

## WHARFING RIGHTS AGREEMENT

This Wharfing Rights Agreement (the "Agreement"), entered into upon this 21<sup>st</sup> day of February, 2024 by and between the CITY OF SALEM, 93 Washington Street, Salem MA, a municipal corporation organized under the laws of the Commonwealth of Massachusetts (herein "City") and Salem Wind Terminal, LLC, a Delaware limited liability company, with offices at 9487 Regency Square Boulevard, Jacksonville, Florida, ( herein "SWT"). The City and SWT are collectively referred to herein as the "Parties".

### Recitals:

WHEREAS, SWT is the lessee of that certain parcel of land located on approximately 42.3 acres based on ANR in Salem, Massachusetts (the "SWT Property") and shown on a plan entitled "67 Derby Street, Plan of Land Located in Salem Massachusetts, endorsed September 12, 2023 and recorded with the Essex South Registry of Deeds in Plan Book 41841 Page 207, the "Plan"), a copy of which is attached to this agreement as Exhibit A; and

WHEREAS, SWT leases such property from the State of Massachusetts Clean Energy Technology Center ("MassCEC") for the buildout, operation, and maintenance of an offshore wind terminal on the SWT Property (the "MassCEC Salem Wind Terminal") The aforementioned SWT-MassCEC Lease shall be referred to herein as the "Master Lease"; and

WHEREAS, The SWT Property includes the longest wharf (the "SWT Wharf") serving Salem Harbor, a deep-water port located in the Commonwealth of Massachusetts, which SWT Wharf is shown on the Exhibit B as the "Load-Out Wharf"; and

WHEREAS, SWT plans to use the SWT Wharf for the loading and discharge of scouring rock, foundations, nacelles, turbines, blades and other offshore wind park construction components to and from the MassCEC Salem Wind Terminal (the "OW Cargoes") and will utilize the SWT Wharf in connection with the planned buildout of the MassCEC Salem Wind Terminal and for other uses related to the development, manufacturing, construction and operation of offshore wind projects primarily serving the Massachusetts market, in order to expand the offshore wind supply chain in Massachusetts and achieve long-term benefits for the Massachusetts offshore wind energy markets, stimulate the local Salem economy, create long-term jobs, and deliver direct investment and expenditures to the Commonwealth of Massachusetts and the City of Salem, including certain environmental remediation of the SWT Property (the "Construction and O&M Activities"); and

WHEREAS, The City owns a portion of the SWT Property that it leased to MassCEC and includes the SWT Wharf (the "City/MassCEC Lease"); and

WHEREAS, Contained within the City/MassCEC Lease are certain Reserved Rights (as that term is defined in the City/MassCEC Lease); and

WHEREAS, Through enabling legislation, the City created the Salem Harbor Port Authority which has the general duty, power and authority to coordinate port development within Salem harbor and to promote and encourage the use of Salem harbor to the fullest extent possible in an environmentally and economically sustainable manner; and

WHEREAS, The City has been a Port of Call for Internationally Registered Passenger and Good Will Vessels since 2014, and desires to continue hosting cruise ships and other visiting passenger or Good Will vessels into the future. Good Will vessels means historic, military or other vessels of public interest, not engaged in trade and intended to promote education and/or tourism. This activity has resulted in increased tourism and a significant, positive economic impact on the City; and

WHEREAS, In order to facilitate commercial marine operations including the attraction of cruise ships to the City, the City has constructed a wharf (the "City Wharf") on City owned property at 4-10 Blaney Street in Salem, Massachusetts (the "City Property"), which City Wharf is adjacent to the SWT Wharf; and

WHEREAS, One of the City's Reserved Rights is the right to access the SWT Wharf for the docking of cruise ships and other visiting passenger or Good Will vessels that Salem Wharf cannot accommodate due to length and draft considerations. City use of the SWT Wharf shall include embarkation and disembarkation of passengers, storing, bunkering and other related purposes. The Parties agree that such access routes shall be available on commercially reasonable terms; and

WHEREAS, The Parties agree that they wish to memorialize the use of(a) the SWT Wharf for the docking of cruise ships or Good Will vessels; and (b) a portion of the SWT Property between the SWT Wharf and the City Wharf for the construction of and use as a pedestrian access way; and

WHEREAS, The Parties agree that the City shall have the opportunity to book passenger/cruise and Good Will vessels at mutually agreeable dates and in such a manner as to not interfere with SWT's use of the SWT Wharf for the OW Cargoes or the Construction and O&M Activities. The Parties agree to the City hosting an aggregate of six (6) cruise and Good Will vessels per calendar year. Further utilization in excess of six (6) cruise or Good Will vessels of the SWT Wharf shall be based on mutual agreement by the City and SWT during low or no offshore wind utilization of SWT Wharf. Vessels that are hosted by the City shall limit vessel calls to no longer than 18 hours unless the City and SWT mutually agree to extending a vessel's call at SWT Wharf.

