

Amended and Restated Road and Recreational Facilities Maintenance Reimbursement Agreement

Mason's Island Fire District
Masons Island Property Owners Association, Inc.
As of May 31, 2023

FOR GOOD AND VALUABLE CONSIDERATION that each party acknowledges receipt of in the formation of this Agreement, which was originally dated the 19th day of January, 2007 (the "Original Agreement") and was amended and restated as of this 31st day of May, 2023, this Agreement is entered into by and between the **MASON'S ISLAND FIRE DISTRICT**, a body politic within the confines of the Town of Stonington, having a mailing address at P.O. Box 373, Village of Mystic, County of New London and State of Connecticut, 06355-0373 (hereinafter referred to as "MIFD", "Fire District" or "District") and the **MASON'S ISLAND PROPERTY OWNERS ASSOCIATION, INC.**, a Connecticut corporation having a mailing address at P.O. Box 344, Village of Mystic, County of New London and State of Connecticut, 06355-0344 (hereinafter referred to as "MIPOA").

WHEREAS, simultaneously with the execution of the Original Agreement, MIPOA became the owner in fee simple of all roads, lanes, streets and various rights of way on the southern portion of Masons Island (the "Island"), located in the Village of Mystic, Town of Stonington, County of New London and State of Connecticut, which such roads, lanes and streets are shown on the maps or plans which are recorded on the Land Records of the Town of Stonington (hereinafter referred to as the "Roads"), as set forth in a Road Transfer Agreement between MIPOA and the Masons Island Company ("MICO"), dated January 19, 2007; and

WHEREAS, MIPOA, as the incorporated association of certain property owners located within MIFD, assumed ownership and responsibility for the care, maintenance and improvement of all said Roads in order to facilitate the administration and operations of said Roads for all residents of the Island within the boundaries of MIPOA; and

WHEREAS, as a condition of the transfer of the fee simple interest in the Roads MIPOA was required to enter into a long term agreement with MIFD whereby MIFD would continue its long-standing obligation of reviewing and approving the maintenance, repair and improvement budget and to reimburse MIPOA's designated general contractor for all approved items of maintenance, repair and improvement to the Roads as may be required from time to time; and

WHEREAS, MIFD is a municipal entity and taxing district duly organized in 1961 by the Town of Stonington in accordance with the laws of the State of Connecticut in effect at that time and remains compliant as organized in accordance with the provisions, powers and authority set forth in C.G.S. Sec. 7-326, as amended; and

WHEREAS, MIPOA may acquire recreational facilities and rights from MICO in the future (any and all such recreational facilities and rights acquired by MIPOA and any wholly-owned subsidiary of MIPOA are, collectively, called the "Additional Covered Facilities", and the Roads and the Additional Covered

Facilities are collectively called the "Covered Facilities"); and

WHEREAS, as the duly organized fire district, MIFD is charged with the responsibility to extinguish fires and to do so in a manner rationally related to such fire district's public health, safety and general welfare, and MIFD has the authority to pay for the maintenance and regulation of recreational facilities, which would include the Additional Covered Facilities, pursuant to C.G.S. Sec. 7-326, as amended, and its By-laws which give the power, among other things, to construct, maintain, and regulate the use of recreational facilities; and

WHEREAS, the construction and maintenance of roads and the cost of maintenance of the Additional Covered Facilities is within the authority and purview of MIFD in furtherance of the obligation to secure access for vehicles as well as maximizing the safety of MIFD residents and their property and providing for maintenance and regulation of the use of recreational facilities within the District; and,

WHEREAS, MIFD has historically reimbursed MICO (the prior owner of the Roads) for the care, maintenance and improvement of the Roads in order to meet the needs of MIFD residents and, consistent with that previous obligation, the transfer of the Roads to MIPOA represented a policy objective that facilitated the coordination of the services provided to the residents of MIFD;

WHEREAS, MIFD has historically paid for some costs associated with the care and maintenance of recreational facilities upon the Island in order to meet the needs of MIFD residents and the transfer of any Additional Covered Facilities which MIFD agrees to add to the coverage under this Agreement will facilitate the coordination of the services provided to the residents of MIFD; and,

WHEREAS, MIFD and MIPOA agree that the transfer of ownership of the Roads and Additional Covered Facilities from MICO to MIPOA is in the best interest of MIFD.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Acknowledgement of Road Transfer. MIFD acknowledges that the fee simple ownership of all Roads, as set forth in Schedule B, attached hereto, was conveyed from MICO to MIPOA simultaneously with the execution of the Original Agreement and that all the said Roads are within the recognized boundaries of MIPOA.

