

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
2174cv00044

HARBOR VIEW HOTEL OWNER LLC,)
)
Plaintiff,)
)
v.)
)
MARTHA’S VINEYARD COMMISSION,)
Defendant.)

AGREEMENT FOR JUDGMENT

Now come the Plaintiff, Harbor View Hotel Owner LLC, and the defendant, the Martha’s Vineyard Commission, and pursuant to Mass.R.Civ.P. 58(a) hereby agree and jointly request that this Court enter judgment as follows:

RECITALS

1. On September 14, 2021, Harbor View Hotel Owner LLC (hereinafter, the “Hotel”) filed this action, an action pursuant to Section 18 of Chapter 831 of the Acts of 1977, as amended, appealing from a number of conditions contained in a decision dated August 27, 2021 (the “Decision”) by the defendant Martha’s Vineyard Commission (the “MVC”) approving the Hotel’s application for certain amendments to a previously approved Development of Regional Impact known as DRI 614.
2. Subsequent to the filing of this appeal, the Hotel and MVC entered into negotiations in an effort to resolve this matter. Those negotiations were successful.
3. To resolve this matter, the parties have agreed that this Court may enter a judgment and an order that a revised decision (the “Revised Decision”) in the form attached hereto as **Exhibit A** shall replace the Decision; that the Revised Decision shall, for all purposes, supersede and replace the Decision; that the Hotel shall be entitled to record the Revised Decision in the Registry of Deeds; and that the Revised Decision shall for all purposes constitute the operative decision with respect to DRI 614, and sets forth all of the conditions placed upon the Hotel by the MVC and to which the Hotel shall be subject going forward, including without limitation the terms and conditions pursuant to which the Hotel may be required to seek the approval of the MVC for any future modifications of DRI 614 (which modifications will be reviewed by the MVC in the normal course

without the need to seek approval of this Court or an amendment to this Agreement for Judgment).

4. The parties to this Action respectfully request that the Court enter Judgment as follows:

JUDGMENT

- A. The Decision dated August 27, 2021 is vacated, rendered moot and is hereby deemed of no further force or effect.
- B. The Revised Decision attached hereto as **Exhibit A** shall replace the Decision; the Revised Decision shall, for all purposes, supersede and replace the Decision; the Hotel shall be entitled to record the Revised Decision in the Registry of Deeds; and the Revised Decision shall for all purposes constitute the operative decision with respect to DRI 614, setting forth all of the conditions placed upon the Hotel by the MVC and to which the Hotel and DRI 614 shall be subject going forward, including without limitation the terms and conditions pursuant to which the Hotel may be required to seek the approval of the MVC for any future modifications of DRI 614 (which modifications will be reviewed by the MVC in the normal course without the need to seek approval of this Court or an amendment to this Judgment).
- C. This Judgment, and the Action generally, shall have no precedential or preclusive effect in court or in any other proceeding, whether before a municipal or state body or otherwise, as to the substance or merits of the claims or allegations raised by the Hotel, and shall not be construed to be determinative thereof.
- D. This Agreement is hereby adopted as an Order of the Court, and the parties hereto forever waive all rights of appeal, and claims for fees and costs upon entry hereof.

HARBOR VIEW HOTEL OWNER, LLC

MARTHA'S VINEYARD COMMISSION

By its attorneys,

By its attorneys,

/s/ Kevin P. O'Flaherty
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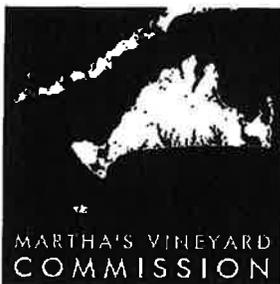
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CERTIFICATION OF SERVICE
I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by ~~mail (by hand)~~ *email* on July 14, 2022

Kevin P. O'Flaherty

EXHIBIT A



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Decision of the Martha's Vineyard Commission

DRI 614-M7 Harbor View Hotel Modifications

1. SUMMARY

Referring Board: Zoning Board of Appeals, Town of Edgartown

Subject: Development of Regional Impact #614-M7 Harbor View Hotel Modifications

Project: Relocation and expansion of proposed spa, expansion of proposed Bradley Cottage, and reconfiguration of the number of guest room keys per building (net number of guest room keys remains the same).

Owner: Harbor View Hotel Owner LLC

Applicant: Marilyn Vukota, Agent

Applicant Address: P.O. Box 1239
Edgartown, MA 02539

Deed: Book 1458, Page 46

Previous Decision: Book 1592, Page 760

Project Location: 131 North Water Street, Edgartown. Map 20B, Lot 107.

Decision: The Martha's Vineyard Commission (the Commission) voted to approve the application for the project as a Development of Regional Impact with conditions. A written decision was issued on August 26, 2021. On September 15, 2021, the Applicant filed an appeal of said decision: *Harbor View Hotel Owner LLC v. Martha's Vineyard Commission*, Dukes County Superior Court C.A. 2174-CV-00044 (the "Appeal"). The parties agreed to settle the Appeal, resulting in further modifications to the project and agreed to revisions of certain of the conditions set forth in the August 26, 2021 decision (the "Revised Decision").

Written Decision: The Revised Decision was approved by a vote of the Commission in Executive Session on July 7, 2022.

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The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of the public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission. This Revised Decision is the operative decision for DRI 614 and supersedes and replaces all prior decisions.

