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ATTORNEYS AT LAW

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Warwick, RI 02886

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Raynham, MA 02767

Luly E. Massaro, Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

January 19, 2018

RE: *Rhode Island Fast Ferry, Inc.*
Docket No. D-13-51

Attorneys:

Amedeo C. Merolla^{^*}

Katherine A. Merolla^{^*}

Steven B. Merolla^{^+}

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Robert M. Proulx^{^*‡}

[^] Rhode Island Bar

^{*} Massachusetts Bar

[≈] Connecticut Bar

⁺ Washington, D.C. Bar

[≈] U.S. Supreme Court

[‡] Of Counsel

Dear Luly:

Enclosed for filing are an original and three copies of the following documents:

Pre-Filed Direct Testimony of the Building Official for the Town of New Shoreham;
Letter of counsel with court order;
Ballard's Wharf Realty LLC correspondence; and
Sworn Affidavit of Executive Director of CRMC.

If you have any questions, please feel free to call.

Very truly yours,

Katherine A. Merolla

KAM/bms

cc. Service List by email

Telephone:
(401) 739-2900
Fax:
(401) 739-2906

Please direct all
correspondence to
Rhode Island office

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS

In Re: Rhode Island Fast Ferry, Inc.

Docket No. D-13-51

PRE-FILED DIRECT TESTIMONY OF MARC TILLSON

Building Official

Town of New Shoreham

1 1. Q. Please state your name.

2 A. Marc A. Tillson.

3 2. Q. Are you currently an officer of the Town of New Shoreham, Rhode Island?

4 A. Yes.

5 3. Q. What office to do you hold?

6 A. I am the duly appointed Building Official of the Town of New Shoreham
7 ("Town").

8 4. Q. For what period of time have you held this office?

9 A. I have been the Building Official of the Town for twenty-nine years.

10 5. Q. What are some of the responsibilities of the New Shoreham Building Official?

11 A. The New Shoreham Building Official is responsible for, among other things, the
12 following: local enforcement of the Rhode Island State Building Code; as Zoning Enforcement
13 Officer, administration and enforcement of the Town's Zoning Ordinances; local compliance
14 inspections for The Department of Environmental Management, Division of Groundwater and
15 Onsite Wastewater Treatment Systems (OWTS, formerly ISDS) to ensure proper installation of
16 OWTS; local enforcement and compliance inspections of the Town's environmental ordinances,
17 such as the Soil Erosion and Sediment Control Ordinance and the removal of Underground
18 Storage Tanks; and ensuring local builders are in compliance with the Rhode Island Building
19 Contractors Registration Law.

20 6. Q. Please describe your qualifications.

21 A. My qualifications are as follows: Building Official for the Town of New
22 Shoreham for twenty-nine years as described above. Prior to my employment with the Town, I

1 was a carpenter working primarily in residential construction. I am also appointed Flood Plain
2 Manager for the Town.

3 7. Q. What documentation have you reviewed in preparation for your testimony?

4 A. I have reviewed RIFF's Exhibit D-1 which was prepared in response to the
5 Town's Data Requests and which consists of diagrams labeled "Proposed Dockage @ Old
6 Harbor, New Shoreham, Rhode Island," and a letter addressed to the U.S. Army Corps of
7 Engineers, which is dated May 15, 2017 and which is from the Kelley Drye & Warren LLP law
8 firm. In addition, I have reviewed the Town's Zoning Ordinance, the State Building Code and the
9 other documentation referenced in this testimony.

10 8. Q. Does construction of the docking facility depicted in RIFF Exhibit D-1 which lies
11 along the inner harbor of the East Breakwater ("Proposed East Breakwater Docking Facility")
12 require the assent of the Rhode Island Coastal Resources Management Council ("CRMC")?

13 A. Yes, the assent of the CRMC is required. The request is made by filing with the
14 CRMC an Application for State Assent.

