

ACCESS and UTILITY EASEMENT

This **ACCESS and UTILITY EASEMENT** is granted this ___ day of May, 2016 (the "Easement") from the **TOWN OF CHILMARK**, a municipal corporation with a mailing address of P.O. Box 119, Chilmark, MA 02535 ("Grantor") to Bank of America, N.A., as Trustee of the James F. Cagney, Jr. Trust, u/d/t dated May 18, 1983, with a mailing address of _____ ("Grantee").

WHEREAS, the Town of Chilmark is the owner of two parcels of land abutting Tabor House Road in Chilmark, MA, and being more particularly described deeds recorded with the Dukes County Registry of Deeds in Book 225, Page 259 and in Book 1163, Page 30 (collectively, "Grantor's Land"); and

WHEREAS, Middle Line Road runs through the Grantor's Land, which road is shown as "Proposed Road" on a plan entitled "Plan of Land in Chilmark, Mass. Surveyed for the Town of Chilmark Housing Committee Scale 1"=150' January 8, 2008," which plan is recorded with the Dukes County Registry of Deeds in Plan Book 16, Page 47; and

WHEREAS, Grantee is the owner of a parcel of land also abutting Tabor House Road in Chilmark, MA, and being more particularly described in a deed recorded with the Dukes County Registry of Deeds in Book 322, Page 288 ("Grantee's Land"); and

WHEREAS, Grantee has asked for a driveway easement over the Grantor's Land, in the location shown on Exhibit "A," and for an easement to use Middle Line Road as access from its property to Tabor House Road; and

WHEREAS, Grantee has also asked for an easement to tie into the Grantor's electrical service located on Grantor's Land; and

WHEREAS, Grantor has agreed to grant an access and utility easement subject to the terms and conditions herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, Grantor grants the following easements to Grantee:

1. **Access Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive, right and easement, in common with others lawfully entitled thereto, appurtenant to Grantee's Land, for travel and for all other purposes for which roads and ways are used in the Town of Chilmark in connection with residential use only, to and from Grantee's Land over the driveway in the location shown as "10' Wide Driveway Easement" on Exhibit "A," attached hereto and incorporated herein by reference, (the "Driveway") and from such driveway over Middle Line Road to Tabor House Road, provided, that:

- a. The Grantee shall construct the Driveway at its sole cost and expense, in a good and workmanlike manner, and in compliance with the Planning Board of the Town of Chilmark's road regulations. In no event may impervious materials be used for the surface of the Driveway. Upon completion of the construction of the Driveway, the Grantee shall promptly restore any portion of the Grantor's Land outside of the confines of the Driveway that is disturbed to as near to its original condition as possible, at the Grantee's sole cost and expense. The Driveway shall be wide enough to accommodate emergency vehicles and as otherwise required by applicable bylaws, rules and regulations; however, in no event shall the hardened surface portion of the driveway, within the 10' wide layout of the Driveway, be greater than 8' wide.
- b. The Grantee shall have the sole right and obligation to repair, maintain and replace the Driveway, including but not limited to the apron at which the Driveway connects with Middle Line Road, at the Grantee's sole cost and expense, and shall do so in a good and workmanlike manner, and in compliance with the Planning Board of the Town of Chilmark's road regulations. The Grantee shall have the sole right and obligation to cause snow and ice to be removed from the Driveway, including but not limited to such apron, at the Grantee's sole cost and expense, and shall do so in a good and workmanlike manner. Grantee shall use reasonable efforts to consult with Grantor before performing any repairs, maintenance or replacements to the Driveway other than ordinary and routine maintenance.
- c. The Grantee hereby agrees to indemnify and save the Grantor harmless from and against all loss, demands, causes of action, costs and expenses, claims, liability or damages, including reasonable attorneys' fees and disbursements, caused by, related to or in any way arising out of the exercise by the Grantee or the Grantee's agents, employees, licensees, contractors and representatives of the easement rights granted herein, or as a result of or in connection with any failure by the Grantee to comply in any material respect with the provisions of this instrument.

