



GLOUCESTER CITY COUNCIL

Special Joint Meeting of the Planning & Development Committee
And the Planning Board

Thursday, March 6, 2014 – 7:00 p.m.

Kyrouz Auditorium – City Hall

AGENDA

(Items May be taken out of order at the discretion of the Committee)

1. ***SCP2014-004: Commercial Street #47-61, Modification of Special Council Permit (SCP2012-010) under GZO Sec. 1.5.13 & Sec. 5.25 Hotel Overlay District***

COMMITTEE

Councilor Greg Verga, Chair

Councilor Paul Lundberg, Vice Chair

Councilor Steven LeBlanc

Back-up and Supporting Documentation all on file at the City Clerk's Office, City Hall

CC: Mayor Kirk
Jim Duggan
Linda T. Lowe
Tom Daniel
Gregg Cademartori
Suzanne Egan

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

City of Gloucester
Special Council Permit - Application

SCP2014-004

MODIFICATION OF SPECIAL COUNCIL PERMIT

4/28/14
(Public hearing to be held
no later than above date)

In conformance with the requirements of the Zoning Ordinance of the City of Gloucester, the undersigned hereby applies for a Modification of a Special Council Permit (CCS) in accordance with Section 1.5.13 of the Ordinance and other Sections listed below:

Type of Permit: Modification of Special Council Permit under Section 1.5.13

Applicant's Name: Beauport Gloucester, LLC

Owner's Name: Same
(if different from applicant)

Location: 47-61 Commercial Street, Map 1, Lot 33
(street address)

Zoning Classification: Hotel Overlay District (MI)

CITY CLERK
GLOUCESTER, MA
14 FEB 20 PM 12: 06

- Attached is a list of owners (with complete addresses) of land directly opposite on any public or private street or way, direct abutter, and abutters to the abutters of land within three hundred (300) feet of the property line, as they appear on the most recent City of Gloucester Assessor's Maps and Tax list.
- Attached is a copy of the Special Council Permit as granted and a statement as to the criteria set forth in Section 1.5.13 of the Zoning Ordinance
- Attached are the necessary plans as set forth in Section 1.5.3 and 5.7.2 (a) of the Zoning Ordinance.

City of Gloucester – Action	
Fee: <u>\$5000 paid</u> ✓	
City Clerk (received):	<u>2/20/14 d r z</u>
City Council (received):	<u>2/25/14</u>
Public Hearing (ordered):	_____
Public Hearing (opened):	_____
Public Hearing (closed):	_____
Final Decision	_____
Disposition	_____
(Approved, Denied, Approved with conditions)	

Applicant: Beauport Gloucester, LLC

By: Sheree Zizik
Name (Signature) Sheree Zizik

6 Rowe Square, Gloucester, MA 01930
Address

978-282-9700
Telephone

Certified for completeness:

Building Inspector: [Signature] Date: 2/20/14

Planning Director: [Signature] Date: 2/20/14

APPLICATION FOR MODIFICATION OF A SPECIAL COUNCIL PERMIT

The undersigned applicant hereby applies for a modification of a special council permit as follows:

1. Applicant:

Name: Beauport Gloucester, LLC

Address: 6 Rowe Square, Gloucester, MA 01930

Telephone Number: Days: 978-282-9700 Nights: Same

2. Owner, if other than applicant:

Name: N/A

Address: N/A

Telephone Number: Days: N/A Nights: Same

3. Property:

Street Address: 47-61 Commercial Street, Gloucester, MA 01930

Assessor's Map: 1 Lot: 33

Registry of Deeds where deed, plan, or both recorded: Essex South District Registry of Deeds

Deed recording: Book 30531, Page 311

Plan recording: Plan: Book 184, Plan 8

Property is located in the Hotel Overlay District (MI) zoning district

4. Nature of relief requested:

See Attachment to the Modification to City Council Special Permit, attached hereto.

5. Evidence to support grant of modification of special council permit:

The standard for granting a modification of a Special Council Permit pursuant to Section 1.5.13 of the Zoning Ordinance is a finding that the interests of the neighborhood and the city are not impaired. The proposed modifications as set forth in the attachment are consistent with the original decision and do not detract from the protection provided to the neighborhood and the City by the Council's original decision. The modifications of the special council permit requested will be in harmony with the intent and purpose of the Zoning Ordinance:

If someone other than owner of equitable owner (purchaser on a purchase and sales agreement) is the Applicant or will represent the Applicant, owner of equitable owner must designate such representative below.

Name of Representative: John D. Cunningham, III, Esq.
Address of Representative: 59 Main Street, Gloucester, MA 01930
Telephone Number: Days: 978-281-0006 Email: j.cunningham@cunningham.cc
Relationship of representative to owner or equitable owner: attorney

I hereby authorize John D. Cunningham, III, Esq. to represent my interest before the Special Permit Granting Authority with respect to this Modification of Special Council Permit Application.

Beauport Gloucester, LLC

By Sheree Zizik
Sheree Zizik

I hereby certify under the pains and penalties of perjury that the information contained in this Application is true and complete

Beauport Gloucester, LLC

By Sheree Zizik
Sheree Zizik Date

Attachment to the Modification to City Council Special Permit

The City Council approved the Special Council Permit for the Beauport Gloucester Hotel by its decision filed with the City Clerk on May 9, 2013. That decision, and other permits and approvals, were subsequently appealed.

Agreements for settlement, which will result in the dismissal of all such appeals, have been reached with both the Mortillaros and Port Community Alliance. Those agreements call for modifications to the Hotel plans, which fall into two major categories:

- A. Additional setbacks for the Hotel levels above the parking deck, moving the building farther back from Commercial Street; and
- B. Moving the seawall landward approximately 10' farther.

Sets of revised plans for the Hotel are submitted with this request for modification. They show the changes to the Hotel plans made to incorporate the settlement terms. Beauport Gloucester has retained the Manchester architectural firm of Olsen/Lewis to prepare revised architectural plans. Olsen/Lewis has extensive experience in hotel design. The project engineers, Beals and Associates, have prepared a set of revised site and engineering plans which show the engineering revisions.

A summary of the proposed changes is as follows:

The Hotel building massing above the garage level was redesigned to move the building farther back from Commercial Street. The lobby floor is set back from Commercial Street. The two guest room floors are moved farther back and space between the northerly guest room wings is widened by building over the loading dock.

A primary goal of the design modification is to provide additional setbacks, while substantially matching the footprint of the original design. The revised design moves the hospitality functions toward the beach side of the site and reduces shadow and other impacts on the Commercial Street side.

Following from the re-design, the room total was lowered from 101 to 96. The tower is now relocated within the building. The tower has a cross section of 400 square feet and is no higher than originally proposed.

The width of the porte cochere at the entry has been increased to cover two vehicles, while maintaining the same vertical clearance. The stairs at each end of the building on the beach side have been made internal. The lobby at ground level has been increased in size for improved circulation and guest services. With the decrease in the number of rooms, the required parking count is reduced by five spaces. The number of spaces provided on site decreases by three spaces, a net gain of two spaces.

The seawall has been moved back to just in front of the face of the garage and an increased beach/sand area replaces the concrete walkway. Handicap accessible ramps from the Commercial Street walkway and from Fort Square are retained and redesigned.

As a result of the increased setback from Commercial Street, the layout of the Lobby floor has been revised to relocate the back of the house functions to the Commercial Street side of

the hotel, the restaurant to the southwest corner and the multi-use rooms to the southeast, taking advantage of the beach front views and locating back of the house functions to the Commercial Street side of the property.

As a result of moving the building forward on the deck, the deck size has been reduced and the pool has been reduced in size and depth and relocated to the top floor space. With the relocation of the multi-use rooms, the deck on the Commercial Street side has been removed.

The generator has been relocated from Fort Square to the first floor level on the Commercial Street side of the building and the electrical/utilities have been relocated from the garage level to the back of the house first floor area. The original permit plans had a mechanical penthouse that extended above the peak of the roof which has been eliminated.

Additional room for Commercial Street traffic has been created by utilizing a 5'-wide sidewalk with a mountable curb in front of the parking garage.

By agreement with the PCA, an area approximately 10' x 20' to be located in front of the seawall in front of the outdoor parking area has been proposed for planting with American Beach grass in biodegradable fabric as a pilot project.

The original Special Council Permit provided in Paragraphs 25 and 26 of the Special Permit Condition (in Appendix 1) for the process of modifications to the plan. Beauport Gloucester concurs with the Building Inspector that the changes should be reviewed as substantial under the provisions of the Special Council Permit and are therefore submitted to the City Council for review, hearing and determination.

Beauport Gloucester, LLC requests that the City Council modifies the Special Council Permit in accordance with this request and make a finding in accordance with Section 1.5.13 of the Gloucester Zoning Ordinance, that the interests of the neighborhood and the City are not impaired by the proposed modifications. Specific requested actions relative to this application for modification to the City Council Special Permit are as follows:

1. Plan sets. The original plans are replaced by the following plan set:
Plan entitled, "New Construction: Beauport Gloucester Hotel, Amended Special Permit Issue February 5, 2014."
2. Because the emergency generator has been relocated and is no longer at street level at Fort Square, condition 2 (on Page 8 of the decision) is deleted.
3. The reference to a walkway across the beach side of the Hotel in condition 8 is deleted, so that the condition will now read: There shall be public access from Commercial Street to Pavilion Beach, as shown on the plans.
4. The City Council granted a Special Permit under Section 5.25.5.1 for off-site valet and tandem parking. The applicant is acquiring the premises at 99A Essex Avenue (Assessor's Map 218, Parcels 1, 17 and 126). The Building Inspector has reviewed the Essex Avenue site and determined it to meet the standards of the decision. The City Council concurs in the Building Inspector's determination and finds that condition 24 is satisfied by the acquisition and use of the Essex Avenue site for offsite parking. The issuance of a building permit for the hotel is subject to Beauport Gloucester providing evidence of ownership or lease agreement for the site to the Building Inspector.

5. A Beach and Development Agreement was entered into between the City of Gloucester and Beauport Gloucester, LLC ("Beauport"), dated April 30, 2013, which was made a condition of the permit as Condition 9 on Page 8 of the Decision and attached to the Decision as Appendix 4. Pursuant to that Agreement, Beauport has escrowed with the City of Gloucester a deed (the "Deed") of Parcel 2 shown on a plan entitled, "Approval Not Required, Plan of Land, 47-61 Commercial Street, Gloucester, MA" dated January 23, 2013. Beauport has agreed, if, as and when all necessary approvals for the hotel have been awarded and the appeals period(s) have expired, without appeal, to modify the Deed to delete so much of the escrowed Deed as reserved an easement to Beauport for coastal structures on Parcel 2 on the Plan, and to add to the Deed an easement in perpetuity that will allow the public to use those portions of Parcel 1 seaward of the structures, improvements and sea walls to be constructed on Parcel 1 and which are not from time to time occupied by approved coastal structures or beach access and egress walkways, subject to Beauport's continuing right to construct possible future coastal structures, including but not limited to retaining walls, sea walls and revetments, as well as access and egress walkways on Parcel 1. Beauport confirms that the deed will continue to provide that Parcel 2 will be deeded to the City. Beauport's right to construct such possible future coastal structures shall be subject to any applicable permitting and approval requirements and shall be limited to circumstances in which such construction is directed by a governmental authority or flood insurance requirements, or where such construction is necessary or appropriate to protect the beach or any structure on Parcel 1. The City Council is asked to approve this modification to the Agreement.

