

**Auction Binder  
The Provident Bank  
Hatter's Cove Marina  
Foreclosure Auction / Secured Party Sale  
DATE: May 1, 2009  
Amesbury, Mass.**

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4-3-09 Draft

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COMMERCIAL REAL ESTATE MORTGAGE

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THIS COMMERCIAL REAL ESTATE MORTGAGE (as amended from time to time, this "Mortgage") is made this 14<sup>th</sup> day of June, 2004, by and from Marina At Hatter's Point, LLC, a limited liability company duly organized and validly existing under the laws of the Commonwealth of Massachusetts, having a mailing address of Unit 1, 5 Perry Way, Newburyport, MA 01950 and Parking for Amesbury, LLC, a limited liability company duly organized and validly existing under the laws of the Commonwealth of Massachusetts, having a mailing address of Unit 1, 5 Perry Way, Newburyport, MA 01950 (collectively referred to as "Mortgagor") to THE PROVIDENT BANK, a Massachusetts savings bank having a mailing address of, 5 Market Street, P.O. Box 37, Amesbury, Massachusetts 01913 (the "Bank").

1. Mortgage, Obligations and Future Advances.

1.1. Mortgage. For valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Mortgagor hereby grants to the Bank, with MORTGAGE COVENANTS, the "Property" described in Section 1.4, below, to secure the prompt payment and performance of any and all obligations of Mortgagor (and if more than one Mortgagor of any of them) to the Bank, whether direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising or acquired, and whether arising out of this present transaction, or a transaction separate and unrelated hereto (the "Obligations"), including without limitation:

- (a) all obligations under a certain Commercial Promissory Note of even date herewith which provides for a variable rate of interest, from Mortgagor payable to the order of the Bank in the original principal amount of \$650,000.00, as the same may be further modified, amended, or extended (the "Note");
- (b) all indebtedness, liabilities or obligations now existing or hereafter arising from Mortgagor to the Bank under any other promissory note, lease, loan agreement or reimbursement agreement, guaranty or other instrument, agreement or document; and
- (c) all covenants and other obligations contained in this Mortgage or contemplated hereby, including without limitation Mortgagor's obligations under Sections 5.1, 7.1, 7.2, 7.3, and 7.4 hereof.

1.2. Security Interest in Property. As continuing security for the Obligations, Mortgagor hereby pledges, assigns and grants to the Bank a security interest in any of the Property (as defined in Section 1.4 below) constituting personal property or fixtures. This Mortgage shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code of Massachusetts.

1.3. Collateral Assignment of Leases and Rents. Mortgagor hereby assigns to the Bank as collateral security for the Obligations all of Mortgagor's rights and benefits under any and all Leases (as defined in Section 1.4 below) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This

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collateral assignment shall be absolute and effective immediately, but Mortgagor shall continue to collect rents owing under the Leases until an Event of Default (as defined in Section 6.1 below) occurs and the Bank exercises its rights and remedies to collect such rents as set forth in Section 6.2(c) hereof.

1.4. Property. The term "Property", as used in this Mortgage, shall mean that certain parcel of land and the structures and improvements now or hereafter thereon located at 60-77 Merrimac Street, Amesbury, MA, as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging or pertaining thereto; (ii) all goods, furniture, machinery, equipment, fixtures, accounts, contract rights, documents, instruments, proceeds of insurance, general intangibles and other items of personal property of the Mortgagor or in which it has an interest, now owned or hereafter acquired, that are located on or used in connection with the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgments, awards of damages and settlements hereafter made as a result or in lieu of any Taking (as defined in Section 3 hereof); (iv) all of the rights and benefits of Mortgagor under any present or future leases and agreements relating to the Property, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of Mortgagor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

1.5 Cross-Collateral and Futures Advances. It is the express intention of the Mortgagor that this Mortgage secure payment and performance of all of the Obligations, whether now existing or hereinafter incurred by reason of FUTURE ADVANCES by the Bank or otherwise, and regardless of whether such Obligations are related to the transaction evidenced by the Note or were contemplated by the parties at the time of the granting of this Mortgage. Notice of the continuing grant of this Mortgage shall not be required to be stated on the face of any document evidencing any of the Obligations, nor shall such documents be required to otherwise specify that they are secured hereby.

2. Representations, Warranties, Covenants.

2.1. Representations and Warranties. Mortgagor represents and warrants that:

- (a) (i) Mortgagors are limited liability companies duly organized and validly existing under the laws of Commonwealth of Massachusetts, (ii) Mortgagor has all requisite capacity to own the Property and conduct its business as now conducted and as presently contemplated, to execute and deliver this Mortgage and convey the Property as contemplated hereby and to grant the security interests and assignment of Leases contained herein, (iii) the execution, delivery and performance of this Mortgage have been authorized by all necessary proceedings of the Mortgagor and do not contravene any provision of any law, rule or regulation applicable to Mortgagor or any agreement, instrument, order or undertaking binding on

Mortgagor or by which the Property is bound or affected, (iv) this Mortgage has been duly executed and delivered by Mortgagor and is the legal, valid and binding obligation of Mortgagor enforceable in accordance with its terms except as limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally;

- (b) Mortgagor is the owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others other than as set forth in detail in Exhibit B hereto (the "Permitted Encumbrances");
- (c) Mortgagor is the owner of the entire lessor's interest in the Leases, and Mortgagor has not executed any assignment of the Leases or any of the rights or rents arising thereunder except to the Bank;
- (d) As of the date hereof, there are no Hazardous Substances (as defined in Section 2.3(b) hereof) in, on or under the Property, except as disclosed in writing to and acknowledged by the Bank; and
- (e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction, or otherwise subject to the provisions of M.G.L. Chapter 140D, the Federal Truth in Lending Act or Federal Reserve Board Regulation Z, or other consumer statutes or regulations and restrictions.

2.2. Recording; Further Assurances. Mortgagor covenants that it shall, at its sole cost and expense and upon the request of the Bank, cause this Mortgage, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations, as may be required by law in order to establish, preserve and protect the interest of the Bank in the Property and the rights of the Bank under this Mortgage. Upon the written request of the Bank, and at the sole expense of Mortgagor, Mortgagor will promptly execute and deliver such further instruments and documents and take such further actions as the Bank may deem desirable to obtain the full benefits of this Mortgage and of the rights and powers herein granted, including, without limitation, filing any financing statement under the Uniform Commercial Code, and obtaining any consents or estoppel certificates of lessees under the Leases that the Bank deems appropriate. Mortgagor authorizes the Bank to file any such financing statement without the signature of the Mortgagor to the extent permitted by applicable law, and to file a copy of this Agreement in lieu of a financing statement.

2.3. Restrictions on Mortgagor. Mortgagor covenants that Mortgagor will not, directly or indirectly, without the prior written approval of the Bank in each instance:

- (a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate or dispose of all or any part of any legal or beneficial interest in the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Mortgage;
- (b) Permit the use, generation, treatment, storage, release or disposition of any Hazardous Substances on the Property. As used in this Mortgage, the term "Hazardous Substances" shall include any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable federal or state law, regulation or rule; or
- (c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment, or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any federal, state or local statute, rule, regulation or law pertaining to the release or clean-up of Hazardous Substances and (ii) any mechanics' or materialmen's lien. Mortgagor further agrees to give the Bank prompt written notice of the imposition of any lien referred to in this Section 2.3(c) and to take any action necessary to secure the prompt discharge or release of the same. Mortgagor agrees to defend its title to the Property and the Bank's interest therein against the claims of all persons and, unless the Bank requests otherwise, to appear in and diligently contest, at Mortgagor's sole cost and expense, any action or proceeding which purports to affect Mortgagor's title to the Property or the priority or validity of this Mortgage or the Bank's interest hereunder.

2.4. Operation of Property. Mortgagor covenants and agrees as follows:

- (a) Mortgagor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all federal, state and local laws, ordinances and regulations, and will obtain and maintain all governmental or other approvals, relating to Mortgagor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or clean-up of Hazardous Substances, and will give prompt written notice to the Bank of (i) any violation of any such law, ordinance or regulation by Mortgagor or relating to the Property, (ii) receipt of notice from any federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;
- (b) Mortgagor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law or which the Bank may require, provided that, in any case, Mortgagor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable federal law and as otherwise required by the Bank; (iii) comprehensive

commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence; (iv) rent loss or business interruption insurance; and (v) such other insurance as the Bank may require from time to time. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in The Commonwealth of Massachusetts that have a financial rating and size and provide deductible amounts acceptable to the Bank, name the Bank as mortgagee, loss payee and/or additional insured, and provide that no cancellation or material modification of such policies shall occur without thirty days prior written notice to the Bank. Such policies shall include (i) a mortgage endorsement determined by the Bank in good faith to be equivalent to the so-called "standard" mortgage endorsement so that the insurance, as to the interest of the Bank, shall not be invalidated by any act or neglect of Mortgagor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; (v) a demolition cost endorsement; (vi) an increased cost of construction endorsement; and (vii) such other endorsements as the Bank may request. Mortgagor will furnish to the Bank annually and upon request such original policies, certificates of insurance, or other evidence of the foregoing as is acceptable to the Bank. The terms of all insurance policies shall be such that no co-insurance provisions apply, or if a policy does contain a co-insurance provision, Mortgagor shall insure the Property in an amount sufficient to prevent the application of the co-insurance provisions;

- (c) Mortgagor will not enter into or modify the Leases without the prior written consent of the Bank, execute any assignment of the Leases except in favor of the Bank, or accept any rentals under any Lease for more than one month in advance, and will at all times perform and fulfill every term and condition of the Leases;
- (d) Mortgagor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles; (ii) permit the Bank and the Bank's agents, employees and representatives, at such reasonable times as the Bank may request, to enter and inspect the Property and such books and records; and (iii) promptly upon request provide to the Bank such financial statements and information regarding Mortgagor, the Property and the Leases as the Bank may request;
- (e) Mortgagor will at all times keep the Property in good and first rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof; and



- (f) Mortgagor shall comply with, and not modify the terms and conditions of any prior mortgage affecting the Property or any note or other obligation secured thereby and shall not permit the holder of any such prior mortgage to advance any additional sums pursuant to such mortgage which would constitute a lien superior to the lien of this Mortgage except with the prior written consent of the Bank.

2.5. Payments. The Mortgagor covenants to pay when due:

- (a) All federal, state or other taxes, betterment assessments and other governmental levies, water rates, sewer charges, insurance premiums, and other charges on the Property, this Mortgage or any Obligation secured hereby or which could, if unpaid, result in a lien on the Property or on any interest therein; and
- (b) All amounts when due under the Note and each other instrument evidencing, securing or relating to any of the Obligations and under any agreement to which Mortgagor is a party or by which Mortgagor is bound, including without limitation, any mortgage encumbering the Property.

If and when requested by the Bank, Mortgagor shall deposit from time to time with the Bank sums determined by the Bank to be sufficient to pay when due the amounts referred to in Section 2.5(a) above. Mortgagor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Bank's request, provides the Bank with adequate security, in the Bank's reasonable judgment, against the enforcement thereof. Mortgagor shall furnish to the Bank the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. Mortgagor shall also furnish to the Bank evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Bank. Without limitation of any of the Bank's other rights and remedies, if the Mortgagor shall fail to deliver, promptly upon request, evidence satisfactory to the Bank of payment of all taxes with respect to the Property, the Bank shall have the right to obtain municipal lien certificates or other appropriate evidence of such payment as may be available to the Bank, and the Mortgagor will pay on demand all fees and expenses of the Bank in connection therewith.

2.6. Notices; Notice of Default. Mortgagor will deliver to the Bank, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use or claim that the Mortgagor is in default in the performance or observance of any of the terms hereof or that the Mortgagor or any tenant is in default of any terms of the Leases. The Mortgagor further agrees to deliver to the Bank written notice promptly upon the occurrence of any Event of Default hereunder, or event which with the giving of notice or lapse of time or both would constitute an Event of Default.

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3. Takings. In case of any condemnation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations which might result in a Taking, Mortgagor shall promptly give written notice to the Bank, describing the nature and extent thereof. The Bank may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and Mortgagor shall promptly give to the Bank copies of all notices, pleadings, determinations and other papers relating thereto. The Mortgagor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. Mortgagor shall not settle any such claim without the Bank's prior written consent. Mortgagor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree, or otherwise, in trust for the Bank and promptly pay the same to the Bank. Mortgagor authorizes any award or settlement due in connection with a Taking to be paid directly to the Bank in amounts not exceeding the Obligations. The Bank may apply such amounts to the Obligations in such order as the Bank may determine.

4. Insurance Proceeds. The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Bank and, at the option of the Bank, be applied to the Obligations in such order as the Bank may determine; provided however, that if the Bank shall require repair of the Property, the Bank may release all or any portion of such proceeds to Mortgagor for such purpose. Any insurance proceeds paid to Mortgagor shall be held in trust for the Bank and promptly paid to it.

5. Certain Bank's Rights.

5.1. Advances. If Mortgagor fails to pay or perform any of its obligations hereunder then, after notice to Mortgagor, the Bank may in its sole discretion do so. Such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Notwithstanding the foregoing, the Bank shall not make any payment described in Section 2.5 so long as the Mortgagor is then in compliance with that Section and no Event of Default exists.