- d. The Grantee shall obtain a vote approving the easement provided herein over Middle Line Road by a majority of the members of the Middle Line Road Association prior to exercising any rights granted herein.
- e. The Grantee shall sign a counterpart to that certain Grant of Cross-Easements, Utility Rights, Agreement of Association and By-laws of Middle Line Road Association, dated November 5, 2008 and recorded with the Dukes County Registry of Deeds in Book 1163, Page 722 (the "Cross-Easement Agreement"), prior to exercising any rights granted herein.
- f. The Grantee shall become a member of the Middle Line Road Association prior to exercising any rights granted herein, and shall share in the costs of maintaining Middle Line Road pursuant to the terms of the Cross-Easement Agreement.
- g. The Grantee shall not access Grantee's Land directly from Tabor House Road.
- h. The Grantor, and its successors and assigns, shall have the right to relocate any portion of the Driveway provided such relocation does not unreasonably interfere with or interrupt access to Grantee's Land. Grantee agrees to promptly execute and deliver to the Grantor all documents reasonably required to effectuate any such relocation.
- i. Grantor shall have the right to use all portions of such Grantor's Land for all purposes which will not materially interfere with the rights granted to Grantee herein.
- j. The easement granted herein is limited to Grantee's Land, and the grant of an easement, license or other right to use the Driveway or Middle Line Road, other than as set forth herein, shall constitute an overburdening of the easement granted herein and is strictly forbidden.

2. **Electrical Easement.** Grantor grants to Grantee, a perpetual, non-exclusive, right and easement, in common with others lawfully entitled thereto, and appurtenant to Grantee's Land, to tie into the "turtle" located in the northwesterly portion of the Grantor's land described in Book 1163, Page 30 and to install an underground utility line to run directly north from said "turtle" to the common boundary of Grantor's Land and Grantee's Land ("Extended Utility Line") for the purpose of supplying electrical service to any use or uses lawfully made of Grantee's Land. The easement shall be ten (10) feet wide, the center line of which shall be the center of the actual Extended Utility Line. The easement granted herein is subject to the following conditions:

- a. Grantee shall be solely responsible for all costs arising as a result of any maintenance, repair or replacement of the Extended Utility Line that may

be required from time to time, unless occasioned by the fault of Grantor, or Grantor's agents, employees, contractors, representatives or invitees, in which case Grantor shall be solely responsible for such costs.

- b. Any and all installation, other work under or on, and/or entry onto the Grantor Parcel shall be undertaken only after fifteen (15) days' notice to Grantor, except in cases of emergency, in which event notice is given as soon as possible. All work undertaken pursuant hereto shall be conducted in compliance with all applicable laws and in a good and workmanlike manner.
- c. The Grantee hereby agrees to indemnify and save the Grantor harmless from and against all loss, demands, causes of action, costs and expenses, claims, liability or damages, including reasonable attorneys' fees and disbursements, caused by, related to or in any way arising out of the exercise by the Grantee or the Grantee's agents, employees, licensees, contractors and representatives of the easement rights granted herein, or as a result of or in connection with any failure by the Grantee to comply in any material respect with the provisions of this instrument.
- d. The Grantor, and their successors and assigns, shall have the right to relocate any portion of the "turtle" and/or Utility Line provided such relocation does not unreasonably interfere with or interrupt existing utility services to Grantee. Grantee agrees to promptly execute and deliver to the Grantor all documents reasonably required to effectuate any such relocation.
- e. Grantor shall have the right to use all portions of such Grantor's Land for all purposes which will not materially interfere with the rights granted to Grantee herein.
- f. Grantee shall not be permitted to grant further rights or easements to tie into the Utility Line, other than as set forth herein or as permitted by the Middle Line Road Association; and any such grant shall constitute an overburdening of the easement granted herein and is strictly forbidden.
- g. The Grantee shall obtain a vote of the Middle Line Road Association approving the electrical easement provided herein and granting the Grantee the right to tie into the Utility Line (as such term is defined in the Cross-Easement Agreement), pursuant to Section 4.03 of the Cross-Easement Agreement, prior to exercising any rights granted herein.
- h. The Grantee shall become a member of the Middle Line Road Association prior to exercising any rights granted herein, and shall share in the costs of maintaining the Utility Line (as such term is defined in the Cross-Easement Agreement), pursuant to the terms of the Cross-Easement Agreement.

This Easement sets forth the entire agreement between the parties hereto concerning the subject matter hereof, and it may not be amended, except by written instrument executed by all parties. The Easement shall be governed by and enforced under the laws of the Commonwealth of Massachusetts. No waiver by any party of any breach by any other party of, or failure of any party to comply with, any condition or provision of this Easement shall be deemed a waiver of any other breach or failure. The invalidity of any provision of this Easement shall in no way affect the validity of any other provision.

EXECUTED as a sealed instrument on the day and date first referenced above.

The Town of Chilmark,
By and through its Board of Selectmen,

Warren M. Doty, Chairman

William Rossi, Selectman

Jim Malkin, Selectman

COMMONWEALTH OF MASSACHUSETTS

County of Dukes, ss.