CUNNINGHAM & CUNNINGHAM
ATTORNEYS AT LAW
59 MAIN STREET
GLOUCESTER, MASSACHUSETTS 01930

JOHN D. CUNNINGHAM III
ROBERT W. CUNNINGHAM

TEL. (978) 281-0006
FAX (978) 281-7400

January 31, 2014

Mr. William Sanborn
Gloucester Building Inspector
City Hall Annex
3 Pond Road
Gloucester, MA 01930

Re: Beauport Gloucester Hotel
47-61 Commercial Street

Dear Bill:

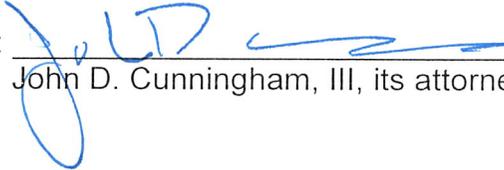
Pursuant to Paragraph 25 and 26 of Appendix 1 of the Decision of the City Council dated May 7, 2013 (see copy attached and labeled "A"), Beauport Gloucester, LLC hereby submits for your review a set of revised plans showing requested modifications to the Hotel plans. We believe that under the standards of Paragraph 26, the changes would be "substantial" because, at a minimum, the proposed changes have modified "the architectural character of the building." Therefore, the provision of Paragraph 25 would be applicable and the proposed modifications are subject to review and recommendation by the Planning Board and public hearing by the City Council.

If you concur, would you please so advise us by signing a copy of the letter and returning it to me and we will submit our proposed modifications to the City Council.

Should you need any additional information, please feel free to contact me.

Sincerely,

Beauport Gloucester, LLC

By: 
John D. Cunningham, III, its attorney

I concur that the proposed changes
are substantial



William Sanborn

2/3/14
Date

JDC/amm

Cc: Sheree Zizik
Lisa Press
Windover Construction, LLC
Todd Morey

Gregg Cademartori
Mike Hale, DPW
Michele Harrison, Esq.
John Olson



CITY OF GLOUCESTER
INSPECTIONAL SERVICES
3 POND ROAD □ GLOUCESTER MA 01930
PHONE 978-281-9774 FAX 978-282-3036

February 3, 2014

John D. Cunningham III
59 Main Street
Gloucester, MA 01930

Re: Offsite parking for Beauport Gloucester Hotel at 79-99 Essex Avenue
Determination of the Building Inspector

Dear Attorney Cunningham:

On May 8, 2012, the City council granted a Special Council Permit to Beauport Gloucester, LLC under GZO Section 5.25, which called for providing off-street parking.

It is my determination that Section 5.25.5.1 authorized the City Council to authorize off-street parking (including valet, tandem and stacked parking) provided that the offsite parking was 1) not in a residential district and 2) that a hotel on such site was allowable either as of right or special permit. The site at 79-99 Essex Avenue is in the EB district and satisfies both requirements.

In its decision, the City council did, in fact, vote to grant a City Council Special Permit to Beauport pursuant to Section 2.25.5.1 for offsite parking including valet, tandem and stacked parking. Appendix 1, Paragraph 24 of the decision authorizes offsite parking for 50 or more vehicles on a site meeting the standards of GZO Section 5.25 and provides that the determination of the Building Inspector as to compliance is conclusive.

I have determined that the City Council by its Special Permit has authorized the offsite parking and that the project site complies with the provision of the ordinance and the decision.

Sincerely,

William Sanborn
Inspector of Buildings

WS/kgf



City of Gloucester Abutters Report

Abutters to Parcel: Map-Lot-Unit 1-33

Please be aware that the abutters list reflects mailing address for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors.

This list of owners of record as shown on the most recent tax list of the City of Gloucester has been prepared for the purposes of notifying abutters as required by the City's Zoning Board of Appeals or City Council and it reflects the abutters to the Parcel known as Map 1 Lot 33 as further shown on the attached map dated 2/11/2014.

ABUTTER	STREET ADDRESS	PARCEL NO.	TAX BILL ADDRESS
1-22 1907 LLC	33 COMMERCIAL ST	1-22	1907 LLC 33 COMMERCIAL ST GLOUCESTER, MA 01930
1-33 BEAUPORT GLOUCESTER LLC	47 COMMERCIAL ST	1-33	BEAUPORT GLOUCESTER LLC 6 ROWE SQ GLOUCESTER, MA 01930-3057
1-14 MY MANAGEMENT GROUP LLC	52 COMMERCIAL ST	1-14	MY MANAGEMENT GROUP LLC 27-29 HARBOR LP GLOUCESTER, MA 01930
1-73 VJ&E REALTY LLC	58 COMMERCIAL ST	1-73	VJ&E REALTY LLC 58-60 COMMERCIAL ST GLOUCESTER, MA 01930-5825
1-45 MORTILLARO GINO 1/3 & VINCENT 2/3 C/O MORTILLARO LOBSTER LLC	65 COMMERCIAL ST	1-45	MORTILLARO GINO 1/3 & VINCENT 2/3 C/O MORTILLARO LOBSTER LLC 60 COMMERCIAL ST GLOUCESTER, MA 01930
1-51 ORLANDO JOSEPHINE RES L/EST	67 COMMERCIAL ST	1-51	ORLANDO JOSEPHINE RES L/EST 67 COMMERCIAL ST GLOUCESTER, MA 01930
1-12 NICASTRO JOHN B TR NICASTRO FA	78 COMMERCIAL ST	1-12	NICASTRO JOHN B TR NICASTRO FA 78 COMMERCIAL ST GLOUCESTER, MA 01930
1-11 CURCURU ANTHONY TR ET AL C/O SCOLA GRACE	80 COMMERCIAL ST	1-11	CURCURU ANTHONY TR ET AL C/O SCOLA GRACE 36 PROSPECT ST GLOUCESTER, MA 01930
1-52 CIARAMETARO C E & PETERSON R F TRS	2 FORT SQ	1-52	CIARAMETARO C E & PETERSON R F TRS 2 FORT SQ GLOUCESTER, MA 01930-5002
1-53 CIARAMETARO C E & PETERSON R F TRS	6 FORT SQ	1-53	CIARAMETARO C E & PETERSON R F TRS 2 FORT SQ GLOUCESTER, MA 01930-5002



City of Gloucester Abutters Report

Abutters to Parcel: Map-Lot-Unit 1-33

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Gloucester Board of Assessors.

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ABUTTER	STREET ADDRESS	PARCEL NO.	TAX BILL ADDRESS
1-54 LUCIDO FRANK & FAVAZZA JENNIE ET AL	10 FORT SQ 25 FORT SQ	1-54	LUCIDO FRANK & FAVAZZA JENNIE ET AL 3317 NORTH COUNTRY CLUB RD TUCSON, AZ 85716-1349
1-1 GLOUCESTER CITY OF	25 FORT SQ	1-1	GLOUCESTER CITY OF
1-20 DANISH DANIEL A	12 BEACH CT	1-20	9 DALE AV GLOUCESTER, MA 01930 DANISH DANIEL A
1-19 LOVASCO SALVATORE & ROSE	1 PASCUCCI CT	1-19	12 BEACH CT GLOUCESTER, MA 01930 LOVASCO SALVATORE & ROSE 1 PASCUCCI CT GLOUCESTER, MA 01930 0000

I hereby certify that the above identifies the assessed owner of record and the mailing information for the parcel listed, as shown on the most recent tax list of the City of Gloucester Massachusetts.

Signed,

Madonna Fleming

Name:

Title: Principal Clerk

Date:

2/14/14

Authorized Representative of the City of Gloucester Assessors' Office, City Hall, 9 Dale Avenue, Gloucester, MA 01930



OFFICE OF THE CITY CLERK
9 Dale Avenue • Gloucester, Massachusetts 01930
Office (978) 281-9720 Fax (978) 282-3051
E-mail: lhowe@gloucester-ma.gov

May 9, 2013

John Cunningham, Esquire
Cunningham & Cunningham
59 Main Street
Gloucester, MA 01930

Re: Application for Special Council Permits by Beauport, LLC pursuant to Sections 5.25 Hotel Overlay, 5.25.3.2(a) and (b) (Hotel and accessory uses), 5.25.4.1 (height), 5.25.5.1 (parking) and 5.25.7.2 and 5.5.4 (Lowlands), and 5.7 (Major Project) of the Gloucester Zoning Ordinance for 47-61 Commercial Street, Map 1, Lot 33

Dear Attorney Cunningham :

In accordance with Massachusetts General Laws, Chapter 40A, Section 11, I am enclosing a copy of the City Council Decision for the Special Council Permits for Beauport, LLC at 47-61 Commercial St., for which a public hearing was held and voted in the affirmative. The Decision was adopted on May 7, 2013 and was filed in the City Clerk's Office on May 9, 2013.

Included with the copy of the decision is the "Right to Appeal" notice. The twenty (20) day appeal period for your application will end on May 28, 2013. After May 28, 2013, you may pick up the Certificate of Lapse of Appeal and attach it to your decision and file with the Registry of Deeds, 45 Congress Street, Salem, MA 01970.

Please feel free to give the City Clerk's Office a call at (978) 281-9720 with any questions regarding this process. Thank you.

Very truly yours,

Linda T. Lowe
City Clerk

Enclosure: File, Building Inspector, City Planner

CITY CLERK
GLOUCESTER, MA

In Re:

13 MAY -9 PM 12: 21

Application of Beauport Gloucester, LLC)	
Special Council Permit)	DECISION OF THE
Pursuant to City of Gloucester Zoning Ordinance)	CITY COUNCIL OF
Section 5.25 (hotel overlay district))	
Section 5.25.3.2(a) and (b) (hotel and accessory uses)))	THE CITY OF GLOUCESTER
Section 5.25.4.1 (height))	
Section 5.25.5.1 (off-site, valet and tandem parking)))	
Section 5.25.7.2 and 5.5.4 (lowlands))	
Section 5.7 (major project))	

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and conclusions with regard to the application of Beauport Gloucester, LLC for Special Permits pursuant to Sections 5.25, 5.25.3.2(a) and (b), 5.25.4.1 footnote (h), 5.25.5.1, 5.25.7.2, 5.5.4 and 5.7 of the City of Gloucester Zoning Ordinance.

The applicant is Beauport Gloucester, LLC. The property is located at 47-61 Commercial Street, Gloucester, and is shown on Assessor's Map 1, Lot 33. The property is within the Hotel Overlay District of the Marine Industrial District (MI).

