

**MEMORANDUM**

TO: Hon. Eric Adams, President of Borough of Brooklyn.  
Theresa Scavo, Chair, Brooklyn Community Board #15.

FROM: Kyle Daniels, Assistant Director, Asset Planning.

SUBJECT: Notice of Joint Public Hearing, September 8, 2020. Intent to Award as a sole source concession for the operation of dry boat storage, docking of no more than 8 jet skis, and business accessory parking.

DATE: August 4, 2020

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Citywide Administrative Services to be held remotely via a WebEx dial-in on September 08, 2020 at 2:30 pm relative to:

INTENT TO AWARD as a sole source concession for the operation of dry boat storage, docking of no more than 8 jet skis, and business accessory parking, consisting of approximately 52,940 square feet of uplands and 1,135 square feet of lands under water property identified as Block 8844, Lot 50, in the Borough of Brooklyn to Emmons Avenue Marina, LLC.

The Occupancy Permit provides for an initial term commencing April 15, 2015 and ending March 31, 2016 with a permit fee of \$119,000, with two (2) one-year renewal options to be exercised at the sole discretion of the City. The first one-year option period provides for a payment of \$125,790, for the period from April 1, 2016 through March 31, 2017 and the second one-year option period provides for payment of \$134,295.50 for the period from April 1, 2017 through March 31, 2018. Both options have been exercised.

The public may participate in the public hearing by calling the dial-in number below. Written testimony may be submitted in advance of the hearing electronically to [Gregg.alleyne@mocs.nyc.gov](mailto:Gregg.alleyne@mocs.nyc.gov). All written testimony must be received by September 3, 2020. In addition, the public may also testify during the hearing by calling the dial-in number. The dial-in information is below:

**Dial-in #:** 1-408-418-9388


**Access Code:** 1297824089

**Press # on further prompts.**

A draft copy of the agreement may be obtained at no cost by any of the following ways:

- 1) Submitting a written request to the NYC Department of Administrative Services, Real Estate Services at [concessions@dcas.nyc.gov](mailto:concessions@dcas.nyc.gov) from **August 17, 2020** through **September 8, 2020**.
- 2) Download from **August 17, 2020** through **September 8, 2020** on DCAS' website. To download a draft copy of the agreement, go to:  
<https://www1.nyc.gov/site/dcas/about/public-hearings.page> .
- 3) By calling (646) 983-6668 Monday through Friday 8am – 3pm from **August 17, 2020** through **August 28, 2020** to request a draft copy be sent to you by mail. For phone request, please provide your name, return address and Concession name.

A transcript of the hearing will be posted on the FCRC website at  
<https://www1.nyc.gov/site/mocs/reporting/agendas.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at [DisabilityAffairs@mocs.nyc.gov](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (646) 872-0231. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability. 

# CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )

<b>AGENCY:</b> New York City Department of Citywide Administrative Services, Real Estate Services (DCAS/DRES)	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>Emmons Avenue Marina, LLC.</u> <b>Address:</b> <u>1400 Broadway, New York, NY 10018</u> <b>Telephone #</b> <u>(212) 947-4575</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>26-3845790</u> <b>Not-for-Profit Organization</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Sole Source Occupancy Permit with Emmons Avenue Marina, LLC for dry boat storage, docking of no more than 8 jet skis and business accessory parking.</u>
<b># VOTES required for proposed action</b> <b>= <u>4</u></b> <input type="checkbox"/> <b>N/A</b>	<b>CONCESSION I.D.#</b> <u>N/A</u>	

**LOCATION OF CONCESSION SITE(S\*)** ☐ **N/A**

**Address:** Approximately 52,940 square feet of uplands and 1,135 square feet of lands under water

**Borough** Brooklyn **C.B.** 15 **Block #** 8844 **Lot #** 50

\*Attach additional sheet

## SELECTION PROCEDURE

(\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids  
☐ Competitive Sealed Proposals\* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on   /  /  .)  
☒ Different Selection Procedure: \* (☒ Sole Source Agreement ☐ Other                      )  
 > FCRC approved different selection procedure on 02/08/17.  
☐ Negotiated Concession\*

## CONCESSION AGREEMENT TERM

**Initial Term:** From 04/15/15 To 03/31/16

**Renewal Option(s) Term:** Two (2) one-year renewal options, exercisable at the City's sole discretion  
 From 04/01/16 To 03/31/17  
 From 04/01/17 To 03/31/18

**Total Potential Term:** 2 Years, 11 months, 17 days

☐ \* >20 years – FCRC unanimously approved term on   /  /  

## ANNUAL REVENUE

(Check all that apply)

(Additional sheet (☐s) attached)

☒ **Annual Fee(s)** Initial Term: \$ 119,000  
 First Option Year: \$125,790  
 Second Option Year: \$134,295.50

☐ % Gross Receipts        %

☐ The Greater of Annual Minimum Fees of \$        v.        % of Gross Receipts

Other:

## NOTIFICATION REQUIREMENTS

**Subject concession was awarded by CSB or CSP.**

☐ **YES** ☒ **NO**

**If YES**, check the applicable box(es) below:

- ☐ The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by   /  /  , which was at least 30 days prior to its issuance.  
☐ The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.  
☐ The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by   /  /  , which was at least 40 days prior to issuance of the solicitation.

**If NO**, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP received written notice by 12/27/16, which was at least 40 days in advance of the FCRC meeting on 02/08/17 at which the agency sought and received approval to use a different selection procedure.

☐ The Agency certifies that each affected CB/BP received written notice on   /  /  , at the time that a notice of

intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.

- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on \_\_/\_\_/\_\_**

**Award is a major concession.**

☐ YES ☒ NO

**If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:**

☐ CPC approved on \_\_/\_\_/\_\_ ☐ City Council approved on \_\_/\_\_/\_\_ or ☐ N/A

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.**

**If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:**

- ☐ The concession was approved by the FCRC on \_\_/\_\_/\_\_.
- ☐ The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

**This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.**

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

**City Chief Procurement Officer**

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:**  
**CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Citywide Administrative Services, Real Estate Services (DCAS/DRES), formerly known as Asset Management (DCAS/AM) intends to seek Franchise and Concession Review Committee (FCRC) approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York (Concession Rules), to enter into a sole source Occupancy Permit ("Occupancy Permit") with Emmons Avenue Marina, LLC, ("Emmons") for the use of approximately 52,940 square feet of uplands and 1,135 square feet of lands under water identified as Block 8844, Lot 50, Borough of Brooklyn.

***Instructions:*** Provide all information requested below; check all applicable boxes.

**A. SELECTION PROCEDURE**

☒ Sole Source

☐ Other *Describe:*

**B. NEGOTIATIONS**

***Instructions:*** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

The sole source Occupancy Permit authorizes Emmons to use and occupy approximately 52,940 square feet of upland and 1,135 square feet of lands under water, a/k/a Block 8844, Lot 50, Brooklyn, New York, for dry boat storage, docking of no more than 8 jet skis, and business accessory parking. The Occupancy Permit provides for an initial term commencing on April 15, 2015 and terminating on March 31, 2016 with two (2) one-year renewal options, exercisable at the City's sole discretion, which options have both been exercised. Compensation to the City as established by a prior agreement, will be \$119,000 for the initial term, \$125,790 for the first option year and \$134,295.50 for the second option year.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

On September 10, 2003 (Cal. No. 1) FCRC approved a resolution to award a concession agreement between DCAS and Marina Holdings. Pursuant to this approval, Marina Holdings entered into an occupancy permit with DCAS for City Block 8844, Lots 50 and 375 in the Borough of Brooklyn, NY. The permit commenced on January 1, 2003 and terminated on December 31, 2003, with two (2) one-year renewal terms ending on December 31, 2005. Marina Holdings owned the adjacent lot 10. Upon the expiration of the permit, the parties could not agree upon the terms of a new permit. The premises were included in a lease auction, but there were no bidders. There was a dispute concerning the boundary lines of City Lot 50, the matter was referred to the Law Department for resolution.

On December 15, 2008, Marina Holdings transferred title of its Lot 10 to Emmons Avenue Marina, LLC ("Emmons") and Emmons began to occupy City Lot 50. "The Law Department negotiated an agreement with Emmons for the retroactive use and occupancy which was approved by The Office of the Comptroller on June 16, 2015.

Pursuant to an agreement between the City , Emmons and Marina Holding :: (1) Emmons paid use and occupancy to the City for the use of Lot 50 for the period from December 15, 2008 through April 15, 2015 and for Marina Holdings' use of Lot 50 for the period December 31,2005 through December 14, 2008 and (2) Emmons agreed to enter into a sole source retroactive Permit for the use of City Lot 50 and to pay a Permit fee retroactive to April 15, 2015 , subject to FCRC approval of the proposed retroactive Permit." Since the end of the retroactive period in 2018, Emmons has continued to occupy the premises and DCAS/DRES intends to initiate a new concession for Emmons. DCAS/DRES has determined that the only entity that can utilize City Lot 50 is the owner of the adjacent Lot 10, as demonstrated by the absence of any bidders when the premises were included in a lease auction.

**D. PUBLIC HEARING** ☐ **N/A – Subject award NOT a significant concession]**

**1. Publication & Distribution of Public Hearing Notice**

☐ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by \_\_/\_\_/\_\_.

☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_  
☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

**OR**

☒ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 08/21/2020, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 08/21/2020 which was not less than 15 days prior to the hearing date . Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 08/21/2020.

☒ Brooklyn Home Reporter, a NYC local newspaper published in the affected borough(s) on 08/14/2020 and 08/21/2020.

☒ Brooklyn Courier Life, a NYC local newspaper published in the affected borough(s) on 08/14/2020 and 08/21/2020.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

☒ A Public Hearing was conducted on 09/08/2020.

**OR**

☐ The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City

Record canceling such hearing on\_\_\_\_/\_\_\_\_/\_\_\_\_ and sent a copy of that notice to all Committee Members.

**RECOMMENDATION FOR ☒ AWARD/ ☐ RENEWAL  
OF CONCESSION AGREEMENT: RESPONSIBILITY DETERMINATION**

AGENCY: New York City Department of Citywide Administrative Services, Real Estate Services (DCAS/DRES)	CONCESSIONAIRE : EMMONS AVENUE MARINA, LLC	CONCESSION I.D. # N/A
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**This is to certify that I have determined that the subject concessionaire has the capability in all respects to perform fully the concession requirements and the business integrity to justify the private use of city-owned property and is therefore responsible.**

**AUTHORIZED AGENCY STAFF**

**Name** Kyle Daniels. **Title** Assistant Director, Asset Planning.

**Signature** Kyle Daniels **Date** 8/21/2020

**SOURCES OF INFORMATION**

**On-line PASSPort vendor inquiry (cautions, liens, warrants) conducted on:** 04/05/2019

**PASSPort filings dated:** 02/01/2018

or ☐ N/A *[Value of concession, when aggregated with value of all other contracts/concessions held by subject concessionaire, <\$100 K]*

**Certificate of No Change:** 12/12/2019

**Changed Questionnaire dated:**   /  /  

or ☒ N/A

**DOI Report dated:** 07/16/2020

or ☐ N/A

**Doing Business Data Form dated:** 02/26/2020

☐ N/A *[CSB without prequalification]*

If the subject action is new concession award awarded pursuant to CSP and award is based on initial proposals, PASSPort Questionnaires also submitted from the second highest rated proposer.

