

**BOROUGH OF KEYPORT  
REQUEST FOR PROPOSALS  
WATERFRONT BOATHOUSE CONCESSION  
FOR THE 2022 SEASON**

Notice is hereby given that PROPOSALS will be received by the Borough of Keyport for the **Waterfront Boathouse Concession for the 2022 Season**. Proposals must be delivered to the Office of the Borough Clerk located at 70 West Front Street, Keyport, New Jersey no later than:

**11:00 AM on Thursday, April 28, 2022**

The concession includes the exclusive use of the boat ramp boathouse for the rental of non-motorized water craft such as kayaks, sail boards, stand up paddle boards, rowboats and canoes. The concessionaire shall be responsible for providing all labor, material, equipment and services necessary to serve patrons in accordance with attached License Agreement.

**TERM OF CONTRACT**

The non-motorized watercraft rental concession season shall be for the term as detailed in the attached License Agreement.

The Waterfront Park may be closed by the Borough for health, safety, or other public reasons during this period. The concessionaire shall not be entitled to an adjustment of fees payable to the Borough due to closure of the park, unless the park shall be closed for more than five (5) consecutive days or for more than twenty (20) total days during the summer season.

**PROPOSAL SUBMISSION**

The PROPOSAL must include the following:

- Bid Proposal Form/Proposal Price Summary
- Schedule A (Qualifications, Equipment, Business References)
- Non-Collusion Affidavit
- Business Registration
- Background Release for each employee
- A listing of rental prices that include maximum prices to be charged. Prices shall be comparable with prices charged for similar items in Keyport and vicinity. Deviation from the submitted price list, either by adding items or deleting, may be done only with the permission of the Borough.

**Failure to submit completed schedules may be cause for rejection of bid. The Borough reserves the right to reject any and all proposals, to waive any informalities or to accept a proposal, which, in its judgment best serves the interest of the Borough.** The Borough reserves the right to reject any proposal which includes prices that are substantially higher than prices charged for comparable items by food vendors and restaurants in Keyport and vicinity.

**BUSINESS REGISTRATION**

Each bidder, as part of the bid package, shall supply a copy of a Business Registration Certificate issued by the New Jersey Treasury Department demonstrating that the bidder has registered as a taxpaying business within New Jersey. Information on how a business can obtain a certificate or to register

online can obtained from the N.J. Department of the Treasury, Division of Revenue, either online at <https://www.nj.gov/treasury/revenue/> or by phone at (609) 292-1730.

### **BACKGROUND CHECK**

Prior to beginning operation, the concessionaire shall submit an authorization for a criminal background on every individual who will be working onsite. At its sole discretion, the Borough, upon reviewing the information obtained in this background check, may prohibit a given individual from working onsite. Additional employees may be added during the course of the season only after successful completion of a criminal background check and approval by the Borough.

### **OTHER REQUIREMENTS**

1. Employees of the concessionaire while on site shall dress in clean clothes, wearing shirts, pants or skirts, and shoes appropriate to the season, no bikini tops, short shorts or sandals.
2. Concessionaire shall secure all equipment and any materials left on site during the time it is unattended.
3. The Borough shall not be responsible for any losses or damage to equipment or materials, whether or not they are secured.
4. The Concessionaire shall be responsible for keeping the boathouse and the immediate vicinity clean and orderly, and shall dispose of all rubbish and waste off-site.
5. When possible, deliveries shall be before start of scheduled day and coordinated with Borough staff.
6. The Concessionaire shall answer to the Borough Administrator during business hours and shall contact the Borough Administrator through Police Dispatch after hours.

### **INSURANCE**

The Concessionaire shall maintain insurance coverages as detailed in the attached Concession Agreement.

### **BASIS OF AWARD**

The concession will be awarded by resolution of the Mayor and Borough Council on the recommendation of the Borough Administrator based on a review of proposals submitted considering the following factors:

- Concession fee payable to the Borough
- Experience and qualifications of prospective concessionaire
- Price of items to be sold

Concessionaire shall have all necessary licenses and shall be operational no later than Saturday, May 28, 2022 or the award shall be considered terminated without further action by the Borough.

**Questions regarding the Request for Proposals may be directed to:**

Jay Delaney, Borough Administrator  
732-739-5123  
[administrator@keyportonline.com](mailto:administrator@keyportonline.com)

## WATERFRONT BOATHOUSE CONCESSION FOR THE 2022 SEASON

### PROPOSAL PRICE SUMMARY

The undersigned hereby declares that they have carefully examined the designated concession site at the Keyport Waterfront Park and submits the following proposal in accordance with the REQUEST FOR PROPOSALS on file in the Borough Clerk's Office, 70 West Front Street, Keyport, New Jersey.

