

ROSS C. BRACKETT  
HERMAN S. LILJA, PhD

SARAH J. WILKINSON, CHAIR

PAUL F. MURPHY  
DENISE C. DONNELLY

BOARD OF SELECTMEN

# TOWN OF ROCKPORT

MASSACHUSETTS 01966-1537

TOWN OFFICE BUILDING  
34 BROADWAY

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MITCHELL R. VIEIRA  
TOWN ADMINISTRATOR

November 13, 2023

To the Residents of Rockport:

The Board of Selectmen met multiple times over the last several months to work out the details of the new lease that is released today. We are pleased to present a new 10-year lease for the homes that reside on Town-owned land surrounding Long Beach.

Items to Note in the new lease\*:

*\*These are not all changes but changes we feel are notable*

- **Settlement Agreement:** The most notable change is that the new lease incorporates the provisions of the Settlement Agreement and Release the town entered into in 2018 directly into the lease. This is also noted at the bottom of page 1.
- **Surveys:** As previously discussed we have secured funding to survey all lots which has not been done since the original 1933 layout. Section 2.6 in the lease allows for the surveys to be completed as well as the cleaning up of lot lines. It also allows for the creation of additional rights of ways. Our intention is to add only one additional right-of-way path in the area of Glenmere Road.
- **Rent:** The rent increase each year will be 4% over the prior year's rent. We have also added into the lease a practice previously requested by the tenants that has been occurring for the last several years that rent may be paid in two installments.

In addition, it is our responsibility as Town leaders to acknowledge and prepare for climate change as we acknowledge and prepare for all issues that affect present and future generations. This is a Town-wide issue that we are tackling in many ways. A few of the actions we are taking that affect Long Beach directly include:

- The term "climatic event" has been added to the lease in Section 10 with other potential casualties and disasters.

- The Town, through the Department of Public Works, is planning to seek the Town's local match for FEMA mitigation work related to the 2018 storm that damaged a portion of the seawall at the upcoming Annual Town Meeting.
- We applied for and have just been awarded a Municipal Vulnerability Preparedness (MVP) program Action Grant for \$242,000 for Rockport Coastal Resiliency Planning, including Long Beach.
- We are in the process of earmarking \$25,000 of Town awarded ARPA funds for Long Beach Climate Resiliency Engineering Costs for follow-up tasks that may be identified in the above MVP process.
- We are planning to work with local and State entities on researching a potential dredging project on the Long Beach Marsh/Saratoga Creek that would restore the marsh, increase natural flood storage capacity, and serve as beach nourishment. This is an important ecosystem and one that we want to ensure stays viable.

We feel that the changes in the lease are a valuable update since the current lease that was created ten years ago. We are confident that this lease will continue the successful tenancy that many residents have enjoyed for over 100 years, while benefiting the entire Town financially. Long Beach is a public jewel that tens of thousands of people visit and enjoy year- round.

#### THE ROCKPORT BOARD OF SELECTMEN

*Sarah J. Wilkinson*

Sarah J. Wilkinson, Chair

*Ross C. Brackett*

Ross C. Brackett, Vice Chair

*Paul F. Murphy*

Paul F. Murphy

*Herman S. Lilja*

Herman S. Lilja

*Denise C. Donnelly*

Denise C. Donnelly



# **TOWN OF ROCKPORT - LONG BEACH\***

## **LEASE AGREEMENT**

### **ARTICLE I: PARTIES**

This Lease Agreement ("Lease") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the **Town of Rockport**, a municipal corporation, acting by and through its Board of Selectmen ("Town"), having an address of Town Office Building, 34 Broadway, Rockport, MA 01966, and ("Tenant"), having an address of \_\_\_\_\_

### **ARTICLE II: PREMISES**

2.1. Premises and Improvements. The Town hereby demises and leases to Tenant, and Tenant hereby leases from the Town, the parcel of land in the Town of Rockport known as Lot # \_\_\_\_\_ at Long Beach, identified on Rockport Assessors Map \_\_\_\_\_ as Lot \_\_\_\_\_ (as the same may be modified pursuant to Section 2.6, the "Land"). The Land is improved by a single-family residential dwelling and other structures, objects and improvements constructed, erected, or placed thereon by Tenant or the former tenants and/or occupants (as the same may be altered, removed or demolished from time to time, and as such other buildings, structures and/or other improvements as Tenant may now or hereafter construct, erect or place on the Land (the "Improvements"). The Land and the Improvements are referred to, together, as the "Premises."

2.2 Parking Rights. Tenant shall have parking placards to park up to two (2) non-commercial vehicles on such parking spaces as the Town may assign to Tenant from time to time (the "Parking Spaces"), which placards shall be identified by the address of the Premises, for use by Tenant and Tenant's guests only during the Permitted Use Period (defined in Section 2.3). Such Parking Spaces shall be appurtenant to and a part of the Land and shall not be assigned, subleased or otherwise transferred without the Town's prior written consent, which may be conditioned and/or withheld in its sole and absolute discretion. The Parking Spaces and the Premises are referred to, together, as the "Property."

2.3 Permitted Uses; Period of Use. Tenant shall use the Premises solely for seasonal single-family residential purposes ("Permitted Use") only from April 1 to December 1 of each Lease Year ("Permitted Use Period"). The use of the Premises from April 1 to April 14 and from October 16 to December 1 is contingent upon the execution of the Intermunicipal Agreement (IMA) between the City of Gloucester and the Town of Rockport to permit said use. Tenant shall not use the Property for any other purpose, or at any time other than the Permitted Use Period, without the prior written consent of the Board of Selectmen, which may be conditioned or withheld in its sole and absolute discretion.

