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CAPE COD
COMMISSION

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**DEVELOPMENT AGREEMENT BY AND BETWEEN
RED JACKET BEACH, LIMITED PARTNERSHIP, BLUE WATER, LIMITED PARTNERSHIP,
EDGE OF THE SEA INC. AS TRUSTEE, AND RIVIERA BEACH, LIMITED PARTNERSHIP
AND
THE CAPE COD COMMISSION**

This Development Agreement is entered into this Fourteenth (14th) day of March 2011 by and between the Cape Cod Commission (hereinafter "Commission") and Red Jacket Beach, Limited Partnership by DeWitt Davenport, President and Treasurer; Blue Water, Limited Partnership by DeWitt Davenport, President and Treasurer; Edge of the Sea Inc. as Trustee by DeWitt Davenport, President; and Riviera Beach, Limited Partnership by DeWitt Davenport, President and Treasurer, in care of The Davenport Companies, with an address of 20 North Main Street, South Yarmouth, MA 02664 (hereinafter "The Davenport Companies").

Whereas, the Commission was established by Chapter 716 of the Acts of 1989, as amended (hereinafter "Act"), for the purpose of reviewing Developments of Regional Impact (hereinafter "DRIs") which, because of the magnitude of their impact are likely to present development issues significant to or affecting more than one municipality; and

Whereas, the Commission has adopted the *Code of Cape Cod Commission Regulations of General Application* (hereinafter "Code"), including inter alia, Chapter A, *Enabling Regulations Governing the Review of Developments of Regional Impact* (hereinafter "Regulations"), as revised May 2010 and corrected June 2, 2010, as well as the Regional Policy Plan for Barnstable County (hereinafter "RPP") as revised on May 9, 2010 and recorded on June 17, 2010; and

Whereas, Chapter D of the Code, which is the Development Agreement Regulations, as amended May 6, 2009, provides for the approval of Development Agreements, and, in particular, Section 4 thereof outlines who may participate in a Development Agreement (hereinafter "Agreement"); and

Whereas, The Davenport Companies is a Qualified Applicant and as such may participate in an Agreement per Sections 1(c), 4(a) and 4(b) of the Development Agreement Regulations; and

Whereas, the Commission and The Davenport Companies are Participating Parties (hereinafter "Party") to this Agreement pursuant to Sections 1 and 4 of Chapter D of the Code; and

Whereas, per Chapter D of the Code, Section 4, the Town of Yarmouth is not a Participating Party to this Development Agreement; and

Whereas, Chapter D of the Code provides for the approval of Development Agreements, and, in particular, Section 5 thereof outlines the procedure for adopting an Agreement by and between the Commission and a Qualified Applicant; and

Whereas, in accordance with Chapter D of the Code, Section 5(a), on July 14, 2009, The Davenport Companies filed a Notice of Intent (see Appendix A attached to this Development Agreement and incorporated by reference) with the Commission's Regulatory Committee requesting a determination that the Red Jacket Resorts Redevelopment, to be located at One South Shore Drive, South Yarmouth, MA (hereinafter "Red Jacket") and 291, 301 and 327 South Shore Drive, South Yarmouth, MA (hereinafter "Blue Water") was suitable and qualifies for the Development Agreement process; and

Whereas, the proposed project as described in the Notice of Intent and which is the subject of this Development Agreement is the demolition of four existing hotels and the construction and operation of two new hotels located on South Shore Drive in South Yarmouth, MA. The proposed project consists of the redevelopment of two separate developed parcels of land along South Shore Drive in South Yarmouth. Seasonal resorts and cottages comprising four resorts, The Red Jacket Beach Resort, The Blue Water Resort, The Edge of the Sea, and Riviera Beach Resort, currently exist on-Site. The Applicant seeks to redevelop both properties totaling 15.5 acres with two modern resorts.

Whereas, one resort will be identified as the Red Jacket Beach Resort and will be located at 1 South Shore Drive. The Applicant is proposing two concepts for this property: Concept A (preferred alternative) includes a right-of-way relocation (see Exhibit A attached to this Development Agreement and incorporated by reference); and Concept B includes the right-of-way maintained at its current location (see Exhibit B attached to this Development Agreement and incorporated by reference). The Applicant proposes to redevelop the site with a modern 4-story seasonal hotel with a 41,860 square foot (s.f.) footprint totaling 119,130 overall s.f. of gross floor area. The resort will provide 154 guest rooms and 8 efficiency units for a total equal to the number of accommodations in the existing facility. The project also includes the development of two 2½-story, four-unit cottages along South Shore Drive (each with a footprint of 2,280 s.f.). The project includes the development of parking spaces, an outdoor pool and deck, an outdoor bar and grill with seating area, a hotel restaurant, a sewage treatment building, and other ancillary uses commonly associated with resorts.

Whereas, the second resort will be identified as the Blue Water Resort and will be located at 291, 301, and 327 South Shore Drive (see Exhibit C attached to this Agreement and incorporated by reference). The Applicant proposes to redevelop the area with a 4-story seasonal hotel comprised of three buildings connected by overhead passageways. The three buildings will have a total footprint of 52,200 s.f. with an overall gross floor area of 195,550 s.f. The resort will provide 240 guest rooms, the same as for the existing facilities at this location. The project includes the development of parking spaces, an outdoor pool and deck, an outdoor restaurant patio, an outdoor bar and patio area, numerous sitting areas, a sewage treatment building, and other ancillary uses commonly associated with resorts; and

Whereas, in accordance with Chapter D of the Code, Sections 5(a) and 5(b), on August 3, 2009, the Commission's Regulatory Committee voted unanimously to recommend to the full Commission that the proposed development was suitable and qualified for consideration as a Development Agreement with the Commission; and

Whereas, in accordance with Chapter D of the Code, Section 5(b), on August 20, 2009, the full Commission determined that the proposed development was suitable and qualified for consideration as a Development Agreement with the Commission and therefore The Davenport Companies could proceed with a Development Agreement Application; and

Whereas, in accordance with Chapter D of the Code, Section 5(b)(ii), The Davenport Companies had one year from the Commission's determination of suitability to file a Development Agreement Application with the Commission, which Application, and attachments were filed on March 29, 2010; and

Whereas, in a letter dated August 24, 2010, Commission staff determined such Application was substantially complete as of August 20, 2010; and

Whereas, in accordance with Chapter D of the Code, Section 5(d) and Section 4(a)(12) of the Act, on August 23, 2010, the Commission's Chair appointed a subcommittee to represent the Commission in negotiating a Development Agreement; and

Whereas, Section 5(e) of Chapter D requires the subcommittee reviewing a Development Agreement to consider its consistency with the Commission Act, RPP, Town's certified Local Comprehensive Plan (hereinafter "LCP"), local zoning, local development bylaws and applicable state law; and

Whereas, Section 5(e)(i) of Chapter D allows the subcommittee to recommend and the Commission may approve a Development Agreement that is inconsistent with the Act, the RPP or the LCP if:

"the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation or balanced economic growth and the interests protected by the Act, RPP or LCP can be advanced or protected by an alternate approach, which shall include appropriate mitigation."

Whereas, in accordance with Chapter D of the Code, Section 5(d), the subcommittee held duly noticed substantive public hearings on November 22, 2010, December 13, 2010, January 3, 2011, and February 3, 2011 to review relevant information on applicable subjects to be reviewed under the Act, the RPP, Barnstable's LCP, local development bylaws, local zoning and applicable state law, and to receive relevant public testimony to inform their decision; and

Whereas, in accordance with Chapter D of the Code, Section 5(d), a hearing officer of the Cape Cod Commission procedurally continued the public hearing on January 12, 2011 and January 31, 2011;

Whereas, in accordance with Chapter D of the Code, Sections 5(d), 5(e)(i) and 5(e)(ii), the Subcommittee held posted public meetings on December 13, 2010 and January 3, 2011 to review, discuss and consider relevant information on applicable subjects to be reviewed under the Act, the RPP, Local Comprehensive Plan, local zoning and applicable state law to inform

their decision and to identify areas of compliance and non-compliance with regulatory standards applicable to subjects identified pursuant to Section 5(d); and

Whereas, in accordance with Chapter D of the Code, Section 5(i), the subcommittee and Qualified Applicant met in a public meeting on February 24, 2011 to review the draft Development Agreement; and

Whereas, in accordance with Chapter D of the Code, Section 5(i), the subcommittee met in a public meeting on March 3, 2011 and recommended that the full Commission should authorize signature of the Development Agreement; and

Whereas, in accordance with Chapter D of the Code, Section 5(i), in a public meeting on March 3, 2011 Mr. DeWitt Davenport, as President and Managing Partner of The Davenport Companies signed the draft Development Agreement recommended by the subcommittee to the Commission indicating the Applicant's agreement to enter into the contract; and

Whereas, in accordance with Chapter D of the Code, Section 5(i), the Commission held a duly noticed public hearing on March 3, 2011 to consider the written Development Agreement contract; and

Whereas, The Davenport Companies is a Qualified Applicant which has voluntarily proposed a coordinated and planned redevelopment of certain Lots and Properties, as hereinafter defined; and

Whereas, The Red Jacket Beach Limited Partnership is the owner of property located at 1 South Shore Drive with said property being more particularly described in the list attached hereto as Appendix B and shown on a plan, a copy of which is attached hereto within Appendix B which is the proposed location of the Red Jacket Resort; and

Whereas, The Blue Water Limited Partnership is the owner of property located at 291 South Shore Drive, the Edge of the Sea Inc. as Trustee is the owner of property located at 301 South Shore Drive, and the Riviera Beach Limited Partnership is the owner of property located at 327 South Shore Drive, with said property being more particularly described in the list attached hereto as Appendix B and shown on plan, copies of which are attached hereto within Appendix B which is the proposed located of the Blue Water Resort; and

Whereas, the lots located at 1, 291, 301 and 327 South Shore Drive in South Yarmouth, consisting of approximately 15.5 acres, together constitute the development sites which are the subject of this Development Agreement; and

Whereas, the redevelopment sites are situated in an Economic Center as designated on Yarmouth's Land Use Vision Map; and

Whereas, the redevelopment sites are subject to the Town of Yarmouth's Hotel / Motel Overlay District 2 (HMOD2) Zoning District; and

Whereas, in the Development Agreement review, the Commission considered the following information and materials submitted for the record as outlined in Appendix C; and

Whereas, the Commission makes Findings pursuant to Section 5(e) of Chapter D concerning the proposed redevelopment's consistency with the Commission Act, RPP, Town's LCP, local

zoning, local development bylaws and applicable state law which are included and incorporated by reference into this Development Agreement and are contained in Appendix D;

NOW THEREFORE, in consideration of The Davenport Companies' agreeing to perform fully its obligations (a) under the Application and attachments, as modified and accepted by the Commission, and (b) under this Agreement, and the Commission's execution of this Agreement as authorized by Section 14 of the Act, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both signatories, the parties hereto agree as follows:

1. The Davenport Companies, its successors or assigns has the right to build the Red Jacket and/or Blue Water resorts (including all components thereof) in accordance with the terms of the Application and attachments, as modified and accepted by the Commission. Any modification of the development project as modified and accepted by the Commission shall only be made in compliance with Section 8 of Chapter D of the Code. Proposed amendments to the Development Agreement that are de minimus changes requiring staff review and approval as determined by the Executive Director, or his/her designee, shall be considered Minor Modification #1. Any Minor Modification #1 shall be approved by the Executive Director or his/her designee and reported to the Commission's Regulatory Committee and do not require further review by the Commission.
2. The Commission's relevant development standards under the RPP, as in effect on the effective date of this Agreement shall apply to this development project for twenty (20) years, notwithstanding any subsequent or intervening changes to said Cape Cod Commission development standards. Should the Applicant seek amendment of this Development Agreement as a result of changes to Commission standards, the Applicant shall petition to amend the agreement as a Major Modification in accordance with Section 8 of Chapter D. Following execution of this Agreement by the Commission and The Davenport Companies, the redevelopment project shall not be subject to review as a Development of Regional Impact during the contract period. Pursuant to Chapter D, this Development Agreement may be extended once, by consent of both Parties, subject to a public hearing and in accordance with Sections 5, 6 and 7 of Chapter D.
3. The terms of this Agreement shall be specifically enforceable in a court of equity, after the giving of notice and an opportunity to cure, as described below. In the event the Commission believes that The Davenport Companies has violated or is about to violate any of its obligations hereunder, the Commission shall give The Davenport Companies written notice of such actual or prospective violation and a 60 day period to commence corrective action provided The Davenport Companies, its successors or assigns will move forward to correct any such violation and continue until such cure is completed. If The Davenport Companies believes no violation has occurred or is about to occur, it may request a hearing before the commission or a subcommittee thereof. The 60-day period to commence should be suspended until the subcommittee makes its determination and will resume should the subcommittee determine a cure is needed. The subcommittee or Commission shall hold its public hearing within 45 days of such request. If no amicable resolution is reached within 30 days after the hearing, either party may seek a judicial resolution.
4. As a condition to the exercise of any rights under this development agreement by a party to whom either the development agreement or rights thereunder have been assigned, such party shall execute and deliver in favor of the Commission an agreement under the terms of

which such party agrees directly with the Commission to be bound by and to observe the terms and conditions of the development agreement in the exercise of the rights thereunder.

5. The Davenport Companies, as Qualified Applicant, has agreed to provide public benefits and improvements as consideration for this Development Agreement, as evidenced by the consistency with the Regional Policy Plan Best Development Practice (BDP) LU1.3, which encourages the incorporation of redevelopment and/or reuse of existing buildings or developed sites in appropriate locations.

The Davenport Companies, as Qualified Applicant, has also agreed to provide public benefits and improvements as consideration for this Development Agreement, as evidenced by information submitted during the Development Agreement review, which includes the following trip reduction plan for employees and guests of the new facilities: An on site transportation coordinator will assigned to coordinate the trip reduction program for the project; a guaranteed ride home program will be provided for employees that car / vanpool for emergencies that may arise during the day; direct deposit of employee payroll checks will be offered; on site services to decrease off site trips by employees including a lunch room with a microwave and a refrigerator will be available to employees of the redeveloped sites; and all employees will be provided with information regarding available public transportation resources, schedules, fare information, and stop/terminal locations.

The Davenport Companies, as Qualified Applicant, also provides the following public benefits and improvements as consideration for this Development Agreement, as evidenced by information submitted during the Development Agreement review:

- The proposed project is located in a designated Economic Center on the Town of Yarmouth Land Use Vision Map;
 - The project is located in the Town of Yarmouth Hotel/Motel Overlay District 2 (HMOD2) Zoning District;
 - Significant community benefit, including higher, more stable wages, and hotel and restaurant business will collect a local option tax;
 - Reduction in nitrogen loading;
 - Improved stormwater management; and
 - Projected lower energy demand.
6. This Development Agreement shall become effective only following issuance of a Certificate by the Commission relative to this Development Agreement as provided in Section 5 of Chapter D.

TERMS AND CONDITIONS

Now, therefore, the Commission and The Davenport Companies agree as follows:

The Davenport Companies and the Commission agree that development and redevelopment constructed consistent with the terms and conditions of this Development Agreement and in compliance therewith shall not be subject to review as a Development of Regional Impact under sections 12 and 13 of the Cape Cod Commission Act for the duration of this Development Agreement.