#### **PROPOSAL MINIMUM: \$1,500.00 (One Thousand Five Hundred Dollars)**

The undersigned agrees to the rental of items as may be permitted by the Borough, agrees to sign the License Agreement included in the REQUEST FOR PROPOSALS and agrees to pay the Borough of Keyport the following amount:

Proposed Sum \_\_\_\_\_

Total in Words: \_\_\_\_\_

Variance (if any) from the specifications. If none, write "none":

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

The undersigned is a (Circle one) corporation / partnership / individual under the laws of the State of \_\_\_\_\_ having principal offices at \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Telephone \_\_\_\_\_ Fax # \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

Include with Proposal Schedule A, Disclosure Statement, Non-collusion Affidavit, and copy of New Jersey Business Registration Certificate.

**BOROUGH OF KEYPORT**  
**WATERFRONT BOATHOUSE CONCESSION FOR THE 2022 SEASON**  
**SCHEDULE A**  
**QUALIFICATIONS OF PROSPECTIVE CONCESSIONAIRE**

**EXPERIENCE IN FOOD CONCESSIONS** (Give locations, type of service, dates)

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**EQUIPMENT TO BE USED IN THIS CONTRACT**

<i>ITEM</i>	<i>MFG &amp; MODEL</i>	<i>OWNED/LEASED</i>	<i>DIMENSIONS</i>	<i>UTILITIES. NEEDED?</i>
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**BUSINESS REFERENCES**

<i>NAME</i>	<i>PHONE</i>	<i>ADDRESS</i>
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1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**BOROUGH OF KEYPORT  
WATERFRONT BOATHOUSE CONCESSION FOR THE 2022 SEASON  
DISCLOSURE STATEMENT**

STATEMENT PURSUANT TO P.L. 1977, CHAPTER 33, APPROVED, March 8, 1977.

ACCOMPANYING PROPOSAL DATED \_\_\_\_\_

LISTED BELOW ARE THE NAMES AND ADDRESSES OF ALL STOCKHOLDERS WHO OWN 10% OR MORE OF THE STOCK OF THE CORPORATE BIDDER HEREIN OR IF A PARTNERSHIP, LISTED BELOW ARE THE NAMES AND ADDRESSES OF ALL INDIVIDUAL PARTNERS IN THE PARTNERSHIP BIDDING HEREIN WHO OWN 10% OR GREATER INTEREST THEREIN.

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT</u>
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\_\_\_\_\_  
Name of Corporation or Partnership

By:

\_\_\_\_\_  
Name of President, Secretary or Partner

\_\_\_\_\_  
Signature

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

(MUST BE COMPLETED AND SUBMITTED WITH BID PROPOSAL)

**BOROUGH OF KEYPORT**  
**WATERFRONT BOATHOUSE CONCESSION FOR THE 2022 SEASON**  
**NON-COLLUSION AFFIDAVIT**

STATE OF NEW JERSEY

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ of the Municipality of \_\_\_\_\_  
in the County of \_\_\_\_\_ and the State of New Jersey, being of full age and being duly  
sworn according to law on my oath depose and say that:

I am \_\_\_\_\_

of the firm of \_\_\_\_\_ the bidder  
making the Proposal for the above named project; that I executed the said Proposal with full authority  
so to do; that said bidder has not, directly or-indirectly, entered into any agreement, participated in  
any collusion or otherwise taken any action in restraint of free, competitive bidding in connection with  
the above named project; that all statements contained in said Proposal and in this affidavit are true  
and correct, and made with full knowledge; that the State of New Jersey and Owner relies upon the  
truth of the statements contained in said Proposal and in this affidavit in awarding the contract for the  
said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure  
such contract upon an agreement or understanding for a commission, percentage, brokerage or  
contingent fee, except bona fide employees or bona fide established commercial or selling agencies  
maintained by \_\_\_\_\_ (N.J.S.A. 52:34-15)

Signature: \_\_\_\_\_

Subscribed and sworn to  
before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**BOROUGH OF KEYPORT  
WATERFRONT BOATHOUSE CONCESSION FOR THE 2022 SEASON  
BACKGROUND RELEASE**

***Must be provided for each individual and checked by the Borough to be permitted to work in the concession at the Keyport Waterfront Park***

I hereby authorize Borough of Keyport to conduct a background check on me for the purpose of determining by suitability to work as a food vendor, or an employee of a food vendor, at the Keyport Waterfront Park, and grant permission for the release to the Borough of public and private information, as may be requested by the Borough, including but not limited to:

- Employment history, including dates of employment, job titles and responsibility, rates of pay, attendance record, and reason for termination
- Criminal history, including arrests, convictions, and pending charges
- Driver's license history, including a record of offenses

I hereby release you, your organization, its officers and employees, and all others from liability or damages that may result or be claimed from furnishing the information requested, including any liability or damage pursuant to any state or federal laws, which may at any time result to me, my heirs, my family or associates because of compliance with this authorization.

