

**THE CITY OF WARWICK  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**RESOLUTION OF THE CITY COUNCIL**

**NO..... DATE.....**

**APPROVED.....MAYOR**

**RESOLUTION TO AUTHORIZE EXECUTION OF A LEASE BETWEEN THE CITY  
OF WARWICK AND THE RI DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT FOR ACCESS TO A FISHING PIER AT ROCKY POINT**

**Resolved that,**

WHEREAS, the health, safety and welfare of the citizens of the City of Warwick are matters of paramount importance to the City Council; and

WHEREAS, the revival and reuse of Rocky Point for the public's benefit is a project of great merit that deserves the City of Warwick's support and investment; and

WHEREAS, the RI Department of Environmental Management is proposing to construct a new fishing pier for public access to Narragansett Bay using land at Rocky Point owned by the City of Warwick to access the new pier; and

WHEREAS, the proposed lease between the City and RI Department of Environmental Management is attached hereto and requires approval by the City Council.

NOW, THEREFORE BE IT RESOLVED, that the lease between the City of Warwick and the RI Department of Environmental Management to use City land at Rocky Point for access to a new fishing pier to provide public access to Narragansett Bay, attached hereto, is approved by the City Council and the Mayor is authorized to execute said lease between the City of Warwick and the RI Department of Environmental Management.

The City Clerk is hereby directed to forward a copy of this Resolution to the Mayor and the RI Department of Environmental Management.

This Resolution shall take effect upon passage.

**SPONSORED BY: COUNCILMAN LADOUCEUR on behalf of  
MAYOR AVEDISIAN**

**COMMITTEE: HEALTH, EDUCATION AND WELFARE**

# FINAL COPY

## INDENTURE OF LEASE

THIS AGREEMENT AND INDENTURE OF LEASE entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF WARWICK, Warwick City Hall, 3275 Post Road, Warwick, RI 02886, hereinafter called the "LESSOR", and STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, acting by and through the Director of the Department of Environmental Management, party of the first part, party of the second part, hereinafter called the "LESSEE".

The expressions LESSOR and LESSEE wherever hereinafter used in this INDENTURE OF LEASE shall be construed as including and referring to the parties hereto and their respective heirs and assigns, wherever such construction is required or consistent with the provisions of this lease; and all covenants, agreements, conditions, rights, powers and provisions hereinafter contained on the part of the respective parties hereto shall extend to and be binding upon their respective successors and assigns.

## WITNESSETH

That the LESSOR does hereby demise and lease that parcel of land and other appurtenances located at Rocky Point Park, in the City of Warwick, Rhode Island, described as that certain portion of Plat 380, Lot 287 consisting of approximately 25,000 square feet and depicted on a Plan attached as Exhibit "A" hereto.

TO HAVE AND TO HOLD said Premises, with all rights, privileges, or preferential use and occupancy and the appurtenances thereto, unto and to the use of the LESSEE,

for and during the term of twenty-five (25) years from February 1, 2018 to January 31, 2043, upon the following covenants and conditions:

1. MISSION AND PURPOSE OF LESSEE: The LESSEE is a governmental agency whose purposes include providing and enhancing public access to the waterfront and to Narragansett Bay.

2. USE OF THE LEASED PREMISES: The LESSEE shall use the Premises for the construction, operation and maintenance of a public fishing pier and boating facility for public access, equally available to all persons, including those with physical handicaps, on a non-discriminatory first come, first-served basis. Any use by the LESSEE of the Premises shall at all times be consistent with all of the terms and conditions of this lease. The Premises shall be used for no other purpose during the term of this Agreement unless agreed upon in writing by all parties including LESSEE, the LESSOR and the National Oceanic and Atmospheric Administration (NOAA).

3. RENT: The LESSEE shall pay unto the LESSOR an annual rental fee of \$10.00 for each and every year of this lease. The LESSEE, paying the rent and performing on its part the agreements herein contained, may peaceably hold and enjoy said Premises and appurtenances during the term of this lease without any lawful let or hindrances by the LESSOR, or any person claiming, by, through, or under it.