The applicant seeks a Special Permit pursuant to Section 5.25, 5.25.3.2(a) and (b), Section 5.25.4.1 footnote (h), 5.25.7.2, 5.5.4 and 5.7 to construct a hotel as defined in 5.25.2.1.

On August 8, 2012, the application for the Special Permit was filed with the City Clerk's office. The City Council received the application on August 14, 2012 and found that the form and content of the application met the requirements of Sections 1.5.2 and 1.5.3 of the Gloucester Zoning Ordinance (GZO). The application and plans submitted and revised (the "Record Plans") are incorporated herein by reference.

The City Council referred the application to the Planning and Development Committee (P & D Committee). Pursuant to Section 5.7.4, the application was also submitted to the Planning Board for its review and recommendations. The application was also forwarded to the city departments as required by Section 5.7. The applicant filed a notice of intent with the Gloucester Conservation Commission. The Planning Board held multiple public meetings and reviewed the following documents as requested by the applicant:

- Special Permit Application for Hotel received 8/12/2012;
- Site development plans entitled: "Plans to Accompany Permit Applications for Beauport Gloucester Hotel", with revisions thru 12/21/2012 prepared by Beals Associates Inc. Charlestown, MA;
- A Letter of Transmittal, Executive Summary/Project Overview;
- A Traffic Impact & Access Study (TIAS) prepared by VHB of Watertown, MA;

Stormwater Management Report – dated 8/8/2012 revised 12/21/2012;
Site Plan Review Application and Plans Stamped Received 8/23/2012
Perkins & Will Light and Shadow Study

The Planning Board relied upon its peer review consultant, BETA Associates, Inc., to provide technical assistance. The Planning Board held meetings on September 20, 2012, November 15, 2012, January 17, 2013, January 31, 2013 and February 7, 2013.

The Planning Board received reports or heard testimony from representatives of the City departments and from citizens both in favor and in opposition to the application.

The Planning Board issued an Advisory Report on the Hotel Overlay District Special Permit and Site Plan Review submitted by Beauport Gloucester, LLC, dated February 7, 2013 recommending the granting of the special permits with findings and recommended conditions. A copy of the report, all submittals by the Applicant and the peer review consultant and the minutes of all meetings are filed with the City Clerk's office and the Community Development Department and are incorporated herein.

The Planning Board also reviewed the project under the Site Plan Review provisions of the Ordinance, Section 5.8.4, but has not issued a final decision. In accordance with Section 5.8.4.1., the following representation was made by the Planning Board: "The work described herein requires the approval of a site plan by the Gloucester Planning Board pursuant to Section 5.8 of the Zoning Ordinance. Any conditions imposed in such site plan approval shall be incorporated herein by reference."

Pursuant to the Gloucester Zoning Ordinance, the P & D Committee of the City Council noticed and posted its multiple public meetings held on the application. The P&D Committee opened its meeting on August 22, 2012, and held additional meetings on October 3, 2012; October 17, 2012; December 5, 2012, January 16, 2013; February 6, 2013; February 20, 2013 and March 7, 2013. Joint Planning Board and P & D Committee meetings were held on September 4, 2012, September 20, 2012 and January 31, 2013. A site visit was held on February 16, 2013, and one of the site visits was specifically for the infrastructure. The P&D Committee concluded its review on March 7, 2013.

The applicant made presentations on the application and plans with specific emphasis on the six criteria of section 1.8.3 of the zoning ordinance for a hotel, the criteria of section 5.25.4.1 footnote (h) for greater building height, the criteria for a lowlands special permit and the major project criteria. Presentations were made by the applicant on social, economic or community needs served by the proposal; traffic flow and safety; adequacy of utilities and other public services; neighborhood character and social structure; qualities of the natural environment; and potential fiscal impact. Presentations included review of traffic, environmental and drainage issues with review and comment by the City staff.

In addition to the presentations, the P&D Committee received reports and other documents from its technical consultants, municipal departments and the general public. All material is on file with the City Clerk's office and is incorporated herein.

On the basis of the testimony at the public meetings, the documents submitted, the representations of the applicant and the public and the recommendations of the Planning Board, on March 7, 2013, the P&D Committee voted 3 in favor, 0 opposed to recommend that the City Council to grant the application of Beauport Gloucester, LLC for a Special Permit under Gloucester Zoning Ordinances Section 5.7.5 and Section 5.25 to construct a Hotel subject to the conditions contained within the Conservation Commission's Order of Conditions and conditions recommended by the Planning Board in its report of February 7, 2013 attached hereto as Appendix 1, and subject to the following additional conditions:

1. The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 p.m., except in cases of an emergency.
2. There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.
3. The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.
4. As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.
5. There shall be no lighting of Pavilion Beach at any time by the Hotel.
6. There shall be bollards placed around the project's onsite hydrant, said hydrant shall remain unobstructed at all times.
7. There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.
8. The Applicant shall urge National Grid to work with it in order to place the utilities underground.
9. The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this special permit.
10. That the City Council adopt as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General Conditions 1-26 and Appendix 2 for Conditions 1-7 as relates to the parking plan.
11. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.
12. The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5(i) to provide documentary evidence to the City Council providing that any and all conditions specified by the City Council in the Special Council Permits have been met

at which time the City Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been submitted to the City Council.

The P&D Committee found that the section 5.25.4.1 footnote (h) criteria for greater building height were satisfied in that such an increase in the allowable height is consistent with the neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of views, overshadowing of other properties, impairment of utilities or other adverse impacts. The P&D Committee found that the additional height would permit the use of a peaked roof to hide the building utilities and mechanicals which is consistent with the neighborhood and surrounding area.

The P & D Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street, as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.4.1 footnote (h) by reference to Section 3.1.6(b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012 revised February 27, 2013, drawing number A0-06.

The Committee also found that the criteria of Section 5.5.4 for a lowlands special permit has been satisfied in that the application meets the requirements of the Wetlands Protection Act as indicated by the Conservation Commission's issuance of an order of conditions and the report of the shellfish constable, and that such construction will not pose a hazard to health or safety and will be so executed as to conserve the shellfish and other wildlife resources of the City. The approved motions incorporated the recommendations and conditions of the Planning Board, the Conservation Commission and the additional conditions set by the P&D Committee.

The P & D Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street, as shown on Assessors Map-1, Lot 33, Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4.

The P & D Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street, as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with the following conditions:

1. The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.
2. The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed seven conditions which shall be incorporated herein and will be attached to the final decision as Appendix #2.

Following proper notice and advertisement, on March 12, 2013 and continued to March 13, 2013, the City Council opened a public hearing.

The City Council considered the application plans and other submission material, presentations by the applicant, its legal counsel, John Cunningham, its consulting engineers, Beals Associates, its consulting traffic engineer, its architect, its construction manager, and its Coastal Geologists of Epsilon Associates. The City Council reviewed and considered the light and shadow studies submitted by the applicant along with the shadow studies submitted by the attorney for abutter Mortillaro. In addition, the City Council considered material submitted and presented by municipal departments and the City's independent engineering consultants. The City Council also considered the numerous letters, documents and reports submitted by those in opposition and in support of the project. Specifically, among other documents included in the record, it considered the presentation and reports submitted by the abutters in opposition and the organized opposition group regarding the seawall and the effect the project will have on the beach. Based on the expert testimony of the Coastal Geologists, Coastal Engineers, the light and shadow studies and reports submitted by the architects and the concurrence of the peer review studies of these experts' opinions, the City Council deliberated and made findings as to the criteria for the special permits. Throughout its deliberations, the City Council weighed and considered the statements of the applicant and its representatives, the City's reviewers, municipal departments, boards and commissions and the comments and submissions of the abutters and the public, all as made and considered on multiple occasions at the public meetings and public hearings.

SECTION 1.8.3 CRITERIA

Based on the evidence presented, the City Council finds that the Application for Special Permits, as revised, meets the criteria of Section 1.8.3 of the Zoning Ordinance as follows:

1. Social economic and community needs: The Hotel will serve the social, economic and community needs of the City. The multiple studies commissioned by the City and by the Applicant and submitted as a part of the record and the testimony by members of the Gloucester business community demonstrate that there is a demand for a year round Hotel in Gloucester. The application materials show that the project provides a full service business, family and tourist oriented facility with meeting rooms and function facilities. The Hotel patrons will generate additional business for downtown restaurants, businesses, and cultural activities. The Hotel will result in the creation of many jobs including but not limited to construction-related jobs and at least 160 professional and service jobs. The applicant has committed to giving a preference for Gloucester residents in employment and to Gloucester companies and Gloucester vendors for services.
2. Traffic flow and safety: On the basis of the traffic reports submitted and the conclusion of the independent consultant, the City Council finds that any increase in traffic generated by the Hotel will not have a material negative impact on the traffic flow and safety in the neighborhood and surrounding area. The hotel will have 145 onsite parking spaces and

has an appropriate Parking Management Plan. The traffic engineering report indicates that the additional traffic generated by the Hotel will not have an impact on the existing traffic patterns in the area. The application indicates that the hotel will have sufficient on-site parking spaces, and provide overflow, tandem and valet parking when it is required. The application exceeds the off-street loading requirements (Section 5.25.5.2) for a Hotel within the HOD as the proposed Hotel has two full loading bays rather than the requirement of one.

3. Adequacy of utilities and other public services: The City Council finds, based on the evidence presented, including but not limited to submissions by pertinent City departments, that the utilities and other public services are adequate. Department of Public Works Director opined that once the proposed infrastructure project is complete the utilities will be adequate for the project. Additionally, the peer review consultant, BETA Group, has also determined that public utility issues were addressed.
4. Neighborhood character and social structure: The neighborhood is a mixed use area. It includes industrial, commercial and multi-family and single family residential use. A hotel use is consistent with the diversity of uses within the neighborhood. As established by the adoption of the Hotel Overlay District provisions of the ordinance, a Hotel use is appropriate. The City Council finds that a hotel will not be substantially detrimental or out of character with the neighborhood or its social structure.
5. Qualities of the natural environment: The applicant will make onsite stormwater improvements. The Conservation Commission has issued an Order of Conditions with numerous conditions which will protect the site. The hotel abuts a portion of Pavilion Beach, a public bathing beach. As a part of this project, the dispute regarding the ownership of the beach parcel will be resolved and the parcel will be conveyed to the City for the continued use as a public beach thus protecting the natural environment and preserving the beach for continued public recreation use. The City Council considered all of the evidence, including the expert reports and opinions relating to the construction of the seawall and to the conservation of Pavilion Beach and finds that the project, as designed, will protect the beach and the natural environment.
6. Potential fiscal impact: The City Council finds that the hotel will generate increased real estate tax revenue and new rooms and meal tax revenue. The Hotel will create additional employment opportunities for the city and overall will have a positive fiscal impacts on the City.

In short, considering the various positive and negative impacts of the project, the City Council finds that the project will not adversely affect the neighborhood, the zoning district or the City in a manner that outweighs the project's benefits.