15 9. Q. How does the Proposed East Breakwater Docking Facility purport to move
16 passengers from the dock to the upland of Block Island?

17 A. The plan included in Exhibit D-1 by St. Jean Engineering, LLC, dated 11/9/2016,
18 depicts a concrete floating dock which connects to a fixed pier dock and then a paver walkway
19 ("Walkway") from the fixed pier to Water Street.

20 10. Q. Does the CRMC application for the construction of the Proposed East Breakwater
21 Docking Facility require a CRMC Building Official's Letter stating that a Building Permit will
22 be issued by the Town upon the receipt of a CRMC Permit?

1 A. Yes. The CRMC Application requires that the Town's Building Official sign off on the
2 CRMC Building Official Letter.

3 11. Q. Does the Walkway of the Proposed East Breakwater Docking Facility require a
4 Building Permit to construct?

5 A. Yes. The Walkway is on the upland, above the mean high-water mark.

6 12. Q. Does the proposed Walkway qualify for permitting for construction, in other words,
7 does the Walkway meet the criteria for issuance of a Building Permit.

8 A. No.

9 13. Q. Please explain your answer to number 12.

10 A. A review of the Town's Flood Insurance Rate Map demonstrates that the Walkway is
11 located entirely within a VE-12 Flood Zone, a Coastal Zone with Velocity Hazard (wave action)
12 with the base flood elevation of 12 feet determined.

13 As the property lies entirely within a Special Flood Hazard Area (SFHA), the Town's
14 Flood Ordinance, Section 11-3, Building Permit, applies. This Section states "all proposed
15 construction or other development within a SFHA shall require a permit." A Building Permit
16 from the Town is required. No Building Permit can issue because the Walkway is in violation of
17 the State Building Code.

18 In addition, any walkway in that area would be located in the Town's Coastal Zone.
19 Zoning Section 314 (B) does not allow a breach or other disturbance of dunes or dune
20 vegetation, cutting of existing vegetation or alteration of wildlife habitats. Construction of a two
21 hundred twenty-one foot long walkway irrespective of design in the Coastal Zone is not
22 permitted.

1 Zoning Section 318, Waterfront Overlay, comprises Block Island's saltwater harbors and
2 establishes uses for the harbors based on the water district as established by the CRMC. The
3 Walkway, irrespective of design, is not a Permitted Use in the Waterfront Overlay where the
4 Walkway would be located.

5 In summary, the Walkway would not be allowed to be permitted or constructed.
6 Accordingly, the CRMC application would be deficient and would not move forward with the
7 CRMC assent process for the construction of the Proposed East Breakwater Docking Facility
8 because I, as the New Shoreham Zoning Official, would not legally be permitted to sign off on
9 the CRMC Building Official Letter.

10 14. Q. Is the consent of the Town of New Shoreham required for the construction of the
11 Proposed East Breakwater Docking Facility?

12 A. Yes.

13 15. Q. Please explain your answer to number 14.

14 A. Pursuant to the Right of Entry Agreement between the Town of New Shoreham
15 and the United States of America, a copy of which is attached to this testimony, the Federal
16 Government has agreed that it will not permit any temporary or permanent structure to be
17 constructed by any person or entity which will impede or restrict the Town and the public's
18 access to the town bait dock, to the Right of Entry Land, to the East Breakwater or to the beach
19 located along the west side of the East Breakwater.

20 16. Q. Does the Proposed East Breakwater Docking Facility, if constructed, impede or
21 restrict the Town and the public's access to the town bait dock, to the East Breakwater or to the
22 beach located along the west side of the East Breakwater?

1 A. Yes. The Proposed East Breakwater Docking Facility, if constructed, irrespective
2 of design, will impede or restrict the Town and the public's access to the town bait dock, to the
3 East Breakwater and to the beach located along the west side of the East Breakwater. Therefore,
4 the consent of the Town of New Shoreham is required in order for the Proposed East Breakwater
5 Docking Facility to be constructed.

