

**LEASE OF PROPERTY AT FORT WETHERILL BY THE TOWN OF JAMESTOWN  
TO THE FORT WETHERILL BOAT OWNERS' & OPERATORS' ASSOCIATION**

THIS INDENTURE OF LEASE, made and executed as of 31<sup>st</sup> day of May 2018, by and between the Town of Jamestown, a Rhode Island municipal corporation, hereinafter called the "Lessor) and Fort Wetherill Boat Owners' & Operators' Association, a Rhode Island non-profit corporation, hereinafter called the "Lessee".

That in consideration of the rent and covenants herein reserved and contained, and subject to the conditions hereinafter set forth, the Lessor does hereby demise and lease unto the Lessee the following described premises:

Those parcels of land situated in the Town of Jamestown, County of Newport, State of Rhode Island, more particularly delineated on Exhibit A-1, attached hereto and made a party hereof.

TERMS OF LEASE

TO HAVE AND TO HOLD the same unto said Lessee, for its use as a recreational marine facility, for and during the term of ten (10) years, said term to commence on the 1<sup>st</sup> day of January 2021 and to terminate on the 31<sup>st</sup> day of December, 2030. Annual payments during this ten (10) year extension period will be in accordance with the rate schedule as outlined below with a two (2%) and three (3%) escalator applied annually.

The Lessee covenants and agrees to pay rent as follows:

Existing Lease Agreement (2015-2020)

The initial annual rent in 2015 shall be Thirty thousand dollars (\$30,000.00) payable on February 15, 2016 with subsequent annual payments made by February 15<sup>th</sup> of each year. The rent shall be payable at the office of the Lessor or at such other place as the Lessor may designate in writing. In each successive year during the base 5-year period, the annual rent payment shall increase with the application of a three (3%) percent escalator, as reflected in the schedule below:

| <u>Year</u> | <u>Amount</u> | <u>Period</u>                       |
|-------------|---------------|-------------------------------------|
| Year 1:     | \$30,000      | October 1, 2015 - December 31, 2016 |
| Year 2:     | \$30,900      | January 1, 2017 - December 31, 2017 |
| Year 3:     | \$31,827      | January 1, 2018 - December 31, 2018 |
| Year 4:     | \$32,782      | January 1, 2019 - December 31, 2019 |
| Year 5:     | \$33,765      | January 1, 2020 - December 31, 2020 |

Lease Extension: (2021-2030) and Five Year Renewal Option (2031-2035)

**Base Lease Extension**

| <u>(2% Annual escalator)</u> |          | <u>(3% Annual escalator)</u> |          |
|------------------------------|----------|------------------------------|----------|
| 2021                         | \$34,440 | 2026                         | \$38,398 |
| 2022                         | \$35,129 | 2027                         | \$39,550 |
| 2023                         | \$35,832 | 2028                         | \$40,736 |
| 2024                         | \$36,549 | 2029                         | \$41,958 |
| 2025                         | \$37,280 | 2030                         | \$43,217 |

**Renewal Option Period**

(3% Annual escalator)

|      |          |
|------|----------|
| 2031 | \$44,514 |
| 2032 | \$45,849 |
| 2033 | \$47,224 |
| 2034 | \$48,641 |
| 2035 | \$50,100 |

USE OF DEMISED PREMISES

- a. That Lessee shall not permit or allow the storage of equipment on State property or property of Lessee without specific authorization from the Lessor.
- b. That parking will be limited to designated areas as depicted in diagram of leased premises (see Exhibit 1A) and in other designated public parking areas.
- c. That no boat launching or hauling shall be permitted with the exception of emergency haulings required due to severe storm threat.
- d. That Lessee shall not violate the terms of the Memorandum of Understanding between Lessor and RIDEM, a copy of which is attached in the original lease as (Exhibit B).
- e. The Lessor shall make available to Lessee suitable area for storage of Lessee's dock floats consistent with paragraph "j" below or provide for an equally suitable site.
- f. The Lessee's vehicle access to the main pier for the purpose of loading and unloading (ONLY) various items between member's boats and vehicles shall be consistent with Exhibit 1A. At all times, the entry ways and access to the Town facility must be maintained at all doorways and along the bulkhead area. Long-term parking is allowed only in the designated parking areas.
- g. The Lessee agrees to maintain two (2) portable restroom facilities (a.k.a. "Porta Johns") for the exclusive use by members and guests of the Fort Wetherill Boat Owners and

Operators Association in a location in proximity to the dock area, as determined by the Town. The Town may also require the Lessee to screen the Porta Johns from public view.

