

TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

Board of Selectmen/Assessors Agenda Village Fire Station – 32 North Street October 12, 2017 – 6:00 PM

1. Call to Order.
2. Approve the September 28, 2017, selectmen meeting minutes.
3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.).
4. Public hearing to consider the following warrant articles for the November Special Town Meeting.
 - a. Enactment Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs in the Town of Kennebunkport.
 - b. Amendment to the Land Use Ordinance Regarding Accessory Apartments.
 - c. Amendment to the Waterfront Ordinance.
5. Consider sewer abatement for Mary H. Abbott Trustee, 24 Washburn Drive, map 20, block 4, lot 3K
6. Meet as Assessors to consider tax abatement.

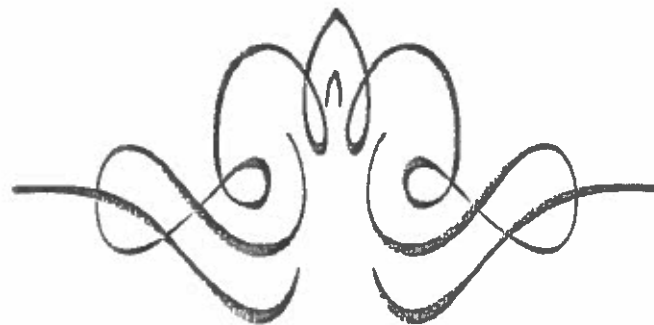
Property Owner	Location	Map	Blk	Lot	Tax Abatement 2017
Gary Ridlon	Langsford Rd.	29	1	10	\$343.97

7. Approve Quitclaim Deed for Dianne J. Bourque Trustee, Dianne J. Bourque Revocable Trust, Map 9, Block 8, lot 1.
8. Approve the Cape Porpoise Pier Chowder House Lease.

9. Other business.
10. Approve the October 12, 2017, Treasurer's Warrant.
11. Adjournment.



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**Town of Kennebunkport
Board of Selectmen/Assessors Meeting
Village Fire Station, 32 North Street
September 28, 2017 – 6:00 PM**

Minutes of the Selectmen's Meeting of September 28, 2017

Selectmen Attending: Stuart Barwise, Patrick A. Briggs, Allen Daggett, Sheila Matthews-Bull

Selectman Absent: Edward Hutchins

Others: Jim Burrows, Michael Claus, Carol Cook, Mike Davis, Werner Gillian, Dave James, Ali Kenneway, Allan Moir, Tracey O'Roak, Dan Rush, Craig Sanford, Laurie Smith, Arlene McMurray, Robert Worthley, Barbara Wright and others

1. Call to Order.

Chair Briggs called the meeting to order at 6:00 PM.

2. Approve the August 24 and September 7, 2017, selectmen meeting minutes.

Motion by Selectman Daggett, seconded by Selectman Barwise, to approve the August 24, 2017, selectmen meeting minutes. **Vote:** 3-0-1/Selectman Barwise abstained because he did not attend that meeting.

Motion by Selectman Daggett, seconded by Selectman Barwise, to approve the September 7, 2017, selectmen meeting minutes. **Vote:** 3-0-1/Selectman Matthews-Bull abstained because she was not present at that meeting.

3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.).

There were no comments.

4. Public Hearing to adopt the MMA Model Ordinance GA Appendices A to D for the period October 1, 2017–September 30, 2018.

Motion by Selectman Barwise, seconded by Selectman Daggett, to open the public hearing to adopt the MMA Model Ordinance GA Appendices A to D for the period October 1, 2017–September 30, 2018. **Vote:** 4-0.

Chair Briggs opened the public hearing at 6: 01 PM.

Director of Public Health/General Assistance Administrator Alison Kenneway explained the amendments to the General Assistance Ordinance.

Chair Briggs closed the public hearing at 6:05 PM.

Motion by Selectman Matthews-Bull, seconded by Selectman Barwise, to adopt the MMA Model Ordinance GA Appendices A to D for the period October 1, 2017–September 30, 2018. **Vote:** 4-0.

5. Award the bid for the purchase of a new ½ ton truck for the Wastewater Department.

Wastewater Superintendent Allan Moir announced that he needed to replace his ½ ton truck. He sent out bid invitations to 12 vendors, and received the following responses:

Vendor	Truck	Price
Quirk Chevrolet	Chevy Silverado Regular Cab	\$23,867
Quirk Chevrolet	Chevy Silverado Super Cab	\$25,500
Arundel Ford	Ford F150 Regular Cab	\$27,756
Arundel Ford	Ford F150 Super Cab	\$30,878
Weirs GMC	GMC Sierra 1500 Regular Cab	\$31,191
Weirs GMC	GMS Sierra 1500 Super Cab	\$32,549

Mr. Moir recommends purchasing the Chevy Silverado Super Cab from Quirk Chevrolet.

Motion by Selectman Daggett, seconded by Selectman Barwise to award the bid for the ½ ton truck for the wastewater department to Quirk Chevrolet at a cost of \$25,500. **Vote:** 4-0.

6. Presentation of municipal valuation return by Assessors Agent Rebecca Nolette.

Director of Planning and Development Werner Gillian presented the municipal valuation return because Rebecca Nolette was not able to attend the meeting. He said that the town is still certifying at 100%.

Motion by Selectman Barwise, seconded by Selectman Daggett, to authorize the 2017 Municipal Valuation Return. **Vote:** 4-0.

7. Meet as Assessors to consider the following tax abatements requests.

Property Owner	Location	Map	Blk	Lot(s)	Tax Abatements 2017	Tax Supplement
Paul & Elizabeth Catarius	23 New Adams Road	37	3	34/BC	\$119.61	

Selectmen's Meeting

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September 28, 2017

Walter G.Rodiger Rev. Trust	12 Arlington St.	7	3	3	\$1,696.24	
Kirsten Ivancevic Rev. Trust	5 Fox Run	8	3	1H	\$7,183.92	
Bill/David & Allison Stires	5 Fox Run	8	3	1H		\$7,183.92
Total Abatements					\$8,999.77	

Mr. Gillian reported all of Assessors Agent Rebecca Nolette's recommendations. He explained that the first abatement for Paul & Elizabeth Catarius is due to a reduction in building value. The second abatement for Walter G.Rodiger Rev. Trust is due to a reduction in land value. The third abatement for the Kirsten Ivancevic Rev. Trust is due to erroneously assessing the previous owner. Bill/David & Allison Stires should have received the bill.

Motion by Selectman Barwise, seconded by Selectman Daggett, to accept all of the recommendations from Assessors Agent Rebecca Nolette and approve the total abatements for \$8,999.77 and the supplement for \$7,183.92. **Vote:** 4-0.

8. Award the bid for the sale of the Parks and Recreation playground equipment.

Town Manager Laurie Smith said that parks and recreation only received one bid from Richard Francouer in the amount of \$200. He wanted to purchase the playground equipment located at Rotary Park at Beachwood. Parks and Recreation Director Carol Cook decided to give Mr. Francouer his choice of pieces from both parks and to send the rest of the equipment to a metal recycling center.