5.2. Legal Proceedings. The Bank shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Bank's reasonable judgment, might affect the Property or any of the rights created or secured by this Mortgage. The Bank shall have such right whether or not there shall have occurred an Event of Default hereunder.

5.3. Appraisals. The Bank shall have the right, at Mortgagor's sole cost and expense, to obtain appraisals and evaluations of the portions of the Property that are real estate at such times as the Bank deems necessary or as may be required by applicable law, provided that so long as no

Event of Default shall have occurred and be continuing, the Mortgagor shall only be obligated to pay for the costs and expenses associated with one such appraisal and evaluation during any 12-month period. All appraisals and evaluations shall be the exclusive property of the Bank and shall not be provided to the Mortgagor unless otherwise required by law.

5.4. Environmental Reports. The Bank shall, at its option, have the right to obtain, at the Mortgagor's sole cost and expense, at any time after the occurrence of an Event of Default or after receipt of information or evidence of any Hazardous Substances or potential of Hazardous Substances on the Property, a current environmental site assessment report on the Property. Such environmental site assessment report shall be prepared by qualified and reputable civil or environmental engineers acceptable to the Bank.

5.5. Surveys. The Bank shall have the right, at Mortgagor's sole cost and expense, to obtain surveys of the Property at such times as the Bank deems necessary or as may be required by applicable law. Such surveys shall be in such form and contain such certifications as shall be required by the Bank and its counsel.

6. Defaults and Remedies.

6.1. Events of Default. Each of the following events shall constitute an "Event of Default" under this Mortgage:

- (a) Failure by Mortgagor to make any payment of principal, interest or other sums when due under the Note or this Mortgage or any other Obligations;
- (b) Failure by Mortgagor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in, or the occurrence of a default under, this Mortgage, the Note, or any other agreement, instrument or other document evidencing, securing or otherwise delivered in connection with any Obligation;
- (c) Failure of any representation or warranty made by Mortgagor in this Mortgage or in any certificate, statement, information or guaranty furnished to the Bank by, on behalf of or at the request of Mortgagor to be true and correct when made or furnished;
- (d) There shall have occurred any adverse change in the business, operations, properties or condition (financial or otherwise) of Mortgagor, which, in the opinion of the Bank acting in good faith, impairs its security or increases its risk;
- (e) Commencement of proceedings under any bankruptcy or insolvency law by or against Mortgagor, or the making of a general assignment for the benefit of creditors by Mortgagor, or the appointment of a trustee, trust mortgagee, custodian or receiver of the Property;

- (f) Any levy or sale upon or execution or other proceedings of any nature is begun whereby the owner of the Property shall or may be deprived of title or right of possession to the Property or any part thereof;
- (g) The actual or threatened alteration, demolition, destruction or removal of any building, fixtures or equipment on the Property without the prior written consent of the Bank; and
- (h) The enactment after the date hereof of any law amending or changing in any way the laws with respect to the taxation of mortgages or debts secured thereby, or the manner of the collection of any such taxes, so as to affect the interests of the Bank adversely as determined in good faith by the Bank; and
- (i) Death or legal incapacity of the Mortgagor or any of them, or the transfer, sale or conveyance of any legal or beneficial interest in the Mortgagor.

6.2. Remedies. On the occurrence of any Event of Default the Bank may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

- (a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by Mortgagor;
- (b) Take possession of the Property (including all records and documents pertaining thereto) and exclude Mortgagor therefrom, and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law;
- (c) Receive and collect all rents, income and profits from the Property, including as may arise under the Leases, and Mortgagor appoints the Bank as its true and lawful attorney with the power for the Bank in its own name and capacity to demand and collect such rents, income and profits and take any action that Mortgagor is authorized to take under the Leases. Lessees under the Leases are hereby authorized and directed, following notice from the Bank, to pay all amounts due Mortgagor under the Leases to the Bank, whereupon such lessees shall be relieved of any and all duty and obligation to Mortgagor with respect to such payments so made;
- (d) Sell the Property or any part thereof or interest therein pursuant to exercise of its STATUTORY POWER OF SALE or otherwise at public auction on terms and conditions as the Bank may determine or otherwise foreclose this Mortgage in any manner permitted by law, and upon such sale, Mortgagor shall execute and deliver

such instruments as the Bank may request in order to convey and transfer all of Mortgagor's interest in the Property, and the same shall operate to divest all rights, title and interest of Mortgagor in and to the Property. In the event this Mortgage shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Bank shall, in its sole and exclusive discretion, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter;

- (e) Cause one or more environmental assessments to be taken, arrange for the removal and/or remediation of any Hazardous Substances, or otherwise cure Mortgagor's failure to comply with any statute, regulation or ordinance relating to the presence or clean-up of Hazardous Substances; provided that the exercise of any of such remedies shall not be deemed to have relieved Mortgagor from any responsibility therefor or given the Bank "control" over the Property or cause the Bank to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and
- (f) Take such other actions or proceedings as the Bank deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations including, without limitation, appointment of a receiver (and Mortgagor hereby waives any right to object to such appointment) and exercise of any of the Bank's remedies provided in the Note or in any document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code of Massachusetts or under other applicable law.

This Mortgage is upon the STATUTORY CONDITION, for any breach of which the Bank shall have the STATUTORY POWER OF SALE and any other remedies provided by applicable law including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof by deed, assignment or otherwise. Mortgagor agrees and acknowledges that the acceptance by the Bank of any payments from Mortgagor after the occurrence of any Event of Default, the exercise by the Bank of any remedy set forth herein or the commencement of foreclosure proceedings against the Property shall not waive the Bank's right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Bank. Mortgagor agrees and acknowledges that the Bank, by making payments or incurring costs described herein, shall be subrogated to any right of Mortgagor to seek reimbursement from any third parties including without limitation, any predecessor in interest to Mortgagor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or clean-up of Hazardous Substances.

6.3. Cumulative Rights and Remedies. All of the foregoing rights, remedies and options

are cumulative and in addition to any rights the Bank might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently. Mortgagor further agrees that the Bank may exercise any or all of its rights or remedies set forth herein without having to pay Mortgagor any sums for use or occupancy of the Property.

6.4. Mortgagor's Waiver of Certain Rights. To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

7. Miscellaneous.

7.1. Payments by the Bank. To the extent permitted by applicable law, Mortgagor shall pay to the Bank, on demand, all reasonable expenses, (including attorneys' fees and expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Bank, in connection with the Bank's exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Mortgage (including without limitation any amounts expended pursuant to Sections 5.1 and 6.2(e) hereof) and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law until paid in full by Mortgagor at a rate per annum equal to five (5%) percent above the Prime Rate. Any amounts owed by Mortgagor hereunder shall be, until paid, part of the Obligations, and the Bank shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Mortgagor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds. All references to "attorneys" in this Section 7 and elsewhere in this Mortgage shall include without limitation any attorney or law firm engaged by the Bank, and all references to "fees and expenses" in this Mortgage shall include without limitation any fees of such attorney or law firm. The obligations of Mortgagor under Sections 7.1, 7.2, 7.3 and 7.4 shall survive any payment or satisfaction of any of the other Obligations.

7.2. Indemnification Regarding Leases. Mortgagor hereby agrees to indemnify and hold the Bank and each of its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands which may be asserted against such Indemnities arising from any undertakings on the part of the Bank to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Bank or any Indemnitee or make them liable for any condition of the Property or for performance of any of the obligations of Mortgagor under the Leases, or any other agreement or arrangement, written or oral, or applicable law.

7.3. Indemnification Regarding Hazardous Substances. Mortgagor hereby agrees to indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including without limitation litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or clean-up firm, incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence, removal, or remediation of Hazardous Substances on or affecting the Property.

7.4. Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Mortgage or the Property or any part thereof or therein, or concerning the construction, maintenance, operation or the occupancy or use thereof by the Mortgagor or other person or entity, then the Mortgagor shall indemnify, defend and hold each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment.

7.5. No Waiver or Release. No failure of the Bank to exercise or delay by the Bank in exercising any right or remedy or option provided for herein or otherwise shall be deemed to be a waiver of that right, remedy or option or of any other right, remedy or option. No sale of all or any of the Property, no forbearance on the part of the Bank, no release or partial release of any of the Property, and no extension of the time for the payment of the whole or any part of any of the Obligations or any other indulgence given by the Bank to the Mortgagor or any other person or entity, shall operate to release or in any manner affect the lien of this Mortgage or the original liability of the Mortgagor except to the extent specifically provided in any written instrument signed by the Bank accomplishing any of the foregoing. Notice of any such extensions or indulgences is waived by the Mortgagor. This Mortgage may not be waived, changed or discharged orally, but only by an agreement in writing signed by the Bank, and any oral waiver, change or discharge of any provision of this Mortgage shall be without authority and of no force and effect. A waiver on any one occasion shall be limited to its express terms and conditions and the circumstances giving rise to such waiver and shall not be construed to be a bar to or waiver of any right on any future occasion.

7.6. Notices. Any demand upon or notice to Mortgagor hereunder shall be effective when delivered by hand, properly deposited in the mails postage prepaid, or sent by telex, answerback received, or electronic facsimile transmission, receipt acknowledged, or delivered to a telegraph company or overnight courier, in each case addressed to Mortgagor at the address shown at the beginning of this Mortgage or as it appears on the books and records of the Bank. Demands or notices addressed to any other address at which the Bank customarily communicates with Mortgagor also shall be effective. Any notice by Mortgagor to the Bank shall be given as aforesaid, addressed to the Bank at the address shown at the beginning of this Mortgage or such other address as the Bank may advise Mortgagor in writing.

7.7. Mortgagor's Waivers. Mortgagor waives presentment, demand, notice, protest, and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Mortgage (except for such demands and notices as are specifically required to be provided to Mortgagor under this Mortgage) and assents to any extension or postponement of the time of payment or performance or any other indulgence with respect to any of the Obligations, to any substitution, exchange or release of any collateral for any of the Obligations and/or to the addition or release of any other party or person primarily or secondarily liable hereunder or in connection with any of the Obligations.

7.8. Entire Agreement; Severability; Captions. The terms and conditions of this Mortgage constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, with respect to the subject matter hereof. The invalidity of any provisions of this Mortgage shall in no way affect the validity of any other provision hereof. The failure of the Bank to perfect its lien on or security interest in any of the Property shall not affect its rights in the remainder of the Property. Section and subsection captions are for convenience of reference only, are not a part of this Mortgage and shall not affect the interpretation hereof.

7.9. Successors. This Mortgage shall be binding upon each of the parties executing this Mortgage and their respective successors, administrators and assigns, and shall inure to the benefit of the parties hereto and the successors and assigns of the Bank. The term "Bank" shall include any subsequent holder of this Mortgage by assignment or otherwise.

7.10. Joint and Several Liability. If more than one party executes this Mortgage the term "Mortgagor" shall mean each and every one of them, and each of them shall be jointly and severally liable hereunder.

7.11. Governing Law; Jurisdiction. This Mortgage shall take effect as a contract executed under seal and shall be interpreted in accordance with and governed by the laws of The Commonwealth of Massachusetts (other than its rules governing choice or conflicts of laws). Each party signing this Mortgage submits to personal jurisdiction in The Commonwealth of Massachusetts and waives any and all rights to object to such jurisdiction. Each such party agrees that service of process may be made and personal jurisdiction obtained by serving Mortgagor at any location provided in Section 7.6 hereof.

7.12. JURY WAIVER. THE BANK (BY ITS ACCEPTANCE OF THIS MORTGAGE) AND THE MORTGAGOR AGREE THAT NEITHER OF THEM, INCLUDING ANY ASSIGNEE OR SUCCESSOR SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS MORTGAGE, ANY RELATED INSTRUMENTS, ANY COLLATERAL OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM. NEITHER THE BANK NOR THE MORTGAGOR SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS



PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE BANK AND THE MORTGAGOR, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER THE BANK NOR THE MORTGAGOR HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

EXECUTED under seal as of the date first above written.

Marina At Hatter's Point, LLC

By: \_\_\_\_\_

Parking for Amesbury, LLC

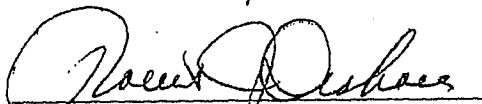
By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

June 14, 2004

On this 14 day of June, 2004, before me, the undersigned notary public, personally appeared C. DANIEL SWIFT, proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, AS MANAGER OF PARKING FOR AMESBURY, LLC

  
Robert J. Deshaies, Notary Public  
My commission expires: 2/16/07

IAFY2004 President-Swift Mortgage.wpd

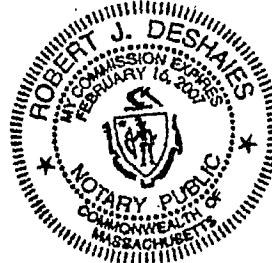


EXHIBIT A  
TO COMMERCIAL REAL ESTATE MORTGAGE  
LEGAL DESCRIPTION OF PROPERTY

JUN 11 2004

Plan 26500 Lot S 9+11  
(EXAMINED AS DESCRIPTION ONLY)  
George T. Capellanis, Engineer  
JAV

PARCEL 1 - REGISTERED LAND [PARKING FOR AMESBURY, LLC]

A parcel of land known and numbered 77 Merrimac Street being shown as Lots 9 and 11 on Land Court Plan 26500-D. Being a portion of the premises described in Certificate of Title 75042 filed in the Land Registration Section of the Essex South District Registry of Deeds.