\* This Lease incorporates the provisions of the Settlement Agreement and Release entered into by the Town in 2018, settling and resolving Essex Superior Court Civil Action No. 1577-00997 and No. 1777CV00144.

2.4 Condition of the Property. Except as set forth in this Lease, the Town shall have no obligation whatsoever regarding the condition of the Property (including, without limitation, the roof, foundation, structural or non-structural elements of any Improvements or the mechanical, electric, and/or plumbing systems thereof), and makes no representations or warranties, express or implied, regarding the Property. Tenant acknowledges and agrees that the Town shall have no obligation to maintain, do any work on (including remove snow or ice therefrom), or make any improvements to the Property. Tenant acknowledges that it is familiar with the condition of the Property, has inspected the Property, and is fully satisfied with the condition thereof and agrees to accept possession and/or use of the Property in "AS IS" condition. Tenant acknowledges that Tenant has not relied upon any statements, written or oral, of the Town and/or its representatives and agents that are not set forth herein as to the character or quality of the Property.

2.5 Access Road. Tenant acknowledges that the Town does not own a portion or portions of the access road to Long Beach and that Tenant may be required to pay a daily or seasonal or other fee to the owner or manager of such access road to pass and re-pass over the access road to and from the Property.

2.6 Lot Lines/Use By Others. Tenant acknowledges that the lot lines of the Land as shown on the Assessors Map or other maps or plans may not accurately reflect the location of the existing Improvements, and that buildings, structures, objects, utilities, driveways, and/or landscaping of abutters existing as of the date of this Lease may encroach into the Premises, and, further that, the Town, upon conducting a survey of the Land, may, with prior notice to Tenant, modify the lot lines of the Lot to address inaccuracies, discrepancies and/or encroachments. Tenant also acknowledges that the Town may create and/or establish public rights of way, walkways and/or paths on Long Beach and/or portions thereof, and, in connection therewith, may alter the lot lines of the Land and/or other portions of Long Beach to accommodate such access ways, provided, however, Improvements located on the Land as of the date of this Lease continue to be located on the Land leased hereby, and a survey is conducted to establish the location and dimensions of such access ways. Tenant agrees not to disturb, remove, harm or otherwise adversely affect such encroachments or interfere with the rights of others to use, occupy, maintain, repair, restore and/or replace the same. Tenant further acknowledges that abutters and other residents of Long Beach may use portions of the Land for pedestrian access to their respective lots and/or to other parts of Long Beach, and agrees not to disturb, hinder, or otherwise interfere with such access rights. Tenant further acknowledges that members of the public may cross the Land for pedestrian access only to and from the beach when Tenant is not occupying the Premises between December 1 and March 31.

### ARTICLE III: TERM

3.1 Term. The term of this Lease shall be ten (10) years, commencing on January 1, 2024 ("Commencement Date"), and terminating on December 31, 2033, unless terminated sooner in accordance with the terms of this Lease ("Term"). A "Lease Year" shall commence on January 1 of a calendar year during the Term of this Lease and terminate on December 31 of that calendar year.

3.2 Termination. Notwithstanding anything in this Lease to the contrary, if the Town, through a 4/5<sup>th</sup> vote of the Board of Selectmen, decides to terminate this Lease at any time during



the Term hereby granted, it shall give Tenant ninety (90) days written notice of the same, and, at the end of said ninety (90)-day period, this Lease and the tenancy hereby created shall cease, without recourse, in which event Base Rent shall be apportioned as of the date of termination.

#### ARTICLE IV: RENT

4.1 Payment of Rent. Tenant covenants and agrees to pay the Town, without notice or demand therefor and without any deduction or set-off whatsoever, the Rent, as such term is defined below.

4.2 Base Rent. Tenant shall pay annual base rent to the Town in the annual amount of , which shall increase on each anniversary of the Commencement Date over the prior Lease Year's rent by four percent (4%) (as adjusted annually, the "Base Rent"), as provided below:

January 1, 2024 to December 31, 2024:  
January 1, 2025 to December 31, 2025:  
January 1, 2026 to December 31, 2026:  
January 1, 2027 to December 31, 2027:  
January 1, 2028 to December 31, 2028:  
January 1, 2029 to December 31, 2029:  
January 1, 2030 to December 31, 2030:  
January 1, 2031 to December 31, 2031:  
January 1, 2032 to December 31, 2032:  
January 1, 2033 to December 31, 2033:

Base Rent for each Lease Year shall be paid, in advance, (a) in two (2) equal installments, the first on or before January 31 of each Lease Year and the second on or before May 31 of said Lease Year, or (b) in full annually on or before January 31 of each Lease Year, during the Term and, subject to the provisions of Section 12.2, for any period that Tenant remains in occupancy of the Property or any portion thereof.

4.3 Additional Rent. Tenant agrees to pay, as "Additional Rent," any and all real estate taxes assessed on the Premises or any part thereof, levies, personal property taxes, betterments or assessments, fees or charges, and any payments due to the Town under this Lease, of whatever nature, that are assessed or chargeable during the Term of this Lease in relation to the Premises and/or Tenant's use thereof, as and when the same becomes due.