Motion by Selectman Barwise, seconded by Matthews-Bull to accept the bid from Richard Francouer in the amount of \$200 for the recreation playground equipment at Rotary Park at Beachwood. **Vote:** 4-0.

9. Award the bid for the purchase of a new Dodge Charger for the Police Department.

Police Chief Craig Sanford said they sent out bid requests to eight dealerships and received the following bids:

Vendor	Price
Newcastle	\$20,498
Southern Maine Dodge Jeep	\$20,543
Poulin	\$22,503

He recommends awarding the bid to Southern Maine Dodge Jeep because their location is closer and worth the extra \$45 because he would spend that in turnpike tolls and gas to go to the others.

Motion by Selectman Daggett, seconded by Selectman Barwise to award the bid for the purchase of a new Dodge Charger for the Police Department to Southern Maine Dodge Jeep at a cost of \$20,543.00. **Vote:** 4-0.

10. Award winter sand bid for 2017.

Public Works Director Michael Claus said he received the following bids for winter sand:

Vendor	Per Yard Delivered	Per Yard Picked Up
Hissong	\$9.10	\$4.20
Dayton	\$9.00	\$5.00

Mr. Claus recommends awarding the bid to Hissong.

Motion by Selectman Barwise, seconded by Matthews-Bull to award the winter sand bid to Hissong at \$4.20 for cubic yard picked up. **Vote:** 4-0.

11. Approve street opening permit for Ben and Rebecca Thompson, 3 Temple Street to install underground utilities.

Robert Worthley, agent for Ben and Rebecca Thompson, was present. He said they are only opening one side of the sidewalk.

Motion by Selectman Barwise, seconded by Matthews-Bull to approve the street opening permit for Ben and Rebecca Thompson ta 3 Temple Street to install underground utilities. **Vote:** 4-0.

12. Consider consent agreement for setback violation at 9 Community House Road.

Director of Planning and Development Werner Gillian explained the consent agreement. He said a mortgage inspection survey revealed a 5 foot discrepancy in the plot plan which led to the construction of an addition which violates the required setback. This agreement says the town will not go after the property owner. He recommends approval of this consent agreement and that the property owner pay for all town legal fees.

Motion by Selectman Matthews-Bull, seconded by Selectman Barwise, to approve the Pichette Consent Agreement for property located at 9 Community House Road and to charge the property owner for legal fees but no fine. **Vote:** 4-0.

13. Consider the Public Safety Committee's recommendation regarding E-911 Street renumbering.

Jim Burrows said there have been inconsistencies in street numbering. The Public Safety Committee would like to correct these issues with the least amount of impact on the property owner. It would like to renumber the addresses on Kings Highway and review all of the street numbers in Kennebunkport and make corrections.

Ms. Smith said the appeals process for the new street numbering would start with her, and the Board of Selectmen would handle the final appeal.

Motion by Selectman Matthews-Bull, seconded by Selectman Barwise to accept the Public Safety Committee's recommendations to correct street numbering issues.

Vote: 4-0.

14. Consider an extension of the Cape Porpoise Pier Chowder House lease.

Ms. Smith explained the lease will expire in November 2017. A notice was sent out to the public asking if anyone was interested, and no response was received.

Motion by Selectman Barwise, seconded by Selectman Matthews-Bull, to enter into negotiations for the extension of the Cape Porpoise Pier Chowder House lease. **Vote:** 3-0-1/Selectmen Daggett recused himself.

15. Other business.**a. Appoint an MMA voting delegate for the MMA Annual Business Meeting.**

Motion by Selectman Matthews-Bull, seconded by Selectman Barwise, to appoint Laurie Smith as MMA voting delegate for the MMA Annual Business Meeting. **Vote:** 4-0.

Mr. Gillian announced that the housing needs assessment meeting is scheduled for October 5, at 7 PM, at the Village Fire Station. The public is invited to attend.

Ms. Smith announced that new audio/visual equipment is being installed at the police department and Village Fire Station meeting room.

16. Approve the September 28, 2017, Treasurer's Warrant.

Motion by Selectman Barwise, seconded by Selectman Matthews-Bull, to approve the September 28, 2017, Treasurer's Warrant. **Vote:** 4-0.

Motion by Selectman Barwise, seconded by Selectman Matthews-Bull, to adjourn the meeting. **Vote:** 4-0.

The meeting adjourned at 6:35 PM.

Submitted by Arlene McMurray

Administrative Assistant



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TOWN OF KENNEBUNKPORT NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE

A public hearing will be held at
the Village Fire Station, 32 North Street
on Thursday, October 12, 2017 at 6:00 p.m.
by the Board of Selectmen
to take public comment on the following topics to be voted
on by Referendum Ballot at the
November 7, 2017 Special Town Meeting:

- 1. Enactment of Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs in the Town of Kennebunkport**
- 2. Amendment to the Land Use Ordinance Regarding "Growth Management Permit Required"**
- 3. Amendment to the Waterfront Ordinance**

Copies of the proposed amendment are available for inspection at
the office of the Town Clerk or on the town's website at
www.kennebunkportme.gov

Tracey O'Roak
Town Clerk



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(5)

Town of Kennebunkport

Number 2017-1

Certificate of Abatement

36 M.R.S.A. § 841

2017

We, the undersigned Assessors/Municipal Officers of the municipality of Kennebunkport, Maine hereby certify to Laurie Smith, Tax Collector, that an abatement of sewer taxes has been granted as follows:

Date: October 3, 2017

Sewer Year: April 1, 2016

Amount Abated:

Value abated: \$ 360.20

Taxpayer: Abbott Mary H Trustee

Location: 24 Washburn Drive

MBL: 20/004 /03K – Sewer Acct.#

Reason: Resident did not occupy the residence until November 2016. Application was pulled by contractor in 2015. Occupancy was taken prior to final certificate of use and occupancy was given. Contractor was supposed to call when the changes were complete and didn't. Final certificate is now in place.

Allan Moir

You are hereby discharged from any further obligation to collect the abated amount.