SECTION 5.7 MAJOR PROJECT REQUIREMENTS

The City Council further finds that the criteria contained in Section 5.7.5 for a major project has been met. The site access is sufficient as required by the ordinance. The City Council's consultants, BETA Consultants, have reviewed the drainage and utility plans, entitled "Plans to Accompany Permit Applications for Beauport Gloucester Hotel, Commercial Street, Gloucester Massachusetts", prepared by Beals Associates, Inc., dated September 21, 2012 and revised and issued as final local permit set February 26, 2013 and recommended that they meet the applicable requirements. The plans submitted by the Applicant entitled "Beauport Gloucester Hotel, Beauport Gloucester, LLC, 47-61 Commercial Street, Gloucester, MA, Special Permit Issue August 8, 2012, revised 2/27/2013", by Perkins & Will Architects, Boston, MA, and Copley Wolff Design Group, 160 Boylston, St., Boston, MA, demonstrate that the project will be screened to reduce impact to the neighborhood and that the lighting plan is in compliance with the requirements of section 5.7.5 and with the City's lighting ordinance.

The City Council further finds that based on the light and shadow studies submitted by the applicant and reviewed by the City Council's consultants, the project is designed and sited in such a manner so that there will no material overshadowing or obstruction of views. Further the Council finds that the traffic and parking plan is designed in a manner which will accommodate the additional vehicles generated by the project and not adversely impact the existing traffic patterns, as shown on the plans entitled "Plans to Accompany Permit Application for Beauport Gloucester Hotel, Commercial Street, Gloucester", prepared by Beals Associates, Inc., 2 Thirteenth St., Charlestown, MA, page C-300 Site Layout and Materials Plan and as modified by Responses of Beauport Gloucester, LLC to Review Letters Dated November 14, 2012 dated December 14, 2012 pages 9-14 and shown on SK-1 through SK-9 and the Beauport Hotel Parking Management Plan Memorandum attached hereto.

CITY COUNCIL DECISIONS

MAJOR PROJECT HOTEL SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the unanimous recommendation of the P&D Committee, the minutes of the meetings and all testimony and documents received at the hearing, the City Council finds that the project meets the requirements of Sections 1.8.3, 5.25 and 5.7 of the zoning ordinance to construct a Hotel.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynot) to grant the Special Council Permit for Major Project/Hotel for Beauport Gloucester, LLC (applicant and owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to 5.25.3.2(a) and (b) and section 5.7 (Major Project) with the following conditions:

1. The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 p.m., except in cases of an emergency.

2. There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.
3. The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.
4. As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.
5. There shall be no lighting of Pavilion Beach at any time by the Hotel.
6. There shall be bollards placed around the project's onsite hydrant, said hydrant shall remain unobstructed at all times.
7. There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.
8. The Applicant shall urge any and all owners or operators of overhead utility lines to work with it in order to place the utilities underground.
9. The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this Special Permit.
10. The City Council adopts as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General conditions 1-26 and Appendix 2 for conditions 1-7 as relates to the parking plan.
11. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.
12. The applicant shall agree to hold the City harmless for any claim of property damage or personal injury that may arise out of the applicant's businesses activities or during construction on the site.
13. That Beauport Gloucester, LLC shall provide pest control services for the duration of the construction and for a period of one year after the hotel opens to neighbors whose properties, as determined by the Board of Health, suffer rodent infestations as a result of the construction of the hotel.
14. The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5(i), to provide documentary evidence to the City Council proving that any and all conditions specified by the City Council in the Special Council Permits have been met at which time the City Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been provided by the City Council.

SECTION 5.25.4.1 FN (h), SECTION 3.16(b) BUILDING HEIGHT SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the P&D Committee's unanimous recommendation that the City Council grant the Special Permit pursuant to Section 5.25.4.1 footnote (h) by reference to Section 3.1.6(b) of the Gloucester Zoning Ordinances for

greater building height and all the testimony and documents received at the hearing, the City Council finds that the increase in height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of view, overshadowing of other properties, impairment of utilities or other adverse impacts and that the project meets the requirements of Section 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynott) to grant a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012, revised February 27, 2013, drawing number A0-06. Subject to the conditions as outlined in the Conservation Commission's Order of Conditions, the Planning Board's Advisory Report and the P&D Committee's recommendation shall be conditions to the grant of this special permit and are attached to this decision as Appendix 1, 2, 3, and 4 and are incorporated herein.

SECTION 5.25.5.1 OFF-SITE, VALET AND TANDEM PARKING SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the P&D Committee's unanimous recommendation that the City Council grant the Special Permit pursuant to Section 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with conditions and all the testimony and documents received at the hearing, the City Council finds that the parking plan meets the requirements of the HOD and that as designed it will help traffic flow and ease congestion and therefore the project meets the requirements of Section 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with conditions.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynott) to grant a Special Council Permit for Beauport Gloucester, LLC located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with the following conditions:

1. The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.
2. The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed several conditions which shall be incorporated herein and attached as Appendix #2.
3. Subject to the conditions as outlined in the Conservation Commission's Order of Conditions, the Planning Board's Advisory Report and the P&D Committee's recommendation shall be conditions to the grant of this special permit and are attached to this decision as Appendices and are incorporated herein.

SECTION 5.5.4 LOWLANDS SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the P&D Committee's unanimous recommendation to the grant of the Zoning Ordinance Section 5.5.4 lowlands special permit for 47-61 Commercial Street and the testimony and documents submitted, the City Council finds that the criteria in section 5.5.4 has been satisfied in that the application meets the requirements of the Wetlands Protection Act as indicated by the Conservation Commission's issuance of an Order of Conditions and that such construction will not pose a hazard to health or safety and will be so executed as to conserve the shellfish and other wildlife resources of the City as indicated by the Shellfish Constable's report.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynott) to grant a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4. Subject to the conditions as outlined in the Conservation Commission's Order of Conditions, the Planning Board's Advisory Report and the P&D Committee's recommendation shall be conditions to the grant of this special permit and are attached to this decision as Appendicies and are incorporated herein.

GENERAL CONDITIONS

In addition to the foregoing, the following general conditions shall apply:

1. In granting this Special Permit, the City Council has relied upon the oral and written representations of the applicant, the documents submitted in support of their application and in their testimony at committee meetings and the public hearings. Any failure to honor any material representation shall constitute just cause for revocation of this special permit.
2. The minutes of the P&D Committee meetings and the City Council public hearings and all documents and testimony received during the hearings are incorporated into this Decision. All construction and use of the property must comply with the plans, as revised, that were submitted with the applicant's special permit application. Any material changes that are not contemplated by the Special Permit application will require either a new special permit or an amendment hereto.
3. Each finding, term and condition of this decision is intended to be severable. Any invalidity in any finding, term or condition of this decision shall not be held to invalidate any other finding, term or condition of this decision.

4. This permit shall not take effect until a certified copy of this decision is recorded with the Registry of Deeds for Essex County. The fee for such recording shall be paid by the applicant.

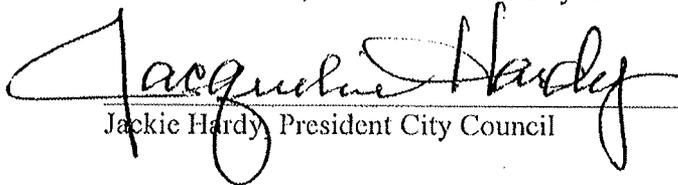
Accordingly, by said City Council Vote of March 13, 2013,

1. The Section 5.25 Special Council permit for a Hotel is granted;
2. The 5.7 Major Project special permit is granted;
3. The Section 5.25.4.1 footnote (h) and 3.1.6(b) special permit for height in excess of 40 feet not to exceed 61 feet in height is granted;
4. The Section 5.5.4 Lowlands special permit is granted;
5. The Section 5.25.5.1 off-site, valet and tandem parking special permit is granted.

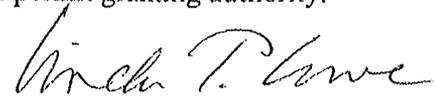
Decision adopted at the City Council meeting of May 7, 2013.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws chapter 40A, and shall be filed within twenty days after the filing of the above referenced decision in the City Clerk's Office. Copies of the complete decision and final plans entitled Beauport Gloucester Hotel, Beauport Gloucester, LLC, 47-61 Commercial Street, Gloucester, MA Special Permit Issue August 8, 2012, revised 2/27/2013, by Perkins & Will Architects, 55 Court St. 2nd Floor, Boston, MA and Plans to Accompany Permit Applications for Beauport Gloucester Hotel, Commercial Street, Gloucester Massachusetts, prepared by Beals Associates, Inc., 2 Thirteenth Street, Charlestown, MA and dated September 21, 2012 and revised and issued as final local permit set February 26, 2013 and the Beauport Hotel Parking Management Plan Memorandum are on file with the City Clerk and the Community Development Department.

Pursuant to Rule 25 of the City Council Rules of Procedure, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and accurate reflection of the March 13, 2013 vote of the City Council sitting as the special permit granting authority.



Jackie Hardy, President City Council



Linda Lowe, City Clerk
5/7/13

Dated: 5-7-13, 2013

Appendix I Special Permit Conditions

The following conditions, as modified have been recommended by the Planning Board and have been adopted by the City Council as conditions to the special permit. These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision.

1. The Project shall be constructed in accordance with the following Record Plans, which are on file with the Planning Board and City Clerk's Office:
 - a) Beauport Gloucester Hotel, Beauport Gloucester, LLC, 47-61 Commercial Street, Gloucester, MA Special Permit Issue August 8, 2012, revised 2/27/2013, by Perkins & Will 55 Court St. 2nd Floor, Boston, MA;
 - b) Plans to Accompany Permit Applications for Beauport Gloucester Hotel, Commercial Street, Gloucester Massachusetts, prepared by Beals Associates, Inc., 2 Thirteenth Street, Charlestown, MA and dated September 21, 2012 and revised and issued as final local permit set February 26, 2013; and
 - c) The Beauport Hotel Parking Management Plan Memorandum
2. All operations and maintenance system reports of the stormwater and wastewater shall be forwarded to the Community Development and Engineering Departments.
3. All site lighting shall be in compliance with the lighting provision of the Code of Ordinances.
4. That any action by the City Council includes specification of elements of the Project and responsibilities that will remain private. The City shall not have any legal responsibility for the operation, maintenance, repair or replacement of the same to the extent such features are located on the Site:
 - a) All driveways and parking areas within the Project;
 - b) Stormwater management facilities within the Project;
 - c) Snow plowing of driveways and parking areas and snow removal
 - d) Landscaping within the Project
 - e) Trash removal from the Project
 - f) Lighting within the Project
 - g) Water and sewer services within the Project.
5. In the event of any emergency, the Applicant shall allow the City of Gloucester DPW access to the sewer and water lines on the Site for repair purposes.
6. The Conservation Commission's Order of Conditions pursuant to 310 CMR 10.00, or any superseding order of the Department of Environmental Protection (DEP), if applicable, and an Order of Conditions issued under the Gloucester Wetland Ordinance regarding this property shall be made a part of the special permit. If there is any inconsistency between the Record Plans and the plans as may be approved by the Conservation Commission or by DEP, the Applicant shall submit an amended plan to City Council and

the Planning Board for review and to the Conservation Commission and to DEP (if applicable) for approval before the City Council Decision to ensure all approvals are consistent with one another.

7. A preconstruction conference with City departments shall be held prior to the commencement of construction of the Project. The contractor shall request such conference at least fourteen business days prior to commencing construction by contacting the Planning Director and Engineering Department in writing. At the conference, the applicant and municipal officials shall agree upon a schedule of inspections. The applicant shall provide the City (including the following departments: Inspector of Buildings, Fire, Police, Engineering, DPW, Community Development and the Board of Health) with 24 hour emergency contact numbers as well as the name and telephone number of a designated owner's representative for all Project related communication.
8. During construction of the Project, the applicant shall conform to all local, state and federal laws regarding noise and vibration. The applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction of the Project shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. except for certain operations such as concrete finishing and emergency repairs. Exterior construction shall not commence on Saturday before 8:00 a.m. and shall not continue beyond 5:00 p.m. with the same exceptions. The Building Inspector may allow longer hours of construction in special circumstances provided that such activity normally is requested in writing by the applicant except for emergency circumstances where oral communication shall be followed by written confirmation. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Gloucester Police Department.
9. The City Council's agents shall be allowed entrance onto and view and inspect the Site during regular business hours to ensure compliance subject to applicable safety requirements as established by the applicant or its contractor including signing in at the construction field office trailer prior to entering the site.
10. Construction monitoring shall occur as required under the Conservation Commission's Order of Conditions or any Final Order issued by DEP.
11. Dust from outside activities shall be controlled. The applicant and its contractors shall effectuate the following practices to minimize levels of dust:
 - a) Wetting soils that are excavated from unsaturated zones
 - b) Wetting equipment during excavation/loading activities
 - c) Minimizing dust generation from areas that have been excavated through the wetting of soils or by other means of stabilizing dust particles.
 - d) Stockpiles left more than 30 days shall be stabilized

- e) Restricting vehicle speeds and travel routes on the Site
 - f) Covering truck beds transporting soils off-site/on-site to prevent dust generation
 - g) Regularly scheduled sweeping of paved areas to ensure a nuisance is not created by blowing soil, dust or debris.
12. Construction fencing shall be erected for the duration of construction, as shown on the Record Plans. Fencing shall be 6 foot wire fencing with fabric screen.
 13. Staging of equipment and material shall be located within the Project. Good faith efforts shall be made to schedule material deliveries to avoid peak traffic hours.
 14. Excavation shall be conducted according to all city and state regulations including 527 CMR. 13.00 And the Gloucester Code of Ordinances Section 13 Noise, and shall be conducted within the hours set forth in Condition #8.
 15. Sedimentation and erosion controls, as shown on the Record Plans, shall be maintained and inspected by an independent erosion control monitor on a weekly basis, or as directed by the Conservation Agent or Engineering Department and said inspections shall be reported in writing to Conservation and Engineering Departments.
 16. The applicant shall (at its own expense) be required to promptly repair any damage which applicant causes to sidewalks, street pavement, signs or other fixtures or features within the public right of way after obtaining permission from the City.
 17. The Project shall be connected to the City of Gloucester utility system for domestic water and fire flow. Final fire flows in compliance with state and local regulations shall be certified by the Fire Department.
 18. The Applicant shall follow the Operation and Maintenance Manual dated December 14, 2012, for the Project's stormwater management system. In the event that the Applicant fails to maintain the on-site stormwater management system in accordance with such Plan, the DPW shall give written notice of such failure and the Applicant shall have twenty (20) days to repair the cited failure. In the event of an emergency and an inability to contact the Applicant or its successor in interest, the DPW may conduct such emergency repair and the Applicant shall permit entry onto the Site to make such emergency repair. In the event the DPW conducts such emergency repair, the Applicant shall promptly reimburse the DPW for all reasonable expenses associated therewith. No entry by the DPW shall be made without prior written notice to the Applicant and without affording the Applicant a reasonable opportunity of not less than twenty (20) days as aforesaid to cure the maintenance or repair problem.
 19. The Applicant shall be responsible for Site security during and following construction. The Applicant shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Site, as directed by the Gloucester Police Department.

20. Following construction of the Project, the applicant shall provide an "as-built" site plan to the Engineering Department, Building Department and Community Development Department prior to the issuance of a certificate of occupancy for the Project in accordance with applicable regulations. The applicant shall provide a separate as-built plan depicting the water mains and services and sewer mains and facilities to the Engineering Department demonstrating compliance with the Record Plans and installation specifications. These plans shall also be submitted in electronic format.
21. The applicant shall actively recruit in Gloucester for all open staff positions including making such efforts as advertising jobs in the local Gloucester newspapers and having a job fair in Gloucester for Gloucester residents
22. Construction shall commence within 2 years of the granting of this special council permit, as affected by state law.
23. That the Agreement between Beauport Gloucester, LLC and the City of Gloucester that was presented to the City Council on February 25, relating to conveyance of the beach parcel and contribution for off-site improvements is incorporated into this special permit (see Appendix 4) and any violation of the Agreement would be grounds to revoke this permit.
24. Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements (redacted as to financial terms) or copies of deed(s) for such parcel(s) shall be delivered to the Building Inspector, before a building permit is issued for the applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Building Inspector's determination that this condition has been satisfied shall be conclusive.
25. If the Applicant wishes to modify the approved Record Plans, it shall submit proposed modifications in accordance with the provisions of GZO Section 1.5.13 and/or the provisions of the Permit. Where such modification is deemed substantial, the same standards and procedures applicable to an original application for a special permit approval shall apply to such modification and review, and recommendation by the Planning Board and public hearing by the City Council; provided, however, that the Building Inspector may determine that a proposed modification is insubstantial and approve the same.
26. The Building Inspector, in consultation with the Conservation Agent, Planning Director, and the Director of Public Works shall determine whether any modifications to the Project are substantial or insubstantial. In making such determination, the following shall be presumed to constitute substantial modifications, subject to confirmation by the City Council by majority vote at a public meeting:

- a) Changes to the building or grading that increase the building's height beyond that shown on the Record Plans;
- b) Changes to the building that increase the total floor area of the Project beyond that shown on the Record Plans;
- c) Changes to the architectural character of the buildings shown in the Record Plans.

Authorization to modify the Record Plans shall be obtained prior to any substantial modification in the field.

Appendix 2 Parking Plan Conditions

The City Council adopts the parking management plan submitted by the applicant dated December 12, 2012. These conditions are binding on the Applicant and are part of the Special City Council Permit Decision:

1. As recommended by the Planning Board, Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements, (redacted as to financial terms) or copy(s) of deeds for such parcels shall be delivered to the Building Inspector, before a building permit is issued for the Applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Inspector of Buildings determination that this condition has been satisfied shall be conclusive.
2. During busy periods, use of the garage spaces will be reserved primarily for Hotel guests, assisted and managed by the valet/parking manager. The surface parking spaces will be available for short term visitors and users of the restaurant and multi-use facilities.
3. During the peak busy season, on-site parking may be limited to one vehicle per room.
4. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand.
5. At peak times, valet service will be used to efficiently park vehicles in the garage. Managed parking will be done so as not to block circulation lanes.
6. Off-site parking, when needed, will be made available for employee parking or for parking for Hotel guests who do not anticipate needing their cars on a daily basis. A van can be utilized to provide shuttle service for employees and guests when off-site parking is required.
7. Groups using the Hotel for meetings or functions, particularly during peak seasons will be encouraged to arrive and depart in limousines and small buses and trolleys.

Appendix 3 Order of Conditions

The City Council adopts as its own, the following Order of Conditions, as modified, that have been recommended by the Conservation Commission as their Attachment "A". These modified conditions are to be binding on the Applicant and are a part of the Special City Council Permit Decision:

Attachment A
CITY OF GLOUCESTER, MA CONSERVATION COMMISSION
ORDER OF CONDITIONS

Applicant: Beauport Gloucester, LLC March 6, 2013
Location: 47-61 Commercial Street, Gloucester, MA DEP FILE #028-2232 and
City of Gloucester Wetlands Ordinance

The property site is defined as the property located at 47-61 Commercial Street in the City of Gloucester, Massachusetts, which is shown in part as Lot 33 on the City of Gloucester Assessor's Map 1. The upland parcel contains about 1.85 +/- acres of land. The property is described in a deed dated July 7, 2011 and recorded with Essex South District Registry of Deeds in Book 30521, Page 84, together with applicant's rights in the beach and flats thereto belonging.

The activity is defined as the construction of a 101-room hotel along with the construction of a seawall, walkway, utilities, construction of entrance and egress, parking areas and the construction of a stormwater management system, all as shown on the approved plans. Portions of the work lie within the 100' buffer of the coastal bank, 100' foot buffer to the coastal beach, and within land subject to coastal storm flowage.

After conducting public hearings, conducting a site visit and obtaining professional review the Gloucester Conservation Commission has found as fact that portions of this property are defined as Coastal Beach and Land Subject to Coastal Storm Flowage. There are also areas defined as Coastal Bank, Land Under the Ocean, Shellfish Beds and Eelgrass Beds located seaward of the Coastal Beach fronting the property. The locations of the Coastal Resource Areas on the property were the subject of an Order of Resource Area Delineation, DEP File #28-2211 issued by the City of Gloucester Conservation Commission on September 14, 2012., the Gloucester Conservation Commission has found as matter of fact that a portion of the proposed project is subject to the Wetlands Protection Act and the City of Gloucester Wetlands Ordinance, Chapter 12 as well as the 2008 Massachusetts Department of Environmental Protection Stormwater Regulations.

Special Conditions:

1. No work shall commence on the affected property until all appeal periods pertaining to this order have elapsed. After the expiration of all such appeal periods in accordance with General Condition 9 on page 3 of this Order of Conditions and prior to commencement of any work on the affected property, this Order of Conditions must be recorded at the Southern Registry District of

the Essex County Registry of Deeds. Failure to record this Order of Conditions will result in automatic revocation of this Order as provided by General Condition 1 on page 7 of this Order of Conditions.