Subject to a drainage easement and an access easement described in a deed to the Town of Amesbury of even date being filed immediately prior hereto in the Land Registration office of the Essex South District Registry of Deeds.

PARCEL 2 - RECORDED LAND [PARKING FOR AMESBURY, LLC]

A certain parcel of land known and numbered 75 Merrimac Street being shown as Parcel 3 on Amesbury Assessor's Map 99 and being more particularly described in a deed recorded in said Registry of Deeds in Book 9302, Page 63, bounded and described as follows:

NORTH: 32 1/4 degrees West 210 feet by land now or formerly of Henry S. Harris and Donna L. Harris to an iron bound; thence running

NORTH: 78 degrees 23' West 83.2 feet to land now or formerly of Henry S. Harris and Donna L. Harris; thence running

SOUTHERLY 32 1/4 degrees East by land now or formerly of Henry S. Harris and Donna L. Harris 272.35 feet, to a point on Merrimac Street, which is 5.4 feet Northeast of a stone bound on said Street; thence running

NORTH 52 degrees 8' East along Merrimac Street, 60.2 feet, to the point of beginning, the said parcel containing 14,470 square feet.

For title, see deed from the Town of Amesbury dated September 16, 2002 and recorded in said Registry of Deeds in Book 19261, Page 82.

PARCEL 3 - RECORDED LAND [MARINA AT HATTER'S POINT, LLC]

An easement described in a Marina Easement dated April 26, 2002 recorded in Essex South District Registry of Deeds in Book <sup>18960</sup>8960, Page 177. assigned to the mortgagor, Marina At Hatter's Point, LLC by assignment from Amesburyport Corporation dated December 11, 2003 and recorded in said Registry of Deeds in Book 22189, Page 460.

*ORZ*



## NOTICE OF MORTGAGEE'S SALE

**NOTICE IS HEREBY GIVEN** that a mortgagee's sale by public auction will be held as set forth below, for condition broken, by virtue of and in execution of the Power of Sale contained in a mortgage deed (the "**Mortgage**") given by **MARINA AT HATTER'S POINT, LLC** and **PARKING FOR AMESBURY, LLC** to **THE PROVIDENT BANK** (of which Mortgage the undersigned is the holder). The Mortgage is dated and recorded as set forth below.

Said premises will be sold by virtue of and in execution of the Power of Sale contained in the Mortgage, and by virtue and in execution of every other power, for condition broken and to satisfy the amounts due under the Mortgage and to foreclose the rights of said **Marina at Hatter's Point, LLC** and **Parking for Amesbury, LLC** and all other persons to redeem the Mortgage.

- I. **DESCRIPTION OF THE PREMISES.** The premises to be sold, as described in the Mortgage, are a certain tract of land with any buildings thereon and rights thereto situated at **60-77 Merrimac Street, Amesbury**, Essex County, Massachusetts as more fully described in **Exhibit A** attached hereto.
- II. **DATE, TIME & PLACE.** The sale will take place on **Friday May 1, 2009 at 11:00 AM**, prevailing local time, on the mortgaged premises at **60-77 Merrimac Street, Amesbury, Massachusetts**.
- III. **MORTGAGE RECORDING INFORMATION.** The Mortgage is dated as of June 14, 2004 and is recorded in **Book 23009, Page 301** of the Essex South District Registry of Deeds and recorded with the Essex South District Registry of Deeds (District of the **Land Court**) as **Document number 441376**.
- IV. **TERMS OF SALE:**

A non-refundable **deposit of Twenty-Five Thousand Dollars (\$25,000.00)** by certified check or official bank check will be required of the purchaser at the sale. Such deposit shall be shown to the auctioneer prior to the commencement of bidding in order for a person to be entitled to bid. The balance of the purchase price shall be paid in full by certified check or official bank check, upon delivery of a foreclosure deed, within thirty (30) days after the date of the foreclosure sale, at the offices of Rudolph Friedmann LLP, 92 State Street, Boston, Massachusetts 02109. If the successful bidder fails to complete the purchase of the premises in accordance with the above conditions, then the mortgagee will be entitled to retain the entire deposit in full as liquidated damages resulting from the successful bidder's failure to complete the purchase.

The successful bidder will be required to execute a written Memorandum of Sale immediately after the close of the bidding. The Memorandum of Sale will be available for review at the sale.

**THE PREMISES WILL BE SOLD AS IS, WHERE IS, AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE**, and subject to and with the benefit of all rights, rights of way, restrictions, easements, covenants, liens or claims in the nature of liens, improvements, public assessments, any and all unpaid taxes, tax titles, tax liens, water and sewer liens and any other municipal assessments or liens or existing encumbrances of record which are in force and are applicable, having priority over the Mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed or in the Mortgage, and subject to any existing tenants, tenancies or persons in possession and rights or claims in personal property installed by tenants or former tenants now located on the premises.

The successful high bidder will be responsible for paying all transfer taxes due by reason of this sale or the foreclosure deed to be given pursuant to this sale.

- V. **RESERVATION OF RIGHTS.** THE MORTGAGEE RESERVES ALL RIGHTS INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO BID AT THE SALE, TO CONTINUE, POSTPONE OR CANCEL THE SALE, TO REJECT ANY AND ALL BIDS, AND TO ALTER, AMEND OR MODIFY THE TERMS, CONDITIONS OR PROCEDURE FOR THE PROPOSED SALE, EITHER ORALLY OR IN WRITING, BEFORE OR AT THE TIME OF THE PROPOSED SALE, IN WHICH EVENT SUCH TERMS AS ALTERED, AMENDED OR MODIFIED SHALL BE BINDING ON ALL BIDDERS AND INTERESTED PARTIES.

Other terms, if any, will be announced at the sale. The sale may be postponed or adjourned from time to time, if necessary, by the auctioneer or the attorney for the mortgagee at the scheduled time and place for the sale.

3 / 31 / 2009  
Date

**The Provident Bank**  
Present holder of said Mortgage

By:   
Its Attorney, James L. Rudolph  
Rudolph Friedmann LLP  
92 State Street  
Boston, Massachusetts 02109  
Tel: (617) 723-7700  
Fax: (617) 227-0313

## **EXHIBIT A**

### **PARCEL 1 - REGISTERED LAND (PARKING FOR AMESBURY, LLC)**

A parcel of land known and numbered 77 Merrimac Street being shown as Lots 9 and 11 on Land Court Plan 26500-D. Being a portion of the premises described in Certificate of Title 75042 filed in the Land Registration Section of the Essex South District Registry of Deeds.

Subject to a drainage easement and an access easement described in a deed to the Town of Amesbury dated June, 2004 and filed with the Essex South District of the Land Court as Document No. 441373.

For title see Document No. 405339 filed with the Essex South District of the Land Court creating Transfer Certificate of Title No. 75042 in Book 402.

### **PARCEL 2 - RECORDED LAND (PARKING FOR AMESBURY, LLC)**

A certain parcel of land known and numbered 75 Merrimac Street being shown as Parcel 3 on Amesbury Assessor's Map 99 and being more particularly described in a deed recorded in said Registry of Deeds in Book 9302, Page 63, bounded and described as follows:

NORTH: 32 1/4° West 210 feet by land now or formerly of Henry S. Harris and Donna L. Harris to an iron bound; thence running

NORTH: 78° 23' West 83.2 feet to land now or formerly of Henry S. Harris and Donna L. Harris; thence running

SOUTHERLY 32 1/4° East by land now or formerly of Henry S. Harris and Donna L. Harris 272.35 feet to a point on Merrimac Street which is 5.4 feet Northeast of a stone bound on said Street; thence running

NORTH 52° 8' East along Merrimac Street 60.2 feet to the point of beginning, the said parcel containing 14,470 square feet.

For title, see deed from the Town of Amesbury dated September 16, 2002 and recorded in said Registry of Deeds in Book 19261, Page 82.

### **PARCEL 3 - RECORDED LAND (MARINA AT HATTER'S POINT, LLC)**

An easement described in a Marina Easement dated April 26, 2002 recorded in Essex South District Registry of Deeds in Book 18960, Page 177 assigned to Marina At Hatter's

Point, LLC by assignment from Amesburyport Corporation dated December 11, 2003 and recorded in said Registry of Deeds in Book 22189, Page 460.

**AS TO PARCELS 1, 2 & 3 IDENTIFIED ABOVE:**

Also including all of the following as to the Property described as Parcels 1, 2 & 3, above: (i) all rights belonging or pertaining thereto; (ii) all goods, furniture, machinery, equipment, fixtures, contract rights, and other items of personal property of the Mortgagor or in which it has an interest, now owned or hereafter acquired, that are located on or used in connection with the Property; (iii) all of the rights and benefits of Mortgagor under any leases and agreements relating to the Property, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of Mortgagor of any kind arising thereunder (the "Leases"); and (iv) all contracts, permits and licenses respecting the use, operation or maintenance of the Property; meaning and intending hereby to include, without limitation, all docks and related tools, equipment and accessories, and that certain license #9813 issued by the Massachusetts Department of Environmental Protection dated March 1, 2004 and recorded in said Registry of Deeds in Book 22607, Page 566.

**60-77 Merrimack Street, Amesbury, MA (hereinafter the “Property”)**

(the “**Buyer**”).

The Property shall be conveyed by the usual mortgagee's deed under the statutory power of sale. The Property shall be conveyed subject to any outstanding tenancies and/or leases, the rights of parties in possession, any tax titles, municipal taxes and assessments, any outstanding water or sewer bills or liens, and the provisions of applicable state and local law, including building codes zoning ordinances and M.G.L. Chapter 21E.

In the event the Mortgagee cannot convey title to the Property as stipulated, the deposit, and if applicable, the balance of the purchase price shall be refunded and all rights hereunder shall cease, and the Buyer shall have no recourse against the Mortgagee, or its employees, agents and representatives, whether at law or in equity.

**TAB 3**



The Property shall be conveyed in "as is" condition, that is, where is, as is, and without any express or implied warranties of any nature, and subject to any prior mortgages, taxes, attachments, liens, and all other encumbrances and rights, title or interest whatsoever which have precedence over the Mortgage identified in the Foreclosure Notice, and subject to any existing tenants, tenancies, or persons in possession. The Buyer acknowledges that Buyer has not been influenced to enter this transaction by, and has not relied upon, any warranties or representations of the Mortgagee or the Auctioneer not set forth or incorporated in this Agreement. No personal property of any nature is included in this conveyance except as expressly set forth herein. If, as of this date, there is any tenant or occupant in residence, the Buyer, if he or she wishes to evict such tenant or occupant, must do so at his or her own expense.

The Buyer shall assume responsibility for and costs relating to compliance with all State and Federal law and regulations regarding Hazardous Substances, Title 5 of the State Environmental Code, state and city requirements regarding smoke detection equipment, and lead paint regulations, all as applicable. Mortgagee makes no warranties or representations regarding the Property's current compliance with any state or local regulations or laws.

In the event that the successful bidder at the foreclosure sale shall default in purchasing the within described Property according to the terms of the Foreclosure Notice and the terms of this Agreement, the full deposit paid by the Buyer to the Mortgagee will be and remain the property of the Mortgagee as reasonable liquidated damages, and in such event the Mortgagee reserves the right to sell the Property by Foreclosure Deed to the second highest bidder provided that the second highest bidder shall deposit the amount of the required deposit with Rudolph Friedmann LLP, 92 State Street, Boston, MA within three (3) business days after written notice of default of the previous highest bidder and title shall be conveyed to said second highest bidder within twenty (20) days of said written notice on the same terms as set forth in this Agreement except as to the bid price.

This Agreement incorporates all discussions and negotiations between the Mortgagee and the Buyer, either express or implied, concerning the matters included herein, and no discussions, representations, statements or negotiations shall limit, modify or otherwise affect the provisions hereof. No modifications, amendment or waiver of any provision of this Agreement is effective unless executed in writing by the party to be charged with such modification, amendment or waiver.

This Agreement shall be governed by Massachusetts law. For purposes of any action or proceeding involving this Agreement, the parties hereto hereby expressly submit to the jurisdiction of all federal and state courts located in the Commonwealth of Massachusetts and consent that any order, process, notice of motion or other application to or by any of said courts or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided a reasonable time for appearance is allowed (but not less than the time otherwise afforded by any law or rule), and waive any right to contest the appropriateness of any action brought in any such court based upon lack of personal jurisdiction, improper venue or *forum non conveniens*.

THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT HE, SHE OR IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

**ACKNOWLEDGMENT OF PERMIT UNDER TIER II AND OF THE POSSIBLE EXISTENCE OF HAZARDOUS MATERIALS.**

The Buyer acknowledges that the Buyer is aware that the Property is subject to and is being occupied and used under the conditions of a Tier II permit issued by the Massachusetts Department of Environmental Protection, and the Buyer agrees to purchase the Property with full knowledge of the existence of such permit and with full knowledge that the Property has contained in the past, and may still contain, certain levels of hazardous materials.