Now, therefore, for consideration paid and in further consideration of the mutual promises hereinafter set forth, SWT and the City hereby covenant and agree as follows:

1. INCORPORATION OF RECITALS. The Whereas recitals above are incorporated herein.
2. TERM / TERMINATION. Unless earlier terminated pursuant to the provisions of this Agreement, this Agreement shall be for a term (the "Term") commencing on the date hereof and ending on termination of the Master Lease for any reason or the expiration of the Master Lease (the earliest being the "Expiration Date"), or upon the City and SWT entering into a mutually agreed to successor agreement regarding use of the SWT Wharf ("Successor Agreement"); provided, however, that the term of any Successor Agreement cannot extend past the Expiration Date of the Master Lease.
3. USE. Subject to the conditions hereinafter set forth, the Parties agree to the following usage:

- a. utilize the SWT Wharf solely for the purpose of allowing six (6) cruise ships and other visiting passenger or Good Will vessels, to dock at the SWT Wharf for the purpose of loading and unloading passengers in any calendar year; and
  - b. allow the City to utilize a walkway (the "Walkway") from the SWT Wharf to the City Property, in the location shown on the access plan attached to this Agreement as Exhibit C. The walkway will be constructed and maintained in such a manner so that it will meet all regulatory requirements. The Walkway and the SWT Wharf are collectively referred to as the "The Wharf"; and
  - c. place and store at the SWT Wharf a Port Authority owned and maintained gangway system and associated equipment for the purpose of embarking and disembarking passengers within The Wharf; provided that SWT reserves the right to relocate the gangway at its own cost to deconflict with tenant requirements and Construction and O&M Activities, provided it redelivers the gangway for City scheduled port calls.
4. CONDITIONS OF USE. The foregoing is subject to the following terms and limitations:
- a. The City acknowledges and agrees that it will use The Wharf in its "As-Is, Where-Is" condition with no representations or warranties of any kind whatsoever, express or implied, from SWT regarding The Wharf's condition or fitness for the City's use of the same.
  - b. Either Party may request a meeting for the purpose of discussing additional rules and regulations governing the City's use of The Wharf, provided that SWT reserves the right to immediately implement additional rules and regulations related to an imminent safety concern which will be reviewed by the Parties at earliest opportunity.
  - c. The City shall be responsible for obtaining all permits and approvals which are necessary in connection with the use of The Wharf by the City for the docking of any vessels covered by this Agreement.
  - d. The City further acknowledges and agrees that The Wharf is subject to all covenants, restrictions, easements and encumbrances now or hereafter of record, including without limitation, any recorded activity and use limitation (the "AUL") on the SWT property in conformance with the Massachusetts Contingency Plan (the "MCP").
  - e. The City shall at all times during the term of this Agreement comply with all present and future federal, state or local laws, codes, ordinances (including, without limitation, zoning ordinances, environmental laws, land-use regulations, wetlands regulations, tideland and waterways regulations, federal and state Harbor regulations, customs regulations and Jones Act requirements), orders, judgments, and injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, which may be applicable to the City or to the The Wharf (collectively, the "Applicable Laws").

- f. The City shall have the unilateral right to transfer this agreement to the Salem Harbor Port Authority or any lawfully constituted board, commission or body within the City's government structure. However, the transfer to any entity that is not a board, commission or instrumentality of the City of Salem shall require the written consent of SWT, which may be withheld by SWT at its sole discretion. The use of the SWT Wharf by vessels designated by the City consistent with this Agreement is not an assignment or transfer of rights under this Agreement.
  - g. The City shall not use The Wharf in any manner that interferes with or adversely affects the buildout, operation, use, occupancy, repair, alterations, improvements, or maintenance of the MassCEC Salem Wind Terminal. Any vessel calls arranged by the City shall be scheduled at least 1 year in advance for a mutually agreeable date. SWT shall cooperate reasonably with the City's request for use and will not unreasonably deny any request that would not interfere with or adversely affect the buildout, operation, use, occupancy, repair, alterations, improvements, or maintenance of the MassCEC Salem Wind Terminal.
  - h. The City represents and covenants that any use of The Wharf for the docking of cruise ships shall comply with all U.S. Coast Guard regulations including but not limited regulations promulgated under 46 U.S. Code § 70103 - Maritime transportation security plans and harbor pilot requirements.
  - i. The City represents and covenants that all construction undertaken by the City should be done in a good and workmanlike manner in compliance with all Applicable Laws and subject to the terms and provisions of this Agreement.
  - j. Concurrent with the execution of this Agreement, SWT and MassCEC shall execute the Master Lease in connection with a sale lease-back transaction related to the SWT Property. This Agreement shall be effective only upon the execution of such real estate contracts, and, if the sale lease-back transaction does not close, this Agreement shall be void ab initio and of no effect.
5. PERMITS AND CONSTRUCTION. The following additional conditions shall apply to any permits necessary for the use of SWT Wharf by the City and in connection with any modification of the Walkway construction by SWT:
- a. The City shall be responsible for preparing, obtaining or maintaining at its sole cost and expense any permits, approvals or submittals, including those required under Applicable Laws related to the City's use and occupancy of The Wharf. SWT shall cooperate reasonably with the City in such applications. No permit application shall be:
    - i. submitted to any governmental authority prior to its review and approval by SWT
    - ii. adverse to any use that SWT intends or may reasonably be expected to make of The Wharf or the SWT Property; and