Date: October 12, 2017

Patrick A. Briggs

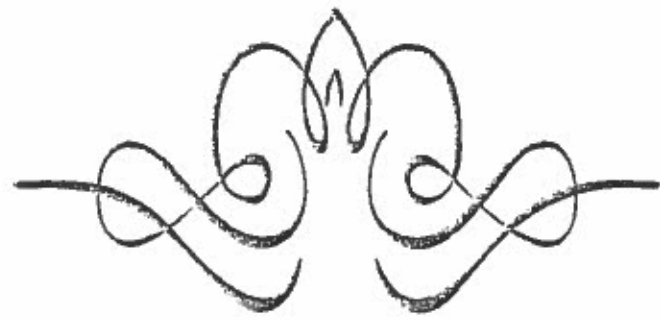
Stuart Barwise

Board of Assessors/Selectmen

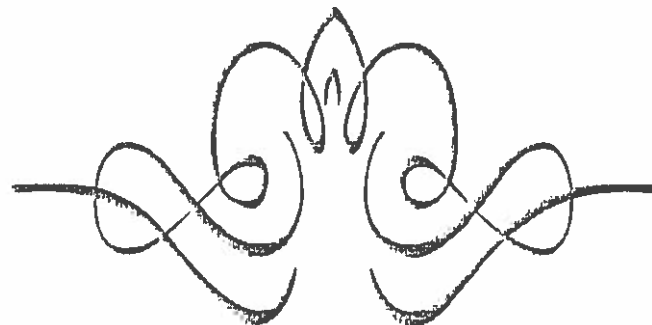
Allen A. Daggett

Edward W. Hutchins

Sheila Matthews-Bull

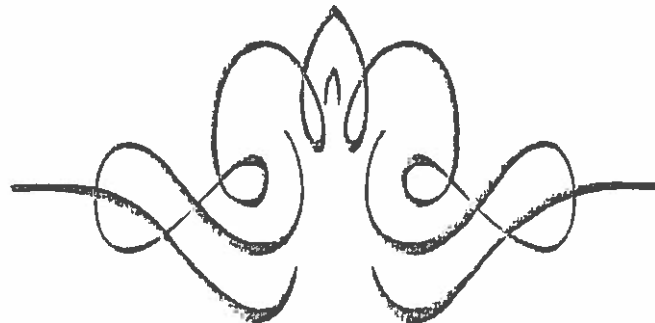


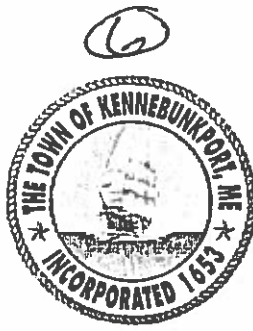
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TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

To: Board of Selectmen/Assessors

From: Becky R. Nolette, CMA, Assessors Agent

Date: October 3, 2017

Re: Abatement – Gary Ridlon, Langsford Road

Mr. Ridlon submitted an abatement application, requesting I visit his parcel to confirm the lot is submerged. After visiting the parcel, I did confirm the lot is submerged the majority of time. I updated the condition factor of the land to reflect its submerged status.

After making the adjustment, the parcel value is decreased by \$39,400, resulting in an abatement of \$343.97.

For your information, I have included the abatement application, and the necessary documents for your signatures.

It is my recommendation that the abatement be granted at your October 12, 2017 meeting.

**Town of Kennebunkport
Certificate of Abatement**

Number 2017-5

36 M.R.S.A. § 841

2017

We, the undersigned Assessors/Municipal Officers of the municipality of Kennebunkport, Maine hereby certify to Laurie Smith, Tax Collector, that an abatement of property taxes has been granted as follows:

Date Granted:	October 12, 2017
Type of Tax:	Real Estate
Tax Year:	April 1, 2017
Amount Abated:	\$343.97
Value abated:	\$39,400
Taxpayer:	Gary Ridlon 17 Portside Dr. Kennebunkport, ME 04046
Location:	0 Langsford Road
MBL:	29/1/10 – Tax Acct.# 27317
Reason:	Submerged lot/condition factor adjusted

You are hereby discharged from any further obligation to collect the abated amount.

Date: October 12, 2017

Patrick A. Briggs

Stuart Barwise

Allen A. Daggett

Edward W. Hutchins

Sheila Matthews-Bull

Board of Assessors/Selectmen

RECEIVED
CE
Y TAXES
2017
B. D. D.

- The above statements are correct to the best of my knowledge and belief.

Mary B. Bollen
Signature of Applicant

A separate application form should be filed for each separately assessed parcel of real estate believed to be “over-valued.”



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MUNICIPAL QUITCLAIM DEED WITHOUT COVENANTS

KNOW ALL BY THESE PRESENTS THAT the Inhabitants of the Town of Kennebunkport, a body corporate and politic located in York County, State of Maine, for consideration paid, release to Dianne J Bourque Trustee, Dianne J Bourque Revocable Trust a certain parcel of land with buildings thereon, if any, located in the Town of Kennebunkport, York County, State of Maine, identified as follows:

Map Lot 009-008-01, on the Town Assessors' maps for Kennebunkport, which are on file at the municipal office, being the same premises described in Town of Kennebunkport sewer liens dated October 24, 2014, November 2, 2015 and October 11, 2016, recorded in the York County Registry of Deeds in Book 16913 Page 106, Book 17127 Page 444 and Book 17339 Page 562 respectively.

The Inhabitants of the Town of Kennebunkport have caused this instrument to be signed in its corporate name by Stuart E. Barwise, Patrick A. Briggs, Allen A. Daggett, Edward W. Hutchins II and Sheila W. Matthews-Bull, its Municipal Officers duly authorized.

Witness our hands and seals this 12th day of October, 2017.

Inhabitants of the Town of Kennebunkport

Witness

Stuart E. Barwise

Witness

Patrick A. Briggs

Witness

Sheila Matthews-Bull

Witness

Edward W. Hutchins II

Witness

Allen Daggett

ACKNOWLEDGEMENT

State of Maine
York, County, ss.

October 12, 2017

Then personally appeared before me the above-named Stuart E. Barwise, Patrick A. Briggs, Edward W. Hutchins II and Sheila W. Matthews-Bull Municipal Officers of the Town of Kennebunkport, and acknowledged the foregoing to be their free act and deed in their said capacity and the free act and deed of the Inhabitants of said Municipality.

Before me,



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LEASE AGREEMENT

This Lease made and entered this ____ day of October, 2017 by and between the Inhabitants of the Town of Kennebunkport, a Maine municipality (hereinafter referred to as "Landlord"), and A and W LLC, d/b/a The Chowder (hereinafter referred to as "Tenant").

ARTICLE I

Premises

Landlord hereby leases, demises and lets unto Tenant and Tenant hereby leases, takes and hires from Landlord, for the term and upon and subject to the terms and conditions set forth in this Lease Agreement (hereinafter the "Lease"), the building operated most recently as the "Cape Pier Chowder House", together with the outside deck area and as shown on Appendix A hereto and made a part hereof (hereinafter the "Premises" or the "Leased Premises"), which Premises arc, at the commencement of this lease, only a portion of the Landlord's property located at or near Cape Porpoise Pier in the Town of Kennebunkport, Maine. The Premises shall include a right of reasonable access thereto.

ARTICLE II

Term

The term of this Lease shall begin on December 1, 2017, and end on November 30, 2022. Landlord may offer Tenant the option to extend the lease for an additional five year period at mutually agreeable terms. Tenant shall have no right to extend the term of this Lease unilaterally.

ARTICLE III

Rent

Section 3.01. Base Rent. During each Lease Year during the term of this Lease, Tenant shall promptly pay Landlord, without any offset, abatement, deductions or setoff whatsoever and without previous demand therefor, at the address set forth in this Lease in regard to notices or at such other place as Landlord may direct by notice in writing to Tenant from time to time, the annual Base Rent for the each Lease Year at the rates set forth hereinafter, which Base Rent shall be payable, in advance, in five (5) equal installments on April 1st, May 1st, June 1st, July 1st, and August 1st of each and every Lease Year during said term. "Lease Year" means the successive periods during the term set forth below, even if such period is not a full 12 months, with the first such period to begin on April 1, 2018.