2.1 Referral

The project was referred to the Commission on September 15, 2020 by the Zoning Board of Appeals of the Town of Edgartown, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, DRI Checklist Item 1.2 - Modification to a Previous DRI. The Applicant opted to proceed with a public hearing review as a Development of Regional Impact at the MVC meeting on November 5, 2020.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on November 19 and 26, 2020; notice was also published in the Vineyard Gazette on November 20 and 27, 2020. Abutters within 300 feet of the property were notified by mail on November 13, 2021.

Hearings: The Commission held a duly noticed public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on December 3, 2020, which was opened and continued at the request of the Applicant without testimony to January 7, 2021. The hearing was then continued at the request of the Applicant without testimony again to January 21, 2021. The January 21 hearing was continued to February 11, and then to April 29 and then to May 6, 2021, and closed at that time with the exception of the written record which was left open until 4:30 pm on May 20, 2021 and closed at that time. The hearings were held entirely using remote conference technology as allowable under Chapter 53 of the Acts of 2020, and Chapter 20 of the Acts of 2021.

2.3 The Appeal

On August 26, 2021 the Commission issued a decision approving a modification to DRI 614, subject to conditions. On September 15, 2021, the Applicant filed an appeal of the decision (the "Appeal") in

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Dukes County Superior Court styled Harbor View Hotel Owner, LLC v. Martha's Vineyard Commission, civil action number 2174CV00044. Thereafter, the Commission and the Applicant negotiated a settlement of the Appeal, resulting in agreed-to modifications to the August 26, 2021 decision as set forth in this Revised Decision. The settlement resulting in this Revised Decision was approved by vote of the Commission in Executive Session on July 7, 2022.

2.4 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan" for DRI 614. All pages are 8.5" x 11" unless otherwise noted. MVC acknowledges that the Applicant may revise the Plan without further MVC review provided that the revisions meet the MVC's Conditions contained within this Decision and the revised plans comply with the provisions set forth in Conditions 16.1 and 16.2, and do not otherwise trigger a threshold for DRI review.

- P1. Bradley Cottage Floor Plans prepared by Niemitz Design Group, Inc. for the Harborview Hotel Bradley Cottage in Edgartown, MA consisting of three (3) 36" x 24" pages, including ID-1.40 Lower Level Furniture Plan; ID-1.41 First Floor Furniture Plan; and ID-1.41 Second Floor Furniture Plan, scale $\frac{1}{4}" = 1'-0"$, dated July 21, 2020 and updated on July 29, 2020.
- P2. Bradley Cottage Exterior Elevations prepared by Niemitz Design Group, Inc. for the Harborview Hotel Bradley Cottage in Edgartown, MA consisting of two (2) 36" x 24" pages, including ID-3.1 North & East Elevations; and ID-3.2 South & West Elevations, scale $\frac{1}{4}" = 1'-0"$, dated July 29, 2020, and updated on August 26 & 27, 2020.
- P3. Exterior Rendering of the Bradley Cottage North Elevation prepared by Niemitz Design Group, Inc. for the Harbor View Hotel, consisting of one (1) 17" x 11" page, not to scale, dated August 2020.
- P4. Applicant Presentation consisting of ten (10) pages consisting of a site plan showing spa location approved in 2018 vs. proposed in 2021, aerial photograph of the site, footprint of Bradley Cottage existing and proposed, elevations of south, east, and west, spa basement plan, spa ground story plan, and spa 2nd story plan received by the MVC on February 10, 2021.

- P5. Applicant presentation consisting of two (2) pages consisting of the 2018 Approved Master Plan and the 2021 Proposed Changes to the Master Plan, received by the MVC on May 6, 2021.
- P6. Document entitled, "Proposed 2020 Modification Approved Net Square Footage (NSF)", attached to this Decision as Exhibit A. [See Exhibit A - attached]

Previous Plans Referenced by this Proposed Modification

- P7. Snow Cottage Floor Plans & Elevations prepared by Beacon Architectural Associates, consisting of seven (7) 17" x 11" pages scaled to $\frac{1}{8}" = 1'-0"$ dated August 11, 2017, including: A-100 Existing Basement Floor Plan; A-101 Proposed First Floor Plan; A-102 Proposed Second Floor Plan; A-103 Proposed Third Floor Plan; A-104 Proposed Roof Plan; A-302 Proposed Front Elevation; and A-302 Proposed Side Elevation.
- P8. Pease Cottage Floor Plans & Elevations prepared by Beacon Architectural Associates, consisting of six (6) 17" x 11" pages scaled to $\frac{1}{8}" = 1'-0"$ dated August 11, 2017, including: A-100 Proposed Basement Plan; A-101 Proposed First Floor Plan; A-102 Proposed Second Floor Plan; A-103 Proposed Third Floor Plan; A-104 Proposed Roof Plan; and A-301 Proposed Elevations.
- P9. Morse Cottage Floor Plans & Elevations prepared by Beacon Architectural Associates, consisting of six (6) 17" x 11" pages scaled to $\frac{1}{8}" = 1'-0"$ dated August 11, 2017, including: A-100 Proposed Basement Plan; A-101 Proposed First Floor Plan; A-102 Proposed Second Floor Plan; A-103 Proposed Third Floor Plan; A-104 Proposed Roof Plan; and A-301 Proposed Elevations.
- P10. Main Building Floor Plans prepared by Beacon Architectural Associates for the Harbor View Hotel, consisting of four (4) 42" x 30" pages scaled to $\frac{1}{8}" = 1'-0"$ dated April 18, 2019, including: A-101 Proposed Hotel First Floor Plan; A-102 Proposed Hotel Second Floor Plan; A-103 Proposed Hotel Third Floor Plan; and A-104 Proposed Hotel 4th Floor Plan.
- P11. "Gov. Mayhew Cottage Renovations & Repairs" prepared by Beacon Architectural Associates for the Harbor View Hotel Phase 2, consisting of fifteen (15) 36" x 24" pages dated June 7, 2019 with final updates on February 21, 2020, including X-001 Title Page; X-002 Abbreviations & General Notes; X-003 Code Review; A-101 Proposed Mayhew First & Second Plans, scale $\frac{1}{8}" = 1'-0"$; A-102 Proposed Mayhew Third Floor Plan, scale $\frac{1}{8}" = 1'-0"$; A-103 Proposed Mayhew Attic Plan, scale $\frac{1}{8}" = 1'-0"$; A-301 Exterior Elevations; A-401 Mayhew Cottage Section, scale $\frac{1}{4}" = 1'-0"$; A-402 Enlarged Plans and Accessibility Details, varying scales; A-403 Mayhew Cottage Partition Types and Specs, scale $\frac{1}{2}" = 1'-0"$; A-404 Mayhew Cottage Stair 104 Section, varying scales; A-405 Mayhew Cottage Stair 101 Section, scale $\frac{3}{8}" = 1'-0"$; A-701 Window and Door Elevations and Details, varying scales; A-702 Mayhew Door Schedule and Elevations; and A-703 Mayhew Finish Schedule and Elevations and Specs, varying scales.