- b. The City may not undertake or permit others to undertake any alterations or construction of any improvements on The Wharf without the prior written consent of SWT; and
  - c. If the City desires or is required to make any alterations to or construct any improvements or fixtures (including accessory buildings required for the operation of a ferry terminal other than mobile or other temporary structures) on, SWT Wharf, it shall provide ninety (90) days written notice to SWT containing a detailed description of the scope of work required for the proposed alterations or improvements, including a description of the scope of work required for the proposed alterations or improvements, including a description of whether any land disturbance or grading will be required. Any such notice shall also include plan drawings, construction plans or any other documents related to the work proposed to be carried out on SWT Wharf. The City may not proceed with any alterations or construction until it has received written approval of its proposed plans from SWT, which approval shall be subject to SWT's sole discretion. SWT's approval of the proposed work does not relieve the City of any of its obligations hereunder. SWT's approval shall in no way constitute an engineering or other certification as to the adequacy of the drawings or plans.
  - d. All construction on the Wharf is subject to the Master Lease and SWT shall be responsible for obtaining any approvals thereunder of MassCEC.
6. COORDINATION WITH SWT ACTIVITIES. The City acknowledges that SWT requires the use of the SWT Wharf for all permitted purposes under the Master Lease . In order to ensure that the use by the City of The Wharf does not interfere with the foregoing required activities by SWT, the City's use of The Wharf shall be subject to the following additional requirements:
- a. To the extent that any vessel utilizing the SWT Wharf pursuant to this Agreement does not vacate the SWT Wharf in time to permit the use of the SWT Wharf by SWT (or its designees), then the City shall be responsible for all costs incurred by SWT due to such delay including, without limitation, all overtime and demurrage costs or fees or liquidated damages assessed against SWT or its contractors, operators, or vessel owners in connection with such delay (collectively, the "Delay Charges"). The City shall reimburse SWT for any Delay Charges within 30 days of a written request therefor from SWT (which request shall include any invoices or other evidence that details such Delay Charges).
7. PAYMENTS OF UTILITIES AND OTHER COSTS. SWT will not charge the City with any fee for the City's use of The Wharf. However, the City or SWT will be responsible for the following costs:
- a. Utilities. The City shall pay SWT all charges for water, sewer, gas, oil, electricity, telephone and other utilities or services used or consumed by the City on The Wharf during the Term, whether designated as a charge, tax, assessment, fee or otherwise, including, without limitation, water and sewer use charges and taxes, if any, all such charges to be paid as the same from time-to-time become due.

