



Duxbury Beach Reservation, Inc.
P.O. Box 2593
Duxbury, MA 02331

Town of Duxbury
878 Tremont Street, #1
Duxbury, MA 02332

LEASE AGREEMENT

DUXBURY BEACH RESERVATION, INC., Duxbury, Massachusetts, a Massachusetts charitable corporation (hereinafter called the "Reservation"), hereby leases to THE TOWN OF DUXBURY, a municipal corporation (hereinafter called the "Town"), all the land and interests in the land in the towns of Duxbury and Plymouth called Duxbury Beach owned by the Reservation south of a line determined by the line running approximately east to west along the southerly edge of the so-called Caterer's Lot located south of the Pavilion area, at the east end of the Powder Point Bridge, and north of the entrance to Gurnet/Saquish, subject to continuation of the migratory shorebird refuge at High Pines, and excluding the land containing and surrounding the High Pines Cottage (the "Premises"), TO HAVE AND TO HOLD for a term of twelve months beginning July 1, 2023 (the "Term"). The Town shall pay the Reservation a total of One Million Dollars (\$1,000,000.00) (the "rent") during the Term of this Agreement in annual rent for the Premises, in furtherance of the charitable purposes of the Reservation. Such payment of the rent shall be made in four installments of \$250,000 each. The installments shall be due on July 15, 2023, October 15, 2023, January 15, 2024, and April 15, 2024, respectively, and shall be prorated as indicated herein in the event that this Agreement is terminated prior to June 30, 2024 (the "Expiration Date").

The Town agrees to manage the recreational use of the Premises occurring pursuant to this Agreement and to keep the Premises open to the public, but only in a prudent and safe manner that is consistent with (i) the Massachusetts Piping Plover Habitat Conservation Plan Certificate of Inclusion for Duxbury Beach as amended through March 2022 and with most recent laws, regulations, and emergency orders; (ii) the Duxbury Beach Management and Habitat Conservation Plan (the "Plan") of the Reservation as revised through May 2016, and as the Plan may be amended from time to time with the consent of the Town's Conservation Commission; (iii) with regulations of the Town of Duxbury and agreed to by the Reservation (the "Adopted Regulations"), including without limitation the Duxbury Beach Guide and Rules (including inserts) (revised March 2021 and as updated), all as promulgated by the Reservation in conjunction with the Duxbury Beach Committee and the Duxbury Beach Operations Division and published from time to time in

a public pamphlet produced by the Duxbury Beach Operations Division; and (iv) Duxbury Town By-Law 7.29 – Beach Use as currently in effect. The Town will comply with Massachusetts laws, regulations, and emergency orders and will comply with the Plan and use its good faith efforts to enforce the Adopted Regulations and Town By-Law 7.29, and to seek and obtain all permits and approvals from applicable agencies and bodies necessary for activities to be conducted on the Premises by, under the supervision or control of, or with the approval of the Town, and to adapt or modify such activities to the extent necessary to comply with the Plan, Massachusetts laws, regulations, and emergency orders, the Adopted Regulations, and Town By-Law 7.29, and such permits and approvals (including such adaptations and modifications as may, in its reasonable discretion, be deemed by the Reservation to be necessary for such compliance). Without limitation, the Town's management and enforcement shall be efficient, protect the safety of the public and the property, and be environmentally responsible, and the Town shall not permit violations of the Wetlands Protections Act, including, without limitation, the release or drainage of fluids, including water, used to wash equipment or vehicles on the Premises that drain into the beach, marsh, flats, roadway, or parking areas.

The Town agrees that it shall not, without the prior consent of the Reservation, install or store on the Premises any structures, fixtures, equipment, or other items that are not associated with or customarily brought onto or placed on the Premises in connection with the Town's use and/or operation of the Premises, and without limitation, will not allow any such items (including without limitation, vehicles) to be located or stored on the Premises. For the avoidance of doubt, the Reservation hereby consents to the parking of vehicles during the day (but not overnight) in lots or over sand as specified by the Reservation from time to time, and placing of signs and traffic control equipment and supplies, each consistent with the rules and regulations promulgated under the Plan, as revised and amended, and any governmental emergency order.