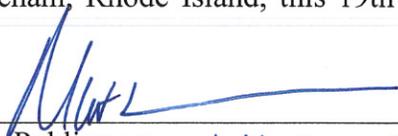
6 17. Q. Does that conclude your direct testimony?

7 A. Yes.



Marc Tillson,
Building Official, Town of New Shoreham

Subscribed and sworn to before me in New Shoreham, Rhode Island, this 19th day of
January, 2018.



Notary Public: Millicent McGinnes
My commission expires: 05/08/2018

DEPARTMENT OF THE ARMY
RIGHT-OF-ENTRY FOR STAGING

Block Island Harbor of Refuge, Town of New Shoreham, RI
Repairs to East Breakwater

THIS AGREEMENT is made as of the 16th day of September, 2016 ("Agreement") by and between the Town of New Shoreham, Rhode Island ("Owner") and the United States of America ("Government").

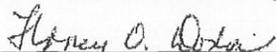
WHEREAS, the parties recognize that from time to time the Government requires access to and through certain properties owned by the Owner as described herein for purposes of making repairs to maintaining and dredging the East Breakwater located in Old Harbor, Block Island (collectively, "East Breakwater Operations").

NOT THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

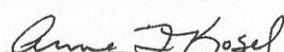
1. The term of this Agreement shall be for a period of five years commencing on the date of this Agreement and terminating five years thereafter.
2. The Owner hereby grants to the Government, an irrevocable right to enter ("ROE") in, over and across the land described below ("ROE Land") for a period of seven months beginning on October 1, 2016 and terminating on April 30, 2017 ("ROE Period"), for use by the Government, its representatives, agents, contractors and assigns as a staging area for the East Breakwater Operations including the right to move, store, and remove equipment and supplies and erect and remove temporary structures on the ROE property and to perform any other work necessary or incidental to the East Breakwater Operations. The ROE Period may be extended by the parties' agreement from time to time in writing as required and all such ROE Period extensions will be governed by the terms and conditions of the Agreement.
3. All tools equipment and other property taken upon or placed upon the ROE Land by the Government or its contractors shall remain the property of the Government or its contractors and shall be removed by the Government prior to the end of each ROE Period. The Government shall not allow or permit any temporary or permanent structure to be constructed by the Government, its contractors, or any person or entity which will impede or restrict the Owner and the public's access to the town bait dock, to the ROE Land, to the East Breakwater or to the beach located along the west side of the East Breakwater, which is not removed by the end of each ROE Period.
4. If any action of the Government's employees or agents in the exercise of this ROE results in damage to the ROE property, the Government will at its option, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee interest of the ROE property at the time immediately preceding such damage. The Government's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any other damages than provided herein.
5. The ROE land is located in the State of Rhode Island, County of Washington, Town of New Shoreham and depicted on Exhibit A, Page 1 of 2 "Block Island, Rhode Island, Harbor of Refuge, Repairs to the East Breakwater, Real Estate Plan," as the cross hatched areas entitled, "Temporary Right of Entry from Town and T&C Holdings LLC" see Note 4 (Area = 0.12 AC) and also shown on Exhibit A Page 2 of 2 and identified as "Contractor's temporary facilities; POV parking and storage and staging area, approximate 5,000 square feet (area owned by Town or T&C Holdings LLC)"; attached hereto and made a part hereof.