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2.5 Other Exhibits

- E1. Referral to the MVC from the Edgartown Zoning Board of Appeals including the ZBA Application, received September 15, 2020.
- E2. Staff Report dated October 26, 2020; and updated on November 5, 2020; January 20, 2021; April 28, 2021; and May 20, 2021.
- E3. Staff Presentation for the MVC dated November 5, 2020; and updated on January 21, 2021, and May 6, 2021.
- E4. Traffic Impact Statement prepared by Ron Müller & Associates, consisting of six (6) pages, dated January 20, 2021.
- E5. Memorandum of Law of the Neighbors of the Harbor View Hotel, in Opposition to the Proposed Harbor View Modifications, submitted by Dylan Sanders, consisting of two hundred thirty-five (235) pages, dated January 20, 2021.
- E6. Memo from the Applicant - Spa Services Narrative, consisting of three (3) pages, dated January 19, 2021, and revised to consist of nine (9) pages on February 10, 2021
- E7. Memorandum from Kevin O'Flaherty, legal counsel for the Harbor View Hotel, consisting of thirty-eight (38) pages, dated April 27, 2021.
- E8. Email from Kevin O'Flaherty with attached pictures of pool area, consisting of five (5) pages, dated April 28, 2021.
- E9. Email from Marilyn Vukota regarding the use of the spa, consisting of one (1) page, dated April 28, 2021.
- E10. Letter from Marilyn Vukota with responses to MVC questions, consisting of seventeen (17) pages including attachments, dated May 20, 2021.
- E11. Letter from Kevin O'Flaherty consisting of four (4) pages dated May 20, 2021.
- E12. Supplemental Memorandum of Law of the Neighbors of the Harbor View Hotel, In Opposition to the Proposed Harbor View Modifications, submitted by Dylan Sanders, consisting of twenty (20) pages, dated May 20, 2021.
- E13. Agreement between Lynn Allegaert and Scout View Property 1, LLC consisting of five (5) pages, dated April 16, 2008.
- E14. Declaration of Trust of The Harbor View Suites Condominium Trust, 131 North Water Street Edgartown, Massachusetts prepared by Goulston & Storrs, P.C. consisting of forty-one (41) pages dated August 31, 2012.

- E15. Master Deed of the Harbor View Suites Condominium, 131 North Water Street Edgartown, Massachusetts prepared by Goulston & Storrs, P.C. consisting of forty (40) pages dated August 31, 2012.
- E16. Master Deed of the Harbor View Hotel Secondary Condominium, 131 North Water Street Edgartown, Massachusetts, prepared by Goulston & Storrs, P.C. consisting of thirty-nine (39) pages dated June 10, 2015.
- E17. Letters of support from the following individuals and organizations: Megan Honey Baptiste, Rina Barletta, Rebecca Bartlett, the Edgartown Board of Trade, Dale Hamson, Bruce & Laura Marshard, Alice Mattison, Deb Nugent, Susan Pizza, Eugenia Revson, Makenzie Wall, and Jean Wong.
- E18. Letters of opposition from the following individuals: Lynn Allegaert (8): January 18 (2), January 20 (2), February 8, February 11, May 10, and May 19, 2021; Loring Allen & Stuart Randall; Gene and Sara Barbato, January 12, 2021; Gene and Sara Barbato & Janice and Francis Conroy, May 20, 2021; Peter and Adrienne Barris; George Bean; Peter Bienstock; Mary Ella Bitzer; Kate and Chuck Brizius; Edwin Brooks; Geoff Caraboolad; Nancy Caraboolad; Dianne and Curtis Carlson; Isobel Case; Jane Chittick (2): December 19, 2020 and January 8, 2021; Janice and Francis Conroy, February 2, 2021; Ann Dickinson; Peter Dreyer; Vanessa Brooker Eastman; Jesse Fink; Carol Fligor; Linda Austin Forrester; Sylvia Frelinghuysen; William Fruhan; Maggie Greely Boris; Holly Hawkes; Andrew Houlahan; Barbara and Tom Israel; T. Kimball Booker; Tara and Bob Levine; Margaret Littlejohn; John McCall; Alexander Neuhoff; Brien O'Brien; Robin Powell Mandjes; Patricia and Kent Ravenscroft; Tom and Terry Reynolds; John Schaefer; Alysa and Paul Stafford; Jim and Susan Swartz; Elizabeth Trahon; Susan and Robert van Roijen; Dick and Kathy Vermillion; Carol and Sandy Vietor; John H. Wasson; Josh Weeks; Peter Weisman; John Wilson; Alessandra Wingerter, legal counsel representing Jim Swartz, Lynn Allegaert, Geoffrey Caraboolad, Robert and Linda Forrester, Joseph Smith Jr., Edwin Brooks, Richard Zannino, Ann Dickinson, and Louise Neuhoff; James and Carol Wolff, David and Pam Young, Richard Zannino.
- E19. Letters that expressed concern for the project without expressing an opinion: Harriet Dewey; Robert Forrester; Ellen Harley; Robert Hayman; Robert Hughes (2): January 18 and February 9, 2021; William Reinfeld and Yvonne Kwauk; Dylan Sanders, legal counsel representing Jim Swartz, Lynn Allegaert, Geoffrey Caraboolad, Robert and Linda Forrester, Joseph Smith Jr., Edwin Brooks, Richard Zannino, Ann Dickinson, and Louise Neuhoff (2): October 26 and November 4, 2020; Joseph Smith Jr. (2): January 14 and May 6, 2021; and Joe Wargo.
- E20. Minutes of the Commission's Land Use Planning Committee Modification Review, October 26, 2020.
- E21. Minutes of the Commission's Modification Review, November 5, 2020.
- E22. Minutes of the Commission's Public Hearing, January 21, 2021.