☐ Yes

☐ No Only one proposal was received

**Technical Qualifications/Experience/Resources**

Basis for determination that proposed concessionaire has the organization, material, equipment, facilities and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments:

Emmons Avenue Marina, LLC ("Emmons") currently operates its business on privately owned property (Block 8844, Lot 10) that is adjacent to the City-owned property which is the subject of this concession award. The concession award relates solely to an Occupancy Permit and the obligations therein for the use of approximately 52,940 square feet of uplands and 1,135 square feet of lands under water identified as Block 8844, Lot 50, Borough of Brooklyn (Permitted Premises). The proposed Occupancy Permit for the Permitted Premises will allow Emmons to continue to utilize the City-owned property for dry boat storage, docking of no more than eight (8) jet skis and business accessory parking. DCAS/DRES has determined that the only entity that can utilize City Lot 50 is the owner of the adjacent Lot 10. This was demonstrated by the absence of any bidders when the premises were included in a lease auction. DCAS concludes that Emmons will be able to meet the obligations in the Occupancy Permit which provides for an initial term commencing on April 15, 2015, and terminating on March 31, 2016 with two (2) one-year renewal options, exercisable at the City's sole discretion, which options have both been exercised.



**Record of Satisfactory Performance**

☐ N/A *[Subject concessionaire is not the current concessionaire and/or has concessions and/or contracts with the City]*

Basis for determination that proposed concessionaire has a satisfactory record of performance:

Emmons has been operating at the Permitted Premises since the title for the adjacent private lot was transferred to them by Marina Holding Corp. on December 15, 2008. During this course of time, DCAS has not received any complaints from the general public on the performance of Emmons operating at the Permitted Premises. The Law Department negotiated an agreement with Emmons for the retroactive use and occupancy and Emmons has complied with the terms of the agreement

**Financial Resources/Adequate Accounting & Auditing Procedures**

Basis for determination that proposed concessionaire has sufficient financial resources and adequate accounting and auditing procedures to control property, funds or other assets, accurately delineate costs, and attribute them to their causes:

Emmons is in good standing with the NYC Department of Finance and has provided the City with Financial Statements and Corporate Tax Returns that demonstrate the necessary financial resources to make the necessary payments to the City.

**Business Integrity**

Basis for determination that proposed concessionaire has a satisfactory record of business integrity:

Emmons has provided DCAS with the company's EEO certificate of compliance. A google search of Emmons Avenue Marina LLC shows no negative reviews from customers. A Department of Environmental Protection search found there were no outstanding water or sewer bills. This helps DCAS determine that Emmons is a responsible entity and conducts its business with integrity.

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**Other Sources of Responsibility Information (Indicate \*)**

(\* Examples: LexisNexis; Google; Department of State website; records or certificates of compliance with EEO laws and executive orders enforced by DSBS/DLS; publications; suppliers, subcontractors and/or customers of the prospective concessionaire; financial institutions, other government agencies, business and trade associations.)

A search of NYS Department of State, and Divisions of Corporations website was conducted and Emmons, along with its principal owners have no outstanding NYS tax warrants. A search of NYS Department of Labor shows no prevailing wage debarments and insurance coverage debarments. A search of the NYC Department of Finance shows no outstanding property tax. A search of the NYC Department of Buildings shows one violation. A search of the US Department of Labor shows no OSHA violations. A search on Factual Data showed there were no public records found for Emmons. Additionally, a Lexis Nexis search found no bankruptcies, no current liens and judgements. Further Lexis Nexis search of the principal owners found no records of criminal or sexual offenses.

**DISPOSITION**

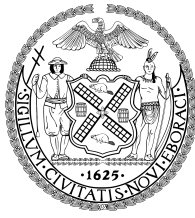
**ADVERSE INFORMATION IDENTIFIED?** ☐ NO ☒ YES, described & addressed below

DCAS identified a DOB violation on property owned by Emmons (Brooklyn Block 8844, Lot 10) related to an electric sign. The Violation Number is 1501TM and the Issue Date is 7/17/1995. DCAS considers Emmons responsible because this was the only adverse item uncovered in twelve separate searches. The electric sign violation does not affect the ability of Emmons to meet its obligations under the proposed Occupancy Permit. The violation is still open, and Emmons is in the process of curing the violation and DCAS is monitoring the effort.

**ADVERSE INFORMATION**

***Instructions:** Check all applicable box(es) indicating types of adverse information found. Provide the information requested and explain basis for the award notwithstanding adverse information. Attach explanatory sheets, as necessary.*

- ☐ **ADVERSE INFORMATION INDICATED IN VENDEX VENDOR INQUIRY &/OR ON MOST RECENT VENDEX QUESTIONNAIRES.** *Describe each item by type, date & current status (include outcome, if disposed of).*
- ☐ **ADVERSE INFORMATION IN DOI REPORT.** *Attach DOI report (include all attachments to report); describe each adverse item therein by date of occurrence and current status (include outcome, if disposed of).*
- ☐ **ADVERSE PERFORMANCE EVALUATION INFORMATION.** *Describe problem(s) by type, date & current status; if problem(s) pertains to your agency, provide statement that agency has approved concessionaire's Corrective Action Plan, and/or that problem category has been corrected, as applicable; if rating pertains to another agency, identify agency, describe problem and describe resolution of problem.*
- ☐ **ADVERSE FINANCIAL RESOURCES/AUDIT INFORMATION.** *Describe each such problem; provide statement that agency has approved the concessionaire's Corrective Action Plan.*
- ☐ **ADVERSE BUSINESS INTEGRITY INFORMATION.** *Describe each such problem; provide statement that agency has approved the concessionaire's Corrective Action Plan.*



The City of New York  
Department of Investigation

MARGARET GARNETT  
COMMISSIONER

180 MAIDEN LANE  
NEW YORK, NY 10038  
212-825-5900

**VENDOR NAME CHECK RESPONSE**

**TO:** Morris Jason  
Department of Citywide Administrative Services (DCAS)

**FROM:** Chuck Joe  
Director

**DATE:** Jul 16, 2020

**SUBJECT:** Vendor Name Check: EMMONS AVENUE MARINA LLC.  
PASSPort ID #: P-916925

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In response to your request for a vendor name check, the Department of Investigation has searched its indices of investigations closed within the past ten years to determine whether the entity listed above, together with all of its affiliates and principals, have been the subject of a substantiated investigation by this Department (see Procurement Policy Board Rules, Section 2-08 (f)).

