, maintenance and repair of the Easement Area and the Easement Area Improvements; and (iii) without undue delay, repair any damage to any part of the Grantor's Property arising or resulting from the use, construction, repair and/or maintenance of the Easement Area and Easement Area Improvements.

Grantee shall install, maintain and repair, at its sole cost and expense, a "DRIVEWAY AHEAD/SLOW" sign, such sign to be installed in a location designated by the Grantor.

During the construction of the Easement Area Improvements and any subsequent construction by the Grantee and its agents with respect to the Easement Area or Easement Area Improvements, the Grantee shall protect any monuments in place on the Grantor's property or re-set any monuments that are damaged during any such construction.

3. Grant of Easement. In consideration of, and as a condition to, the Grantee's agreement to construct, maintain and repair the Easement Area and Easement Area Improvements and repair any damage to the Grantor's Property as aforesaid, the Grantor hereby grants to the Grantee:

(a) a nonexclusive easement to enter into and use the Easement Area for the sole purposes of constructing, maintaining, repairing and inspecting the Easement Area and Easement Area Improvements and repairing any damage to the Grantor's Property as aforesaid, all at the Grantee's sole cost and expense and all as the Grantee shall reasonably deem necessary or appropriate to that end, provided the same meets with the reasonable approval of the Grantor; and

(b) a nonexclusive easement to enter into, pass over and use the Easement Area and Easement Area Improvements as a sidewalk for public use by pedestrian foot travel only; provided, that such easement does not (a) permit travel by bicycle, scooter, skateboard, roller skates, rollerblades or any other type of vehicle (motorized or otherwise), and (b) include any right of the Grantee to build upon or otherwise improve the Easement Area except as provided herein or except in accordance with such plans, terms and conditions as have first been (i) approved (or required) by all governmental and regulatory bodies with relevant jurisdiction, and, then (ii) independently approved in writing by the Grantor or (c) include any right of the Grantee to build upon or otherwise improve or use any portion of the Grantor's Property other than the Easement Area as herein provided. This grant of easement shall not be construed as a dedication to the public of the underlying fee simple ownership of the Easement Area or to grant any rights in and to the Grantor's Property, other than the Easement Area, in accordance with the terms of this Agreement.

4. Compliance; Diligence. Grantee covenants that (a) it shall not overburden the easements granted hereunder, (b) it shall not permit the easements granted hereunder to be used in any way or manner that would interfere with or prohibit the Grantor and all those claiming by, through or under him clear, open and unobstructed access to the Grantor's Property at all times, (c) it shall not permit the easements granted hereunder to be used in any way or manner that would interfere with or prohibit open, clear and unobstructed pedestrian foot travel over and upon the Easement Area (other than during times of construction and/or maintenance) and, to that end, there shall be no sitting, camping, picnicking, loitering or lingering in the Easement Area, (d) the Easement Area, and the Easement Area Improvements shall at all times comply with all local, state and federal laws, rules and regulations, including all zoning and environmental regulations, and (e) the Easement Area Improvements shall be diligently completed and maintained (unless there is a delay in construction or maintenance that is beyond the Grantee's reasonable control, but only for so long as such delay continues) in good, safe and sound condition, all at Grantee's sole expense. It is further acknowledged that the easements granted hereunder are subject to all encumbrances or other matters of record applicable to or affecting the Grantor's Property. The Grantee shall not permit or suffer the creation or continued existence, whether by voluntary action or operation of law or otherwise, of any security interest in, mortgage upon, lien upon or other voluntary or involuntary encumbrance of any nature whatsoever upon the Grantor's Property.

5. Insurance. Throughout the term of the easements granted hereunder Grantee, at its sole cost and expense, shall keep in force, with companies qualified to do business, reasonably acceptable to the Grantor and in good standing in the Commonwealth of Massachusetts, comprehensive public liability and casualty/property insurance insuring the Easement Area and the Easement Area Improvements and their use with a combined limit of not less than Three Million Dollars (\$3,000,000) or, if greater, not less than such combined limit as is, at the time in question, customary in Chilmark and surrounding communities for a policy of such type insuring property and usage comparable to the Easement Area, the Easement Area Improvements and their usage. Grantee shall name the Grantor, its members and/or its mortgagees, as requested, as additional insureds or additional payees, as the case may be, and shall deposit the policy of such insurance company with the Grantor, and, in the case of the renewal of such policy, shall deposit the new policy with the Grantor not less than fifteen (15) day prior to the expiration date of the then expiring policy.

6. Indemnity; Grantor's Right to Act. Grantee shall promptly indemnify and save Grantor and his heirs, legal representatives, successors and assigns harmless from and against any and all liabilities, losses, damages, claims, judgments, costs and expenses (including, without limitation, reasonable attorney's fees), to the extent of Grantee's liability under M.G.L. c. 258, or, if applicable, the provisions of G.L. c. 84 § 15, asserted by or on behalf of any person, firm or corporation (i) on account of or based upon injury to person, or loss of or damage to property sustained or occurring in connection with the easements granted hereunder, (ii) on account of or based upon injury to person, or loss of or damage to property sustained or occurring in the Easement Area and/or the Grantor's Property based upon the act, omission, fault, negligence or misconduct of any person

whatsoever (other than the Grantor or its agents and assigns) in connection with the easements granted hereunder, (iii) on account of or based upon work done in the Easement Area and/or the Grantor's Property in connection with the easements granted herein; and (iv) on account of or resulting from the Grantee's breach of this Agreement.