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Driver's License #: \_\_\_\_\_ State: \_\_\_\_\_

Social Security #: \_\_\_\_\_

THIS INFORMATION WILL BE USED SOLELY FOR THE PURPOSE OF OBTAINING AND VERIFYING  
BACKGROUND INFORMATION AS AUTHORIZED BY THE ACCOMPANYING RELEASE

WATERFRONT  
BOATHOUSE  
LICENSE  
AGREEMENT



## KEYPORT WATERFRONT BOATHOUSE LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (this "Agreement") is entered into as of this \_\_\_\_ day of May 2022, by and between:

**BOROUGH OF KEYPORT**, a municipal corporation of the State of New Jersey, with principal offices located at 70 West Front Street, Keyport, New Jersey 07735 (hereinafter referred to as "**LICENSOR**") and

(hereinafter referred to as "**LICENSEE**")

(collectively referred to as the "**PARTIES**").

**1. License.** The Licensor hereby licenses to the Licensee and the Licensee accepts the terms of this License Agreement (hereinafter referred to as this "**AGREEMENT**") governing the exclusive access and use of a portion of a boat ramp boathouse as described in paragraph 2 of this Agreement (the "**LICENSED PREMISES**") upon the terms and conditions set forth in this Agreement.

**2. Licensed Premises.** The Licensed Premises shall be a space that constitutes a portion of the Licensor's boat ramp boathouse measuring approximately three hundred (300) square feet designated by the Licensor.

**3. Term.** This Agreement shall have a term **commencing May 9, 2022 and ending October 31, 2022 (the "Term")**.

**4. License Fee.** Licensee agrees to pay to the Licensor an amount of \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars) to be paid in five (5) monthly installments of \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars) beginning on or before June 15, 2022 to be paid on or before the 15th of every month following until the total fee has been paid. A late fee of eight percent (8%) shall be assessed on any payment more than ten (10) days past due.

**5. Use of the Licensed Premises.** The Licensee agrees to use the Licensed Premises only for the rental of non-motorized water crafts such as kayaks, sail boards, stand up paddle boards, rowboats and canoes. The following items, services and uses are **specifically and expressly prohibited**: rental, leasing or lessons of any power or motorized water craft such as but not limited to personalized water craft, jet skis, motorized small boats, services including motorized boats towing wakeboards, water skis, tubing and parasailing, vending machines, mechanical or electronic amusement devices, kiddie or children amusement rides, going-out of business merchandise, furniture (except beach chairs and the like), firearms, weapons and ammunition, or personal service establishments.

**6. Condition of the Licensed Premises.** The Licensed Premises is being licensed as an "As Is" condition. The Licensor makes no representations concerning the condition of the Licensed Premises or the suitability of the Licensed Premises for any particular purpose.

**7. Fixtures and Equipment.** The Licensee is responsible for supplying its own fixtures and equipment. Size and design of said fixtures and equipment must be approved by the Licensor prior to installation or use at the Licensed Premises. Fixtures and equipment at the Licensed

Premises at the inception of this Agreement may be used by the Licensee, but must be returned in acceptable condition at the end of the term of this Agreement.

**8. Compliance with Codes.** The Licensee shall be solely responsible for making any and all repairs and for performing any and all work necessary for the Licensed Premises to comply with all applicable building, maintenance, and occupancy codes, and all other applicable municipal ordinances, county ordinances and regulations, and State statutes and regulations, and the terms of this Agreement.

- A. If the Licensee fails to comply with the requirements of the foregoing paragraph, the Licensor or its designated agent or representatives may enter the Licensed Premises after ten (10) days notice, in order to effectuate compliance. Licensee shall reimburse the Licensor for all costs incurred for work performed by the Licensor. The notice requirement in this paragraph shall not apply in an emergency circumstance.
- B. The Licensee shall indemnify, defend and hold the Licensor harmless from fines, claims and losses of every kind arising out of or in connection with spills or discharges of hazardous substances or wastes occurring at or about the Licensed Premises. The Licensee shall not use the Licensed Premises in any manner so as to prevent a "negative declaration" or Letter of Non-Applicability (or the equivalent) pursuant to the Environmental Cleanup Responsibility Act, the Spill Compensation and Control Act, ISRA or any other similar or succeeding legislation or rules and regulation there under, the Licensee shall furnish to the Licensor and the appropriate documents and records as needed to demonstrate compliance with any environmental rule, mandate, regulation, and/or statute and if a cleanup plan must be prepared and a cleanup undertaken, the Licensee shall prepare, submit and implement the same at Licensee's sole cost and expense.
- C. **Garbage and Recycling, Containers and Dumpsters:** The Licensee shall arrange for private collection of all garbage and recycling. The location of all garbage and recycling containers and/or dumpsters shall be approved by the Director of Public Works and thereafter the garbage and recycling containers and/or dumpsters shall be kept only in that location except when being moved for collection. Garbage and recycling containers and/or dumpsters shall be placed at the curb for collection in a location approved by the Director of Public Works and thereafter the garbage and recycling containers and/or dumpsters shall only be placed at that location at the curb for collection. Garbage and recycling containers and/or dumpsters shall not be placed at the curb for collection before 9:00 p.m. on the night prior to collection and shall be removed from the curb no later than 9:00 a.m. on the day of collection. All garbage and recycling containers and/or dumpsters for food service businesses shall be emptied at least two (2) times per week or more frequently as required by the Director of Public Works. Additionally, all garbage and recycling containers and/or dumpsters for food service businesses shall be maintained in accordance with the Monmouth County Health Department regulations and regulations promulgated by the Licensee, as may be amended from time-to-time which are incorporated herein by reference.

**9. Installation of Fixtures and Equipment.** The Licensee shall not install any permanent fixtures or equipment on or in the Licensed Premises without the prior written consent of the Licensor. Any request for such consent shall be accompanied by a description of the fixtures and/or equipment to be installed and a sketch showing the location for each installation. The

Licensor shall not be required to give its consent. If consent is given, all installed fixtures and equipment shall, upon the expiration of the Agreement, become the Licensor's property unless an exception is explicitly set forth in the consent.

**10. Repairs and Maintenance by Licensee.** The Licensee shall keep the Licensed Premises in good repair and properly maintained. The Licensee shall be responsible for repairing all damage to the Licensed Premises occurring during the term of the Agreement. At the expiration of the Agreement, the Licensee shall return possession of the Licensed Premises to the Licensor in the same condition that the Licensed Premises was in at the commencement of the Agreement, normal wear and tear accepted.

**11. Renovations and Maintenance by Licensor.** The Licensee acknowledges that the Licensor may desire or be required to make certain renovations and/or to perform certain maintenance at the Licensed Premises during the term of the Agreement. The Licensee shall, upon notice from the Licensor, permit the Licensor to enter the Licensed Premises and to perform the desired and/or required renovations or maintenance. Nothing in this paragraph shall obligate the Licensor to make any renovations or perform any maintenance.

**12. Alteration of Licensed Premises.** The Licensee shall not physically alter the Licensed Premises without the Licensor's prior written consent.

**13. Required Insurance.** Prior to taking possession of the Licensed Premises, the Licensee shall provide the Licensor with proof that the Licensee has obtained comprehensive general liability insurance coverage naming the BOROUGH OF KEYPORT as an additional insured and having limits of liability of at least \$2,000,000 combined aggregate for bodily injuries and for property damage. In addition, the Licensee shall provide the Licensor with proof that the Licensee has in effect Worker's Compensation coverage for all its employees at the Licensed Premises as required by law and The Licensee shall provide Worker's Compensation coverage for the Licensee's contractors when renovations are being performed. The Licensee shall keep the insurance in full force and effect for the entire term of this Agreement. Each of Licensee's insurance policies shall: (1) contain an express waiver of subrogation by the insurance carrier in favor of Licensor, Licensor's agents, employees, and mortgagees; (2) be issued by a nationally recognized and reputable carrier licensed to do business in the State of New Jersey having a Best Rating of not less than A-14 and which is approved by Licensor; (3) contain a provision that the policy shall not be cancelled, terminated or materially changed without thirty (30) days prior to notice to Licensor from the insurance carrier and (4) the Licensee's policy of insurance shall include the "BOROUGH OF KEYPORT" and its subdivisions as an additional named insured with respect to the Licensee's operations. An original or manually countersigned certificates of insurance evidencing that all required coverages are in effect shall be delivered to Licensor ten (10) days prior to the Commencement of the Term of this Agreement, and renewal or replacement policies or certificates shall be delivered to Licensor at least (20) days before each expiration date.

**14. Flood and Hazard Insurance.** The Licensor will provide flood and hazard insurance. The cost of insurance if any shall be pro-rated between the Licensor and the Licensee on a square foot basis. The Licensee shall be responsible for paying its portion of the hazard and flood insurance premiums within fifteen (15) days of the date the invoice for same is mailed to Licensee. The Licensee shall hold the Licensor harmless for any damage sustained by Licensee resulting from flooding and/or any other cause. The Licensor's flood insurance shall only cover the building and not the Licensee's equipment and/or related improvements.

