

West Tisbury Affordable Housing Committee  
Minutes  
Nov. 15, 2022

**Present:** James Klingensmith, Jeffrey Dubard, Larry Schubert and Amy Upton

**Absent with Regrets:** Mike Colaneri and Rise Terney

**Also Present:** Rhonda Conley (Admin. Asst.), Jessica Miller, Keith McGuire, Philippe Jordi, Caroline Flanders, Thomas Humphrey (vineyard Gazette), Alexander Bullen, Ivory Littlefield, Sara Rosenthal, Julie Praza, Susan Silk, Liz Volchok, Laura Sober and other members of the public.

Schubert made a motion seconded by Upton to accept the minutes of Oct. 25, 2022 as written. **VOTE 4 YES 0 NO**

### **Meeting Rules of Conduct**

Klingensmith presented rules that he wished the committee to follow (see attached).

### **INVOICES**

**Town Counsel:** Schubert made a motion seconded by Upton to pay town counsel covenant work and recording fees (see attached). **VOTE 4 YES 0 NO**

**Admin. Asst Time Sheet:** Klingensmith asked about the time sheet. Conley explained that the time sheet is not voted upon that the Chair has the right given by the committee to sign time sheets.

### **ANNOUNCEMENTS AND CORRESPONDENCE**

**Appreciation Letter:** Klingensmith requested that the committee send a letter to Jochsberger for his service. All agreed that Conley draft a letter for the committee to review and approve sending.

**MV Land Bank Letter:** Conley reported that she had received a letter from the Land Bank stating projects they were involved with affordable housing and conservation.

### **ONGOING BUSINESS**

**Interim Chair:** Klingensmith being interim chair was decided at Oct. 25, 2022 meeting.

**15 Rock Pond Rd.:** There has been no resale of the home nor enforcement of the previous letters sent (see attached). Georgian Coogan, attorney has been stated as counsel to Christy Phillipps. There are emails stating his interest in the case but no official letter stating him as Phillipps attorney (see attached) Schubert asked Conley to recheck with DCRHA as to maximum resale price as the mortgage rates have risen.

**Island Co Housing:** Caroline Flanders acting as Island Co Housing representative stated to Conley she will stay in contact with DCRHA about a new monitoring agent for Co-Housing and will assist in the resale of Phillipps home and Co Housing will help with materials. She will also stay in contact with Coogan as to closing the resale. Conley has sent Coogan AHC requirements for the resale (see attached). 5-minute break as host had to leave meeting for short time.

**401 State Rd.:** Klingensmith reported that McGuire has created steps hopefully to follow through the process. McGuire presented the steps but as the information was only received shortly before meeting the points were only brushed upon (see attached). McGuire stated that the IHT has spoken to several potential designers. He explained that a contract when chosen will need drafted and agreed. The RFP will need looked at by the selected designer and any questions the designer has will need clarified by AHC with those will be approval of number of rooms, budget and other possible questions. Answers will

lead to design concept to discuss with AHC. Then there will be the schematics and structural design. First step said McGuire is finding a designer. Klingensmith asked about getting to the bottom- faster than April. McGuire believes be sooner. Klingensmith asked about changes if appear. McGuire will address everything. Silk would like to have the public aware of all project progress possibly by email, website, meeting notices. As getting emails out to everyone, Upton stated would be difficult progress reports on the website will be used. Questions about zoom meetings continuing was answered with hybrid meetings may be in order.

## **NEW BUSINESS**

**Short Term Rental Tax:** Dubard presented a report on the use of this tax and the possibility of getting some into affordable housing trust. He has been attending meetings around the island to get the sense of towns where he found interest in creation of a warrant to allow use for housing. Dubard talked about this money being set aside for specific use. One suggestion from Dubard was structural use ( possibly accessory apartments, acquiring houses for renovation). Schubert suggested instead of the rental tax going to general fund that they be transferred to AHT. It was asked that Conley and Dubard look into moving funds. There could be a proposed warrant article for approval at town meeting. It would have to be voted every year. Possibly 83% allocated to AHT for use on above mentioned uses. Ruskin said that Chilmark Select Board has been approached with a proposal of 75% of the Short Term Rental Tax. Lots of questions on this and need to be up front about it. Authorizing year after year makes that an obstacle thinks Ruskin. Schubert asked about use of the money for private project which Ruskin said all are private with one limitation-income.