General

- GC1. This Development Agreement is valid for twenty (20) years from the date of issuance of a Certificate by the Commission Clerk and/or the Yarmouth Town Clerk relative to this Development Agreement as provided in Sections 5 and 6 of Chapter D. Pursuant to Section 7 of Chapter D, this Development Agreement may be extended once, by consent, of both Parties, subject to a public hearing in accordance with Sections 5, 6 and 7 of Chapter D.
- GC2. This Development Agreement may be amended or rescinded pursuant to Section 8 of Chapter D. Proposed amendments to the Development Agreement that are de minimus changes requiring staff review and approval as determined by the Executive Director, or his/her designee, shall be considered Minor Modification #1. Any Minor Modification #1 shall be approved by the Executive Director or his/her designee and reported to the Commission's Regulatory Committee and do not require further review by the Commission.
- GC3. The proposed project consists of the demolition of four existing hotels and the construction and operation of two new hotels located on South Shore Drive in South Yarmouth, MA. One resort will be identified as the Red Jacket Beach Resort and will be located at 1 South Shore Drive. The Applicant is proposing two concepts for this property: Concept A (preferred alternative) includes a right-of-way relocation (see Exhibit A attached to this Development Agreement and incorporated by reference); and Concept B includes the right-of-way maintained at its current location (see Exhibit B attached to this Development Agreement and incorporated by reference). The Applicant proposes to redevelop the site with a modern 4-story seasonal hotel with a 41,860 square foot (s.f.) footprint totaling 119,130 overall s.f. of gross floor area. The resort will provide 154 guest rooms and 8 efficiency units for a total equal to the number of accommodations in the existing facility. The project also includes the development of two 2½-story, four-unit cottages along South Shore Drive (each with a footprint of 2,280 s.f.). The project includes the development of parking spaces, an outdoor pool and deck, an outdoor bar and grill with seating area, a hotel restaurant, a sewage treatment building, and other ancillary uses commonly associated with resorts.
- The second resort will be identified as the Blue Water Resort and will be located at 291, 301, and 327 South Shore Drive (see Exhibit C attached to this Agreement and incorporated by reference). The Applicant proposes to redevelop the area with a 4-story seasonal hotel comprised of three buildings connected by overhead passageways. The three buildings will have a total footprint of 52,200 s.f. with an overall gross floor area of 195,550 s.f. The resort will provide 240 guest rooms, the same as for the existing facilities at this location. The project includes the development of parking spaces, an outdoor pool and deck, an outdoor restaurant patio, an outdoor bar and patio area, numerous sitting areas, a sewage treatment building, and other ancillary uses commonly associated with resorts; and
- GC4. The Project shall be constructed in accordance with the following plans and other documents:
- Sheets C1 through C7 from the plan set entitled "Red Jacket Beach Civil Engineering Plans" designed by Haight Engineering, PLLC and Mettee Planning Consultants, dated March 9, 2010

- Revised Sheets L1A and L2A from the plan set entitled “Red Jacket Beach Landscape Plans” designed by G2+1, LLC dated January 3, 2011
- Sheets A1 through A7 from the plan set entitled “Red Jacket Beach Architectural Plans” designed by TMS Architects, dated March 9, 2010
- Sheets C1 through C7 from the plan set entitled “Red Jacket Beach Civil Engineering Plans “B”” designed by Haight Engineering, PLLC and Mettee Planning Consultants, dated July 16, 2010
- Revised Sheets L1B through L2B from the plan set entitled “Red Jacket Beach Landscape Plans “B”” designed by G2+1, LLC dated January 3, 2011
- Sheets C1 through C7 from the plan set entitled “Blue Water Beach Civil Engineering Plans” designed by Haight Engineering, PLLC and Mettee Planning Consultants, dated March 9, 2010
- Revised Sheets L1A L2A, and L3A from the plan set entitled “Blue Water Beach Landscape Plans” designed by G2+1, LLC dated January 3, 2011
- Sheets A1 through A4 from the plan set entitled “Blue Water Beach Architectural Plans” designed by TMS Architects, dated March 9, 2010
- Materials board for the Red Jacket and Blue Water Hotel as submitted by Mettee Planning Consultants and on file at the Cape Cod Commission offices

Any substantial deviation from the approved plans, including but not limited to changes to building design, building location, lighting, landscaping or other site work, shall require approval through the Cape Cod Commission in accordance with the Modifications section of Chapter D, the Commission’s Development Agreement regulations. Proposed amendments to the Development Agreement that are de minimus changes requiring staff review and approval as determined by the Executive Director, or his/her designee, shall be considered Minor Modification #1. Any Minor Modification #1 shall be approved by the Executive Director or his/her designee and reported to the Commission’s Regulatory Committee and do not require further review by the Commission.

- GC5. Prior to the issuance of a Building Permit for any proposed building, development or redevelopment at the project sites, The Davenport Companies shall first obtain a Preliminary Certificate of Compliance from the Commission which states that all conditions of this Development Agreement that are required to be satisfied prior to issuance of a Preliminary Certificate of Compliance have been met. Unless the Commission issues a written determination that the relevant specific condition(s) of this Development Agreement have been met, the Commission shall not issue a Preliminary Certificate of Compliance.
- GC6. Prior to the issuance of a Certificate of Use/Occupancy for any proposed building, development or redevelopment at the project sites, The Davenport Companies shall first obtain a Final Certificate of Compliance from the Commission which states that all conditions of this Development Agreement that are required to be satisfied prior to issuance of a Final Certificate of Compliance have been met. Unless the Commission issues a written determination that the relevant specific condition(s) of this Development Agreement have been met, the Commission shall not issue a Final Certificate of Compliance.
- GC7. If all required site work, including but not limited to exterior lighting, irrigation, and/or landscape improvements are not complete, or if any other outstanding conditions are not met at the time a Final Certificate of Compliance is sought from the

Commission for any building, development or redevelopment at the project sites, any work which is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission Counsel. The amount of the escrow agreement shall be equal to 150% of that portion of the incomplete work for the particular building, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work for the particular building in issue. The escrow agreement shall be payable to *Barnstable County* with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to The Davenport Companies, with interest, upon completion of the required work. All required exterior lighting, site work, irrigation, and/or landscape improvements shall be completed in a reasonable and mutually agreed upon timeframe as specified in the escrow agreement.

- GC8. Prior to commencement of any site development, construction or redevelopment at the project site, The Davenport Companies shall provide written proof to the Commission that a copy of this Development Agreement, and any modifications or rescissions have been made available to all site contractors, architects, engineers, landscape designers, and other firms or persons involved in the construction of the project.
- GC9. This Development Agreement was reviewed by the Commission pursuant to the 2009 Regional Policy Plan (as amended May 19, 2010, recorded June 17, 2010) which is incorporated by reference.
- GC10. The Applicant shall be bound by those rights actually held by abutting property owners and other landowners to pass over land which is part of the Red Jacket Development Agreement, and shall not unreasonably interfere with those rights. In addition, the Applicant may avail itself of any and all rights provided it by statute, common law, and/or case law regarding the viability, location, size, and use of those rights of way, and shall always maintain the right to amend said rights by agreement of those parties so affected.

Water Resources

WRC1. To ensure compliance with MPS WR3.2, WR5.1, WR5.4, and WR6.2, and MPS in Section WR7 of the RPP, the following information shall be submitted for review and approval, which approval shall not be unreasonably withheld or delayed, by Commission staff prior to issuance of a Preliminary Certificate of Compliance for each building:

- A completed Groundwater Discharge Permit application and Engineering Report consistent with Findings WRF6 and WRF7 of this Development Agreement. The information contained in the Hydrogeologic Reports and reviewed by the Commission should be updated by the Engineering Report to include continuous water-level measurements to resolve the effect of tidal fluctuations on groundwater levels;
- Plans for sludge disposal, long-term ownership, operation, maintenance and replacement of private wastewater treatment facilities consistent with Finding WRF9; and
- Grading and drainage plans, including calculations consistent with Conceptual Drainage Plans submitted with the Development Agreement application. Grading and drainage plans shall be certified to meet the Massachusetts

Stormwater Management Policy and all MPS in Section WR7, except as provided by Finding WRF10 of this Development Agreement. Grading and drainage plans and the operations and maintenance (O&M) plan required by MPS WR7.10 shall be stamped by a licensed professional engineer. Detailing construction-phase erosion controls consistent with MPS WR7.9.

WRC2. To ensure compliance with MPS WR3.2, WR5.1, WR5.4 and WR6.2, and MPS in Section WR7 of the RPP, the following information shall be submitted for review and approval, which approval shall not be unreasonably withheld or delayed, by Commission staff prior to issuance of a Final Certificate of Compliance for each building or phase of the project:

- A DEP-approved Groundwater Discharge Permit consistent with Findings WRF6 and WRF7 of this decision. Wastewater design flows for the Blue Water and the Red Jacket wastewater treatment facilities shall not exceed 39,600 gpd and 27,620 gpd, respectively, unless otherwise required by DEP. If design flows exceed these amounts, the Applicant will need to demonstrate the MPS will be met;
- A DEP-approved plan for sludge disposal, long-term ownership, operation, maintenance and replacement of private wastewater treatment facilities consistent with Findings WRF9; and
- A letter stamped by a licensed professional engineer certifying as-built grading & drainage plans are consistent with approved plans required by Condition WRC1 and are certified to meet the Massachusetts Stormwater Management Policy and all MPS in Section WR7, except as provided by Finding WRF10.

WRC3. To ensure compliance with MPS WR3.2, WR5.1, WR5.4 and WR6.2, Groundwater Discharge Permit Monitoring Reports shall be submitted to the Commission when the reports are filed with MADEP. If monitoring reports indicate that the requirements of the Groundwater Discharge Permits are not met, the Applicant shall submit a return-to-compliance plan for staff review .

Coastal Resources

CRC1. To ensure compliance with MPS CR1.1 and CR1.4 in Section CR1 (Maritime Industry, Character, and Public Access) of the RPP, final building, site layout, and landscaping plans shall be submitted for review and approval, which approval shall not be unreasonably withheld or delayed, by Commission staff for each redevelopment site prior to the issuance of a Preliminary Certificate of Compliance or building permit. The site plans shall be stamped by a civil engineer and/or landscape architect.

CRC2. To ensure compliance with MPS CR2.2, CR2.3, CR2.4 and CR2.5 in Section CR2 (Coastal Hazard Mitigation) of the RPP, the following information shall be submitted for review and approval, which approval shall not be unreasonably withheld or delayed, by Commission staff prior to the issuance of a Final Certificate of Compliance for each building or phase of the project:

- Site grading plans stamped by a licensed professional engineer;
- Site building plans, including the elevation of the lowest horizontal structural member of each proposed structure. To comply with MPS's, the elevation of the lowest horizontal structural member for structures located on barrier beaches or coastal dunes shall be elevated at least one foot above base flood

elevation or two feet above existing grade, whichever is higher (CR2.5). Structures located in A zones shall have the lowest horizontal structural member elevated a minimum of one foot above base flood elevation (CR2.2); and

- A DEP-approved Groundwater Discharge Permit consistent with Findings WRF6 and WRF7 of this decision. Wastewater design flows for the Blue Water and the Red Jacket wastewater treatment facilities shall not exceed 39,600 gpd and 27,620 gpd, respectively, unless otherwise required by DEP. If design flows exceed these amounts, the Applicant will need to demonstrate the MPS will be met.

CRC3. To ensure compliance with MPS CR3.3 and CR3.4 in Section CR3 (Coastal Water Quality and Habitat) of the RPP, the following information shall be submitted for review and approval by Commission staff prior to the issuance of a Preliminary Certificate of Compliance for each building or phase of the project:

- A letter stamped by a licensed professional engineer certifying as-built grading and drainage plans, including calculations consistent with Conceptual Drainage Plans submitted with the DA application, are certified to meet the Massachusetts Stormwater Management Policy and all MPS's in Section WR7, except as provided by Finding WRF10.

Transportation

TC1. The Applicant shall implement the following trip reduction plan for employees and guests of the new facilities:

- An on site transportation coordinator will assigned to coordinate the trip reduction program for the project;
- A guaranteed ride home program will be provided for employees that car / vanpool for emergencies that may arise during the day;
- Direct Deposit of employee payroll checks will be offered;
- On site services to decrease off site trips by employees including a lunch room with a microwave and a refrigerator will be available to employees of the redeveloped sites; and
- All employees will be provided with information regarding available public transportation resources, schedules, fare information, and stop/terminal locations.

Waste Management

WMC1. Prior to issuance of a Final Certificate of Compliance, and prior to issuance of a Certificate of Use/Occupancy for the first building on either resort/site, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld or delayed, information on the project's Hazardous Waste Generator status and its methods for handling, storage and disposal of Hazardous Wastes consistent with MPS WM1.5.

WMC2. Prior to the issuance of any construction bid documents, and prior to commencement of any land clearing, demolition or construction work connected to any project component, and prior to issuance of a Preliminary Certificate of Compliance or Building Permit for any building or phase of the project, the Applicant shall submit for Commission staff review and approval, which such approval shall not be unreasonably

withheld or delayed, project construction bid documents, to ensure these specifications provide for proper management of solid waste, recyclables, construction and demolition debris, and Waste Ban items consistent with MPS WM2.1 and MPS WM2.2 for the construction phase.

- WMC3. Prior to issuance of a Final Certificate of Compliance and prior to issuance of a Certificate of Use/Occupancy for the first building on either resort/site, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld or delayed, a solid waste and recycling management plan which details how recyclables, particularly Waste Ban items, will be collected, stored on site, and recycled to ensure the operational phase is consistent with MPS WM2.3.

Energy

- EC1. The project shall be designed and constructed according to MPS E1.3; ASHRAE 90.1-2007, Section 5.4, for building envelope efficiency for insulation, fenestration and doors.
- EC2. To meet the requirements of MPS E1.6 for 10% on-site renewable energy generation for a redevelopment project, the Applicant shall install a 52 KW solar PV array. The Applicant shall dedicate an estimated 6,567 s.f. of south facing, unobstructed roof space to support this solar PV installation.

Community Character

Landscaping

- CCC1. To ensure compliance with HPCC2.9 and HPCC2.10, final landscape plans for all properties with planting details in accordance with draft plans sent to the Commission dated 1/3/11 shall be submitted prior to the issuance of a Preliminary Certificate of Compliance for each building or phase of the project.
- CCC2. Prior to issuance of Preliminary Certificate of Compliance for any building or phase of the project, a landscape maintenance agreement outlining, at a minimum, the following items shall be submitted:
- Planting Replacement: Any grass, trees, or shrubs that die prior to the expiration of 3 growing periods shall be replaced. All substitutions and/or changes shall be non-invasive.
 - Irrigation: Where installed, irrigation shall be monitored to avoid overspray on pavement areas, as well as timed for water conservation.
 - Hand Watering: All plantings shall be monitored and if showing signs of stress related to underwatering shall be deeply hand watered as needed.
 - Pruning: Trees and shrubs shall be monitored and pruned as needed to remove weak, diseased or damaged limbs/branches in order to avoid the need for pesticide applications and to maintain proper form.
 - Fertilizer: Unless organic, fertilizers shall not be applied in bioretention areas and wellhead protection areas.
 - Integrated pest management: An IPM system that emphasizes monitoring and use of bio-rational pesticides (non-toxic with few ecological side-effects) and fertilizers shall be used to maintain the health of plantings.
 - Staking and Guying: Trees shall be staked and guyed for the first growing season. Guys shall be inspected and adjusted periodically through the first year to ensure that they do not girdle or otherwise injure trees. Stakes and guys shall be removed after one year unless otherwise indicated.

Exterior Lighting

- EXLC1. All exterior fixtures, including but not limited to all site lighting (including any sign lighting), and all on-building mounted lights, lights in building elements, and pole-mounted lights used for the project shall comply with MPS HPCC2.11 and with Exterior Lighting Technical Bulletin 95-001 (as amended).
- EXLC2. Prior to issuance of a Building Permit and prior to issuance of a Preliminary Certificate of Compliance for the first building, the Applicant shall submit for Commission staff review and approval which approval shall not be unreasonably withheld final exterior lighting design information including but not limited to fixture cuts and foot-candle plans which are consistent with the information in Section 3.0 of Technical Bulletin 95-001 (as amended). Such final exterior lighting design information submitted per this condition shall be utilized during project construction unless otherwise allowed per condition EXLC3.
- EXLC3. If unforeseen changes are made to the exterior lighting design as construction proceeds, prior to selection and installation of exterior lighting fixtures, the Applicant shall submit for Commission staff review and approval which approval shall not be unreasonably withheld additional exterior lighting design information sufficient to allow Commission staff to determine if the proposed alternate fixtures are consistent with condition EXLC1. Alternate exterior light fixtures found to be consistent with condition EXLC1 may be utilized upon written Commission staff approval, and do not constitute an amendment of this Development Agreement per Section 8.0 of the Commission's *Development Agreement Regulations*.
- EXLC4. Prior to issuance of a Final Certificate of Compliance for each building and prior to issuance of a Certificate of Use/Occupancy for each building, an inspection must be conducted by Commission staff prior to verify that the installed exterior lighting design is consistent with condition EXLC1. If this inspection finds that the installed exterior lighting design is inconsistent with condition EXLC1, the Applicant shall make amendments and changes necessary to bring the lighting design into compliance with condition EXLC1. If such adjustments are required, Commission staff must conduct a site inspection to verify the adjusted design is consistent with condition EXLC1. Such adjustments and inspections to the exterior lighting design shall occur prior to prior to issuance of a Final Certificate of Compliance and prior to issuance of a Certificate of Use/Occupancy for the relevant building.

Miscellaneous

As a condition to the exercise of any rights under this development agreement by a party to whom either the development agreement or rights thereunder have been assigned, such party shall execute and deliver in favor of the Commission an agreement under the terms of which such party agrees directly with the Commission to be bound by and to observe the terms and conditions of the development agreement in the exercise of the rights thereunder.

Notices. All notices and other communications that are required or may be given under this Development Agreement shall be in writing and shall be sent by certified mail return receipt requested to the following addresses or to such other place as any Party may designate by notice to the other Party:

If to the Commission:

Cape Cod Commission
3225 Main Street
P.O. Box 226
Barnstable, MA 02630
Attn: Commission Counsel
Phone: (508) 362-3828
Facsimile: (508) 362-3136

With a copy to:

Eric W. Wodlinger, Esq.
c/o Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, MA 02110
Phone: (617) 951-1136
Facsimile: (617) 542-7437

If to Red Jacket Beach, Limited Partnership, Blue Water, Limited Partnership, Edge of the Sea Inc. as Trustee, and Riviera Beach, Limited Partnership, or The Davenport Companies:

20 North Main Street
South Yarmouth, MA 02664
Attn: DeWitt Davenport
Phone: (508) 398-2293
Facsimile: (508) 760-3640

Choice of Law, etc. This Development Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The state and federal courts sitting in the Commonwealth of Massachusetts shall have exclusive jurisdiction over any claim or dispute arising under or in connection with this Agreement.

Counterparts. This Development Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. The parties agree that a signature sent by facsimile or electronic mail to another party or counsel for another party shall have the same force and effect as an original signature.