**15. Hazardous Materials.** The Licensee shall not keep or store any hazardous or explosive materials on the Licensed Premises.

**16. Compliance with Laws.** The Licensee shall use and occupy the Licensed Premises in compliance with all applicable municipal and county ordinances, State laws and regulations, and Federal laws and regulations. Licensee must maintain a valid Keyport Mercantile License, if applicable, always.

**17. Indemnification.** The Licensee agrees to hold the Licenser (and the Licenser's agents, servants, and employees) harmless for any and all claims, actions, and judgments for personal injuries and/or property damage arising out of or in any way connected with the Licensee's use or occupancy of the Licensed Premises, and to defend the Licenser (and the Licenser's agents, servants and employees) against any and all such claims and actions. If during the Term of this Agreement, any lien or claim is filed against the Licensed Premises for work, supplies, services or materials provided to or on behalf of the Licensee, the Licensee shall within thirty days of the date of filing of such liens or claim discharge same or else be found in breach of this Agreement.

- A. Licensee hereby releases Licenser from liability for loss, damage, injury or claim for contribution (including business and other consequential losses) caused to Licensee, its employees, agents, officers, invitees or visitors by steam, electricity, gas, water, rain, ice or snow or any leak or flow from any part of the Licensed Premises or any equipment therein, or from the condition, design or defect in the Licensed Premises and from any acts or omissions of other occupants of the Licensed Premises and from liability for any damage to or loss of Licensee's property from any and all causes whatsoever.
- B. Licensee shall notify Licenser if any event occurs which requires, or which may require indemnification. Licensee shall defend with legal counsel satisfactory to Licenser any claim proceeding, which may be brought against Licenser, its mortgagee or others to whom this Section applies, if any, with respect to the foregoing or in which they may be implicated. Licensee shall pay, satisfy and discharge any judgment, order or decree, which may be recovered against, Licenser, its mortgagee or other to whom this section applies.

**18. Assignment Prohibited.** The Licensee shall not assign any of its rights under this Agreement.

**19. Utilities.** The Licensee shall be responsible for arranging and paying for all utility services to the Licensed Premises during the term of the Agreement, including municipal water and sewer service. The borough will present utility bills to the Licensee in anticipation of timely reimbursement.

**20. Security Deposit.** Upon execution of this Agreement, the Licensee shall deposit with the Licenser the sum of \$1,000.00 to be held by the Licenser as security for the Licensee's obligation to pay all municipal water and sewer charges and other municipal charges accruing during the terms of the Agreement. The security deposit shall not earn interest in favor of the Licensee. The Licenser shall have the right to apply this security deposit to any municipal water and sewer charges and other municipal charges which are past due by 15 days or more. Should the Licenser apply all or part of the security deposit to past due charges, the Licensee shall be notified of the same and shall be required to restore the security deposit to the original amount within fifteen 15 days. If the total of the charges exceeds the amount of the security deposit, the

Licensee shall, within 15 days after the date when the notice is mailed be required to restore the security deposit to the original amount plus the amount that the charges exceeded the security deposit. When the Agreement expires the Licenser will release the security deposit to the Licensee upon the Licensee providing proof that the water and sewer use at the Licensed Premises has ceased and any final bills have been paid in full.

**21. Sign Restrictions.** Licensee shall neither place nor allow to be placed any signs, banners, or posters, permanent or temporary, or merchandise of any kind, on or about the exterior of the Licensed Premises or Unit(s), except not more than two (2) signs which are to be of a size, design, and colors approved in advance in writing by the Borough Council and its Mayor, and such shall be installed at Licensee's cost in a manner and at a location specified by the Borough Council. Such signs shall be erected on the East and West sides of the Licensed Premises. Licensee shall maintain its sign in good order and condition and in conformity with applicable governmental laws and requirements. The Borough Council shall be permitted to remove any sign temporarily to perform repair or remodeling work and shall replace same as soon as practicable. Any interior signage design or placed to be viewed, or which can be viewed from outside the Licensed Premises must be placed at least two (2) feet from any window or opening and must also comply with any BOROUGH OF KEYPORT Ordinances and as provided herein. Licensee shall not place freestanding signs anywhere. The Borough Council shall be permitted, in its sole discretion, to permit in writing, such additional signage, as it may deem appropriate on terms and conditions that are uniform to all Licensees.

**22. Remedies upon Breach.** If the Licensee breaches any of the terms or conditions of this Agreement, the Licenser may re-take possession of the Licensed Premises by any lawful means, and upon re-taking possession, re-let the Licensed Premises. The Licenser may also take any other permitted legal action against the Licensee. If the Licenser is required to institute any court proceeding against the Licensee, the Licensee agrees to pay the Licenser's court costs and reasonable attorney's fees. The security provided under this Agreement may be used by the Licenser to remedy any breach by the Licensee of this Agreement.