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- E23. Minutes of the Commission's Continued Public Hearing, February 11, 2021.
- E24. Minutes of the Commission's Continued Public Hearing, April 29, 2021.
- E25. Minutes of the Commission's Continued Public Hearing, May 5, 2021.
- E26. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review,
- E27. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review,
- E28. Minutes of the Commission's Deliberation and Decision, July 22, 2021.
- E29. Minutes of the Commission's Approval of the Written Decision, August 26, 2021.

2.6 Summary of Testimony

The following gave testimony during the public hearing on January 21, 2021:

- Presentation of the project by Sean Murphy and Scott Little, Harbor View General Manager.
- Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: Joseph Wargo, Jane Chittick, Sara Piazza, and Robert Forrester.

The following gave testimony during the public hearing on February 11, 2021:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: Lynn Allegaert, Geoff Caraboolad, Rich Zannino, and Joseph Smith.

The following gave testimony during the public hearing on April 29, 2021:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: Robert Hughes; Jim Swartz; Dylan Sanders, representing several of the immediate neighbors; Mitzi Lawlor; Julia Tarka, representing the Edgartown Board of Trade; and Ned Brooks.

The following gave testimony during the public hearing on May 6, 2021:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Applicant presentation by Marilyn Vukota.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: Amanda Turner Philips, Dale Hamson, Dylan Sanders, Robert Hughes, Joseph Wargo, Jim Swartz, Robert Forrester, and Geoff Caraboolad.

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- Closing Statement by Marilyn Vukota.

3. FINDINGS

3.1 Project Description

The MVC approved a major expansion and renovation of the Harbor View Hotel with conditions in July 2008 (DRI 614). The project included changes to the Main Hotel, demolition of the Mayhew Building, and the construction of new cottages, with the total finished square footage of all buildings increasing from 91,277 ft² to 113,564 ft², and the number of guest room keys dropping from 120 to 117. The project was financed by Lehman Brothers, which went bankrupt in September 2008. In May 2012, a new group of seasonal residents became the controlling investors in the property.

DRI 614 was modified in 2009 (614-M) to change the location and size of the spa; 2012 (614-M2) to change the phasing and the location of the office; 2014 (614-M3) to install cook tops in some of the units; 2016 (614-M4) to extend the timelines for the phasing; and 2018 (614-M6) for an extensive modification, including a reduction of 8,000 ft², relocation of the spa, and a net increase of 29 more guest room keys than the 2008 approval. A proposal in 2017 (614-M5) to modify the Main Hotel and Mayhew Building, as well as the number of cottages, was withdrawn.

On August 21, 2021, the Commission issued a decision approving additional modifications to DRI 614 subject to several conditions. The Applicant challenged a number of the conditions in the Appeal. The parties negotiated a settlement which resulted in revisions to the conditions and which are set forth herein in this Revised Decision. On July 7, 2022 the Commission voted in Executive Session to settle the Appeal by requesting that the Court remand the matter to the Commission and for this Revised Decision to become the operative decision in this matter as follows:

Main Hotel Building: The previously approved 1,620 ft² spa addition on the south side of the main hotel building has not and will not be constructed. Additionally, the previously approved 1,288 sf expansion of the main ballroom (“Edgartown Room”) has not and will not be constructed. As a result, the planned elimination of guest room keys on the hotel’s 2nd, 3rd, and 4th floors will not be necessary to accommodate the expanded ballroom and those guest room keys will remain. The elimination of these two major building expansions from the previously approved plan reduces the impact to abutters and neighbors.

Mayhew Building: The building was approved for 48 guest room keys including the planned elimination of 3 pre-existing guest room keys to accommodate the relocation of the electrical room and fitness center from the Main Building to make room for the approved ballroom expansion. As described above, the previously approved expansion of the ballroom has not and will not be constructed and the fitness center and electrical room will not be relocated to the Mayhew Building leaving the number of guest room keys at 51.