2. The Gloucester Conservation Commission shall be notified in writing within fifteen (15) days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance. In conjunction with the transfer of ownership, interest, or control of the property subject to this Order and/or transfer of contract to perform the work conditioned by this Order, the applicant shall submit to the Gloucester Conservation Commission a statement signed by the successor(s) in ownership, interest or control of the property or contract to perform the work that she/he is aware of an outstanding Order of Conditions on the site, has received a copy of this Order of Conditions and has accepted responsibility required by General Condition 17 on page 5 of this Order of Conditions.
3. This Order shall be made part of all construction contracts and subcontracts dealing with the work proposed, and the requirements of this Order of Conditions shall supersede any conflicting contract requirements. The contractor or contractors responsible for the project's completion shall understand and be notified of the requirements of this Order of Conditions. Any person performing work on the activity that is the subject of this Order of Conditions is individually responsible for understanding and complying with the requirements of this Order of Conditions.
4. The contractor, contractors, or other individual(s) in charge of work on the site shall have a copy of this Order of Conditions, as well as all approved plans and documents referenced in Section A 8 of this Order available at the on-site office upon commencement of any site work and shall make the plans and documents available to any person doing work on the site at all times.
5. Prior to any work being done on the project site, the applicant shall inform the Gloucester Conservation Commission in writing of the names, addresses, business, mobile and home telephone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this Order and his/her alternate. The notification shall occur at least 48 hours prior to commencement of any work on the site. The 48 hours shall not be over weekends or holidays. The applicant shall also notify the Commission in writing of any changes in this information.
6. All work shall be conducted in strict accordance with the Notice of Intent and approved plans and supporting documentation unless otherwise specified in this Order of Conditions, which shall be the controlling document. Any other or additional activity in areas within the jurisdiction of the Gloucester Conservation Commission will require separate review and approval by the Conservation Commission.
7. If the Gloucester Conservation Commission finds, by majority vote, any changes as referenced in General Condition 14 on page 4 of this Order of Conditions to be significant and/or to deviate from the original plans, the Notice of Intent, or this Order of Conditions, the applicant shall provide written notice to the Gloucester Conservation Commission for approval prior to implementing the change in the field. The Commission shall determine whether the change is

*Beauport Gloucester, LLC
Special Council Permit Decision
Appendices*

significant enough to require a new Public Hearing and/or the filing of a new Notice of Intent within 21 days. If a new public hearing is required or a new Notice of Intent is required these shall all be conducted and advertised and noticed to the abutters at the expense of the applicant, in order to take testimony from all interested parties. Within 21 days of the close of said hearing, the Commission shall issue an amended or new Order of Conditions.

8. Any material errors found in the plans or information submitted by the applicant shall be considered as changes, and the procedures outlined in General Condition 14 and Special Condition 7 above shall be followed.
9. No on-site wells for irrigation shall be constructed within 100 feet of any Coastal Resource Area without the filing of a new Notice of Intent with the Gloucester Conservation Commission.
10. Issuance of these conditions does not in any way imply or certify that the site or adjacent areas will not be subject to flooding, storm damage, or any other form of water damage.
11. The applicant agrees with the Gloucester Conservation Commission's position that the Order of Conditions as written, individually or as a group, protects the Interests of the Act. In the event that an Enforcement Order is issued to the applicant and/or the property owner and the applicant and/or the property owner fails to act after five (5) business days from the receipt of said Enforcement Order, the Gloucester Conservation Commission may satisfy the requirements of the Enforcement Order and the applicant agrees to reimburse the Gloucester Conservation Commission for all administrative costs and other expenses required to satisfy the Enforcement Order including but not limited to all costs incurred by the City due to the use of its own resources or the use of outside resources including the employment of experts, specialized contractors or any other individual or organization it deems necessary to satisfy the requirements of the Enforcement Order.
12. By accepting this Order of Conditions the Applicant, the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project pursuant to Condition 15, with or without probable cause or prior notice, and until a Certificate of Compliance is issued. After a Certificate of Compliance is issued the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project, with or without probable cause or prior notice for the purpose of monitoring compliance with those Conditions of this Order of Conditions which remain in effect in perpetuity. The Agent or members of the Gloucester Conservation Commission or their designees and consultants will follow the Owner's on-site check-in and safety procedures.
13. It is the responsibility of the applicant to satisfy all procedural requirements of all agencies which may have jurisdiction over the activity that is the subject of this Order of Conditions, and to obtain all required licenses, permits, or authorizations. These may include but are not limited to the following: a) Massachusetts Department of Environmental Protection Waterways License and other approvals, if required, b) NPDES Stormwater Pollution Prevention Permit, c)

Massachusetts Highway Department Access Permit, if required, d) City of Gloucester City Council, e) Permits from the City of Gloucester Building Department including building, wiring and plumbing permits. Copies of all such licenses, permits and authorizations shall be provided to the Gloucester Conservation Commission immediately upon receipt.

Prior to Construction

14. At least 30 days prior to any construction or activity on the site the Applicant shall submit the following revised or supplemental final engineering drawings and information to the Gloucester Conservation Commission for their Approval. As appropriate the revised or supplemental plans and information shall be signed and sealed by a Massachusetts Registered Professional Engineer, Registered Professional Land Surveyor, Massachusetts Registered Landscape Architect, Massachusetts Licensed Site Professional or Massachusetts Licensed Soil Evaluator.
15. At least 30 days prior to the commencement of any activity on this site, the applicant shall pay for the services of the Gloucester Conservation Commission's consultant for the project to perform the following services:
 - a) Review and make recommendations to the Gloucester Conservation Commission on the applicant's revised plans, information and submittals as required by this Order of Conditions;
 - b) Attend the pre-construction meeting with the Gloucester Conservation Agent;
 - c) Inspect the installed erosion controls with the Gloucester Conservation Agent;
 - d) Conduct inspections of the site with the Gloucester Conservation Agent on a monthly basis while the work is being performed;
 - e) Conduct inspections of the site with the Gloucester Conservation Agent on a regular basis
16. The Gloucester Conservation Commission's consultant shall provide the Conservation Commission and the Applicant with a Scope of Services and proposed budget for the inspectional and consulting services required by this order. Upon acceptance of the proposal by the Conservation Commission, the Applicant shall fund an account administered by the City of Gloucester in the full amount of the estimated cost for the environmental monitoring at least 7 days prior to the commencement of any of the consultant's work. The consultant shall submit monthly invoices for services rendered to the Conservation Commission for approval and payment.
17. The Applicant shall submit the final SWPPP which includes all of the appendices, forms and attachments required by the 2008 NPDES General Permit for Stormwater Discharges From Construction Activities and which identifies the responsible parties. The construction period checklist should be revised to meet all of the requirements of the 2008 NPDES General Permit for Stormwater Discharges from Construction Activities. A sample inspection report form is available from the US EPA at

http://www.epa.gov/npdes/pubs/exampleswppp_residential_apppe.pdf. The SWPPP shall include a spill control and response plan.

18. The Applicant shall submit a detailed vibration monitoring plan to monitor vibrations near the Coastal Bank during the pile driving phase of the project. The plan shall be prepared by a Massachusetts Registered Professional Engineer experienced in pile driving operations and monitoring vibrations. Results of the monitoring shall be reported to the Gloucester Conservation Commission on a weekly basis. At no time shall the peak particle velocity adjacent to the coastal bank exceed 0.75 in/sec.
19. Design calculations supporting the final seawall construction plans and certification of the structure by a Massachusetts Licensed Engineer responsible for the design of the wall shall be submitted to the Conservation Agent for the City files prior to construction. Final Construction Plans depicting the Seawall and associated details shall be submitted by the design engineer noted above. Said plans shall incorporate any and all revisions requested by the Conservation Commission and agreed to by the applicant.
20. The ramps and stairway to the beach shall be ADA compliant and shall be designed to account for normal fluctuations of the level of sand.
21. The applicant shall coordinate with the City DPW and their engineers on the details of the connection at the east end of the seawall.
22. All of the above items shall receive Approval from the Gloucester Conservation Commission prior to any work on the site. The applicant shall pay for the Conservation Commission's NOI consultant, who will review and make recommendations to the Conservation Commission on the applicant's revised plans, information and submittals.
23. At least 7 days prior to the commencement of any construction or activity on the project site, an on-site Preconstruction Meeting must be held with the contractor, designated agent and the Conservation Agent and the selected environmental monitor to review this Order of Conditions to ensure that all conditions of this Order are understood and review the construction sequencing.
24. At the Preconstruction Meeting, the Applicant shall submit the documents listed below. These documents shall be updated regularly until construction on the project is complete. Documents shall include the following:
 - a) Photographs depicting the project site along the Coastal Resource Areas.
 - b) Results of sand density testing and grain size analysis. This shall form the basis of the sand specification required below.
 - c) Sand specifications shall be prepared by the applicant's engineer and submitted at the preconstruction meeting

- d) Construction sequencing plan.
 - e) Construction schedule.
25. At least 7 days prior to the commencement of any activity on the project site the applicant shall notify the Gloucester Conservation Commission in writing that activity is commencing on a date certain. The 7 calendar days shall not include holidays.
 26. No clearing of vegetation, including trees, or disturbance of soil on any areas within 100 feet of any wetland resource area shall occur prior to the Preconstruction Meeting, except such minimal disturbance required in order to stake the required erosion control lines.
 27. After the Preconstruction Meeting and prior to any construction at the site, all erosion controls shall be installed along the approved staked line. The erosion controls shall consist of devices as located and detailed on the approved plans.
 28. The construction and associated protective measures for the installation of the sheet pile wall, demolition of the existing building, placement of armor stone and the construction of ramps and stairways, shall be monitored and inspected by an independent engineering/environmental monitor as chosen by the Conservation Agent on a schedule determined and directed by the Conservation Agent. Periodic reports by the Monitor shall be filed with the Conservation Agent.
 29. During demolition, and during construction of the seawall, the Applicant's consultant shall submit weekly monitoring reports with photos of the work and site, a description of work that took place that week and a description of work planned for the following week.
 30. Prior to pouring the concrete for the seawall cap, the condition of the protective coating shall be inspected and any deterioration of the steel sheet piles shall be addressed.
 31. Sand brought to the site for placement on the beach shall be compatible in color, shape and grain size with existing sand on the beach. A material specification shall be filed with the Conservation Agent prior to construction.
 32. Construction safety fencing shall be installed prior to construction as outlined on the project plans and shall be modified as directed by the City Staff. The limits of the fencing adjacent to Coastal Resource Areas may be phased to maximize protection to the Coastal Resource Areas during the demolition of the existing building. Temporary protective fencing may be placed on the beach portion of the site at the Conservation Agent's direction if it is determined that further beach protection is necessary during demolition or during seawall construction.
 33. No construction activities or alterations shall occur to the westerly end of Pavilion Beach on the seaward side of the upland parcel. This area shall be left in a "natural" state.
 34. The designated inspector under the NPDES Permit and the SWPPP shall provide the Gloucester Conservation Commission with copies of all SWPPP Inspection Reports. Inspections shall be

conducted at the intervals required under the NPDES. The inspection reports shall address the current condition of erosion and sedimentation controls; describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail.