In the event Grantee fails to meet any of its obligations under this Agreement, Grantor shall have the right, but not the obligation, to undertake any such obligations. The Grantee shall reimburse Grantor for all costs and expenses incurred by Grantor in the course of such undertaking promptly upon receipt of copies of paid bills for such costs and expenses. As used in this paragraph, "promptly" shall mean within thirty (30) days.

7. Termination of Easements. In the event of a breach of any covenant to be observed by Grantee herein, Grantor may terminate this Agreement and the easements granted herein, provided, however, that prior to any termination for any breach by Grantee, Grantor shall give thirty (30) days written notice thereof to the Grantee and shall not be entitled to terminate this Agreement if Grantee shall have cured or remedied the breach within thirty (30) days after receipt of Grantor's notice thereof (the "Initial Cure Period"). If the breach is of such a nature that it cannot be cured within the Initial Cure Period, but the Grantee shall have commenced and is diligently pursuing the cure but has not completed the cure or remedy prior to the expiration of the Initial Cure Period, then the Grantee shall have an additional thirty (30) day period to complete the cure or remedy the breach (the "Extended Cure Period"). If the breach is of such a nature that the cure or remedy requires authorization by Town meeting, then the Grantee shall have an additional thirty (30) day period, following the expiration of the Extended Cure Period, to effectuate such cure (the "Further Extended Cure Period"). If Grantee fails to cure or remedy the breach prior to the expiration of the applicable cure periods as set forth above, then the Grantor shall have the right to terminate this Easement Agreement and the Grantee's rights hereunder.

In the event of any such termination, the Grantor shall record an affidavit, signed under the pains and penalties of perjury, setting forth the fact of a breach that was not cured within applicable cure periods and giving notice of the termination of this Easement Agreement and easements granted herein. Such affidavit, upon recording, shall be conclusive evidence that this Easement Agreement and the easements granted herein have terminated and shall be binding on all persons.

Upon termination of the Easement Agreement, any and all rights of the Grantee in and to the Easement Area and Easement Area Improvements shall terminate and become the sole property of the Grantor.

If a breach is cured or remedied prior to the expiration of the applicable cure periods set forth above, this Easement Agreement shall continue in full force and effect.

Notwithstanding the foregoing, in the event that Grantee shall breach the same covenant of this Easement Agreement on two (2) or more separate occasions during any twelve (12) month period and even though such breach may have been cured, Grantor shall be entitled to terminate this Easement Agreement if Grantee shall not have cured or remedied such subsequent breach

within thirty (30) days after receipt of written notice thereof from the Grantor to the Grantee notwithstanding the nature of such breach.

8. Successors and Assigns; Joint and Several. This Agreement shall be binding upon and inure to the benefit of the Grantor and his successors, assigns, transferees, executors, administrators, heirs and legal representatives. This Agreement and the rights hereunder shall not be assigned, transferred or encumbered by the Grantee, except with the prior written consent of the Grantor which consent may be withheld in the Grantor's sole and absolute discretion. Any purported assignment, transfer or encumbrance shall be null and void and shall constitute a breach by the Grantee of this Agreement which is not subject to cure.

9. Covenants Running with the Land. The easements and other rights conferred hereby are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns. Nothing contained herein shall in any way be construed as releasing Grantee's successors and assigns from any obligations to Grantor created by this Agreement or in any way limit the Grantor's remedies at law or in equity as against Grantee's successors and assigns.

10. Notices. Any notices given hereunder shall be in writing and shall be delivered in hand, mailed postage prepaid, by registered or certified mail, return receipt requested, or shall be sent by Federal Express or another nationally recognized overnight delivery service, addressed to the party for whom the notice is intended at the address of such party maintained by the Board of Assessor's for the Town of Chilmark. Any such notices shall be deemed given when so delivered by hand, or if so mailed, when deposited with the U.S. Postal Service, or, if so delivered by such overnight delivery service, when deposited with said overnight delivery service.

11. Miscellaneous. This Agreement sets forth the entire agreement between the parties hereto concerning the subject matter hereof, and it may not be amended, except by written instrument executed by all parties. This Agreement shall be governed by and enforced under the laws of the Commonwealth of Massachusetts, and it may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. No waiver by any party of any breach by any other party of, or failure of any party to comply with, any condition or provision of this Agreement shall be deemed a waiver of any other breach or failure. The invalidity of any provision of this Agreement shall in no way affect the validity of any other provision.

EXECUTED as a sealed instrument of the date and year first above written.

GRANTOR:

GRANTEE:

NORTH WINDS, LLC

TOWN OF CHILMARK

By its Board of Selectmen

By: _____
Paul W. DiMaura, Manager

James M. Malkin

Warren M. Doty

William N. Rossi

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

On this _____ day of _____, 2019, personally appeared before me Paul W. DiMaura, proved to me through satisfactory evidence of identification, which was personal knowledge of him, photographic identification of him with signature issued by a federal or state governmental agency or _____, to be the person whose name is signed on the foregoing instrument, and he acknowledged to me that he signed it voluntarily as his free act and deed for its stated purpose as Manager of the North Winds, LLC.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

On this _____ day of _____, 2019, personally appeared before me _____, proved to me through satisfactory evidence of identification, which was personal knowledge of him, photographic identification of him with signature issued by a federal or state governmental agency or _____, to be the person whose name is signed on the foregoing instrument, and he acknowledged to me that he signed it voluntarily for its stated purpose, as a member of the Chilmark Board of Selectmen.

Notary Public
My commission expires: