

SECOND AMENDMENT TO LICENSE AGREEMENT

BETWEEN

MANHATTAN RIVER GROUP, LLC

AND

**CITY OF NEW YORK
DEPARTMENT OF
PARKS & RECREATION**

for

THE OPERATION AND MAINTENANCE
OF A FULL-SERVICE MARINA AT
THE DYCKMAN MARINA

MANHATTAN, NEW YORK

M28-M

DATED: MARCH 27, 2013

2013-011645-

SECOND AMENDMENT TO LICENSE AGREEMENT ("Amendment") made this __ day of February, 2013, between the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065 and Manhattan River Group, LLC ("Licensee"), a limited liability company organized under the laws of the State of New York, whose address is 120 West 58th Street, 3D, New York, NY 10019.

WHEREAS, the parties to this Amendment are parties to that certain License Agreement dated June 25, 2009 with respect to the operation and maintenance of a full-service marina for the accommodation of and use by the public at Dyckman Marina ("License" or "License Agreement"), as the same was amended by the "First Amendment to License Agreement" dated August 26, 2010 (the "First Amendment") to which the parties to this Amendment are also parties; and

WHEREAS, Licensee as "Contractor" and Parks as "Guarantor" are about to become parties to an agreement ("BIG Funding Agreement") with the New York State Office of Parks, Recreation and Historic Preservation ("NYSOPRHP") under which NYSOPRHP will administer a U.S Fish and Wildlife Administration Boating Infrastructure Grant for its Project Y-16-D-1 ("BIG") to further fund the work, and certain work to be performed by Licensee, under the terms of the BIG and the License Agreement; and

WHEREAS, Parks as Guarantor under the BIG Funding Agreement will be responsible to NYSOPRHP for any failure of Licensee to perform its obligations as Contractor under that agreement; and

WHEREAS, the License Agreement contains a small number of minor typographic and technical errors;

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereby do agree as follows:

A. Modifications to License Agreement

1. Capitalized terms not otherwise defined herein have the meanings assigned to them in the License Agreement as amended by the First Amendment
2. Section 2.1(i)(i) defining “Gross Receipts” is hereby modified by moving the word “exclude” in the fifth line thereof to follow the word “shall” in the same line.
3. The final paragraph of Section 14.1 of the License Agreement is hereby modified to read in its entirety as follows:

“The term “Assignment” shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than 49% in stock or voting control of or other equity interest in Licensee, including any transfer by operation of law. Without the prior written consent of Commissioner, which shall not be unreasonably withheld, conditioned or delayed, no sale or transfer of the stock of or interest in Licensee may be made under any circumstance if it –

- (i) would result in a change of control of Licensee violative of the intent of this Section 14 (that being to grant this License solely to the Licensee named herein, as stated above), or
- (ii) involves, by itself or in combination with other prior or simultaneous transfers or assignments, more than 10% in stock or voting control of, or other equity interest in, Licensee, or
- (iii) would, alone or in combination with other prior or simultaneous transfers or assignments, constitute an Assignment.”

4. Section 14.2 of the License Agreement is hereby amended by deleting the entire first sentence thereof and substituting therefor the following:

“In cases where Commissioner’s prior written consent is required regarding a transaction to which this Section 14 is applicable,”

5. A new Section 37.0 is hereby added to the License Agreement, reading as follows:

“LICENSEE ORGANIZATION, POWER AND AUTHORITY

“37.0 Licensee and the individual executing this License on behalf of Licensee each represents and warrants that Licensee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder.”

6. A new Section 38.0 is hereby added to the License Agreement, reading as follows:

“USE OF PRONOUNS

“38.0 The use in this Amendment of a singular, plural, masculine, feminine and/or neuter pronoun shall include the others as the context may require.”

7. The following Provisions Relating to Administration of United States Fish and Wildlife Administration Boating Infrastructure Grant Y-16-D-1, shall be added to the License Agreement as sections 6.21, 6.22 and 6.23 and 6.24

“6.21 Reporting Grant Funds Drawings. Licensee hereby agrees to report to Parks, as GUARANTOR under the terms of the BIG, the issuance of any bill or invoice to NYSOPRIIP relating to a drawing of funds under the BIG, and the receipt of the drawn funds. Each report shall indicate the amount drawn or requested, and the date or anticipated date of the drawing.

“6.22 Correspondence. Licensee shall furnish copies of all correspondence and communications between Licensee and NYSOPRHP relating to the BIG to Parks promptly after receipt or transmission thereof.

“6.23 Right to Inspect Records. Licensee shall afford Parks full access during normal business hours to inspect its records relating to funding and all other aspects of work performed and to be performed under the License Agreement and the BIG, as well as all documents furnished under subsections b) and c) immediately above.

“6.24 No Termination. Licensee hereby agrees not to take any action looking toward termination of the BIG Funding Agreement or abandonment by Licensee of its obligations thereunder, without advance written consent of Parks. Taking any such action without the advance written consent of Parks shall constitute a material breach of the License Agreement.”

8. **Effect of Amendment.** Except as amended hereby, the License Agreement as previously amended shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the License Agreement as previously amended, the terms of this Amendment shall prevail.

SECOND AMENDMENT TO LICENSE AGREEMENT

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK DEPARTMENT
OF PARKS AND RECREATION

MANHATTAN RIVER GROUP, LLC

By: 

By: 

Name: Elizabeth Smith
Title: Assistant Commissioner for Revenue
& Marketing

Name: Jerald Tenenbaum
Title: Managing Member

Dated: March 27, 2013

Dated: March 22, 2013

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Sharon Cantor
Acting Corporation Counsel 

APR 03 2013

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this 27 day of March, 2013 before me personally came Elizabeth Smith to me known, and known by me to be the Assistant Commissioner for Revenue and Marketing of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purposes mentioned therein.

Robinson Markel

ROBINSON MARKEL
Notary Public, State of New York
No. 02MA7713010
Qualified in New York County
Commission Expires May 31, 2014

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this 2nd day of March, 2013 before me personally came _____ to me known, and known by me to be the Managing Member of Manhattan River Group, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in his/her official capacity and for the purposes mentioned therein.

JENNIFER TENENBAUM

Jca
LAWRENCE HAMBISON
Notary Public, State of New York
No. 02MO6059854
Qualified in New York County
Commission Expires July 28, 2015

