



# Martha's Vineyard Land Bank Commission

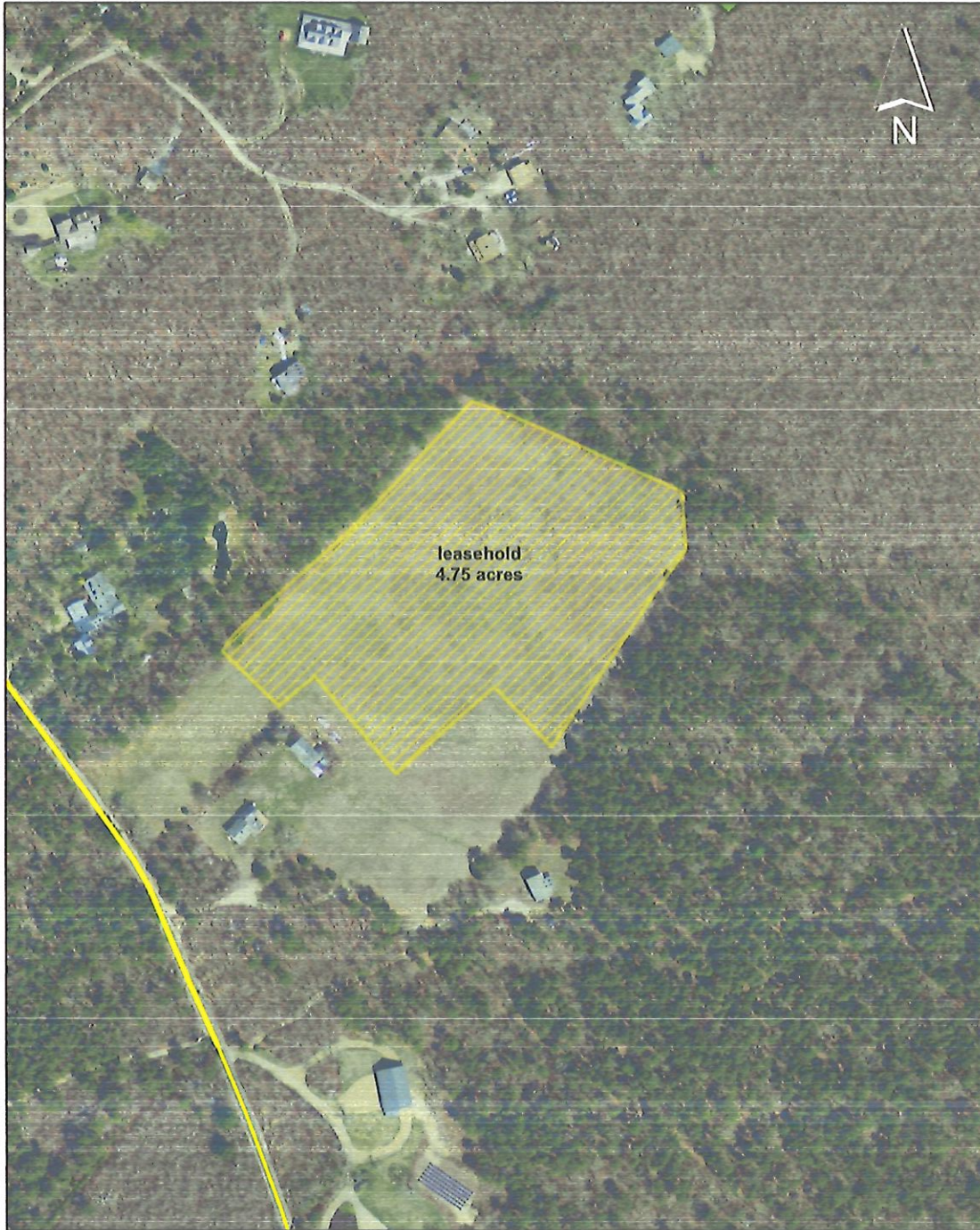
## **BID PACKAGE**

September 20, 2023

### **s p e c i f i c a t i o n s**

- the land bank is offering an agricultural lease over the leasehold, comprising 4.8 acres at the Poucha Pond Reservation in Edgartown, that is illustrated on the attached Exhibit 1
- term is January 1, 2024 to December 31, 2028, with possible extension (with mutual agreement) to December 31, 2032
- all uses must be in accordance with the attached land bank policy, particularly Part 2.1
- prospective bidders must specify how they will farm the leasehold (e.g., details as to crops, livestock, etc.) and whether new infrastructure (e.g., wells, fencing, etc.) will be needed
- bids should contain no non-agricultural elements
- bidders must be able to demonstrate secure housing on the Vineyard, so as to be able to supply proper oversight to the leasehold
- proposals must be received by the land bank by 10:00 am on October 20, 2023; they may be mailed to Post Office Box 2057, Edgartown, Massachusetts 02539; emailed to [mhill@vineyardlandbank.com](mailto:mhill@vineyardlandbank.com); or hand-delivered to 40 Meetinghouse Way, Edgartown, Massachusetts

# exhibit 1





# Martha's Vineyard Land Bank Commission

## PUBLIC USE OF LAND BANK PROPERTIES

*adopted by vote of the land bank commission: July 23, 2012  
amended through: January 9, 2023*

Landscape reflects the lives of the people who live in it. Although the American landscape is thoroughly variegated, three primary elements can be isolated: commerce, personality and respite.

Every town witnesses to the first two. Trade and enterprise have created business districts and transportation networks, while houses and other forms of public art spotlight personality. Respite is to be found in open spaces, most particularly those less tamed conservation reservations that have been set aside in their natural state.

The land bank hews to the idea that commingling these elements dilutes them. As a result, the land bank seeks always to refine the ability of its properties to offer respite. This means that they need to be deaf to the call of commerce. They need to be immune to the thrust of personality. Instead, they are to offer individuals and families the opportunity to experience the outdoors — for nature study, hiking, picnicking, mountain-biking, horseback-riding, dog-walking, hunting, fishing, kayaking, swimming and all of the other types of passive recreation — in personal and/or unpaced ways.

The following Parts 1, 2 and 3, therefore, shall apply to all properties owned by the land bank in fee-simple:

### **1.0 Permitted uses**

The following uses are permitted:

- 1.1 Passive recreation.** The land bank law permits only passive recreation on land bank properties. Examples are cited above. Hikers shall confine themselves to marked trails.
- 1.2 Household-based harvesting.** Low-impact harvesting — such as berrying, sugaring, herb-snipping, seaweed-gathering and the like — is permitted, provided:

- 1.21 that any limitations cited in any particular management plan for any particular property are honored; and
- 1.22 that no use shall be made of any species appearing on any federal or commonwealth list of endangered, rare or “of special concern” species; and
- 1.23 that no mechanized tools are employed; and
- 1.24 that no plants are uprooted or removed.

**1.3 Tours.** Interested individuals and organizations may lead guided tours on land bank properties, provided:

- 1.31 that the particular land bank properties are open to the general public and have approved management plans; and
- 1.32 that the tourguides comply with the terms of the management plans, particularly the requirement that attendees stay on designated trails; and
- 1.33 that no fee is charged for the tours, although donations — strictly voluntary — may be accepted; and
- 1.34 that the land bank is advised in advance of the particular dates and times of the tours.