**23. Quiet Use/Enjoyment.** Licenser covenants that upon Licensee payment of the Licensing Fee, other monies required of Licensee to be paid hereinabove and performing all of Licensee's other obligations under this Agreement, Licensee shall peacefully and quietly have, hold and enjoy the Licensed Premises throughout the term of this Agreement without interference by the Licenser or anyone claiming through or under Licenser, subject, nevertheless, to the other provisions of this Agreement.

**24. Force Majeure.** The Licenser shall not be in default or liable for failure to perform any of the covenants of this Agreement if same is caused by: Act of God; strike or other labor dispute; governmental regulation, prohibitions, moratoria or controls; inability to obtain materials, labor, service or financing or due to any other cause beyond the control of the Licenser.

**25. Counsel Fees.** Licensee agrees to pay Licenser reasonable attorney's fees and all costs and expenses incurred to recover possession of the Licensed Premises and to enforce any provision of this Agreement and/or recover damage in connection therewith.

**26. Events of Default.** Each of the following shall constitute a "Default" by Licensee under this Agreement:

- A. If Licensee fails to pay the License Fee and/or other monies due hereunder or Security Deposit when due, or fails to deliver, as and when required by the Agreement, any

instrument of subordination, estoppel certificate, insurance certificate, certificate of occupancy as requested by the Licensor.

- B. If Licensee (1) fails to commence and complete Licensee's Work promptly after delivery of possession, or (2) fails to open for business, or (3) vacates or abandons the Licensed Premises, or fails to operate its business in the entire Licensed Premises for the Permitted Use; Licensee's Work shall mean any obligation placed upon Licensee to be performed under this Agreement or as otherwise agreed upon between Licensor and Licensee or as requested by Licensor;
- C. If Licensee transfers, assigns, mortgages or encumbers Licensee's interest in this Agreement, or attempts to sublet or grant a right to a third party to use or occupy all or a portion of the Licensed Premises except as expressly permitted herein;
- D. If Licensee fails to inform or observe any obligation in this Agreement required of Licensee other than the payment of the License Fee, and such failure continues for twenty (20) days after notice; however, the twenty (20) day period shall be extended if such Default cannot be cured within twenty (20) days, provided Licensee has commenced and diligently continues to cure same;
- E. If Licensee makes an assignment for the benefit of creditors, files a petition in bankruptcy, or applies for the appointment of a trustee or receiver;
- F. If a bankruptcy petition is filed against Licensee and is not dismissed or vacated within thirty (30) days;
- G. If a receiver or trustee or other fiduciary is appointed for Licensee for all or any portion of the assets of either of them, and such receivership or trusteeship is not vacated or dismissed within thirty (30) days; or
- H. If a levy under judgment against Licensee on assets at the Licensed Premises is not satisfied or bonded within thirty (30) days.

**27. Licensor's Remedies.** In the event of a Default, Licensor shall have the right to terminate this Agreement by giving Licensee ten (10) days' notice and at the expiration of such ten (10) day period, Licensee shall immediately surrender possession of the Licensed Premises, failing which Licensor may recover possession of the Licensed Premises, failing which Licensor may recover possession pursuant to the laws of the State of New Jersey. Prior to giving Licensee notice of termination as herein provided, Licensor shall notify Licensee of a Default and Licensee shall have 30 days to cure nonmonetary defaults and ten (10) days to cure monetary defaults provided the Licensee is only permitted to cure one (1) monetary default; any subsequent monetary default may at the Licensor's sole discretion be deemed non-curable and the Licensor may exercise any rights and remedies herein or as available by law.

- A. If this Agreement is terminated for Default, or if Licensee vacates the Licensed Premises prior to the expiration of this Agreement, Licensor shall have the right but not the obligation to re-license the Licensed Premises and, if all License Fees reserved under the Agreement (together with costs, legal fees, expenses and damages from Licensee's Default) is not recovered by Licensor, Licensee shall be liable for Licensor's damages, including without limitation, expenses, including without limitation, expenses to return

the Licensed Premises in proper condition, including alterations, repairs, and replacements necessary in Licensor's sole discretion.

- B. Licensor may recover damages for breach of this Agreement: (1) at the time of re-licensing, or (2) in separate actions when damages are ascertained by successive re-licensing, or (3) in a single proceeding at the expiration of the term of this Agreement. In all events Licensee hereby agrees that the cause of action shall be deemed to have not accrued until the expiration of the term of this Agreement.
- C. In the event of a breach or anticipatory breach by Licensee of any of its obligations under this Agreement, Licensor shall be permitted all equitable remedies in addition to those provided herein as if such other remedies were specifically provided for herein.
- D. The rights and remedies of Licensor set forth herein shall be in addition to any other right and remedy in law or in equity now or hereinafter available, and all such rights and remedies shall be cumulative. Any action or failure to act by Licensor shall not constitute a waiver of Default and any waiver of Default shall be effective only if in writing and signed by the Licensor. Any failure of Licensor to insist upon the strict performance of any Licensee's obligations under this Agreement or to exercise any right or remedy available upon a breach thereof by Licensee hereunder during the continuances of any such breach shall not constitute a waiver thereof.

