

TOWN OF TISBURY

OFFICE OF THE SELECTMEN

BOX 1239 - 51 SPRING STREET

VINEYARD HAVEN, MASSACHUSETTS 02568

TEL: (508) 696-4200

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Memorandum of Understanding

For Maintenance of Trees

and Preservation of Viewshed of Lake Tashmoo Overlook

Made as of July 16, 2013,

The Town of Tisbury, Massachusetts, acting by its Board of Selectmen ("Town"), with an address of 51 Spring Street, Vineyard Haven, MA 02568, and Thomas and Virginia Payette, as Trustees of the Payette Vineyard Realty Trust, under a Declaration of Trust dated December 29, 2000, as the owner of property with an address of 80 Plum Cove Rd., Tisbury, MA 02568 ("Payette"), and shown on Tisbury Assessors' Map 39A as parcel 5, including the trees thereon (the "Payette Property"), in exchange for the mutual covenants and consideration set forth herein, hereby agree to and enter into this Memorandum of Understanding ("MOU") as follows:

1. Payette will allow the Town to maintain the current view from the so-called Tashmoo Overlook, located off of State Road in Tisbury, over, across and through the Payette Property to Lake Tashmoo as shown on the Viewshed Plan attached hereto as Exhibit "A" (entitled "The View Corridor" and consisting of sheets A-1, labeled "The Tashmoo Overlook," and A-2, labeled "Tashmoo Overlook," both prepared by Schofield, Barbini & Hoehn Inc. and dated June, 2012, by keeping trees and shrubs limbed and trimmed, specifically including the willow trees, as shown on the Plan, and consistent with the photographs attached hereto as Exhibit "B". The parties also agree to review and consider, on an annual basis, other mutually agreed upon selective trimming, topping, or removal of vegetation or trees on the Payette Property consistent with the spirit of this MOU. No cutting or trimming below twenty feet (20') above grade on the Payette Property is permitted, unless mutually agreed.
2. The Town agrees to pay for the oversight and direction of the work and maintenance described in paragraph 1 by an arborist mutually agreed upon by the Parties. The Town will provide Payette written notice of its desire to perform maintenance of the trees by sending a certified letter to Payette's address maintained by the Tisbury Assessors, and identifying a date at least thirty (30) days after the date of notice on which the Town intends to perform the work, to be scheduled on either a Friday afternoon or a Saturday morning. Should Payette object to the date, Payette will have five days from receipt of the Town's notice to identify, in a written notice to the Town, an alternative date, such date to be within thirty (30) days of the work date specified in the Town's notice. Payette shall address its notice to the current Town Administrator or Chairman of the Board of Selectmen, at the address noted in the introductory paragraph.
3. The Town agrees to obtain, with Payette's cooperation, consent and approval, all necessary permits, if any, for any of the agreed upon work under this MOU, and to pay all fees and costs related thereto, and, at the Town's option, to defend any appeals or challenges of such permits, if necessary. The Town will perform no work unless it is agreed upon by the parties.

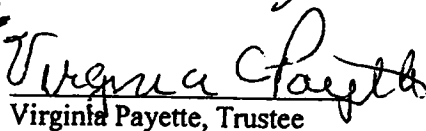
4. In exchange for Payette allowing the Town to maintain the view, as set out in this MOU, the Town agrees to maintain a twenty (20) foot "no cut" zone along the boundary of the Town's Water Department property, shown as parcel A7 on Tisbury Assessors' Map 39 (the "Town Parcel") contiguous to the Payette Property and the adjacent stone wall or walls running along Plum Cove Road, which property and road are shown on a plan entitled "Plan of Land in Tisbury, Mass. Prepared For the Town of Tisbury & the Tisbury Water Works," dated December 15, 2011 by Schofield, Barbini & Hoehn Inc.
5. The parties agree to dispose promptly of slash and cuttings resulting from maintaining the trees and their respective properties, and further agree not to dispose of their cuttings on the other's property.
6. The parties agree that, so long as this MOU remains in effect, no condemnation action or adversarial legal action shall be taken by either party against the other with respect to the subject matter of this MOU, unless otherwise required by applicable law, which would include a vote taken under a petitioned article placed on a Town Meeting Warrant concerning the Payette Property, provided the petitioners proceed in accordance with the applicable law. It is the intention of the parties that this MOU will remain in effect for so long as the parties continue to honor the terms and provisions hereof.
7. This MOU shall have an initial presumed term of ten (10) years, but will only continue in effect until either party notifies the other in writing, by certified mail at the respective addresses noted above, of its desire to terminate. The MOU shall terminate twenty-one (21) days from the date the recipient receives notification of termination from the other party.
8. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

The Payette Vineyard Realty Trust

Town of Tisbury,
By its Board of Selectmen


Thomas Payette, Trustee


Jeffrey C. Kristal, Selectman


Virginia Payette, Trustee


Tristan R. Israel, Selectman