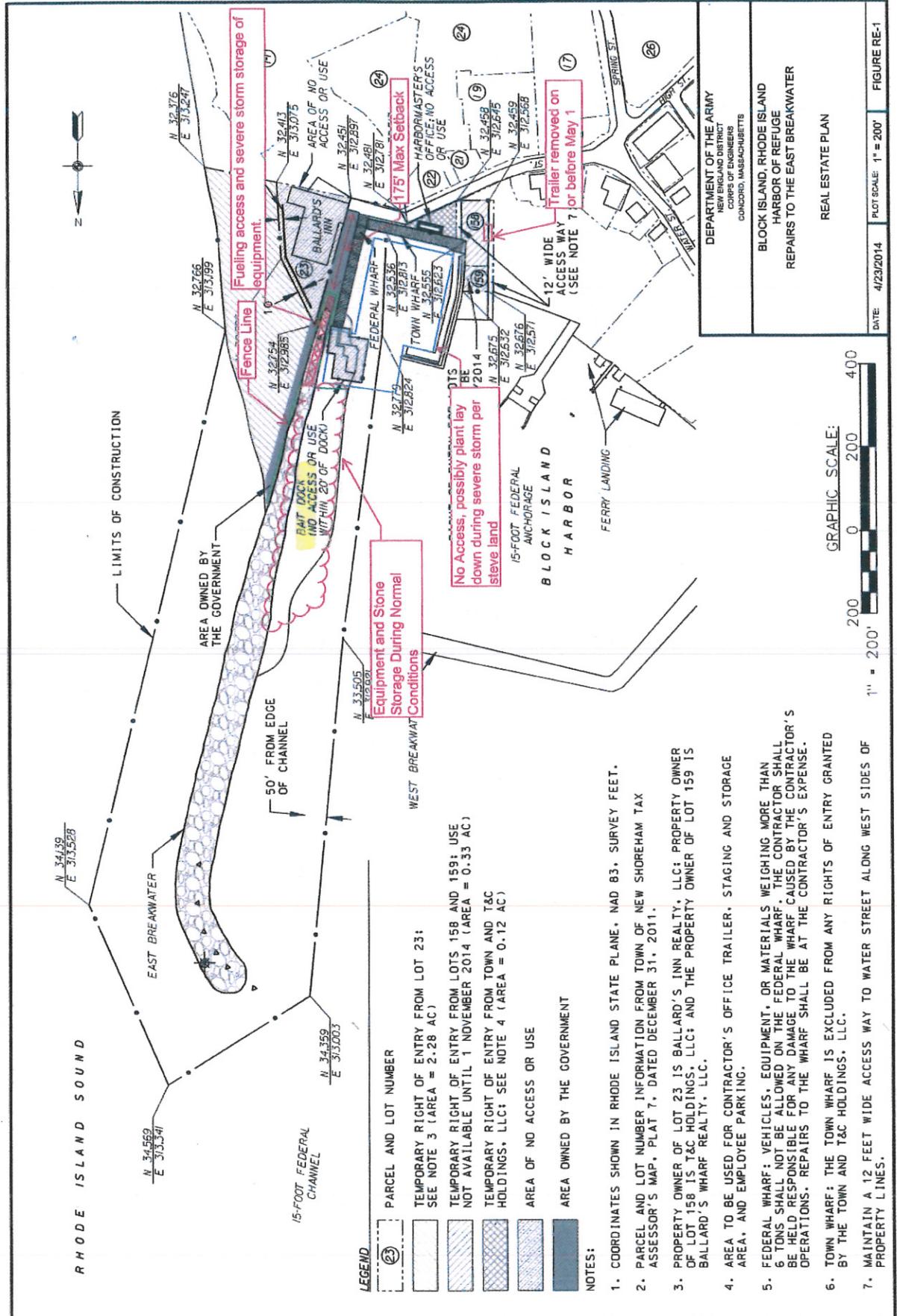
The parties have hereunto set their hands and seals as of the day and year first above written.