A search of the Department of Investigation records was conducted on the below listed names, which includes the submitting entity, all affiliates, and principals associated with this vendor name check request. Please see the below results:

**Submitting Entity:**

Emmons Avenue Marina LLC.— no closing memorandum found at this time.

**Principal Owner(s):**

Joseph Nakash — no closing memorandum found at this time.

Ralph Nakash — no closing memorandum found at this time.

**Officer(s) of the Company:**

No Officer(s) of the Company listed for this vendor name check.

**Affiliate(s):**

Marina Holding Corp.— no closing memorandum found at this time.

CITY OF NEW YORK  
FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the Department of Citywide Administrative Services, Real Estate Services, to utilize a different procedure pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a sole source Occupancy Permit (“Occupancy Permit”) with Emmons Avenue Marina, LLC for the utilization of approximately 52,940 square feet of uplands and 1,135 square feet of lands under water identified as Block 8844, Lot 50, Borough of Brooklyn for the purpose of dry boat storage, docking of no more than 8 jet skis, and business accessory parking. The Occupancy Permit provides for an initial term commencing on April 15, 2015 and terminating on March 31, 2016 with two (2) one-year renewal options, exercisable at the City’s sole discretion, which options have been exercised. Compensation to the City will be \$119,000 for the initial term, \$125,790 for the first option year and \$134,295.50 for the second option year.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

**September 9, 2020**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

**OCCUPANCY PERMIT  
(Non-Maritime)**

**between**

**The City of New York  
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
REAL ESTATE SERVICES  
1 Centre Street  
New York, NY 10007**

**and**

**EMMONS AVENUE MARINA, LLC  
1400 Broadway  
New York, New York 10018**

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**Premises: Brooklyn, Block 8844, Lot 50 approximately 52,940 square feet of  
uplands and 1,135 square feet of lands under water**

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**\*\*\*\*\***

## **INDEX**

<b><u>Paragraph</u></b>	<b><u>Caption</u></b>	<b><u>Page</u></b>
1	Definitions	4
2	Term	4
3	Unconditional Right of Revocation	4
4	Permitted Activities	5
5	Base Charges/Additional Charges	6
6	Late Charges/Dishonored Check	7
7	Acceptance of Base Charges After Expiration of Term	7
8	No Assignment	7
9	Consent to Change Premises; Cost of Work, Labor and Materials	7
10	Permits and Compliance with Laws	8
11	Insurance	8
12	Responsibility for Safety, Injuries or Damage and Indemnification	13
13	Security Deposit	15
14	Termination of the Occupancy Permit	15
15	Investigation	15
16	No Discrimination	18
17	No Conflict of Interest	18
18	Other Agreements	18
19	Notices	18
20	Warranty	19
21	Jury Waiver; Waiver of Counterclaim	19
22	Additional Requirements Upon Permittee	19
23	Survival	19
24	Utilities, Maintenance and Service	20
25	Legality of Use	20
26	Right to Audit	20
27	No Oral Modification	20

## **ACKNOWLEDGEMENTS**

Exhibit "A" - Diagram and Metes & Bounds

Exhibit "B" - Certification by Insurance Broker or Agent

OCCUPANCY PERMIT  
(Maritime)

The City of New York  
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
REAL ESTATE SERVICES  
1 Centre Street  
New York, New York 10007

THIS OCCUPANCY PERMIT, made and entered into this      day of      , 2020 by and between the CITY OF NEW YORK (the “City”) acting by its Department of Citywide Administrative Services, Real Estate Services (“Permitter”), having an office at 1 Centre Street, New York, New York 10007, and Emmons Avenue Marina, LLC d/b/a Venice Marina (“Permittee”), having an address at 1400 Broadway, New York, New York 10018.

WITNESSETH

WHEREAS, Section 1301 (2) (b) of the New York City Charter (the “Charter”) grants the Commissioner of the Department of Small Business Services (“DSBS”) exclusive charge of the “wharf property” and “water front property” (as such terms are defined in the Charter) owned by the City of New York; and

WHEREAS, in accordance with Section 1301 (2) (b) the DSBS Commissioner has authorized the DCAS Commissioner, pursuant to Section 1301 (2) (h) of the Charter to grant temporary permits terminable at will with respect to the Premises (as hereinafter defined) for a period not exceeding three years for the purpose of water front commerce or in furtherance of navigation and not exceeding one year for other purposes to use and occupy any wharf property belonging to the City of New York; and

WHEREAS, Permittee herein has requested a temporary occupancy permit and Permittee occupies “wharf property” as such term is defined in Section 1150 (7) (a) of the Charter; and

WHEREAS, pursuant to Section 824 (c) of the New York City Charter, the DCAS Commissioner is authorized to enter into such temporary occupancy permits; and

WHEREAS, this Occupancy Permit has been approved by the Franchise and Concession Review Committee pursuant to Title 12 of the Rules of the City of New York;

WHEREAS, Permittee shall conduct all activities permitted hereunder with diligent care, and shall defend, indemnify and hold Permitter harmless from any damage to Permitter, third parties (including Permittee’s agents, employees and invitees) and the property resulting from such activities;

NOW, THEREFORE, it is mutually agreed as follows:

1. Definitions:

- (a) Permitter: The City of New York ("City"), acting through its Department of Citywide Administrative Services, Real Estate Services which has its offices at 1 Centre Street, New York, New York 10007. Notices and correspondence should be addressed to the attention of: Deputy Chief Asset Management Officer/Leasing, New York City Department of Citywide Administrative Services, Real Estate Services, 1 Centre Street, 20<sup>th</sup> Floor North, New York, New York 10007.
- (b) Permittee: Emmons Avenue Marina, LLC
- (c) Premises: All that certain property, situated in the County of Kings, City and State of New York, described as follows:

Block 8844, Lot(s) 50, approximately 52,940 square feet of uplands and 1,135 square feet of lands under water, all as shown on the diagram attached hereto and made a part hereof as Exhibit A (hereinafter the "Premises").