The undersigned each acknowledge receipt of a copy of this Agreement.

Executed as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

The Provident Bank: Mortgagee

Buyer \_\_\_\_\_

**DRAFT – NOT VALID  
UNTIL COMPLETED AND  
EXECUTED**

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

Title: \_\_\_\_\_

Duly Authorized \_\_\_\_\_

John McInnis Auctioneers Auctioneer

By: \_\_\_\_\_

## EXHIBIT A

### **PARCEL 1 - REGISTERED LAND (PARKING FOR AMESBURY, LLC)**

A parcel of land known and numbered 77 Merrimac Street being shown as Lots 9 and 11 on Land Court Plan 26500-D. Being a portion of the premises described in Certificate of Title 75042 filed in the Land Registration Section of the Essex South District Registry of Deeds.

Subject to a drainage easement and an access easement described in a deed to the Town of Amesbury dated June, 2004 and filed with the Essex South District of the Land Court as Document No. 441373.

For title see Document No. 405339 filed with the Essex South District of the Land Court creating Transfer Certificate of Title No. 75042 in Book 402.

### **PARCEL 2 - RECORDED LAND (PARKING FOR AMESBURY, LLC)**

A certain parcel of land known and numbered 75 Merrimac Street being shown as Parcel 3 on Amesbury Assessor's Map 99 and being more particularly described in a deed recorded in said Registry of Deeds in Book 9302, Page 63, bounded and described as follows:

NORTH: 32 1/4° West 210 feet by land now or formerly of Henry S. Harris and Donna L. Harris to an iron bound; thence running

NORTH: 78° 23' West 83.2 feet to land now or formerly of Henry S. Harris and Donna L. Harris; thence running

SOUTHERLY 32 1/4° East by land now or formerly of Henry S. Harris and Donna L. Harris 272.35 feet to a point on Merrimac Street which is 5.4 feet Northeast of a stone bound on said Street; thence running

NORTH 52° 8' East along Merrimac Street 60.2 feet to the point of beginning, the said parcel containing 14,470 square feet.

For title, see deed from the Town of Amesbury dated September 16, 2002 and recorded in said Registry of Deeds in Book 19261, Page 82.

### **PARCEL 3 - RECORDED LAND (MARINA AT HATTER'S POINT, LLC)**

An easement described in a Marina Easement dated April 26, 2002 recorded in Essex South District Registry of Deeds in Book 18960, Page 177 assigned to Marina At Hatter's Point, LLC by assignment from Amesburyport Corporation dated December 11, 2003 and recorded in said Registry of Deeds in Book 22189, Page 460.

**AS TO PARCELS 1, 2 & 3 IDENTIFIED ABOVE:**

Also including all of the following as to the Property described as Parcels 1, 2 & 3, above: (i) all rights belonging or pertaining thereto; (ii) all goods, furniture, machinery, equipment, fixtures, contract rights, and other items of personal property of the Mortgagor or in which it has an interest, now owned or hereafter acquired, that are located on or used in connection with the Property; (iii) all of the rights and benefits of Mortgagor under any leases and agreements relating to the Property, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of Mortgagor of any kind arising thereunder (the "Leases"); and (iv) all contracts, permits and licenses respecting the use, operation or maintenance of the Property, meaning and intending hereby to include, without limitation, all docks and related tools, equipment and accessories, and that certain license #9813 issued by the Massachusetts Department of Environmental Protection dated March 1, 2004 and recorded in said Registry of Deeds in Book 22607, Page 566.

After recording, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# MASSACHUSETTS FORECLOSURE DEED BY CORPORATION

The Provident Bank, a Massachusetts banking institution with place of business at 5 Market Street, P.O. Box 37, Amesbury, MA 01913, the current holder of a mortgage from MARINA AT HATTER'S POINT, LLC and PARKING FOR AMESBURY, LLC to THE PROVIDENT BANK, (which mortgage is dated as of June 14, 2004 and is recorded in Book 23009, Page 301 of the Essex South District Registry of Deeds and recorded with the Essex South District Registry of Deeds (District of the Land Court) as Document number 441376), by the power conferred by said mortgage and every other power, for and in consideration of the sum of \_\_\_\_\_ of (\$ \_\_\_\_\_ .00) paid, grants the premises conveyed by said mortgage to:

FOR REGISTRY USE ONLY

**DRAFT — NOT VALID  
UNTIL COMPLETED AND  
EXECUTED**

WITNESS the execution and the corporate seal of said corporation this \_\_\_\_ day of \_\_\_\_\_, 2009.

The Provident Bank

The Provident Bank

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Duly Authorized

Duly Authorized

The Commonwealth of Massachusetts

Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of The Provident Bank in his/her capacity as \_\_\_\_\_ of The Provident Bank.

\_\_\_\_\_  
Notary Name:  
(Official Signature and Seal)  
My commission expires:

The Commonwealth of Massachusetts

Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of The Provident Bank in his/her capacity as \_\_\_\_\_ of The Provident Bank.

**DRAFT - NOT VALID  
UNTIL COMPLETED AND  
EXECUTED**

\_\_\_\_\_  
Notary Name:  
(Official Signature and Seal)  
My commission expires:

## THE COMMONWEALTH OF MASSACHUSETTS

Town of Amesbury

Office of the Treasurer

The Town of Amesbury, Essex County, in consideration of \$165,000.00, the receipt whereof is hereby acknowledged, hereby grants to Parking for Amesbury, LLC, of 5 Perry Way, NewburyPort, MA 01950, all its right, title and interest in two parcels of land in said Town bounded and described as follows:

PARCEL ONE REGISTERED LAND:

Land in said Amesbury at 77 Merrimac Street, being Parcel 4 on Assessor's Map 99, and also shown as Lot 1 on Land Court Plan 25500-A, sh. 1, described in Certificate of Title 74097, at the Essex South District Registry of Deeds.

Meaning, intending and hereby conveying the same premises formerly shown as Parcel 37 on Town of Amesbury Assessors' Map 52, now shown as Parcel 4 on Town Assessors' Map 99 and acquired by said Town under an instrument of taking dated February 15, 1991, and registered with the Essex South District Registry of Deeds, Document No. 261075, noted on Certificate of Title 56298, and a decree of the Land Court in Case No. 104041 T.L., dated May 24, 2001, and registered with said Registry in Document No. 383581 noted on Certificate of Title 56298

PARCEL TWO RECORDED LAND:

Land in said Amesbury at 75 Merrimac Street, being Parcel 3 on Assessor's Map 99, described in Essex South District Registry of Deeds, Book 9302, Page 63.

Meaning, intending and hereby conveying the same premises formerly shown as Parcel 38 on Town of Amesbury Assessors' Map 52, now shown as Parcel 3 on Assessors' Map 9 and acquired by said Town under an instrument of taking dated February 15, 1991, and recorded with the Essex South District Registry of Deeds in Book 10741, Page 518, and a decree of the Land Court in Case No. 104056 T.L., dated May 24, 2001, and recorded with said Registry in Book 17419, Page 230.

The land hereby granted was sold in accordance with the provisions of Chapter 358, Section 2, of the Acts of 1938, as amended, by Barbara D. Moore, Custodian, to the above-named grantee at public auction on March 26, 2002, notice of the proposed sale having been sent by certified mail to the owner of record on March 5, 2002, and similar notices posted on March 12, 2002, in the following public places:

Town Hall

Public Library

✓ The grantee hereof has paid, in addition to the purchase price, the sum required by G. L. c. 44, s. 63A, to be paid in lieu of current taxes.

The Town of Amesbury has received a statement signed under the pain and penalties of perjury by C. Daniel Swift, individually and as the sole officer and director of the Parking For Amesbury, LLC, under the provisions of and in compliance with Chapter 803 of the Acts of 1986 that neither he nor any other person who would gain equity in the above-described land have ever been convicted of a crime involving the willful and malicious setting of a fire or of a crime involving the aiding, counseling or procuring of a willful and malicious setting of a fire; or of a claim involving the fraudulent filing of a claim for fire insurance; or are delinquent in the payment of real estate taxes to the Town of Amesbury.

Witness the execution of this instrument this 18<sup>th</sup> day of September 2002.

Town of Amesbury

By Barbara D. Moore  
Barbara D. Moore  
Treasurer

403339 (75042+) Bk:19261  
Southern Essex District Registry  
9/20/2002 11:44 AM DEED

no official Stamp needed

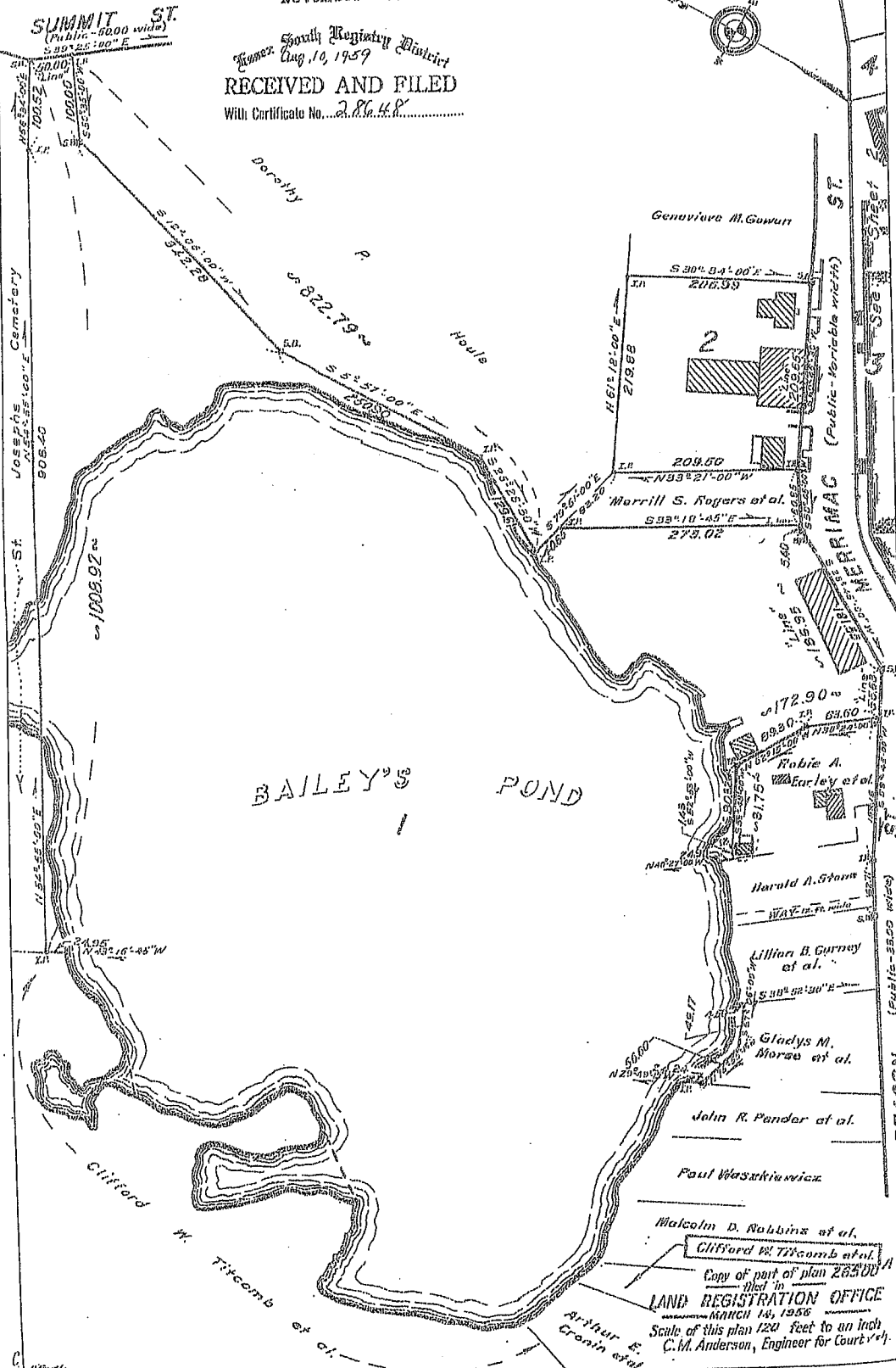
PLAN OF LAND IN AMESBURY  
Clinton F. Goodwin, Engineer

November 1955

26500A  
Sheet 1

South Registry District  
Received Aug. 16, 1957  
RECEIVED AND FILED  
With Certificate No. 28648