- b. Taxes. SWT shall remain responsible for the payment of real estate taxes for The Wharf in accordance with that certain Tax Increment Financing agreement between SWT and the City dated as of September 21, 2023.
- c. Maintenance Costs. SWT shall have no responsibility for maintaining the SWT Wharf except to the extent it deems necessary for its own purposes including for OW Cargoes and Construction and O&M Activities. If maintenance costs necessary to support the City's activities exceed those incurred by SWT pursuant to the foregoing sentence, SWT may terminate this Agreement unless the City is willing to pay such additional maintenance costs. The City shall be responsible for any costs necessary to maintain or upgrade the SWT Wharf for use by cruise ships. Nothing in this paragraph is meant to limit or modify SWT's maintenance and repair obligations under the Master Lease.
- d. Dredging. The City has made an independent determination that the channel adjacent to the SWT Wharf is of sufficient depth to accommodate cruise ships or any other vessels covered by this Agreement. To the extent that additional dredging is required for City sponsored vessel arrivals, any such dredging the sole responsibility of the City and the cost of such dredging shall be at the City's sole cost, risk and expense. Furthermore, the City shall provide reasonable notice of any dredging activities it wishes to undertake and such dredging activities shall not unreasonably interfere with the use of SWT Wharf for OW Cargoes and Construction and O&M Activities.
- e. Review Costs. To the extent that SWT is required to engage any third-party professionals, including architects or engineers, to review any proposed alterations or improvements to The Wharf, and upon prior agreement by the parties, the City will reimburse SWT for the cost of such services within 30 days of receipt of a written request therefor (which request shall include any invoices or other evidence that details such charges). SWT shall provide the City with a description of the scope of any professional review services and an estimate of the anticipated costs prior to undertaking any such review work.
- f. Security. The City shall be responsible for all security in connection with its activities pursuant to activities relevant to this Wharfing Rights Agreement and the Port Authority's Facility Security Plan within The Wharf, including without limitation, any police details or customs or immigration officials. SWT shall have no liability for the safety of any passengers embarking or disembarking any vessel at the SWT Wharf or utilizing the Walkway.
- g. Enforcement Rights. To the extent that SWT incurs any costs in enforcing its rights under this Agreement, including, without limitation, reasonable attorneys' fees, the City will reimburse SWT for the cost of such services within 30 days of receipt of a written request therefor from SWT (which request shall include any invoices or other evidence that details such charges). To the extent that the City incurs any costs in enforcing its rights under this

Agreement, including, without limitation, reasonable attorneys' fees, SWT will reimburse the City for the cost of such services within 30 days of receipt of a written request therefor from the City (which request shall include any invoices or other evidence that details such charges).

- h. Other Rights. SWT acknowledges that the City or Salem Harbor Port Authority may impose a tariff, pilotage and/or navigational requirements upon City or Port Authority scheduled vessels calling on the SWT Wharf.

8. ENVIRONMENTAL.

- a. The City Acknowledgment. The City acknowledges that there have been historic releases of Hazardous Materials on The Wharf and that The Wharf is subject to ongoing monitoring by SWT. The City shall not use The Wharf in any way that violates the AUL or adversely affects or interferes with SWT's regulatory obligations, including without limitation, all requirements of MADEP related to the Massachusetts Contingency Plan #RTN-3-2 I 067 applicable to The Wharf (the "MCP Site"), nor shall the City take any action that exacerbates any pre-existing environmental contamination.

- b. Use of Hazardous Materials. The City represents and warrants that it will not on, about, or under The Wharf, make, treat, store, use or dispose of any Hazardous Materials. "Hazardous Materials" as used herein shall include, without limitation, all pollutants chemicals, petroleum, oil or any fraction thereof, hydrocarbons, radioactive materials, polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials and/or products, urea formaldehyde, or any material substances which are classified as "hazardous" or "toxic" under any Applicable Laws related to the environment, human health, safety or welfare. Notwithstanding, Vessels calling on the SWT Wharf may take on bunkers in accordance with all Applicable Laws.

- c. No Discharge; Removal; Remediation. The City shall not release, leak, spill or discharge any Hazardous Materials in, on or under The Wharf. The City shall be responsible at its own cost and expense for the removal and remediation, including, without limitation, all costs and consultants, attorneys, monitoring or site restoration related to any removal or remediation of any Hazardous Materials that are after the date hereof brought onto or released at The Wharf to the extent said costs arise out of the City's use or occupancy of The Wharf during the Term, including, without limitation, any discharges or releases from any vessels or from the bilge pumps of any vessels using the SWT Wharf. This removal requirement shall not apply to the pre-existing environmental contamination on The Wharf except to the extent that any of the City's actions exacerbate the contamination, increase the likelihood of contamination exposure to receptors, or involve the excavation of contaminated soils.

- d. Nuisance. The City acknowledges that The Wharf is located in an industrial area. SWT shall have no liability or responsibility for any damage suffered by the City or its

employees, agents, customers, guests or invitees on The Wharf as a result of any odors, emissions, noise, dust or debris emanating from the MassCEC Salem Wind Terminal or from any other actions whatsoever at the SWT Property.