Permittee agrees to accept the Premises in its "as is" condition. Emmons agrees that its occupancy rights under this Occupancy Permit, once approved, are subject to all existing encumbrances and occupancies and any rights that the occupants may have.

2. Term:

This Occupancy Permit shall become effective upon written notice from Permitter to Permittee, upon registration of this Permit with the Office of the Comptroller. The term (the "Term") of this Occupancy Permit shall commence as of April 15, 2015 and end March 31, 2016 with two (2) one-year renewal options, exercisable at the Permitter's discretion. The parties acknowledge that Permitter has exercised its two (2) one-year options. This Occupancy Permit shall be revocable at any time by notice in writing by Permitter, and thereupon all rights of Permittee in said Premises by virtue of said Occupancy Permit shall cease and terminate. Any rights Permitter may have under this Occupancy Permit and the restoration of the Premises shall survive the revocation or termination of this Occupancy Permit.

3. Unconditional Right of Revocation:

- (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS OCCUPANCY PERMIT, PERMITTOR MAY TERMINATE THIS OCCUPANCY PERMIT AT WILL AT ANY TIME BY GIVING PERMITTEE NOT LESS THAN TWENTY-FOUR (24) HOURS' NOTICE.
- (b) Permittee expressly agrees that Permitter shall have the unconditional right to revoke this Occupancy Permit, with or without cause, and terminate the Term hereof, upon twenty-four (24) hours' written notice to Permittee, any provision of this Occupancy Permit to the contrary notwithstanding. In the event of such termination and revocation, Permittee shall remain liable for the due and full



performance of all the terms, covenants and conditions of this Occupancy Permit on the part of Permittee to be performed up to the time of such termination and revocation. Permittee understands and agrees that nothing, including without limitation, the length of time this Occupancy Permit has been in effect, the cost of any improvements, capital or otherwise, or any other cost, expense or liability assumed by Permittee, shall give rise to any greater rights than have been expressly granted Occupancy Permit hereunder, nor shall they affect Permitter's unconditional right of revocation. Furthermore, in the event of revocation, Permitter's sole liability to Permittee shall be to refund to Permittee, on a pro-rated basis, that portion of its current monthly Base Charge paid representing the unexpired portion of the month in which the revocation takes place. Any and all obligations and/or liabilities of Permittee under this Occupancy Permit shall survive the revocation or termination thereof.

4. Permitted Activities:

Permittee shall enter upon and use the Premises only for the conduct of the following activities (hereinafter referred to as the "Permitted Activities" and for no other purpose: dry boat storage, docking of no more than eight (8) jet skis and business accessory parking.

Permittee shall not use the Premises for the sale of tobacco products, or electronic cigarettes; for gambling establishments of any kind, including but not limited to, arcade, slot machines and billiard halls; for firearms sales or repairs; for pornography sales or rentals, massage parlors or brothels; or for physical culture establishments of any kind. Permittee shall carry out all Permitted Activities hereunder in accordance with all applicable laws, orders, rules, licenses, permits and regulations of all government entities having jurisdiction over same.

No ownership, leasehold or other property interest shall vest in Permittee by virtue of this Occupancy Permit.

5. Base Monthly Charges and Additional Charges

- (a) Permittee shall pay to Permittor:
- (i) The sum of \$119,000 shall be payable for the first Permit year, April 15, 2015 thru March 31, 2016, (\$9,917.per month ("Base Monthly Charge")), which amount of \$119,000 shall be payable by Permittee to Permittor as a lump sum payment within ten (10) days of Permittee's receipt of notice from Permittor of registration of this Occupancy Permit with the Office of the Comptroller (the "Confirmation Notice") .
  - (ii) As the Permittor has exercised the first one- year renewal option, at the annual rate of \$125,790( monthly rate of \$10,482.50 (Base Monthly Charge)) for the period from April 1, 2016 thru March 31, 2017, the sum of \$125,790 shall be payable by Permittee to Permittor as a lump sum payment within ten (10) days of Permittee's receipt of the Confirmation Notice.
  - (iii) As the Permittor has exercised the second one-year renewal option, at the annual rate of \$134,295.50 (monthly rate of \$11,191.29 (Base Monthly Charge)) for the period from April 1, 2017 thru March 31, 2018, the sum of of \$134,295.50 shall be payable by Permittee to Permittor as a lump sum payment within ten (10) days of Permittee's receipt of the Confirmation Notice.
  - (iv) Permittee shall deliver the payments described in Sections i, ii and iii above, within ten (10) business days from its receipt of the Confirmation Notice.
- (b) Permittee shall pay to Permittor additional charges that include, but are not limited to, reasonable attorney's fees, and any other monies paid by Permittor for service of process, marshal's fees and costs incurred in summary proceedings (hereinafter, the "Additional Charges"). Further, Permittee shall pay to Permittor as Additional Charges such other items identified in this Occupancy Permit as Additional Charges.
- (c) All Base Monthly Charges and Additional Charges shall be paid to Pemittor at the following address:

The City of New York  
Department of Citywide Administrative Services  
Real Estate Services  
1 Centre Street, 20<sup>th</sup> Floor North  
New York, New York 10007  
Attention: Executive Director  
Real Estate Financial Analysis Services

6. Late Charges/Dishonored Checks:

- (a) If Permittee fails to pay any monthly Base Monthly Charge and/or any Additional Charge in full by the tenth (10th) day of any monthly period, Permittor, at its sole discretion, may impose a late payment charge for that monthly period equal to two percent (2%) of any fees/charges due, but not less than a minimum charge of ten dollars (\$10.00). Such late payment charge shall be compounded monthly and shall be collectible as an Additional Charge. Permittor's failure to immediately impose or demand a late payment charge shall not waive Permittor's right to collect it at a later date.
- (b) In the event that any payment by check is not honored the first time it is presented for payment, Permittee shall make that payment and the payments for the next ensuing six (6) months by certified or bank check unless otherwise indicated by Permittor in writing. Nothing contained herein, however, shall be deemed to prevent Permittor from holding Permittee in default under this Occupancy Permit for the dishonor of any of Permittee's checks. Permittee must pay Permittor a fee of Twenty Dollars (\$20.00) for each dishonored check, which fee shall be collectible as an Additional Charge.