Silber stated that Province Town has filed legislation pertaining to room tax, It does not have to be a percentage it could be voted in another form.

Dubard is proposed that without being perpetuity people may have time to digest the use and welcome the use for housing.

**New AHC-AHT Member:** Several people have shown an interest in joining the committee. There is one position open as member and 2 alternate positions. Upton spoke of Ivory Littlefield stating he was a worker, interested in the important issue of housing. She said he is happy to throw his hat into the ring and will be either a full member or alternate. Littlefield has been involved in West Tisbury big house bylaw in the past.

***Schubert made a motion seconded by Upton to recommend to the Select Board to elect Alexander Bullen as alternate member to the AHC and AHT and to elect Ivory Littlefield as an At Large member to the AHC and AHT. Bullen VOTE 4 YES 0 NO Littlefield VOTE 4 YES 0 NO***

**Adjourned 8:01 P.M.**

**Approved 11-29-2022 by vote**

**Next meeting will be Nov. 29, 2022 via zoom see agenda on website for attending meeting.**

Respectfully submitted by Rhonda Conley

**Suggested Guide lines for West Tisbury Affordable Housing Committee meetings**

(To be changed, approved and accepted by the Committee)

November 1, 2022

Mostly to be used for meetings on a zoom platform.

1. Please mute before the meeting begins. Unmute after being recognized and re mute after speaking. (This will reduce background noise and feedback)
2. Wait to be recognized before speaking
3. Please make remarks identifying who you are for the record and speaking though the Chairperson.
4. Votes will be by roll call for the minutes.
5. Keep comments only to points on the agenda.
6. Keep comments focused only on agenda items.

**Attachment 2**

**AFFORDABLE HOUSING COVENANT**

**TOWN OF WEST TISBURY**

**AFFORDABLE HOUSING COMMITTEE**

This affordable housing covenant (“Covenant”) is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Valerie Plante-Pachico having a mailing address of 299 Old County Rd. (“Owner”); the **TOWN OF WEST TISBURY**, a municipal corporation within the county of Dukes County, with a mailing address of P.O. Box 278, West Tisbury, Massachusetts 02575 (the “Town”), acting by and through its duly appointed Affordable Housing Committee (“AHC” which term shall include the Town unless the context otherwise requires); and the **DUKES COUNTY REGIONAL HOUSING AUTHORITY**, a duly organized body politic and corporate organized pursuant to the laws of Massachusetts, with a mailing address of P.O. Box 4538, Vineyard Haven, MA 02568 (the “DCRHA” or “Monitoring Agent”).

WHEREAS, the Town is organized exclusively for municipal purposes, including the development and preservation of decent, affordable housing for low- and moderate-income people in the Town, the promotion of neighborhood stability and improvement, and the creation of homeownership opportunities for low- and moderate-income people who otherwise lack such resources;

WHEREAS, the Town has enacted zoning by-laws in furtherance of the Town’s goals of providing affordable housing to individuals and families of low and moderate incomes by facilitating the development of such affordable housing, which zoning by-laws include but are not limited to the creation of Homesite Lots, as defined in Section 4.4-7 of the West Tisbury Zoning By-laws, which section provides that the property shall be subject to a permanent restriction in the record title of the land, limiting purchase, rental or transfer to persons qualified to own or rent affordable housing at a price level established by the Affordable Housing Committee;

WHEREAS, Owner purchased a Homesite Lot, being the real property located at 299 Old County Rd., in West Tisbury, Massachusetts, as more particularly described on Exhibit A attached hereto and incorporated herein by reference, and in a deed (the “Deed”) from

Mark S. Plante dated June 24, 2014 recorded in the Dukes County Registry of Deeds (the "Registry") in Book 1351 Page 680 (the "Premises") at a consideration which is less than the fair market value of the property;

**WHEREAS, this Covenant limits refinance, purchase or transfer of the Premises in order to preserve the affordability thereof pursuant to the terms and conditions in said Covenant;** and

WHEREAS, the DCRHA has been retained to monitor compliance with and to enforce the terms of this Covenant, and eligible purchasers such as the Owner may be required to pay to the DCRHA, as the Monitoring Agent, or its successor, a small percentage of the resale price upon the Owner's conveyance of the Premises, as set out in this agreement and as more fully provided herein; and

WHEREAS, the rights and restrictions granted herein to the Monitoring Agent and the Town serve the public's interest in the creation and retention of affordable housing for persons and households of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers.