**2.0 Permitted uses, by advance permission only**

The following uses are permitted, subject to land bank commission oversight:

**2.1 Farming.** No farming shall occur except in accordance with the following:

- 2.11 that the land bank shall maintain all fallow land in such a manner — including but not limited to regular mowing and removal of exotic or invasive species — as to facilitate its future agricultural use;
- 2.12 that the land bank shall, in the case of exemplary farm proposals submitted by qualified prospective lessees, be willing to consider installing, via either contracted or staff labor, livestock or deer fencing and/or agricultural wells, such improvements to be considered public assets;
- 2.13 that, in order to seek out such lessees, the land bank commission shall issue a public request-for-proposals (RFP), in the interests of fair

competition, and shall make notice of the RFP in the local newspapers, "trade" publications both on- and off-island, Martha's Vineyard Agricultural Society, Island Grown Initiative, and the like; and

2.14 that a rate of \$10 per acre per annum is applied and that no higher figure is entertained, so that the land bank can be certain that it is making its decisions based on the welfare of the land itself rather than any emoluments which may be offered to the institution; and

2.15 that no lease will be issued without prior review by the land bank land superintendent as to:

2.151 the lessee's plan for the leasehold, specifically:

(i) the intended agricultural use; and

(ii) its soil management protocols (e.g., organic conditioning; pesticide use; composting; minimal disturbance of soil profile; cover crops so as to maintain roots in soil year-round; grazing intensity); and

(iii) the expected rotation of and variation in crops and livestock; and

(iv) the use of natural materials, as opposed to man-made; and

(v) any proposal to convert woodland or shrubland to pasture or cropland; and

(vi) its sensitivity to ecology of surrounding land; and

2.152 the likelihood that the farmer will be skilled enough to realize the proposal as submitted; and

2.153 the probability that the farmer will make serviceable use of the agricultural resource while not overburdening it or impeding public use of its environs; and

2.154 any past use of land bank farmland by that particular farmer.

2.16 that the sample lease attached as Exhibit A is used, as a guideline

subject to modification or waiver by the land bank commission at its discretion but with the following standard features:

- 2.161 expiration after five years but with a renewal clause yielding a total term of nine years; and
  - 2.162 regular performance review; and
  - 2.163 early termination in circumstances of dereliction; and
  - 2.164 payment in cash in full at the time of lease execution, or in kind at the discretion of the land bank land superintendent; and
  - 2.165 acknowledgment that the land bank may site trails along the perimeters or in pre-agreed locations for use by the general public; and
  - 2.166 acknowledgment that any use of the leasehold by any party other than the lessee requires land bank approval; and
  - 2.167 use of sound soil conservation and soil enhancement techniques which will facilitate or allow for future agricultural use; and
  - 2.168 a recommendation that the lessee carry appropriate liability insurance, if deemed prudent by lessee as a result of analysis of the risk involved in its proposed farm operation but with the understanding that lack of same gives rise to no liability for the land bank as an institution, as it is protected by its own insurance policies.
- 2.2 Hunting.** No hunting shall occur except in accordance with land bank policy, separately adopted.
- 2.3 Firewood-gathering.** No firewood shall be removed except as part of an organized community-woodlot program overseen by the land superintendent or his designee.
- 2.4 All other harvesting.** No other harvesting shall occur except in accordance with the following:

- 2.41 that the land bank commission shall first issue a public request-for-proposals so as to allow for fair competition; and
- 2.42 that use of a product by the land bank itself — e.g., log harvesting for boardwalks, seed harvesting for field restoration — shall take precedence over use by anyone else; and
- 2.43 that no use shall be made of any species appearing on any federal or commonwealth list of endangered, rare or “of special concern” species; and
- 2.44 that priority will be given to those individuals/companies who:
  - 2.441 outline specifically how the product will be used, including a timetable so that the land bank can be certain that it will not go to waste; and
  - 2.442 have a demonstrated record in successfully using the particular product; and
  - 2.443 will use the product on Martha’s Vineyard; and
  - 2.444 will return a portion of the harvest to the land bank “in kind;” and
- 2.45 that a license for such activity is issued by the land bank commission, such license possibly to include conditions such as:
  - 2.451 one harvesting per site in any one season; and/or
  - 2.452 harvestings on alternate years only, or less frequently, so as to assure the replenishment of the source site.