Entire Agreement; Amendments and Waivers. This Development Agreement, together with the Exhibits hereto (which are incorporated herein by reference and made a part hereof) constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect thereto. No amendment, supplement, modification or waiver of this Development Agreement shall be binding unless executed in writing by the party to be bound thereby.

Invalidity. If any of the provisions contained in this Development Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, then, to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Development Agreement.

IN WITNESS WHEREOF, the parties have executed this Development Agreement under seal as of the day and year first above written.

Cape Cod Commission

By: *Royden Richardson*
Name: *ROYDEN RICHARDSON*
Title: *CHAIRMAN*

Red Jacket Beach, Limited Partnership
By its General Partner: Red Jacket, Inc.

By: *[Signature]*
Name: DeWitt Davenport
Title: President and Treasurer

Blue Water, Limited Partnership
By its General Partner: Blue Water, Inc.

By: *[Signature]*
Name: DeWitt Davenport
Title: President and Treasurer

Edge of the Sea Inc., as Trustee

By: *[Signature]*
Name: DeWitt Davenport
Title: President

Riviera Beach, Limited Partnership
By its General Partner: Riviera Beach, Inc.

By: *[Signature]*
Name: DeWitt Davenport
Title: President and Treasurer

APPENDIX A



FREEMAN LAW GROUP LLC
Attorneys at Law

Peter L. Freeman
pfreeman@freemanlawgroup.com
Tel. (508) 362-4700 Mobile (781) 854-2430

Stephanie A. Kiefer
skiefer@freemanlawgroup.com
Tel. (617) 227-5011 Mobile (617) 416-1583

July 14, 2009

Via Hand Delivery

Kristy Senatori
Cape Cod Commission
3225 Main Street
P.O. Box 226
Barnstable, MA 02630



RE: Red Jacket Resorts Redevelopment
South Shore Drive, Yarmouth MA

Dear Kristy:

Enclosed please find a Notice of Intent to File a Development Agreement pursuant to Chapter D of the Cape Cod Commission regulations, along with a project description and narrative for the above-referenced matter. Please let us know if you require any further information. Also, please inform us when this Notice of Intent is put on the Regulatory Committee agenda so we can mark our calendars.

Very truly yours,

Peter L. Freeman
Freeman Law Group, LLC

cc: The Davenport Companies
Robert Lawton, Town Administrator -- Town of Yarmouth



Cape Cod Commission
3225 Main Street, PO Box 226
Barnstable, MA 02630
Tel: (508)362-3828
Fax: (508)362-3136

**NOTICE OF INTENT TO
FILE DEVELOPMENT AGREEMENT APPLICATION**

Pursuant to Section 5(a) of the Cape Cod Commission Development Agreement Regulations (Chapter D), the applicant named below hereby submits the following as a Notice of Intent to File Development Agreement Application for the project and properties herein stated.

1. General Information

Applicant Name: Red Jacket Beach LP, Blue Water LP, Edge of the Sea Trust, and Riviera LP

Address: c/o The Davenport Companies, 20 North Main Street, South Yarmouth, MA 02664

Telephone Number: (508) 398-2293 Contact: DeWitt Davenport or Paul Rumul

2. Project Information

Project Name: Red Jacket Resorts Redevelopment

Project Location: One South Shore Dr., and 291, 301, 327 South Shore Dr., S. Yarmouth

3. Project Description

Brief description of the project including but not limited to gross floor area, lots, units, acres, zoning of site and specific uses:

Please see attachment Exhibit 1, "Project Description and Narrative"

Applicant or Authorized Representative Name (Please Print)

Peter L. Freeman, Freeman Law Group LLC
86 Willow Street, Yarmouth Port, MA 02675
(508) 362-4700 / (508) 362-4701 (fax) / pfreeman@freemanlawgroup.com


Signature

July 14, 2009
Date

Red Jacket Resorts Redevelopment

The “Red Jacket Beach Resort” and
The “Blue Water Resort” Redevelopment Project
South Shore Drive, Yarmouth, MA

**NOTICE OF INTENT
TO FILE DEVELOPMENT AGREEMENT APPLICATION**

EXHIBIT “1”

PROJECT DESCRIPTION AND NARRATIVE

Development Agreement:

This planned redevelopment consists of two separate hotel redevelopment projects along South Shore Drive in the Town of Yarmouth: The “Red Jacket Beach Resort” and the “Blue Water Resort”, collectively the “Red Jacket Resorts Redevelopment”. The specific details of each project are further described below.

The Red Jacket Beach LP, Blue Water LP, Edge of the Sea Trust, and Riviera LP (collectively “the applicant”) hold a majority legal and equitable interest in the real properties which are the subject of the Development Agreement and the applicant is thus a qualified applicant pursuant to the definition of “Qualified Applicant” as stated under Section 1(c) of Chapter D – Development Agreement Regulations. The Town of Yarmouth, however, does not meet the qualifications of being able to enter into the Development Agreement as required by Section 4(c) of Chapter D – Development Agreement Regulations as its Local Comprehensive Plan is not as yet certified by the Cape Cod Commission and the Town does not have a bylaw approved by the Commission establishing the procedures for negotiating or authorizing the execution of a Development Agreement. Therefore, the Town of Yarmouth will not be a “Participating Party” as defined in the regulations. Nonetheless, the applicant, who has been working closely with the Town of Yarmouth since the inception phase of the project, welcomes input from the Town and encourages the Commission to allow participation from the Town in the negotiating of this Development Agreement.

Project Description of Each Project Property:

Project Property "A" – "Red Jacket Beach Resort":

The subject property is addressed One South Shore Drive, South Yarmouth as shown on Map 19, Parcels 9 through 20.1 on the Town of Yarmouth Assessor's Map. The owner of the property is the Red Jacket Beach LP. The site contains approximately 6 acres. The project property is located in the Town of Yarmouth's Hotel/Motel Overlay District 2 (HMOD2) Zoning District. The existing use and proposed use of the property is a hotel use, which is an allowed use in the HMOD2 Zoning District. The hotel structures located on this property are approximately 104,500 square feet with 150 hotel rooms and 11 multi-bedded units with full kitchens. While project design presently is in the concept stage, it is estimated that the new hotel structure will contain approximately 68,000 additional square feet for a total square footage of approximately 172,500. The number of guest accommodations will remain the same, thus there will be no increase in the intensity of use of the hotel.

Subject Property "B" – Blue Water Resort:

The subject property is currently known as three separate resorts: the "Blue Water Resort"; the "Edge of the Sea Resort"; and the "Riviera Beach Resort". The subject property is addressed as 291, 301, and 327 South Shore Drive, South Yarmouth as shown on Map 26, Parcels 118 through 126 on the Town of Yarmouth Assessor's Map. The owner of the property is: Blue Water LP, Edge of the Sea Trust, and the Riviera LP. The site contains approximately 9.5 acres. The project property is located in the Town of Yarmouth's Hotel/Motel Overlay District 2 (HMOD2) Zoning District. The existing use and proposed use of the property is a hotel use, which is an allowed use in the HMOD2 Zoning District. The combined hotel structures on these three properties are approximately 125,000 square feet with a combined total of 239 guest rooms, suites and cottages. The project designs are only in the concept stage, however, it is estimated that the hotel structure will contain approximately 74,000 additional square feet for a total square footage of approximately 199,000. The number of guest accommodations will remain the same, thus there will be no increase in the intensity of use of the hotel.

Project Description for Both Properties:

Both properties, although clean and neat, are very dated when compared to what today's travelers expect from a resort. The hotel rooms are basically 1950's or 1960's era motel rooms, lacking both in size and amenities. The structures are also situated at ground level in sprawling one to two story structures operating on private septic systems.

Thus, in order to stay current and to vastly improve the site and to bring the structures into compliance with FEMA requirements, the project applicant intends to raze these out-dated buildings and replace them with state-of-the-art resorts, featuring larger rooms and improved amenities. The applicant also intends to construct a private wastewater treatment facility in compliance with the Massachusetts Department of Environment Protection regulations and to remove the existing septic systems.

Both property sites are within a designated Economic Center on the Town of Yarmouth Land Use Vision Map, as approved and endorsed by the Cape Cod Commission and the Barnstable County Assembly of Delegates. Economic Centers, in conjunction with the Regional Policy Plan (*effective January 16, 2009*) of the Cape Cod Commission, are designed to encourage redevelopment in these mapped areas.

Both property sites are also located in the Town of Yarmouth's Hotel/Motel Overlay District 2 (HMOD2) Zoning District. The HMOD2 Zoning District, which was recently approved at Town Meeting, was created with the goal and purpose of providing hotel / motel owners in this area with the ability to renovate, reconstruct, and or replace their properties to encourage improvement of this unique waterfront lodging area.

Neither property is listed on any local, state or national historic register and is not located within any local, state or national historic district.

Criteria:

The proposed redevelopment projects meet the criteria for eligibility for a Development Agreement as listed under Section 5(a) of Chapter D – Development Agreement Regulations as follows:

- i. The project would benefit from comprehensive review of the planned development to allow for planning of efficient infrastructure;
- ii. The project exhibits two of the three characteristics listed in the regulation:
 - o the project involves multiple structures; and
 - o multiple properties under control by the same qualified applicant;
- iii. It is anticipated that construction of the project will be exceed seven years;
- iv. The project is in the concept phase and thus future expansions are not yet fully or definitively defined but should be discussed upfront to avoid segmentation;
- v. No Environmental Impact Report is required for the project; and
- vi. The Town of Yarmouth is in support of the project.

In addition to the above, there is no development permit application pending.

APPENDIX B

RED JACKET RESORTS REDEVELOPMENT

Application for a Development Agreement

Red Jacket Beach Resort and Blue Water Resort

Red Jacket Beach LP, Blue Water LP, Edge of the Sea Trust, and Riviera LP

C – Owners of Record Attachment

RED JACKET BEACH OWNERSHIP

Certificate of Title No. 136046, Deed of Record recorded in Document No. 631500.

Deed of Record recorded in Book 22375 at Page 321.

Deed of Record recorded in Book 5500 at Page 347.

Deed of Record recorded in Book 4244 at Page 27.

BLUE WATER OWNERSHIP

Blue Water - Blue Water Limited Partnership

Certificate of Title No. 138810, Deed of Record recorded in Document No. 651175.

Edge of the Sea – Edge of the Sea Trust

Certificate of Title No. 138823, Deed of Record recorded in Document No. 651286.

Riviera – Riviera Limited Partnership

Certificate of Title No. 138809, Deed of Record recorded in Document No. 651174.

Certificates of Title and Deeds of Records Attached

Doc. No. 631,500
Ctf. No. 136046

TRANSFER CERTIFICATE OF TITLE

From Certificate No. 40945, Originally Registered September 15, 1967
in the Registry District of Barnstable County.

THIS IS TO CERTIFY that RED JACKET BEACH LIMITED PARTNERSHIP, a Massachusetts
limited partnership having its principal office, at 20 North Main Street, South
Yarmouth, Massachusetts 02664,

the owner(s) in fee simple,

of that land situated in YARMOUTH

in the county of Barnstable and the Commonwealth of Massachusetts, described as
follows:

LAND
PLAN 11259-A

LOTS 1, 2, 3, 4, 5, 6, 7 and 8
PLAN 30328-A

So much of said land as lies within the limits of South Shore
Drive as shown on said plan is subject to the rights of all those lawfully entitled
thereto in and over the same and there is appurtenant to said land the right to use
said South Shore Drive in common with all those lawfully entitled thereto.

Said land is subject to the easements set forth in a grant made by
Ralph L. Kelley to the Cape & Vineyard Electric Company and New England Telephone &
Telegraph Company dated March 4, 1954 duly recorded Book 867 Page 462.

So much of said land as lies within the limits of the way (8) feet
wide running along the southeasterly side of said land approximately shown on said
plan and so much of the land designated as Lot 6 marked "Beach Area" as shown on
said plan is subject to the terms of a stipulation between the petitioners and John
D. Lyons et al filed with the papers in this case on January 26, 1966 and
registered as Document No 110,266.

There is appurtenant to said land the right to use the way shown
on said plan for all purposes for which such ways may be used in the Town of
Yarmouth as set forth in a grant made by Ralph L. Kelley to Warren C. Baker dated
June 14, 1955 duly recorded Book 1155 Page 36.

REGISTER OF DEEDS
JULIUS E. M... 631500
136046
JAN 4 2 16 PM '85 1116-86


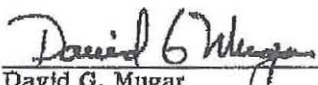
4655

We, PALMER DAVENPORT and DAVID G. MUGAR, Trustees under written Declaration of Trust dated September 1, 1967 registered with Barnstable County Land Registration Office as Document No. 115344, as amended by instruments registered as Document Nos. 155332 and 448720, having an address of 20 North Main Street, South Yarmouth, Massachusetts 02664, in consideration of ONE (\$1.00) DOLLAR paid, grant to RED JACKET BEACH LIMITED PARTNERSHIP, a Massachusetts limited partnership having its principal office at 20 North Main Street, South Yarmouth, Massachusetts 02664 with QUITCLAIM COVENANTS the land in Yarmouth, Barnstable County, Massachusetts described on Schedule A attached hereto.

This conveyance is made subject to a mortgage granted by said Palmer Davenport and David G. Mugar, Trustees as aforesaid to First NH Bank in the original principal amount of \$1,500,000.00 dated August 20, 1993, registered as Document No. 591473.

For title, reference is made to Certificate of Title No. 40945.
EXECUTED as a sealed instrument this 13 day of December, 1994.

South Shore Drive, Yarmouth

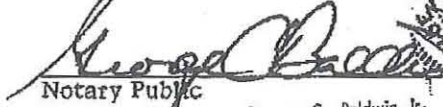

Palmer Davenport
Trustee as aforesaid

David G. Mugar
Trustee as aforesaid

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

12-13

Then personally appeared the above named PALMER DAVENPORT as trustee as aforesaid and acknowledged the foregoing instrument to be his free act and deed before me


Notary Public
George C. Baldwin, Jr.
Notary Public
My Commission Expires June 14, 1996



My commission expires:

Yarm 1, 2, 3, 5, 6, 7 + 8 30328-A + (LAN) 11259-A

COMMONWEALTH OF MASSACHUSETTS

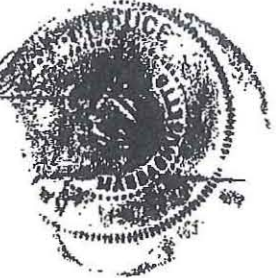
Suffolk, ss

December 13

, 1994

Then personally appeared the above named DAVID G. MUGAR, Trustee as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

Kathleen A.K. Bruce
Notary Public



My commission expires:

KATHLEEN A.K. BRUCE
Notary Public

My Commission Expires November 10, 2000

SCHEDULE A

A certain parcel of land situate in Yarmouth in the County of Barnstable and Commonwealth of Massachusetts, bounded and described as follows:

Northeasterly by the Town Road, measuring on the upland about two hundred seventy-eight (278) feet;

Easterly by land now or formerly of Fred L. Abbott, measuring on the upland about eighty-seven and 8/10 (87.8) feet;

Southwesterly and Westerly by Nantucket Sound; and

Northwesterly by Parker River.

All of said boundaries, except the water lines, are determined by the Court to be located as shown on plan 11259-A dated 1925, drawn by Nelson Bearse, Surveyor, as modified and approved by the Court, and filed in the Land Registration Office at Boston, a copy of a portion of which is filed in Barnstable County Registry of Deeds in Land Registration Book 6, Page 108 with Certificate of Title No. 1358.

Also another parcel of land situate in said Yarmouth, bounded:

Southeasterly by South Shore Drive, two hundred fifteen (215) feet;

Southwesterly by the northeasterly line forming the junction of said South Shore Drive and a Way, thirty-nine and 27/100 (39.27) feet;

Westerly by the easterly line of said Way, two hundred forty-two and 62/100 (242.62) feet;

Northeasterly by land now or formerly of Warren C. Baker, two hundred fourteen and 57/100 (214.57) feet; and

Easterly by said Baker land and by land now or formerly of Frank J. McGlvern et al, one hundred fifty-two and 93/100 (152.93) feet.

Said land is shown as LOTS 1, 2, 3 and 7 on plan hereinafter mentioned.

Southeasterly by the northwesterly line of a Way, one hundred sixty-five and 75/100 (165.75) feet;

Northeasterly by the southwesterly line of said Way, one hundred forty four and 12/100 (144.12) feet;

Southeasterly by the northwesterly line forming the junction of said Way and South Shore Drive, thirty-nine and 27/100 (39.27) feet;

Southeasterly by said South Shore Drive, one hundred sixty-seven and 53/100 (167.53) feet;

Easterly by the end of said South Shore Drive, thirty-two (32) feet;

Northerly by said South Shore Drive, forty and 26/100 (40.26) feet;

Easterly by land now or formerly of S. Nelson Ringsmuth et al, about thirty-two (32) feet;

Southeasterly by Nantucket Sound;

Northwesterly about ninety-seven (97) feet, and

Southwesterly about two hundred eighty-three (283) feet, by land now or formerly of Leonidas B. Lewis;

Northwesterly by Parker River; and

Northeasterly by land now or formerly of Warren C. Baker, about three hundred ninety-one (391) feet.