NOW THEREFORE, for good and valuable consideration, including the purchase of the Premises for less than fair market value, the receipt and sufficiency of which consideration are hereby acknowledged, the Owner, including his/her/their heirs, successors and assigns, hereby grants this Covenant to the Town and the Monitoring Agent and covenants and agrees that the Premises shall be subject to the following provisions, rights, covenants, agreements, restrictions, conditions, reservations, obligations, liens and other matters set forth herein (collectively the "restrictions"), which are imposed for the benefit of, and shall be enforceable by, the Town and the Monitoring Agent, and their respective agents, designees, successors and assigns, and shall be secured by a mortgage granted by the Owner to the Town, to be recorded herewith.

1. **Eligible Purchaser:** As used in this Covenant, "Eligible Purchaser" shall mean an individual or household which has an annual income equal to or less than the Base Income as defined below, and owning assets not in excess of the limit set forth in guidelines adopted by the AHC, and which individual or household has been qualified by the Monitoring Agent to own affordable housing pursuant to the Town's Affordable Housing Program. Said individual or household must provide to the Monitoring Agent such certifications as to income, assets and residency as the Monitoring Agent may require to determine eligibility as an Eligible Purchaser. The Base Income shall be no more than \_\_\_\_\_ of the median income, by household size, for the County of Dukes County, as published from time to time by the Department of Housing and Community Development ("DHCD") and will be adjusted from time to time according to DHCD guidelines. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter must occupy the Premises as his, her or their principal residence.

2. **Maximum Resale Price:** (a)The Maximum Resale Price shall be the lesser of the appraised value of the Premises at the time of or **four hundred forty-two thousand seven hundred forty-five (\$442,745.00)**, as increased at the rate of 3% (three percent) per annum, not compounding, from the date of this Covenant, provided the Premises is in good repair at the time of resale ("good repair" meaning that all necessary repairs to the Premises and all fixtures therein have been made throughout the ownership of the Premises so as to keep the Premises and said fixtures in the same condition in which they are now or may hereafter be put, reasonable wear and tear (being the normal, gradual deterioration occurring due to aging and ordinary use of the Premises despite reasonable and timely maintenance and repair (only excepted), as such good repair is determined by an **independent home inspector**, agreed upon by Owner and the Monitoring Agent and/or AHC, and the cost thereof borne by the Owner (in the

event the Premises is not in good repair the Owner's 3% increase per year will decrease by the cost of any necessary upgrade or repair to make the Premises in "good repair"); and **provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning no more than the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning no more than 140% of the Area Median Income** for a household size appropriate for the Premises could obtain mortgage financing (as such purchase price is determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program).

(b) There will be a **resale fee of 2% subtracted from the resale price to cover costs of any marketing, income certification or lottery process.** This will be paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of this Covenant, including the supervision of the resale process.

(c) For purposes of this Covenant, household size is determined as the number of bedrooms plus one; i.e., a two bedroom house shall be deemed appropriate for a three person household for the purposes of income eligibility and price setting; a three bedroom house shall be deemed appropriate for a four person household; a four bedroom house shall be deemed appropriate for a five person household; and a five bedroom house shall be deemed appropriate for a six person household.

Nothing in this Covenant constitutes a promise, commitment or guarantee by the AHC or the Monitoring Agent that upon resale the Owner shall actually receive the Maximum Resale Price for the Premises or any other price for the Premises.

All **home inspections** referenced above shall be prepared by a **bonded home inspector** hired by the Owner, at the Owner's expense, which inspector is acceptable to the Monitoring Agent and/or AHC, and is recognized as utilizing acceptable professional inspection standards in Massachusetts.