9. INSURANCE.

a. Types of Coverage. The City shall maintain at its sole cost and expense the following insurance on The Wharf:

- i. The City shall carry coverage as described in this section no later than 30 days prior to the first arrival of a cruise ship, other passenger vessel, or Good Will vessel.
- ii. Marine general liability and wharfingers insurance, including but not limited to wharfing legal liability coverage with a total limit of at least \$10,000,000 per occurrence (occurrence form policy). Such insurance shall include, but not be limited to, specific coverage for: (a) contractual liability encompassing the City's indemnification obligations set forth in Article 14 below entitled "Indemnity"; (b) personal injury and property damage liability; and (c) products and completed operations liability;
- iii. Worker's compensation insurance covering all persons in connection with any work done by or at the request of the City on or about any of The Wharf, including but not limited to a U.S. Longshore and Harbor Workers Compensation Act endorsement;
- iv. Employers' liability insurance with a total limit of at least \$1,000,000 per incident, \$2,000,000 in the Aggregate, and an Umbrella policy of \$2,000,000, including the Maritime endorsement with Jones Act coverage if vessels are used; and
- v. Automobile liability insurance for any City vehicle entering SWT equal to \$1,000,000, \$1,000,000 in the Aggregate and an Umbrella policy of \$2,000,000.
- vi. Property insurance. Property Insurance in the full replacement cost of the City's improvements, personal property, fixtures and equipment located on the Wharf, providing coverage for all risk of physical loss.

b. The insurance required by this paragraph shall be written by companies having an A.M. Best rating of at least A-/VIII. All companies providing insurance required by this paragraph shall be authorized to do insurance business in the Commonwealth.

- i. The policies shall be for a term of not less than one year and shall (except for workers' compensation and employers' liability insurance) name SWT and its

affiliates and MassCEC as additional named insureds. The amount of insurance required above may be satisfied through the purchase by the City of a separate excess umbrella liability policy together with lower limit primary underlying insurance. The City agrees and, to the extent permitted under its applicable policies of insurance, will require its insurers to agree that coverage afforded SWT and MassCEC as additional insured by each of these policies is primary and non-contributory with respect to any other similar insurance or self-insurance maintained by SWT or MassCEC. The coverage required above shall provide that, except for the limits of insurance, the insurance shall apply separately to each insured against whom a claim is made or suit is brought. All policies shall provide a waiver of subrogation in favor of SWT and its affiliates and MassCEC.

- ii. If such insurance or any part hereof shall expire, be withdrawn, become void by breach of any condition thereof by the City or otherwise become void, the City shall immediately obtain new or additional insurance reasonably satisfactory to SWT and indemnify SWT and its affiliates and MassCEC to the extent of any claim reasonably settled or loss suffered by them to the extent they would have been covered if the City had maintained such insurances. The City shall provide Certificates of Insurance or, if requested, copies of insurance policies relative to this agreement and provide at least 30 days written notice of any changes in insurance including cancellation or non-renewal.
  - c. The City will mandate that the cruise ships that call on the SWT Wharf provide certifications that demonstrate Protection and Indemnity protection of at least \$20,000,000 each occurrence, including coverage for damage to the SWT Wharf caused by such vessels and injury to or death of Masters, mates or crew or City invitees.
10. DEFAULT. The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:
- a. The City's failure to duly perform and observe, or the City's violation or breach of any other provision hereof if such failure shall continue for a period of ten (10) days after notice thereof is given by SWT.

In the event of a default of the City under this Agreement beyond any applicable notice and cure period, SWT shall have all of its rights and remedies, at law and in equity.

11. NOTICES. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given for all purposes (i) three (3) days after having been sent by United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, or (ii) one (1) day after having been sent by Federal Express or other nationally recognized air courier service, to the addresses stated below:

SWT:

67 Derby Street  
Salem, MA 01970

With copy to:

Legal Department  
9487 Regency Square Blvd.  
Jacksonville, FL 32250  
Attn: Art Mead, VP & Chief Counsel

The City:

Office of the Mayor City Hall  
93 Washington Street Salem, MA 01970

With a Copy to:

City Solicitor City Hall  
93 Washington Street Salem, MA 01970

12. SURRENDER. Upon the expiration or earlier termination of this Agreement, the City shall peaceably leave and surrender The Wharf in good condition and, if so, requested by SWT shall remove any improvements constructed thereon by the City. The City's personal property not removed at the expiration of the Term or within thirty (30) days after the earlier termination of the Term for any reason whatsoever shall at the discretion of SWT become the property of SWT, or SWT may thereafter cause such property to be removed from The Wharf at the sole cost and expense of the City. SWT shall not in any manner or to any extent be obligated to reimburse the City for any property that becomes the property of SWT in the manner set forth in the proceeding sentence. Upon such expiration or earlier termination of the Term hereof, no party shall have any further rights or obligations hereunder except as specifically provided herein.
13. ACCESS. SWT and its authorized representatives shall have the right to enter The Wharf at all times for the purpose of inspecting the same or for the purpose of performing any activity thereon consistent with the Master Lease and may take all such action thereon as may be necessary or appropriate for any such purpose or as may be required under Applicable Law.