4.4 Rent. Base Rent and Additional Rent are referred to, collectively, as "Rent." All Rent and other payments required to be made by Tenant to the Town under this Lease shall be paid by cash or check made payable to the "Town of Rockport" and delivered to the Rockport Treasurer/Collector at the address set forth above, or at such other place as the Town may from time to time direct by written notice to Tenant.

4.5 Interest. The Rent and/or any and all other charges or fees due under this Lease, if not paid within thirty (30) days from their issue date, shall bear interest at the rate of twelve percent (12%) per annum (computed on the unpaid and overdue amount from the date that payment is due)

for each month or portion thereof that Base Rent or the other charge/fee is late, as the case may be, until received in full by the Town.

4.6 Triple Net Lease. Tenant acknowledges and agrees that this is an absolute triple net Lease, and that, except as provided in this Lease, Tenant shall have the sole responsibility with regard to the Premises. All payments of Rent shall be absolutely net to the Town so that this Lease shall yield to the Town the Rent herein specified, free of any taxes, assessments, charges, impositions or deductions of any kind charged, assessed or imposed on or against the Premises. Other than as set forth herein, the Town shall not be expected or required to pay any such charge, assessment or imposition, maintain, or furnish any services to the Property, or be under any obligation or liability hereunder, except as expressly set forth herein. Any and all costs, expenses and obligations of any kind relating to the Premises or the condition thereof, including without limitation, all maintenance, alterations, repairs, restoration, reconstruction and replacements as hereinafter provided, which may arise or become due under this Lease, shall be paid by Tenant at Tenant's sole cost and expense.

#### ARTICLE V: UTILITIES

5.1 Water. The Premises are served by Town water. Tenant acknowledges and agrees that the Premises shall be occupied only during the period of time that public water supply is available, which the parties acknowledge is generally between April 1 through November 30 during the Lease Term. Tenant shall be responsible for payments of all water user and service charges and such other fees, charges, and assessments that may be made from time to time for the construction, maintenance, operation, improvement, repair, and/or replacement of said water supply system. Tenant shall be responsible for the maintenance, operation, repair, improvement, and replacement of the water pipes, lines and other appurtenances and/or facilities running from the water main to the dwelling on the Premises, as well as for those connections with other dwellings which may be serviced by a common water pipe with the Premises, including, without limitation, the clearing of any blockages, at its sole cost and expense.

5.2 Sewer. The Premises are served by municipal sewer. Tenant shall be responsible for payments of all sewer user fees and service charges and such other fees, charges, and assessments that may be made from time to time for the construction, maintenance, operation, improvement, repair, and/or replacement of said sewer system, including such payments that may be due under the "Intermunicipal Agreement for Wastewater Collection, Treatment and Disposal Between the City of Gloucester, Massachusetts, and the Town of Rockport, Massachusetts," dated October 5, 2000, as said agreement may be amended, supplemented, or replaced from time to time, and under such sewer regulations as the Town or the City of Gloucester may adopt from time to time. Tenant shall be responsible for the maintenance, operation, repair, improvement, and replacement of the sewer laterals running from the sewer main to the dwelling on the Premises, including, without limitation, the clearing of any blockages, at its sole cost and expense.

5.3 Other Utilities. Tenant shall be solely responsible for providing, and paying for, all other utilities of sufficient capacity to serve Tenant's use of the Premises. Tenant shall contract directly with applicable providers for all other utility services (including, without limitation, heat, hot water, telephone, cable and electricity), garbage disposal, and pay the bills therefor promptly upon receipt of the same. The Town shall have no obligation to provide any utilities (other than



water and sewer as described in this Article V) to the Premises. Tenant shall, if requested by the Town, provide the Town with evidence of payment of utilities. If Tenant fails to pay the same when due, the Town shall have the right, but not the obligation to pay the same, and to charge Tenant the costs thereof, which shall be paid by Tenant promptly upon demand, with interest thereon. The Town shall have the same remedies as to nonpayment of utility charges as it has for nonpayment of Rent.

#### ARTICLE VI: MAINTENANCE

6.1 Maintenance by Tenant. Tenant shall be solely responsible, throughout the Term of this Lease and so long thereafter as Tenant is in occupancy of the Premises, for maintaining the Premises, including, without limitation, the Improvements, in good order and condition, it being acknowledged and agreed to that the Town shall have no obligation to maintain, repair or replace the same, and Tenant shall observe the following covenants, at its sole cost and expense:

- (a) Tenant shall be responsible for mowing the grass, and shall not allow grass or other vegetation to grow in such manner so as to become a fire hazard to the Premises or any nearby property or improvements. Tenant shall be responsible for removing snow and ice from the Premises.
- (b) Tenant shall not drill, dig or construct any wells on the Premises. All existing wells shall be tested by a licensed laboratory, at Tenant's expense, for compliance with all federal, state and local drinking water standards on an annual basis on or before June 15<sup>th</sup> of each year of the Term and thereafter so long as Tenant continues in occupancy of the Premises. Copies of the aforementioned test results shall be filed on or before July 1<sup>st</sup> of each year with the Board of Health and the Board of Selectmen.
- (c) Tenant shall comply with the Long Beach Rules and Regulations promulgated by the Board of Selectmen from time to time.
- (d) Tenant shall keep the Premises in a clean and neat condition at all times. No dirt, garbage or refuse or any other substances shall be disposed of from the Property except in proper receptacles. Tenant shall not permit anything to fall or be thrown from the windows, doors, balconies or porches of the Premises. Tenant shall not permit anything to be disposed of in or on the adjoining beaches, marshes and creek including but not limited to all organic waste. Tenant shall be responsible for disposing of trash and rubbish from the Premises by purchasing transfer station tickets, engaging a private trash collector, or other lawful means.
- (f) Tenant shall not make or permit loud or disturbing noises to be made at any time, nor commit or permit any nuisance to exist on the Premises, nor do or permit anything by such persons which is unlawful, improper or otherwise offensive to, or which will interfere with the rights, comforts or convenience of other residents and/or occupants of the Long Beach area. No musical instrument, appliance, radio, phonograph, television or the like shall be operated between the hours of 11:00 P.M. and the following 8:00 A.M. in a manner so as to be heard outside the Premises.