3. **Resale and Transfer Procedure:** When the Owner, his successors or assigns, shall desire to sell, transfer, dispose or otherwise convey the Premises, or any portion thereof, the Owner shall notify the Monitoring Agent and AHC in writing of the Owner's intention to so convey the Premises. The Monitoring Agent shall calculate the then Maximum Resale Price. The Monitoring Agent shall then seek to find an Eligible Purchaser, which efforts shall include: (A) the placement of an advertisement for sale of the Premises stating the Maximum Resale Price (as defined) (B) best contact telephone number, and the phrase: "*Sale of unit subject to certain guidelines and restrictions with respect to the maintenance and retention of affordable housing for households of low and moderate income*" and (C) the receipt of satisfactory evidence that the new purchaser qualifies as an Eligible Purchaser. The Monitoring Agent shall give notice to the AHC of its progress in locating an Eligible Purchaser.

If more than one Eligible Purchaser is located, the Monitoring Agent, with AHC approval, shall conduct a lottery or other like procedure in the Monitoring Agent's discretion to determine the Eligible Purchaser entitled to the conveyance of the Premises at the Maximum Resale Price. In lieu of a sale to an Eligible Purchaser, the Town, its successors, assigns or designees, shall have the right to purchase the Premises for the Maximum Resale Price.

4. **Resale and Transfer Restrictions:** Except as otherwise stated herein, the Premises or any interest therein, shall not at any time be sold, transferred, disposed of, mortgaged or otherwise conveyed by the Owner, or the Owner's successors and assigns. **This includes gifted, reverse mortgaged or unapproved TRI loans.** No attempted sale, transfer, mortgage or other conveyance shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the

Eligible Purchaser, the Town (including its successors, assigns and designees) or the Mortgagee, as applicable, as provided above, to the then owner of the Premises for and in connection with the sale, transfer, mortgage or other conveyance of such Premises, is equal to or less than the Maximum Resale Price for the Premises.

No conveyance, sale, transfer, mortgage or other conveyance to an Eligible Purchaser or otherwise (if permitted herein), shall be valid unless a certificate is recorded, signed and acknowledged by the AHC or its agent or designee and states that the conveyance is in compliance with the restrictions contained in this Covenant (“Compliance Certificate”).

Any good faith purchaser of the Premises, any lender or other party taking a security interest in such Premises and any other third party may rely upon such a Compliance Certificate as conclusive evidence of the matters stated therein.

Within ten (10) days of the conveyance of the Premises, the Owner shall deliver to the AHC and Monitoring Agent a true and certified copy of the deed of the Premises as recorded, together with information as to the place of recording thereof in the public records. Failure to comply with the preceding sentence shall not affect the validity of such conveyance.

5. **Transfers Upon Death:** Upon the death of the Owner, or, if there is more than one Owner, the last surviving Owner, the Owner's executor(s) or administrator(s) shall, on or before the first business day occurring ninety (90) days after said Owner's death, cause the AHC and the Monitoring Agent to receive written notice of the date of the Owner's death, of whether or not said Owner died intestate, and of the identity, address and relationship of all known heirs and devisees. In the event that a will is admitted for probate by a Court of competent jurisdiction, a copy of such will and all allowed codicils thereto shall be provided to the AHC and Monitoring Agent. Upon receipt of such notice, the AHC shall consent (which consent must be recorded in the Dukes County Registry of Deeds) to a transfer of the Premises to the spouse of the Owner, or the child or children of the Owner, provided that the spouse or child/children demonstrate to the AHC and Monitoring Agent that: (i) the Premises is the principal/primary residence of such spouse or child/children, or shall be upon said Homeowner's death, and provided that the child/children also demonstrate to AHC and Monitoring Agent that (ii) the child is an income qualified Person, and (iii) spouse or child/children is an Eligible Purchaser, and (iii) the Premises is the only real property currently owned or owned in the last three years by the spouse or child/children. The resale and transfer procedures and restrictions of Sections 3 and 4 above, and all other provisions of this Covenant, shall apply to any sale, transfer or other disposition of the Premises to any individual other than the Owner's spouse or child/children, as permitted above, and shall apply to any sale, transfer or other disposition of the Premises from the Owner's spouse or child/children. Said spouse or child/children (“Second Generation Owner”) must sign a new covenant at the time of transfer to said Second Generation Owner, which new covenant shall provide a similar Transfer Upon Death Clause so that the Premises may pass down to the spouse or child/children of the Second Generation Owner upon death and so on through the generations, provided that all other terms of this paragraph are met, including but not limited to the requirement that the Premises is the principal residence of such spouse or child/children.