Said land is shown as LOTS 4, 5, 6 and 8 on said plan.

All of said boundaries, except the water lines, are determined by the Court to be located as shown on plan 30328-A drawn by Mercer Engineering Corp., Surveyors, dated June 7, 1965, as modified and approved by the Court, and filed in the Land Registration Office at Boston, a copy of a portion of which is filed in Barnstable County Registry of Deeds in Land Registration Book 311, Page 58 with Certificate of Title No. 39448 and said land is shown thereon as LOTS 1, 2, 3, 4, 5, 6, 7 and 8.

So much of said land as lies within the limits of South Shore Drive as shown on said plan is subject to the rights of all those lawfully entitled thereto in and over the same and there is appurtenant to said land the right to use said South Shore Drive in common with all those lawfully entitled thereto.

Said land is subject to the easements set forth in a grant made by Ralph L. Kelley to the Cape & Vineyard Electric Company and New England Telephone & Telegraph Company dated March 4, 1954 duly recorded Book 867 Page 462.

So much of said land as lies within the limits of the way (8) feet wide running along the southeasterly side of said land approximately shown on said plan and so much of the land designated as Lot 6 marked "Beach Area" as shown on said plan is subject to

the terms of a stipulation between the Petitioners and John D. Lyons et al filed with the papers in this case on January 26, 1966 and registered as Document No. 110,266.

There is appurtenant to said land the right to use the way shown on said plan for all purposes for which such ways may be used in the Town of Yarmouth as set forth in a grant made by Ralph L. Kelley to Warren C. Baker dated June 14, 1955 duly recorded Book 1155, Page 36.

And it is further certified that said land is under the operation and provisions of Chapter 185 of the General Laws, and that the title of said Palmer Davenport and David G. Mugar, Trustees as aforesaid to said land is registered under said Chapter, subject, however, to any of the encumbrances mentioned in Section forty-six of said Chapter, which may be subsisting, and subject also as aforesaid and to any and all public rights legally existing, in and over the same below mean high water mark, applicable to land in case 11259.

Said Lot 6 is subject to any and all rights of the public in the tidewaters of Nantucket Sound and said Lot 8 is subject to any and all rights of the public in the tidewaters of Nantucket Sound and Parkers River.

I, DAVID G. MUGAR, surviving Trustee under written Declaration of Trust dated September 1, 1967 registered with Barnstable County Land Registration Office as Document No. 115344, as amended by instruments registered as Document Nos. 155332 and 448720, having an address of 20 North Main Street, South Yarmouth, Massachusetts 02664, in consideration of One (\$1.00) Dollar paid, grant to RED JACKET BEACH LIMITED PARTNERSHIP, a Massachusetts limited partnership having its principal office at 20 North Main Street, South Yarmouth, Massachusetts 02664 with QUITCLAIM COVENANTS the land in Yarmouth (South), Barnstable County, Massachusetts described as follows:

Lots 73, 74 and 75 as shown on plan entitled "Gateway Isles" a Subdivision Plan of Land in South Yarmouth Mass. for Gateway Construction Co. Inc. Scale: 1" = 60' September 1964 Being a Division of Lots 47-48 49 & 50 as shown on a plan "Gateway Isles" dated May 1963. Plan Bk 181 Pg 125 Charles S. Kennedy Surveyor - Designer West Dennis, Mass. Cape Cod, recorded in Plan Book 203 Page 17.

The undersigned hereby certifies that said Trust is in full force and effect; all the beneficiaries are of full age; all the beneficiaries are competent; all the beneficiaries of said Trust have consented to the transfer of the property to Red Jacket Beach Limited Partnership for nominal consideration.

For title, reference is made to deed from Gateway Construction Co., Inc. dated February 8, 1969 recorded in Book 1428 Page 204.

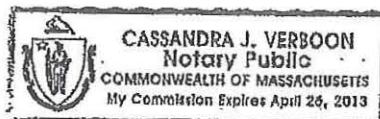
Executed as a sealed instrument this 27th day of September, 2007.

OK
DTT

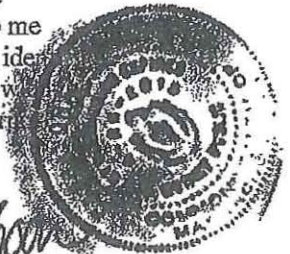
David G. Mugar
David G. Mugar, Trustee

COMMONWEALTH OF MASSACHUSETTS
, ss.

On this 27th day of September, 2007 before me, the undersigned notary public, personally appeared David G. Mugar, Trustee as aforesaid, proved to me through satisfactory evidence of identification, being driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged to me that he signed the foregoing instrument voluntarily for its stated purpose.



Cassandra J. Verboon
Notary Public



South Shore Drive, South Yarmouth

I, FRANK J. McGIVERN, as surviving tenant by the entirety, of Yarmouth (South), Barnstable County, Massachusetts in consideration of SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$7,500.00) DOLLARS paid grant to PALMER DAVENPORT and DAVID G. MUGAR, Trustees under a written declaration of trust dated September 1, 1967, registered with Barnstable County Land Registration Office as Document No. 115344 (mailing address: 20 North Main Street, South Yarmouth, Massachusetts 02664) with QUITCLAIM COVENANTS the land in Yarmouth (South), Barnstable County, Massachusetts bounded and described as follows:

Starting at a cement bound on the southeast corner of land of Ralph L. Kelley running northerly a distance of approximately 85 feet;

thence running easterly for approximately 60 feet to an iron pipe;

thence turning and running southerly to South Shore Drive approximately 85 feet; and

thence running westerly along South Shore Drive to the point of beginning, approximately 60 feet.

For title see deed dated August 5, 1958, recorded with Barnstable County Registry of Deeds in Book 1013 Page 510.

EXECUTED as a sealed instrument this 30 day of December 1986.

Frank J. McGivern
Frank J. McGivern

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss December 30th 1986

Then personally appeared the above-named FRANK J. McGIVERN and acknowledged the foregoing instrument to be his free act and deed, before me,

Eugene R. McGivern
Notary Public

My commission expires: 5/11/90

RECORDED DEC 31 86

CANCELLED

JOHN C. CRENEY, P.C.
ATTORNEY-AT-LAW
17 EAST MAIN STREET
HYANNIS, MASSACHUSETTS
02601
617-771-0048

I, ANNE J. O'CONNELL of Crosby Circle, Barnstable (Osterville), Barnstable County, Massachusetts, for consideration of EIGHT THOUSAND (\$8,000.00) DOLLARS paid, grant to PALMER DAVENPORT of 20 North Main Street, Yarmouth (South), Barnstable County, Massachusetts, with QUITCLAIM COVENANTS the land in Yarmouth (South), Barnstable County, Massachusetts which is bounded and described as follows:


EASTERLY	by	Land now or formerly of Elizabeth A. Joyce, seventy-five (75.00) feet, more or less;
SOUTHERLY	by	a way now or formerly called South Shore Drive, sixty (60.00) feet, more or less;
WESTERLY	by	land now or formerly of Frank J. McGivern et ux, seventy five (75.00) feet, more or less; and
NORTHERLY	by	land now or formerly of David G. Mugar et al, Trustees, sixty (60.00) feet, more or less.

Said land is conveyed subject to all rights, benefit and restrictions of record in so far as they are in full force and effect.

Meaning and intending to convey all the land described in a deed from Harold E. Cole and Harriet E. Cole to me and my deceased husband, John M. O'Connell, dated October 27, 1952, and recorded in the Barnstable County Registry of Deeds, Book 839, Page 534.

CANCELLED
OCT 18 24

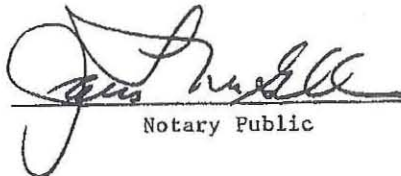
Witness my hand and seal this 4th day of September,
1984.


Anne J. O'Connell

COMMONWEALTH OF MASSACHUSETTS

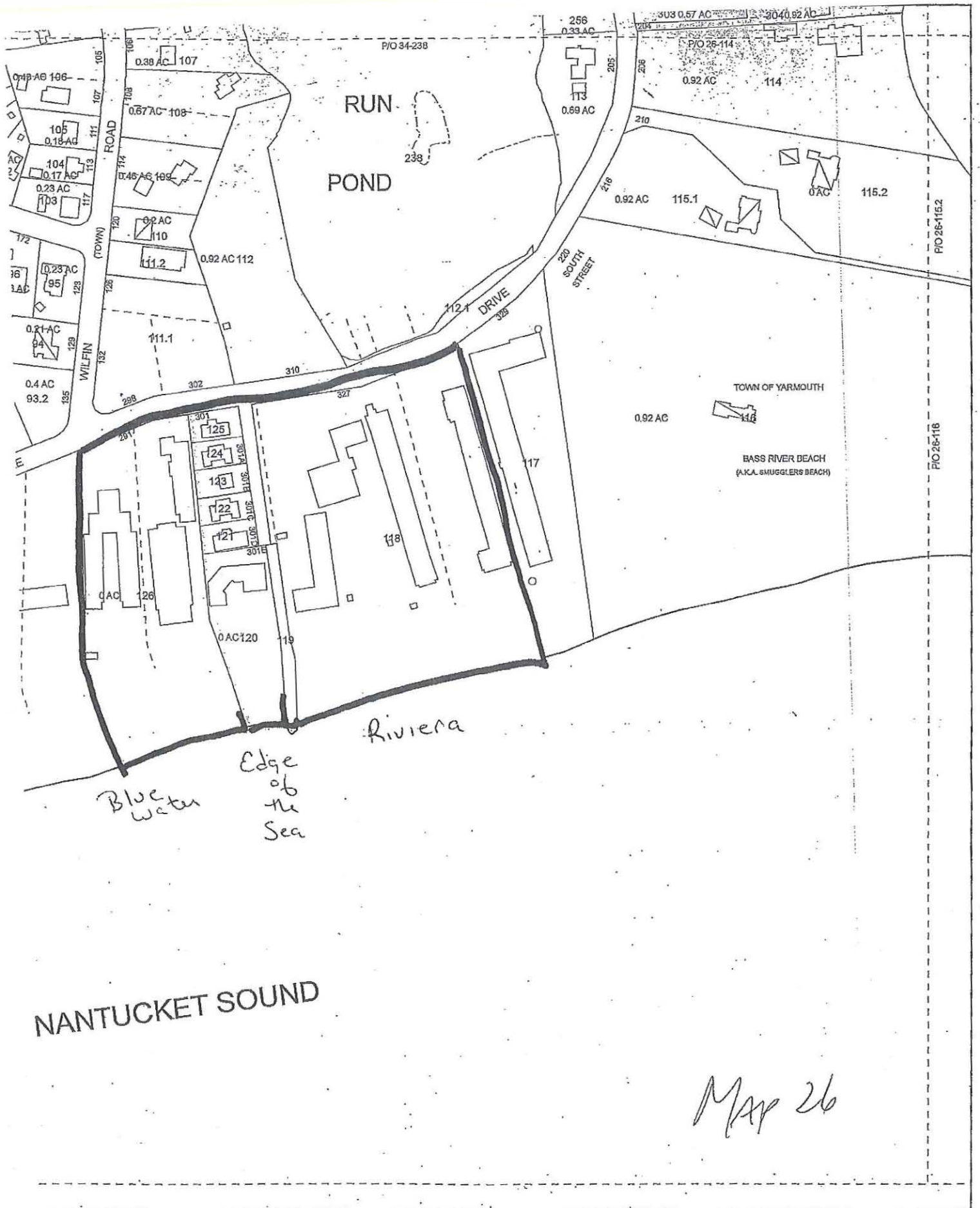
Barnstable, ss. September 4, 1984

Then personally appeared the above-named ANNE J.
O'CONNELL and acknowledged the foregoing instrument to be her
free act and deed, before me


Notary Public

My commission expires: October 26, 1990

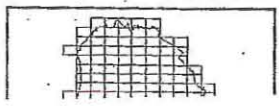
RECORDED SEP 11 84



NANTUCKET SOUND

Blue water
Edge of the Sea
Riviera

Map 26



Doc. No. 651,175
Ctf. No. 138810

TRANSFER CERTIFICATE OF TITLE

From Certificate No. 60129, Originally Registered October 3, 1973
in the Registry District of Barnstable County.

THIS IS TO CERTIFY that BLUE WATER LIMITED PARTNERSHIP, a Massachusetts limited
partnership, of 20 North Main Street, South Yarmouth, Massachusetts 02664,

the owner(s) in fee simple,

of that land situated in YARMOUTH

in the county of Barnstable and the Commonwealth of Massachusetts, described as
follows:

LOT C
PLAN 14114-A1

LOTS 122, 123, 57, 59, 58 AND 60
PLAN 14114-A2 (Sheet 2 & 3)

And it is further certified that said land is under the operation and provisions
of Chapter 185 of the General Laws, and that the title of said owner(s) to said
land is registered under said Chapter, subject, however, to any of the encumbrances
mentioned in Section forty-six of said Chapter, which may be subsisting; and
subject to any and all rights of the public in the use of said Run Pond as a Great
Pond, also to any and all public rights legally existing in and over the same below
mean high water mark in Nantucket Sound.

WITNESS ROBERT V. CAUCHON, Chief Justice of the Land Court at Barnstable, in said
County of Barnstable,

the first day of November in the year nineteen hundred and ninety-five

at 8 o'clock and 32 minutes

Attest, with the Seal of said Court,

JOHN F. MEADE, Assistant Recorder.

Land Court Case No. 14114

651175
138810

44.30

Property Address: 291 South Shore Drive, South Yarmouth, MA 02664

WE, PALMER DAVENPORT and DAVID G. MUGAR, Trustees under written Declaration of Trust dated October 1, 1973 registered with Barnstable County Land Registration Office as Document No. 179860, having a mailing address of 20 North Main Street, South Yarmouth, Massachusetts 02664, in consideration of ONE (\$1.00) DOLLAR paid, grant to BLUE WATER LIMITED PARTNERSHIP, a Massachusetts limited partnership having its principal office at 20 North Main Street, South Yarmouth, Massachusetts 02664 with QUITCLAIM COVENANTS THE LAND IN Yarmouth, Barnstable County, Massachusetts described on Exhibit A attached hereto.

This conveyance is made subject to a mortgage granted by said Palmer Davenport and David G. Mugar, Trustees as aforesaid to Cape Cod Bank and Trust Company in the original principal amount of \$1,000,000.00 dated March 18, 1992, registered as Document No. 547717.

For title, reference is made to Certificate of Title No. 60129

EXECUTED as a sealed instrument this 25th day of October

RECORDED
OCT 26 1995
1 8 32 AM
JOHN F. MEAD
BARNSTABLE COUNTY
REGISTER OF DEEDS

David G. Mugar
David G. Mugar
Trustee as aforesaid

Palmer Davenport
Palmer Davenport
Trustee as aforesaid

STATE OF GEORGIA

Glynn, ss.

October 26, 1995

Then personally appeared the above named PALMER DAVENPORT, Trustee as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

Janet R. Smith
Notary Public
JANET R. SMITH
Notary Public, Glynn County, Georgia
My Commission Expires August 16, 1998

My commission expires:

Glynn C 14114-A1 +

122 123 57 59 58 + 60

14114-A2 (5/12/93)


COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 25 , 1995

Then personally appeared the above named DAVID G. MUGAR, Trustee as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

Andrea Galea
Notary Public



My commission expires: July 5, 2001

EXHIBIT A

Seven certain parcels of land situated in Yarmouth, in the County of Barnstable, and Commonwealth of Massachusetts, together with the buildings thereon, and bounded and described as follows:

SOUTHERLY by the northerly line of South Street;
WESTERLY by land now or formerly of John G. Sears; and
NORTHERLY by Run Pond.

All of said boundaries, except the water line, are determined by the Court to be located as shown upon plan No. 14114-A1 filed in Book 11 Page 20, Barnstable Registry District, with Certificate of Title No. 2565, the same being compiled from a plan drawn by George F. Clements, Civil Engineer, dated August 1929, and additional data on file in the Land Registration Office at Boston, all as modified and approved by the Court, and is shown thereon as LOT C.

NORTHERLY by the southerly line of South Street, one hundred (100) feet;
EASTERLY by Lot 123, by two lines measuring three hundred seventy-five and 57/100 (375.57) feet, and about forty-eight (48) feet respectively;
SOUTHERLY by Nantucket Sound; and
WESTERLY by Lot 121, by two lines measuring about fifty (50) feet and three hundred eighty-two and 69/100 (382.69) feet respectively.

Said land is shown as LOT 122 on plan hereinafter mentioned.

NORTHERLY by South Street, one hundred (100) feet;
EASTERLY by Lot 124, measuring on the upland about three hundred ninety-seven and 36/100 (397.36) feet;
SOUTHERLY by Nantucket Sound; and
WESTERLY by Lot 122, measuring on the upland about four hundred twenty-three and 57/100 (423.57) feet.

Said land is shown as LOT 123 on said hereinafter mentioned plan.

All of said boundaries, except the water lines, are determined by the Court to be located as shown on subdivision plan 14114-A2 dated August 1930 drawn by George F. Clements, Civil Engineer, and filed in the Land Registration Office at Boston, a copy of which is filed in Barnstable County Registry of Deeds in Land Registration Book 11 Page 20 with Certificate of Title No. 2565 and said land is shown thereon as LOTS 122 and 123.