- (g) Tenant shall not make any changes to the Premises that will divert the flow of stormwater on or from the Premises or place and install fences or benches of any kind thereon, without the Town's prior written consent.
- (h) Between December 2 and March 30, and during any extended period during the Permitted Use Period when Tenant is not using the Premises, Tenant shall: (i) not store or keep any boats, vehicles, or equipment on the Premises or the Parking Spaces, and/or (ii) keep any and all objects indoors, or, if left outdoors, properly secure the same.

6.2 Failure to Maintain. If Tenant shall fail to comply with the terms of this Lease, including, without limitation, maintaining the Premises in the condition required herein, the Town shall have the right, but not the obligation, after thirty (30) days written notice from the Town to Tenant thereof (or without notice in any emergency, immediately threatening life or property, with such notice as practicable), to do or perform such acts, work, repairs, improvements and as are required of Tenant pursuant to this Lease, and charge the reasonable cost thereof to Tenant as Additional Rent, with interest.

6.3 Landlord Repairs. Tenant agrees that the Town shall have no responsibility or liability for, and Tenant shall assume the risk of, any loss or damage or injury to the Premises, including the Improvements, or to the personal property of Tenant or any of the other Tenant Parties, from any cause whatsoever, including, without limitation, vandalism, theft or otherwise, provided, however, that nothing herein limits in any manner any remedies Tenant may have against the Town due to the negligence of the Town or its agents, employees, or contractors.

## ARTICLE VII: ALTERATIONS

7.1 Alterations. Tenant shall not make any material changes, extensions, alterations, additions, or other modifications to the Land and/or the Improvements thereon, including, without limitation, any change that would divert the flow of stormwater on or from the Premises (any of the foregoing, "Work"), without the prior written consent of the Board of Selectmen, not to be unreasonably withheld. Any and all such Work of any kind and nature shall be at Tenant's sole cost and expense. Tenant shall have no right to change or modify the Parking Spaces.

7.2 Approved Plans and Specifications. At least sixty (60) days prior to any Work, Tenant must submit to the Board of Selectmen three (3) complete sets of plans and specifications that clearly delineate all the proposed Work and obtain the Town's written approval thereof ("Approved Plans and Specifications"). The Town shall not withhold approval unreasonably, and in the event of disapproval, the Town shall give Tenant an itemized statement of reasons for disapproval. Tenant shall use reasonable efforts to cause such item to be appropriately revised as soon as possible after receipt of such notice of disapproval and resubmit the same to the Town for approval pursuant to this Section. The Town and Tenant agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such item and/or requested modifications by the other. If no response is received from the Town within said sixty (60) day period, the plans and specifications shall be deemed approved, provided that nothing herein shall be deemed approval of any Work that does not comply with the Rockport Zoning Bylaws or any other applicable federal, state or local laws, rules, regulations, or bylaws.



7.3 Construction Period. No Work shall be conducted or carried on between June 15 and September 15, inclusive, of each year, in order to preserve the peaceful enjoyment of the area for residents and other tenants.

7.4 Construction Standards. All Work must be constructed in material compliance with the Approved Plans and Specifications, using materials of good quality, and in a good, careful, proper and workmanlike manner in accordance with good engineering practices and applicable laws. Tenant will be responsible for obtaining and maintaining, at its sole cost and expense, all permits, licenses and approvals necessary for any and all Work done on or to the Premises.

7.5 Insurance. Contractors engaged by Tenant to perform any Work shall maintain worker's compensation insurance, liability insurance and automobile liability insurance from the commencement of the Work until the completion thereof, as required by law, in amounts reasonably acceptable to the Town and shall name the Town as an additional insured party. Prior to the commencement of any Work, Tenant shall require each contractor to provide the Town with a copy of the contractor's insurance certificate indicating liability insurance coverage as herein specified, and copies of any approvals, including any building permits necessary or obtained to conduct said construction. To the extent possible, Tenant shall require the contractors to obtain, for each policy of insurance secured by the contractors, provisions permitting waiver of any claims against the Town for loss or damage within the scope of the insurance.

7.6 Liens and Encumbrances. Tenant shall not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant in connection with any Work performed at the direction of Tenant and shall cause any such lien to be released of record without cost to the Town within sixty (60) days of the filing of the lien. The Town shall not, under any circumstances, be liable for the payment of any expenses incurred or for the value of any Work done or material furnished to the Premises or any part thereof, and the laborers and materialmen furnishing labor and materials to the Premises or any part thereof shall release the Town and the Premises from any liability.