6. **Restrictions Against Leasing, Refinancing and Junior Encumbrances:** The Premises shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent which consent shall be evidenced by the Monitoring Agent's signature on a Permitted Mortgage Agreement (defined herein) or other documentation as required which must be recorded in the Dukes County Registry of Deeds. **These consents by the Monitoring Agent shall be reported and listed with the AHC. The Premises shall not be**

**refinanced, encumbered (voluntarily or otherwise) or mortgaged for an amount greater than the Maximum Resale Price.**

Any rents, profits, or proceeds from any transaction described above (including, but not limited to proceeds from foreclosure sales) which transaction has not received the prior written consent of the Monitoring Agent shall be paid to and shall be the property of the West Tisbury Affordable Housing Trust, to the fullest extent permitted by law. In the event that the AHC, in the exercise of its absolute discretion, shall consent to any lease other than those permitted above, or shall consent to any refinancing, encumbrance or mortgage as described above, it shall be a condition to such consent that all rents, profits or proceeds from such transaction which exceed the carrying costs of the Premises, as determined by the AHC in its sole discretion, shall be paid to and be the property of the AHC.

7 **Rights and Obligations of Mortgagees:** The Owner may only mortgage the Premises (1) with the prior written consent of the Monitoring Agent and reported to the AHC as stated in Paragraph 6 above, and (2) only if the lender, Owner and DCRHA execute a Permitted Mortgage Agreement at the time of the loan closing, in a form approved by the AHC, which agreement incorporates the terms and provisions of this paragraph.

In the event of a default in any of the Owner's obligations under the Mortgage, the holder of record of any mortgage on the Premises (each, a "Mortgagee") shall notify the Monitoring Agent and the AHC of such fact and AHC shall have the right (but not the obligation) within 120 days after its receipt of such notice, to cure such default in the Owner's name and on the Owner'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. Said holder shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by the Mortgage or to commence to foreclose under the Mortgage on account of such default.

If, after such cure period, the holder intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of this Covenant, the holder shall notify the Monitoring Agent and the AHC of its intention to do so and AHC 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 all indebtedness and any other sum or obligation secured by the Mortgage and to acquire the Mortgage.

In the event of acquisition of title to the Premises and the Owner's interest in the Premises by the Mortgagee by foreclosure sale or the delivery of a deed in lieu of foreclosure, the holder shall give the Monitoring Agent and AHC written notice of such acquisition and the AHC or its designee shall have an option to purchase the Premises and Owner's interest in the Premises from the Permitted Mortgagee for the full amount owing to the holder of the Mortgage, provided, however, that the AHC notifies the holder in writing of the AHC's intent to make such purchase within thirty (30) days following the AHC's receipt of the holder's notice of such acquisition of the Premises and Owner's interest in the Premises; further provided that AHC or its designee shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the AHC does not complete the purchase within such period, the holder of the Mortgage shall be free to sell the Premises and Owner's interest in the Premises to another person.

The Owner agrees to the delivery of all notifications from the Mortgagee to the Monitoring Agent and AHC as well as any other communications and disclosures made by the Mortgagee to the Monitoring Agent and AHC pursuant to this Agreement and Covenant.

In the event the foreclosing Mortgagee has complied with the terms of this Section, and the Town or its designee has not exercised its cure and/or purchase rights under this Section, the rights and restrictions contained in this Covenant shall not apply to such Mortgagee upon such acquisition of the Premises, any purchaser of the Premises at a foreclosure sale conducted by such Mortgagee, or any purchaser of the Premises of such Mortgagee, and such Premises shall thereupon and thereafter be free from all such rights and restrictions (a "Permitted Foreclosure").