7. Acceptance of Base Monthly Charge After Expiration of Term:

It is expressly agreed that Permittor's acceptance of any payment from Permittee for the continued use of the Premises beyond the natural expiration of the Term of this Occupancy Permit, or the revocation of this Occupancy, shall not give rise to any landlord/tenant relationship between the parties, but rather shall be deemed to create a day-to-day license/permit, at the same daily Base Monthly Charge rate as set forth in Article 5 above.

8. No Assignment:

This Occupancy Permit to conduct the Permitted Activities in the Premises is for the exclusive use of Permittee and solely for the purpose hereinabove set forth and shall not be assigned either in whole or in part, or leased or sublet in any manner, nor shall any interest therein pass to any other person, firm or corporation whatsoever, either by the acts of Permittee or by operation of law, without the prior written consent of Permittor, which consent may be granted or denied by Permittor in its sole discretion.

9. Consent to Change Premises; Cost of Work, Labor and Materials:

- (a) Permittee may not change, alter, add to or subtract from the Premises without the prior written consent of Permittor, which consent may be granted or denied by Permittor in its sole discretion. All additions, including, without limitation, trade fixtures, shall, at the option of Permittor, become the property of Permittor when attached to the Premises. Permittee may not attach any advertisement, notice or sign to the inside or the outside of the Premises without obtaining Permittor's prior written consent.

- (b) Permittee shall pay the entire cost of all work, labor and material in connection with all activities undertaken by it at the Premises, including but not limited to:
  - (i) construction, use, maintenance and removal;
  - (ii) the protection of all structures which shall in any way be disturbed by the conduct of Permitted Activities;
  - (iii) all changes in sewers or other subsurface structures necessitated by the conduct of Permitted Activities, including the laying or relaying of pipes, conduits, sewers or other structures;
  - (iv) replacement or restoration of the pavement in the Premises, which may have been disturbed during conduct of the Permitted Activities; and
  - (v) the inspection of all work during the conduct of Permitted Activities and any restoration, as herein provided, which may be required by any government entity having jurisdiction over same.

10. Permits and Compliance with Laws:

Before the conduct of any Permitted Activities hereunder shall begin, Permittee shall obtain all permits which may be required by any government entity having jurisdiction over same. Permittee shall perform all the duties that may be imposed by such government entity as a condition of such permits, provided such conditions are not inconsistent with the provisions of this Occupancy Permit. Permittee shall submit to such entity working plans which shall include and show in detail the method of construction of the structures hereby authorized and the mode of protection or changes in all structures required by the construction or removal of the same.

Upon the completion of the work, Permittee shall furnish to such entity plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction, and complete dimensions of any structure erected or installed pursuant to this License.

Permittee shall comply with all applicable laws, rules, regulations and orders of any government entity having jurisdiction over the use, occupancy and maintenance of the Premises, and with such other rules, regulations, orders, terms and conditions as may be set or required by Permittor.

11. Insurance:

**Section 1.01** Permittee's Obligation to Insure

- (a) From no later than April 25, 2017 through the date of the expiration or termination or revocation of this Occupancy Permit, Permittee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein.

#### **Section 1.02 Commercial General Liability Insurance**

- (a) The Permittee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death), Two Million Dollars (\$2,000,000) for personal and advertising injury and Three Million Dollars (\$3,000,000) for products completed operations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Three Million Dollars (\$3,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this Occupancy Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by Permittor, and shall be "occurrence" based rather than "claims-made"
- (b) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this Occupancy Permit. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees with coverage at least as broad as ISO Form 2026.

#### **Section 1.03 Workers' Compensation, Employers Liability, and Disability Benefits Insurance**

The Permittee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Permittee's operations under this Occupancy Permit, and such insurance shall comply with the laws of the State of New York.

#### **Section 1.04 Commercial Automobile Liability Insurance**

- (a) With regard to all operations under this Occupancy Permit, the Permittee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any non-owned or hired vehicles. If Permittee owns vehicles that are used in the operations under this Permit, Permittee shall ensure such coverage also covers owned vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

- (b) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

#### **Section 1.05 Marine Insurance**

- (a) Marine Protection and Indemnity Insurance. With regard to any marine vessels involved in operations under this Occupancy Permit, the Permittee shall maintain or cause to be maintained Marine Protection and Indemnity insurance with coverage at least as broad as policy form SP-23. Coverage shall include bodily injury and property damage arising from marine operations under this Occupancy Permit, including injury or death of crew members (if not fully provided through other insurance), damage to piers, wharves and other fixed or movable structures and loss of or damage to any other vessel or craft, or to property on such other vessel or craft, not caused by collision. Such insurance shall name the City, including its officials and employees, as Additional Insured and have a limit of at least two Million Dollars (\$2,000,000) per occurrence.
- (b) Marina Operators Legal Liability Insurance. Permittee shall maintain Marina Operators Legal Liability Insurance covering liabilities arising from the operation of the marina associated with this Occupancy Permit. Such insurance shall name the City, including its officials and employees, as Additional Insured, and have a limit of at least two Million Dollars (\$2,000,000) per occurrence.