The Reservation may, in its discretion, operate a "predation program" on the Premises during the term of this Agreement, including without limitation, contracting with the U.S. Fish and Wildlife Service for that purpose. The predation program will be scheduled so as not to unreasonably and directly interfere with the recreational use of the Premises. Written, telephonic, or electronic notice will be provided to the Town Manager (or his designee) at least thirty (30) days before the implementation of the predation program during the term of this Agreement. The Reservation will implement any such predation program in compliance with then-applicable state and Federal laws, rules, and regulations.

The Town agrees to cooperate with the Reservation in obtaining (and to become a co-applicant, if appropriate and upon the request of the Reservation) and to understand any orders of conditions under the Massachusetts Wetlands Protection Act and the Duxbury Wetlands Protection Bylaw applicable to the Premises during the term of this Agreement, including orders of conditions issued by the Duxbury Conservation Commission, and to comply with the conditions, including general and special conditions, stated therein with respect to activities to be conducted on the Premises by, under the supervision or control of, or with the approval of the Town.

The Town shall respond to and address non-compliance with applicable rules of conduct, including the Adopted Regulations and Town By-Law Section 7.29, by any persons on the Premises upon observation by Town staff, notice by Reservation staff, or visitor complaint. In the event the Reservation should at any time reasonably believe that the Town is materially not complying with the terms under this Agreement (including, without limitations, keeping the Premises open consistent with the Certificate of Inclusion, the Plan, the Adopted Regulations, and Town By-Law 7.29 (unless beach closure is mandated by governmental order), and/or enforcing the same or other applicable laws, regulations, Town by-laws, and emergency orders on the Premises), it may notify the Town of such facts. Upon receipt of any notice pertaining to non-compliance with applicable rules of conduct or operational violations, the Town shall use good faith

efforts to rectify such situation within 24 hours. In the event it does not do so, the Reservation shall have the absolute right, but not obligation, to remedy such situation at the expense of the Town.

To the extent permitted by law, the Town agrees to indemnify the Reservation against and save it harmless from all claims, including claims for injury or damage to persons or property on the Premises during the term of this Agreement, and penalties resulting from any breach of this Agreement by the Town.

The Town agrees not to assign its interest hereunder or grant any rights to any third parties in any part of the Premises (other than for permitted public beach access), or to permit vendors or other for hire or commercial enterprise operators to operate on any part of the Premises without the written consent of the Reservation.

Except to the extent that the parties may otherwise agree, during the term of this Agreement, (i) the Reservation shall be responsible for the design and implementation of a program for the protection of endangered or threatened species on the Premises, and responsible for the maintenance of the Premises (including repairs and improvements that the Reservation may, in its sole discretion, choose to implement), provided, however, that the Reservation shall not be responsible for maintenance needs resulting from the use of the Premises by Town staff and/or visitors or permittees of the Town, such as maintenance of the vehicular crossovers. (The Town may in its discretion and at its own expense, choose to perform maintenance that the Reservation is not otherwise responsible for, but in such an event, the Town shall only perform such work under the supervision of and consistent with the requirements of the Reservation.), and (ii) the Town shall be responsible for managing, regulating, and operating the recreational use of the Premises in a prudent and safe manner, and enforcing public order, consistent with state laws, regulations, Town by-laws, and orders, and the Plan, the Certificate of Inclusion, and Adopted Regulations, including, as requested by the Reservation, regulations relating to endangered or threatened species. Nothing in the preceding sentence shall preclude the parties from entering into a separate agreement or agreements allocating responsibility for performing or paying for specific activities related to the maintenance, repair, or operation of the Premises.