In the event of a Permitted Foreclosure, the Mortgagee shall be entitled to recover the principal amount of the loan and accumulated interest, penalties, real estate taxes and its costs and expenses of foreclosure, including reasonable attorney's fees and court costs which are validated ("mortgage expenses") even though the total may exceed the Maximum Resale Price as defined above. In the event such holder of a mortgage forecloses and the Premises is sold for a price that exceeds the mortgage expenses, but does not exceed the Maximum Resale Price, the Owner of the Premises shall receive the remainder of the sale proceeds, up to said Maximum Resale Price, after the mortgage expenses are paid. If the Owner has applied and received such mortgage without the consent of the Monitoring Agent and AHC they shall forfeit such proceeds to the AHC. In the event such holder of a mortgage forecloses and the Premises is sold for a price that exceeds both the mortgage expenses and the Maximum Resale Price, such excess above the Maximum Resale Price shall be paid to the AHC (provided, that in the event that such excess shall be so paid to the Town by such holder, the Town shall thereafter indemnify such holder against loss or damage to such holder, resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Town in accordance herewith, provided that such holder shall give the AHC prompt notice of any such claim and shall not object to the intervention by the AHC in any proceeding relating thereto).

8. **Construction:** The parties acknowledge that a principal residence has been constructed on the Premises and a certificate of occupancy from the building inspector of the Town of West Tisbury has been issued therefor.

9. **Condition of Conveyed Premises:** The Owner agrees that throughout the term of this Covenant, the Owner shall maintain the Premises, and improvements thereon, in good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Premises.

10. **Restrictions to Run with the Premises, Duration of Restrictions:** The Owner agrees and acknowledges that the restrictions in this Covenant are essential to the fulfillment of the purposes of the Town, are for the benefit of the Town, the Town's agents, successors, designees and assigns, including but not limited to the AHC, and are conditions and restrictions on the use of the Premises which are intended to, and shall, run with the land and shall be binding upon and enforceable against the Owner, the Owner's successors and assigns and any party holding title to the Premises. The restrictions shall be perpetual, to the maximum extent permitted by law, including but not limited to the provisions of M.G.L. Chapter 184, Sections 23, 26 – 32, and St. 2004, c. 445 ("An Act Authorizing Martha's Vineyard Affordable Housing Covenants"), and, at a minimum, said restrictions shall be binding upon the Owner and the Town for a term of one hundred fifty (150) years from the date of recording hereof and shall remain in full force and effect in accordance with the provisions of M.G.L. Chapter 184, Section 27, as it may be amended from time to time, or as provided in similar successor provisions, which provisions of M.G.L. Chapter 184, Section 27 permit the extension of the period of enforceability of said restrictions by the recording of an extension in accordance with the provisions of said law before the expiration of the first thirty (30) years from the date of recording hereof, and before the expiration of each succeeding twenty (20) year period



thereafter, or for such other maximum further periods of time as may be allowed by any amendments of said law or by any successor provisions. The Owner hereby agrees that any requirements of the law of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

It is the intention of the parties that all of the rights, restrictions and obligations created by this Covenant, including but not limited to the options to purchase created herein, shall be perpetual and run with the title to the Property, except where terminated pursuant to Section 7 above, and such rights and options shall be considered to be coupled with an interest. In the event that it should be adjudicated by final unappealable order of a court having jurisdiction over such issue that the Rule of Perpetuities applies to any right, obligation or option granted hereby or created herein, then, and only then, the right or option so limited, shall terminate twenty (20) years after the death of the first survivor of the following persons: the children living as of the date hereof of any employees of the Town.

11. **Enforcement:** (a) The rights hereby granted shall include the right of the AHC and the Monitoring Agent to enforce this Covenant independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Premises to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the AHC and the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the AHC and/or Monitoring Agent, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Premises in violation of the provisions of this Covenant, the AHC shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

(i) specific performance of the provisions of this Covenant;

(ii) money damages for charges in excess of the Maximum Resale Price, if applicable;

(iii) if the violation is as sale of the Premises to an Ineligible Purchaser, except as permitted herein, the AHC and/or Monitoring Agent shall have the option to locate an Eligible Purchaser on the terms and conditions provided herein, and the purchase price shall be a price which complies with the provisions of this Covenant; specific performance of the requirement that an Ineligible Purchaser shall, sell as herein provided, may be judicially ordered;