35. The Applicant's Engineer shall provide the Gloucester Conservation Commission with a minimum of two (2) progress reports per month or at intervals as agreed with the Conservation Agent when work is ongoing directly adjacent to the Coastal Beach or work on the stormwater management system is ongoing. Progress reports shall indicate what work has been completed and what work is anticipated to be done over the next reporting period. The report shall also address the current condition of erosion and sedimentation controls and shall describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail. Failure to provide these reports within two days of the Applicant's Engineer's inspection of the site shall constitute a violation of this Order of Conditions and the Commission may issue an Enforcement Order requiring that all work be ceased until the reports are provided and the site is inspected by the Gloucester Conservation Commission, the Commission's Agent and/or the Commission's consultant.

During Construction

36. Accepted engineering and construction standards shall be followed in the completion of this project. This includes proper installation and maintenance of Erosion & Sediment Control (E&SC) Best Management Practices (BMPs) per applicable DEP, US Department of Agriculture Natural Resource Conservation Service (NRCS), and/or manufacturers' guidelines.
37. The erosion controls shall be maintained per General Condition 18 on page 8 of this Order of Conditions until the referenced stabilization efforts are inspected and approved in writing by the Commission. Upon completion of the project, the applicant shall remove and discard all E&SC materials determined to be detrimental to the resource areas and restore the soil and vegetation beneath the barriers to pre-disturbance condition.
38. The applicant shall have on hand at the start of any soil disturbance, removal or stockpiling, an emergency supply of erosion control materials consisting of a minimum of 200 feet of filter mitts in good condition and sufficient stakes for securing the filter mitts. The additional supply of filter mitts and stakes shall be used only for the control of emergency erosion, and shall be installed in accordance with the details shown on the approved plans. An emergency-use only reserve of products for other methods of E&SC, if previously approved in writing by the Commission, may be substituted. (See Standard Condition 17.)
39. The Owner must maintain erosion control devices and check on a weekly basis and after any rain event totaling more than 0.5" of precipitation over any 24-hour period. Filter mitts shall be maintained and replaced on an as-needed basis, unless the Gloucester Conservation Commission determines otherwise, to prevent the passage of accumulated sediments to resource areas

downgradient of the site and the work areas. Accumulated sediment upgradient of erosion control devices shall be removed immediately if its depth exceeds 6 inches or every two weeks during construction.

40. The erosion control specifications provided in the Notice of Intent and the erosion control provision in the Order of Conditions will be the minimum standards for this project. Erosion control devices may be modified based upon experience at the site. Additional or modified erosion control measures may be required by the Gloucester Conservation Commission at any time before, during and after construction. These will be maintained until the Applicant's Engineer and a member or agent of the Gloucester Conservation Commission agree that they are no longer needed, at which time they will be removed, using mutually satisfactory removal procedures.
41. All existing catch basins and stormwater inlets and all new catch basins and stormwater inlets (immediately upon their installation) on and immediately adjacent to the site shall be protected by Silt Sacks to prevent sediment from entering the stormwater drainage system. Silt Sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order of Conditions have been permanently stabilized and the Gloucester Conservation Commission and/or Staff has formally approved their removal. Filter fabric placed under the inlet rim is not an acceptable substitute for silt sacks.
42. The contractor shall install temporary erosion controls on all stormwater drainage system and stormwater management system inlet and outlet pipes until the construction of the systems and their tributary pre-treatment measures has been completed and all surfaces on the site have been stabilized.
43. Until the proposed impervious surfaces and travel ways within the site have been paved, a temporary stabilized construction entrance for the site shall be maintained.
44. Street sweeping to eliminate any siltation and deposited material on paved surfaces on and immediately adjacent to the project site (on Commercial Street and Fort Square) during construction will be provided by the Owner and/or his Contractor as necessary until all affected surfaces of the site have been stabilized.
45. All equipment shall be operated and maintained to prohibit alterations of Coastal Resource Areas not allowed by this Order of Conditions and to minimize disturbance in buffer zones to those areas clearly identified on the plans, demarcated in the field, and permitted by this Order of Conditions. No equipment is to enter or cross any Coastal Resource Area (other Land Subject to Coastal Storm Flowage) at any time. At the end of each work day all equipment shall be parked outside of the 100 foot resource area buffer zone as shown on the plans.
46. Immediately upon the completion of the foundation for the proposed building, the applicant shall engage a Registered Professional Engineer or Land Surveyor to prepare an as-built plan accurately depicting the foundation location and its proximity to wetland resource areas and certifying that the completed foundation is located as shown on the approved plans. This plan shall be submitted

to the Gloucester Conservation Commission Agent for approval prior to proceeding with any further work on the building.

47. Grading shall be performed in accordance with the approved plans for the project and shall not direct runoff to the property of others, unless such conditions already exist. This project shall not increase runoff, nor cause flood or storm damage to abutters or the property of others.
48. If any dewatering activities are necessary for the project, water shall not be directly released into any Coastal Resource Area or stormwater drainage system. Water from dewatering activities shall first be deposited into and filtered by a Dirt Bag® or similar device such as a sediment sump surrounded by a crushed stone and filter fabric dike or a stilling basin to remove sediment before the water is released. This requirement also applies to discharge of any and all construction-generated runoff, whether released by gravity or pumped.
49. The area of construction shall remain in an environmentally stable condition at the close of each construction day.
50. If any of the stormwater management structures or stormwater treatment systems are to be used as sedimentation control during construction, all accumulated silt and debris shall be thoroughly removed to the naturally occurring soil and cleaned prior to final construction and final stabilization. If fill is required to bring the basin to proposed subgrade the fill shall be clean gravel fill. The stormwater management and treatment structures and/or infiltration areas shall be inspected by the Gloucester Conservation Commission and/or its agent and consultant when they have been cleaned and prior to adding any fill or surfacing materials.
51. Prior to final installation of the subsurface infiltration structures, any fill and accumulated silt and debris shall be removed to the naturally occurring soil. If fill is required to bring the infiltration area to proposed subgrade, the fill shall be Title 5 fill. The installation of the subsurface infiltration structures shall be inspected by the Gloucester Conservation Commission and/or its agent when they have been cleaned down to the natural soil and prior to adding any fill or surfacing materials.
52. Prior to the creation of any impervious surfaces for any building or structure (roof), parking areas, roadways, walkways within a particular phase of the project, all stormwater drainage collection, treatment and control systems including infiltration and detention structures serving that phase shall be fully constructed and functional.
53. Beach profile monitoring shall be required immediately after the seawall is constructed and annually for three years post-construction to determine if the seawall is causing any adverse impacts to the coastal beach. Beach profile monitoring shall consist of elevation profiles taken from the face of the seawall across the coastal beach to approximately the low tide line. Profiles should be taken approximately every 100 feet along the coastal beach starting at the southeasterly edge of the property to just beyond the westerly property line. Adverse impact to the coastal beach will be deemed to be changes that cannot be attributed to normal seasonal fluctuations to the coastal beach.

54. The applicant will be required to submit an annual report by a qualified coastal geologist or coastal engineer along with these surveys. This report will summarize the surveys with a discussion of any profile changes and whether the coastal geologist/ coastal engineer deems that these are natural changes or whether changes have occurred that are deemed to be adverse impacts resulting from the seawall construction. If it has been determined based on these surveys that the seawall has caused adverse impacts to the coastal beach, the applicant will be required to perform beach nourishment with compatible sediment to remedy the impacts.
55. The applicant shall provide the Commission with an illicit discharge statement prior to discharging any stormwater to post-construction Best Management Practices (BMPs).
56. All plantings on the site must be regionally native and shall not be non-native invasive plants.
57. If the work undertaken for this project results in the introduction of or growth of invasive species, it shall be the Applicant's responsibility to remove the invasive species (including the roots) and re-establish native vegetation within the affected areas.
58. All debris, fill and excavated material shall be stockpiled as far away from Coastal Resource Areas as possible and surrounded by a double row of staked filter mitts to prevent sediment from surface runoff entering the resource areas. At no time shall any debris or other waste material be buried or disposed of within a Coastal Resource Area or Coastal Resource Buffer Zone.
59. No unsuitable material of any kind (stumps, roots, trash, debris, etc.) may be buried, placed or dispersed on the property.
60. All construction debris that is not recycled for appropriate on-site use shall be removed from the site. All void areas shall be brought to grade and any imported backfill material shall be tested for contaminants prior to being imported to the site. The results of the testing of all imported soil testing shall be submitted to the Gloucester Conservation Commission along with a certified statement by a Massachusetts Licensed Site Professional that all soil materials imported to the site are clean and free from contamination.
61. Concrete trucks and other vehicles shall not be washed out in any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), Buffer Zone, or into any stormwater drainage system components. Any deposit of cement or concrete products into a Buffer Zone, or Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage shall be immediately removed and the area shall be restored.
62. During and after work on this project, there shall be no discharge or spillage of fuel, oil, or other pollutants into any Coastal Resource Area or Buffer Zone. Also, there shall be no refueling of mechanical equipment within a Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, Equipment for fuel storage and refueling operations shall be located outside all areas within the jurisdiction of the Gloucester Conservation Commission (excepting

Land Subject to Coastal Storm Flowage). The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism.

63. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
64. Any future work, excluding routine landscape maintenance, within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone other than that permitted under this Order of Conditions, must be reviewed and approved by the Gloucester Conservation Commission. In the event sand replenishment is required in the area in front of the seawall, such replenishment shall be permitted on an as needed basis under this order with notice to the Conservation Agent of the time, amount, and need for such replenishment.

Certificate of Compliance

65. Upon completion of the work on the project, the applicant shall request in writing a Certificate of Compliance from the Gloucester Conservation Commission and shall submit the following information with the request:
66. A certification from a Massachusetts Registered Professional (Civil) Engineer stating that construction complies in all respects with this Order of Conditions and setting forth deviations, if any exist.
67. Two sets of field surveyed as-built site plans prepared, signed and stamped by a Massachusetts Registered Professional Land Surveyor or a Massachusetts Registered Professional (Civil) Engineer. The as-built plan shall include, at a minimum, and as applicable to the project, elevations of all pipe inverts and outlets, pipe sizes, materials, and slopes; all other drainage structures, limits of clearing, grading and fill; all structures, pavement and spot elevations and 2 foot contour elevations within 100 feet of Coastal Resource boundaries; locations of wetlands boundaries; all alterations within Coastal Resource areas; and all dates of fieldwork. The as-built survey shall include a statement that the survey was made on the ground under the direct supervision of the Surveyor/Engineer and that the survey conforms to all of the requirements of 250 CMR 6.02.
68. A CD containing the electronic drawing file for the As-Built Survey in .pdf and AutoCAD 2004 formats.
69. The as-built plans shall locate at least three control points and at least three benchmarks.
70. Post-construction photographs demonstrating compliance with this Order of Conditions, including established vegetation where required.

71. All fees for the Gloucester Conservation Commission's Consultant required by this Order of Conditions shall be paid in full by the Applicant prior to any request for a Certificate of Compliance.

Perpetual Conditions

Conditions 72 through 77 shall survive the expiration of this Order of Conditions and shall be included as continuing requirements in perpetuity on the Certificate of Compliance and the property owner shall be the party responsible for compliance with these conditions. These conditions shall survive the Order of Conditions and shall run with the title of the property in Perpetuity. The Gloucester Conservation Commission or its agent shall have permanent rights of entry onto the property to check on compliance with these Conditions.