14. INDEMNIFICATION. To the maximum extent permitted by law, the City agrees to defend, pay, protect, indemnify, defend and save and hold harmless SWT and MassCEC from and against any and all liabilities (including liabilities based on a theory of strict liability), losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever (collectively "Losses"), however caused, and by whomsoever caused, arising of or in any way relating to the City's use, occupancy, condition, design, construction, maintenance, repair or rebuilding of The Wharf, or otherwise relating to, the SWT Premises, (i) for any injury to or death of any person or persons or any loss of or damage to any property; real or personal, in any manner arising from or in any way connected with the use of SWT Property, including but not limited to the Wharf by the City its employees, agents, contractors, permittees and invitees, including but not limited to any or crewmembers, visitors or passengers from cruise, industrial or Good Will vessels at the SWT Wharf, the Walkway, or other portions of the SWT Property for or on behalf of the City , (ii) for any costs or expenses or increase in costs or expenses incurred by or imposed on SWT or MassCEC, other than taxes (subject to section 5(b) above), that would not have been so incurred or imposed but for this Agreement or the exercise or non-exercise of rights hereunder and (iii) for any breach of the terms or conditions of this Agreement, including without limitation, the City's obligations under Section 6, whether or not SWT or MassCEC has or should have knowledge or notice of the defect or conditions, if any, causing or contributing to such Losses. In case any action or proceeding is brought against SWT or MassCEC by reason of any such Losses, the City covenants upon written notice from SWT requesting the same to defend SWT or MassCEC in such action with counsel satisfactory to SWT, with the expenses of such defense paid by the City, and SWT will cooperate and assist in the defense of such action or proceeding if reasonably requested to do so by the City. The obligation of the City under this paragraph shall survive any termination of this Agreement.

15. MISCELLANEOUS.

- a. NO WAIVER. No delay or failure by either party to enforce its rights hereunder shall be construed as a waiver, modification or relinquishment thereof.
- b. SEVERABILITY. If any term or provision of this Agreement or the application thereof to any provision of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- c. MODIFICATION. This Agreement may be modified, amended, discharged or waived only by an agreement in writing signed by both parties.
- d. COUNTERPARTS. This Agreement may be executed in several counterparts. which together shall be deemed one and the same instrument.

e. GOVERNING LAW. Except as otherwise provided in subclause 15(f) below (AAA Arbitration), any disputes arising out of or related to this Agreement shall be governed by and construed according to the laws of the General Maritime Laws of the United States and, to the extent applicable, the laws of the Commonwealth of Massachusetts and the parties agree that the exclusive venue for any action arising under this Agreement shall be in the federal or Massachusetts Superior Court vested with jurisdiction for Essex County, Massachusetts.

f. AAA ARBITRATION

- i. Scope, governing rules. Notwithstanding subclause 15(e) above, the parties agree solely to submit to arbitration administered by the AAA under its Commercial Rules the following controversy: Any dispute arising out of or relating to SWT's denial of the City's request to use the Wharf or denial by SWT to schedule a vessel call requested by the City. Such dispute or controversy shall be submitted to arbitration under this subclause 15(f) only after senior officers and senior officials of both parties have met in person at least twice for over 4 hours to negotiate a resolution and have failed to do so. Only then, after thirty days from the second in person meeting, if the dispute has not been amicably resolved to the satisfaction of both parties shall a party have the right to invoke arbitration under this clause. Any such arbitration of the above controversy will be submitted to one (1) arbitrator.
- ii. Authority of tribunal, judicial review. The parties further agree that they will faithfully observe this Agreement and the Commercial Rules and will abide by and perform any award rendered by the arbitrator, and that a judgment of any court having jurisdiction may be entered upon the award. The award rendered by the arbitrator shall be final and non-reviewable and non-appealable and binding on the parties and may be entered and enforced in in the courts vested with jurisdiction for Essex County, Massachusetts. Judgment on the award shall be final and non-appealable. For the avoidance of doubt, any dispute under this this subclause 15(f) shall be governed by and construed according to the laws of the Commonwealth of Massachusetts.
- iii. Selection of tribunal. There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent[s] of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules.
- iv. Seat of arbitration. The place of arbitration shall be Essex County, Massachusetts.
- v. Remedies. The arbitrator will have no authority to award punitive or consequential damages or any compensatory damages exceeding \$1,000,000.00.

[PAGE LEFT INTENTIONALLY BLANK; SIGNATURES  
CONTAINED ON FOLLOWING PAGE]

In witness whereof, THE CITY OF SALEM and SALEM WIND TERMINAL, LLC have caused this Agreement to be executed by their respective duly authorized officials and officers as of the date and year first above written.