7.7 Ownership of Improvements. All Improvements constructed or installed by Tenant or Tenant's predecessors shall be the exclusive property of Tenant. Tenant may at any time, at its sole option, demolish or remove any such Improvements made to the Premises, provided that Tenant restores the Premises to the same condition as prior to the alteration or addition, reasonable wear and tear and damage by fire or other casualty only excepted.

#### ARTICLE VIII: USE OF PREMISES

8.1 No Waste. Tenant shall not use the Premises in any manner that constitutes a nuisance or commit any waste. Tenant shall not permit the Premises to be used in any way which would, in the opinion of the Town, be extra-hazardous.

8.2 Compliance With Applicable Laws. Tenant shall comply with any and all applicable federal, state, and local laws, rules, regulations and bylaws. Tenant acknowledges and agrees that nothing in this Lease shall be deemed to be an agreement by the Town to issue or cause the issuance of any approval, permit or license, to waive any applicable fees or charges, or to limit



or otherwise affect the ability of the Town or any regulatory authority of the Town to fulfill its regulatory mandate or execute its regulatory powers consistent with all applicable legal requirements.

8.3 Assignment; Transfer. Tenant shall not assign, mortgage, pledge or encumber (collectively referred to as "Transfer") this Lease without the Town's prior written consent, which consent shall be exercised in the Town's sole and absolute discretion. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of Tenant's interest in the Lease by operation of law.

8.4 Hazardous Materials. (a) Tenant agrees that it shall not maintain, generate, store, allow or bring on the Property or transport or dispose of, on, or from the Property, any Hazardous Materials. As used herein, the term "Hazardous Materials" are any hazardous, toxic or radioactive materials, substances or waste, as defined in federal or state law regulating or addressing the generation, storage, use, or transportation of such materials, including but not limited to Massachusetts General Laws, Chapter 21E; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., any rules, regulations or orders promulgated pursuant thereto, and any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or matters as may now or hereafter be in effect ("Environmental Laws"). The Town shall have no obligation or responsibility to abate or remediate any Hazardous Materials present on, or released from, the Premises. During the Term of this Lease, and for so long as Tenant uses the Property or any portion thereof, Tenant shall adhere to Environmental Laws, and any violation of the same shall be deemed a material breach of the Lease for which the Town may terminate this Lease.

(b) Tenant shall defend, hold harmless and indemnify the Town from, and shall assume all responsibility and liability at its sole cost and expense, for the payment of penalties, sanctions, forfeitures, losses, costs, or damages, including attorneys' fees and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceedings arising out of, or related to, the failure of Tenant, and/or his/her/their family, friends, relatives, invitees, sublessees, licensees, occupants, visitors, agents, employees, representatives, contractors, and/or anyone claiming by, through or under Tenant (collectively, with Tenant, "Tenant Parties") to comply with any of the Environmental Laws and/or for the release, disposal, or presence of Hazardous Materials on or about the Property if caused by any of the Tenant Parties. The indemnification of this Section specifically includes reasonable costs, expenses and fees incurred in connection with any investigation of the condition of the Property and/or any cleanup, remedial, removal or restoration work required by any governmental authority. Tenant shall not be obligated to indemnify the Town for environmental conditions to the extent created by Hazardous Materials caused by the negligence or willful misconduct of Town, its agents, servants, contractors or employees, unless caused or exacerbated by any of the Tenant Parties.

(c) As soon as Tenant has knowledge of any release or threatened release of any Hazardous Materials on or from the Property or any portion thereof, Tenant shall immediately notify the Town of such release or threatened release, whether or not such release or threatened release is caused by Tenant or any of the other Tenant Parties. Failure to so notify the Town shall be deemed a material breach of the Lease for which the Town may terminate this Lease.



(d) The provisions of this Section will survive the expiration or termination of this Lease.

#### ARTICLE IX: INDEMNIFICATION; RELEASE

9.1 Indemnification. Tenant shall, to the maximum extent this provision may be made effective according to law, defend, indemnify and hold harmless the Town from and against all claims, actions, proceedings, damages, demands, costs, expenses and/or liabilities of whatever kind and/or nature, including, without limitation, for any accident, harm, injury, loss or damage whatsoever, however caused, to any person or to the property of any person, occurring during the Term of this Lease and thereafter, so long as Tenant or any occupant claiming by or through Tenant is in occupancy or Tenant's property remains on the Premises, arising directly or indirectly from or related to: (a) Tenant's failure to comply with any term of this Lease or the terms of any applicable federal, state and/or local laws, rules, regulations, bylaws and/or codes, (b) the use or occupancy of the Property by the Tenant or any of the other Tenant Parties, (c) any act, omission, negligence or intentional misconduct on the part of any Tenant and/or any of the other Tenant Parties, and/or (b) the exercise by Tenant or any of the other Tenant Parties of the rights granted under this Lease. The foregoing agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including attorneys' fees, and the defense thereof with counsel acceptable to the Town or counsel selected by an insurance company which has accepted liability for any such claim.

9.2 Release. Tenant agrees to use and occupy the Property at Tenant's sole risk. To the maximum extent this provision may be made effective according to law, Tenant agrees that the Town shall have no responsibility or liability, and hereby waives any and all rights of recovery and releases any claim it may have against the Town or its agents, employees, or contractors, for any injury, loss or damage to any of the Tenant Parties, the Improvements, or to the property of any of the Tenant Parties, provided, however, that nothing herein limits in any manner any remedies Tenant may have against the Town due to the Town's negligence.