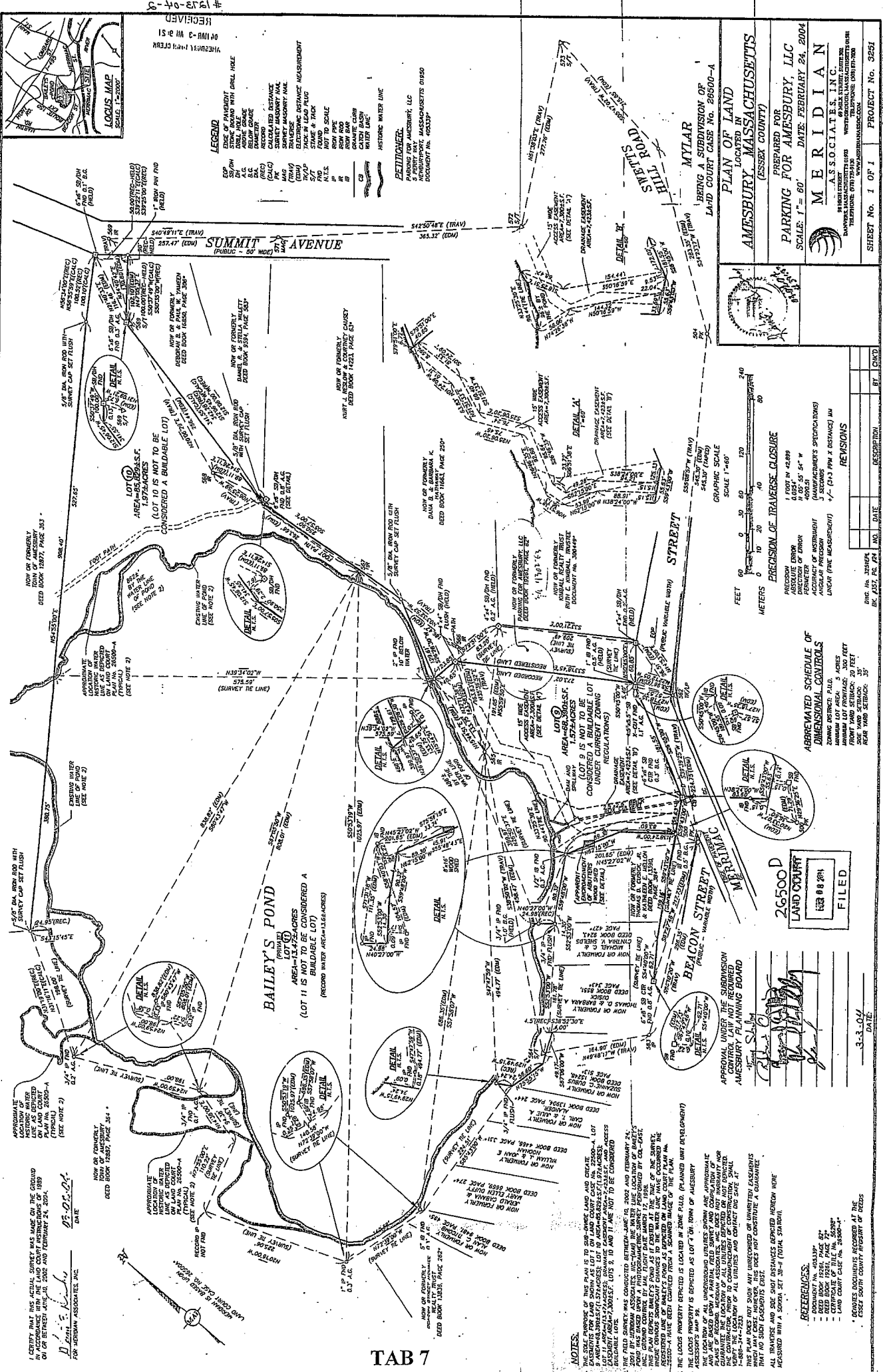
See  
note




February 23, 1968 No Certificate of Title shall be issued relating to lot 3 shown hereon, unless authorized by the Court, the same being subdivided on another plan dated January 1968 filed with Court # 38456 See Cancellation as to Plan Doc. # 46506

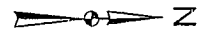
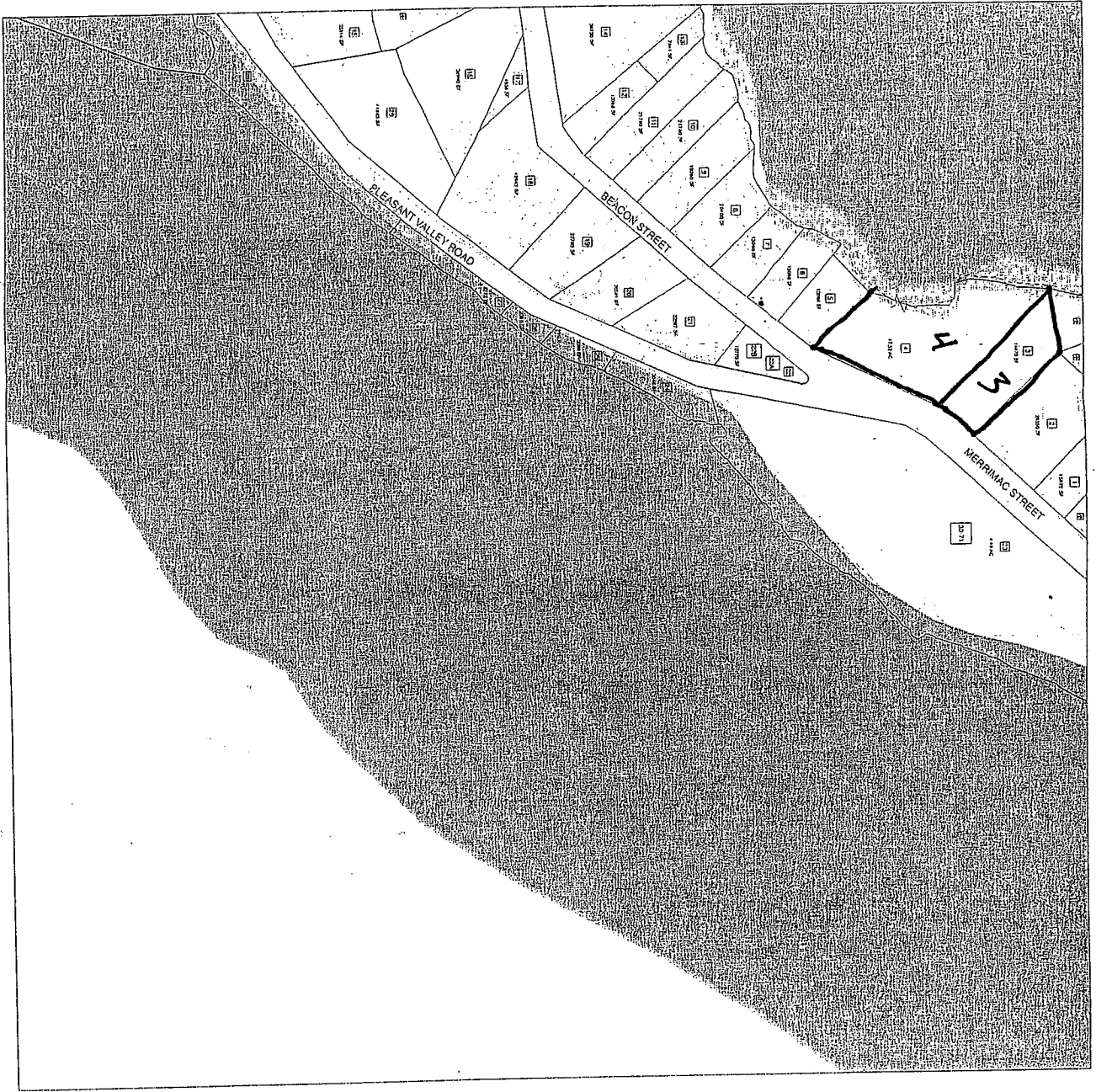
SUBDIVISION OF LOTS  
SEE PLAN WITH CERT.





















MAP REVISION DATE	
As of January 1, 2005	


 Merrimack Valley Planning Commission  
 1000 Main Street, Suite 200  
 Amesbury, MA 01810  
 (978) 335-0177

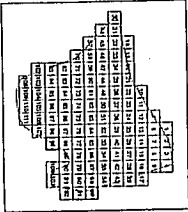


**LEGEND**

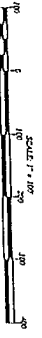
-  Parcel Line
-  Prior Parcel Line with Common Ownership
-  Parcel Number
-  For Additional Parcel Information  
See Adjacent Sheet
-  Contour Lines, 2 Ft
-  Right of Way
-  Town Boundaries
-  Easements
-  Hydrographic Features
-  Streams
-  Wetlands
-  Exempt Lands
-  Federal
-  State
-  Municipal
-  Private

**NOTE:** AREAS, BOUNDARIES, AND DIMENSIONS SHOWN ON THIS TAX MAP ARE DERIVED FROM AERIAL PHOTOGRAPHS, GROUND SURVEYS, AND RECORDED DEEDS. THIS MAP IS NOT TO BE USED FOR PROPERTY ASSESSMENT PURPOSES ONLY AND NOT FOR CONVEYANCE.

Data Sources: The data for this map was supplied by the Merrimack Valley Planning Commission, the State of Massachusetts, and the Secretary's Office of Environmental Affairs/PLACETS.



**INDEX**



AMESBURY, MASS.

3  
10

**MARINA EASEMENT**

2002071900673 Bk:18960 Pg:177  
07/19/2002 15:09:00 OTHER Pg 1/3

**AMESBURYPORT CORPORATION**, a Massachusetts corporation with principal offices at Damonmill Square, 9 Pond Lane, Concord, MA 01742, ("Grantor"), hereby reserves to itself and its assigns, the following rights and easements IN GROSS with respect to the land of the Grantor situated in Amesbury, Essex County, Massachusetts described in a deed registered with the Land Registration Office for the Essex South District as Document 371450, being Lots 3 and 4 on Land Court Plan No. 26500-A and containing an area of 5.57 acres  $\pm$  ("the Grantor's Land"), as Grantor's Land may be more particularly bounded, measured, described and shown a plan entitled "Easement Plan of Land (Associated With Access and Utilities to Service the Marina) Located in Amesbury, Massachusetts (Essex County)", Prepared For Amesburyport Corporation dated March 5, 2002, by Meridien Engineering, Inc., ("the Marina Easement Plan"), and filed with said Land Registration Office with Document Number 402235.

**MARINA USE EASEMENT**

The perpetual right and easement to operate a public marina and, in connection therewith, to construct, improve, repair, reconstruct and replace building(s), docks, slips, piers, wharfs, floats and/or other structures used in connection with the operation of a public marina in, under and upon the area designated "Marina Use Easement, Area = 39,500 $\pm$  S.F." ("the Marina Use Easement Area") on the Marina Easement Plan and such other areas on or upon the Merrimac River to which the ownership of the Grantor's Land may by law extend or as the Grantor, its successors and/or assigns, or others may lawfully operate such marina.

Included within the Marina Easement shall be the right to use incident to the marina that portion of Building 9 as shown on the Marina Easement Plan as "Restrictive Easement For Water Dependent Use, Area = 735 $\pm$  S.F."

The reserved right and easement to operate a public marina shall not include the right to store fuel for sale to the public nor to store any hazardous materials within the Marina Use Easement Area.

Marina patrons and staff shall have 24 hour access to the Marina, provided, however, that there shall be no unlawful, improper, offensive or noisome activity carried on within the Marina Use Easement Area which may unreasonably disturb the residents of the HATTER'S POINT CONDOMINIUM. There shall be no loud playing of music at any time within the Marina Use Easement Area and no playing of music before the hour of 9:00 A.M. or after the hour of 8:00 P.M. It is specifically understood and agreed that any person entering onto the Marina Use Easement Area shall be deemed to have agreed (A) to abide by the above conditions and (B) to indemnify and hold harmless, the Grantor, and its successors.

**Return to:**

Seth Emmer, Esquire  
Marcus, Errico, Emmer & Brooks, P.C.  
45 Braintree Hill Office Park, Suite 107  
Braintree, MA 02184

and assigns to Grantor's Land, for any and all claims of injury to persons (including death) and/or damage to property resulting from or as a result of any entry upon or use of the facilities within the Marina Use Easement Area.

#### MARINA BUILDING EASEMENT

The perpetual right and easement to construct, improve, repair, reconstruct and replace building(s) and/or other structures for the operation of a marina in, under and upon the area designated "Marina Building Easement, Area = 1,781 ± S.F." ("the Marina Building Easement Area") on the Marina Easement Plan.

#### MARINA UTILITY EASEMENT

The perpetual right and easement to install, maintain, repair and/or replace underground utilities to serve the marina and/or the marina building(s) which may hereafter be constructed pursuant to this Marina Easement in, under or within the area designated "Proposed Utility Easement To Service Marina Use Area, Area = 12,956± S.F." ("the Marina Utility Easement Area") on the Marina Easement Plan.

This Marina Easement is reserved by the Grantor **IN GROSS** for the benefit of the Grantor and/or any person or entity that Grantor may hereafter designate, by written instrument duly recorded and specifically referring hereto, to construct and/or operate the public marina and marina building(s) in the above-noted areas so designated on the Marina Easement Plan and, in connection therewith to utilize the Marina Utility Easement Area for the purposes noted therein.

The Grantee, by the acceptance of the rights and benefits hereof, shall be deemed to have agreed to indemnify and hold harmless, the Grantor, and its successors and assigns to Grantor's Land, for any and all claims of injury to persons (including death) and/or damage to property resulting from or as a result of any entry onto or use of the said Marina Use Easement Area, the Marina Building Easement and/or the Marina Utility Easement in any respect pursuant to these Easements.