On this ____ day of May, 2016, before me, the undersigned notary public, personally appeared Warren M. Doty, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chairman of the Chilmark Board of Selectmen.

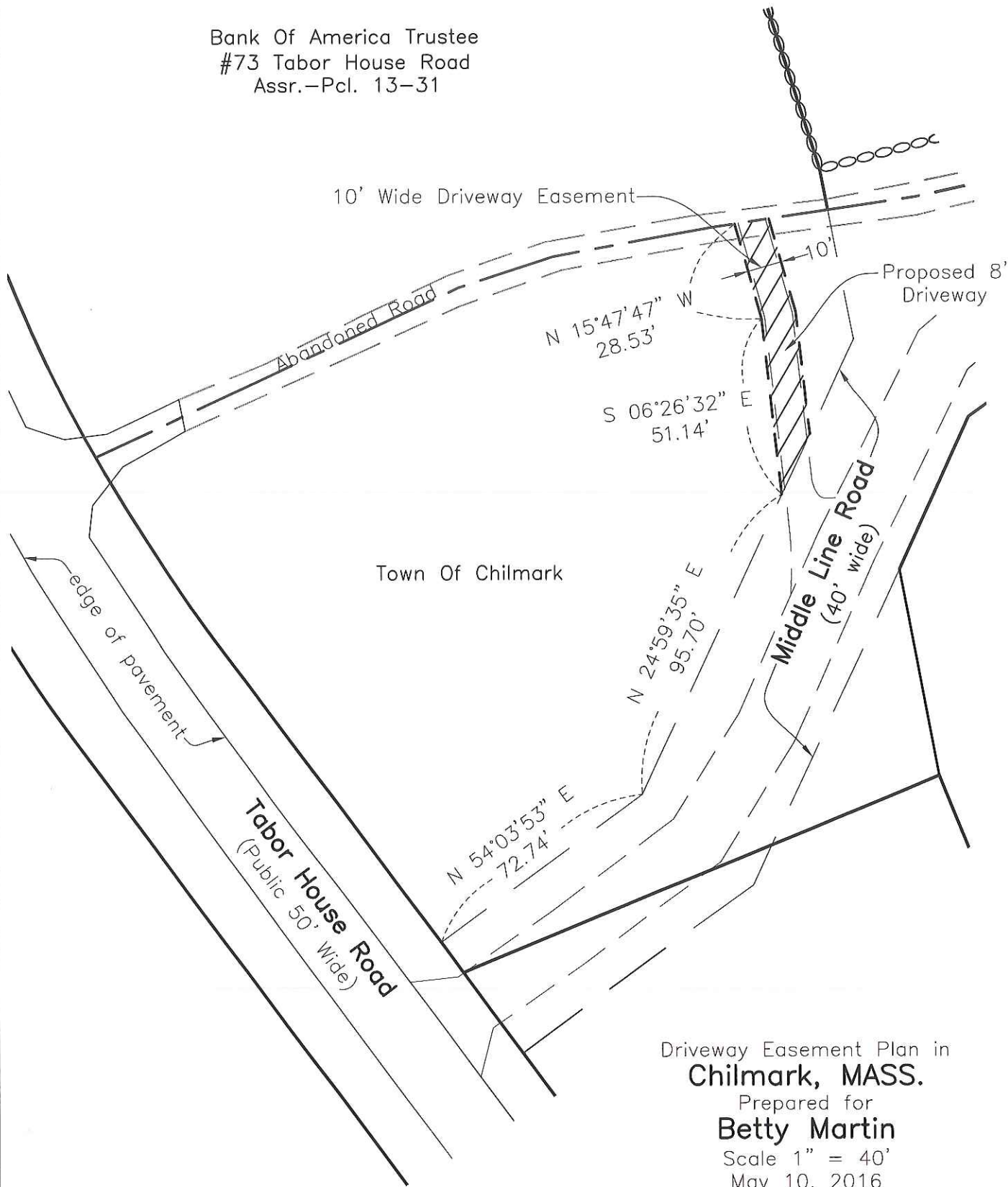
Notary Public

My commission expires:

AFFIX SEAL:

Exhibit "A"

Bank Of America Trustee
#73 Tabor House Road
Assr.-Pcl. 13-31



Driveway Easement Plan in
Chilmark, MASS.
Prepared for
Betty Martin
Scale 1" = 40'
May 10, 2016

Plan Reference:
Chilmark Casefile 47



**VINEYARD LAND SURVEYING
& ENGINEERING, INC.**

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