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Bradley Cottage: The replacement of this cottage was approved in 2018 as a 7,080 ft² building with 12 guest room keys. In this modification, it is proposed to be 9,650 ft², including a 3,990 ft² spa and four guest room keys – an increase of 2,570 ft² and a reduction of eight guest room keys. The spa will be located on the first floor (basement) and/or second floor of the building and its use will be limited to registered guests of the hotel and up to two guests of hotel guests per guest room key per day. The four guest room keys will be located on the second and/or third floor of the building.

Pease Cottage: This new cottage was proposed and approved for 11 guest room keys.

Accordingly, this modification will result in no net change in the total number of hotel guest room keys. The seven guest room keys that are not eliminated in the Main Building and Mayhew Building and the one additional guest room key in Pease, will be offset by the reduction of eight guest room keys in the Bradley Cottage.

3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to “protect the health, safety, and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration, and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.”

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluation the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all testimony presented and reviewing all documents submitted during the hearing and review period. The Commission has also considered the Appeal, the advice of its counsel with respect thereto and believes that adoption of the Revised Decision in settlement of the Appeal is appropriate under the circumstances.

3.3 Benefits and Detriments

Based on the record and testimony presented, and its subsequent consideration of resolving the Appeal, the Commission finds the following pursuant to Sections 14 and 15 of the Act.

- A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT..**

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A1. The Commission finds that the proposed development at this location is essential and appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Harbor View Hotel is a historic, pre-existing non-conforming use in the R-5 Residential District of Edgartown, with surrounding residential properties and town-owned land. The hotel is one of 13 hotels in Edgartown, which has a total of about 513 hotel rooms, not including Airbnb and other short-term rentals. The Commission also notes the following:

- Thirteen years have passed since the original approval of DRI 614 in 2008, and conditions on the Island and at the hotel have changed, while much of the 2008 approved project remains unbuilt.
- The Commission approved significant modifications to the 2008 plans in 2018, although a public hearing was not required at the time.
- The hotel property has changed hands since 2008 and weathered the Covid-19 pandemic.
- The decision not to build an expanded ballroom or add a spa to the Main Hotel building, meant that guest room keys in the Mayhew and Main Hotel buildings which had been designated for removal to accommodate the expansion of the ballroom would not be eliminated. This in turn caused the Hotel to be out of compliance with the 2018 approval of DRI 614-M6. The current proposal will bring the Hotel back into compliance with the number of guest room keys approved under the 2018 plan.

The Commission finds ON BALANCE that the probable benefits of the project outweigh the probable detriments, as described below. With respect to persons and property (Section 15(c) of the Act), impact on the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), provision of municipal services or burden on taxpayers (Section 15(e) of the Act), and consistency with town, regional, and state plans and objectives (Sections 14(b), 15(g), and 15(h) of the Act), the Commission finds that the project would have a beneficial impact. The Commission finds the project would have a detrimental impact with respect to impact upon the environment (Section 15(b) of the Act), and a neutral impact with respect to public facilities (Section 15(f) of the Act).

A2. The Commission finds that the proposed development would have a slightly detrimental impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Water Quality (including Groundwater), the Commission finds that the project will have a neutral impact, since the number of guest room keys will remain the same as previously approved. The property is also connected to the Edgartown Wastewater Treatment Facility.

With respect to Stormwater, the Commission finds that the proposed increase in impervious surfaces from the larger footprint of Bradley Cottage will be offset by the proposed reduction in the size of the Main Building footprint due to the elimination of the spa addition and expanded ballroom.

The Commission finds that impacts associated with Coastal Erosion do not apply to the project.

With respect to Flooding and Climate Change Resilience, the Commission finds that the project will create a minor detriment, since it will increase the size of Bradley Cottage, and in turn the amount of development on the site that is at risk of flooding and storm damage. The project will also increase the amount of impervious surface on the site, reducing the absorption of stormwater into the ground.

The Commission notes that Bradley, Morse, Snow, and Pease cottages, as conditioned, will have electric heat pumps for heating and cooling; and rooftop solar panels to the greatest extent feasible. However, the Commission finds that with respect to Energy, the project will create a minor detriment, to the extent that it will still require an increase in energy usage.

With respect to Open Space, the Commission finds that the increased footprint of Bradley Cottage will be offset by the reduction in the Main Building footprint because the additions for the spa and expanded ballroom have not and will not be constructed

A3. The Commission finds that the proposed development would have a beneficial effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds the project will have a neutral impact, since the number of guest room keys and parking spots will not change from the previous approval. The project as previously approved includes the addition of seven parking spaces (an increase from 90 to 97), which have yet to be constructed.

With respect to Character and Identity, the Commission finds the project, as part of the continued expansion of the hotel and its operations, will have an overall detrimental effect. Commissioners note that incremental changes at the hotel over time have affected the neighborhood, and that the proposed spa, although only open to registered guests and up to two guests of hotel guests per guest room key per day, is significantly larger than previously approved (although the number of treatment rooms and overall square footage have been reduced as part of the Settlement). The Commission also notes that the Applicant has represented that the plan approved in 2018, as revised by this Revised Decision, is the Master Plan for the Hotel.

With respect to Economic Development, the Commission finds the project will have a beneficial impact by creating additional jobs and supporting tourism and economic activity in Edgartown. The hotel currently has 35-40 full-time equivalent employees, with about 175 employees in the peak season. The Applicant expects an additional five employees as a result of the expanded spa. Commissioners note that the expansion project as a whole, including the portions not yet built, will further increase the economic benefits, including potential work for Island tradespeople.

With respect to Social Development, the Commission makes no findings.

With respect to Safety and Health, the Commission finds the project would have a beneficial impact, since the new Bradley Cottage will include two handicapped-accessible guestrooms on the second or third floor, and will bring the hotel into ADA and MAAB compliance.