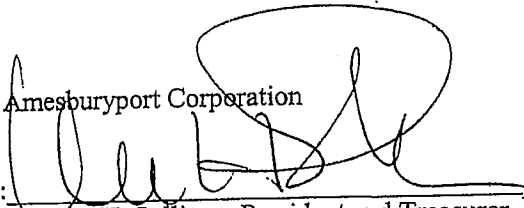
Any person or entity taking title to any Unit at HATTER'S POINT CONDOMINIUM or granting a Mortgage on any Unit, as the case may be, by the acceptance and recording of such Unit Deed or Mortgage shall be conclusively deemed to assented to the provisions of this Marina Easement and the rights reserved to the Grantor and its assigns with respect to such future public marina.

This Marina Easement may be amended or revoked, in whole or in part, by a writing signed and acknowledged by the Grantor but in no manner as to eliminate or burden the rights reserved hereby and shall be interpreted under the laws of the Commonwealth of Massachusetts.

The consideration for this instrument is less than \$100 and therefore no Massachusetts Documentary Tax stamps are required by law.

For Grantor's title see Document 371450 and Certificate of Title No. 72173 registered with the Land Registration Office for Essex South District Deeds.

IN WITNESS WHEREOF, the said AMESBURYPORT CORPORATION. has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by William H. Sullivan, its President and Treasurer, hereunto duly authorized, this 26<sup>th</sup> day of April, 2002.

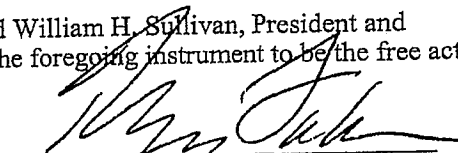
Amesburyport Corporation  
By:   
William H. Sullivan, President and Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

April 26, 2002

Then personally appeared before me the above-named William H. Sullivan, President and Treasurer as aforesaid, and acknowledged the execution of the foregoing instrument to be the free act and deed of Amesburyport Corporation

  
Notary Public

My commission expires: **THOMAS WRAY FALWELL**  
**NOTARY PUBLIC**  
My Commission Expires Sept. 22, 2006

5/6

SOP  
REC

ASSIGNMENT OF MARINA EASEMENT

AMESBURYPORT CORPORATION, a Massachusetts corporation with principal offices at Damonmill Square, 9 Pond Lane, Concord, MA 01742 ("Assignor"), holder of certain rights and easements IN GROSS with respect to certain land situated in Amesbury, Essex County, Massachusetts described in a deed registered with the Land Registration Office for the Essex South District as Document 371450, being Lots 3 and 4 on Land Court Plan No. 26500-A and containing an area of 5.57 acres ± ("the Assignor's Land"), and as the Assignor's Land may be more particularly bounded, measured, described and shown a plan entitled "Easement Plan of Land (Associated With Access and Utilities to Service the Marina) Located in Amesbury, Massachusetts (Essex County)", Prepared For Amesburyport Corporation dated <sup>April 19</sup> ~~March 5~~, 2002, by Meridien Engineering, Inc., ("the Marina Easement Plan") filed with said Land Registration Office with Document Number 402235, all as set forth in a certain Marina Easement dated April 26, 2002 and recorded with said Deeds in Book 18960, Page 177 ("the Marina Easement"), for consideration paid of \$1.00 and other good and valuable consideration, does hereby assign the rights and easements so reserved to the Assignor under the Marina Easement to **MARINA AT HATTER'S POINT, LLC**, a Massachusetts Limited Liability Company with principal offices at 5 Perry Way, Unit #1, Newburyport, MA 01950 ("the Assignee"), its successors and/or assigns

This Assignment shall operate, as authorized by and provided in the Marina Easement, as the designation of the Assignee as the entity to construct and/or operate the public marina and marina building in the areas so designated on the Marina Easement Plan and, in connection therewith to utilize the Marina Building Easement Area and the Marina Utility Easement Area for the purposes noted therein.

The Assignee, and its successors and/or assigns, by the acceptance of the rights and benefits hereof, shall be conclusively deemed to indemnify and hold harmless, the Assignor, and its successors and assigns to Assignor's Land (including the Hatter's Point Condominium Association, Inc, and all present and future Unit Owner's at Hatter's Point Condominium) for any and all claims of injury to persons (including death) and/or damage to property resulting from or as a result of any entry onto or use of the said Marina Use Easement Area, the Marina Building Easement Area or any substitute area therefor and/or the Marina Utility Easement Area, or in any respect pursuant to the Marina Easement.

1520.2

Box 98

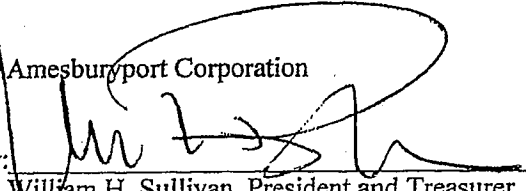
This Assignment is expressly conditioned upon and is subject to the following terms and conditions, to which by the acceptance and recording hereof the Assignee, and its successors and/or assigns, agrees to be bound as if fully set forth in the Marina Easement:

1. The Assignee shall adopt reasonable Rules and Regulations for the operation of the marina (including, as a minimum, Rules and Regulations ["the Minimum Rules and Regulations"] as enumerated on Exhibit "A" hereto and made a part hereof) so that such operation and use of any buildings, structures, public parking and/or walkway areas and other associated amenities therein shall not unreasonably interfere with the quiet enjoyment of the Units at Hatter's Point by the residents thereof. The Assignee shall, at all times, strictly enforce the Minimum Rules and Regulations and, upon the Assignee's failure to so enforce same, the Assignor shall have the right to seek their enforcement by judicial or other means and, in connection therewith, to recover its reasonable costs and expenses, including attorney's fees, and appropriate damages on behalf of itself and the owners and residents of Hatter's Point Condominium. From and after the date upon which the Assignor conveys the final Unit at Hatter's Point to a purchaser thereof, the rights of the Assignor in connection with any proposed change to the Minimum Rules and Regulations and/or the enforcement thereof, shall inure to and be exercised by the Directors of The Hatter's Point Condominium Association, Inc.
2. The Marina Easement Plan contains a specified Marina Building Easement Area. For a period of six (6) months from the date hereof, no construction of any Marina Building shall occur without the express, written consent of the Assignor. During said six (6) month period, the Assignor shall have the right and option of designating, within the existing mill buildings or on an alternate part of the Hatter's Point site, in any case with an entry area facing the River within Buildings #24 or #25 or on land southwesterly of said Buildings, space for the substitute construction of the marina facilities and associated interior amenities in lieu of the construction of the Marina Building within the Marina Building Easement Area. Upon such designation and the agreement of the Assignee to such designation, which agreement shall not be unreasonably withheld, conditioned and/or delayed, the Marina Building Easement Area shall be null and void and any and all rights and easements therein, as reserved by the Marina Easement, shall inure to the benefit of the Assignor.

The consideration for this instrument is less than \$100 and therefore no Massachusetts Documentary Tax stamps are required by law.

The Assignor hereby terminates and extinguishes the right to revoke the Easement reserved in the aforesaid Marina Easement.

IN WITNESS WHEREOF, the said AMESBURYPORT CORPORATION has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by William H. Sullivan, its President and Treasurer, hereunto duly authorized, this 11<sup>th</sup> day of December, 2003.

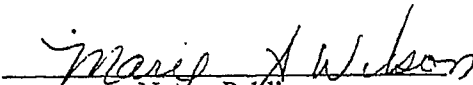
Amesburyport Corporation  
By:   
William H. Sullivan, President and Treasurer

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

December 11, 2003

Then personally appeared before me the above-named William H. Sullivan, President and Treasurer as aforesaid, and acknowledged the execution of the foregoing instrument to be the free act and deed of Amesburyport Corporation

  
Notary Public

My commission expires: 2-5-10



## EXHIBIT A

### MINIMUM RULES & REGULATIONS

The following minimum rules and regulations are those to be adopted by and strictly enforced as part of the full rules and regulations by the Marina at Hatter's Point, LLC, its successors and assigns, to govern activities of people using the marina, gangways, walkways, driveways and/or parking areas of both the marina and Hatter's Point Condominium. Use for access of all land areas to the marina by marina patrons, their guests and invitees is strictly limited to the public access riverwalk and connecting walkways to it from parking areas, the public driveway and designated public parking areas and thereby prohibiting access to all Hatter's Point Condominium private landscaped areas, parking areas, garages and buildings except as specifically provided for marina use.

At a minimum said rules and regulations will at all times include the following:

1. Noise shall be minimized at all times and not exceed 80 db from 7 a.m. to 7 p.m. and 60 db from 7 p.m. to 7 a.m. measured at the condominium unit exterior decks. Boat owners/operators shall use maximum discretion at all times to minimize noise from pets, people, vehicles, halyards (by tying them away from masts) and from operating engines, generators, radios, stereos, televisions, signal horns and any other noise generating devices so as to insure the quiet enjoyment of other patrons of the marina and homeowners of the condominium.

Boats having no exhaust muffler system or a system that is ineffective at muffling engine exhaust noise will not be accommodated at this marina.

2. Pets shall be leashed at all times both on the docks and gangways and on the condominium walkways, driveways and parking areas. Waste from pets will be cleaned up upon deposit and disposed of into marina waste containers. All walkways, parking areas, driveway and landscaped areas of the condominium are strictly off limits for "walking" or "watering" pets.
3. Parking – Use of parking spaces along the river walk as drop off parking is limited to 15 minutes. Parking of any period longer is limited to the marina parking lot across Merrimac Street. Parking in the driveway or along Merrimac Street/Pleasant Valley or Beacon Street is strictly prohibited.
4. Any form of trash is to be bagged and deposited only within waste containers provided by the marina.
5. Marina lessees are fully responsible for the behavior of their guests and/or invitees and insuring their compliance to these rules and regulations. Alcohol consumption is strictly prohibited from all marina gangways and land areas, driveways and parking areas of the Hatter's Point Condominium. The possession or use of firearms and/or illegal drugs is strictly prohibited from all docks, gangways, land areas, driveways and parking areas.

6. Reasonable fire and life safety regulations prohibiting fuel storage (except in boats), refueling, open flames, grills, the lighting of fireworks, firecrackers or flares, etc. on the docks or on land.
7. Reasonable and complete environmental regulations protecting the river from the improper discharges in accordance with state and federal environmental laws.

**The Commonwealth of Massachusetts**

No. 9813



6 PLANS

**Whereas,** The Marina at Hatter's Point, LLC

of -- Amesbury --, in the County of -- Essex -- and Commonwealth aforesaid, has applied to the Department of Environmental Protection for license to -- construct and maintain gangways and associated gangway landings, a main walkway and secondary walkways, and jet docks. -----

and has submitted plans of the same; and whereas due notice of said application has been given, as required by law, to the -- Mayor and City Council -- of the -- City of Amesbury; -----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said

-- The Marina at Hatter's Point, LLC --, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to -- construct and maintain gangways and associated gangway landings, a main walkway and secondary walkways and jet docks. --

in and over the waters of -- Merrimack River -- in the -- City -- of -- Amesbury -- and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. 9813, (6 sheets).

PRINTED ON RECYCLED PAPER

Return to:  
Charlie Wear  
Meridian Assoc. Inc  
98 High St  
Dartmouth MA 01923

License No. 9813

Page 2

The structures hereby authorized shall be limited to the following uses: to provide a public recreational boating facility.

SPECIAL WATERWAYS CONDITIONS

1. This license is valid for 30 years from the date of issuance. By written request of the licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in the original license.
2. All vacant berths shall be assigned in a fair and equitable manner to the public patrons of said facility, by means of a waiting list or other comparably unbiased method; nothing in this provision shall be construed to prevent berthing assignments based on vessel characteristics, or the offer of first refusal rights to existing patrons of the facility who wish to relocate to a vacant berth.
3. Any contract or other agreement for exclusive use of berths at said facility shall have a maximum term of one year, and may be renewable upon each expiration for an additional period of up to one year.
4. Reasonable arrangements shall be made to accommodate transient boaters, including, at a minimum, a procedure for making any berth available for transient use during periods of vacancy in excess of 24 hours.
5. An adequate number of restrooms and refuse receptacles shall be provided.
6. Any utility services provided at the marina shall be constructed and maintained in compliance with all applicable local and state requirements.
7. All lighting at the marina shall be designed to minimize interference with navigation by reflection, glare or interference with aids to navigation.
8. All exterior pedestrian facilities on the project site shall be open to the general public, except where access restrictions are necessary in order to avoid significant interference with the operation of the facility or to maintain security at slips, ramps, floats, and other docking facilities. Reasonable rules and regulations governing the use of areas subject to public access may be adopted by the Licensee, but shall be subject to prior review and written approval of the Department.
9. The Tidewater Displacement fee and Commonwealth Tidelands Occupation fee listed on page five of this license may be paid in nine equal installments of \$9,189.00 over nine years. The first installment is due prior to the issuance of this license. The nine annual installments are due by the anniversary date of license issuance.

License No. 9813

Page 3

Please see page 4 for additional conditions to this license.

Duplicate of said plan, number 9813 on file in the office of said Department, and original of said plan accompanies this License, and is to be referred to as a part hereof.