NORTHWESTERLY by Wilfin Road, sixty (60) feet;
NORTHEASTERLY by Lot 56, one hundred forty-nine and 72/100 (149.72) feet;
EASTERLY by a portion of land now or formerly of John G. Sears, sixty-five and 91/100 (65.91) feet; and
SOUTHWESTERLY by Lot 58, one hundred seventy-seven (177) feet,

Being shown as LOT 57 on hereinafter mentioned plan.

SOUTHERLY by the northerly line of South Street, one hundred twenty-seven and 93/100 (127.93) feet;
WESTERLY by Lot 60, one hundred forty-one and 68/100 (141.68) feet;
NORTHERLY by Lot 58, one hundred twenty and 14/100 (120.14) feet; and
EASTERLY by land now or formerly of John G. Sears, one hundred thirteen and 16/100 (113.16) feet.

Being shown as LOT 59 on said hereinafter mentioned plan.

NORTHWESTERLY by Wilfn Road, sixty (60) feet;
NORTHEASTERLY by Lot 57, on hundred seventy-seven (177) feet;
EASTERLY by a portion of land now or formerly of John G. Sears, sixty-five and 91/100 (65.91) feet; and
SOUTHWESTERLY by Lots 59 and 60, two hundred four and 28/100 (204.28) feet.

Being shown as LOT 58 on said hereinafter mentioned plan.

SOUTHERLY by the northerly line of South Street, by two lines measuring twenty (20) feet and seventy-nine and 03/100 (79.03) feet, respectively;
SOUTHWESTERLY by the junction of said South Street and Wilfn Road, forty-one and 82/100 (41.82) feet;
WESTERLY by said Wilfn Road, one hundred sixty-two (162) feet;
NORTHERLY by Lot 58, eighty-four and 14/100 (84.14) feet; and
EASTERLY by Lot 59, one hundred forty-one and 68/100 (141.68) feet.

Being shown as LOT 60 on said hereinafter mentioned plan.

All of said boundaries are determined by the Court to be located as shown on Plan 14114-A2 (Sheet 2) dated August, 1930, drawn by George F. Clements, Civil Engineer, and filed in the Land Registration Office at Boston, a copy of which is filed in Barnstable County Registry of Deeds in Land Registration Book 11 Page 20 with Certificate of Title No. 2565 and said land is shown thereon as LOTS 57, 59, 58 and 60 respectively.


Together with a right of way over the ways shown on the above-mentioned plans for all purposes for which ways are commonly used in the Town of Yarmouth in common with others lawfully entitled thereto.

Subject to and with the benefit of rights, reservations, restrictions and easements of record, if any there be, insofar as the same are in full force and applicable.

I, Palmer Davenport, Trustee of an unnamed trust under a Declaration of Trust dated October 1, 1973 and registered as Document No. 179860, hereby certify that:

1. Said Trust is in full force and effect.
2. All the beneficiaries are of full age.
3. All the beneficiaries are competent.
4. All the beneficiaries of said Trust have consented to the transfer of the property to Blue Water Limited Partnership for nominal consideration.

Signed under the pains and penalties of perjury.


Palmer Davenport, Trustee
October 25, 1995

BARNSTABLE REGISTRY OF DEEDS

Doc. No. 651,286
Ctf. No. 138823

TRANSFER CERTIFICATE OF TITLE

From Certificate No. 96407, Originally Registered May 8, 1984,
From Certificate No. 98482, Originally Registered October 4, 1984
in the Registry District of Barnstable County.

THIS IS TO CERTIFY that EDGE OF THE SEA INC., a Massachusetts corporation, Trustee of the Edge of the Sea Trust under a Declaration of Trust dated October 23, 1995 being Document No. 651,287 having its principal office, at 20 North Main Street, South Yarmouth, Massachusetts 02664,

the owner(s) in fee simple,

of that land situated in YARMOUTH

in the county of Barnstable and the Commonwealth of Massachusetts, described as follows:

LOTS 127, 128, 129, 130, 131, and 132
PLAN 14114-D

LOT 181
PLAN 14114-J

There is appurtenant to said Lots 127 through 132 the Way 5 feet wide over Lot 132 and an easement of way over the 20 foot Way on the westerly side of Lot 138, both Ways shown on said plan by broken lines. There is also appurtenant to said land rights of ingress and egress in the Way 20 feet wide extending from South Street to Lot 132 and shown on said plan.

There is appurtenant to said Lot 181 a right of way over the 20 foot way and over the other way northerly to South Street, a public way, in common with others entitled thereto, so far as said rights may be conveyed.

651286

138823

EDGE OF THE SEA MOTEL, INC.

Nov 1 3 97 11 30

a corporation duly established under the laws of the Commonwealth of Massachusetts and having its usual place of business at 301 South Shore Drive, South Yarmouth

Barnstable County, Massachusetts, for consideration paid, in the amount of ONE MILLION TWO HUNDRED THOUSAND (\$1,200,000.00) DOLLARS

grants to JOHN F. DEAR, as Trustee of Edge of the Sea Trust under written declaration of trust dated October 23, 1995, to be registered herewith, at Doc. No. 651287

the land in

[Description and encumbrances, if any]

The land, together with the buildings and improvements thereon, situated in Yarmouth (South), Barnstable County, Massachusetts, being shown as (i) Lot 132 on Land Court Plan 14114-D and Lot 181 on Land Court Plan 14114J as described in Certificate of Title No. 96407; and (ii) Lots 127, 128, 129, 130 and 131 on Land Court Plan 14114D as described in Certificate of Title No. 98482. Said premises are conveyed subject to the easements and reservations noted on such Certificates of Title insofar as the same are in force and applicable, and together with other rights noted on said Certificates.

PROPERTY ADDRESS: 301 South Shore Drive, S. Yarmouth, MA.

BARNSTABLE COUNTY REGISTRY OF DEEDS COUNTY EXCISE TAX TOTAL 2736.00 CHECK 2736.00

TAX 4104.00 CHECK 4104.00 EXCISE TAX 1238400 15150

RECEIVED BARNSTABLE COUNTY MASS. 11/95

In witness whereof, the said EDGE OF THE SEA MOTEL, INC.

has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by JAMES L. JOHNSON President & its Treasurer hereto duly authorized, this 1st

day of November in the year one thousand nine hundred and ninety-five

Signed and sealed in presence of

EDGE OF THE SEA MOTEL, INC.

by James L. Johnson JAMES L. JOHNSON, PRESIDENT & TREASURER

BARNSTABLE REGISTRY OF DEEDS

The Commonwealth of Massachusetts

BARNSTABLE ss. 11/1 19 95

Then personally appeared the above named JAMES L. JOHNSON, President & Treasurer, as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of the EDGE OF THE SEA MOTEL, INC.

BARNSTABLE COUNTY REGISTRY OF DEEDS before me, JOHN F. DEAR, Notary Public

Notary Public - State of the Mass. My commission expires 10/20 19 2000

YARM - 127, 128, 129, 130, 131 + 132, 14114-D and 181, 14114-J

Doc. No. 651,174
Ctf. No. 138809

TRANSFER CERTIFICATE OF TITLE

From Certificate No. 61092, Originally Registered February 14, 1974
in the Registry District of Barnstable County.

THIS IS TO CERTIFY that RIVIERA LIMITED PARTNERSHIP, a Massachusetts limited
partnership, of 20 North Main Street, South Yarmouth, Massachusetts 02664,

the owner(s) in fee simple,

of that land situated in YARMOUTH

in the county of Barnstable and the Commonwealth of Massachusetts, described as
follows:

LOT 189

PLAN 14114-N

There is appurtenant to said land a right of way over the 20 foot
Way and over the other Way northerly to South Street, a public Way, in common with
others entitled thereto, so far as said rights may be conveyed.

And it is further certified that said land is under the operation and provisions
of Chapter 185 of the General Laws, and that the title of said owner(s) to said
land is registered under said Chapter, subject, however, to any of the encumbrances
mentioned in Section forty-six of said Chapter, which may be subsisting; subject to
any and all public rights legally existing in and over the same below mean high
water mark in Nantucket Sound.

WITNESS ROBERT V. CAUCHON, Chief Justice of the Land Court at Barnstable, in said
County of Barnstable,

the first day of November in the year nineteen hundred and ninety-five

at 8 o'clock and 30 minutes

Attest, with the Seal of said Court,

JOHN F. MEADE, Assistant Recorder.

Land Court Case No. 14114

651174

138809

67.5

Property Address: 327 South Shore Drive, South Yarmouth, MA 02664

WB, PALMER DAVENPORT and DAVID G. MUGAR, Trustees under written Declaration of Trust dated February 1, 1974 registered with Barnstable County Land Registration Office as Document No. 183480, having an address of 20 North Main Street, South Yarmouth, Massachusetts 02664, in consideration of ONE (\$1.00) DOLLAR paid, grant to RIVIERA BEACH LIMITED PARTNERSHIP, a Massachusetts limited partnership having its principal office at 20 North Main Street, South Yarmouth, Massachusetts 02664 with QUITCLAIM COVENANTS THE LAND IN Yarmouth, Barnstable County, Massachusetts described on Exhibit A attached hereto.

This conveyance is made subject to a mortgage granted by said Palmer Davenport and David G. Mugar, Trustees as aforesaid to Springfield Institution For Savings in the original principal amount of \$1,000,000.00 dated May 1985, registered as Document No. 362603.

For title, reference is made to Certificate of Title No. 61092 EXECUTED as a sealed instrument this 15th day of October 1995.

Palmer Davenport
Palmer Davenport
Trustee as aforesaid

David G. Mugar
David G. Mugar
Trustee as aforesaid

STATE OF GEORGIA

Glynn, ss.

October 26, 1995

Then personally appeared the above named PALMER DAVENPORT, Trustee as aforesaid and acknowledge the foregoing instrument to be his free act and deed, before me

My commission expires:

Janet R. Perkins
Notary Public
JANET R. PERKINS
Notary Public, Glynn County, Georgia
My Commission Expires: 10/26/98

189 14114-N

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 25 , 1995

Then personally appeared the above named DAVID G. MUGAR, Trustee as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

Adrian O'Brien
Notary Public



My commission expires: *July 5, 2001*

EXHIBIT A

in the County of Barnstable and said Commonwealth of Massachusetts, bounded and described as follows:

LOT 189, Land Court Plan No. 14114N

For Grantor's title, see certificate of title no. 61092

APPENDIX C

The Davenport Companies / Red Jacket Resorts Redevelopment Development Agreement

MATERIALS SUBMITTED FOR THE RECORD

TABLE 1: Materials Submitted for the Record	
<i>Materials from Cape Cod Commission</i>	<i>Date Sent</i>
Email from Kristy Senatori to Peter Freeman and Paul Rumul regarding a list of Commission members on the Executive Committee	6/18/09
Email from KS to PR and PF enclosing a revised Development Agreement application	7/8/09
Email from KS to PF requesting list of abutters	7/16/09
Email from KS to PF confirming receipt of letter from Town of Yarmouth supporting the DA	7/27/09
Memo from KS to Regulatory Committee regarding Notice of Intent to file a DA application	7/28/09
Email from KS to PF regarding recommendations to full commission relating to the development agreement	7/28/09
Email from KS to PR regarding full commission meeting to hear Notice of Intent	8/11/09
Email from KS to DeWitt Davenport and TM regarding Notice of Intent	8/12/09
Packet prepared by KS to full Commission which includes draft decision, staff memo to Regulatory Committee, Notice of Intent to file DA application, letter of support from Town of Yarmouth, and minutes from regulatory committee meeting of 8/3/09	8/13/09
Email from KS to PR and TM regarding Assessor's Maps	8/18/09
Letter to Applicant stating approval of Applicant's Notice of Intent to File a Development Agreement application	8/20/09
Email from KS to Trevor Meyer, Paul Rumul and DeWitt Davenport regarding MEPA thresholds	8/20/09
KS to PR regarding Notice of Intent	8/24/09
Email from KS to TM regarding a meeting to discuss energy on September 3 rd	8/26/09
Email correspondence between KS and PR regarding Chapter H	2/19/10
Email from KS to PR regarding coastal/water resources	3/8/10
Email from KS to PR regarding a conference call with Phil Dascombe	4/1/10
Email from Scott Michaud to Trevor Meyer regarding the existing and proposed septic layout	4/5/10
Email between KS and Trevor Meyer regarding requested materials, to be delivered no later than April 12 th	4/8/10

Letter from Kristy Senatori to DeWitt Davenport regarding application materials needed in order for application to be deemed complete (sent via mail and email)	4/8/10
Email from KS to PR confirming a meeting for 2PM 4/13	4/12/10
Email correspondence between KS, PR and Paul Ruchinskas regarding affordable housing	4/14/10
Email between KS, PR and SM regarding groundwater discharge permits	4/15/10
Email from KS to PR regarding water resources classification map	4/30/10
Email correspondence between KS and PR regarding a response letter	5/14/10
Email from KS to PR asking for the new landscape plans	5/18/10
Email between KS and PR setting up a conference call for that day at 2:30 p.m. regarding landscaping	5/27/10
Email correspondence between KS and PR setting up a meeting regarding coastal/water resources	6/4/10
Email from Scott Michaud to Paul Rumul regarding the existing and proposed septic layout	6/8/10
Email correspondence between KS and PR setting up a meeting for Friday, June 25 th at 11:30 a.m.	6/17/10
Email from KS to PR regarding Economic Development	8/5/10
Email from KS to PR confirming a time to drop off a redlined application	8/5/10
Email from KS to PR regarding community character	8/9/10
Email from KS to PR regarding the existing and proposed septic layout	8/10/10
Email correspondence between KS and PR regarding Coastal Resources	8/10/10
Email correspondence between KS and PR regarding Coastal Resources	8/12/10
Email correspondence between Kristy Senatori, Scott Michaud and Paul Rumul regarding water resources	8/12/10
Email from KS to PR regarding solid waste, hazardous waste, and exterior lighting	8/18/10
Email correspondence between KS and PR regarding food waste	8/19/10
Email from KS to DD and PR confirming receipt of application and deeming it substantively complete	8/19/10
Email correspondence between KS and Karen Greene confirming receipt of the application materials by the Building Inspector, Planning Board, and Town Clerk	8/23/10
Email and attached letter from KS to DD regarding the completion of their Development Agreement Application as of August 20 th	8/24/10
Email from John McCormack withdrawing from Subcommittee based on conflict of interest	8/28/10
Email between KS and PR regarding a meeting on EDC	9/2/10
Email from KS to PR regarding a meeting date/time to review the Development Agreement process	9/9/10

Email correspondence between KS and PR regarding information on the existing and proposed cottages at Red Jacket Beach	9/9/10
Email between KS and PR regarding conceptual landscape plans for Red Jacket Resort	9/13/10
Email from KS to PR regarding Affordable Housing	9/16/10
Email from KS to DD, PR, TM, KG, HW, Terry Sylvia, and staff reminding them of the public hearing on October 5 th which includes a September 28 th Staff Report and Exhibits	9/28/10
Email from Page Czepiga to Nicole Bohane regarding cancellation of the October 5 th public hearing	9/30/10
Email from Gail Hanley to Jane Hibbert asking her to post the attached Cancelled Hearing Notice for the project	9/30/10
Email from KS to DD and PR, the subcommittee members and staff notifying them of the cancellation of the October 5 th public hearing	9/30/10
Email from Kristy Senatori to Karen Greene which includes the revised Staff Report	11/15/10
Email from KS to DD regarding an email from Ann Evans	10/1/10
Email from KS to Ann Evans regarding her comments and notifying her of the cancellation of the Oct 5 th public hearing	10/1/10
Email from KS to Ann Evans regarding the cancellation of the public hearing	10/4/10
Email from Page Czepiga to Karen Greene regarding dates for the public hearing	10/15/10
Email from Page Czepiga to PR, DD, KG and RL confirming the location for the November 22 nd public hearing	10/27/10
Email from KS to PR which includes the Staff Report and asks for comments by 11/15 and mentions a new member of the Subcommittee	11/10/10
Revised Staff Report including site plans	11/15/10
Meeting and Hearing Attendance Sheet	11/22/10
Email from Scott Michaud to KS regarding Mr. Wensley's concerns addressed at the Nov. 22 nd hearing	12/1/10
Email from SM to KS regarding an analysis of the room count	12/13/10
Email from Tabitha Harkin to Doug Greiner regarding planting plan suggestions	12/27/10
Materials from Applicant	Date Received
South Shore Drive Redevelopment review of the CCC RPP Energy Minimum Performance Standards	5/8/09
South Shore Drive Redevelopment Project Outline	7/1/09
Letter from Attorney Peter L. Freeman of Freeman Law Group LLC to Kristy Senatori which included a Notice of Intent to File a Development Agreement	7/14/09
Letter from Attorney Peter L. Freeman to Kristy Senatori which included Applicant's Supplement to Notice to Intent to File Development Agreement Application	7/21/09
Letter from Attorney Freeman to Kristy Senatori regarding the list of abutters certified by the Director of Assessing for	7/23/09

the Town of Yarmouth	
Email from PR to KS regarding the full Commission meeting presentation on 8/20	8/11/09
Email from Trevor Meyer to KS regarding pictures for the public hearing	8/12/09
Email from TM to KS regarding additional comments for the public hearing 8/17	8/19/09
Email correspondence between TM and KS regarding MEPA thresholds and compliance	8/20/09
Email between PR and KS regarding recording of Notice of Intent	8/25/09
Email correspondence between TM and KS confirming a meeting to discuss Energy on September 3 rd at 3:00 p.m.	8/26/09
Email from TM to KS regarding the FW Webb DRI application	8/31/09
Review of the Energy Minimum Performance Standards	10/15/09
Email correspondence between PR and KS confirming a meeting on 12/23 to discuss Chapter H	12/18/09
Email from PR to KS regarding the change of use within Chapter H	1/11/10
Email correspondence between TM and KS setting up a meeting to discuss Water Resources	2/17/10
Email from PR to KS confirming attendance at a meeting at the Commission to discuss water resources for February 22 nd	2/19/10
Email from Trevor Meyer to Andy Walsh regarding Resource Delineation plans	2/23/10
Certified List of Abutters from the Town of Yarmouth	2/23/10
Email from Trevor Meyer to Scott Michaud regarding the existing and proposed overlay in the estuary plan	2/25/10
Email from Trevor Meyer to KS regarding fee waiver documentation and asking if the Commission had a copy of it and if not, how to document it	3/5/10
Email from PR to KS confirming a meeting to further discuss water/coastal resources with Scott Michaud on March 15 th at 1:30	3/8/10
Email from PR to Andy Walsh regarding the Coastal Resources Minimum Performance Standards	3/16/10
DEP WPA Form 2 – Determination of Applicability form with plan attached	3/17/10
Email from PR to KS telling her that Russ from their office left to drop off more information	3/14/10
Development Agreement Application Submittal Package	3/23/10
Letter from DeWitt Davenport including Development Agreement Application submittal package	3/29/10
Email from PR to KS confirming a conference call at 10 a.m. the next day with Phil Dascombe and KS to discuss the design review process	4/1/10
Email from Trevor Meyer to KS stating that the items he said would be ready by Wednesday are taking longer than expected and will be delivered by Monday the 12 th	4/8/10