The Lease Year Base Rent shall be as follows:

1. For the Lease Year December 1, 2017 through November 30, 2018 \$ 40 000.00
2. For the Lease Year December 1, 2018 through November 30, 2019, \$ 40 000.00
3. For the Lease Year December 1, 2019 through November 30, 2020, \$ 40 000.00
4. For the Lease Year December 1, 2020 through November 30, 2021, \$ 40 000.00
5. For the Lease Year December 1, 2021 through November 30, 2022, \$ 40 000.00

ARTICLE IV

Landlord's Obligations

Section 4.01. Quiet Enjoyment. Landlord warrants that, so long as Tenant faithfully performs all agreements and obligations of this Lease, Tenant shall, subject to applicable provisions of law and governmental authorities and to Landlord's rights hereunder, including the right to alter, improve, maintain, repair, or replace any portions of the Premises or any fixtures, appurtenances and equipment thereof, peaceably and quietly have, hold, and enjoy the Premises for the term set forth herein without molestation or disturbance by and from Landlord and free from any and all encumbrances except as otherwise specified in this Lease.

Section 4.02. Improvements. Tenant agrees and accepts the Premises "As Is" "Where Is" in their current condition.

Section 4.03. Maintenance and Repairs. Throughout the term of this lease, Landlord shall be responsible for maintaining the proper condition and functioning, and to maintain in good order and repair, the pier supports on which the Premises are located; provided, however, that if these supports prove inadequate to enable Tenant to use the Leased Premises or otherwise create an unsafe condition, then Landlord may, at its option, either (i) repair the supports to the Tenant's reasonable satisfaction, or (ii) terminate this Lease without further liability to Landlord. Tenant shall be entitled to an abatement of rent during any period of repair or maintenance performed by Landlord which renders the Leased Premises unusable by Tenant.

ARTICLE V

Tenant's Obligation

Section 5.01. Payment of Rent. Tenant shall pay each and every installment of Base Rent and other amounts due hereunder promptly when due, and without demand by Landlord and without any withholding or offset whatsoever.

Section 5.02. Utility Charges. Tenant shall pay when due all utility charges for sewer, water, gas, telephone and electrical service, and any other utilities used or consumed on the Premises.

Section 5.03. Personal Property Taxes. Tenant shall pay all personal property taxes levied or assessed in respect of all personal property and trade fixtures situated on such Premises, excluding any personal property owned by Landlord.

Section 5.04. Use and Occupancy. Tenant shall use and occupy the Premises solely for a restaurant, including "take-out" food, in accordance with the provisions of Appendix B hereto, and in all cases for purposes which are lawfully permitted under applicable laws and for which the Premises are reasonably suited and for no other purposes whatsoever. Notwithstanding the terms of the Lease, the Premises shall be used and operated for their permitted purposes only between the dates of April 1st and November 30th of each Lease Year. Tenant shall obtain any and all licenses or permits necessary for the conduct of its permitted use of the Premises and shall comply, at its expense,

with all governmental laws, rules, regulations and ordinances, and with all of Landlord's insurance policies applicable to the Leased Premises and with all reasonable rules and regulations established by Landlord from time to time; and, without limiting the foregoing, Tenant shall comply with the Rules and Regulations as set forth in Exhibit B and the Cape Porpoise Pier Ordinance set forth in Appendix C both of which exhibits are attached hereto and are hereby incorporated as part of this Lease. To the extent the provisions of the body of this Lease and Appendices B and/or C may conflict, the most restrictive of the three shall control.

Section 5.05. Maintenance and Repairs. Tenant shall maintain the Premises, including a restroom facility that will be open to the public during operating hours, in as good order, repair, and condition as the Premises existed at the commencement of this Lease, reasonable wear and tear excepted. Except as provided in Section 4.03 above, Tenant shall be solely responsible for all repairs and replacements to the entire Premises belonging to Landlord, whether or not then being used or occupied by Tenant, during the entire lease term. Without limiting the foregoing, Tenant shall be responsible for and shall pay, either to Landlord or to parties doing such work, the following: all maintenance to the roof of the Premises, the exterior walls and structural portions of the Premises, and the utility lines and services, water, sewer and sprinkler charges, painting, decorating, door and window repair and replacement, paving, insurance costs, service contracts on HVAC units, and all other usual and customary expenses of owning, operating, and preserving the Premises.

Section 5.06 Alterations. Tenant shall not make any alterations, installations repairs, improvements, replacements or additions in, to or about any part of the Premises, or remodel all or any part of the Premises, without the prior written consent of Landlord, including the prior written approval by Landlord of the plans and specifications therefor, which consent or approval 'Will not be unreasonably withheld nor delayed. Tenant shall remove at its own expense any alterations, additions, and the like installed in violation of this provision. In the event of failure of Tenant to so remove, Landlord shall have the right to enter and remove such alterations, additions, and the like, and charge the reasonable cost thereof to Tenant. All additions, repairs, replacements, alterations and improvements to the premises made by Tenant, including all materials used and incorporated therein, shall become the property of Landlord upon the expiration or termination of this Lease.

Section 5.07. Signage. Tenant shall not install advertisements of any kind including, but not limited to, signs, awnings, and signals, to any part of the leased Premises including the inside or outside of the windows or doors unless and until the style, size, color, construction, and location of such advertisements have been approved in writing by Landlord. Tenant agrees that upon expiration or termination of this Lease Agreement, Tenant will remove such advertisements and restore the affected portion of the leased premises to its original condition prior to the installation of such advertisements.

Section 5.08. Security and Safety Regulations. Tenant shall conform to all reasonable rules and procedures now or hereafter established by Landlord for the safe, secure, and orderly use of the Premises.

Section 5.09. Landlord Entry for Repairs. Notwithstanding the respective obligations of the parties, and without creating or implying any obligation on the part of the Landlord, Tenant shall permit Landlord at any time to enter the Premises to install, maintain, repair, and replace any pipes, ducts, meters, wires and other machinery, equipment, apparatus, and fixtures if, in the

judgment of the Landlord, such improvements are necessary and consistent with sound real estate management of similar buildings. Such work shall be carried out in a manner to cause the Tenant minimum inconvenience.

Section 5.10. Waste and Nuisances. Tenant shall not injure or deface the Premises. Tenant shall not permit the use of the Premises for any purposes other than those provided herein and shall not permit any use of the Premises which is improper, offensive, or contrary to law or ordinance. Tenant shall not permit on the Premises any hazardous or inflammable substances, fluids, or chemicals and shall permit no objectionable noise, odors, or other nuisance. Tenant shall not permit or maintain any conditions which might cause an adverse effect on any insurance coverage affecting the Premises.

Section 5.11. Risk of Loss. Tenant shall hold the property owned by Tenant, or in the Tenant's custody situated on the Premises, at Tenant's own risk.

Section 5.12. Liability and Casualty Insurance. Tenant shall insure Tenant and Landlord, as their interests may appear, with comprehensive general liability and all-risk property and casualty insurance coverage on the Premises in such amount and with such companies as Landlord shall reasonably require, but in no event for less than One Million Dollars for injury or death in any single accident, which coverage shall provide for thirty (30) days prior notice of cancellation, nonrenewal or expiration. Tenant shall provide evidence of such insurance coverage on request. In no event shall the limits of such policies be considered to limit Tenant's liability under this Lease.

By way of amplification of, and not in limitation of, the provisions of this Section 5.12, at all times after the execution of this Lease, Tenant will take out and keep in force, at its expense:

- a. Comprehensive general liability insurance, naming Landlord and its officers, agents and employees as additional insureds, including insurance against assumed or contractual liability, with respect to the Premises, insuring against damage to property and bodily injury, including death caused by any act or omission, including the furnishing or consumption of alcohol by Tenant, its employees, contractors or licensees, patrons, and invitees. Such insurance shall afford protection to the limits of not less than Three Million Dollars (\$3,000,000.00) per occurrence/aggregate with respect to bodily injury or death. Said insurance shall provide for coverage of other occupants or users of Landlord's Premises who might be harmed or injured, or suffer property damage, as a result of any activities caused by or occurring on the Premises.
- b. All-risk casualty insurance, written at replacement cost value and with replacement cost endorsement, covering all of the Premises and all of Tenant's personal property in the Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Lease), and all leasehold improvements installed in the Premises by Tenant.
- c. Prior to execution of this Lease, upon request at each annual anniversary of this Lease, and at any other time reasonably requested by Landlord, Tenant shall provide certificates of insurance evidencing Tenant's compliance with the above provisions and naming Landlord as an additional insured. The company or companies writing any insurance which Tenant is required to take out and

maintain or cause to be taken out or maintained pursuant hereto, as well as the form of the insurance coverage, shall at all time be subject to Landlord's approval, and any such company or companies shall be licensed to do business in the State of Maine.

- d. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord to be increased beyond the minimum rate from time to time applicable to the Premises or to any such property for the use or uses made thereof, Tenant will pay as additional rental, the amount of any such increase upon Landlord's demand.

Section 5.13. Indemnity. Tenant shall hold harmless, defend and indemnify Landlord from any injury, death, loss, claim, or damage to any person or property while on or about the Premises and from any injury, loss, claim, or damage to any persons or property anywhere occasioned by any act, neglect, omission, or default of Tenant or its employees, agents, visitors, invitees, or contractors.

Section 5.14. Waiver of Subrogation. Landlord and Tenant each hereby release the other from any and all liability or responsibility to the other, or to anyone claiming through or under them by way of subrogation or otherwise, for any loss or damage caused by fire or any of the extended coverage or supplementary contract casualties, provided, however, that this release shall be applicable and in effect only with respect to loss or damage occurring during any time as any applicable party's insurance policies shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair said policies or prejudice the rights of the insured thereunder and provided further that this release shall apply only to the extent that insurance proceeds are actually received or collected under the insurance policy of the party sustaining the loss. Each party agrees that its policies will include such a clause or endorsement if obtainable without extra cost or if extra cost is charged, then as long as the other party pays such extra costs after notice thereof.

Section 5.15. Liens and Encumbrances. Tenant shall not suffer or permit any lien or encumbrance of any nature or description to be placed against the Premises or any portion thereof. Tenant shall have no authority to permit any lien or encumbrance to attach to or be placed upon Landlord's title or interest to the premises, building, or any portion thereof

Section 5.16. Landlord Entry for Inspection and Show. Tenant shall permit Landlord or its agents to enter upon the Premises at reasonable times to inspect the premises. Tenant shall permit Landlord to show the Premises throughout the term of this Lease.

Section 5.17. Surrender. At the expiration or termination of this Lease, Tenant shall peaceably surrender the Premises and all additions, alterations, and improvements to Landlord, broom clean and in good order, repair, and condition. At the expiration or termination of this Lease, Tenant shall further remove all goods and effects not attached to the Premises, repair all damage caused by such removal, and leave the Premises in clean and tenantable condition.

Section 5.18. Environmental. Tenant represents, warrants and agrees that its use, maintenance and operation of the Premises and the conduct of the business related thereto, shall at all times be in compliance with all applicable federal, state, county or local laws, regulations

and ordinances of any governmental authorities relating to Hazardous Materials, as hereinafter defined, and that Tenant, its agents, employees, customers, suppliers, and invitees will not cause any Hazardous Materials to be deposited, discharged, placed or disposed of at the Premises, and that the premises will remain free from hazardous Materials.

Tenant shall, to the extent arising from breach of the foregoing warranty, (a) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up, and remove all Hazardous Materials from the Premises, in accordance with all applicable federal, state and local laws, regulations, rules, ordinances and policies and in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless Landlord, its employees, agents, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any relation to (i) the discovery, presence, disposal, release, or threatened release, of any Hazardous Materials hereafter placed within, under, upon, from or into the Premises, (ii) any personal injury (including wrongful death) or property damage (real or personal), any lawsuit brought or threatened, settlement reached, or government order and/or any violations of laws, orders, regulations, requirements, or demands of government authorities, now in effect or at any time in the future, which are based upon or in any way related to any Hazardous Materials hereafter placed on the Premises.

As used herein, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances or matter, oil or other petroleum products, underground petroleum storage tanks, asbestos, chemical pollutants or related materials, including as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§6901, et seq.), applicable Maine Statutes (including 38 M.R.S.A. §561, et seq.; 39 M.R.S.A. §§1361, et seq.; 38 M.R.S.A. §§1301, et seq.; and 38 M.R.S.A. §§1317, et seq.) or any similar federal, state, or local law in effect from time to time, or in the regulations adopted and publications promulgated pursuant thereto or any other substances or materials constituting a hazard, peril, or threat to the health of persons, animals or plant life.

Section 5.19. Security Deposit. Tenant has previously paid Landlord a security deposit in the amount of One Thousand Five Hundred Dollars (\$1,500), and paid by response to a request for proposals issued by Landlord the amount of One Thousand Dollars (\$1,000) as security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease. If Tenant defaults in respect to any of the terms, provisions, covenants, and conditions of this Lease, including but not limited to payment of rent, Landlord may, but shall not be required to, use, apply, or retain the whole or any part of the security for the payment of any rent in default or for any other sum which Landlord may expend or be required to expend by reason of Tenant's default, including any damages or deficiency accruing before or after forcible detainer action or other reentry by Landlord. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the security, or any balance thereof, shall be returned to Tenant within thirty (30) days after the expiration or termination of this Lease. Whenever and as often as the amount of the security held by Landlord shall be diminished by Landlord's application thereof, Tenant shall, within (ten) 10 days after Landlord's request therefor, deposit additional money

with Landlord sufficient to restore the security to its original amount unless Landlord agrees in writing to any diminished security deposit. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the security, or the remaining balance thereof, Landlord may return the security to the original Tenant, regardless of one or more assignments of the Lease itself.

ARTICLE VI

Landlord Default

Section 6.01. Notice and Opportunity to Cure. Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

ARTICLE VII

Tenant Default and Landlord's Remedies

Section 7.01. Events of Default. Tenant shall be in default hereunder in any of the following events.