The Town agrees that it accepts the Premises in "as is, where is" condition as of the date of the commencement of the term of this Agreement. In the event that during the term of this Agreement the condition of the Premises materially changes as the result of weather or other like natural causes (such as, but not limited to, a severe storm, flood, erosion, or earth quake, which materially affects its enjoyment of the Premises) and excluding, for the avoidance of doubt, impacts of natural wildlife behavior, such as piping plover nesting, or of public health and safety issues, the Town shall have the option, as its sole and exclusive remedy, to terminate this Agreement by giving the Reservation 30 days' written notice (during which 30-day period the parties shall confer in good faith on the development and implementation, on mutually acceptable terms, of a plan for ensuring the uninterrupted delivery of essential municipal services, such as enforcement, to the Premises during said thirty (30)-day period) and paying any pro-rated portion of the consideration payable under this Agreement accrued but not then paid to the date of termination (provided that no portion of consideration previously paid will be required to be refunded to the Town). In the event of termination by the Town, the Reservation will not be responsible for or liable for any damages or repayment to the Town or to contractees of the Town (e.g., persons to whom the Town sells access stickers) or otherwise as a result of the termination of the rights of the Town or, indirectly, its contractees. In the event of such a material change, the Reservation will endeavor to repair the Premises to the extent it deems practicable, in its sole discretion.

The Town is not required hereunder to obtain any insurance relating to its use of the Premises, but in the event it obtains liability insurance, it agrees to have the Reservation named as an additional insured on

such policy and provide a certificate evidencing the same to the Reservation. The Reservation is not required to obtain any insurance relating to the Premises.

If either party believes that the other party is in breach of this Agreement during its term, it shall provide notice to the other party by hand or by certified mail and the other party shall have 30 days from the receipt of such notice to cure the breach (or if such cure cannot reasonably be completed within 30 days, such longer period as is reasonably required so long as the party has commenced cure within the initial 30 days and is diligently prosecuting same to completion).

Anything in the foregoing to the contrary notwithstanding, the Reservation shall have the option, in its sole discretion, to terminate this Agreement effective as of March 31, 2024 by giving the Town not less than 60 days' prior written notice. In the event of such termination, the Town shall be responsible for payment, if not then yet paid, of the first three installment payments hereunder, but shall not be responsible for payment of the last installment payment, and otherwise each party shall be responsible for performance of all its duties and obligations under this Agreement up to and including the date of termination, but not for the period thereafter. The Reservation will not be responsible for or liable for any damages (including resulting from the failure of expectations) or repayment to the Town or to contractees of the Town (e.g., persons to whom the Town has sold access stickers) or otherwise as a result of the termination of the rights of the Town or, indirectly, its contractees. The Town acknowledges that it has no rights or interests in the Premises other than those set forth in this Agreement or in the expectation of leasing the Premises following such termination.

The Town warrants that it has taken all required action to enter into and perform this Agreement, including consistent with law and the by-laws of the Town.

Any dispute arising under the Agreement shall be governed by applying Massachusetts law, without regard to the principles of conflicts of law, and any adjudicated dispute shall be in a Massachusetts state court.

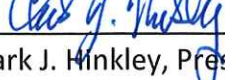
Any amendment to the terms of the Agreement must be in writing, signed by authorized representatives of the parties.

If any provision of the Agreement is found to be in contravention of law, that provision shall be struck and the remaining terms shall remain in full force and effect.

[signature page follows]

EXECUTED as a sealed instrument as of this 29th day of June, 2023.

DUXBURY BEACH RESERVATION, INC.


By: 
Clark J. Hinkley, President, Duxbury Beach Reservation, Inc.

By: 
Sue Rourke, Treasurer, Duxbury Beach Reservation, Inc.

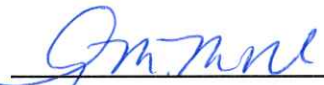
TOWN OF DUXBURY


By: 
René J. Read, Town Manager, Town of Duxbury

 6/26/23
Cynthia Ladd Fiorini, Chair of Selectboard, Town of Duxbury

 6/26/23
Brian E. Glennon, II, Selectperson, Town of Duxbury

 6/26/23
Fernando Guitart, Selectperson, Town of Duxbury

 6/26/23
Amy M. MacNab, Selectperson, Town of Duxbury

 6/26/23
Michael McGee, Selectperson, Town of Duxbury