Email correspondence between PR and KS confirming a meeting on 4/13 at 2 p.m. to discuss application materials	4/12/10
Email from PR to KS stating that he is having difficulty finding the "Water Resources Classification Map 1" referred to in the definitions of the RPP under "impaired area"	4/30/10
Letter from Applicant to KS in response to April 8, 2010 letter regarding application materials	5/11/10
Email correspondence from TM regarding landscape plans with plans attached	5/18/10
Email correspondence from Trevor Meyer to Kristy Senatori regarding revised landscape plans	5/24/10
Email from Trevor Meyer to KS containing a draft response to the Commission's questions dated April 8, 2010 and he noted they are working on the comments the Commission had for them last week	5/17/10
Email from PR to KS confirming a meeting for the following day at 9 a.m.	6/3/10
Email from PR to KS confirming a meeting to discuss coastal/water resources for 8:30 a.m. on Tuesday, June 8, 2010	6/4/10
Email correspondence from PR to KS confirming a conference call to discuss Energy on Friday June 25 th at 11:30 a.m.	6/17/10
Email correspondence from PR to KS confirming at 9:00 meeting time for KS to deliver a redlined application and copies of plan B	8/5/10
Email correspondence from PR to KS in response to KS providing Leslie Richardson's comments on Economic Development and updating him on staff responses. PR says he will discuss them with her on Monday	8/5/10
Email correspondence from Paul Rumul to Kristy Senatori regarding a description of public benefits and improvements	8/10/10
Email correspondence from PR to KS stating that he will get back to her tomorrow regarding Water and Coastal Resources	8/10/10
Email correspondence from Paul Rumul to Kristy Senatori and Scott Michaud regarding proposed wastewater flows for Red Jacket and Blue Water in response to correspondence from SM	8/11/10
Email correspondence from Trevor Meyer to Paul Rumul and forwarded to Kristy Senatori addressing concerns listed by Andrea Adams with original concerns attached	8/19/10
Email correspondence from Trevor Meyer to Kristy Senatori which included additional information regarding food waste for the Development Agreement Application	8/20/10
Copy of Application with Town Clerk stamp	8/20/10
Email corr between PR and KS confirming that complete application packets will be delivered to the appropriate Town Officials and Boards the following day	8/19/10
Email correspondence between PR and KS confirming 9/28/10 or 10/5/10 for a public hearing date	8/28/10

Email correspondence from Paul Rumul to Kristy Senatori regarding information on the existing and proposed cottages at Red Jacket Beach.	9/9/10
Email correspondence between PR and KS confirming a meeting date of September 14 th at 10 AM to go over a project timeline after completion of the application	9/9/10
Email correspondence from PR to KS asking for the affordable housing mitigation cost and formula ahead of the distribution schedule or as soon as possible	9/16/10
Email correspondence from PR to KS regarding the presentation of Concept B plans to the Yarmouth Planning Board and receiving unanimous approval with no changes made to the plan	9/16/10
Email correspondence from Kelli Orava to Kristy Senatori regarding "factual inaccuracies that need to be corrected" in the Staff Report	9/27/10
Letter from DeWitt Davenport to KS regarding Community Character and Architecture which includes a letter from the public (author unknown)	9/27/10
Comment letter from DeWitt Davenport to KS regarding the right of way	10/1/10
Letter from DeWitt Davenport to Kristy Senatori addressing the impact on Run Pond, the number of rooms, parking, guest identification, conference rooms, restaurant trips, and rights of way with a hydrogeologic evaluation attached.	12/2/10
Email from PR to KS regarding affordable housing discussion	12/29/10
Email from Douglas Grenier to Tabitha Harkin regarding Blue Water Resort landscape plans	1/3/11
Email from DG to TH regarding Red Jacket Resort landscaping plans	1/3/11
Letter via mail and email from DeWitt Davenport confirming legal authority to contractually bind the entities having equity interests in the land subject to the DA	2/23/11
Email from PR to KS regarding the draft Development Agreement	2/23/11
Email from PR to KS containing legal advice from Peter Freeman, Esq. regarding the DA	2/23/11
Email from DD to KS regarding corrections to the DA	2/23/11
Email from Kelli Orava to KS with attached letter from DD to Roy Richardson regarding assignability of the Development Agreement	3/2/11
Materials from Public Agencies/Towns/State/Federal	Date Received
Letter from Yarmouth Board of Selectmen supporting a reduction of the applicant's fee	6/19/09
Project Notification Form from the Mass Historical Commission stating that the development is unlikely to affect significant historical/archaeological resources	7/23/09
Letter from the Yarmouth Board of Selectmen supporting the Development Agreement	7/23/09

Letter from the Yarmouth Board of Selectmen regarding consistency with local planning	2/24/10
Letter from the Planning Board to the Board of Selectmen expressing their support for the Development Agreement	9/23/10
Letter from the Community and Economic Development Committee in support of the Development Agreement	9/23/10
Letter from the Yarmouth Board of Selectmen in support of the Development Agreement	11/16/10
Letter from the Yarmouth Board of Selectmen supporting the redevelopment and "Concept B" and attached supporting letters from the Planning Board, the Community and Economic Development Committee and the Fire Department	11/16/10
Letter from the Yarmouth Fire Department in support of the Development Agreement	11/17/10
Letter from the Yarmouth Chamber of Commerce supporting the development agreement	11/19/10
Letter from the Cape Cod Chamber of Commerce in support of the Development Agreement	11/22/10
Letter from the Town of Yarmouth Department of Community Development regarding affordable housing	12/28/10
Email from the Town of Yarmouth Department of Community Development regarding affordable housing	12/29/10
Email from Karen Greene, Director of Dept of Community Development regarding Yarmouth's Municipal Affordable Housing Trust	1/6/11
Comment letter from Nanette Davidson, Yarmouth Area Chamber of Commerce	3/3/11
Materials from Members of the Public	Date Received
Email from Howard Wensley to CCC asking for explanation of a development agreement	8/5/09
Letter from the Lyon family (abutters of the property) regarding a drainage problem at Red Jacket	8/17/09
Hand delivered letter to CCC from anonymous regarding concerns about the development including affects on the character of the Cape and the size of the hotel	9/27/10
Letter from the Moody Family (property abutters) regarding concerns about the right of way	9/27/10
Letter from the Yee family (property abutters) regarding concerns about the right of way	9/30/10
Email from Ann Evans regarding testimony for the 10/5 public hearing including pictures of the size of the hotel and concerns	10/1-10/4/10
Email from Michele Wolfson from Welfleet, MA to express her vote against the development as it is "out of character" for the Cape	10/4/10
Letter from Michael Sabina regarding concerns about the right of way and attached deed with highlighted portion listing the right of way	11/15/10
Letter from Ann Evans regarding testimony for 11/22 hearing	11/12/10
Letter from Dawn Karol, Esq., a property abutter, regarding	11/16/10

the change in right of way which would direct people onto her property	
Email from Ann Evans to CCC regarding 11/22 public hearing and noticing the public and voicing disapproval of the development	11/22/10
Summary of public hearing presentation by Howard Wensley addressing concerns with the redevelopment and attached printout submitted by from Tripadvisor.com in which past guests commented on the poor parking situation at Blue Water Resort	11/22/10
Hand submitted letter from Elizabeth Joyce against the redevelopment	11/22/10
Letter from the Cape Cod Chamber of Commerce asking the Commission to reconsider the affordable housing mitigation	
Email correspondence from Howard Wensley to Page Czepiga and forwarded to Kristy Senatori regarding an issue with the number of parking spaces	12/20/10
Email from Howard Wensley to KS regarding impacts on Run Pond, number of guest rooms, parking, guest ID, conference rooms, and the right of way	12/30/10
Email from Kathleen Vellante to CCC Board Members regarding concerns about the scope of the demolition and reconstruction of Blue Water Resort and the right of way	1/3/11
Public Hearing Materials	Date Received
Attendance Sheet	11/22/10
Applicant's Public Hearing slideshow presentation	11/22/10
Packet provided to the subcommittee	11/22/10
Materials submitted to subcommittee for December 13 th public hearing	12/7/10
Materials submitted to the subcommittee for 1/3 public hearing	1/3/11
Staff presentation, sign-in sheet, meeting agenda, and minutes for approval	1/3/11

APPENDIX D

The Davenport Companies / Red Jacket Resorts Redevelopment Development Agreement

FINDINGS

General Findings

GF1. The proposed project as described in the Notice of Intent and which is the subject of this Development Agreement is the redevelopment of two separate developed parcels of land along South Shore Drive in South Yarmouth. Seasonal resorts and cottages comprising four resorts, The Red Jacket Beach Resort, The Blue Water Resort, The Edge of the Sea, and Riviera Beach Resort, currently exist on-Site. The Applicant seeks to redevelop both properties totaling 15.5 acres with two modern resorts.

One resort will be identified as the Red Jacket Beach Resort and will be located at 1 South Shore Drive. The Applicant is proposing two concepts for this property: Concept A (preferred alternative) includes a right-of-way relocation (see Exhibit A attached to this Development Agreement and incorporated by reference); and Concept B includes the right-of-way maintained at its current location (see Exhibit B attached to this Development Agreement and incorporated by reference). The Applicant proposes to redevelop the site with a modern 4-story seasonal hotel with a 41,860 square foot (s.f.) footprint totaling 119,130 overall s.f. of gross floor area. According to the Applicant, the resort will provide 154 guest rooms and 8 efficiency units for a total equal to the number of accommodations in the existing facility. The project also includes the development of two 2 1/2-story, four-unit cottages along South Shore Drive (each with a footprint of 2,280 s.f.). The project includes the development of parking spaces, an outdoor pool and deck, an outdoor bar and grill with seating area, a hotel restaurant, a sewage treatment building, and other ancillary uses commonly associated with resorts.

The second resort will be identified as the Blue Water Resort and will be located at 291, 301, and 327 South Shore Drive (see Exhibit C attached to this Development Agreement and incorporated by reference). The Applicant proposes to redevelop the area with a 4-story seasonal hotel comprised of three buildings connected by overhead passageways. The three buildings will have a total footprint of 52,200 s.f. with an overall gross floor area of 195,550 s.f. According to the Applicant, the resort will provide 240 guest rooms, the same as for the existing facilities at this location. The project includes the development of parking spaces, an outdoor pool and deck, an outdoor restaurant patio, an outdoor bar and patio area, numerous sitting areas, a sewage treatment building, and other ancillary uses commonly associated with resorts.

The development of the project is further described on plans and documents incorporated into this Development Agreement and as shown on Plans entitled "Red Jacket Beach Civil Engineering Plans" Sheets C1 through C7 designed by Haight Engineering, PLLC and Mettee Planning Consultants, dated March 9, 2010, revised sheets L1A through L2A from the plan set entitled "Red Jacket Beach Landscape Plans" designed by G2+1, LLC dated January 3, 2011, sheets A1 through A7 from the plan set entitled "Red Jacket Beach Architectural Plans" designed by TMS Architects, dated March 9, 2010, sheets C1 through C7 from the plan set entitled "Red Jacket Beach Civil

Engineering Plans "B" designed by Haight Engineering, PLLC and Mettee Planning Consultants, dated July 16, 2010, revised sheets L1B through L2B from the plan set entitled "Red Jacket Beach Landscape Plans "B" designed by G2+1, LLC dated January 3, 2011, sheets C1 through C7 from the plan set entitled "Blue Water Beach Civil Engineering Plans" designed by Haight Engineering, PLLC and Mettee Planning Consultants, dated March 9, 2010, revised sheets L1A L2A, and L3A from the plan set entitled "Blue Water Beach Landscape Plans" designed by G2+1, LLC dated January 3, 2011, and sheets A1 through A4 from the plan set entitled "Blue Water Beach Architectural Plans" designed by TMS Architects, dated March 9, 2010.

- GF2. The subject sites are situated in an Economic Center as designated on Yarmouth's Land Use Vision Map (LUVM). Both properties are also located in the Town of Yarmouth's Hotel / Motel Overlay District 2 (HMOD2) Zoning District.
- GF3. The Commission adopts the following testimony that was provided in writing by Terry Sylvia, the Town Planner for the Town of Yarmouth on September 28, 2010, and finds that the project is consistent with the local comprehensive plan, applicable zoning, including overlay districts, development bylaws, and any applicable Districts of Critical Planning Concern.
- 1) Redevelopment of motels in the Hotel/Motel District 2 in which the subject properties are located is allowed by right under Yarmouth Zoning Bylaw section 404.2. Although the project has not been to a formal site plan review as it is not presently in application for any permits, staff review of the project finds no inconsistency with other zoning regulations. The project has undergone formal design review, as is required by the Zoning Bylaw, and was found to have met all design criteria outlined in the town's Architectural & Site Design Standards.
 - 2) In regard to the town's existing LCP, the project is in concert with the goals outlined in Chapter 8, Land Use & Growth Management, in that it encourages redevelopment of properties and uses in order to improve Yarmouth's economic health and quality of life. In fact, Chapter 8 encourages the use of development agreements to shape redevelopment and encourage imaginative design. In addition, LCP Chapter 10, Economic Development, encourages the upgrade of existing hotel/motel accommodations as tourism represents the town's largest economic sector and the town's primary economic engine.
 - 3) Yarmouth has not designated any Districts of Critical Planning Concern (DCPCs).

Land Use

- LUF1. Minimum Performance Standard (MPS) LU1.1 requires that development and redevelopment be consistent with the category of desired land use where the project is located as well as the characteristics of that category, both as identified on the Regional Land Use Vision Map. The proposed redevelopment is located within an area designated as Economic Center. Economic Centers are defined in the RPP as "*[a]reas designated on the Regional Land Use Vision Map as appropriate for growth and redevelopment. These areas serve the region or sub-region and could include characteristics such as civic and institutional uses, retail, and mixed use.*" The proposed hotel use is consistent with the Economic Center land use category, and therefore the Commission finds the project is consistent with MPS LU1.1.

Economic Development

EDF1. MPS ED1.1 requires development to be located in Economic Centers or Industrial and Service Trade Areas, or where appropriate, Village Centers. The proposed redevelopment will be located in an area which is designated an Economic Center on the Regional Land Use Vision Map, and therefore the Commission finds it is consistent with MPS ED1.1.

Community Character / Heritage Preservation

Historic Preservation

CCF1. The Historic standards of the RPP require the preservation of historic resources, cultural landscapes and cultural resources (HPCC1.1, HPCC1.2 and HPCC1.3). HPCC1.1. requires preservation of identified historic structures and HPCC1.2 requires that identified cultural landscapes be preserved. HPCC1.3 requires that Massachusetts Historic Commission be consulted to determine if there are potential impacts to known archeological sites or resources.

The proposed project is not located within an historic district and there are no known historic resources on the project site. On July 20, 2009, Massachusetts Historical Commission (MHC) determined that the proposed project was unlikely to have significant effect on historic or archaeological resources. Therefore, the Commission finds that the Blue Water project and both concepts for the Red Jacket are consistent with the Heritage Preservation section of the RPP.