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Premises in violation of the provisions of this Covenant in the absence of a Compliance Certificate, by an action in equity to enforce this Covenant; and

(v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the AHC and the Monitoring Agent in the event successful enforcement action is taken against the Owner or the Owner's successors or assigns. The Owner hereby agrees to grant a mortgage on the Premises to the AHC, to be recorded herewith, to secure payment of such fees and expenses in any successful enforcement action, and to secure the terms, provisions and obligations of the Owner herein. The AHC shall be entitled to seek recovery of fees and expenses incurred in a

successful enforcement action of this Covenant against the Owner and to assert such a lien on the Premises to secure payment by the Owner of such fees and expenses.

(d) The Owner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the AHC and the Monitoring Agent the right to take all actions with respect to the Premises which the AHC and the Monitoring Agent may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Covenant.

12. **Monitoring Agent/Services/Fees:** The Monitoring Agent \_\_\_\_\_ shall monitor compliance with the terms of this Covenant and also have the right to enforce the restrictions herein. As partial compensation of providing these services, a resale fee shall be payable to the Monitoring Agent on the sale of the Premises to an Eligible Purchaser or any other purchaser in accordance with the terms of this Covenant. This fee, if imposed shall be paid by the Owner herein as a closing cost at the time of closing and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, her/his or their successors or assigns, or the Monitoring Agent may bring an action and may seek an attachment against the Premises. Such fee may be added to the price paid to Owner by an Eligible Purchaser and not included in the Maximum Resale Price.

13. **Notice:** Any notices, demands, or requests that may be given under this Covenant shall be sufficiently serviced if given in writing and by hand delivered or posted in the United States mail by registered or certified mail addressed to the AHC, the Monitoring Agent and Owner at the addresses written above, or if addressed to the West Tisbury Affordable Housing Committee, to P.O. Box 278, West Tisbury, MA 02575, or such other addresses as may be specified by either party by such notice.

14. **Further Assurances:** The Owner agrees from time to time, as may reasonably be required by the AHC or the Monitoring Agent, to furnish a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Premises, information concerning the resale of the Premises and other information pertaining to the Premises or the Owner's eligibility for and conformance with the requirements of this Covenant.

15. **Severability:** If any provisions hereof or the application thereof to any person or circumstances shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application or such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law and to the fullest extent permitted by the Rule Against Perpetuities.

16. **Town's Right to Assign:** The AHC shall have the right to assign this Covenant or any or all of the AHC's rights and duties herein, to the Dukes County Regional Housing Authority to the fullest extent permitted by law.

17. **INDEPENDENT COUNSEL:** THE OWNER ACKNOWLEDGES THAT HE, SHE OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

18. **Waiver:** The waiver by the AHC or the Monitoring Agent of, or the failure of the AHC to take action with respect to, any breach of any provisions herein contained, shall not be deemed to be a waiver of such term, covenant, condition, provision, restriction, reservation, obligation, lien or other matter, or subsequent breach of same, or of any other term, covenant, condition, provision, restriction, reservation, obligation, lien or other matter herein contained.

19. **Captions:** All captions, headings or titles used in this Covenant are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

20. **Modifications and Amendments:** This Covenant may only be modified, altered or amended by an agreement in writing executed by the parties hereto.

21. **Binding Agreement:** This Covenant shall bind and inure to the benefit of the parties hereto and their successors and assigns as are permitted by this Covenant.

22. **Singular Includes Plural:** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine and neuter.

23. **Choice of Law:** This agreement shall be governed by, construed in accordance with, and enforced under the laws of the Commonwealth of Massachusetts.