4. OPTION TO RENEW LEASE: The LESSEE, in consideration of the mutual covenants and conditions herein contained, shall have the option to renew this lease for a further period of ten (10) years from the first day of February 2043 to and including the thirty-first of January 2053, upon the same terms and conditions as are herein

contained, except that the amount of annual rent, the minimum insurance requirement, and minimum liability insurance to be in effect for each term of the extended period.

The LESSEE, in order to exercise such option, must have given notice in writing by certified mail to the LESSOR at least six (6) months before the expiration date of this lease, of intention to take up such option. LESSEE shall have the right to exercise any one or more of such options at any one time.

5. PRIOR TERMINATION: a) In the event the LESSEE shall fail to comply with and to perform all the covenants and agreements contained in this lease, and such failure shall continue for more than thirty (30) days or longer than is reasonably necessary and requisite to correct the failure, after written notice has been given by the LESSOR to the LESSEE specifying the existence and nature of the default, the LESSOR shall be at liberty to enter upon and take immediate possession of the Premises and declare this lease at an end.

b) The failure of the LESSOR to insist in any one or more instances upon the strict and literal performance of any of the agreements, terms, or conditions of this lease, or to exercise any option of the LESSOR herein contained, will not be construed as a waiver for the future of such term, conditions, agreement or option.

6. FAILURE TO REMOVE PROPERTY FIXTURES: If upon termination of this lease under any of the provisions hereof, or if the LESSEE moves out or is dispossessed, the LESSEE fails to remove within six (6) months after such termination, moving out, dispossession, or expiration, all its buildings, equipment or other personal property, such remaining buildings, equipment, or other personal property and buildings shall be deemed abandoned by the LESSEE and shall become the property of the LESSOR.

This paragraph shall not apply to any property of the LESSOR or any permanent structures constructed on the Premises. In the event an occurrence that makes the Pier or its ancillary facilities unsafe or unfit for use, the DEM agrees to immediately secure the Pier, and to repair, reconstruct or remove the Pier or ancillary facilities within thirty-six (36) months at its sole expense. Failure by the DEM to comply with this provision shall constitute an event of default on its part.

7. ASSIGNMENT AND SUBLETTING: The LESSEE shall not assign this lease or sublet the whole or any part of the Premises without the prior written consent of the LESSOR.

8. OWNERSHIP: The CITY and DEM agree that DEM is the sole owner of the Pier.

9. MAINTENANCE: DEM shall have the responsibility for daily maintenance of the Pier annually from April 1st through November 30th. (i.e. removal of sand, refuse and litter). DEM and the City shall cooperate on daily maintenance from December 1st through May 30th.

10. OPERATION AND USE OF THE PREMISES: The DEM and the CITY shall cooperate to regulate and police users at the Pier and DEM shall be responsible for enforcement of fisheries regulations. The DEM and the CITY agree to promptly work cooperatively to resolve any issues that may arise during the normal operations of the Pier with DEM being the primary party responsible for curing any issues related directly to the Pier such as policing, trash, user conflicts, and other similar and related matters.

(a) SPECIAL EVENTS: (i) Both the LESSEE and the LESSOR agree not to sub-let or otherwise make the Premises available to others or to serve or allow the serving of alcoholic beverages at any event without the prior written approval of the respective

party. A special use permit shall be required from the LESSOR for all events where alcohol will be served and for all events held on the Premises. The LESSEE and LESSOR will provide timely notification to the respective party of its scheduled activities to ensure that conflicts in use are minimized or eliminated.

(b) HOURS OF OPERATION: The LESSEE shall establish and post hours of operation for the facility after obtaining the LESSOR'S approval and shall take reasonable measures to enforce the same.

(c) SECURITY: The LESSEE shall take reasonable measures to secure the Premises, from unauthorized entry and/or use during those hours when they are closed to the public. The LESSEE shall periodically patrol the Premises and lands and shall enforce all state laws pertaining to them.