- h. The Lessee agrees to offer membership to the owner of the house lot on the west side of Ft. Wetherill Road that may be created through subdivision of plat 10 lot 145 (i.e. the 3.6 acre Old Highway Barn parcel). Further, membership shall also place the house lot owner in First position of the waiting list.
- i. The Lessee shall agree to cooperate with both the Town and any new owner or lessee of Plat 10 lot 145. However, cooperation shall not be construed in any way to cause the Association to forfeit or relinquish any rights and privileges provided by this lease Agreement.
- j. That winter dock storage will be limited to the designated areas as depicted in diagram of leased premises (see Exhibit 1B) or in another approved area as designated by the Lessor.

#### OBLIGATIONS AND OPERATIONS OF LESSEE

The Lessee covenants and agrees that during the term hereof, and for any further time as it shall hold said premises, or any part thereof:

- a. That it shall operate the Marina located on the premises pursuant to CRMC Permit No. B00-11-73 under the jurisdiction of the Lessor's and the Town Harbormaster.
- b. That its membership shall be restricted to residents of the Town of Jamestown, Rhode Island, whether full-time or transient short-term members. Use of the facility by non-Jamestown residents will be deemed a violation of the terms of this agreement.
- c. That it shall maintain a current membership roster, boat registrations for current annual dock assignments (it is understood that temporary dock assignments may take place from time to time) and a waiting list at Lessor's Town Hall and Harbor Office.
- d. That of the 42 boat slips, 38 slips are to be occupied by boats of 26 feet in length and under, with the remaining 4 slips to be occupied by member boats over 26 feet in length.
- e. That in the event of severe inclement weather, Lessee agrees to allow the Town of Jamestown to seek safe harbor for two (2) town boats during the duration of any such Storm(s).
- f. Town Water: The FWBOA will be subject to all local regulations and charges associated with being a Jamestown Water District customer.

#### ALTERATIONS BY LESSEE

Other than the docks, ramps and pilings, which are considered to the sole property of the Lessee, the Lessee shall make no structural alterations to the Lessor's leased premises without the written consent of the Lessor. The Lessee shall save the Lessor harmless on account of any claim of mechanics or

material men, or any liens in connection with any alterations, additions or improvements, and at the termination or expiration of this Lease will peaceably yield said premises and all additions thereto to the Lessor, and leave the same clean and in such repair, order and condition as the same are in at the commencement of the lease term.

#### MAINTENANCE BY LESSEE

It is understood by the parties herein that the docks, ramps and piling are considered the sole property of the Lessee. Therefore, Lessee shall, at its sole cost and expense, keep and maintain the subject docks, ramps, and pilings as owned by the Lessee in good order during the term of this Lease, except for reasonable wear and tear and damages by or negligence of the Lessor, or any person or persons for which it is legally responsible. In addition, Lessee shall be responsible for maintaining any and all changes to the demised premises and equipment installed as leasehold improvements. Lessee agrees that in the event it should vacate the demised premises and/or decline to renew its Lease with the Lessor, that it shall remove any and all docks, ramps and piling located within the demised premises. Lessee shall otherwise, not be obligated to maintain or repair any and all other property deemed to be owned by Lessor.

#### GOVERNMENTAL REGULATIONS

The Lessee shall not use or occupy, or permit the leased premises to be used or occupied, in any unlawful manner, for any illegal purpose, in such manner as to constitute a nuisance, or for any use which is incompatible with Lessor's present adjacent business operations and, further, comply with the covenants and conditions attached hereto and made a part hereof. The lessee shall comply with all municipal, state or federal regulations concerning the conduct of its business, shall procure, at its own expense, all permits, licenses, etc., required by it, and shall hold harmless the Lessor from penalties and fines imposed upon the Lessor pursuant to any law, ordinance or governmental requirement by reason of the conduct by the Lessee of its business in the demised premises.