License No. 9813

Page 4

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform to all terms and conditions stated herein.
  2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
  3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
  4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This license may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
  5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
  6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
  7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
  8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP.
  9. This License authorizes structure(s) and/or fill on:
    - ☒ Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.
    - ☒ Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.
    - ☐ a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.
    - ☐ Navigable River or Stream. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, in the waterway.
- No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this license.
10. Unless otherwise expressly provided by this license, the licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

License No. 9813

e 5

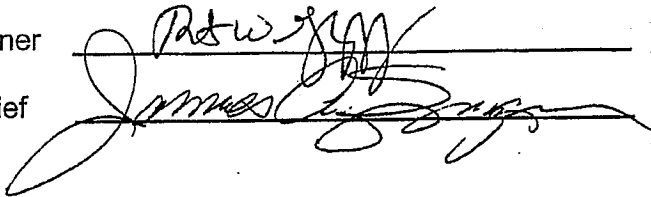
The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said -- The Marina at Hatter's Point, LLC -- by paying into the treasury of the Commonwealth -- two dollars and zero cents (\$2.00)-- for each cubic yard so displaced, being the amount hereby assessed by said Department. (0.0 cu. yds. = \$0.00)

Nothing in this License shall be so construed as to impair the legal rights of any person. This License shall be void unless the same and the accompanying plan are recorded within 60 days from the date hereof, in the Registry of Deeds for the County of -- Essex -----

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this first day of March in the year two thousand and four

Commissioner

Section Chief



Department of  
Environmental  
Protection

THE COMMONWEALTH OF MASSACHUSETTS

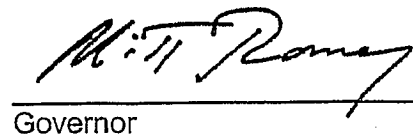
This license is approved in consideration of the payment into the treasury of the Commonwealth by the said -- The Marina at Hatter's Point, LLC

-- the further sum of -- ninety one thousand, eight hundred and ninety dollars and zero cents (\$91,890.00) --

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

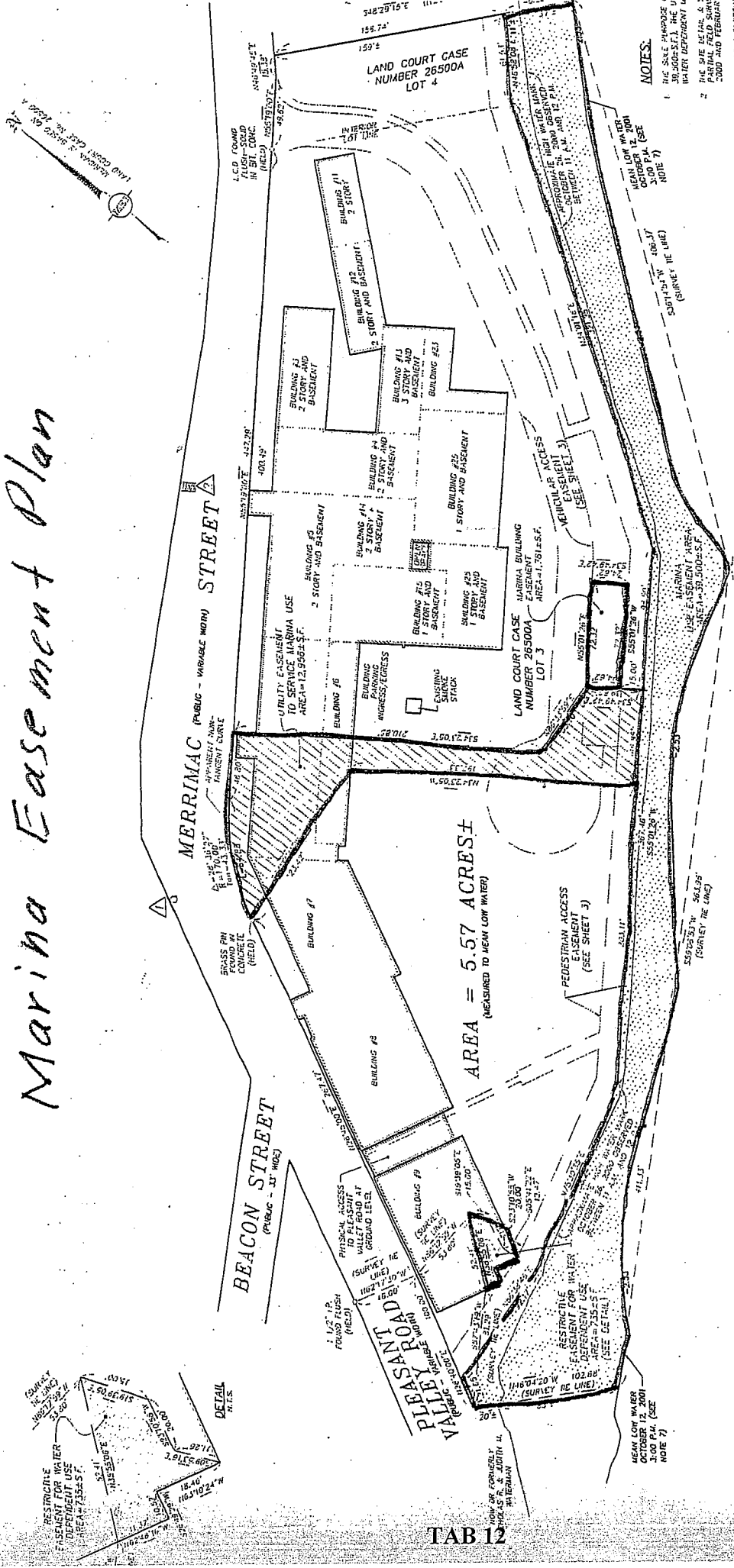
BOSTON,

Approved by the Governor.

  
Governor

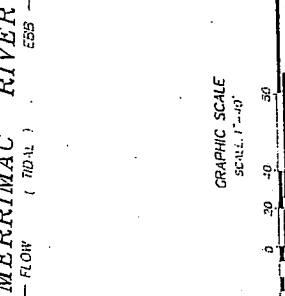
For Information Only - Not A Signed or Recorded Plan

# Marina Easement Plan



- NOTES:**
1. THE SCALE PURPOSE IS TO SHOW THE GENERAL LAYOUT OF THE MARINA AND THE EASEMENT AREAS.
  2. THE SITE DETAILS ARE TO BE DEVELOPED BY THE ARCHITECT AND ENGINEER.
  3. THE LOCUS PROPERTY IS TO BE DEVELOPED BY THE ARCHITECT AND ENGINEER.
  4. THE LOCUS PROPERTY IS TO BE DEVELOPED BY THE ARCHITECT AND ENGINEER.
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  8. THE LOCUS PROPERTY IS TO BE DEVELOPED BY THE ARCHITECT AND ENGINEER.
  9. THE LOCUS PROPERTY IS TO BE DEVELOPED BY THE ARCHITECT AND ENGINEER.
  10. THE LOCUS PROPERTY IS TO BE DEVELOPED BY THE ARCHITECT AND ENGINEER.

- LEGEND:**
- BIT. CONC. BITUMINOUS CONCRETE
  - IP. IRON PIPE
  - LP. LEAD PIPE
  - LC. LAND COURT DASH
  - S.H. STONE BOARD
  - D.H. DRILL HOLE
  - B.G. BELOW GRADE
  - A.G. ABOVE GRADE
  - S.D. STORM DRAIN LINE
  - RCP. REINFORCED CONCRETE PIPE



**TEMPORARY BENCHMARK CHART:**

ITEM #	DESCRIPTION	ELEV.
1	4.41' FOUND IN UPPER PART OF MARINA	32.38'
2	CONCRETE FOUNDATION OF MARINA	31.44'

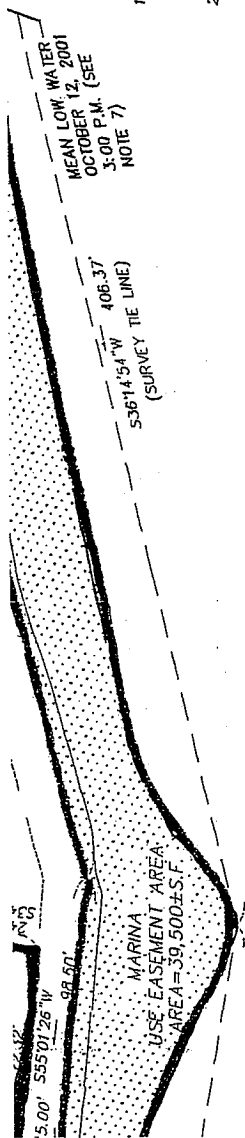
**REFERENCES:**

- 1. LAND COURT CASE NUMBER 26500A
- 2. LAND COURT CASE NUMBER 26500A
- 3. LAND COURT CASE NUMBER 26500A
- 4. LAND COURT CASE NUMBER 26500A
- 5. LAND COURT CASE NUMBER 26500A
- 6. LAND COURT CASE NUMBER 26500A
- 7. LAND COURT CASE NUMBER 26500A
- 8. LAND COURT CASE NUMBER 26500A
- 9. LAND COURT CASE NUMBER 26500A
- 10. LAND COURT CASE NUMBER 26500A



# Marina Easement Plan





ER  
78B

**LEGEND:**

- BIT. CONC. BITUMINOUS CONCRETE
- I.P. IRON PIPE
- I.P. IRON PIPE
- L.C.D. LAND COURT DISK
- S.B. STONE BOUND
- D.H. DRILL HOLE
- B.G. BELOW GRADE
- A.G. ABOVE GRADE
- D — STORM DRAIN LINE
- ⊙ STORM DRAIN MANHOLE
- RCP REINFORCED CONCRETE PIPE



TAB 12

KNOWLEDGE,  
NOTES DEPICTED  
ID THE LINES  
PUBLIC OR  
D, AND THAT  
HPS OR FOR

**RECORD OWNER:**  
AMESBURYPORT CORPORATION  
9 POND LANE  
CONCORD, MASSACHUSETTS  
DOCUMENT NO. 371450

**REVISIONS**

NO.	DATE	DESCRIPTION	BY	CHK'D

DWG. No. 3066EASE\_MARINA

DATE

**NOTES:**

- THE SOLE PURPOSE OF THIS PLAN IS TO DEPICT THE MARINA USE EASEMENT (AREA=39,500±S.F.). THE UTILITY EASEMENT TO SERVICE MARINA AREA (AREA=12,956±S.F.) AND THE WATER DEPENDENT USE EASEMENT (AREA=735±S.F.).
- THE SITE DETAIL & SURFACE IMPROVEMENTS DEPICTED HEREON WERE OBTAINED FROM A PARTIAL FIELD SURVEY CONDUCTED ON AUGUST 31, SEPTEMBER 6 THROUGH OCTOBER 13, 2000 AND FEBRUARY 28, 2002 BY MERIDIAN ENGINEERING, INC.
- THE LOCUS PROPERTY DEPICTED IS LOCATED IN ZONE P.U.D. (PLANNED UNIT DEVELOPMENT).
- THE LOCUS PROPERTY IS DEPICTED AS LOT 23 ON TOWN OF AMESBURY ASSESSOR'S MAP 99.
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE AND ARE BASED UPON A PARTIAL FIELD SURVEY AND COMPILATION OF PLANS OF RECORD. MERIDIAN ENGINEERING, INC. DOES NOT WARRANT NOR GUARANTEE THE LOCATION OF ALL UTILITIES DEPICTED OR NOT DEPICTED. THE CONTRACTOR, PRIOR TO COMMENCEMENT OF CONSTRUCTION, SHALL VERIFY THE LOCATION OF ALL UTILITIES AND CONTACT DIG SAFE AT 1-888-344-7233.
- THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- THE ELEVATIONS DEPICTED HEREON WERE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) OF 1929. STARTING BENCHMARK: A MASS. D.P.W. BENCH MARK DISK STAMPED "5404" SET FLUSH IN THE CONCRETE WHEEL GUARD OF THE RTE 1-495 NORTHBOND BRIDGE OVER MERRIMAC STREET (RTE 150). LOCATED BELOW THE STATE SEAL AT THE SOUTHWEST CORNER OF THE BRIDGE, 75.7 FT. WEST OF THE CENTERLINE OF RTE 150, 22.0 FT. SOUTH OF THE CENTERLINE OF RTE 1-495, 16.1 FT. EAST OF THE CORNER OF A 6' HIGH CHAIN LINK FENCE. ELEVATION=93.015.