CITY OF SALEM, MASSACHUSETTS



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Dominick Pangallo, Mayor,  
duly Authorized

[City of Salem Signature Page to the Wharfing Rights Agreement]

SALEM WIND TERMINAL, LLC



Robert B. Karl, Senior Vice President,  
duly Authorized

[Salem Wind Terminal, LLC Signature Page to the Wharfing Rights Agreement]

EXHIBIT A – THE PLAN

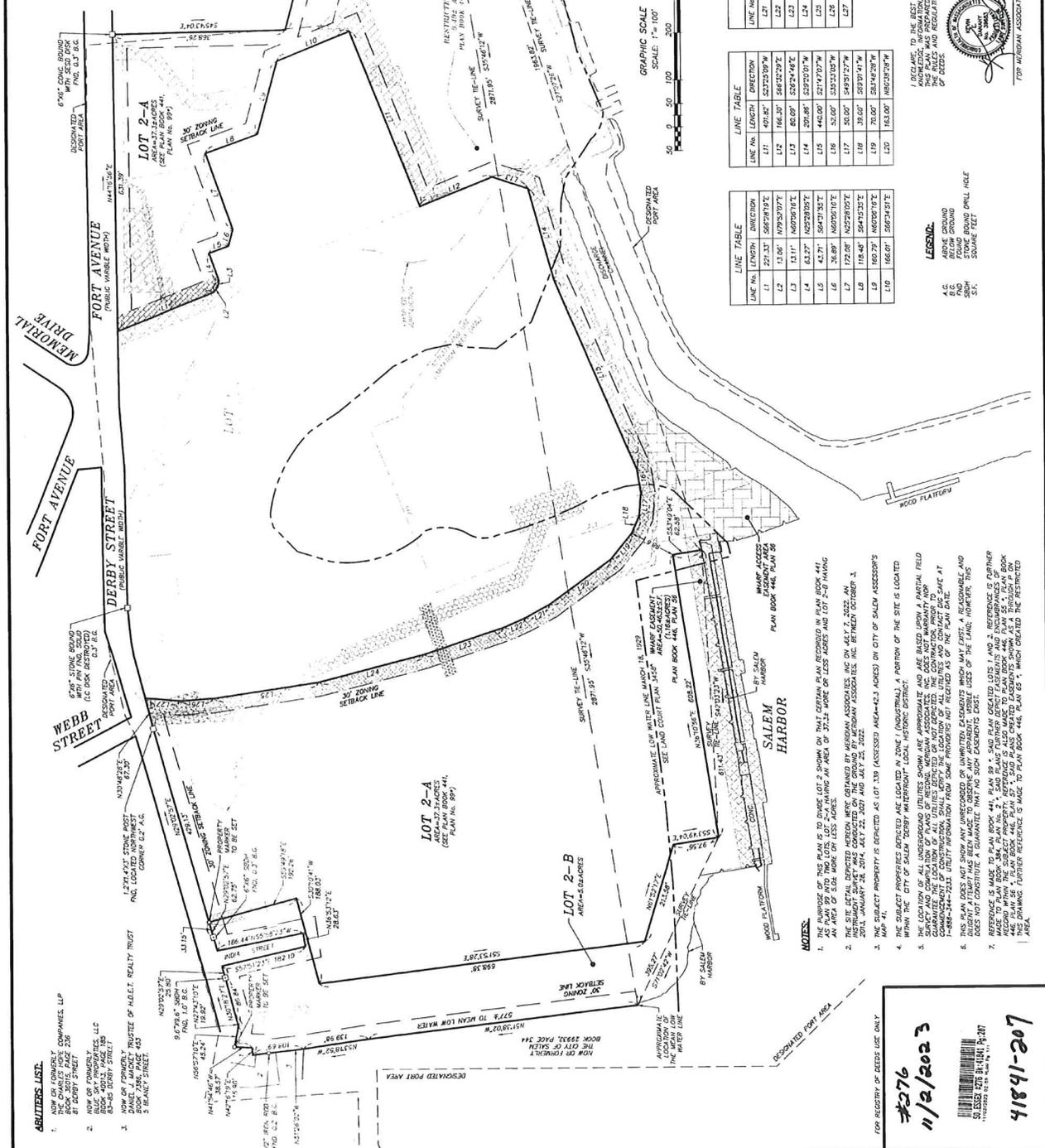
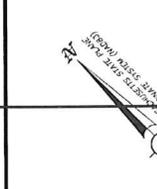
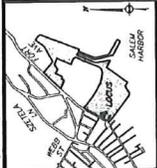
41841-207

REVISIONS	DATE	DESCRIPTION

SALEM WIND TERMINAL, LLC  
 SALEM, MASSACHUSETTS  
 (BESSEK COURT)  
 PLAN OF LAND  
 LOCATED IN  
 67 DERBY STREET  
 CENTER - LOT 2