#### PUBLIC LIABILITY INSURANCE

Lessee shall, at its own expense, obtain and maintain in continuous effect during the term of this lease, a policy or policies of insurance with such company or companies satisfactory to Lessor, insuring against public liability on the demised premises, in amounts not less than one million (\$1,000,000.00) dollars per person, and two million (\$2,000,000.00) dollars per accident, and against property damage in an amount of not less than one hundred thousand (\$100,000.00) dollars. The Lessor shall be named as an insured in such insurance. Said insurance shall not be cancelable, except upon thirty (30) days' written notice to the Lessor. Lessee shall provide a copy of the approved policy to the Lessor on an annual basis.

#### INDEMNIFICATION BY LESSEE

The Lessee agrees to indemnify and defend the Lessor against, and to save it harmless from, any and all claims of whatever nature, for injury or damage to persons or property, in or about the demised premises, or arising from any accident, injury, or damage arising within the parking area as deemed leased to Lessee, resulting from any act, default or omission on the part of the Lessee, its employees, agents, contractors, invitees, or licensees. However, Lessee shall not indemnify and defend the Lessor against, and to save it harmless from, any and all claims of whatever nature, for injury or damage to

persons or property arising from the use by a non-member or non-business invitee of any common areas shared between the Lessee, Lessor or any third party, where Lessee is not at fault.

#### INSPECTION BY LESSOR

Lessee agrees to permit Lessor, its agents or contractors, to inspect the demised premises at any reasonable time, upon providing reasonable notice thereof and to permit Lessor to make such repairs to the demised premises which Lessor may deem desirable or necessary, and which Lessee has not covenanted herein to do, or has failed so to do.

#### RISK OF LOSS

All personal property, of every kind and description, which Lessee causes to be placed upon the demised premises, or upon other premises of the Lessor, shall be the sole risk of the Lessee, and Lessee hereby indemnifies and holds harmless the Lessor, its agents, servants and employees, from any loss or damage to said property, including loss of use.

#### DAMAGE BY FIRE OR OTHER CASUALTY

In the event that at any time the demised premises are damaged or destroyed, or otherwise rendered unfit for accustomed use and occupation to an extent which exceeds fifty (50%) percent of the sound insurable value thereof, then the Lessor or the Lessee may, by written notice to the other party given thirty (30) days after occurrence of such casualty, cancel this lease; but if this Lease is not cancelled, the Lessor shall, with reasonable diligence, repair, rebuild and restore the premises and make the same fit and available for Lessee's use and occupancy.

#### ABATEMENT OF RENT

In the event that the demised premises or any part thereof shall be taken for any purpose, or should access be denied or restricted in any manner by the Lessor or the interior of the premises shall be destroyed or damaged by fire or other cause beyond the control of the Lessor, or the exterior of the demised premises shall be damaged or out of repair during the term of this Lease, or any extension thereof, a just proportion of the rent reserved according to the nature, location and extent of the injuries sustained by the demised premises, or their lack of repair, shall put them in proper condition and made available for the Lessee's use and occupation, and in case of a taking as aforesaid, a just proportion of said rent, according to the size, location and use of the space taken, shall be abated during the remainder of the term of this Lease.

#### ASSIGNMENT AND SUBLEASE

Notwithstanding any other provisions contained herein, the Lessee may not assign this Lease, nor sublet the whole or any part of the demised premises. It is understood that Lessee may from time to time assign temporary dock space to its temporary members and that such an assignment shall not be considered a sublease under this Lease in accordance with Paragraph 2(c) above.

#### LESSOR'S REMEDIES IN CASE OF DEFAULT

If Lessee defaults in the payment of rent, or any additional fees, or defaults in the performance of any of the other covenants or conditions hereof, Lessor shall give Lessee notice of such default and, if Lessee does not cure any such default within thirty (30) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within that period, if Lessee does not commence such curing within such thirty (30) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease. On the date specified in such notice the term of this Lease shall be terminated and Lessee shall then quit and surrender the demised premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the demised premises by any lawful means and remove Lessee or other occupants and their effects. If the Lessee shall be declared insolvent according to law, or if a receiver or other similar officer shall be appointed to take charge of the Lessee's property, or a substantial part thereof, then, and in each of the said cases, the Lessor lawfully may (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance) immediately or at any time thereafter while such default or other situation as aforesaid continues, and without further demand or notice, enter into and upon the demised premises or any part thereof in the name of the whole and repossess the same and expel the Lessee and those claiming through or under the Lessee and remove its effects, at Lessee's expense, without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; and upon entry as aforesaid, this Lease shall terminate, and the Lessee shall remain obligated for all rental monies due for the remainder of the term.