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With respect to Noise, the Commission finds the project would have a neutral effect, since the proposed spa would be enclosed and open only to registered guests and up to two guests of hotel guests per guest room key per day. The spa is intended to handle 20 guests per day in peak season, 10 per day in the shoulder seasons, and two per day in the off-season.

With respect to Night Lighting, the Commission finds the project would have a neutral effect. Any new lighting must be downward facing, as required by the conditions for DRI 614.

With respect to Impact on Abutters (after completion), the Commission finds that the proposed modification will have a neutral impact, since the number of guest rooms will remain the same and the spa will be contained and will be open only to registered guests and up to two guests of hotel guests per guest room key per day. However, Commissioners note that incremental changes at the hotel over time have affected the neighborhood, and that the project as a whole, including the unbuilt portions, will further increase the total room count on the property from 2008 conditions, and the construction of new cottages may create further impacts. However, it should also be noted that function space capacity will not be expanded as had been the plan prior to this modification and, accordingly, the anticipated increase of impacts related to larger function space that was approved in 2018 will not occur.

The Commission also acknowledges the concerns of many neighbors that changes to the hotel, including activity associated with the relocated pool bar, have negatively affected the neighborhood. Accordingly, the Commission has conditioned the project to require the Applicant to return to the Commission with a revised campus plan in the event future proposed modifications increase the square footage or uses approved hereby (see Condition 16.2 below).

A4. The Commission finds that the proposed development would have a beneficial impact upon the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act).

The Commission notes that the project as conditioned will upgrade the previous conditions related to Affordable Housing, by providing affordable housing for additional employees by making available not less than twenty-five (25) single- or double-occupancy bedrooms and five (5) apartment units, with at least the apartment units made available on a year-round basis. The Commission further notes that the project as conditioned will accelerate the Applicant's monetary contribution to the Edgartown Affordable Housing Committee, requiring that half be paid upon the Applicant's receipt of the first building permit for the project and half upon receipt of the Certificate of Occupancy for the finished project.

A5. The Commission finds that the proposed development would have a beneficial effect on the provision of municipal services or burden on taxpayers in the making provision therefore (Section 15(e) of the Act).

The Commission notes that the project will likely have a minimal impact on municipal services, since the site is already developed and close to town, and that the project will increase the value of the hotel property, and potentially increase tax revenue to the town in the form of property taxes, the Room Occupancy Tax, and the Short-Term Rental Tax.

A6. The Commission finds that the proposed development would increase the burden on existing public facilities or those that are to be developed within the succeeding five years (Section 15 (f) of the Act).

A7. The Commission finds that the proposed development would not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Section 14(b), 15(g), and 15(h) of the Act).

The project generally aligns with the Island Plan, including Section 2 (Development and Growth), Section 4 (Built Environment), and Section 6 (Livelihood and Commerce).

The objectives for historical and cultural resources in the Edgartown Master Plan include ensuring that new and reconstructed dwellings and buildings are compatible “with existing neighborhoods and the Town’s character.” However, the Edgartown Community Development Plan (prepared by the MVC) aims in part to encourage more year-round business in the “downtown,” which arguably does not include the hotel property. (The downtown area does not have a formal boundary.)

A8. The Commission finds that the proposed development as conditioned is consistent with municipal ordinances and by-laws (Section 14(c) if the Act).

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project as a whole supports the Commission’s land development objectives, as outlined in the Island Plan and enumerated in section A7 of this Decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION’S KNOWLEDGE.

The project is consistent with local zoning and would be allowable by Special Permit, as outlined in section A8 of this Decision.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

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The project site is within the Martha's Vineyard Lawn Fertilizer Control District, but no other DCPCs.

In sum, after careful review of the Plans and its attendant submittals and the testimony presented by the Applicant and others, and considerations relevant to the Settlement of the Appeal, the Commission has concluded that the benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in Section 14(a) of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on July 22, 2021 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations participated in the decision on July 22, 2021:

- Voting to approve the project: Trip Barnes; Christina Brown; Joshua Goldstein; Michael Kim; Joan Malkin; Ted Rosbeck; Doug Sederholm; Linda Sibley; and Ernie Thomas.
- Voting against: Jeff Agnoli; Fred Hancock; Kathy Newman; Ben Robinson; Christine Todd
- Abstentions: Jim Vercruyse.
- Recused: None.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with conditions.

As noted, the Applicant appealed the Decision to court in the Appeal. The Commission has approved a settlement of the Appeal, and has requested that the Court remand the matter so that this Revised Decision shall replace for all purposes the August 26, 2021 written decision of the Commission. This Settlement was approved by a vote of the Commission in Executive Session on July 7, 2022.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Commission imposes the following condition in order to minimize the potential detriments and maximize the potential benefits. These conditions replace and supersede all prior conditions imposed by the Commission in decisions related to DRI 614.

1 Hotel Uses

- 1.1. The Spa will be open at all times to hotel guests and up to two guests of hotel guests per guest room key per day. The spa will not be open to the general public. There will be no more than 5 treatment rooms and no more than 7 treatment beds. No additional salon, manicure, or pedicure stations are to be added beyond those shown in the Plans.

1.2 The hotel acknowledges that 119 North Water Street is a private residence and, as such, is subject to the same restrictions and regulations that the town places on other private residences on North Water Street within the R-5 zoning district. The Hotel acknowledges that 119 North Water Street is not allowed to be used by the Hotel as a commercial adjunct or commercial overflow facility for the Hotel.