(d) FEES: No fees shall be imposed for admission to its facilities.

(e) ACCESS: The LESSEE'S use of the Premises will at all times be consistent with its paramount interest in maintaining a public park freely accessible to the public.

(f) SIGNS: The LESSEE shall have the right to erect and maintain appropriate business signs on the Premises so long as such signs do not affect the safety of the public, nor conflict with state law or local town ordinances, and such signage has first been reviewed and approved in writing for content, design and location by the City of Warwick prior to installation.

**11. UTILITIES, CONSTRUCTION, REPAIR, ALTERATION AND IMPROVEMENTS OF FACILITIES:** (a) DEM shall have the sole responsibility for the cost of all future repairs, alterations and improvements to the Pier.

(a) The LESSEE shall have the right to bring on to the Premises, at its own expense, water and other utilities. No such utility installations or other work shall be commenced until the LESSEE shall have first submitted the plan and specifications therefore to the City of Warwick and obtained its approval of such installations. LESSEE shall pay when due the cost of all utility service to the Premises, if any.

(b.) The LESSEE shall provide the LESSOR with plans and specifications for all capital improvements to the Premises.

(c) The LESSEE agrees to abide by all applicable laws, ordinances, rules and regulations administered by these or any other governmental agencies having authority over the LESSEE'S activities in this regard.

(d) The LESSEE shall at its, sole expense, obtain all necessary permits from appropriate governmental agencies, the furnishing of copies thereof to LESSOR prior to the commencement of the work and the compliance by LESSEE of all conditions of said permits in a prompt and expeditious manner.

(e) In connection with all construction, repair and/or replacement to be performed by or on behalf of the DEM from time to time, the DEM agrees that such work shall be performed in a prompt, efficient and continuous manner.

12. LAWS: The LESSEE shall comply with all laws, ordinances, rules, regulations, orders and requirements of the Federal, State and Local Governments and LESSOR.

13. MAINTENANCE OF THE PREMISES: The LESSEE shall keep the Premises clean and in good repair during the term of this lease, ordinary wear and tear thereof, damage by fire and other unavoidable casualty excepted, provided that the expiration or sooner termination thereof, the LESSEE will peaceably surrender up possession of the

Premises to the LESSOR in as good condition as they now are, or may be put in, ordinary wear and tear thereof, and damage by fire and other unavoidable casualty excepted. The LESSEE shall be responsible for and repair, at its own expense, all damage, caused by LESSEE'S negligence or by the negligence of LESSEE'S agents, employees, servants, invitees, or visitors, to the buildings and other appurtenances including those owned by the LESSOR on the Premises, said damage to be repaired to the satisfaction of the LESSOR. The LESSOR may at all times view and inspect the Premises and any building, structure or other appurtenance thereon, and to order such repairs as may be considered reasonably necessary.

14. INSURANCE: DEM is self-insured and shall provide evidence to the CITY as such and shall name the CITY as an additional insured for the Pier for any property damage, personal injuries and/or claims incurred by users of the Pier and its ancillary facilities. Any DEM contractor or subcontractor shall be required to name the CITY as additional insured on any general liability insurance policy.

15. TAXES: The LESSEE is exempt from real estate and other taxes legally assessed against property of the LESSEE on the Premises shall be paid by the LESSEE during the term of this lease.

16. NOTICES: All notices required to be given by the LESSEE to the LESSOR shall be in writing and be addressed to the Director of the Department of Environmental Management, 235 Promenade Street, Providence, RI 02908 and to the Associate Director for Natural Resources Management, DEM, 235 Promenade Street, Providence, RI 02908, and any notices from the LESSOR to the LESSEE shall be addressed to Mayor Scott Avedisian, City of Warwick, 3275 Post Road, Warwick, RI 02886 or to



such other addresses as the parties hereto may respectively designate by notice in writing.