A. If Tenant shall fail to pay any Base Rent, Additional Rent, or other charge required to be paid by Tenant under this Lease within five (5) days of the date the same is due and payable; or

B. If Tenant shall default in the performance of any of the other obligations and agreements of this Lease, and such default shall not have been remedied within thirty (30) days after written notice of Landlord to Tenant specifying such default and requiring it to be remedied; or

C. If Tenant shall abandon the premises or fail to operate the Premises for the use permitted hereunder or leave them vacant for more than thirty (30) consecutive days during this Lease term; or

D. If an execution, attachment, lien, or other encumbrance shall be issued against Tenant and its property and such shall not be vacated or removed within thirty (30) days after the issuance thereof.

Section 7.02. Landlord's Option to Terminate. If Tenant becomes in default as defined in Section 7.01, Landlord may terminate this Lease upon written notice to Tenant, in which event all rights of Tenant hereunder shall expire and terminate and Tenant shall surrender the Premises on the date of such termination, and Tenant shall remain liable as herein provided.

Section 7.03. Tenant Not Released. In the event of termination of this Lease as provided herein, Tenant shall not be released or discharged but shall remain and continue liable to Landlord in a sum equal to all Base Rent, Additional Rent, and other charges then due and shall be liable for all damages provided for hereunder and all costs, and reasonable attorney's fees incurred by Landlord as a result of Tenant's default.

Section 7.04. Landlord's Remedies.

A. Reentry: In the event of termination, Landlord may reenter the Premises using such force as may reasonably be required without being liable for prosecution or damages on account of such reentry, and may possess and repossess the Premises by summary proceedings, ejectment, or otherwise. Tenant hereby waives any right to a jury trial in any eviction or forcible entry and detainer proceedings.

B. Repair and Alteration: Landlord may repair or alter the Premises as reasonably necessary to render them in tenantable condition.

C. Lease and Release: Landlord may lease or release the Premises or any portion thereof for the whole or the remainder of the original Lease term or for a longer period in Landlord's name or as agent for Tenant.

D. Damages: If this Lease is terminated under the provisions of this Article or in the event of the termination of this Lease, or of reentry, by or under any summary dispossession or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall pay to Landlord as damages, at the election of Landlord, in addition to all Base Rent, Additional Rent, and other charges then due and payable under this Lease, either:

(i) a sum which at the time of such termination of this Lease or at the time of any such reentry by Landlord, if any, equals the excess of (1) the aggregate of the Base Rent and the Additional Rent payable hereunder which would have been payable by Tenant (conclusively presuming the Additional Rent to be the same as was payable either for the Lease Year preceding or during, or the Lease Year immediately following such termination) for the period commencing with such earlier termination of this Lease or the date of any such reentry, as the case may be, and ending with the expiration date, had this Lease not so terminated or had Landlord not so reentered the Premises, over (2) the aggregate rental value of the Premises for the same period after considering and deducting reasonable projections of vacancy rates and costs of leasing and making the Premises acceptable to new tenant; or

(ii) sums equal to the Base Rent and the Additional Rent (as above presumed) payable hereunder which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so reentered the Premises payable upon the due date therefor specified herein following such termination or such reentry and until the expiration date; provided, however, that if Landlord shall relet the Leased Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting, the expenses incurred or paid by Landlord in terminating this Lease or in reentering the Premises and in securing possession thereof, including reasonable attorney's fees, as well as the expenses of reletting.

All damages payable under this paragraph (D) shall be in addition to all Base Rent and Additional Rent accrued and payable at the time of such termination or reentry and shall also be in addition to all expenses, damages and costs thereafter becoming due under this Article.

E. Other Damages. Tenant agrees to pay on demand, in addition to all charges hereunder, or in the event of termination of this Lease, then in addition to damages under Section 7.04(D): (a) all of Landlord's expenses including reasonable attorney's fees incurred in enforcing any of the obligations of Tenant under this Lease, or in evicting Tenant or in collecting any amount due hereunder or in exercising any rights or remedies under this Lease or in Landlord consenting to any action of Tenant for which the Lease requires Landlord's consent; and (b) late charges incurred from the nonpayment of such Base Rent, Additional Rent, damages, charges, and expenses at the rate of 18% per annum of such amounts; and (c) all expenses arising out of any termination of this Lease, all costs incurred in collecting charges, expenses and damages due from Tenant under this Lease, including all attorney's fees of Landlord, and all expenses of Landlord in attempting to re-lease the premises or parts thereof including advertising, attorney and brokerage fees, and cleaning and remodeling expenses.

F. Suits to Recover Deficiency. Suits for recovery of any deficiency or for damages or for a sum equal to any installment or installments of any rent, expense or charges may be brought by Landlord from time to time after Tenant is in default at Landlord's option. Landlord shall not be required to await the date whereon the term of this Lease 'would have expired in the event of Tenant's default or termination pursuant to paragraph 7.02.

G. Remedies Cumulative. The rights and remedies given to Landlord in this Lease are distinct, separate, and cumulative remedies. The existence of these remedies shall not be deemed to be in exclusion of any other remedies provided at law or in equity. Exercise of any one such remedy shall not be deemed a waiver or such other remedies as may be available.

H. Receipt of Monies Not Waiver. The receipt of rent or other monies by Landlord from Tenant with knowledge of any breach or default on the party of Tenant shall not be deemed a waiver of such default. The receipt of rent or other monies by Landlord from Tenant after termination of this Lease shall not be deemed to reinstate, continue, or extend the term of this Lease or to affect any notice previously provided Tenant or to operate as a waiver of Landlord's right to recover any damages or other amounts due hereunder or possession of the Premises.

ARTICLE VIII

Landlord's Right to Cure Tenant's Default

Section 8.01. Right to Cure. If Tenant defaults in the performance of any agreement or obligation under this Lease and fails to cure such default after notice as provided herein, Landlord may, at its option, either before or after any termination of this Lease, and without waiving its claim for damages for such breach, cure such breach on behalf of Tenant. Any amount paid or any liability incurred by Landlord in curing a default of Tenant under this Article shall be deemed paid or incurred on account of Tenant and Tenant shall reimburse Landlord therefor or save Landlord harmless therefrom together with interest thereon at the rate of 18% per annum, and in addition, Tenant shall reimburse Landlord for all costs and reasonable attorney's fees incurred in curing a default.

ARTICLE IX

Casualty Damage and Eminent Domain

Section 9.01. Damage or Destruction. In case the Premises shall be damaged by fire or other casualty so as to render the same untenantable in whole or in part for any period, a just abatement of rent shall be made until the same shall be repaired by the Landlord, provided, however, that if, in the Landlord's sole discretion, the Premises shall be so badly damaged by fire or any other casualty that the Landlord shall not desire to rebuild, this Lease shall terminate at the Landlord's option and rent shall be apportioned to the time of such termination. Further, in case the Premises shall be damaged by fire or other casualty so as to render the same untenantable in whole or in part for any period, Landlord shall not be liable for interruption to Tenant's business or for damage to or replacement or repair of Tenant's personal property (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Lease) or any leasehold improvements installed in the Premises by Tenant resulting therefrom, all of which damage shall be repaired and replaced by Tenant promptly, unless this Lease is terminated at Landlord's election. Notwithstanding the foregoing, if the Premises are not restored completely by Landlord within one hundred eighty (180) days of such fire or other casualty, this Lease shall thereupon be deemed to have terminated.