1.3 The Hotel shall inform the MVC through the LUPC of the Hotel's existing guest room key count prior to the issuance of the first Building Permit for the work approved in this Decision.

2 Building Materials

2.1 As offered by the Applicant, prior to the removal of the Morse, Bradley and Snow cottages the Harbor View shall:

- a) Donate the furnishings, bedding, linens, etc. that are not being re-used to families identified by Martha's Vineyard Community Services and the Dukes County Regional Housing Authority.
- b) Materials in Bradley, Morse, and Snow Cottages that will not be reused on site shall be salvaged and/or reused on-Island to the greatest extent feasible. Notice of the availability of the materials shall be posted in both Island newspapers for at least two weeks prior to making such materials available to the public.

3 Affordable Housing and Employee Housing

3.1 As offered by the Applicant, the Applicant shall contribute \$107,072 to the Edgartown Affordable Housing Committee, half of which shall be paid upon receipt of the first Building Permit for the project, and half upon receipt of the Certificate of Occupancy for the finished project.

3.2 The Hotel agrees to provide annually a signed acknowledgment that it has met the Hotel's obligation to provide affordable housing as follows: The Applicant will provide affordable housing for some employees by making available not less than twenty-five (25) single- or double-occupancy bedrooms and five (5) apartment units. At least the apartment units must be available on a year-round basis. Employees may be required to pay a rental amount not to exceed 40% of the market rate for such housing. The Applicant shall donate any surplus materials (i.e., linens, bedspreads, appliances, furniture) to an Island affordable housing organization or as recommended by MVCS or the Dukes County Regional Housing Authority.

4 A.D.A.

4.1 As offered by the Applicant, the property shall comply with all ADA regulations including having 6 accessible units (5% of the available units, per ADA regulations) and 4 accessible parking spaces.

5 Traffic, Parking

5.1 As offered by the Applicant, the Applicant shall:

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- a) maintain the entrances and exits to the property as they were prior to the proposed renovations,
- b) limit its function capacity to 306 people,
- c) provide alternate transportation and parking for any non-hotel guest function (i.e.: people not staying at the hotel) of over 140 people that occurs between June 15 and October 15,
- d) provide traffic mitigation by providing 55 employees with bus passes annually, continuing to provide van transportation for its guests to and from the boats and airport, continuing to require that its employees that do drive (other than those employees parking at the Fuller Street lot, which are senior employees) to park at the Edgartown Park and Ride lot and take the shuttle to town, and continuing to provide bicycles for its guests to use at their leisure.

5.2 As offered by the Applicant, the Applicant shall provide parking for 63 vehicles (4 of which are handicapped spaces) on the property and 14 guest parking spaces and 12 employee spaces at the Fuller Street parcel thereby keeping the overall guest parking at 77 spaces. The new parking lot at the rear of the property shall not be paved with asphalt, but shall have a pervious surface.

6 Recycling

6.1 As offered by the Applicant, the Applicant shall continue its recycling plan consisting of the recycling of glass, office paper, newspapers, cardboard, metals, computers, waste paints and solvents, brass keys, refrigerant gas, grease from the fryers, old batteries, televisions, waste oil from lawnmowers, conversion of old towels into rags, old sheets into drop cloths and copper piping. The applicant shall continue to donate linens and bedspreads to staff, the Boys & Girls Club and others in need.

7 Landscaping

7.1 As offered by the Applicant, a final landscape plan for the project, including DRI 614-M7, shall be submitted to and is subject to the approval of the LUPC prior to the issuance of a Certificate of Occupancy for the four buildings in this DRI modification. This landscaping shall include extensive screening between the subject property and the abutting properties to continue to provide the neighbors privacy.

Lighting

8.1 As offered by the Applicant, all of the exterior lighting on the property shall be down lighting.

9. Stormwater

9.1 As offered by the Applicant, the water runoff on the property shall be directed to dry wells and recharged into the groundwater. A presently impervious parking lot is being replaced by a pervious parking lot. The applicant shall install a drain to alleviate runoff on to Fuller Street from the southern entrance from the property to Fuller Street to the specifications of the Edgartown Highway Department.

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10 Water

10.1 As offered by the Applicant, dual flush toilets shall be installed in the employee areas and public areas. The present 3.0 gallon flush toilets in the units shall be replaced by 1.6 gallon flush toilets.

11 Energy

11.1 As offered by the Applicant, all project improvements contemplate green systems and materials wherever possible to address the energy inefficiency of the pre-2007 buildings. The applicant shall:

- a) Bradley, Morse, Pease, and Snow Cottages shall include electric heat pumps for heating and cooling.**
- b) Implement guest programs for energy savings, light sensors, fan timers, motion controls, etc.**
- c) Make all new construction and renovations high performance, well insulated, including icynene insulation.**
- d) Install low-energy insulated windows in all new construction**
- e) Bradley, Morse, Pease, and Snow Cottages as proposed shall include rooftop solar panels to the greatest extent feasible, subject to Edgartown Historic District Commission review and approval.**
- f) Implement a lighting plan for the property that shall reduce the amount of incandescent lighting on the property through a combination of compact fluorescent bulbs and LED lighting.**
- g) Make the roofs of all new buildings a light color to reduce glare and heat gain**
- h) Install televisions and the few appliances that are in some units that shall be EnergyStar rated.**

11.2 The applicant will use its best efforts to construct the improvements with energy efficiency.

11.3 As offered by the Applicant, all of the above shall meet or exceed the Massachusetts Building Code. As the specific insulation and windows have not yet been selected, the Applicant shall provide a final lighting plan and energy analysis to the MVC staff at the time of the building permit application showing that the project meets federal Energy Star standards the Massachusetts Building Code

12 Community Benefits

12.1 As offered by the Applicant, the applicant and/or a foundation established by the applicant shall

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make contributions to the community in the annual amount of \$50,000 in direct grants and \$50,000 of in-kind donations.