Owner: Town of New Shoreham, RI


Nancy O. Dodge, Town Manager

United States of America


Anne L. Kosel
District Chief of Real Estate
Real Estate Contracting Officer



RHODE ISLAND SOUND

LIMITS OF CONSTRUCTION

EAST BREAKWATER

Fence Line

AREA OWNED BY THE GOVERNMENT

50' FROM EDGE OF CHANNEL

15-FOOT FEDERAL CHANNEL

WEST BREAKWATER

Equipment and Stone Storage During Normal Conditions

No Access, possibly plant lay down during severe storm per state land

1175' Max Setback

Trailer removed on or before May 1

12' WIDE ACCESS WAY (SEE NOTE 7)

15-FOOT FEDERAL ANCHORAGE

BLOCK ISLAND HARBOR

FERRY LANDING

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT
CORPS OF ENGINEERS
CONCORD, MASSACHUSETTS

BLOCK ISLAND, RHODE ISLAND
HARBOR OF REFUGE
REPAIRS TO THE EAST BREAKWATER

REAL ESTATE PLAN

DATE: 4/23/2014

PLOT SCALE: 1" = 200'

FIGURE RE-1

GRAPHIC SCALE: 1" = 200'

LEGEND

- (23) PARCEL AND LOT NUMBER
- TEMPORARY RIGHT OF ENTRY FROM LOT 23: SEE NOTE 3 (AREA = 2.28 AC)
- TEMPORARY RIGHT OF ENTRY FROM LOTS 158 AND 159: USE NOT AVAILABLE UNTIL 1 NOVEMBER 2014 (AREA = 0.33 AC)
- TEMPORARY RIGHT OF ENTRY FROM TOWN AND T&C HOLDINGS, LLC: SEE NOTE 4 (AREA = 0.12 AC)
- AREA OF NO ACCESS OR USE
- AREA OWNED BY THE GOVERNMENT

NOTES:

1. COORDINATES SHOWN IN RHODE ISLAND STATE PLANE, NAD 83, SURVEY FEET.
2. PARCEL AND LOT NUMBER INFORMATION FROM TOWN OF NEW SHOREHAM TAX ASSESSOR'S MAP, PLAT 7, DATED DECEMBER 31, 2011.
3. PROPERTY OWNER OF LOT 23 IS BALLARD'S INN REALTY, LLC; PROPERTY OWNER OF LOT 158 IS T&C HOLDINGS, LLC; AND THE PROPERTY OWNER OF LOT 159 IS BALLARD'S WHARF REALTY, LLC.
4. AREA TO BE USED FOR CONTRACTOR'S OFFICE TRAILER, STAGING AND STORAGE AREA, AND EMPLOYEE PARKING.
5. FEDERAL WHARF: VEHICLES, EQUIPMENT, OR MATERIALS WEIGHING MORE THAN 6 TONS SHALL NOT BE ALLOWED ON THE FEDERAL WHARF. THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY DAMAGE TO THE WHARF CAUSED BY THE CONTRACTOR'S OPERATIONS. REPAIRS TO THE WHARF SHALL BE AT THE CONTRACTOR'S EXPENSE.
6. TOWN WHARF: THE TOWN WHARF IS EXCLUDED FROM ANY RIGHTS OF ENTRY GRANTED BY THE TOWN AND T&C HOLDINGS, LLC.
7. MAINTAIN A 12 FEET WIDE ACCESS WAY TO WATER STREET ALONG WEST SIDES OF PROPERTY LINES.



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767

RE: CRMC/New Shoreham Lease of Breakwater in Old Harbor

To Whom It May Concern:

I, Grover Fugate, under oath and penalty of perjury, state as follows:

1. I am the Executive Director of the State of Rhode Island Coastal Resources Management Council (CRMC).
2. Attached as Exhibit A to this Affidavit is a true and accurate copy of the Lease between the CRMC and the Town of New Shoreham (Town) for the breakwater/jetty identified with an "X" on the attached Exhibit B. The leased property is sometimes known as the "Red Breakwater" or the "Northern Ell" within Old Harbor, Block Island.
3. Originally constructed at the direction of the Army Corps of Engineers in the waters of the State of Rhode Island, the Red Breakwater is now the property of the State of Rhode Island managed and controlled by the Town pursuant to the Lease.
4. The term of the Lease is from May 2012 through April 2062. The Town is responsible for maintaining the Red Breakwater during the Lease term.
5. Pursuant to State law and the CRMC's Regulations, any alterations to the Red Breakwater, including constructing a dock attached to it, or anchoring a dock to it, would require an Assent from the CRMC. The Town, as holder of the Lease, would have to consent to any such dock and would have to be a party to any request for such an Assent.