9.3 Non-Lease Property. Tenant acknowledges and agrees that the Town's obligations with respect to other Town-owned property, improvements and/or facilities, including, without limitation, the seawall, sidewalks, and beach areas that are not part of the Property (the "Non-Lease Property") are subject to any and all applicable laws, including, without limitation, any obligations and/or liability that the Town may have under the applicable laws of negligence, but are independent of this Lease. Tenant shall have all rights and remedies as are available to all under such laws for the Town's failure to maintain the Non-Lease Property, but such negligence shall not constitute a default of the Town under this Lease or entitle Tenant to exercise any remedies it may under this Lease. For avoidance of doubt, nothing herein shall impair Tenant's rights and remedies against the Town under applicable laws with respect to the Non-Lease Property independently of the Lease.

9.4 Survival. The provisions of this Article IX shall survive the expiration or earlier termination of this Lease.

#### ARTICLE X: CASUALTY; EMINENT DOMAIN

10.1 Substantial Part. For the purposes of this Article X, "substantial part" shall be defined as (a) that portion of the Premises which if damaged or taken by eminent domain would materially affect the use of the Premises for the Permitted Use, and/or (b) that portion of Long Beach and/or any portion thereof which, if damaged by casualty, prevents or significantly impedes access to the Premises and/or renders the Premises and/or Long Beach uninhabitable.

10.2 Substantial Casualty and/or Taking. If a substantial part of the Premises/Long Beach shall be destroyed or damaged by fire, flood, storm or other casualty or climatic event, or if a substantial part of the Premises/Long Beach shall be taken by eminent domain by any public or quasi-public agency or authority other than the Town, then this Lease shall terminate at the election of either the Town or Tenant, without recourse. Any such termination shall be effective thirty (30) days after the date of notice thereof.

10.3 Restoration. If any part of the Premises is damaged by fire or other casualty or is taken by a public authority and this Lease is not terminated by the Town or Tenant as provided above, Tenant shall proceed with reasonable diligence to repair and restore the Premises, or what remains thereof in the case of a partial taking.

10.4 Damages for Taking. In the event of a taking by eminent domain or deed given in lieu thereof, the Town shall have, and hereby reserves and excepts, and Tenant hereby grants and assigns to the Town, all rights to recover for damages for the taking, and to compensation accrued or hereafter to accrue by reason of such taking or damage. Tenant covenants to deliver such further assignments and assurances thereof as the Town may from time to time request, hereby irrevocably designating and appointing the Town as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the unamortized value of any of Improvements installed in the Premises by Tenant at Tenant's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by the Town from the taking authority.

10.5 Damage by Fire or Other Casualty. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that in no event shall the Town be liable for any injury, harm or any other loss, cost, expense, demand, claim, or have any obligation to repair, replace, improve, restore and/or rebuild, any damage of any kind or nature whatsoever to the Property or any portion thereof caused by an eminent domain taking or by fire, flood or other casualty or climatic event.

#### ARTICLE XI: TERMINATION; DEFAULT

11.1 Event of Default. It shall be an "Event of Default" if:

- (a) Tenant fails to pay Rent or any other sum required to be paid by Tenant under this Lease and such failure is not cured with fifteen (15) days after written notice thereof; or
- (b) Tenant fails to pay utilities or taxes or betterments assessed in a timely manner; or



- (c) Tenant fails to observe or perform any of Tenant's other covenants, agreements, or obligations hereunder and such failure is not cured within thirty (30) days after written notice, or, if the default is of a nature that cannot reasonably be cured within said thirty (30)-day period, if Tenant fails to commence the cure within said thirty (30)-day period and thereafter completes it with reasonable diligence, no later than sixty (60) days from the date of the Town's notice; or
- (d) Tenant files a petition in bankruptcy under any bankruptcy act or makes an assignment for the benefit of creditors; or
- (e) Involuntary proceedings under any bankruptcy law are initiated against Tenant or if a receiver or trustee is appointed for Tenant and such proceedings are not dismissed or the receivership or trusteeship vacated within ninety (90) days.

11.2 Remedies. The Town may, immediately or at any time thereafter, terminate this Lease by written notice to Tenant, specifying a date not less than fourteen (14) days after the giving of such notice on which this Lease shall terminate, and this Lease shall come to an end on the date specified therein as fully and completely as if such date were the date herein originally fixed for the expiration of the Lease Term. Notwithstanding the foregoing, in the event of such termination, Tenant agrees to pay and be liable for, on the days originally fixed for the payment thereof, and for the then remaining Term of this Lease, amounts equal to the installments of Rent and other fees or charges as would otherwise have been payable by Tenant to the Town under the terms of this Lease had this Lease not been terminated by Tenant's default. In addition, Tenant shall pay the Town any and all damages, costs and expenses suffered or incurred by the Town in enforcing this Lease from and after Tenant's default, including but not limited to, all legal fees, the costs of eviction, the costs of re-letting the Premises, including brokerage commissions and the costs of restoring the Premises to the condition required under this Lease, reasonable wear and tear excepted. All such damages, costs and expenses shall be deemed Additional Rent due under this Lease.

11.3 Cure Rights. If the Event of Default, the Town, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of Tenant. If the Town makes any expenditures or incurs any obligations for the payment of money in connection with Tenant's default, including but not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred shall be paid to the Town by Tenant as Additional Rent.