General

72. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Wetland Resource Area, or within the 100-foot Coastal Buffer Zone except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
- a) The expanded beach area seaward of the seawall shall be monitored on an annual basis for the purposes of determining if there has been loss of sand over the course of natural beach cycles. In the event it is determined that there has been a loss of sand due to reasons other than natural beach cycles, the applicant shall be allowed to perform beach nourishment programs upon written notification to the Gloucester Conservation Commission. Such nourishment shall result in a sand condition similar in nature to the condition prior to sand loss with respect to color, grain size and density of material.
73. Any new owner or successor in title shall, within 30 days of assuming ownership, provide a letter to the Gloucester Conservation Commission acknowledging that they understand their obligations under this Order of Conditions. This requirement shall be recorded in the deed and on subsequent deeds for the property.

Stormwater Management

74. The applicant shall provide the Gloucester Conservation Commission with a copy of any Ownership documentation along with the contact name and telephone number for the agent or property manager. The property owner(s) are responsible for the Operation and Maintenance Plan, of the stormwater collection, treatment and management systems on the property.
75. The applicant shall comply with all requirements of the Operation and Maintenance Plan filed with the Order of Conditions. The applicant shall maintain and repair the stormdrain collection system and appurtenances in order to ensure that the design capacity, the storm water treatment and pollution abatement capacity, and structural integrity of these facilities are maintained. The applicant shall maintain all stabilized surfaces as designed including maintenance and repair of

pavement and maintenance of landscaped areas maintaining a vigorous growth of all plant materials. Catch basins and stormwater treatment units shall be inspected and cleaned and roadways, driveways and sidewalks shall be swept at intervals specified in the O&M Plan. Accumulated sediments shall be removed from sumps and floatable wastes shall be removed from the surface of every catch basin at intervals specified in the O&M Plan. All drain pipes shall be inspected and sediment and debris removed at intervals specified in the O&M Plan. Sediments and wastes shall be disposed of in accordance with all applicable federal, state, and local laws.

76. Snow shall not be stockpiled on the property. Snow shall be removed from the site upon completion of plowing activities and disposed of in accordance with proper procedures.
77. The applicant and his successors in ownership shall file written reports of the inspections, cleaning and stormwater maintenance along with an up to date certified illicit discharge statement with the Gloucester Conservation Commission on an annual basis, by November 1st beginning the year the binder course of pavement is first installed.
78. Any issues which arise at any time affecting the function of any components of the Stormwater Management system on the site, including the underground infiltration system, the biofiltration swales or the constructed stormwater wetlands must be addressed immediately by the property owner at his sole expense.

APPENDIX 4 Beach and Development Agreements

Agreement

This Agreement (the "Agreement") is made as of April 30, 2013, by and between Beauport Gloucester, LLC, a Massachusetts limited liability company ("Beauport") and the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts (the "City").

WHEREAS, Beauport is the owner of certain uplands now known as and numbered 47-61 Commercial Street in Gloucester and claims to have ownership of certain beach and flats seaward of the uplands (the "Property"); and

WHEREAS, the City of Gloucester disputes Beauport's claim of ownership of Pavilion Beach, and claims that it owns the Beach, and the City of Gloucester believes that Pavilion Beach is one of the oldest public bathing beaches in the United States of America; and

WHEREAS, Beauport is applying for permits in order to be able to construct a hotel and appurtenances (the "Project") within a portion of the Property under the Gloucester Zoning Ordinance (the "Ordinance"); and

WHEREAS, the Project is shown on certain plans (which may be amended and supplemented, from time to time) submitted to the Gloucester City Council as part of the City Council Special Permit processes and other provisions of the Ordinance; and

WHEREAS, the City has requested that Beauport convey to it that portion of the Property comprising the beach and flats known as Pavilion Beach (the "Pavilion Beach Portion"); and

WHEREAS, Beauport is agreeable to deeding the Pavilion Beach Portion to the City for \$1.00, subject to the terms and conditions set forth below; and

WHEREAS, independent of the Project, the City intends to make certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area (the "Infrastructure Improvements"), and may also make improvements to the West End Intersection (collectively with the Infrastructure Improvements, the "Improvements"); and

WHEREAS, Beauport has already contributed \$600,000.00 to the City for such Infrastructure Improvements, and is willing to contribute an additional \$1,400,000.00 to the City for the Improvements, subject to the terms and conditions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Beauport and the City agree as follows:

- (i) The deed (the "Deed") to the City of the Pavilion Beach Portion will be in the form attached hereto as Exhibit One which is made a part hereof;
- (ii) The Deed will be executed and delivered in escrow to the City within ten (10) days of the filing in the City Clerk's Office of a City Council Special Permit approving the Project;
- (iii) The City shall be entitled to remove the Deed from escrow and record it after the Building Inspector confirms to the City and to Beauport, that the foundation, seawall, stairs and ramps have been completed;
- (iv) In mitigation of the cost and expense to the City of making the Improvements necessary for the construction and uninterrupted use of the Hotel, Beauport shall make the additional \$1,400,000.00 contribution to the City for the Improvements in three installments, one within ten (10) days of the issuance of a building permit for the Project, one six (6) months thereafter, and the final one within ten (10) days of the issuance of a final certificate of occupancy for the Project; and
- (v) This Agreement shall bind the parties and their successors and assigns, including any of Beauport's successors in title to the Property;
- (vi) It is further agreed that if Beauport shall make customary beach amenities available (which may include without limitation, towels, beach chairs or umbrellas or the like) to its guests, Beauport shall make the same available to members of the general public;
- (vii) Except as provided in the Deed, at no time during the construction of the Project, will Beauport interfere with the public's right to use Pavilion Beach.

Beauport's obligation to convey the Property to the City and to make the additional \$1,400,000.00 contribution for the Improvements shall automatically terminate, and the City shall promptly return the Deed to Beauport, if Beauport notifies the City in writing that it is not proceeding with the Project. In such event, the City and Beauport agree that the City Council Special Permit shall be null and void. The failure of the City to enforce any provision of this Agreement shall not be deemed a waiver by the City of its enforcement rights, unless it issues a waiver in writing.

Time is of the essence of this Agreement.

All notices to the City shall be addressed to the Mayor and the City Council.

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

Executed in duplicate under seal as of the date first above written.

BEAUPORT GLOUCESTER, LLC

By: 
Name: Sheree Zink
Title: Vice President

CITY OF GLOUCESTER

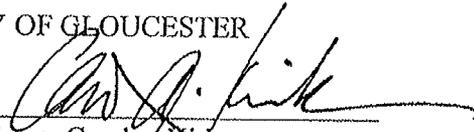
By: 
Name: Carolyn Kirk
Title: Mayor

Exhibit One

DEED

Beauport Gloucester, LLC, a Massachusetts limited liability company ("Grantor"), for One Dollar (\$1.00) consideration paid, grants to the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts ("Grantee"), all of its right, title and interest in and to that certain parcel of beach and flats in Gloucester, Essex County, Massachusetts (the "Premises") described in Exhibit A, attached hereto and incorporated herein by reference, for use, in common with others entitled thereto, for all purposes for which public beaches are now or hereafter used in the City of Gloucester.

Grantor reserves the perpetual right and easement, as appurtenant to Grantor's Remaining Land, as defined in Exhibit A, to utilize the Premises as a public beach and for all purposes which are not materially inconsistent with the rights of the general public to utilize the Premises as a public beach. No rights reserved by Grantor hereunder shall be exercised in a manner which is materially inconsistent with the general public's rights to utilize the Premises as a public beach, other than as provided herein.

Subject to obtaining all required permits therefor, the Grantor reserves the perpetual right and easement, from time to time, as appurtenant to Grantor's Remaining Land, to use, maintain, alter, repair, add to, remove, construct, install and replace the following improvements, which now exist or which Grantor, or its successors and assigns may hereafter locate in whole or in part on the Premises and/or on Grantor's Remaining Land:

- (1) Revetments, seawalls, and/or retaining walls including any already in existence;
- (2) Walkways, including stairways and ramps, providing access to the Premises from Grantor's Remaining Land and/or Fort Square, including any already in existence;
- (3) Any other coastal structures which are reasonably necessary to protect Grantor's Remaining Land and any improvements now and hereafter thereon, or to enable occupants of Grantor's Remaining Land to have reasonable access to and from the Premises; and
- (4) Any other improvements which are required or mandated by any governmental agency or entity having jurisdiction.

Notwithstanding anything to the contrary herein contained, Grantor, subject to obtaining all required permits therefore, in exercising any of its rights hereunder, shall have the temporary right, from time to time, to bring onto the Premises, such personnel, equipment and materials as may be reasonably necessary or appropriate for Grantor to so exercise its rights. In such instances, the general public's right to utilize the Premises, or portions thereof, may be

Address of Premises: Rear of 47-61 Commercial Street, Gloucester, MA 01930
Address of Grantee: Gloucester City Hall, 9 Dale Avenue, Gloucester, MA 01930

temporarily interrupted. In addition, any improvements constructed or installed on the Premises by Grantor which are approved by the Commonwealth of Massachusetts or by the Grantor, or which are required by or mandated by any governmental agency or entity, shall be presumptively deemed not to be materially inconsistent with the general public's rights to utilize the Premises as a public beach.

Grantor shall include its employees, guests, invitees and licensees and its successors and assigns.

No rights to use the Grantor's Remaining Land are being granted or created, including, but not limited to, any rights by implication or necessity.

WITNESS the execution hereof under seal this ____ day of _____, 2013.

Beauport Gloucester, LLC

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

On this ____ day of _____, 2013 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were a _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ for Beauport Gloucester, LLC.

Notary Public

Commission expires:

Exhibit A to Deed from Beauport Gloucester, LLC to the City of Gloucester

The "Premises" are that certain parcel of land located southwesterly of, but not on, Commercial Street in Gloucester, Essex County, Massachusetts consisting of beach and flats and shown as Parcel 2 on a plan (the "Plan") entitled "Approval Not Required, Plan of Land, 47-61 Commercial Street, Gloucester, MA" by Coler & Colantonio dated January 23, 2013, to be recorded herewith.

Parcel 1 on the Plan is referred to in the Deed to which this Exhibit is attached as "Grantor's Remaining Land".

For Grantor's title to the Premises and Grantor's Remaining Land, see Deed dated July 7, 2011, recorded with the Essex South District Registry of Deeds in Book 30521, Page 84 and Confirmatory Deed dated July 15, 2011, recorded with said Deeds in Book 30531, Page 311.

Supporting Documents in regard to Special City Council Permit Application #2014-004 for Modification of Special Council Permit (SCP2012-010) for Commercial Street #47-61 under GZO Sec. 5.25 Hotel Overlay District are on file in the City Clerk's Office and may be viewed during regular business hours.