#### **Section 1.06 General Requirements for Insurance Coverage and Policies**

- (a) Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.
- (b) Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.
- (c) Wherever this Article requires that insurance coverage be "at least as broad as a specified form (including all ISO forms), there is no obligation that the form itself be used provided that Permittee can demonstrate that the alternative form or endorsement contained in the policy provides coverage at least as broad as the specified form.
- (d) There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by Permitter. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any aspect of a self-insurance program). Further, Permittee shall ensure that any such

self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations the insurers are required to undertake in liability policies.

- (e) The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Permittee under all primary, excess and umbrella policies covering operations under this Permit.
- (f) All required policies, except for Workers' Compensation insurance, Employers Liability insurance and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Permitter, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.
- (g) All required policies, except Workers' Compensation, Employers Liability and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

#### **Section 1.07 Proof of Insurance**

- (a) Certificates of Insurance, "Additional Insured" endorsements and Broker's Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Permitter prior to or upon execution of this Occupancy Permit.
- (b) For Workers' Compensation, Employers Liability Insurance and Disability Benefits, the Permittee shall submit one of the following:
  - 1. C-105.2 Certificate of Worker's Compensation Insurance;
  - 2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
  - 3. Request for WC/DB Exemption (Form CE-200);
  - 4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
  - 5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

- (c) For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits, the Permittee shall submit one or more Certificates of Insurance in a form acceptable to Permittor. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with a specified minimum limits; and b) be accompanied by the provision(s) or endorsement(s) in the Permittee's policy/ies including its general liability policy by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form (Exhibit B) required by Permittor or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time the policy is available, at which time a certified copy of the policy shall be submitted.
- (d) Certificates of Insurance and Certification of Insurance by Broker or Agent confirming renewals of insurance shall be submitted to the Permittor prior to the expiration date of coverage of all policies required under this Occupancy Permit. Such Certificates of Insurance documents shall comply with subsections (b) and (c) directly above.
- (e) Acceptance or approval by the Permittor of a Policy or Certificate of Insurance or any other matter does not waive Permittee's obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Permittee's liability for its failure to do so.
- (f) The Permittee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by Permittor or the New York City Law Department.

#### **Section 1.08 Miscellaneous**

- (a) The Permittee may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- (b) The Permittee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.
- (c) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Permittee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Permit (including notice to Commercial General Liability insurance carriers for events relating to the Permittee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being



given on behalf of the City of New York as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Permittee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York, 10007.

- (d) The Permittee’s failure to secure and maintain insurance in complete conformity with this Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this Permit. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- (e) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Permittee of any liability under this Permit, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Permit or the law.
- (f) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, the Permittee shall at all times fully cooperate with the City with regard to such potential or actual claim.
- (g) Apart from damages or losses covered by Workers’ Compensation Insurance, Employer’s Liability Insurance and Disability Benefits Insurance, or Commercial Automobile Liability Insurance, the Permittee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Permittee and/or its employees, agents, or servants of its contractors or subcontractors.
- (h) In the event the Permittee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Permit and requires such entity to name the Permittee as an Additional Insured under such insurance, the Permittee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability Insurance at least as broad as ISO form CG 2026).
- (i) In the event the Permittee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Permittee shall immediately forward a copy of such notice to both the Licensor and the New York City Comptroller, Attn: Office of Contract

Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Permittee shall ensure that there is no interruption in any of the insurance coverage required under this Article. If Permittee is remiss in timely procuring or renewing its insurance, the Permitter, at its own option reserves the right to terminate this Occupancy Permit.

12. Responsibility for Safety, Injuries or Damage and Indemnification:

**Section 1.01 Permittee Responsibility**

- (a) The Permittee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.
- (b) The Permittee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this Permit.
- (c) The Permittee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this Occupancy Permit, whether or not due to the negligence of the Permittee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.
- (d) The Permittee shall use the Premises in compliance with, and shall not cause or permit the Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Permittee or the Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this Occupancy Permit, Permittee shall not cause or permit, or allow any of the Permittee's personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.
- (e) Permittee's obligations under this Article shall survive the revocation or termination of this Occupancy Permit.

**Section 1.02 Indemnification and Related Obligations**

- (a) To the fullest extent permitted by law, Permittee shall defend, indemnify and hold harmless the City and its officials and employees against any and all claims (even if the allegations of the claim are without merit), judgment for damages, and cost and expenses (including reasonable attorney fees and disbursements) to which the City

or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operation of the Permittee and/or its agents under this Occupancy Permit to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with law or any requirements of this Occupancy Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Permittee, the City and its officials and employees shall be partially indemnified by the Permittee to the fullest extent permitted by law.

- (b) The Permittee's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by the Permittee's obligations to obtain and maintain insurance under this Occupancy Permit, nor (ii) adversely affected by any failure on the part of the City or its officers and employees to avail themselves of the benefits of such insurance.

13. Security Deposit:

Upon execution hereof, Permittee shall deposit with the Comptroller of The City of New York the sum of Nineteen Thousand Nine Hundred Sixty-Six Dollars and Sixty-Eight Cents (\$19,966.68), which sum shall be security for (a) the faithful performance of all obligations imposed upon Permittee hereunder and (b) the payment of all the sums of money (including taxes) which may be due the City because of the conduct of any activities herein authorized or any restoration as herein provided.

In the event that Permittee fully and completely performs all such obligations and timely makes all such payments, Permitter shall cause said sum to be returned to Permittee, without interest, promptly thereafter.

In the event that Permittee shall default in the performance of any such obligation or the making of any such payment, Permitter may apply the sum so deposited to the cost of performing such obligation or making of such payment on Permittee's behalf. Permittee's liability for such default shall in no event be limited to the amount of such security deposit and Permittee shall be and remain liable for any deficiency.

14. Termination of the Occupancy Permit

- (a) Upon the revocation or termination of this Occupancy Permit, Permittee, at its sole cost and expense, shall cause the Premises to be restored to its proper and original condition.
- (b) Permitter, upon reasonable notice to Permittee, may inspect the Premises to confirm that it has been satisfactorily restored to its original condition. If, in Permitter's sole opinion, the Premises have not been satisfactorily restored, Permitter may complete restoration of the Premises and assess Permittee any costs it thereby incurs that exceed the existing balance of the Security Deposit which Permittee

shall pay promptly upon written demand by Permittor.