No failure to enforce any term of this Lease shall be deemed a waiver.

#### LESSEE'S REMEDIES ON DEFAULT

If Lessor defaults in the performance of any of the covenants or conditions hereof, Lessee shall give Lessor notice of such default and, if Lessor does not cure any such default within thirty (30) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within that period, if Lessor does not commence such curing within such thirty (30) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessee may withhold rent payments and apply the same to the same for repairs and maintenance to the pilings, revetments and bulkheads that are the responsibility of Lessor hereunder.

#### HOLDING OVER

If Lessee holds over or continues in possession of the premises after the expiration of this Lease and without the execution of a new lease, the tenancy thus created shall be one from month to month. All covenants, obligations, conditions, and agreements herein contained shall so far as applicable, apply to all extensions of the terms hereof and to all holdings over by the Lessee as Lessee by will.

## RENEWAL

- a. The Town and the FWBOA shall at any time during the lease period consider a lease extension beyond the final extension period on December 31, 2035.

## LESSEE'S RISK

The Lessee acknowledges that the Lessor does not enjoy any title, legal or equitable, or any rights or privileges of possession of occupancy with respect to the property described in Exhibit B attached hereto. Pursuant thereto, the Lessee acknowledges that is has assumed all risks associated with its use and/or improvement of said property and agrees to hereby remise, release and forever quitclaim unto said Lessor, its successors and assigns, all and all manner of actions, causes of action, debts, due, claims and demands, both in law and equity, arising from its use of improvement of said property. Notwithstanding anything to the contrary contained herein, the Lessor and Lessee agree that, should the Lessee be disturbed in its use of enjoyment of the premises described in Exhibit B, the Lessee's sole remedy shall be that provided for in Paragraph 10 hereof.

## NOTICES

All notices that may be given hereunder by Lessee or Lessor shall be by registered or certified mail, addressed in the case of the Lessor to Town Administrator, Town of Jamestown, Rhode Island 02835; and, in the case of the Lessee, to c/o Mark Liberati, 2 Old Walcott Avenue, Jamestown, Rhode Island 02835; or to such other address as the parties may, from time to time, designate by written notice previously sent.

## ATTORNEY'S FEES

In case suit should be brought for the recovery of the demised premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the demised premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

## SUCCESSORS AND ASSIGNS

All the covenants, conditions and provisions of this Lease shall apply to and inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the said Lessor and the said Lessee, both as to rights and as to duties and liabilities.

## ENTIRE AGREEMENT

The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

## JURISDICTION

The parties agree that this Lease shall be deemed a Rhode Island contract and shall be governed by the laws of the State of Rhode Island.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed, in duplicate, by their respective officers thereunto duly authorized, on the day and year first above written.

TOWN OF JAMESTOWN

By: Andrew E. Nota  
Andrew E. Nota, Town Administrator

STATE OF RHODE ISLAND  
COUNTY OF NEWPORT

In Jamestown in said County, on this 31 day of May 2018, before me personally appeared the above-named Andrew E. Nota, executing the foregoing instrument for and in behalf of said Town of Jamestown; to me known and known by me to be the party described in and who executed the foregoing instrument; and he acknowledged the same, by him so executed, to be his free act as Town Administrator, as aforesaid, and his free act and deed individually as well.

