

DATE: March 20, 2017

TO: Board of Selectmen

FROM: Park & Recreation Committee

SUBJECT: Updated Menemsha Bulkhead Lease and Bulkhead Rules & Regulations

The attached provides the updated Menemsha Bulkhead Ground Lease and Menemsha Bulkhead Rules & Regulations recommended by the Park & Recreation Committee for your consideration and formal adoption.

These updated documents are the result of several public meeting discussions followed by a duly-posted and advertised public hearing to formally receive public comment and final review by Town Counsel.

Thank you for your consideration as we prepare for the upcoming summer season.

A handwritten signature in dark ink, appearing to read "Andy Goldman", followed by a small mark that looks like "cx".

Andy Goldman, Chairman  
Park & Recreation Committee

**MENEMSHA BULKHEAD LEASE: 3/9/17**

This Bulkhead Lease is made by and between the Town of Chilmark (as Lessor) acting through its Park and Recreation Committee (the "Committee") and the named Tenant (the "Lessee") in furtherance of the Goals for Menemsha as determined by the Town Master Plan: to "Retain Menemsha as a fishing port and Retain the visual character of the area."

To that end, the Master Plan contains Objectives which, among other things, are as follows:

- (1) Assure priority of fishing boats in Menemsha Harbor over pleasure craft; to maintain presently designed dock area for commercial fishing vessels; make no expansion of dock facilities for pleasure craft.
- (2) Keep all existing fishing shacks in Menemsha; require that before any shack on town property is removed the town be given the opportunity to purchase it with private or public funds to lease to fishermen.
- (3) Require any new building or alterations to buildings on town-leased land to be subject to design approval by the town for continuity of design and proportions of traditional fishing shacks.

In its role as implementer of the town Master Plan to support commercial fishing by and for Chilmark fishermen the Town (as "Lessor") hereby does lease, demise and let unto

Lessee: \_\_\_\_\_

Mailing and notice address: \_\_\_\_\_

Lot No. \_\_\_\_\_

of Town Land at Menemsha Basin identified on a plan on file in the office of the Board of Selectmen of Chilmark (the "Leased Premises") to hold for a term of one year, from January first, 20 through December 31, 20.

**RENT:** The rent for the term of this lease is to be \$\_\_\_\_\_, due and payable within 30 days after issuance by the Town to the Lessee.

**INSURANCE/PERSONAL PROPERTY:** Lessee shall procure, keep in force, and pay for comprehensive public liability insurance indemnifying Lessor and Lessee against all claims and demands for injury to or death of persons or damage to property which may be claimed to have occurred on the Leased Premises, in amounts which shall be not less than ONE MILLION (\$ 1,000,000.00) Dollars combined single limit for bodily injury and property damage liability, including products liability coverage. Such insurance shall be acquired from insurers qualified to do business in Massachusetts and in good standing therein, insuring Lessor as well as Lessee against injury to persons or damage to property as provided. Lessee shall deposit with Lessor certificates for such insurance at or prior to the commencement of the term and thereafter within thirty (30) days prior to the expiration of any such policies. All such policies shall provide that they shall not be cancelled without at least ten (10) days prior written notice to each insured named therein.

It is understood and agreed that any goods or other personal property owned or possessed by Lessee, and stored, displayed, or otherwise maintained by Lessee at the Leased Premises shall be kept there at Lessee's sole risk and without any liability whatsoever on the part of the Lessor for any loss or damage thereto. If the whole or any part of such personal property shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes or other pipes, by theft or from any other cause, no part of said loss is to be charged to or borne by Lessor. It shall be Lessee's obligation to provide any insurance for such goods and/or personal property.

**ALTERATIONS/UTILITIES:** The Lessee shall not make structural alterations or additions to the Leased Premises unless the Lessor consents in writing, which consent shall not be unreasonably withheld or delayed. All such allowed alterations shall be at Lessee's expense and shall conform to current Massachusetts building code requirements. Any alterations or improvements made by the Lessee shall become the property of the Lessor at the termination of the Lease term.

**21 E:** Lessee shall not engage in any activity on said Leased Premises which would cause the discharge of hazardous substances, pollutants or effluent or the discharge into the air of any emissions which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. s.1251, et seq., or the Clean Air Act, 42 U.S.C., s.7401, et seq., or any similar state statute, regulation, local ordinance or any other Environmental Law.

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**INDEMNIFICATION:** The Lessee hereby agrees, on behalf of Lessee, and Lessee's agents, representatives, insurers, employees, partners, heirs, successors, and assigns (the "Indemnifying Parties") and does hereby, indemnify and save the Lessor and its successors, assigns, employees, agents, insurers, contractors, subcontractors and servants and boards, and any and all individuals and organizations assisting or participating in lease programs of the Town (the "Releasees"), harmless from (and agree to defend the Releasees from) any and all liabilities, claims, causes of action, demands, injuries, damages, costs, losses and expenses (including court costs and attorney's reasonable fees and expenses) that the Releasees may sustain or incur by reason of, relating to, or arising out of the discharge of hazardous substances, pollutants or effluent from the Leased Premises, or by reason of, relating to, or arising out of the use by Lessee of the Leased Premises.

**TERMINATION:** In the event that the Lessor determines that the Lessee is violating the terms of this Lease, or is no longer engaging in fishing activity or commercial activity, the Lessee shall be directed to promptly vacate the Leased Premises, and this Lease shall be void and without recourse to the parties hereto.