**2.5 Extraction and collection.** No plants, animals, minerals or artifacts shall be extracted or collected except in accordance with the following:

- 2.51 that a license for such activity is issued by the land bank commission, such license to include conditions such as:
  - 2.511 adherence to the land bank ecologist’s protocol as regards item(s) sought, property, method and the like; and
  - 2.512 extraction or collection to occur exclusively under the

direct and on-site supervision of the ecologist; or

2.513 extraction or collection to be undertaken solely by the ecologist, with specimens then delivered to the requesting party.

**2.6 Release of species.** No species shall be released on any land bank property without prior land bank consent.

**2.7 Private inurements.** Betterments requested or sought to be exercised by private parties on land bank property in the absence of pre-existing legal rights — e.g., vegetation trimming; trail siting; crossing of land bank land by personal vehicles — shall not be permitted unless such betterments are (i) temporary; and (ii) *de minimus* in nature and scale; and (iii) pose no lasting impact to any resource; and (iv) constitute extraordinary circumstances; and (v) are part of a proffered exchange of such conservation benefit that its public magnitude offsets the short-term private benefit (its being stipulated that the offering of cash is not a conservation benefit).

### **3.0 Prohibited uses**

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The following uses are prohibited:

**3.1 Active recreation.** The land bank law prohibits the use of land bank properties for active recreation. Active recreation refers to any activity in which [a] structures of some nature are required and [b] participants conduct themselves according to rules or some sort of organization. Examples of active recreation are baseball, frisbee golf, geocaching, motocross riding, soccer, tennis and the like.

**3.2 Commercial Uses.** All commercial uses, excepting those permitted in Part 2, are prohibited, whether the cash is exchanged on- or off-premises.

**3.3 Camping and campgrounds.** Youth environmental education groups — e.g., scouts, school clubs — may apply to the land bank commission for a permit to camp. The commission may issue such permits provided that any such use is infrequent, closely supervised and limited to three or fewer consecutive nights. No other camping is permitted.

**3.4 Nuisances.** Recreational sound- or vibration-generating uses — such as unmanned aircraft (e.g., drones) or music-amplification devices — are prohibited.

**3.5 Artistic exhibitions and other venue-based events.** No land bank property shall be used as a venue for film-making; performance art; the display of



sculpture or paintings or graphics of any nature; wedding ceremonies; and the like.

*Exhibit A*

FARMLAND LEASE

date: \_\_\_\_\_

1. Parties. The MARTHA'S VINEYARD LAND BANK COMMISSION, a corporate body politic with a principal mailing address of Post Office Box 2057, Edgartown, Massachusetts 02539 ("**LESSOR**") does hereby lease to \_\_\_\_\_ of \_\_\_\_\_, Massachusetts \_\_\_\_\_ ("**LESSEE**", *which expression shall not include any heirs, successors, executors, administrators, sub-tenants or assigns*), a parcel of real property known as \_\_\_\_\_ and located at \_\_\_\_\_, in \_\_\_\_\_, Dukes County, Massachusetts.
2. Leasehold. The Leasehold comprises a portion of the property conveyed to the **LESSOR** by deed dated \_\_\_\_\_ and recorded in the Dukes County registry of deeds in book \_\_\_\_\_ page \_\_\_\_\_ (the "Premises"), such portion being approximately shown on the attached Exhibit 1 as "Leasehold" (the "Leasehold"). The Leasehold consists of \_\_\_ acres, more or less.
3. Term. The term of this lease shall be from \_\_\_\_\_ to \_\_\_\_\_ (the "Lease Term") unless sooner terminated or extended in accordance herewith.
4. Rent. The **LESSEE** shall pay to the **LESSOR** the sum of \$\_\_\_\_.00 (\_\_\_\_\_ dollars and zero cents) for each calendar year or portion thereof that this Lease is in effect, payable in full at the commencement of each Lease Term. **LESSEE** may, at the sole discretion of the **LESSOR**'s land superintendent, make such payment in kind rather than in cash.
5. Use of Leasehold. The **LESSEE** shall use the Leasehold solely for \_\_\_\_\_. [The number and type of livestock shall be subject to the approval of the **LESSOR**'s land superintendent, in his sole discretion, and such approval need not be in writing; in no event shall horses be permitted on the Leasehold.] **LESSEE** shall be entitled to use, install and employ equipment reasonably necessary to this purpose, and shall also be entitled to park on the Leasehold at any one time, in addition to any farm equipment, one (1) vehicle for personal use [plus two (2) additional vehicles for employees], such parking of vehicles to occur only on such dates and times as **LESSEE** and/or **LESSEE**'s employees are physically present and conducting work within the Leasehold. Any goods, equipment or personal property stored or