2. Road Maintenance Reimbursement or Payment.

A. Reimbursement or Payment. MIFD agrees to pay directly or reimburse MIPOA (the "Road Maintenance Reimbursement") for the performance of services pertaining to maintaining, repairing and improving the Roads as may be required, from time to time, and for no other purpose except as provided in this Agreement. Said payments and reimbursement are made in furtherance of MIFD's statutory authority to extinguish fires maintain roads in the advancement of the public health, safety and general welfare of all MIFD residents.

B. Amount of Reimbursement of Payment. The Road Maintenance Reimbursement shall not, in the aggregate, exceed the specific budget category appropriated by MIFD for the annual Road

Maintenance Budget of MIFD. Said Road Maintenance Budget shall be submitted to MIFD for review and approval in accordance with the requirements of this Agreement and the MIFD By-Laws.

C. *New Road Requirements.* It is the understanding of the parties that MIPOA will be conveyed title to all future roads constructed by MICO, within the boundaries of MIPOA and MIFD. MIFD agrees to pay directly or reimburse MIPOA for the maintenance of said future roads in the event such roads are completed and certified by a professional engineer to be built to the specifications and any other requirements as applicable to the Town of Stonington Private Road Regulations as of the date of conveyance and for no other purpose except as provided in this Agreement. MICO shall be responsible for ensuring compliance with said Private Road Regulations and other applicable laws before MIPOA takes title.

3. Additional Covered Facilities Reimbursement.

A. *Reimbursement or Payment.* MIFD agrees to pay directly or reimburse MIPOA (the "Additional Covered Facilities Reimbursement") for all costs of maintenance of the Additional Covered Facilities, such costs to include costs of maintaining, repairing and improving the Additional Covered Facilities as may be required, from time to time, including reimbursement for costs related to the operation and other start-up and transitional costs pertaining thereto, as may be agreed by the parties, and for no other purpose except as provided in this Agreement. Said payments and reimbursements are made in furtherance of MIFD's statutory authority maintain and regulate the use of recreational facilities and in the advancement of the public health, safety and general welfare of all MIFD residents.

B. *Amount of Reimbursement or Payment.* The Additional Covered Facilities Reimbursement of payments shall not, in the aggregate, exceed the specific budget category appropriated for the annual Additional Covered Facilities Maintenance Budget of MIFD. Said Additional Covered Facilities Maintenance Budget shall be submitted to MIFD for review and approval in accordance with the requirements of this Agreement and the MIFD By-Laws.

C. *New Additional Facility Requirements.* It is the understanding of the parties that MIPOA may propose to acquire additional facilities and rights in the future from MICO that are within the boundaries of MIPOA and MIFD. In order for any such facility to be an Additional Covered Facility within the meaning of this Agreement, MIFD must first agree to the addition of such facility to Schedule 1 hereto, and upon such approval and amendment of this Agreement, such facility shall for all purposes be an "Additional Covered Facility".

4. Covered Facilities Maintenance Budget. MIPOA shall submit simultaneously with the Roads Maintenance Budget an Additional Covered Facilities Maintenance Budget (collectively, the "Covered Facilities Maintenance Budget") to MIFD on or before April 1 of each year, prior to entering or modifying any contracts or agreements pertaining to the maintenance, repair or improvement of any of the Covered Facilities. The proposed Covered Facilities Maintenance Budget shall include reference to any existing multi-year contractual arrangements.

A. *Standards and Considerations.* The preparation and approval of the Road Maintenance Budget shall take into consideration the responsibilities set forth in sub-paragraphs 2.A through 2.K of the Road Transfer Agreement, which responsibilities are incorporated and made a part hereof.