**28. Waiver of Jury Trial.** Licensor and Licensee hereby waive trial by jury in any action, proceeding or counterclaim on any matters whatsoever arising out of or in any way connected with this Agreement, except with respect to any claim covered by insurance.\

**29. Waiver of Redemption.** If Licensor recovers possession of the Licensed Premises by reason of Licensee's Default, Licensee waives its rights of redemption granted under any present or future laws and Licensee further waives Notice of Default, Notice to Quit and Notice of Licensor's Intention to Re-enter except as otherwise provided in Paragraph A of Section 28.

**30. Vacation and Return of Licensed Premises.** On the expiration or earlier termination of the term of this Agreement, Licensee shall quit and surrender the Licensed Premises broom clean, in good order and condition. Notwithstanding provisions in this Agreement to the contrary, the Licensor shall have the right to require Licensee to remove any and all alterations and improvements installed by the Licensee and repair any damage caused by such installation or removal. All property not removed by Licensee shall be deemed abandoned and Licensor shall have the right to sell (without necessity of public auction), keep for itself, or dispose of same without accountability to Licensee and charge the cost of sale, removal and disposal to Licensee, together with the cost to repair and restore as aforesaid. This obligation shall survive the expiration of the term of this Agreement and surrender of the Licensed Premises, and acceptance thereof by Licensor.

**31. Notices.** All notices under this Agreement shall be in writing and shall have been properly served only if sent by Certified or Registered Mail, Return Receipt Request, postage prepaid, to the Licensee at the Licensed Premises or at such other address furnished by Licensee and to the Licensor at the address first listed above. Date of service shall be the date the notice is deposited in a facility under the exclusive control of the United States Postal Service. Either party may designate a change of address by serving notice as provided herein.

**32. Titles and Section Numbers.** The titles, article numbers, section numbers and table of contents appearing in this Agreement are inserted for convenience and shall not define or limit the scope or intent of same or any way affect this Agreement.

**33. Licensee Defined, Execution of Agreement by Licensee, Licensors Defined, use of Pronoun.**

- A. The word "Licensee" shall mean every person or party named as a Licensee herein, and if there shall be more than one Licensee, any notice required under this Agreement may be given by or to any one of them.
- B. If the Licensee is a corporation or limited liability corporation, Licensee must provide within thirty (30) days of the award of this Agreement a Certificate of Good Standing from the New Jersey Secretary of State. In the event the corporation has been in existence for less than one-year proof of filing of the corporation's Certificate of Incorporation will be accepted. For each subsequent year of the Agreement the Licensee must provide the Licensors with a copy of the fully executed annual Report Filing Form and a copy of payment of the fee. The person signing the Agreement for a corporate or limited liability corporation Licensee must also sign in his corporate capacity and personal capacity and personally guarantee the Agreement. If the Licensee is a corporation or limited liability corporation, prior to executing this Agreement, the Licensee must provide a Resolution to the Licensors authorizing the person signing the Agreement on behalf of the Corporation the power and authority to do so.
- C. If the Licensee is a partnership, limited partnership or limited liability partnership, Licensee must provide within thirty (30) days of the award of this Agreement a Certificate of Good Standing from the State of New Jersey. In the event the limited partnership has been in existence for less than one-year proof of filing of the partnership's Certificate of Limited Partnership will be accepted. For each subsequent year of the Agreement the Licensee must provide the Licensors with a copy of the fully executed annual Report Filing Form and a copy of payment of the fee.  
  
If the Licensee is a partnership or limited partnership, Licensee must provide a current copy of all members, including home and business addresses, of the partnership or limited partnership within ten (10) days of the award of this Agreement. All partners regardless of involvement in the business venture, including limited partners, must sign the Agreement in their personal capacity and personally guarantee the Agreement.
- D. When the term "Licensors" is used herein, it shall mean and include only the BOROUGH OF KEYPORT.
- E. The use of the neuter singular pronoun to refer to Licensors or Licensee may be in an individual, a corporation, or group of individuals or corporations. Whenever used in this Agreement the singular includes the plural and the plural includes the singular.

**34. Partial Invalidity.** If any provision of this Agreement shall be invalid, unenforceable or inapplicable with respect to any party, the remainder of this Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and be endorsed to the fullest extent permitted by Law.