**MERIDIANS ASSOCIATES**  
 500 CUMMINGS CENTER, SUITE 3550  
 BOSTON, MASSACHUSETTS 02118  
 TELEPHONE: (617) 292-6447  
 WWW.MERIDIANSASSOCIATES.COM

DESIGNED BY: AUGUST 21, 2023  
 SCALE: 1" = 100'  
 SHEET NO. 1 OF 1  
 PROJECT NO. 6469-3



**LINE TABLE**

LINE NO.	LENGTH	DIRECTION
L1	401.82'	S22°32'39"W
L2	186.35'	S68°32'39"E
L3	53.82'	S62°02'00"W
L4	201.88'	S28°34'46"E
L5	442.00'	S27°42'07"W
L6	36.89'	N62°09'10"E
L7	172.08'	N25°29'00"E
L8	118.48'	S64°53'52"E
L9	160.72'	N62°09'10"E
L10	168.01'	S67°34'51"E

**LINE TABLE**

LINE NO.	LENGTH	DIRECTION
L11	401.82'	S22°32'39"W
L12	186.35'	S68°32'39"E
L13	53.82'	S62°02'00"W
L14	201.88'	S28°34'46"E
L15	442.00'	S27°42'07"W
L16	36.89'	N62°09'10"E
L17	172.08'	N25°29'00"E
L18	118.48'	S64°53'52"E
L19	160.72'	N62°09'10"E
L20	168.01'	S67°34'51"E

**LINE TABLE**

LINE NO.	LENGTH	DIRECTION
L21	271.33'	S82°28'19"E
L22	11.06'	N92°29'07"E
L23	61.17'	N62°09'10"E
L24	42.71'	S64°53'52"E
L25	36.89'	N62°09'10"E
L26	172.08'	N25°29'00"E
L27	118.48'	S64°53'52"E
L28	160.72'	N62°09'10"E
L29	168.01'	S67°34'51"E

**LEGEND:**  
 A.C. ABOVE GROUND  
 P.D. PILE DRIVEN  
 S.D.M. STONE FOUND PILE NOLE  
 S.P. SQUARE PILE

FOR MERIDIANS ASSOCIATES, INC. DATE: 08/21/2023

**ABUTTERS LIST:**  
 1. NOW OR FORMERLY THE CHARLES HUNT COMPANIES, L.P.  
 81 DERBY STREET  
 SALEM, MASSACHUSETTS 01970  
 2. NOW OR FORMERLY BLS, INC.  
 83-85 DERBY STREET  
 SALEM, MASSACHUSETTS 01970  
 3. NOW OR FORMERLY TRUSTEE OF HADLEY REALTY TRUST  
 BOOK 2086, PAGE 433  
 5 BEACON STREET  
 SALEM, MASSACHUSETTS 01970

**NOTES:**  
 1. THE PLAN IS TO BE MADE BY THE CITY OF SALEM ASSESSORS' MAP 41.  
 2. THE SUBJECT PROPERTY IS DEFINED AS LOT 2-A (ASSESSED AREA=42.3 ACRES) AND LOT 2-B (ASSESSED AREA=5.08 ACRES) MORE OR LESS AS SHOWN.  
 3. THE SUBJECT PROPERTY IS DEFINED AS LOT 2-A (ASSESSED AREA=42.3 ACRES) AND LOT 2-B (ASSESSED AREA=5.08 ACRES) MORE OR LESS AS SHOWN.  
 4. THE CITY OF SALEM "DORBY WATERFRONT LOCAL HISTORIC DISTRICT" PORTION OF THE SITE IS LOCATED WITHIN THE CITY OF SALEM "DORBY WATERFRONT LOCAL HISTORIC DISTRICT".  
 5. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE AND ARE BASED UPON A PARTIAL FIELD SURVEY AND COMPILED FROM RECORDS OF MERIDIANS ASSOCIATES, INC. THE LOCATION OF ALL UTILITIES AND CONDUITS SHALL BE DETERMINED BY THE LOCATION OF ALL UTILITIES AND CONDUITS AT THE COMMENCEMENT OF CONSTRUCTION. SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATION OF ALL UTILITIES AND CONDUITS.  
 6. THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNLIMITED EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO DISCOVER ANY APPARENT, VISIBLE USES OF THE LAND, HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.  
 7. THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNLIMITED EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO DISCOVER ANY APPARENT, VISIBLE USES OF THE LAND, HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.  
 8. THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNLIMITED EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO DISCOVER ANY APPARENT, VISIBLE USES OF THE LAND, HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.

#276  
 11/2/2023  
 41841-207

EXHIBIT B – LOAD-OUT WHARF



EXHIBIT C – ACCESS PLAN