B. *Budget Line Items.* In preparing the budget for the above referenced standards and considerations, the proposed budget submitted by MIPOA shall include but not be limited to the following line items: Snow Removal (including sanding); Clearing; Mowing; Paving; Drainage; Sweeping; Signs; Miscellaneous.

C. *The Covered Facilities Maintenance Budget Process.* The parties agree to the following parameters for the budget process:

(1) The Board of Directors of MIFD and the Board of Directors of MIPOA will each appoint a Board member to act as its Facilities Representative. These two Representatives shall serve as a Joint Facilities Committee (the "Facilities Committee") for both parties.

(2) On or before six months prior to the end of each fiscal year (which, for the purposes hereof, shall mean July 1 through June 30), MIPOA shall hire a general contractor and advise MIFD of the selection through the Facilities Committee.

(3) Following the selection of a general contractor, the Facilities Committee shall meet to set forth a proposed Annual Maintenance Program for the Covered Facilities (the "Program"). Said Program shall be completed on or before February 1st of each year.

(4) Upon completion of the Program, MIPOA's general contractor shall obtain bids or proposals from sub-contractors qualified to provide the services required under the Program. Said bids or proposals shall bind the proposed sub-contractor until a stipulated time of expiration, which shall be for a period of time inclusive of the fiscal year in which the services are required.

(5) Following receipt of the binding proposals, MIPOA shall approve a proposed Covered Facilities Maintenance Budget, including the approved sub-contractors proposed by MIPOA's general contractor, and shall submit the proposed Covered Facilities Maintenance Budget to MIFD on or before April 1st.

(6) MIFD shall act upon the Covered Facilities Maintenance Budget, at the MIFD annual meeting, on or before May 31st.

5. Protocols Pertaining to the Road Maintenance Reimbursement and Additional Covered Facilities Reimbursement. Expenses included in the Covered Facilities Maintenance Budget are required to be paid by MIFD within a reasonable time after invoices are submitted by MIPOA's general contractor to MIFD's Facilities Representative.

A. *Role of MIPOA and the General Contractor.* MIPOA and its general contractor shall be

responsible for the execution of all services as approved in the Covered Facilities Maintenance Budget. The agreement between MIPOA and the general contractor shall include the following provisions:

(1) The general contractor shall be as fully responsible to MIPOA for the acts and omissions of its consultants, subcontractors, and of other persons either directly or indirectly employed, as it is for the acts and omissions of persons employed directly by the general contractor.

(2) The general contractor shall provide sufficient organization, skilled personnel, and management to carry out the requirements and intent of this Agreement and the Covered Facilities Maintenance Budget.

(3) The general contractor shall coordinate the work of the subcontractors with each other, and with the efforts of MIPOA and MIFD.

(4) The general contractor and each subcontractor shall be required to secure and maintain such insurance coverage (including as reasonably required by either MIPOA or MIFD, General Liability, Automobile Liability, Workers Compensation and Excess Liability Insurance) in amount not less than \$1,000,000, which shall name MIPOA and MIFD as additional insured parties. Moreover, said general contractor and each subcontractor shall have on file certificates of insurance evidencing such coverages.

(5) The general contractor and each subcontractor shall comply with all federal, state and local laws, regulations and ordinances.

(6) All agreements between the general contractor and any subcontractor in connection with the maintenance of the Covered Facilities shall specifically provide that the MIFD is an intended third-party beneficiary pursuant to the terms of said agreements, and that MIFD shall have standing to enforce the provisions of same and to recover for the breach of said agreements and contracts. Moreover, MIFD will have sole discretion to determine whether services have been completed in accordance with the appropriate agreement.

B. *Role of the Facilities Committee.* MIFD's Facilities Representative shall be responsible to MIPOA for approving the work of the general contractor and/or its subcontractors on behalf of MIFD prior to, on behalf of MIFD, instructing the Treasurer of MIFD to pay expenses included in the Covered Facilities Maintenance Budget. Approved bills shall be submitted to the Treasurer on a monthly basis for payment.