otherwise maintained by **LESSEE** at the Premises shall be kept there at **LESSEE**'s sole risk.

No other activity, including but not limited to retail activity, shall be permitted on the Leasehold without the express written consent of the **LESSOR**.

It is understood by **LESSEE** that trails exist or will exist on the Premises near the Leasehold which are or will be used by the **LESSOR** and its guests and invitees for passive recreational purposes and that these guests and invitees shall have the right to walk on such paths and otherwise use such paths for such passive recreational activities (which include pet exercise) as the **LESSOR** shall, in its sole discretion, determine. The **LESSEE** acknowledges that the **LESSOR** shall not patrol the Premises or Leasehold. [The **LESSEE** covenants and agrees that the Leasehold, or such portion thereof as **LESSEE** is using at any one time, will be fenced by **LESSEE** at **LESSEE**'s sole cost and in such a secure manner as to assure **LESSOR** that its guests and invitees can bring their pets on the paths without concern that these pets might (i) suffer harm, or (ii) annoy or harass the livestock.]

The **LESSEE** shall not be liable for damages incurred by **LESSOR** in connection with or arising out of use by **LESSOR** or its guests or invitees of such paths on the Premises unless such damage is caused by **LESSEE**'s or **LESSEE**'s employees' omission, fault, neglect or other misconduct. Conversely, the **LESSOR** shall not be liable for damages incurred by the **LESSEE** in connection with or arising out of use of paths located on the Premises, including, but not limited to, harm to livestock and crops.

Without limiting the generality of any other provisions of this Lease, **LESSEE** shall not make or permit any use of the Leasehold which shall be unlawful, improper or contrary to any applicable federal or commonwealth law or municipal ordinance (including, without limitation, all zoning, building, land bank or sanitary statutes, codes, rules, regulations or ordinances) or the **LESSOR**'s management plan for the Premises, as it may be amended from time to time, and which is available for inspection at the **LESSOR**'s office. In addition, **LESSEE** shall not make or suffer offensive use of the Leasehold, nor permit uses not contemplated by this Lease, nor create any substantial interference with rights, safety or enjoyment of the public, or occupants of any adjacent property, nor make any use whatsoever thereof other than as expressly stated herein.

6. Utilities. **LESSEE** acknowledges and agrees that the type and amount of utilities currently serving the Leasehold are sufficient for **LESSEE**'s purposes and that if **LESSEE** desires additional utilities servicing the Leasehold in the future **LESSEE** shall obtain said additional utilities at its sole cost and expense, subject to the prior

written approval of the **LESSOR's** land superintendent. **LESSEE** shall promptly pay all bills for any such utilities, including any repair and/or activation fees.

7. Alterations/Additions. The **LESSEE** may, at **LESSEE's** expense, erect fencing, gates and impermanent structures on the Leasehold provided that in each instance it has received in advance and in writing the approval of the **LESSOR's** land superintendent as to siting, style, quality, composition and the like. It is understood and agreed that any improvements made to the Leasehold by **LESSEE** and any goods or other property owned or otherwise possessed by **LESSEE** and stored or otherwise maintained by **LESSEE** at the Leasehold shall be erected and kept there at **LESSEE's** sole risk and without any liability whatsoever on the part of the **OWNER** for any loss or damage thereto.
  