17. INDEMNITY: Subject to R.I. Gen. Laws § 9-31-1 *et. seq.*, LESSEE agrees that LESSEE shall, at all times, defend, protect and save, hold harmless and indemnify the LESSOR, its agents, servants, and employees against and from : 1) any penalty, damages or charges, including attorneys' fees for any violation of any law or ordinance whether occasioned by negligence or willful act of LESSEE or of LESSEE'S agents, employees, servants, invitees or visitors; 2) all claims, including bodily injury and death, loss, costs, damage or expenses including attorneys' fees arising out of or from any accident, incident or occurrence in any way connected to the use in, on or about the Premises by LESSEE, or by LESSEE'S agents, employees, servants, invitees, or visitors; 3) all claims, including bodily injury and death, loss, costs, damage or expenses, including attorneys' fees arising out of or from any failure of the LESSEE in any respect to comply with and perform all the requirements and provisions of this lease. 4) During the term of the construction of the Pier, the LESSEE shall require its contractors and subcontractors to indemnify the LESSOR, including naming the LESSOR as an additional insured under all policies of insurance required for the construction project by the LESSEE.

18. NON-WAIVER: The failure of the LESSOR to insist in any one or more instances upon the strict and literal performance of any of the agreements, terms or conditions of this lease or to exercise any option of the LESSOR herein contained, will not be construed as a waiver for the future of such term, condition, agreement or option, the receipt by the LESSOR of rent with knowledge of the breach of any term, condition, or

agreement will not be deemed to be a waiver of such breach. The receipt by the LESSOR of rent after the giving of any notice required to be given to the LESSEE by the law or by the terms of this lease will not in any way affect the operation of such notice.

19. APPROVAL: This agreement shall be effective only subsequent to its approval by the State Properties Committee as designated below.

20. SUBORDINATION: This agreement is subject and subordinate to any leases, covenants, licenses, easements, and agreements which may now affect the real property of which the Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof.

21. BINDING: This Agreement is executed, delivered and accepted upon the express terms, covenants and conditions contained herein, which terms, covenants and conditions shall be binding upon and inure to the benefit of the parties hereto and their successors, and assigns. This Agreement is intended to be governed by and construed in accordance with the laws of the State of Rhode Island. This Agreement may not be amended or modified except pursuant to a written agreement signed by the parties hereto.

IN WITNESS WHEREOF, THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS has caused these presents to be executed in its name and behalf by Janet L. Coit, its Director of the Department of Environmental Management, hereunto duly authorized and the CITY OF WARWICK, RHODE ISLAND has caused these presents to be executed in its name and behalf hereunto by Mayor Scott Avedisian duly authorized, each party signing counterparts the day and year first written above.

EXECUTED IN THE PRESENCE OF:

\_\_\_\_\_

LESSEE:  
STATE OF RHODE ISLAND AND  
PROVIDENCE PLANTATIONS

By: \_\_\_\_\_  
Janet L. Coit, Director  
Department of Environmental  
Management

LESSOR:  
CITY OF WARWICK

\_\_\_\_\_

By: \_\_\_\_\_  
Scott Avedisian, Mayor

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the State Properties Committee:

APPROVED AS TO TERMS  
AND CONDITIONS:

\_\_\_\_\_  
Chairman, State Properties Committee

APPROVED AS TO  
SUBSTANCE:

\_\_\_\_\_  
Director of Administration

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney General

APPROVED:

\_\_\_\_\_  
Public Member, State Properties Committee

APPROVED:

\_\_\_\_\_  
Public Member, State Properties Committee



Title: \_\_\_\_\_  
 Scale: 1:1,200  
 Date: 10/26/2017  
 Drawn by: pej

0 200 Feet

This map was created for informational, planning and guidance use only. It is a general reference, not a legally authoritative source for the location of natural or manmade features. Proper interpretation of this map may require the assistance of appropriate professional services. The cartographic representations depicted have not been verified by a RI Registered Professional Land Surveyor and are not intended to be used in place of a survey. The producer makes no warranty, express or implied, related to the accuracy, reliability, completeness, or currentness of this map.  
 File: F:\Work\Plan&Dev\RockyPt\RI\MOU\_Enblis.mxd

