

## **GROUND LANDLORD ESTOPPEL AND AGREEMENT**

This Ground Landlord Estoppel and Agreement (this “Estoppel and Agreement”) is made as of \_\_\_\_\_, 2021, by Town of West Tisbury, a municipality in the Commonwealth of Massachusetts, (together with its successors and assigns, the “Landlord”).

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### **BACKGROUND**

The Landlord has entered into that certain Lease, dated as of August 30, 2017, as amended by First Amendment dated February 7, 2018 (the “Lease”), between the Landlord, as landlord, and Island Housing Trust Corporation, as tenant and assigned to Scotts Grove LLC (the “Tenant”), as to which a Notice of Lease is recorded with the Dukes County Registry of Deeds (“Registry”) in Book 1463, Page 859, as affected by an Assignment of Lease recorded with the Registry in Book 1463, Page 863. The Lease relates to property located at 565 Edgartown Road, West Tisbury, Massachusetts, as more particularly described in the Lease (the “Premises”).

The Tenant is obtaining a loan (the “Loan”) from the Massachusetts Housing Partnership Fund Board, having its principal address at 160 Federal Street, Boston, Massachusetts 02110 (the “Lender”). The Lender has requested the execution and delivery of this Estoppel and Agreement as a further condition to the making of the Loan.

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### **ESTOPPEL AND AGREEMENTS**

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord agrees and certifies as follows:

1. The Landlord is the present fee owner of the Premises and the legal and equitable owner of the entire Landlord’s interest under the Lease.
2. A true, complete and accurate copy of the Lease has been previously delivered to the Lender. The Lease is in full force and effect and there are no amendments, modifications or supplements thereto except as set forth above.
3. Notwithstanding anything contained in the Lease to the contrary, the Tenant may assign and mortgage its interest in the Lease to the Lender pursuant to the mortgage granted to the Lender (the “Mortgage”), and may grant the Affordable Housing Restriction affecting the Premises for the benefit of the Lender. In consideration thereof, Tenant and Lender assent to the following terms and conditions in the Mortgage, as required by Section 8 of the Lease:
  - a. In the event of a default in any of the Tenant's obligations under the Leasehold Mortgage, the Holder of the Leasehold Mortgage (the “Holder”) shall notify the Landlord of such default and the Landlord shall have the right (but not the

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obligation) within 120 days after its receipt of such notice, to cure such default in the Tenant's name and on the Tenant's behalf, provided that current payments due the Holder during such 120 day period (or such lesser time period as may have been required to cure such default) are made to the Holder, and said Holder shall not have the right, unless such default shall not have been cured within that time, to accelerate the note secured by the Leasehold Mortgage or to commence to foreclose under the Leasehold Mortgage on account of such default; and

- b. If the Holder intends to accelerate the note secured by the Leasehold Mortgage or initiate foreclosure proceedings under the Leasehold Mortgage, the Holder shall first notify the Landlord in writing of its intention to so do (which notice may be delivered simultaneously with the notice of default described above) and the Landlord shall have the right, but not the obligation, upon notifying the Holder within thirty (30) days of receipt of said notice from said Holder, to pay off the indebtedness secured by the Leasehold Mortgage and to acquire the security therefor; and
- c. If the Holder acquires title to the Leasehold Premises through foreclosure or deed in lieu of foreclosure and thereafter intends to sell the Leasehold Premises to a third party, the Holder shall use reasonable efforts to sell the Leasehold Premises to a purchaser or purchasers who is/are a public or non-profit entity whose constituency or beneficiary includes low or moderate income residents of Martha's Vineyard. A Holder shall be deemed to have made such reasonable efforts if, prior to any conveyance by such Holder, it shall have circulated information regarding the availability of the Leasehold Premises for purchase to at least three (3) of the following (in any combination): (i) public or non-profit entities whose constituency or beneficiary includes low or moderate-income residents of Martha's Vineyard, and/or (ii) venues where such information is likely to be seen by such public or non-profit entities that support low or moderate income housing (including, by way of example, one or more local newspapers or magazines of general circulation in the area, or any other publication whose readership has a connection with low or moderate income housing on Martha's Vineyard).

4. The Landlord acknowledges that it has received notice under the Lease of the Mortgage, and that the Lender has all rights of a leasehold mortgagee under the Lease, including without limitation the rights set forth respectively in Section 8 thereof. The Landlord agrees to give all notices to the Lender at the address set forth above (subject to any subsequent written notice of change of address).

5. The Landlord hereby warrants and represents as follows: (i) all rent, additional rent, taxes, and other charges payable under the Lease have been paid to the extent they are payable to the date hereof; (ii) the Tenant enjoys the quiet and peaceful possession of the Premises; (iii) neither the Landlord nor the Tenant is in default under any of the terms of the Lease and, to the best of the Landlord's knowledge, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder, (iv) the Landlord has delivered, and the Tenant has accepted, the Premises in accordance with the terms of the Lease, and (v) the Landlord has not approved, and to the best

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of the Landlord's knowledge the Tenant has not entered into, any assignment of the Lease or sublease of any portion of the Premises.

6. The Term of the Lease commenced on August 30, 2017 (the "Commencement Date"), and expires on August 30, 2068, with four (4) automatic ten (10) year extensions, and a further extension term of eight (8) years.

7. The annual Base Rent due under the Lease is \$1.00 payable at the Commencement Date. The Base Rent has been paid through the date hereof.

8. All work performed on the Premises to date complies with the terms of the Lease and, if required, has been approved by the Landlord.

9. The Landlord acknowledges that the Landlord has received evidence of compliance with all of the insurance requirements set forth in the Lease, including without limitation Section 12 thereof.

10. The Landlord acknowledges and agrees that it shall not encumber the Premises by mortgage or otherwise, without the consent of the Lender.

11. The Lease and this Landlord's Estoppel and Agreement have been duly authorized by all requisite actions of the Board of Selectmen of the Landlord, which actions remain in full force and effect without modification as of the date hereof.

12. The Landlord acknowledges and agrees that the Lender is materially relying upon this Estoppel and Agreement in providing financing to the Tenant in connection with the Premises.

*[signature page follows]*

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IN WITNESS WHEREOF, the Landlord has caused this Estoppel and Agreement to be executed under seal by its duly authorized officers as of the date first above written.

**TOWN OF WEST TISBURY**

**BY ITS BOARD OF SELECTMEN**

\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as \_\_\_\_\_ of \_\_\_\_\_, for its stated purpose as the voluntary act of \_\_\_\_\_.

\_\_\_\_\_

Notary Public

My commission expires:

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The foregoing Landlord's Estoppel and Agreement is hereby acknowledged and consented to by the Tenant as of the date first set forth above, and the Tenant hereby confirms that all of the facts set forth therein are true and complete.

### **SCOTTS GROVE LLC**

By: Island Housing Trust Corporation, its Manager

By:\_\_\_\_\_

Name:

Title:

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