## ARTICLE XII: MISCELLANEOUS

12.1 Changes in Lease. None of the covenants, agreements, provisions, terms and conditions of this Lease shall in any manner be changed, altered, waived or abandoned except by a written instrument signed, sealed and mutually agreed upon by all the parties hereto.

12.2 Holding Over. In the event Tenant uses or remains in possession of the Property or any portion thereof after the expiration or termination of this Lease and without the execution of a new Lease and the Town elects to accept Rent thereafter, Tenant shall be deemed to be occupying the Premises as a tenant from month to month at an amount equal to one hundred fifty



percent (150%) of the Base Rent payable by Tenant immediately prior to the expiration/termination (which Base Rent payments shall be subject to the annual escalation, as provided in this Lease) and otherwise subject to all the conditions, payments, provisions and obligations of this Lease insofar as they are applicable to month to month tenancy. The Town's collection of holdover rent as herein provided shall not be deemed a waiver of the Town's rights to take possession of the Premises nor shall it establish any rights on the part of Tenant to occupy the Premises, except as a month to month tenancy. Notwithstanding the Town's acceptance of rent or any payments, Tenant shall be liable to the Town for all damage, injury and loss suffered by the Town caused by such failure to vacate including all such damage, injury and loss relating to new rentals which were to begin following the end of the Term. The acceptance by the Town of the rent shall not create a new tenancy but shall be solely for use and occupancy as aforesaid.

12.3 Surrender. At the expiration or termination of this Lease, Tenant shall remove from the Land and/or the Premises any and all Improvements, fixtures, and personal property bought by or constructed, placed or brought upon the Land and/or the Premises by Tenant and/or Tenant's predecessors (collectively, "Tenant's Property"). If Tenant fails to remove Tenant's Property within one hundred twenty (120) days from the date of expiration or termination, or such other time as the Town may, in its sole discretion, approve in writing, (not to exceed one hundred eighty (180) days from said expiration or termination), ownership of Tenant's Property shall vest in and belong to the Town, without any payment by the Town, and the Town shall have the right to sell, lease, demolish, and/or remove the foregoing, without any recourse; Tenant shall be responsible for and shall promptly pay the Town any and all costs and expenses the Town incurs to demolish, remove and/or store Tenant's Property, including, without limitation, costs of demolition, disposal, and remediation of any site conditions, including the removal of any Hazardous Materials on the Land/Premises, if any. Tenant shall, promptly after removing Tenant's Property, repair any damage caused to the Land/Premises from such removal, and shall deliver the Land/Premises to the Town in good and clean order and repair. This obligation shall survive the expiration or termination of this Lease.

12.4 Quiet Enjoyment. The Town hereby warrants and covenants that, so long as Tenant is not in default of this Lease beyond any applicable cure period, Tenant shall have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of the Town.

12.5 Town Access. The Town or its agents, employees, and representatives may, at reasonable times and without interfering with Tenant's possession, enter the Premises to inspect for compliance with the terms hereof, and to make such repairs to the Premises as the Town may deem reasonable necessary or convenient for the safety and preservation thereof. The Town shall give Tenant a minimum of twenty-four (24) hours notice for such visits, provided however that the Town may enter the Premises at any hour and without twenty-four (24) hours' notice in the case of an emergency affecting the Premises or public safety. No prior notice shall be required for the Town to access, inspect, maintain, repair and/or improve the Parking Spaces.

12.6 Pets. Tenant may keep pets on the Premises without the written consent of the Town, provided that Tenant complies with all laws, rules, regulations, and bylaws applicable to pets and the Long Beach Rules and Regulations. Tenants shall pick up after their pets and shall dispose of such waste in trash receptacles only.



12.7 Severability. If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

12.8 Signatures. In the event this Lease is held by multiple Tenant parties (two or more parties) or a legal entity and not a person, this Lease shall not be effective unless and until this Lease is signed by any and all such Tenant Parties.

12.9 No Other Agreements. This Lease terminates and supersedes all prior oral and written understandings or agreements on the subject matter hereof, and the parties acknowledge that the prior lease entered into between the Tenant and the Town expired by its terms and that any and all rights arising thereunder have been extinguished.

12.10 No Waiver. The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be bound thereby.

12.11 Remedies Not Exclusive. No mention in this Lease of any specific right or remedy shall preclude the Town or Tenant from exercising any other right, or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either in law or in equity.

12.12 Personal Liability. No official, employee or consultant of the Town of Rockport shall be personally liable to Tenant, the other Tenant Parties or any partner thereof, or any successor in interest or person claiming through or under Tenant, the other Tenant Parties, or any such partner, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease or any amendment or extension entered into pursuant hereto. In no event shall the Town be liable for indirect, special, consequential and/or punitive damages.

12.13 Notice. Any notice relating to the Property or to the occupancy thereof shall be in writing and shall be deemed duly served when delivered in hand, sent by recognized overnight courier, or mailed by registered or certified mail, postage prepaid, addressed to the other party at the addresses listed in Article I, or at such other addresses as the parties may from time to time designate by written notice to the other party.

12.14 Notice of Lease. The Town shall, at Tenant's request, execute a Notice of Lease pursuant to Massachusetts General Laws Chapter 183, Section 4 prepared by Tenant, which Notice shall be recorded at the Essex South Registry of Deeds by Tenant at its expense and a copy of said Notice of Lease stamped by said Registry shall be given to the Town by Tenant promptly.