12.2 As offered by the Applicant, the applicant shall continue to provide function space in the off-season to Island non-profit groups at cost.

13. Community Relations

13.1 Prior to the filing of any request for modification of the DRI to increase the square footage above that shown in Exhibit A and/or prior to seeking a change of use from existing uses and from those uses shown on the Plan approved in this Revised Decision and as set forth on Exhibit A, the Hotel will hold a meeting in person or via Zoom to which owners of abutting properties shall be invited in order for those abutters to provide input to the Hotel on the proposed modifications.

14 Construction Time Frame and Minimizing of Impact of Project

14.1 This approval shall remain in full force and effect for 3 years from the June 1st which follows the date when all of the permits and approvals the hotel requires to complete construction for the project are obtained and are final and unappealable. Within such 3-year period, the Applicant shall have completed the foundations of the Bradley, Morse, Pease and Snow Cottages, or shall return to the Commission to request an extension. This approval and construction timetable will be tolled to accommodate any delays resulting from appeals or litigation that prevent the completion of the project. Such tolling period shall take into account the normal construction season on the island which is between October 1st and Memorial Day and shall carryover to the following construction season(s). Additionally, in the event that the town, state, or federal government or other public entity enacts a prohibition or restriction to construction activity at the project site for any reason which causes a delay in construction, this approval and construction timetable will be tolled to accommodate such delay. Such tolling period shall take into account the normal construction season on the island which is between October 1st and Memorial Day and shall carryover to the following construction season(s). The hotel agrees that it will submit initial applications for all four buildings comprising the project (i.e., Bradley, Morse, Pease and Snow Cottages) to the Edgartown ZBA within one-hundred-thirty-five (135) days of final settlement of this litigation with the MVC and the issuance by the MVC of any revised decision or the issuance of any required or necessary subsequent approvals by the MVC for the project approved by the revised decision, and shall diligently pursue any necessary approvals from the Edgartown Historic District Commission.

14.2 All work shall be coordinated reasonably to minimize the amount of impact to the abutters and neighborhood.

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14.3 The restaurant and pub shall remain open whenever feasible during construction of the cottages except for normal scheduled closures for offseason maintenance.

15 Hotel / Condominium Structure

14.1 In order to ensure that the property remains a hotel, the MVC sets the following conditions:

a) No unit shall be occupied by any owner or guest for more than ninety (90) consecutive days, nor may the owner or guest re-occupy any unit within thirty (30) days of a continuous ninety (90) day stay, nor may the owner or guest stay more than four (4) months in any calendar year.

b) No owner, occupant, or guest may claim residency at this location, with the exception of the apartment previously occupied by Bob Carroll.

c) In at least 85% of the units, whenever an owner or guest of the owner of a unit is not occupying the unit it must be available for transient rental or placed in a rental program.

d) All occupants of a unit, whether an owner, guest, or hotel guest shall not use the unit until they have checked in with the hotel's front desk.

16 Modifications

16.1 Any proposed modification of the DRI to increase the number of guest room keys above 146 and/or the total square footage of the Hotel above that set forth in Exhibit A, and/or which seeks a change of use or change in intensity of use, shall be referred to the MVC (including by self-referral by the Applicant) for prior review and approval. For the purpose of this condition, a change in intensity of use shall mean any new use or new non-ancillary commercial activity open to the general public at the Hotel which results in additional visits to the Hotel by members of the public and creates a material adverse impact to traffic and parking. The Applicant has the right to modify the number of guest room keys in individual buildings provided that the total number of guest room keys does not exceed 146 guest room keys. See Exhibit A – attached.

16.2 Any proposed modification of the DRI to increase the square footage of the Hotel above that set forth in Exhibit A, and/or which seeks a change of use from any existing uses and any of the uses approved by the MVC in 2018 (as modified in 2021) or as set forth in the 2018 Master Plan shall be accompanied by a 5-year campus plan for the Hotel.

6. CONCLUSION

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6.1 Permitting from the Town

The Applicants must, consistent with this Revised Decision, apply to the appropriate Town of Edgartown Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with this decision and may place further conditions thereon in accordance with applicable law or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the Commission.

6.2 Length of Validity of Decision

See Condition 14.1.

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6.3 Signature Block



Joan Malkin, Chair

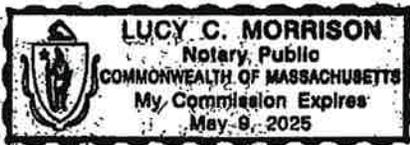
12 July 2022
Date

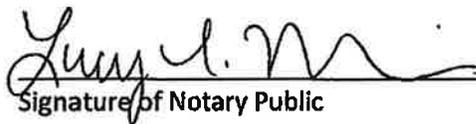
6.4 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 12th day of July, before me,
Lucy C. Morrison, the undersigned Notary Public, personally appeared
Joan Malkin, proved to me through satisfactory evidence of
identity, where was/were personal knowledge to be the person(s)
whose name(s) was/were signed on the preceding or attached document in my presence, and who
swore or affirmed to me that the contents of the document are truthful and accurate to the best of
his/her/their knowledge and belief.





Signature of Notary Public

Lucy C. Morrison

Printed Name of Notary
My Commission Expires May 9, 2025

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: _____

Deed: Book _____, Page _____

Document Number: _____