Karen Montoya  
NOTARY PUBLIC

FORT WETHERILL BOAT OWNERS,  
& BOAT OPERATORS' ASSOCIATION

By: Mark Liberati  
Mark Liberati, President - FWBOA

KAREN MONTOYA  
NOTARY PUBLIC-RHODE ISLAND  
ID #43174  
MY COMMISSION EXPIRES 07-01-2018

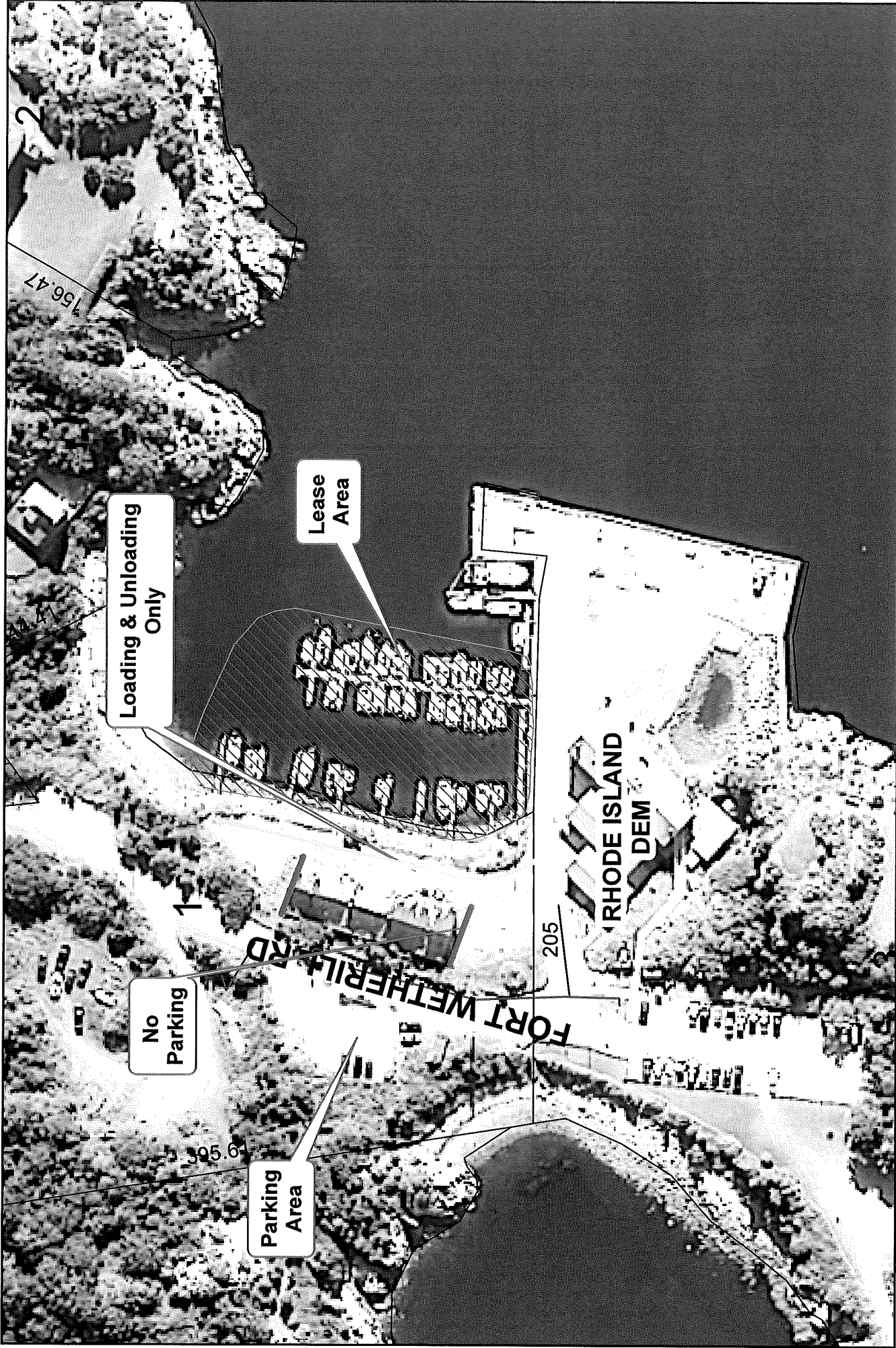
STATE OF RHODE ISLAND  
COUNTY OF NEWPORT

Jamestown, in said County, on this 31 day of May 2018, before me personally appeared the above-named Mark Liberati, executing the foregoing instrument for and in behalf of the said Fort Wetherill Boat Owners' & Boat Operators' Association; to me known and known by me to be the party described in and who executed the foregoing instrument; and he acknowledged the same, by him so executed, to be his free act as President of the Fort Wetherill Boat Owners' & Boat Operators' Association, as aforesaid, and his free act and deed individually as well.