12.15 Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be

interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Lease, except as otherwise stated in this Lease or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) use of the terms "termination" or "expiration" are interchangeable; (v) reference to a default will take into consideration any applicable notice, grace and cure periods; (vi) references to "Tenant" shall, where appropriate, include any and all the other Tenant Parties; and (vii) if more than one person is named as Tenant hereunder, the obligations of all such persons shall be joint and several.

12.16 Survival. Terms and conditions of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease shall so survive.

12.17 Governing Law. This Lease shall be governed by the laws of the Commonwealth of Massachusetts, and any proceedings brought relating to this Lease shall be brought in the courts of the Commonwealth of Massachusetts. The provisions of those laws shall not be deemed waived by any provision of this Lease.

12.18 Right of First Refusal. Tenant shall have a right of first refusal subject to the following terms and conditions:

- (a) In the event that the Town elects to sell the Land being leased herein without first having received an offer to purchase from a third-party, the Town shall so notify the Tenant and the Town and the Tenant shall have thirty (30) days, or such longer period as both parties may agree upon, in which to attempt to agree upon terms of purchase and sale. Neither the Tenant nor the Town shall have any recourse or remedy in the event that the Town and the Tenant fail to reach an agreement; provided, however, all of the other rights and obligations contained in this Paragraph 12.18 shall remain in full force and effect.
- (b) In the event that the Town receives a bona fide third-party offer to purchase the Land, the Town shall provide Tenant with written notice of such offer and a copy of the offer, sent by certified mail, return receipt requested, and Tenant shall have a period of thirty (30) days from the date of such notice to exercise its right of first refusal by giving written notice to the Town that the Tenant agrees to purchase the Land on the same terms and conditions as set forth in the third-party offer. The third-party's offer shall be in writing, signed, and shall include the name and address of the prospective purchaser, the purchase price offered, and all other terms and conditions of the sale. The Tenant's written notice of agreement to purchase shall be accompanied by a deposit equal to the deposit paid or to be paid, or both, by the third-party purchaser under its offer. Any deposit shall be applied to the purchase at the time of closing and, in the event that Tenant does not purchase the Land, the deposit paid by Tenant shall be disbursed in accordance with the deposit provisions set forth in the third-party offer. If Tenant exercises the right of first refusal, it shall purchase the Land within sixty (60) days after notice of its agreement to purchase is received by the Town, or such longer period of time as the parties may agree to in writing. Upon the recording of the deed to the property, this Lease and all of the parties' future obligations thereunder shall automatically terminate. If Tenant elects not to exercise



its right of first refusal or, having exercised it, fails to complete the purchase in accordance with the terms of the third-party offer within the time provided herein, the Town will be free to sell the Land to the third party, provided that no term of such sale transacts more favorably to the purchaser than any term presented in the third-party offer. The Town shall notify Tenant, in writing, of its election to sell the property at least ninety (90) days prior to the date of closing. This notification may be made at the same time as the notification of the offer, referred to above, and is meant to be consistent with, and not in addition to, the 90-day notification period provided in Section 3.2 of this Lease. The Lease and any tenancy thereby created shall cease upon the closing of the sale.

- (c) In the event that the Town elects to sell all of the property it owns at Long Beach as a whole without first having received an offer to purchase same from a third-party, the Town shall so notify all Tenants and any Tenant or group of Tenants shall have thirty (30) days, or such longer period as all parties may agree upon, in which to attempt to agree upon terms of purchase and sale. Neither the Tenant(s) nor the Town shall have any recourse or remedy in the event that the Town and the Tenant(s) fail to reach an agreement; provided, however, all of the other rights and obligations contained in this Paragraph 12.18 shall remain in full force and effect.
- (d) In the event that the Town receives a bona fide third-party offer to purchase all of the property it owns on Long Beach as a whole, the Town shall provide all of the Tenants with simultaneous written notice of such offer, and a copy of the offer, sent by certified mail, return receipt requested. Any Tenant or group of Tenants shall have a period of ninety (90) days from the date of such notice to exercise this right of first refusal, by giving written notice to the Town of its agreement to purchase all of said property for the same price and on the same terms and conditions as set forth in the third-party offer. Should more than one Tenant or group of Tenants wish to exercise the right of first refusal, then the Town will accept the first qualifying notice the Town receives in writing and the right of first refusal of all others will be deemed null and void. All provisions of this section applying to a sale of the Land only shall apply to the right of first refusal process for the sale of the Long Beach property as a whole except as to any such provisions which are inconsistent with provisions for the sale of the whole and as to those provisions the provisions for the sale of the whole shall control.
- (e) Nothing in this provision shall obligate the Town to offer the Land or any property on Long Beach for sale, at any time, and any decision by the Town to offer all or any portion of its property for sale shall be contingent upon legislative authority or some other form of relief as may be necessary to sell such property and to exempt the Town from the provisions of G.L. c. 30B. In the event that the Town elects to sell the Land or the whole of the property at Long Beach, the Town shall use best efforts to obtain such legislative authority or other relief as may be appropriate.

[signature page follows]



IN WITNESS WHEREOF, this Lease has been executed in duplicate by the parties hereto, under seal.

TOWN OF ROCKPORT  
By its Board of Selectmen

TENANT:

\_\_\_\_\_  
Sarah J. Wilkinson, Chair

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Ross C. Brackett, Vice-Chair

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Paul F. Murphy

\_\_\_\_\_  
Herman S. Lilja

\_\_\_\_\_  
Denise C. Donnelly