(1) MIPOA shall direct its general contractor to inspect the work jointly with MIFD's Facilities Representative, upon MIFD's request. For the purposes of the Facilities Committee, the MIFD's Facilities Representative will have the sole discretion to determine whether the services have been completed as required by the appropriate agreement. If not completed to the satisfaction of MIFD's Facilities Representative, the MIFD Facilities Representative, through

MIPOA and its general contractor, shall submit a report of discrepancies and deficiencies in the work performed by any general contractor or subcontractor and set forth the requirements necessary to meet prior to payment.

(2) In consultation with MIPOA's general contractor, if and as applicable, the Facilities Committee shall determine when the work is finally completed and, following completion of corrections, the parties' Facilities Representatives shall jointly direct that the Treasurer of MIFD pay the relevant amounts. The Treasurer of MIFD shall not pay any such amounts prior to receipt of the joint direction parties' Facilities Representatives.

6. Liability Insurance. Separate and coterminous liability insurance policies, including medical payments insurance, shall be maintained by both MIFD and MIPOA in an amount to be agreed upon by MIPOA and MIFD; but in no event in an amount less than \$5,000,000.00, in order to protect MIPOA and its members as well as MIFD and its constituents from any claims regarding the Covered Facilities and the respective roles of the parties in the maintenance and use thereof from any claims. Said policies shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, repair, maintenance, or replacement of roadways and recreational facilities of a nature, type and extent comparable to the Covered Facilities. Each party's Liability Insurance Policies shall be endorsed to add the other party as an "Additional Insured" and to waive subrogation rights in favor of the other party and those claiming by, through and under the other party.

7. Termination.

A. *Termination of Agreement for Cause.* If, through any cause, in part or in full, MIPOA (including its general contractor or subcontractors) shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violate any of the covenants, agreements, or stipulations of this Agreement, MIFD shall thereupon have the right to terminate this Agreement by giving at least thirty (30) days' written notice and opportunity to cure to MIPOA of such termination and specifying the nature of the violation and the effective date of termination, provided, however, in the event such failure or violation shall be of a nature that the same is not reasonably capable of cure within thirty (30) days, MIPOA shall have such additional time (during which period any such termination shall not become effective) as is necessary to cure the same so long as MIPOA diligently and continuously pursues such cure. This Agreement shall terminate upon the expiration of the notice period if by such date the violation has not been cured by MIPOA.

Notwithstanding the above, MIPOA shall not be relieved of liability to MIFD for damages sustained by MIFD by virtue of any breach or violation of this Agreement by MIPOA, and MIFD may withhold any payments to MIPOA or its general contractor for the purpose of setoff until such time as the exact amount of damages due MIFD from MIPOA is determined.

B. *Termination for Lack of Funding.* MIPOA acknowledges that the Agreement is subject to funding by MIFD, in accordance with the requirements of law applicable to fire districts. MIPOA therefore agrees that MIFD shall have the right to terminate this Agreement in whole or in part without penalty in

the event that: (1) MIFD is unable to issue its debt obligations for sale because of a legal infirmity as otherwise determined by bond counsel or the Internal Revenue Service; or, (2) MIFD is unable to market and or timely sell the required amount of debt obligations required to fund its obligations under this Agreement in whole or in part, or, (3) the money required to enable MIFD to fund its obligations under this Agreement is either not appropriated, authorized or made available pursuant to law, or such funding appropriations have been reduced pursuant to law.

(1) *Effects of Non-appropriation.* If funds to enable MIFD to fund its obligations under this Agreement are not appropriated, authorized or otherwise made available in accordance with law, MIFD shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated, authorized or otherwise made available by law by giving advance written notice of termination to MIPOA. MIFD shall provide any such notice promptly upon learning of an actual or threatened non-appropriation event.

(2) *Effects of Reduced Levels of Funding.* If funding is reduced by law, or funds to pay MIPOA for the agreed to level of services and functions to be provided by MIPOA under this Agreement are not appropriated, authorized or otherwise made available in accordance with law, MIFD may, upon seven (7) business days written notice to MIPOA, reduce the level of services or functions in such manner and for such periods of time as MIFD may elect. The charges payable under this Agreement shall be equitably adjusted to reflect such reduced level of services or functions and the parties shall be afforded the rights set forth in this Agreement.