Building design and architecture

CCF2. There are several building design standards that apply to the project, namely MPS HPCC2.4, HPCC2.5, HPCC2.6 and HPCC2.8. MPS HPCC2.4 requires redevelopment to be consistent with the region's traditional development patterns, reflecting features such as modest building mass, height, scale, roof shape, roof pitch, building materials, and proportions between doors and windows. MPS HPCC2.5 requires structures to be designed with multiple distinct massings differentiated by significant variations in roofline and building footprint, or be fully screened. Redevelopment projects may expand to a single massing of 50,000 square feet without full screening if the expansion occurs on previously developed impervious or landscaped areas. MPS HPCC2.6 requires that redevelopment involving new construction must vary the massing, façades, and roof configuration of a building. If a building façade is more than 50 feet in length, the standard requires that a minimum of 10 feet of variation in the building footprint (set-back or projection in the building wall) for every 50 feet of façade length be provided, and that there be related changes in the roofline in order to reduce the apparent mass of the building.

CCF3. The application for the Red Jacket site includes two concepts for the redevelopment of the existing site, Concept A and Concept B, however the building design is the same for both concepts proposed and therefore the following findings of the Commission apply to both Concept A and Concept B.

The proposed Red Jacket hotel structure has a footprint of 41,860 square feet (including porches), and as a redevelopment project less than 50,000 square feet the building is not required to be fully screened under the provisions of MPS HPCC2.5. The cottages (2,280 sf) and septic treatment building (2,100 sf) are also well below the

redevelopment threshold requiring full screening, and therefore the Commission finds these structures are also consistent with the provisions of MPS HPCC2.5.

The design narrative and plans for the project (Sheet A3) include a diagram that illustrates how the building incorporates the minimum façade variation required under MPS HPCC2.6. The narrative and plans also describe the design strategies used to ensure that the massing, facades, and roof configuration are varied as required under this standard. Although the building has a large footprint, the configuration of the structure into three wings with a central core creates three smaller building masses as required under the standard. The four story structure is consistent with the Town's zoning requirements for height, and will result in a modest increase in height in comparison to the existing hotel. The design breaks the building façade into three elements: the base which consists of covered porches and pedestrian oriented features that anchor the building; the mid-section that is less detailed but incorporates balconies and protrusions to create depth and shadow that help break up the horizontal elements of the building wings; and, the roof portion which incorporates the upper story of the proposed hotel within the roof plane. The inclusion of the upper story of the proposed hotel within the Gambrel-style roof and the covered porch at the ground floor level, both reduce the apparent bulk and mass of the four-story structure. The façade also incorporates changes in the wall height and roof height which in combination also help break the massing into smaller components. The building is further articulated with cross gables, dormers, projecting porches and balconies. The proposed elevations show that the building exterior is intended to be clad with cedar shingle siding with white trim boards, with architectural shingles on the roof, all of which are consistent with the Commission's requirements for the use of traditional building materials. In summary, the Commission finds that the building design incorporates the required variation in massing and has followed the Commission's design guidance and that the project is consistent with both MPS HPCC2.4 and HPCC2.6.

- CCF4. The cottages and septic treatment building proposed at the Red Jacket Resort do not include any facades longer than 50 feet and are not required to incorporate any variation in the façade per MPS HPCC2.6. The exterior elevations for the cottages also show variation in wall height, roof pitch and roof height that are consistent with the Commission's design guidelines. Therefore, the Commission finds that these structures are consistent with both MPS HPCC2.4 and HPCC2.6.
- CCF5. The proposed Blue Water hotel structure has a footprint of 52,200 square feet and as a redevelopment project of more than 50,000 square feet the building is required to be designed as multiple distinct masses, or incorporate a screening strategy consistent with the surrounding area (either frontage buildings or 200-foot vegetated buffer). The proposed building consists of three separate and distinct masses connected by upper level walkways that successfully reduce the building into three smaller components. The Commission finds this strategy is consistent with the requirements of MPS HPCC2.5, and therefore full screening with frontage buildings or a deep vegetated buffer is not required. The septic treatment building (2,100 sf) is well below the redevelopment threshold requiring full screening, and therefore the Commission finds this is also consistent with the provisions of MPS HPCC2.5.

The design narrative in Section 2.3 of the application materials includes a thorough description of the evolution and thinking behind the building design and a detailed description of their attempt to meet the Commission's design guidelines. The plans for the project (Sheet A2) also include a diagram that illustrates how the building incorporates the minimum façade variation required under MPS HPCC2.4 and HPCC2.6. The narrative and plans also highlight the design strategies used to ensure that the massing, facades, and roof configuration are varied as required under this standard. Although the building has a large footprint, the configuration of the structure into three separated components connected by upper level walkways creates three smaller masses as required under the standard. The four story structure is consistent with the Town's zoning requirements for height. The design breaks the building façade into three elements: the base which consists of canopies, covered porches and pedestrian oriented features that anchor the building; the mid-section that is less detailed but incorporates balconies and protrusions to create depth and shadow; and, the roof portion which incorporates the upper story of the proposed hotel within the roof plane. Gambrel and shed roof elements are also included within the upper level which, in combination with the pedestrian oriented features at the ground level, reduce the apparent bulk and mass of the structure and bring down the edges of the building in a manner consistent with the Commission's design guidelines. The façade also incorporates changes in the wall height and roof height which in combination also help break the massing into smaller components. The proposed elevations show that the building exterior is intended to be clad with cedar shingles with white trim boards, with architectural shingles on the roof, all of which are consistent with the Commission's requirements for the use of traditional building materials. The Blue Water design includes glass panels at the projecting balconies which are appropriate for this type of design. In summary, the Commission finds that the building design incorporates the required variation in massing and has followed the Commission's design guidance for incorporating changes in wall height, roof height and massing and that the project is consistent with both MPS HPCC2.4 and HPCC2.6.

- CCF6. The septic treatment building at the Blue Water site does not include any facades longer than 50 feet and is not required to incorporate any variation in the façade per MPS HPCC2.6. The exterior elevations show that the building has been designed to give the appearance of a small residence that is consistent with the Commission's design guidelines and which will also act as a frontage building to screen views of the larger hotel structure behind. Therefore, the Commission finds that the septic treatment building is consistent with both MPS HPCC2.4 and HPCC2.6.

Parking

- CCF7. MPS HPCC2.8 requires that parking shall be located to the rear or the side of a building or commercial complex unless such location would have an adverse or detrimental impact on environmental or visual features on the site. In such cases, alternative means of minimizing environmental or visual impacts of the proposed parking is required.

- CCF8. At the Red Jacket site and due to the location of the lot with frontage on several streets, the only way that the applicant could meet the standard for the location of parking to the side or rear (MPS HPCC2.8) would be to relocate the buildings to the eastern side of the property and place the parking field next to the beach and Parker's River. The Commission finds that such a configuration would have a more detrimental visual impact on the site than the proposed configuration. The proposed cottages on South

Shore Drive will provide some screening to the parking area from the south and east, and an existing fence on the north side of the property provide additional screening. As such, the Commission finds that the location of the parking is appropriate in this instance; however, the standard requires that other means of minimizing the impact of the parking be followed such as improved landscaping and screening. Minor changes to the landscaping should result in an improvement in the visual amenity of the site and decrease the impact of the parking by providing a more effective buffer. In addition, the existing fence on the northern property line is shown as being extended around the property to provide screening of the parking to the north and should provide the screening required under MPS HPCC2.8. Therefore, the Commission finds that the project is consistent with MPS HPCC2.8.

- CCF9. At the Blue Water site, the narrow and wide configuration of the lot limits the options for the placing of parking and buildings. The proposed configuration locates the building closer to the ocean side of the property, with parking to the north near the street and in front of the building. The alternative configuration that would meet the standard for the location of parking to the side or rear would relocate the buildings to the northern property line and place the parking field next to the beach. The Commission finds that such a configuration would have a more detrimental visual and resource impact on the site than the proposed configuration that places the parking in front of the building. The septic treatment building will provide some screening to the parking area from the north. The proposed berm and landscaping will provide some buffering of the parking from the street. The Commission finds that the location of the parking is appropriate in this instance. Landscaping changes should result in an improvement to the visual amenity of the site and decrease the impact of the parking being located in the front. Therefore, the Commission finds that the project is consistent with MPS HPCC2.8.

Landscaping

CCF10. *Red Jacket Beach Resort - Concepts A and B*

As a redevelopment project, the proposed plan will improve the visual character of the site in accordance with MPS HPCC2.9. The Commission finds that the incorporation of native plant materials including low-maintenance understory grasses serves to minimize maintenance and watering in the parking area and remain consistent with MPS HPCC2.9 and HPCC2.10, requiring redevelopment to improve parking-lot landscaping and foster sustainable practices.

CCF11. *Blue Water Resort*

Consistent with MPS HPCC2.9, the Commission finds the mix of drought tolerant and native plantings in a bermed landscape buffer along South Shore Drive includes a public pedestrian pathway as well as additional landscape screening to minimize the visual impacts of proposed parking and improve the visual character of the site. Additionally, interior parking lot islands incorporate low-maintenance understory groundcovers and grasses in order to minimize maintenance and watering in the parking area and remain consistent with MPS HPCC2.9 and HPCC2.10, requiring redevelopment to improve parking-lot landscaping and foster sustainable practices.

CCF12. *Red Jacket Beach Resort - Concepts A and B & Blue Water Resort*

The Commission finds the plans for all sites properly integrate buildings with the landscaped environment, divide expansive parking areas, incorporate tree plantings, and include pedestrian amenities to improve the visual and functional character of the

site in compliance with MPS HPCC2.10. To foster the sustainability and energy conservation pursuant to MPS HPCC2.10, proposed plantings on all sites include a mix of native and drought tolerant plantings alongside traditional ornamentals which should be appropriate for the coastal setting, including low maintenance groundcovers and grasses in parking lot islands.

As the Applicant has represented that the Red Jacket and Blue Water resort properties currently employ a permanent maintenance crew, the Commission finds that pursuant to MPS HPCC2.10, requiring a Landscape Maintenance contract for a minimum of three growing seasons, the applicant's request to continue current practice with a limited requirement of additional maintenance procedures shall be appropriate for the Red Jacket and Blue Water resorts and that therefore the project is consistent with MPS HPCC2.10.

Exterior Lighting

EXLF1. MPS HPCC2.11 stipulates certain standards for site and exterior building lights in all developments related to fixture type, shielding, and full cutoff, and sets a maximum initial foot-candle of 8.0. Based on the information submitted, the Commission finds the preliminary exterior lighting design selected for both resorts is substantial compliance with MPS HPCC2.11 and the with the additional guidance provided in the Commission's Exterior Lighting Technical Bulletin 95-001 (as amended). The Commission also finds that certain aspects of the overall project's exterior design may change as redevelopment proceeds.

EXLF2. As the exterior lighting design may change as redevelopment proceeds, the Commission finds that it is appropriate to condition the Development Agreement to require the proposed exterior lighting design to be consistent with the requirements of MPS HPCC2.11 and Technical Bulletin 95-001, and to require Commission staff review and approval of the exterior lighting design that would be used for each building or phase prior to issuance of a Preliminary Certificate of Compliance and prior to issuance of a Building Permit for each building. The Commission finds that it is also appropriate to condition the Development Agreement to so as to require a site inspection of the installed exterior lighting design be conducted by Commission staff for each building prior to issuance of the relevant Final Certificate of Compliance and prior to issuance of the relevant Certificate of Use/Occupancy.

Waste Management

WMF1. MPS WM1.5 requires that "[a]ny development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste..." be in compliance with the state's Hazardous Waste regulations and specifies three items be provided to show compliance with this requirement for purposes of Commission review, including: 1) registration or notification to the Massachusetts Department of Environmental Protection (DEP) as a Hazardous Waste Generator, 2) a written plan to manage the Hazardous Waste prior to disposal, and 3) a signed contract with a registered, licensed company to dispose of the Hazardous Waste.

WMF2. In the August 20, 2010 narrative, the Applicant states there are no known Hazardous Wastes on the site. However, the Applicant also acknowledges the project could generate Hazardous Wastes once the facility, if approved, is in operation. These Hazardous Wastes could include used pool chemicals, used fluorescent bulbs, old computers, monitors, and televisions, and mercury-containing batteries. The

application narrative also states the Applicant *“will be a [Very Small Quantity Generator] of Hazardous Wastes.”*

- WMF3. Based on the information submitted, the Commission finds it is appropriate to condition the Development Agreement to require the Applicant to submit evidence of consistency with MPS WM1.5 for Commission staff review and approval before the issuance of a Final Certificate of Compliance for each building.
- WMF4. MPS WM2.1 requires that *“[d]evelopment and redevelopment projects shall address the disposal of construction waste...”* and that *“a plan shall be provided to demonstrate how the applicant proposes to handle solid wastes, construction and demolition waste and recyclable materials currently categorized by the [DEP] as a waste ban material.”* Waste ban materials are items DEP regulations require to be diverted from disposal as trash and recycled, such as cardboard, plastic and paper. MPS WM2.2 describes the requirements of a construction and demolition (C&D) waste management plan needed as part of Commission review if a project generates C&D waste. MPS WM2.3 requires that a solid waste and recycling management plan be provided for the post-construction phase of development, which details how recyclables, particularly waste ban items, will be collected, stored on site, and recycled.
- WMF5. Based on the information submitted, the project will generate waste, particularly C&D from construction and rehabilitation work. The Commission finds it appropriate to condition the Development Agreement to require Commission staff review and approval of project construction bid documents prior to their issuance and prior to issuance of a Building Permit for the first structure on either resort, to ensure these specifications provide for management of solid waste, C&D and waste ban items in a manner consistent with MPS MW2.1, WM2.2 and WM2.3 throughout project construction.
- WMF6. MPS WM2.4 requires a post-construction management plan for those developments that generate a significant amount of food waste. Based on the information submitted, the Commission finds resorts have now and will include a restaurant, and it appears the resorts currently generate approximately 13,550 pounds of food waste per year, or approximately 6.7 tons annually. MPS WM2.4 specifically cites a supermarket as a type of development that generates *“significant amounts of food waste.”* A 2002 DEP study, which sought to characterize various sources of compostable solid waste, found *supermarkets* as a category generated approximately 225 tons per year of compostable waste. The Commission finds the project is not a significant generator of food or compostable waste per MPS WM2.4, and as such, this MPS does not apply to the project.

Water Resources

- WRF1. The project is required by MPS WR1.5 to *“adopt Best Management Practices such as a turf and landscape management plan that incorporates water conservation measures including the use of native and drought resistant plantings and the use of drip irrigation, and minimizes the amount of pesticides and chemical fertilizers.”* Findings HPCC10, HPCC11 and HPCC12 and Condition CCC2 of this Development Agreement refer to MPS HPCC2.10 which requires a landscape plan and maintenance agreement that foster sustainable practices.

- WRF2. The project is not located in areas that contribute to drinking-water supplies. Therefore, Section WR2 of the RPP does not apply.
- WRF3. The Red Jacket site is partially located within a watershed that drains to the Parker River, a nitrogen-overloaded system. The goal of Section WR3 of the RPP is “to preserve and restore the ecological integrity of marine water embayments and estuaries.” Projects in nitrogen-overloaded Marine Water Recharge Areas are required to maintain or improve existing nitrogen loads in accordance with MPS WR3.2.
- WRF4. The project is not located in areas that drain to fresh surface waters. Therefore, Section WR4 of the RPP does not apply.
- WRF5. Both project sites are located in Impaired Water Quality Areas due to the density of existing development. The Red Jacket site is partially located in Water Quality Improvement Area where improvement of water quality is a major goal to address existing water-quality impairment in the Parker River.

In accordance with MPS WR5.1 and WR5.4, the project is permitted to exceed the 5-ppm-N nitrogen loading concentration otherwise required by WR1.1 because the project will decrease nitrogen loads consistent with MPS WR3.2. At each site, nitrogen-loading concentrations will be reduced from approximately 23 to 7 milligrams-N per liter (ppm-N) based on parameters described in Commission Technical Bulletin 91-001 and information provided in the Development Agreement application.

- WRF6. In accordance with MPS WR6.2, wastewater treatment facilities are generally required to treat project wastewater to a maximum of 5 ppm-N. The Commission finds that the 5 ppm-N limit may be increased to 10 ppm-N for redevelopment in Impaired Areas where it can be demonstrated that the increased limit will not cause an adverse to impact sensitive water resources consistent with MPS WR6.2.

Project wastewater facilities plans are conceptual only. Locations of the wastewater facilities are described on the Conceptual Site Layout Plans for each site. Engineering Reports required to be submitted with applications to MADEP for Groundwater Discharge Permits have not been completed.

Existing standard Title-5 wastewater systems will be replaced by two (2) wastewater treatment facilities located at the respective sites. Existing septic systems for the Red Jacket site are shown on the plan entitled *Sewage Disposal Systems for Proposed 160 Unit Motel and 3 Duplexes in South Yarmouth for Davenport Realty Trust, prepared by Mercer Engineering Corp., dated October 27, 1966*. Most if not all of the existing standard septic systems presently serving the Red Jacket Resort are within the Parkers River watershed. These septic systems will be removed and provide a suitable nitrogen offset.