- (c) The terms of this Article shall survive revocation or termination of this Occupancy Permit.

15. Investigations:

15.1 The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York ("State") or City of New York ("City") governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

15.2(a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

15.2(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then:

15.3(a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

15.3(b) If any nongovernmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 15.5 below without the City incurring any penalty or damages for delay or otherwise.

15.4 The penalties which may attach after a final determination by the commissioner or

agency head may include but shall not exceed:

- (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
- (b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

15.5 The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

- (a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 15.4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 15.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

15.6(a) The term "license" or "permit" as used herein shall be defined as a license, Permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

15.7 In addition to and notwithstanding any other provision of this License, the commissioner or agency head may in his or her sole discretion terminate this License upon not less than three (3) days' written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by the Licensee, or affecting the performance of this License.

16. No Discrimination:

(a) Permittee shall not unlawfully discriminate against any customer because of actual or perceived age, race, creed, religion, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, military status, presence of a service animal or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations.

(b) Permittee shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, race, creed, religion, religious practice, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, pregnancy, childbirth or condition relating to pregnancy or childbirth, political beliefs or affiliations, arrest or conviction record, military status, predisposing genetic characteristics, unemployment status, status as a victim of domestic violence, stalking, and sex offenses, presence of a service animal, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

17. No Conflict of Interest:

Permittee warrants and represents that no officer, agent, employee or representative of The City of New York has received any payment or other consideration for the making of this Occupancy Permit and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Occupancy Permit or the proceeds thereof.

18. Other Agreements:

Other than the Agreement dated February 29, 2016, which parties hereto acknowledge remains in full force and effect, which reconciled certain arrears owed Permitter for Permittee's use of the Premises, thereby restoring Permittee to good standing, it is understood that all other agreements between the parties with respect to this Occupancy Permit shall be superseded by this Occupancy Permit and any obligations between the parties shall be determined solely by this Occupancy Permit until such time as this Occupancy Permit is superseded by another agreement.

19. Notices

Except as otherwise in this Occupancy Permit specifically provided, a notice or communication which either party is required to give to the other shall be in writing by personal delivery or by overnight mail or by registered or certified mail, return receipt requested, addressed to the other at the address set forth below or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to be received as follows: if by personal delivery upon receipt, if by overnight mail the next day following the date of mailing, or if by registered or certified mail the third day following such mailing.

To Permitter:

Deputy Chief Asset Management Officer/Leasing  
New York City Department of Citywide Administrative Services  
Real Estate Services  
1 Centre Street, 20th Floor  
New York, NY 10007

To Permittee:

Emmons Avenue Marina, LLC  
c/o Law Office of Robert A. Spiegelman  
1400 Broadway  
New York, New York 10018  
Attn: Robert Spiegelman

20. Warranty

The undersigned signatory for Permittee personally warrants and represents that he/she has full power and authority to enter into this agreement on behalf of Permittee and to bind Permittee to its terms.

21. Jury Waiver; Waiver of Counterclaim:

To the fullest extent permitted by law, Permittee waives its right to a jury trial in any action or summary proceeding to recover possession of the Premises and also waives its right to counterclaim or set-off therein, which waivers shall survive the revocation or termination of this.

22. Additional Requirements Upon Permittee:

Permittee, at its sole cost and expense, shall keep the Premises free from deposits of refuse, debris, garbage, waste and all other objectionable materials, shall keep the Premises in good and sufficient repair and condition, and shall maintain the Premises in a safe and secure manner.

23. Survival:

In addition to the provisions of this Occupancy Permit that specifically survive revocation or termination of this Occupancy Permit, any provisions of this Occupancy Permit which, by their nature, would survive revocation or termination shall be deemed to do so.

24. Utilities, Maintenance and Service:

Permittee must provide and pay for its utilities, including all sewer charges and for all water, gas, heat and electricity consumed and used in the Premises, and shall procure at Permittee's own cost and expense all meters (including their maintenance and repair), permits, approvals and licenses necessary to effectuate this provision. Permittee, at its own expense, may purchase, install and maintain its own telephone, computer and/or Internet services. However, should any of these services cease to function or should their service providers go out of business for any reason, including due to an Act of God, a natural disaster, an act of war or terrorism, or any other reason customarily set forth in "Force Majeure" provisions, Permitter shall have no responsibility of any kind to Permittee for such loss of services and Permittee shall not be entitled to a reduction in charges as a result of such loss of services.

25. Legality of Use:

Permitter makes no representation as to the legality of use of the Premises for Permittee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction, Permittee covenants and agrees that the City, its agents, officials, and employees, shall not be liable for any damages arising out of or related to such illegal



use and that Permittee shall defend, indemnify and hold harmless the City, its agents, officials, and employees, against any liability or expense therefor.

26. Right to Audit:

Permittee shall make available to the office of the Comptroller of the City of New York and Permitter's auditor, on demand, all books, records, documents and correspondence pertaining to this Occupancy Permit, for the purposes of examination, audit, review or any purpose deemed necessary by the office of the Comptroller of the City of New York and/or Permitter.

27. No Oral Modification:

This Occupancy Permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by Permitter and Permittee.

PERMITTOR: THE CITY OF NEW YORK

PERMITTEE: Emmons Avenue Marina, LLC

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

Deputy Commissioner  
Real Estate Services  
Department of Citywide  
Administrative Services

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form  
and Certified as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

**UNIFORM FORM OF ACKNOWLEDGMENT**

STATE OF )  
 )SS.:  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Notary Public)←~~Strike-out~~→(Commissioner of Deeds)

[illegible]

On this       day of       , 20       , before me, the undersigned, personally appeared       , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

(Notary Public)←~~Strike-out~~→(Commissioner of Deeds)