(3) *No Payment for Lost Profits.* In no event shall MIFD be obligated to pay or otherwise compensate MIPOA for any lost or expected future profits of MIPOA's general contractor, its subcontractors or any other persons claiming by, through, or under MIPOA.

C. *Enforcement, Right to Cure, Expenses.* If MIPOA is in default of any of its obligations hereunder, MIFD shall have the right to give written notice of said default to MIPOA and if MIPOA has not cured said default within thirty (30) days of the date of said notice except for items of a seasonal nature which shall be cured within one hundred eighty (180) days of said notice, MIFD shall have the right to cure said default on its own accord and shall further have the right to charge MIPOA with the reasonable costs and expenses incurred by MIFD to cure said default. If any party hereto shall initiate any action to enforce any of the terms or obligations of the parties as contained herein, the successful party in such action shall be entitled to recover all of its costs and expenses including reasonable attorney fees and court costs.

8. **Force Majeure.** The obligations set forth in this Agreement will be equitably adjusted in the event of the occurrence of a Force Majeure Event, as follows:

A. Acts of God, such as tornado, fire, hurricane, blizzard, earthquake, typhoon, flood or other inclement weather conditions uncharacteristic of and not reasonably foreseeable in New London County Connecticut, that prevent either party from completing its obligations under this Agreement and any associated project schedules.

B. Acts of the public enemy, war, civil unrest, terrorism, pandemics, sabotage and or acts of the State, Federal or local governments in their sovereign capacity.

C. Labor strikes (including strikes affecting transportation).

For the avoidance of doubt, MIFD and MIPOA agree that monetary payment obligations under this Agreement are not subject to excuse or delay on account of any Force Majeure Events.

9. Assignability/Consent. Except as provided herein, or except as may be hereafter determined by the parties in writing, no party to this Agreement may sell, assign, transfer or delegate its interest in this Agreement, or any of its right, duties, or obligations hereunder, without the prior written consent of the other party. Whenever, the consent or the approval of a party is required herein, such party shall not unreasonably withhold, delay, or deny such consent or approval. Any purported sale, assignment, transfer or delegation in violation of the terms of this paragraph shall be null and void.

10. Notice. Except as otherwise specifically prohibited in this Agreement, whenever under this Agreement approvals, authorizations, determinations, notices, satisfactions or waivers are required or permitted, such items shall be effective and valid only when given in writing signed by a duly authorized officer of MIFD or MIPOA and delivered in hand or sent by mail, postage prepaid, to the party to whom it is directed, which until changed by written notice, are as follows:

MIPOA:
The President
P.O. Box 344
Mystic, CT 06355-0344

MIFD:
The President
P.O. Box 373
Mystic, CT 06355-0373

11. Entire Agreement. This Agreement, when executed by the parties, shall be effective as of the date first stated above in this Agreement. All understandings and agreements heretofore had between MIFD and MIPOA with respect to the subject matter of this Agreement are merged into, or superseded by, this Agreement. This Agreement and the documents expressly referenced herein fully and completely expresses the agreement of the parties with respect to the reimbursement and maintenance of the Covered Facilities. The parties acknowledge that no representations of any kind whatsoever with respect to the subject matter hereof have been made other than as appear in this Agreement, that neither party has relied on any such representations, and that no claim that either party has so relied on may be made at any time or for any purpose.

12. Amendment of Agreement. This Agreement may not be modified or amended except by a writing signed by both parties, in accordance with the laws governing fire districts in the State of Connecticut.

13. Construction of Language. The language in this Agreement shall be construed according to its customary meaning within the construction industry in the State of Connecticut, except where a specific definition is provided herein. Whenever used: the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

14. Captions and Titles. Captions and titles of the different Articles and Paragraphs of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement, and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

15. No Waiver.

A. The failure of either party to exercise any right, option or remedy hereby reserved or the existence of any course of performance or dealing hereunder or in connection herewith shall not be construed as a waiver of any provision hereof; or of any such right, option or remedy available to either party; or as a waiver for the future of any such provision, right, option or remedy; or as a waiver of a subsequent breach of this Agreement.