The Blue Water and the Red Jacket wastewater treatment facilities will be designed for wastewater flows of 39,600 gallons per day (gpd) and 27,620 gpd, respectively. These flows consist of 150% of Title 5 wastewater design flows for 240 and 167 guest rooms, respectively. The additional 50% design flows allocated to ancillary uses such as restaurants, spas, lounges, conference space, and swimming facilities are described in the Hydrogeologic Reports approved by MADEP, an approval that permits the

applicant to apply to MADEP for Individual Groundwater Discharge Permits for each facility.

- WRF7. Reduced nitrogen-loading concentrations at both redevelopment sites described in Finding WRF5 reflect a reduction in wastewater effluent nitrogen strength from 35 to 10 ppm-N, a reduction of over 70%. Therefore, the Commission finds the project meets applicable MPS WR3.2, WR5.1, WR5.4 & WR6.2.
- WRF8. The siting of wastewater treatment facilities on barrier beaches is prohibited by MPS WR6.6. The wastewater leaching facility for the Red Jacket Resort is proposed to be partially located on a designated barrier beach. As found in Finding CRF5, the natural functions of the beach have been lost by alterations associated with existing and previous development. Therefore, the Commission finds that it is appropriate to provide flexibility in the application of MPS WR6.6 and allow the leaching facility in the proposed location.
- WRF9. The project is required to meet MPS WR6.8 & WR6.9 which require the following:
- Long-term ownership, operation, maintenance and replacement of private wastewater treatment facilities must be secured as a condition of approval in accordance with Commission, state, and local guidelines; and
 - An approved plan for sludge disposal.
- WRF10. The project is required to meet MPS in Section WR7 (Stormwater Quality) of the RPP. A minimum two-foot separation between points of infiltration and maximum high water table is required by MPS WR7.8 for stormwater leaching structures, except as required under MPS CR3.4 which provides for additional separation to 3 feet to account for sea level rise. The Commission finds that flexibility in the application of MPS WR7.8 is appropriate considering improved water quality afforded by other MPS in Section 7 of the RPP and challenges likely to be posed by the effect of tidal influence on groundwater levels.

Coastal Resources

- CRF1. Coastal Resources Goal CR1 protects water-dependent uses on or near the shore, public shore access, and maritime aesthetics, including views of the ocean and shoreline from public ways, waterways, and existing development. In accordance with MPS CR1.1 (Public Access), development and redevelopment shall not interfere with existing legal public access or historic rights of way to the shore. The concept plans will maintain abutters' rights to the shore. As such, the Commission finds that the project complies with this standard.
- CRF2. MPS CR1.4 (Maritime Aesthetics) requires that redevelopment be designed to maintain and enhance the view of the ocean and/or shoreline from public ways, existing development, access points, and waterways. Although the footprint of the proposed Red Jacket redevelopment will not change views of the ocean and shoreline from public ways, the increase in building height may interfere with ocean views from nearby residences. The proposed Blue Water redevelopment will not significantly change visual access (neither Nantucket Sound nor the shore are currently visible). Proposed vegetative plantings on the site may further limit seaward viewing. The Commission finds that the project complies with this standard.

- CRF3. The 100-year coastal floodplain extends across a portion of both the Red Jacket (A zone, el. 10 ft., el. 12 ft.) and Blue Water (A zone, el. 10 ft.) sites. MPS CR2.2 (Accommodating Relative Sea-level Rise) requires that new buildings, including replacements, be designed to accommodate sea-level rise by elevating the lowest horizontal structural member of the building one-foot above the base flood elevation (100-yr. flood elevation). MPS CR2.5 (Barrier Beaches, Coastal Dunes and Their Buffers) has a similar requirement for redevelopment projects (elevating the lowest horizontal structure member at least 1 ft. above base flood elevation or 2 ft. above existing grade, whichever is higher). The proposed redevelopment is not expected to significantly change overall site grades or flowage characteristics and, therefore, the Commission finds the project complies with MPS CR2.4 (Damage Prevention and Flood Minimization).
- CRF4. MPS CR2.3 (Migration of Coastal Resources) requires that development and redevelopment within the 10-yr. floodplain shall not impede the migration of coastal resources, such as Coastal Beaches, Coastal Dunes, and Salt Marsh. Landward migration of coastal resources at both the Red Jacket and Blue Water sites is currently limited by existing shoreline structures, such as concrete and steel retaining walls. The Commission finds that the construction of proposed wooden decks (located adjacent to shoreline retaining walls) would not significantly interfere with coastal resource migration since they would be attached to the retaining walls and be elevated 2 ft. above beach grade.
- CRF5. Both the Red Jacket and Blue Water sites are located, at least in part, on Barrier Beach and both redevelopments will remain as seasonal use resorts. Both projects will be located on previously altered Barrier Beach resource areas whose natural functions (e.g., flood control, storm damage prevention, etc.) have largely been lost by alterations associated with previous development. Therefore, the Commission finds that the redevelopment components of the Red Jacket and Blue Water projects will not adversely alter the existing coastal resource functions.
- CRF6. In accordance with MPS CR2.5 (Barrier Beaches, Coastal Dunes and their Buffers), redevelopment on Barrier Beaches or Coastal Dunes shall not result in an increase in the total combined building footprint, impervious area, or intensity of use (e.g., wastewater flow, impervious area, or conversion from seasonal to year-round use, etc.). In addition, redevelopment cannot adversely affect the natural beneficial functions of the coastal resources or increase the flood hazard.

Both concept plans for the Red Jacket redevelopment will result in slight reductions in total impervious cover on the nearly 70% of the site identified as Barrier Beach and coastal flood zone. The net decrease in total impervious area at the site will increase the amount of groundwater recharge, improving flood control. Although the total impervious area at the site will be less than existing, the number of parking spaces associated with the redevelopment will increase by 23. The additional parking spaces (and vehicles) could result in some increase in non-point source pollution. Low Impact Design (LID) stormwater management features (e.g., pervious pavement, stormwater infiltration areas, tree filters, etc.) are expected to adequately handle any increase in pollutant load. Although the number of guest rooms at Red Jacket will be the same as existing, the volume of wastewater generated by the redevelopment is unclear given the proposed ancillary uses (restaurant, lounge, spa).

Approximately 35% of the Blue Water redevelopment is located on Barrier Beach, a portion of which is also in the coastal floodplain. The total amount of impervious area on the Barrier Beach resource will increase only slightly (+0.7%). Overall, the total impervious area at the site will increase by 4.8%, primarily due to an increase in paved parking and driveways (+12.9%). As with Red Jacket, LID stormwater management features are expected to adequately handle any increase in pollutant load. While the number of guest rooms at Blue Water will be the same as existing, the volume of wastewater generated by the redevelopment is unclear given the proposed ancillary uses (restaurant, lounge, spa)

- CRF7. MPS CR2.5 does not permit new development on Barrier Beaches and Coastal Dunes within, or 100-ft. landward of Land Subject to Coastal Storm Flowage (LSCSF). The proposed wooden beach deck at Red Jacket (~3,240 s.f.) and the proposed beach deck on the eastern half of Blue Water (~1,360 s.f.) constitute new development since they are not a replacement structures and encroach on previously undisturbed portions of the upper beach. The deck at Red Jacket will also cover a small area of Coastal Dune. In response to Commission staff concerns, the Applicant reduced the deck area at Red Jacket from the originally proposed size of 5,400 s.f., and also proposed using removable panels so it can be dismantled prior to storms and during the off-season. The decks result in a combined net loss of 4,600 s.f. of beach habitat (about a tenth of an acre), and pose a potential flood hazard to adjacent properties if not removed during a storm surge. The deck at Red Jacket also encroaches on 100 ft. coastal wetlands buffer, which is required under MPS CR3.1 (Coastal Wetlands Buffer) to remain undisturbed.

However, the Commission finds that the proposed decks may be constructed as part of the project and relief under MPS CR2.5 and CR3.1 is appropriate as the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for environmental protection, recreation, and balanced economic growth and the interests protected by the RPP can be achieved or protected by an alternate approach, which includes a reduction in the size of the deck, removable panels for dismantling before storms and during the off-season, and the use of decking which would allow sunlight to reach the dune grasses.

- CRF8. Coastal Resource Goal CR3 promotes maintenance and improvement of coastal water quality and the protection of coastal ecosystems. Protection of a 100 ft. undisturbed buffer surrounding coastal wetlands and/or landward of the mean high water mark of coastal water bodies is required by MPS CR3.1 (Buffers to Coastal Wetlands). There are currently no existing undisturbed buffers to coastal wetlands due to the developed character of the redevelopment sites, and none are proposed. The eastern third of the proposed beach deck at Red Jacket is located within the 100 ft. buffer landward of mean high water.

- CRF9. MPS CR3.3 (Stormwater Discharges) prohibits direct stormwater discharges into any coastal waters or wetlands. Based on conceptual plans for the redevelopment sites, surface runoff generated by storms up to the 25-yr. storm will be discharged to storm sewers. Untreated surface flows from storms in excess of the 25-yr. storm will be accommodated by LID stormwater management features. The stormwater infiltration areas will be sized based on final engineering plans in order to comply with MPS CR3.3.

CRF10. MPS CR3.4 (Stormwater Management) requires stormwater management systems within 300 ft. of the spring high water contour incorporate a 3 ft. separation from groundwater in order to accommodate relative sea-level rise. Given the effect of tidal influence in groundwater levels and protections afforded by Section 7 of the RPP, the Commission finds that partial relief through the conditioning of this requirement is appropriate and finds it enables a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation, or balanced economic growth and the interests protected by the RPP can be protected through Condition CRC3 of this Development Agreement. The Commission finds it is appropriate to condition the Development Agreement requiring the Applicant to submit final engineered stormwater management plans for Commission staff review and approval, which may include a groundwater separation distance of less than three (3) feet, prior to construction.

Wildlife and Plant Habitat / Wetlands

WPHF1. The Red Jacket site is located in a Significant Natural Resource Area (SNRA) due to the designation of the site as Barrier Beach. Development at the Blue Water site is located outside of the Coastal Beach and SNRA.

WPHF2. Due to the disturbed nature of both sites, the Commission finds a natural resources inventory is not required (MPS WPH1.1). Development proposed is consistent with the current development footprint, and does not result in increased impacts to resources located within wetland buffer areas (MPS WET1.2).

Open Space and Recreation

OSF1. As much of the development occurs within previously developed areas on both sites, the Commission finds the permanent protection of open space is not required (MPS OS1.3).

Energy

EF1. The Commission finds that Standard E1.1 (Redevelopment Energy Audit) does not apply to this project as the majority of the existing buildings on the site(s) will be razed for redevelopment.

EF2. The Commission finds that standard E1.2 (ENERGY STAR certification) does not apply to this project given that the Red Jacket Resorts operate seasonally at an occupancy rate of 57%. The Commission further finds that at such time the Red Jacket Resort is to exceed an annual occupancy rate of 45%, either by extending their seasonal operation or by increasing their occupancy rate in season, they would meet the criteria to qualify as a Hotel/Hospitality building type under the ENERGY STAR program, and would be required to achieve ENERGY STAR certification for the project.

EF3. The Commission finds that the Applicant will design and construct the entire redevelopment project according to MPS E1.3; ASHRAE 90.1-2007, Section 5.4, a building envelope efficiency standard for insulation, fenestration and doors.

EF4. The Commission finds that the Applicant has selected the base compliance option for MPS E1.6; 10% on-site renewable energy generation, and that as a redevelopment project, the Applicant is eligible for the 10,000 s.f. redevelopment credit to calculate the required offset.

Transportation

TF1. Based on information outlined in the Institute of Transportation Engineers (ITE) *Trip Generation*, Eighth Edition, 2008, and the Applicant's Development Agreement application, the unadjusted traffic impacts of the proposed Red Jacket Beach Resort are outlined below.

	Existing Red Jacket Beach Resort (166 rooms) ¹	Proposed Red Jacket Resort (162 rooms) ²	Net Change in Trips
Daily	1,356	1,324	-32
AM Peak Hour	93	91	-2
PM Peak Hour	98	96	-2

¹ Based on ITE LUC 310, Hotel, 164 rooms

² Based on ITE LUC 310, Hotel, 162 rooms

The Commission finds that based on the net decrease in vehicle trips, the Red Jacket Resort project will not have a significant impact on the regional roadway system.

TF2. Based on information outlined in the Institute of Transportation Engineers (ITE) *Trip Generation*, Eighth Edition, 2008, and the Applicant's Development Agreement application, the unadjusted traffic impacts of the proposed Blue Water Resort are outlined below.

	Existing Blue Water Resort, Edge of Sea Resort and Riviera Beach Resort (239 rooms) ¹	Proposed Blue Water Resort (240 rooms) ²	Net Change in Trips
Daily	1,953	1,961	8
AM Peak Hour	134	134	0
PM Peak Hour	141	142	1

¹ Based on ITE LUC 310, Hotel, 239 rooms

² Based on ITE LUC 310, Hotel, 240 rooms

The Commission finds that based on the net increase in vehicle trips, the Blue Water Resort project will not have a significant impact on the regional roadway system.

TF3. The standard of review for transportation safety impacts is 25 or more new peak hour trips through a high crash location. A high crash location is defined as a location where three (3) or more crashes have occurred for three (3) consecutive years. The proposed project is not estimated to generate a significant amount of new traffic; As such, the Commission finds that the project will not cause degradation in public safety.

TF4. The Applicant has proposed the following trip reduction plan for employees and guests of the new facilities:

- An on site transportation coordinator will assigned to coordinate the trip reduction program for the project;
- A guaranteed ride home program will be provided for employees that car / vanpool for emergencies that may arise during the day;
- Direct Deposit of employee payroll checks will be offered;
- On site services to decrease off site trips by employees including a lunch room with a microwave and a refrigerator will be available to employees of the redeveloped sites; and
- All employees will be provided with information regarding available public transportation resources, schedules, fare information, and stop/terminal locations.

The Commission finds that the proposed trip reduction plan is a public benefit the Applicant is providing as consideration of the Development Agreement.

TF5. Based on the site driveway locations, the Commission finds that the project's site driveways comply with the Sight Distance requirements of the RPP (MPS TR1.8).

TF6. MPS TR3.1 requires all projects, regardless of traffic volumes, to perform Level of Service analysis at all access and/or egress driveways. Based on the net decrease in overall traffic from the combined projects and the absences of any known traffic back-ups onto the regional roadways from the project driveways, the Commission finds it is appropriate to waive the Level of Service requirements at the site driveways.

TF7. The transportation section of the RPP requires projects to mitigate all traffic-related impacts associated with the proposed project. Based on the net decrease in traffic when combining the impacts of the two sites, the Commission finds that the project complies with the transportation congestion standards of the RPP.

Affordable Housing

AHF1. As a non-residential redevelopment project, only the MPS' under AH Goal 3 apply. As a redevelopment project that is maintaining the same use, under AH 3.5, the applicant receives a credit for the required amount of mitigation based upon the existing square footage. Therefore, the affordable housing mitigation is calculated from the amount of net new square footage. The table below is based upon the information provided in the application and subsequent correspondence with the Applicant.

	Red Jacket	Blue Water	Total
Redevelopment Square Footage	130,050	195,550	325,600
Existing Square Footage	116,240	120,000	236,240
Net New Square Footage	13,810	75,550	89,360

The amount of the affordable housing mitigation required under AH 3.1 is therefore calculated according to the 89,360 square feet of net new square footage. As seasonal resort hotels, the use falls under the "Other" category for AH 3.1, and the mitigation is calculated in accordance with the guidelines provided in Technical Bulletin 10-001. The following information and charts follow the steps in the analysis described in Technical Bulletin 10-001.

- 1) Calculate Employment Density from 2003 U.S. Department of Energy data

Building Type	Building Square Footage	Mean Square Feet Per Worker	Number of Employees
Lodging	89,360	2,074	43

- 2) Calculate Percentage of Jobs that Pay Less than the Average Wage from May 2009 U.S. Department of Labor data

NAICS Code	National Average Wage	Total # of Jobs	Total # of Jobs Less Than Average Wage	% of Jobs Less Than Average Wage
Traveler Accommodation-721100	\$20.90	1,730,640	1,583,430	91.5%

- 3) Projected Number of Below Average Wage Jobs: $43 \times .915 = 39$.

- 4) Calculate the per square foot mitigation based upon the formula for "Other" in AH 3.1:
 $\$2.37 \times (39/[89,360/1,000]) = \1.03 per square foot

- 5) Calculate Total Mitigation: $\$1.03 \times 89,360 = \$92,037$.

AHF2. In lieu of the \$92,037 affordable housing mitigation required under AH3.1, the Applicant has the option under MPS AH3.4 of providing year round, deed restricted, affordable units in Yarmouth that total 10% of the projected number of below average wage jobs, i.e. four units. These units shall comply with the relevant standards under Goals AH1 and AH2.

AHF3. The Commission finds that relief from the requirements of MPS AH3.1 is appropriate and further finds that the inconsistency with MPS AH3.1 is necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation, or balanced economic growth and the interests protected by the RPP can be achieved or protected by an alternate approach, which includes the Town's efforts in affordable housing, including the Simpkins Residences project which will provide 65 units of senior, rental, affordable housing, the history of the Applicant meeting housing needs, over \$3 million in the Town's Affordable Housing Trust, and \$1 million for the Housing Authority to be put towards senior housing.