Karen Montoya  
NOTARY PUBLIC

KAREN MONTOYA  
NOTARY PUBLIC-RHODE ISLAND  
ID #43174  
MY COMMISSION EXPIRES 07-01-2018

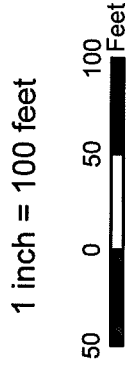




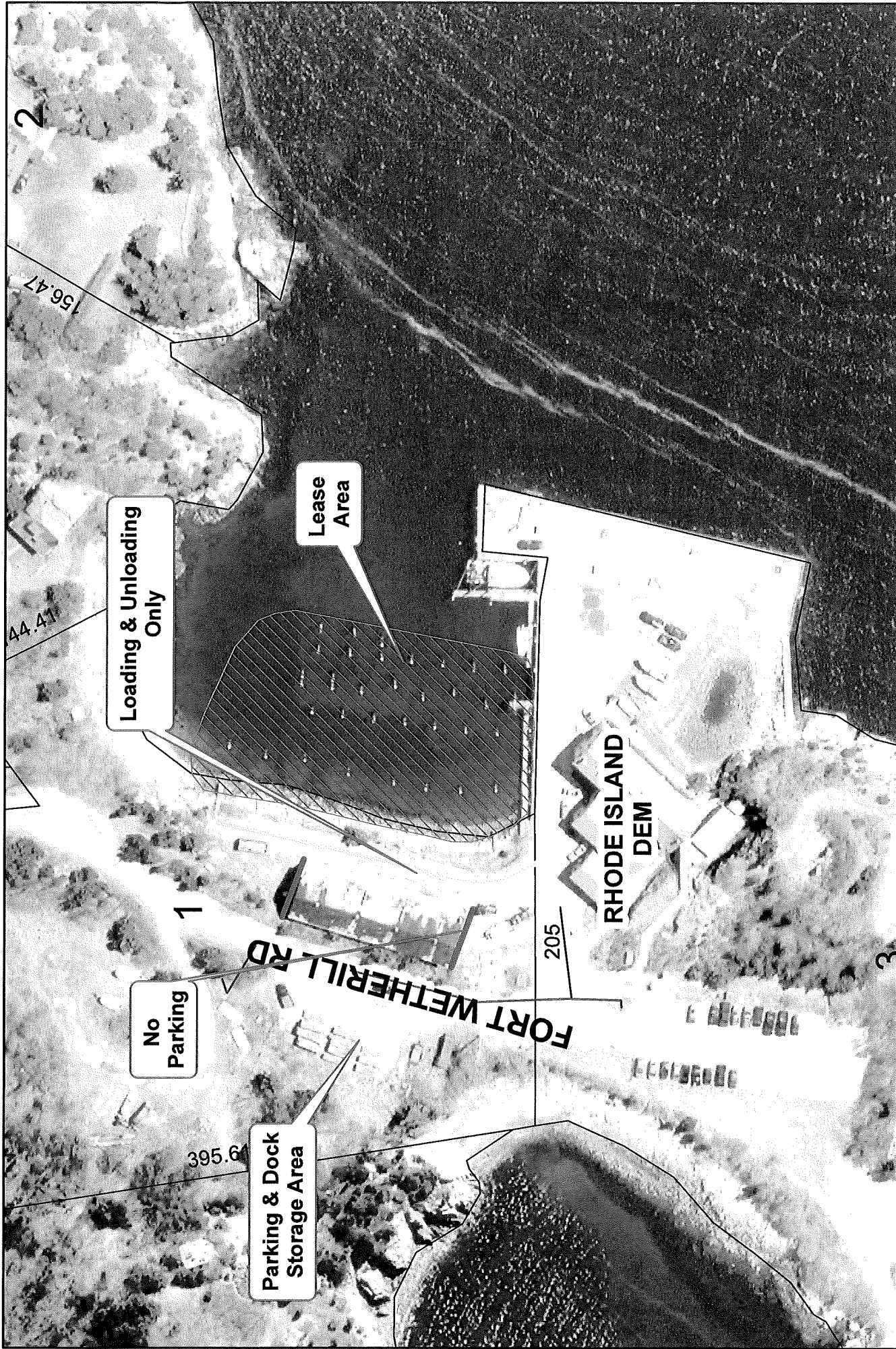
**RIGIS**

Jamestown RI GIS Dept.  
J. Jobin 7/23/2015

— No Parking  
- - - Loading / Unloading Zone Only



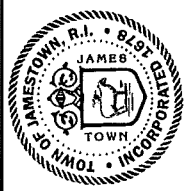
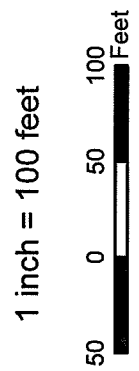
# Exhibit 1 - A Fort Wetherill