B. The consent or approval by MIFD of any act by MIPOA requiring the MIFD's consent or approval shall not be construed to waive or render unnecessary the requirement for MIFD'S consent or approval of any subsequent, similar act by MIPOA. The payment by MIFD of any amount due hereunder with knowledge of a breach by MIPOA of any provision of this Agreement shall not be a waiver of such breach. No provision of this Agreement affecting or relating to MIFD shall be deemed to have been waived unless such waiver shall be in writing signed by MIFD.

16. Successors and Assigns. MIFD and MIPOA each binds itself, its successors, permitted assigns and legal representatives to the other party to this Agreement and to the successors, permitted assigns and legal representatives of such other party in respect of all covenants of this Agreement.

17. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement, however, is held to be prohibited or invalid under applicable law, such provision shall be deemed restated to reflect the original intentions of the parties, as nearly as possible in accordance with applicable law, and if capable of substantial performance, the remaining provisions of this Agreement shall be enforced as if this Agreement was entered into without an invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislation, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

18. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not in limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

19. Enforcement. MICO, as the mortgagee of the Roads, is hereby named as a third-party beneficiary of this Agreement with respect to the Roads, with distinct rights of enforcement in the event that MIFD shall fail or neglect to make any required payments and MIPOA shall fail, neglect or refuse to enforce the Agreement, following written demand and a reasonable time for performance given by

MICO. Said rights shall automatically lapse and be of no further force the earlier of twenty years from the date of the Original Agreement or upon satisfaction of the terms of a mortgage by and between MIPOA and MICO, whichever date is sooner.

20. Governing Law. This Agreement, its terms and conditions and any claims arising therefrom shall be governed by the internal laws of the State of Connecticut.

[Remainder of page intentionally left blank; signatures to follow.]

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the dates signed below.

WITNESS:

Stacey Taylor
Stacey Taylor

Risa M Brunear
Lisa Brunear

MASON'S ISLAND FIRE DISTRICT

By: [Signature]
Ethan Tower
Its President, Duly Authorized

Date: 05/31/23

WITNESS:

MASON'S ISLAND PROPERTY OWNERS
ASSOCIATION, INC.

Stacey Taylor
Stacey Taylor

Risa M Brunear
Lisa Brunear

By: [Signature]
Bill Pryor
Its President, Duly Authorized

Date: 05/31/23

[Remainder of page intentionally left blank; acknowledgements to follow.]

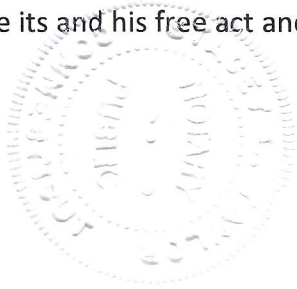
STATE OF CONNECTICUT

COUNTY OF NEW LONDON

)
)ss. Mystic
)

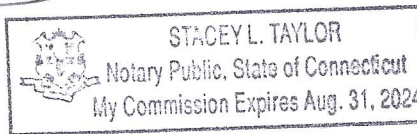
May 31st, 2023

Personally appeared, Ethan Tower, acting herein as President, duly authorized, of **MASON'S ISLAND FIRE DISTRICT**, signer and sealer of the foregoing instrument and acknowledged the same to be its and his free act and deed, before me.



Stacey L. Taylor
(name)

Notary Public/Commissioner of the Superior Court



STATE OF CONNECTICUT

COUNTY OF NEW LONDON

)
)ss. Mystic
)

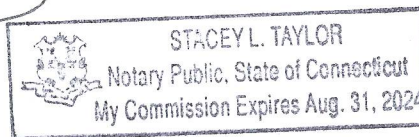
May 31st, 2023

Personally appeared, Bill Pryor, acting herein as President, duly authorized, of **MASON'S ISLAND PROPERTY OWNER'S ASSOCIATION, INC.**, signer and sealer of the foregoing instrument and acknowledged the same to be its and his free act and deed, before me.



Stacey L. Taylor
(name)

Notary Public/Commissioner of the Superior Court



Schedule 1

Legal Descriptions of Additional Covered Facilities

[Insert.]