### Attachment 3



**TOWN OF WEST TISBURY**

AFFORDABLE HOUSING COMMITTEE

P. O. Box 278

West Tisbury MA 02575-0278

508-696-0102

[affordhouse@westtisbury-ma.gov](mailto:affordhouse@westtisbury-ma.gov)

September 15, 2022

Christy Phillipps

Via E-mail ([coastit@gmail.com](mailto:coastit@gmail.com)) and Certified Mail

*Re: 15 Rock Pond Road, West Tisbury*

P.O. Box 242

West Tisbury, MA 02575

Dear Ms. Phillipps,

As outlined in a letter from the West Tisbury Affordable Housing Committee dated July 27, 2022, the previous and continuing rental of the property you own at 15 Rock Pond Road, West Tisbury (the “Premises”) constitute a default and violation of the Affordable Housing Deed Rider, by and between you and Island CoHousing, LLC and its assignees and designees, the Town of West Tisbury (the “Town”) and Dukes County Regional Housing Authority (“Monitoring Agent”), dated April 12, 2000 and recorded in the Dukes County Registry of Deeds in Book 795, Page 9 (the “Deed Rider”). Clause 7 of the Deed Rider provides, in relevant part:

“The Property shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without prior written consent of the Monitoring Agent [DCRHA]... **Any rents, profits, or proceeds from any transaction described in the last preceding sentence which transaction has not received the prior written consent of the Monitoring Agent shall be paid to and be the property of the Monitoring Agent.**” (Emphasis added).

You have been renting the Premises without permission from the Monitoring Agent since at least 2018 (and you have rented the Premises since as early as 2006). The Monitoring Agent approved a rental for a period of six months over the winter of 2019-2020 (contingent upon you providing the Monitoring Agent information necessary to income certify the tenant, which information was never produced), with the agreement that you would thereafter sell the property as you did not intend to live at the Premises. That approval from the Monitoring Agent expired in or around May of 2020. Since May of 2020, you have continued to rent the Premises without permission from the Monitoring Agent. It is my understanding that the rent collected has been in the amount of at least \$1,550.00 per month.

The Deed Rider grants the Town broad authority to enforce the terms of the Deed Rider. Pursuant to such enforcement rights, this letter serves as a demand letter, requesting that you pay all rents collected pursuant to the unauthorized renting of the Premises to the Monitoring Agent. No later than October 1,

2022, please deliver a certified or bank check in the amount of \$43,400.00 representing the total rent collected at the rate of \$1,550.00 per month from June 2020 through September 2022. (If rent has been increased or decreased over the years, please let me know so we can adjust this figure accordingly). By October 1, 2022, please deliver the check payable to “Dukes County Regional Housing Authority” via hand delivery to Town Hall, c/o Jennifer Rand, Town Administrator.

If the Town does not receive the foregoing funds by October 1, 2022, the Town has instructed Town Counsel, cc’ed here, to file a complaint with the Dukes County Superior Court seeking collection of the same.

Sincerely,

Michael Colaneri, Chair

West Tisbury Affordable Housing Committee

cc: Town Counsel, Ronald H. Rappaport ([rrappaport@rrklaw.net](mailto:rrappaport@rrklaw.net))

Select Board: Jennifer Rand, Town Administrator ([TownAdmin@westtisbury-ma.gov](mailto:TownAdmin@westtisbury-ma.gov))

Dukes County Regional Housing Authority, David Vigneault ([david@housingauthoritymv.org](mailto:david@housingauthoritymv.org))

#### **Attachment 4**

West Tisbury Affordable Housing Committee

RFP Response Concerns

Sept. 20, 2022

AHC Members and IHT/South Mountain Reps

I have composed this list for your points that members of the committee felt needed addressed or changed on the RFP response. Also, you will find the Outline Specs for this project attached in email with points in red members have commented on.

- Pg. 8 Paragraph 2: Drawings should be readable and have measurements as to setbacks, road, driveway, etc.
- Pg. 8 Paragraph 2: Referring to the RFP plan 7 rental units proposed with 4 units designated 55+
- Pg.9 last paragraph: Shared common room inside where asked for outside pavilion or such

- Pg. 8 Paragraph 1 and 4: Entrance proposed off of Lamberts Cove Rd. at top north side of property also proposed parking facing north border.: There is no granted access on the northern border for a path. The north side setbacks were not to be touched nor parking there
- Pg.12: DCRHA question as to signed on manager
- Seeking \$1,400,000.00 from West Tisbury Community Preservation funds. This large amount from the town CPC was troubling to some

Please let me know if there are any other points that should be added to the list.

**See Also**

IHT Steps (separate file)