8. Annual Review. On December 1, \_\_\_\_\_ and on each consecutive December 1 during the Lease Term hereof, or subsequent Lease Terms, the **LESSOR** shall conduct a review of the **LESSEE's** use of the Leasehold as permitted under the terms of this Lease, to determine (i) whether the public interest is served by continuation of this Lease and/or (ii) whether the **LESSEE's** use of the Leasehold complies with the terms of the Lease and/or is compatible with the goals, objectives and expectations of the **LESSOR** (each, an "Annual Review"). If, as the result of any Annual Review, the **LESSOR** determines, *in its sole discretion*, that the public interest is not served by the **LESSEE's** use of the Leasehold under the terms of this Lease or that the **LESSEE's** use of the Leasehold is not compatible with the goals, objectives and expectations of the **LESSOR**, then the **LESSOR** may unilaterally terminate this Lease, upon thirty (30) days' written notice to the **LESSEE**.

If, however, **LESSOR** has been satisfied with **LESSEE's** performance under this Lease during this period, and if **LESSEE** so desires, **LESSOR** shall renew this Lease, under the same terms and conditions, for a period from \_\_\_\_\_ to \_\_\_\_\_. Such renewal shall be memorialized in writing by **LESSOR**, with **LESSEE** to timely sign the renewal in acknowledgment of same.

9. Maintenance of the Leasehold. The **LESSEE** agrees to maintain the Leasehold in a condition which is in accordance with sound agricultural, soil conservation and soil enhancement techniques and which will facilitate or allow for further agricultural use. Care and preparation of the Leasehold for the intended agricultural use shall be the sole responsibility of the **LESSEE**.

The **LESSEE** shall maintain and keep all fences and other improvements located on the Premises in as good order, repair and condition as the same are at the commencement of the Lease Term, reasonable wear and tear or damage by fire or other unavoidable casualty excepted. **LESSEE** shall keep all fencing, no matter where located on the Leasehold, clear of all vegetation at all times and shall

accomplish same without use of any chemical treatments.

The **LESSEE** shall prevent the conversion to shrubland or woodland of any and all grassy areas, through regular grazing or mowing or both.

The **LESSEE** shall not permit the Leasehold to be overloaded, damaged, stripped nor to suffer any waste. The **LESSEE** covenants, with respect to the public use of the Premises, that **LESSEE** shall operate its equipment and conduct its activities so as not to endanger public safety. Specifically, equipment shall, whenever possible, be housed or removed from the Leasehold when not in immediate use. The **LESSEE** further agrees that the use of heavy equipment will be confined as much as possible to existing farm roads, so as to avoid soil compaction. The **LESSOR** shall have the right to disapprove any use of the Leasehold which it believes, *in its sole discretion*, is not compatible with existing or planned passive recreational use of the Premises by the public.

10. Assignment/Subleasing. The **LESSEE** may assign or sublet the whole or any part of the Leasehold, or allow third-party use thereof, but only with the **LESSOR**'s prior *written* consent. In the event that the **LESSEE** desires to do so, **LESSEE** will provide written notice to the **LESSOR**. Upon receipt of such notice, the **LESSOR** shall, within thirty (30) days, consent or disapprove of same. If so permitted, **LESSEE** shall be responsible for damages incurred which arise out of activities of such sub-tenants and/or assigns, and the indemnification set forth in Paragraph 5, above, shall apply.
11. Indemnification and Liability. The **LESSEE** agrees to (i) defend, indemnify and save the **LESSOR** harmless from any and all liability, loss, injury, claim or damage to or of any person or property arising out of the **LESSEE**'s or **LESSEE**'s sub-tenants or assigns use of the Leasehold, unless caused by the fault or negligence of the **LESSOR** or its agents; and (ii) indemnify and save the **LESSOR** harmless from all injury, loss, claim or damages, including reasonable attorneys' fees, to or of any person or property anywhere occasioned by any omission, fault or neglect or other misconduct of **LESSEE** or **LESSEE**'s sub-tenants or assigns, or acting expressly or impliedly at **LESSEE**'s direction, or occasioned directly or indirectly by virtue of **LESSEE**'s activity at the Leasehold.
12. Termination by Lessor. In addition to the right of **LESSOR** to terminate the Lease following an Annual Review as set forth in Paragraph 8, above, the **LESSOR** shall have the independent right to terminate the Lease in the event that the **LESSEE** shall default in the payment of rent or in the observance or performance of any other of the **LESSEE**'s covenants, agreements or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof. In such event, the **LESSOR** shall have the right, while the default continues, to reenter