**RIGIS**

Jamestown RI GIS Dept.  
J. Jobin 7/23/2015

— No Parking  
 — Loading / Unloading Zone Only



**Exhibit 1 - B  
Fort Wetherill**

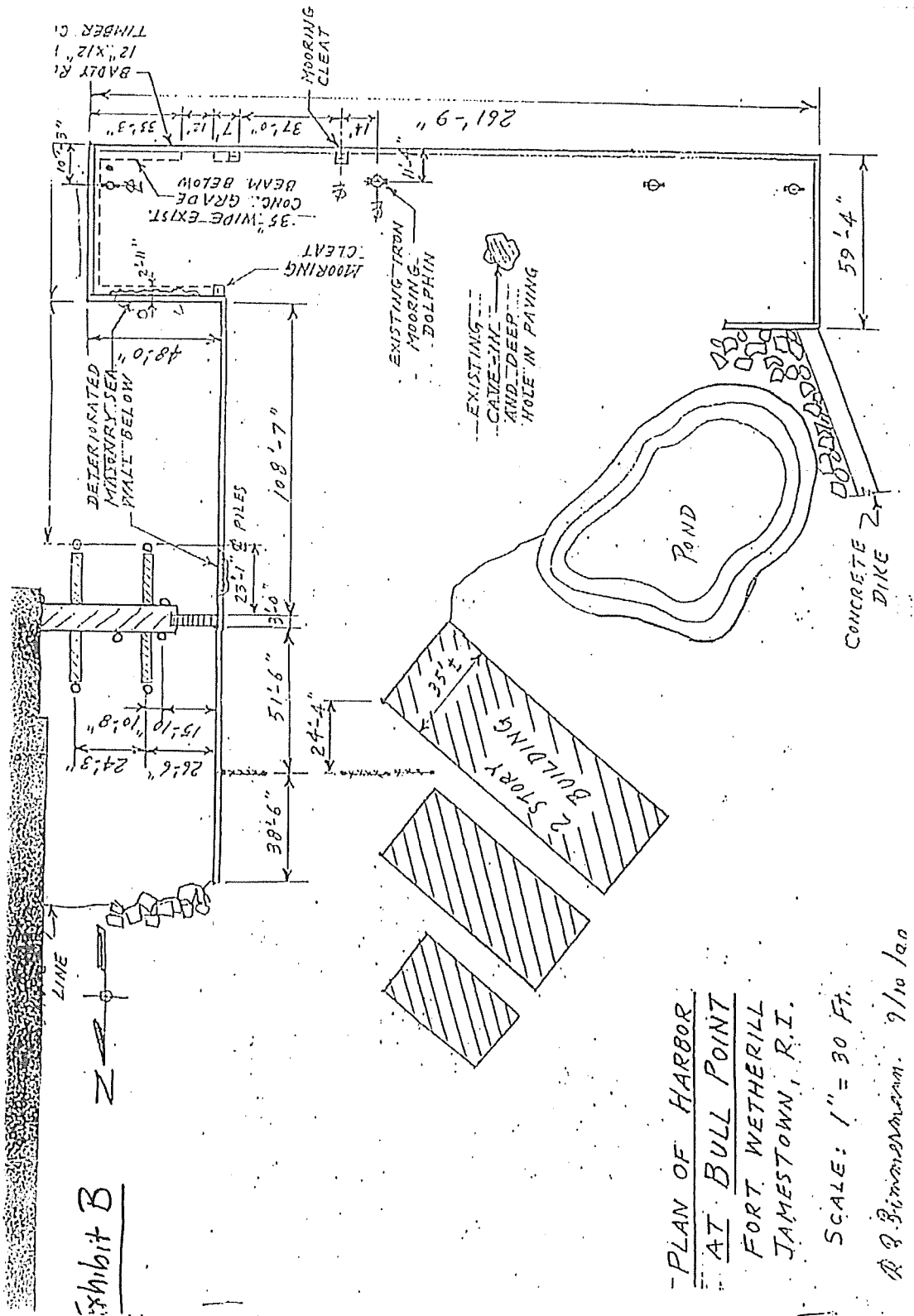


Exhibit B

PLAN OF HARBOR  
 AT BULL POINT  
 FORT WETHERILL  
 JAMESTOWN, R.I.

SCALE: 1" = 30 FT.

R. B. Binneman, 9/10/10