The provisions of the Bulkhead Area Rules and Regulations are specifically incorporated herein and are annexed to this lease as ADDENDUM "A". Violation of any of the above Lease provisions, or of any of the Bulkhead Area Rules and Regulations, shall be sufficient cause for immediate termination of this lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date

Lessor, by its Board of Selectmen

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

Parks & Recreation, by its Chairman

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

\_\_\_\_\_  
Date

## **MENEMSHA BULKHEAD AREA RULES AND REGULATIONS: 3/9/17**

These Rules and Regulations enumerate proscribed and prescribed Leasehold provisions in the section entitled **Use of the Bulkhead including alteration of structures** as well as general provisions directing activities of the Committee and tenants in the section entitled **Administrative**.

### **Use of the Bulkhead including alteration of structures**

1. No tenant shall sublet or permit any other person or persons to occupy or use the leased premises except with the prior written approval of the Committee.
2. No tenant shall make or suffer to be made any additions or alterations to the leased premises except with the prior written approval of the Committee, in addition to such other approvals as may be required by law, if any.
3. Each tenant desiring to renew their lease shall make application on or before December 1 of each year for such renewal. Such application shall state the tenant's anticipated activities during the year of their lease to engage in or support commercial fishing, and their plans for future activity; and no renewal shall be granted by the Committee absent a satisfactory showing of compliance with the provisions of this lease and a finding that tenant's activities are in furtherance of the Town's Master Plan goals relative to commercial fishing. Any requested changes to lists of items approved for sale are to be included in the application for renewal.
4. Upon the expiration of a lease and any renewal thereof, if any, as may be granted, the tenant shall quit and deliver the leased premises to the Town at the end of the term in good order and condition and free of all personal property, debris and rubbish.
5. If the tenant is a commercial establishment, the tenant may only sell or offer for sale such items as are on the approved list of items for sale attached hereto and made a part hereof.
6. Designated representatives of the Town may enter to view and make improvements and/or to expel the tenant if the tenant shall fail to pay the rent, or in case of a breach of any covenants herein on the part of the tenant.
7. It is the responsibility of each tenant to maintain the leased premises (including any structure(s) thereon) in a manner that is sanitary, safe to the public and harmonious with the visual character of the area.
8. The tenant shall hold the Town harmless from any damages that may be assessed against it in connection with entry onto the leased premises by tenant, tenant's agents and invitees, and/or the use, operation and/or maintenance of the leased premises by the tenant.

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9. If at any time during the term of this Lease, or any extension or renewal thereof, in the judgement of the Committee, the best interests of the Town require the removal of any building or personal property located on a lot, the Committee shall give written notice to the tenant and the tenant shall remove such building and/or personal property at his/her own expense from the leased premises within 30 days of receipt of such notice. If the tenant fails to remove the building and/or personal property within said 30 days, it is hereby agreed that the title and ownership of such building and/or personal property shall automatically vest in the Town at the expiration of the 30 day period, and the Town may take such action regarding such property as it deems appropriate without incurring any liability to the tenant therefor. The Committee may approve a time period more than 30 days to vacate the leased premises, with advance notice.
10. No signs or billboards are to be allowed on buildings other than trade names except as shall be in compliance with Town bylaws relating to signage and with the written approval of the Committee.
11. Leased premises are to be kept free of litter.
12. No sleeping quarters are to be maintained on the leased premises, nor overnight occupancy permitted.
13. The walk in front of the Bulkhead is to be kept free and clear.
14. No storage of boats, vehicles or motors on the property without prior written Committee approval.

**Administrative**

1. When Town lots become available, written notice will be posted and applications of Chilmark residents may be sent to the Committee. If there are multiple applicants for a vacant lot, the Committee shall choose a tenant on the basis of the tenant's ability to contribute to the commercial fishery.
2. No lease on the Bulkhead may be given to any but one who is a Chilmark resident for at least ten months a year, or for any business that will be managed by anyone other than one who is a Chilmark resident for at least ten months a year; except that the Committee may by unanimous vote suspend this provision where the Committee finds that the benefits to commercial fishing require such suspension and that no Chilmark Lessee or viable Chilmark Manager is available. Any suspension shall be for a one year duration and may be extended following a new evaluation and vote.
3. Leases will be limited to one year.
4. No more than one lot may be leased to an individual.

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5. No new business is to be allowed on the Bulkhead that will be in competition with those already established on private land in Chilmark as of June 1, 1970.
6. Only one gas station will be permitted on the Bulkhead and it shall be a condition of tenancy that such gas station will be open for business every day of the year except when appropriate.
7. Only one marine repair will be permitted on the Bulkhead.
8. All buildings are to be shingled and have gabled roofs to retain the visual character of the area. Exceptions require prior Committee written approval.
9. No buildings or additions are to be constructed closer than ten (10) feet to the lot lines except with written permission of the Committee.
10. No tenant shall be a member of the Committee.
11. No rule, regulation or Lease provision may be changed except by the unanimous approval of the Committee.

**Attachments**

List of items permitted for sale by Larsen's Fish Markets (winter and summer)

List of items permitted for sale by Menemsha Fish Market (winter and summer)

List of items permitted for sale by Menemsha Texaco

List of items permitted for sale by Menemsha Fish House