Grover J. Fugate
Executive Director
Coastal Resources Management Council
Date: October 27, 2015

State of Rhode Island)
County of Providence)

On this 27th day of October 2015, before me, the undersigned notary public, personally appeared Grover Fugate, personally known to the notary to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to the notary that the contents of the document are truthful and accurate to the best of his knowledge and belief.



John T. Longo
Notary Public
My Commission Expires: 12/4/17



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767



LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of the 1st day of April, 2012, by and between the State of Rhode Island by and through the Coastal Resources Management Council ("CRMC") (hereinafter referred to as "the State" or "CRMC"), and the Town of New Shoreham (hereinafter referred to as the "Town").

I. LEASED PREMISES

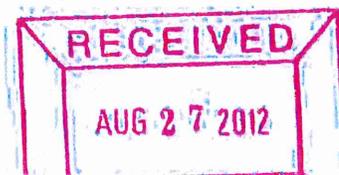
The State hereby leases to Town the following described property in the Block Island Old Harbor known as the Red Breakwater which is further described as follows:

That portion of the project for navigation, Block Island Harbor of Refuge, Rhode Island adopted by the Rivers and Harbors Act of July 11, 1870, consisting of the cut-stone breakwater lining the west side of the Inner Basin; beginning at a point with coordinates N32579.55, E312625.53, thence running northerly about 76.59 feet to a point with coordinates N32655.92, E312631.32, thence running northerly about 206.81 feet to a point with coordinates N32858.33, E312673.74, thence running easterly about 109.00 feet to a point with coordinates N32832.15, E312779.54.

The above-described property is referred to in this Lease Agreement as the "Red Breakwater."

II. TERM

The Town shall hold the Red Breakwater with all the rights, privileges, and appurtenances thereof, for and during the term of fifty (50) years, beginning on April 1, 2012, and ending on April 1, 2062.



III. RENT

The annual rent is one dollar (\$1.00) per year. Payment of the rent for the term of the lease shall be made upon execution of this Agreement by one, lump-sum payment of fifty dollars (\$50.00).

IV. COVENANTS OF TOWN

The Town hereby covenants with the State as follows:

- A. The Town will maintain the Red Breakwater in good order and repair;
- B. The Town will pay the rent in the manner aforesaid;
- C. The Town will use and occupy the Red Breakwater in a careful and proper manner;
- D. The Town will not use or occupy the Red Breakwater for any unlawful purpose, and will conform to and obey all present and future laws and ordinances and all rules, regulations, requirements, and orders of all governmental authorities or agencies pertaining thereto.
- E. The Town will quietly and peaceably surrender up possession of the Red Breakwater to the State at the expiration of this Lease Agreement subject to all reasonable wear and tear.

V. MUTUAL COVENANTS

It is mutually agreed by and between the CRMC and Town that:



A. The Town shall have the right to erect such signs, docks, and other structures on or near the Red Breakwater at its own expense as the Town shall deem desirable in accordance with applicable laws and regulations, and shall maintain all such structures in good order and repair.

B. All fixtures, structures and/or equipment as shall have been installed by the Town during the term of this Lease Agreement on or near the Red Breakwater shall become the property of the Town at the termination of this Lease Agreement. At the end of the lease period the Town shall be renewal of the lease all fixtures, structures and/or equipment shall be removed.