and take complete possession of the Leasehold, to declare the term of this Lease to be ended and to remove the **LESSEE's** equipment and other personal property, without prejudice to any remedies which might otherwise be used for arrears of rent or other default. The **LESSEE** shall indemnify the **LESSOR** against all costs of undertaking same or which **LESSOR** may incur by reason of such termination during the residue of the term.

13. Notice. Any notice from the **LESSOR** to the **LESSEE** relating to the Leasehold or to the occupancy thereof shall be deemed to have been duly served if mailed to the address of **LESSEE** set forth in Paragraph 1, by regular mail, or sent by electronic mail, addressed to **LESSEE** at \_\_\_\_\_@\_\_\_\_\_. Any notice from the **LESSEE** to the **LESSOR** relating to the Leasehold or to the occupancy thereof shall be deemed to have been duly served if mailed to the **LESSOR** at Post Office Box 2057, Edgartown, Massachusetts 02539 or sent by electronic mail, addressed to **LESSEE** at harrison.kisiel @ vineyardlandbank.com.
  
14. Surrender. The **LESSEE** shall, at the expiration or other termination of the Lease, remove all **LESSEE's** equipment and personal property, including all signs affixed by the **LESSEE**, and all alterations and additions, and all rubbish, and shall deliver to the **LESSOR** the Leasehold in the same condition as it was prior to the term hereof, all soil conditioning excepted, unless by earlier written agreement the parties have agreed that any such alterations have become the property of the **LESSOR**. The **LESSEE** shall deliver to the **LESSOR** all locks and keys thereto. The **LESSEE** shall, under the sole direction and at the sole discretion of the **LESSOR's** land superintendent, seed and condition the Leasehold in order to assure that all portions thereof are in an acceptable natural condition. In the event of **LESSEE's** failure to remove any of **LESSEE's** equipment or personal property from the Leasehold, the **LESSOR** is hereby authorized, without liability to the **LESSEE** for loss or damage thereto, and at the sole risk of the **LESSEE**, to remove and store any of the property at the **LESSEE's** expense, or to retain same under the **LESSOR's** control or to sell at public or private sale, without notice, any of the equipment or personal property not so removed, and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.
  
15. Insurance. The **LESSOR** recommends that the **LESSEE** maintain, with respect to the Leasehold, comprehensive public liability insurance, worker's liability insurance (if necessary) and personal property damage insurance insuring the **LESSEE**. The **LESSOR** shall have no obligation to procure and maintain such insurance on behalf of the **LESSEE**.
  
16. Mutual Option to Terminate. It is understood and agreed to by the parties that either party shall have the option to terminate this Lease on six (6) months' written notice to the other party, with or without cause.

17. General Provisions. This Lease contains the entire agreement of the parties hereto concerning the subject matter hereof and supersedes all other agreements between the parties hereto, whether written or oral. This Lease may only be amended by written instrument executed by both parties hereto.

This Lease shall be governed by and construed in accordance with the laws of the commonwealth of Massachusetts (without reference to choice of law provisions).

IN WITNESS WHEREOF, the **LESSOR** and **LESSEE** have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LESSEE:**

\_\_\_\_\_

**LESSOR:**

\_\_\_\_\_  
MARTHA'S VINEYARD  
LAND BANK COMMISSION

by its \_\_\_\_\_