Section 9.02. Eminent Domain. If all or a substantial portion of the Premises are taken or condemned by a duly constituted public authority, both Landlord and Tenant shall have the right to terminate this Lease upon giving written notice of termination to the other within thirty (30) days of the terminating party's receipt of notice of taking from the public authority. If the Lease is so terminated, the rent shall be apportioned and paid to the effective date of termination. In the event this Lease shall not be terminated as provided herein, rent shall abate proportionately as to the portion so taken based on the value of the portion so taken in relation to the value of the Premises immediately prior to the taking and the relative impact of the taking on the Tenant's business.

The Landlord shall be entitled to receive the entire award or awards in any condemnation proceeding without deduction therefrom for any estate vested in the Tenant and the Tenant shall receive no part of any award or awards from the Landlord or in the proceedings and the Tenant hereby assigns to the Landlord any and all of its right, title, and interest in or to such award or awards or any part thereof.

Section 9.03. Duty to Restore. Notwithstanding anything to the contrary, in event of any such casualty, Tenant shall be obligated to use diligent and proper efforts to put the premises or the building in proper condition for use and occupation and to restore the Premises to substantially the same condition as existed prior to such casualty, all such restoration to be completed within 180 days of any such casualty.

Section 9.04. Landlord's Entitlement to Damages. Landlord reserves and excepts all rights to damages to said Premises and building and the leasehold hereby created, accrued, or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, Tenant grants to Landlord all Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as

Landlord may from time to time request; provided, however, then Landlord agrees to make such proceeds available to reimburse Tenant for costs incurred by Tenant in restoring the Premises.

ARTICLE X

Limitations of Liability

Section 10.01. Landlords Liability Limited. Landlord and its agents, employees and contractors shall not be liable for any injury to any person or damage to property due to the building in which Premises are located being in need of repair or due to the happening of any accident in or about the Premises, or due to any act or neglect of Tenant or of any employee, patron, or visitor of Tenant. This provision applies without limitation to injury or damage caused by Tenant's sale, furnishing and/or consumption of alcohol, nature, rain, ice, wind, frost, water, steam, gas, or odors in any form or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures and to damage or injury caused by fixtures, furnishings, equipment and the like situated at the Premises whether owned by Tenant or others.

ARTICLE XI

Notice and Waiver

Section 11.01. Written Notice Requested. All notices required to be given under this Lease shall be made in writing; oral notice shall be ineffective for all purposes.

Section 11.02. Delivery of Notice. Written notice shall have been delivered duly served if mailed by Certified Mail, Return Postage Requested, postage prepaid to Tenant and to Landlord at the following addresses:

Tenant: A and W, LLC – D/B/A Cape Pier Chowder
 P O Box 7217
 Cape Porpoise, Maine 04014

Landlord: Town of Kennebunkport
 6 Elm Street
 P.O. Box 566
 Kennebunkport, ME 04046-0566

Section 11.03. Waiver. No waiver of any default shall be deemed effective unless in writing signed by the party making the waiver. No waiver of any breach, covenant, condition, obligation or duty shall be construed a waiver of any other breach of the same or any other covenant, condition, obligation or duty.

ARTICLE XII

Amendment Modification and Renewal

Section 12.01. Writing Required. No amendment, modification, or renewal of this Lease shall be binding unless evidenced by an agreement in writing signed by Landlord and Tenant.

Section 12.02. Holdover Tenant. If Tenant shall hold over as a Tenant after the expiration of the terms of this Lease, such tenancy shall be deemed to continue on a month-to-month basis and Tenant shall remain fully bound under all terms and conditions of this Lease, provided, however, the rent shall be twice the Base Rent in effect during the last month of the term hereof. This Section shall not be construed to give Tenant any right to hold over.

ARTICLE XIII

Miscellaneous

Section 13.01. Interpretation. This Lease shall be construed in accordance with the law of the State of Maine. Whenever the context requires, the singular number includes the plural number and vice versa, the masculine gender includes the feminine gender and vice versa, the neuter gender includes the masculine and feminine gender. If Tenant includes more than one person or party, Tenant's obligations shall be joint and several. Time is of the essence in the performance of the terms and conditions of this Lease.

Section 13.02. Captions. Captions of paragraphs of this Lease are solely for convenience and shall not be deemed part of this Lease for any purpose.

Section 13.03. Exhibits. All exhibits attached to this Lease have been initialed by the parties for purposes of identification.

Section 13.04. Partial Invalidity. If any provision of this Lease shall be held invalid or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permitted by law.

Section 13.05. Successors and Assigns: Landlord Liability. The covenants and agreements of Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successors, and assigns. No covenant or agreement of Landlord shall be binding upon any such heir, executor, administrator, successor, and assign except for defaults occurring during such person's period of ownership nor binding individually upon any fiduciary, shareholder, or beneficiary under any trust. "Landlord" means only the owner or the mortgagee in possession for the time being of the building in which the Premises are located so that in the event of any sale of said building or an assignment of this Lease, Landlord shall be and hereby is entirely released and discharged from any and all further liability and obligations of Landlord hereunder, except any that may have theretofore accrued. Notwithstanding anything to the contrary provided in this Lease, if landlord or any successor in interest of Landlord shall be a mortgagee, or individual, joint venture, tenancy in common, corporation, firm or partnership (general or limited), it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee, corporation of such individual or on the part of the members of such firm, partnership or joint venture, or any stockholder, officer, director or trustee of such corporation with respect to any of the terms, covenants and conditions of this Lease, and that Tenant shall look solely to the equity of Landlord or such successor in interest in the Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of personal liability to be absolute and without any exception whatsoever.

Section 13.06. Recordation. This Lease shall not be recorded. If requested by Tenant, Landlord shall prepare a separate memorandum of lease in conformance with Maine law.

Section 13.07. Duplicate Originals. This Lease has been executed in two (2) or more copies, each of which shall be considered an original for all purposes.

Section 13.08 Entire Agreement. This Lease and the attached Appendices A, B, and C contain the complete and entire agreement of the parties.

Section 13.09. Estoppel Certificate. The Tenant agrees, at any time, and from time to time upon no less than ten (10) days prior request by Landlord, at Landlord's expense, to execute, acknowledge, and deliver to Landlord a statement in writing certifying, if such be the case, that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the Lease as modified is in full force and effect), stating the amounts and dates to which the Base Rent and Additional Rent, and other charges have been paid and stating whether or not to the best knowledge of Tenant there exists any default in the performance of any covenant, agreement, term, provision, or condition contained in this Lease, and if so specifying each such default, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of, or any prospective holder of a mortgage upon the premises by any other property interested party.