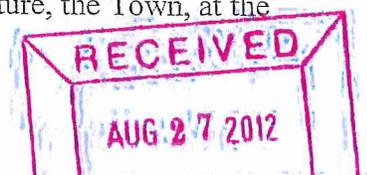
C. The Town shall peaceably and quietly have, hold, and enjoy the Red Breakwater for the term aforesaid.

D. This Lease Agreement and all the covenants, provisions, conditions, hereinbefore contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

E. The execution and performance by the Town of the terms and provisions of this Lease Agreement have been duly authorized by all requisite action and this Lease Agreement constitutes a valid and binding obligation of the Town. The execution and performance of this Lease Agreement will not violate any provision of law, any order of any court, or other agency of government, or any other instrument to which the Town is a party or by which Town is bound. The Town has full power and authority to enter into this Lease Agreement and to consummate the transactions herein contemplated.

E. The execution and performance by the CRMC of the terms and provisions of this Lease Agreement have been duly authorized by all requisite action and this Lease Agreement constitutes a valid and binding obligation of the CRMC. The execution and performance of this Lease Agreement will not violate any provision of law, any order of any court, or other agency of government, or any other instrument to which the CRMC is a party or by which CRMC is bound. The CRMC has full power and authority to enter into this Lease Agreement and to consummate the transactions herein contemplated.

F. Notwithstanding anything herein contained to the contrary, in the event that the Red Breakwater shall be materially damaged by flood, fire, or any act of nature, the Town, at the



Town's option, may cancel this Lease Agreement upon written notice to the CRMC, and the Town shall be under no obligation to repair or replace the Red Breakwater. For purposes of this Lease Agreement, material damage shall be damage which costs one-hundred-and-fifty thousand dollars (\$150,000) or more to repair or replace.

VI. ENTIRE AGREEMENT

This Lease Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the lease of the Red Breakwater, and cancels all previous oral and written negotiations, agreements and, commitments, in connection therewith.

VII. CONSTRUCTION

This Lease Agreement shall be construed pursuant to the laws of the State of Rhode Island.

VIII. CONTROVERSIES AND CLAIMS SUBJECT TO ARBITRATION

All disputes between the parties hereto arising under this Lease Agreement may, with the mutual consent of the parties, be resolved by binding arbitration in Rhode Island pursuant to the rules then prevailing of the American Arbitration Association. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Notwithstanding the foregoing, each party (hereinafter, the "initiating party") specifically reserves the right (i) to seek equitable remedies in a court of competent jurisdiction; and (ii) to bring a third party action against any other party in any proceeding to which the initiating party is a party under circumstances in which the basis of the initiating party's claim against the other party is that such other party is liable, in whole or in part, for any claim or counterclaim being asserted against the initiating party in such proceeding. Notwithstanding the foregoing, each party specifically reserves the right to seek equitable remedies in a court of competent jurisdiction including, without limitation, the right to seek injunctive relief to preserve the *status quo* during the period of arbitration under the terms of this paragraph.



IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed by their duly authorized representatives as of the day and date first written above.

WITNESS:

Lisa A. Turner
Lisa A. Turner

STATE OF RHODE ISLAND:
by and through the
Coastal Resources Management Council

Grover J. Fugate
Grover J. Fugate, Executive Director

WITNESS:

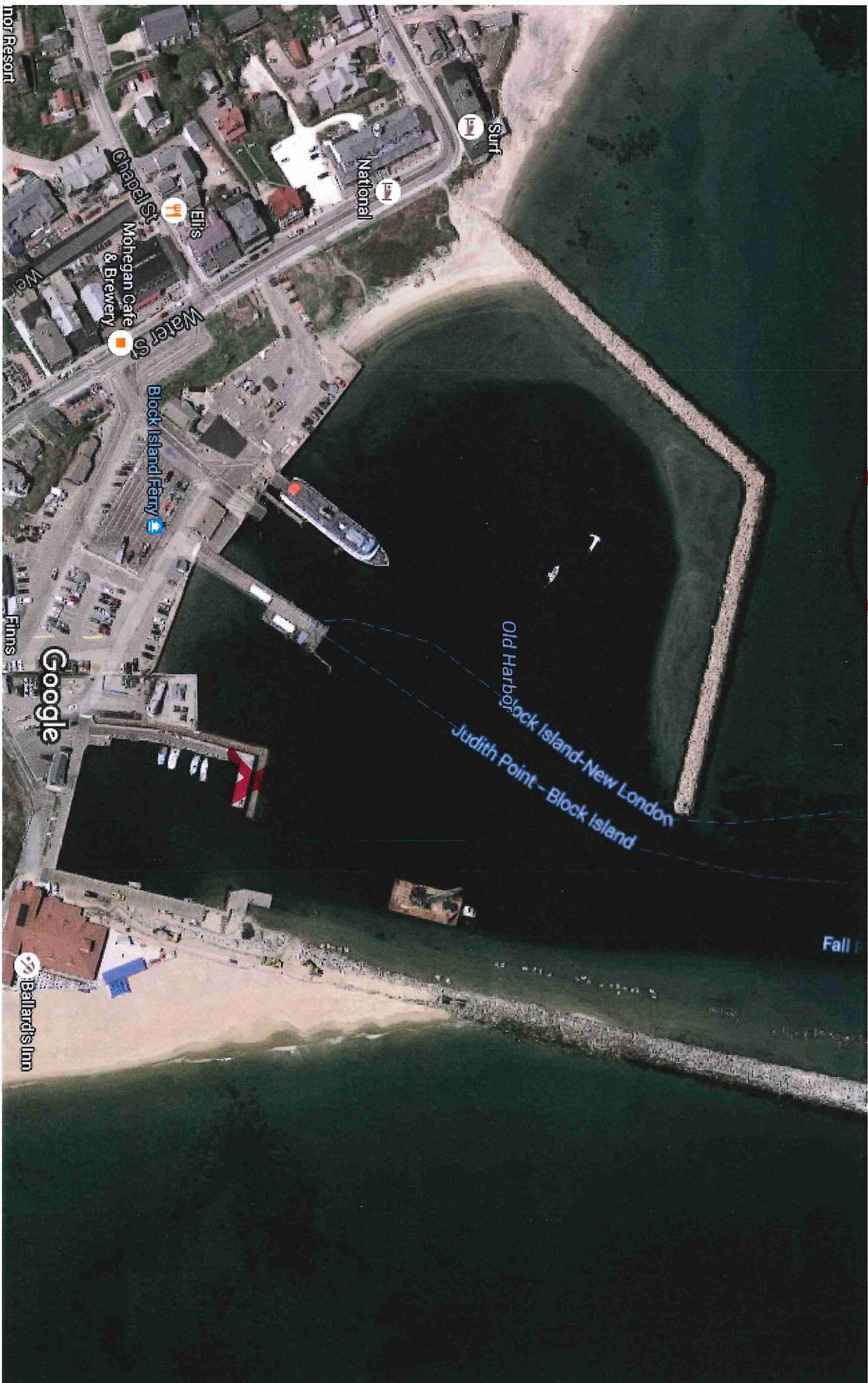
Shirlyne J. Govern
Shirlyne J. Govern

TOWN OF NEW SHOREHAM:

Nancy O. Dodge
Nancy O. Dodge, Town Manager



Google Maps Google Maps



September 18, 2015

To Whom It May Concern:

I am the manager of Ballard's Wharf Realty, LLC (BWR), which owns Plat 6, Lot 159 in the Town of New Shoreham. Please be advised that BWR has not agreed to allow Bluewater, LLC to utilize BWR's riparian/littoral rights, nor has BWR agreed to allow Bluewater, LLC's proposed pier to connect to BWR's existing marine facility.

A handwritten signature in blue ink, appearing to read "Blake Filippi", written over a horizontal line.

Blake Filippi