**80 UNIT OVER-55 CONDOMINIUM**

**EASEMENT PLAN OF LAND**  
**(ASSOCIATED WITH ACCESS & UTILITIES**  
**TO SERVICE THE MARINA)**  
**LOCATED IN**  
**AMESBURY, MASSACHUSETTS**  
**(ESSEX COUNTY)**

PREPARED FOR  
**AMESBURYPORT CORPORATION**  
SCALE: 1" = 40' DATE: MARCH 5, 2002

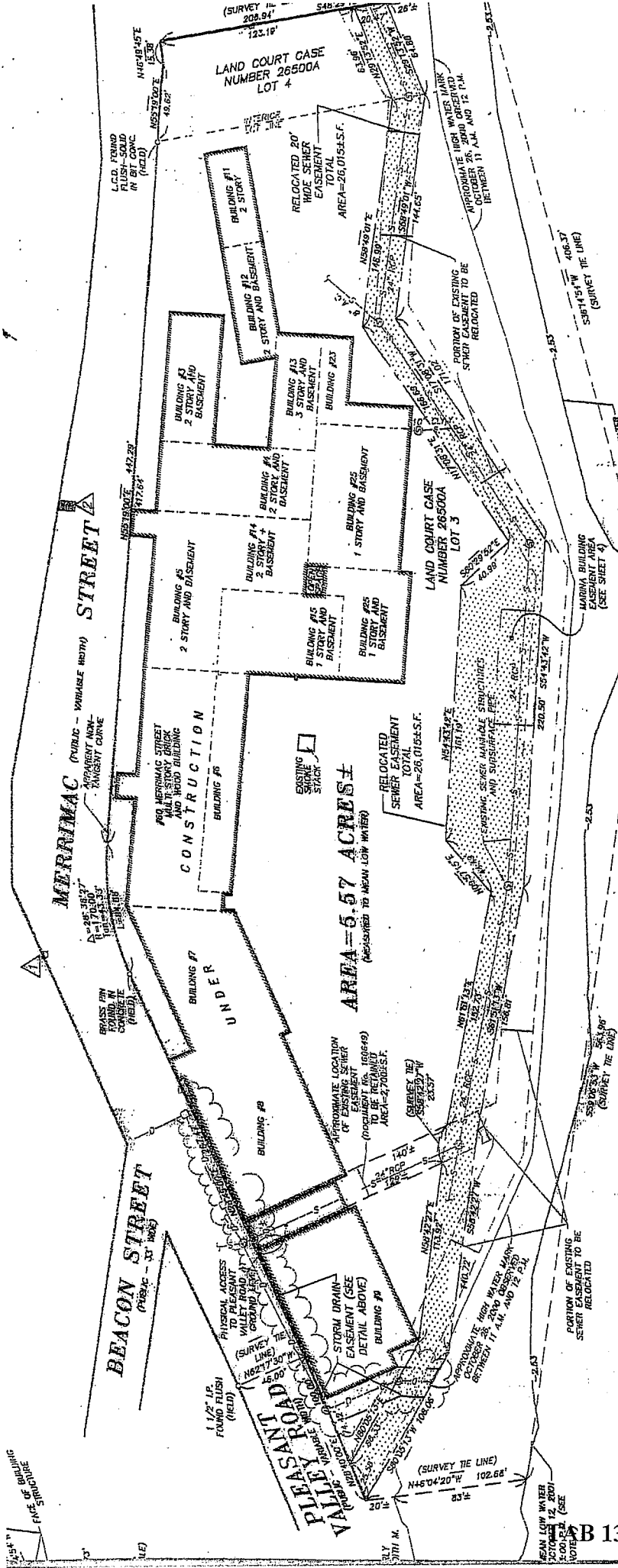


**M E R I D I A N**  
**E N G I N E E R I N G, I N C.**  
98 HIGH STREET  
DANVERS, MASSACHUSETTS 01923 WESTBOROUGH, MASSACHUSETTS 01581  
TELEPHONE: (978) 739-9130 TELEPHONE: (508) 871-7039

SHEET No. 4 OF 4 PROJECT No. 3066

Marina Easement Plan





TEMPORARY BENCHMARK CHART

TBM #	DESCRIPTION	ELEV.
1	NAIL FOUND IN UP/6/18 0.7 A.C.	27.80'
2	CONCRETE STEP OF HOUSE	31.44'

(SEE NOTE 7)

85 UNIT

EAST (ASSOCIATED)

AMESE

AMESE

SCALE: 1" = 1'

REVISIONS

NO.	DATE	DESCRIPTION	BY	CHKD
1	4/20/02	LAND COURT COMMENTS		

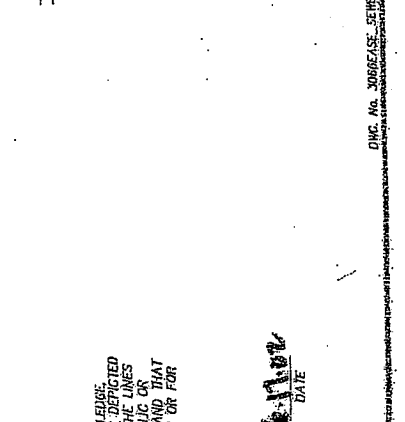
RECORD OWNER: AMESBURY CORPORATION, 9 FOND LANE, CONCORD, MASSACHUSETTS, DOCUMENT NO. 37760

DATE: 6-10-02

FOR MERRIMAC ENGINEERING, INC.

DECLARATION: TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THAT THE PROPERTY LINES, DEPICTED ARE THE LINES DIVIDING EXISTING OWNERSHIP OF PUBLIC OR PRIVATE STREETS AND WAYS UNLESS OTHERWISE ESTABLISHED AND THAT NO NEW STREETS AND WAYS ARE DEPICTED. (MASS. GEN. LAWS, CHAP. 41, SECT. 81-X)

REFERENCES: - CERTIFICATE No. 39297 - DOCUMENT No. 16049 - LAND COURT FILE No. 26500A - "RECORDS DOCUMENTS RECORDED AT THE SOUTH ESSEX REGISTRY OF DEEDS"



AB 13

WE P.L.D. (PLANNED UNIT DEVELOPMENT), TOWN OF AMESBURY, ASSessor's MAP 99. LOTS ARE APPROXIMATE AND ARE BASED ON THE LOCATION OF ALL UTILITIES PRIOR TO COMMENCEMENT OF CONSTRUCTION. UNWRITTEN EASEMENTS WHICH MAY EXIST, NOTE THAT NO SUCH EASEMENTS EXIST. ON THE NATIONAL GEODETIC VERTICAL DATUM (NAD 83) WITH A 6' HIGH CHAIN LINK FENCE. THE STATE SEAL AT THE SOUTHWEST CORNER OF THE 150' X 22.0' FT. SOUTH OF THE CORNER OF A 6' HIGH CHAIN LINK FENCE.

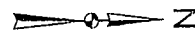
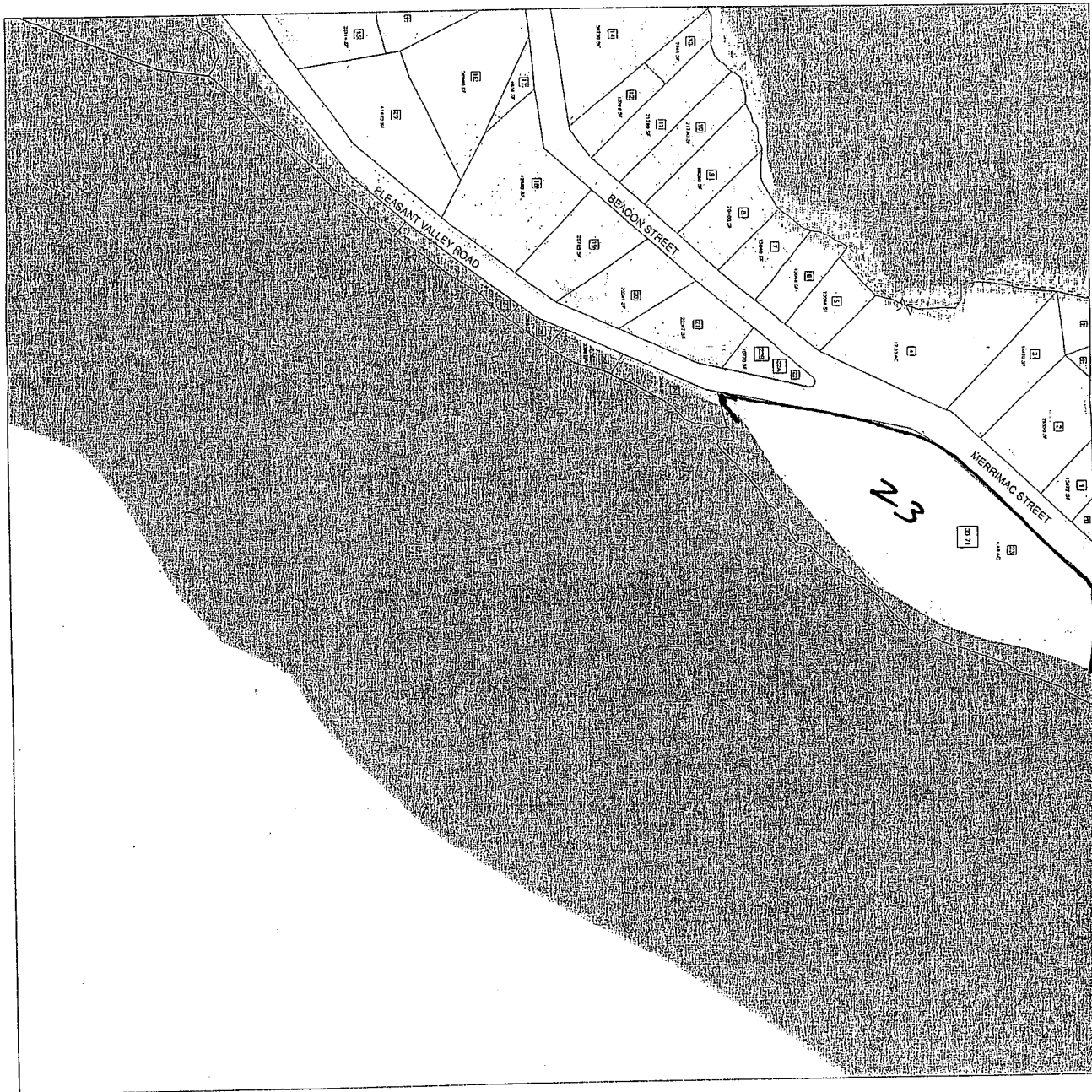
DATE: 6-10-02

FOR MERRIMAC ENGINEERING, INC.



MAP REVISION DATE	
As of January 1, 2005	

Merrimack Valley Planning Commission  
 100 Main St.  
 Amesbury, MA 01810  
 (978) 243-2814

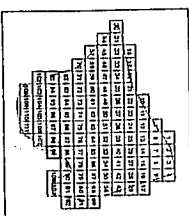


**LEGEND**

- Parcel Line
- Prior Parcel Line with Common Ownership
- Parcel Number
- For Additional Parcel Information See Adjacent Sheet
- Contour Lines, 2 Ft
- Right of Way
- Town Boundaries
- Easements
- Hydrographic Features
- Streams
- Wetlands
- Exempt Lands
  - Federal
  - State
  - Municipal
  - Private

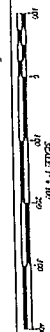
**NOTE:** AREAS, BOUNDARIES, AND DIMENSIONS SHOWN ON THIS TAX MAP ARE DERIVED FROM AERIAL PHOTOGRAPHS, GROUND SURVEYS, AND RECORDED DEEDS. THIS MAP IS NOT TO BE USED FOR PROPERTY ASSESSMENT PURPOSES ONLY AND NOT FOR CONVEYANCE.

Data Source: The data for this map was supplied by the Merrimack Valley Planning Commission, the Town of Amesbury and the Executive Office of Environmental Affairs.



**INDEX**

AMESBURY, MASS.



Excerpts from Amended and Restated Master Deed Dated July 15, 2002

Book 18960, page 180

- ¶ 3. B, page 3: The Land of the Condominium is additionally subject to an easement described in Attachment A hereto reserved to the Declarant, in gross, or his designee, providing for the construction and operation of a marina and related buildings and improvements (the "Marina") on the Common Area, utilization of certain Common Area parking facilities, erection, maintenance, use and access to docks and slips, use of Common Area roads for access to the marina facilities, utilization of certain area within Building 9 of the Condominium, as shown on the Floor Plans, for storage purposes, and other related matters. No use shall be made of the Common Areas of the Condominium nor shall action be taken that seeks to or has the effect of interfering with the rights granted by this easement.
- ¶ 3. D, page 4: In order to protect the Condominium from overflow from the adjacent body of water known as Bailey Pond, should the Declarant or the Town of Amesbury be able to secure an appropriate easement, license, right and/ or agreement therefor, the Association shall maintain the weir on said Bailey Pond free of debris and in good working order. The Association shall, in all events, additionally maintain the Bailey Pond outflow pipe pursuant to the Storm Drain Easement described in Attachment A hereto. All costs thereof shall be Common Expenses.
- NB: See quitclaim deed, Land Court Document # 441373.
- ¶ 13. I, page 23 The Declarant's rights to add Units, Phases, amenities and/ or improvements to the Condominium shall expire ten (10) years from the date of recording of this Master Deed. Thereupon, the Land, Buildings and improvements shall be unencumbered by the rights reserved to the Declarant in this Section. The foregoing expiration of reserved rights shall not, however, impact the rights granted under the so-called Marina Easement referenced in this Master Deed for the development, construction, maintenance and operation of a Marina and the rights granted thereunder for access to and the use of certain Common Areas and Facilities nor the Declarant's reservation of the right to use the name Hatter's Point in connection with the Marina or other adjoining or nearby land which the Declarant may develop.
- ¶ 13. J, page 23: The Declarant's reserved rights under this Section 13 and elsewhere in this Master Deed including without limitation the rights to add Units, Phases, amenities and/or improvements to the Condominium (the "Reserved Rights") shall be assignable and may be freely pledged and mortgaged by the Declarant.