IN WITNESS WHEREOF, the parties have executive this Lease Agreement under seal as of the day and year first above-written.

WITNESS:

INHABITANTS OF TOWN OF
KENNEBUNKPORT

By: _____
Laurie A. Smith, Town Manager

[TENANT]

By: _____
Wanda Daggett

[TENANT]

By: _____
Allen A. Daggett

APPENDIX A TO LEASE AGREEMENT

[DIAGRAM OF LEASED PREMISES]

APPENDIX B TO LEASE AGREEMENT

Rules and Regulations Regarding Restaurant Use

- I. Tenant may use the Premises for the sale of hot dogs, hamburgers, lobster rolls, fried foods, ice cream, tonic, coffee, tea, milk, and similar menu items, to be consumed on the Premises or packaged "to go." Tenant may also use the Premises for the sale of beer and wine, to be consumed on the Premises only. Within this limitation, the precise menu items offered for sale shall be at the discretion of the Tenant. The Tenant shall not engage in wholesale sales of any goods or foods. Tenant shall not permit the retail sale of cooked lobsters or clams anywhere on the Premises by anyone except Tenant.
- II. In regard to the use and occupancy of the Premises, Tenant will at its sole expense:
 - A. Keep the inside and outside of all glass in the doors and windows of the Premises clean;
 - B. Replace promptly any cracked or broken glass of the Premises, including exterior windows, with glass of like kind and quality;
 - C. Maintain the Premises in a clean, orderly, and sanitary condition;
 - D. Keep any garbage, trash, rubbish, or other refuse in appropriate containers and be responsible for all removal of such garbage, trash, rubbish, and refuse on a regular basis;
 - E. Maintain in good working order the one lobster tank owned by Landlord and the supply lines that service this tank, and any product losses or food inventory losses or damage as a result of any equipment or any utility failure will be at the sole risk of Tenant;
 - F. Repair or replace any equipment or property belonging to Landlord that is damaged or destroyed through the fault of Tenant, the negligence of Tenant's employees, or the general operation of Tenant's business;
 - G. Conduct its business in all respects in a dignified manner in accordance with highest standards of similar operations.
- III. In regard to the use and occupancy of the Premises, Tenant will not:
 - A. Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Premises in such manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior.

APPENDIX C TO LEASE AGREEMENT

CAPE PORPOISE PIER ORDINANCE

1. **Preamble:** The Inhabitants of Kennebunkport having determined that the operation of a fish pier and public landing is a public purpose and having determined that such a facility is needed in Cape Porpoise Harbor for the convenience and economic well-being of the Inhabitants of the Town of Kennebunkport, enact this ordinance to be known as the “Cape Porpoise Fish Pier Ordinance”.
2. **Definitions:**
 - a. **Cape Porpoise Pier:** “Cape Porpoise Pier” means the existing pier on Bickford’s Island in Cape Porpoise and the related real estate, fixtures, personal property, easements and other rights belonging to the Town of Kennebunkport and any replacement, improvement, extension or modification of said premises and facilities made hereafter.
 - b. **Town:** “Town” means the Town of Kennebunkport organized and existing as a municipal corporation under the laws of the State of Maine.
3. **Purposes:** The Cape Porpoise Pier shall be managed by the municipal officers of the Town, or their designee, primarily as a public fish pier for the berthing, servicing, loading, offloading, repair and other needs of commercial fishing vessels. To the extent compatible with its primary use as a public fish pier, and to the extent permitted by agreements between the Town and the State of Maine, the pier shall also be available for use by other vessels, by residents of the Town, and by members of the general public.
4. **Fee structure:** After notice and public hearing, the municipal officers shall establish a reasonable schedule of fees for the use of the Cape Porpoise Pier, its related facilities, and for services provided at the pier. In establishing the schedule of fees, the municipal officers shall consider the value of the services provided, the costs to the Town for administration, maintenance, salaries, equipment, debt service and repairs to the pier, the expenses incurred by the Town for piers, docks and harbors and the amounts collected by the Town in personal property taxes on boats. Copies of the schedule of fees as established by the municipal officers shall be available at the municipal office during normal business hours and shall be posted in the vicinity of the Cape Porpoise Pier.
5. **Regulations:** After notice and public hearing the municipal officers are authorized to adopt regulations governing the rules of operation of the Cape Porpoise Pier which rules shall be designed to ensure its primary use as a fish pier, to prevent obstruction, overcrowding and unnecessary delays, to prevent personal injury or damage to vessels or property, to maintain safe and healthful conditions, to prevent vandalism and theft of property, to establish reasonable limits on the hours of operation, to prevent disturbance of the peace, to ensure that fees established are collected, and to govern such other matters as may be necessary or useful to the management and operation of the pier.

6. **Authority to contract:** The municipal officers are authorized to contract on such terms and conditions as are in the best interest of the Town with private persons or corporation for the provision of services to fishermen, vessels, residents of the Town and members of the public using the Cape Porpoise Pier and to contract for the operation of food take-out, ship store, retail and wholesale, lobster pounds and other incidental businesses on the Cape Porpoise Pier facilities. Prior to entering into any such contract, the municipal officers shall give notice of their intention to enter into such a contract and shall afford interested persons a reasonable opportunity to submit proposals for consideration.
7. **Cape Porpoise Pier Account:** All fees, rents leasehold payments of other sums collected by the Town in connection with the operation of the Cape Porpoise Pier shall be kept in a separate account to be known as the Cape Porpoise Pier Account. The funds in said account shall be used by the municipal officers to supplement any other sums appropriated by the Town for the costs association with the Cape Porpoise Pier, including without limitation, expenses for administration, salaries, debt service, maintenance, equipment and repairs. Funds remaining in the Cape Porpoise Pier Account at the end of the fiscal year shall not lapse and such funds shall not be transferred to other accounts unless by vote of the Town at a regular or special town meeting.
8. **Authority to Retain Pier Manager:** The municipal officers are authorized to contract with or employ a Pier Manager and such other personnel as may be necessary to the operation of the Cape Porpoise Pier on such terms and conditions as are in the best interest of the Town. The municipal officers may delegate to the Pier Manager responsibility for the management and operation of the Cape Porpoise Pier under the general direction and supervision of the municipal officers, provided that the municipal officers shall not delegate the authority to establish fees under S4, to adopt regulations under S5 or to enter into contracts under S6 of this ordinance.
9. **Penalties:** Whoever violates the provisions of this ordinance or any regulation or rule established under this ordinance shall be punished by a fine of not more than \$100 for each such occurrence. If any violation continues for a period longer than 24 hours, each day that it continues shall be deemed a separate violation subject to the penalty herein provided. The right of any person to sue the Cape Porpoise Fish Pier may be suspended by the municipal officers, after reasonable notice and hearing, for failure to pay any fees due or for violation of regulations adopted pursuant to this ordinance.
10. **Notice:** The notice requirements under §4, 5, and 6 of this ordinance shall be met by posting in three public places within the Town and by publication in a newspaper of general circulation at least seven days prior to the hearing.

Adopted – April 14, 1982 at a Special Town Meeting