**35. Survival of Obligations.** Licensee's obligation to comply with any environmental laws, rules and regulations and to reimburse Licensor for costs to perform any obligations that Licensee has failed to perform shall survive the expiration or earlier termination of this Agreement.

**36. Violation of Local Ordinances.** Nothing contained in this Agreement shall be deemed to limit or restrict the Licensor's ability to impose fines upon the Licensee for violations of municipal ordinances in addition such rights it must enforce the terms of this Agreement.

**37. Relationship of Parties.** Nothing herein contained shall be deemed or construed by the Parties hereto, nor by any third party, as constituting the Licensor as a partner of Licensee in the conduct of Licensee's business or as creating the relationship of principal and agent or joint ventures between the Parties hereon, it being the intention of the Parties hereto that the relationship between them is and shall at all times be and remain that of Licensor and Licensee only.

**38. Performance Guarantee.** The Licensee shall be required to post a performance guarantee to guarantee the performance of all the Licensee's obligations under this Agreement. Upon execution of this Agreement, the performance guarantee shall be deposited with the Licensor, in cash, in the amount of \$1,000. The security deposit shall not earn interest in favor of the Licensee. The security deposit will be held as security for performance of Licensee's obligations under this Agreement, including without limitation, surrender of possession of the premises to Licensor as provided herein. If Licensor applies any or part of the security deposit to cure default by Licensee, Licensee must on demand restore the security deposit to its original amount.

When the Agreement expires, the Licensor shall inspect the Licensed Premises, and within 45 days after the expiration of the Agreement, the Licensor shall mail to the Licensee a written notice specifying all damage to the Licensed Premises and the cost of repairing or correcting the damage, all unpaid water and sewer charges, and all other charges incurred because of the Licensee's failure (if any) to perform the Licensee's obligations under this Agreement. If the total of the charges exceeds the amount of the security deposit, the Licensee shall, within 15 days after the date when the notice is mailed, pay the amount of the excess to the Licensor. If the total of the charge is less than the amount of the security deposit, the Licensor shall include with the notice a check, payable to the Licensee, for the difference.

**39. Keys.** Where indicated, the Licensee hereby acknowledges receipt of the keys from the Licensor for the Licensed Premises. The Licensee agrees that should the existing locks be re-keyed or replaced or should additional locks be installed that the Keyport Borough Administrator will be provided with one (1) copy of each current key to the Licensed Premises within twenty-four (24) hours of any change. The Licensee also agrees to deliver all keys to the demised premises to the Borough Administrator within five (5) business days of the termination of the license. The Licensor agrees that any keys(s) it possess will only be used in the case of an emergency at the Licensed Premises affecting the health, safety and welfare of the public, the Licensees or occupants of the Licensed Premises. The Licensor also reserves the right to use said key(s) in accordance with the provisions of this Agreement for the Licensed Premises, as directed or agreed upon by the Licensee, as otherwise available by law or upon reasonable notice to the Licensee.

**40. Governing Law, Forum Selection.** The parties agree that this Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the

jurisdiction of the of New Jersey, Monmouth County, in any such suit, action or proceeding and to the laying of venue in such Court. Each party hereto irrevocably waives any objection to the laying of venue of any such action or proceeding brought in said Court and irrevocably waives any claim that any such suit, action or proceeding brought in said Court has been brought in any inconvenient forum.

**41. EMERGENCY.** The Licensee agrees that in the event of a state of emergency declared by the Governor of the State or other appropriate official including the Keyport Director of Emergency Management that they will cooperate with securing and/or moving the License Premises and taking the steps necessary to avoid risks to the Licensed Premises, and other property and life. No claim for damages shall be asserted by the Licensee for loss of use of the Licensed Premises in the event of a declared emergency.

**42. Entire Agreement.** This Agreement constitutes that entire agreement of the parties. This Agreement may not be altered, amended, or changed in any way except by a separate writing signed by the Licensor and the Licensee.

[THIS SPACE INTENTIONALLY LEFT BLANK]

ATTEST:  
(LICENSOR)

**BOROUGH OF KEYPORT**

\_\_\_\_\_  
Michele Clark  
Borough Clerk

\_\_\_\_\_  
Collette J. Kennedy,  
Mayor

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

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

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

ATTEST:

\_\_\_\_\_  
(Witness)

STATE OF NEW JERSEY  
COUNTY OF \_\_\_\_\_

I certify that on \_\_\_\_\_, \_\_\_\_\_ personally came before me and this person acknowledged under oath, to my satisfaction that (a) this person is \_\_\_\_\_; (b) this person is the attesting witness to the signing of this document by the proper person(s); (c) this document was signed and delivered by \_\_\_\_\_, as his voluntary act duly; (d) this person signed this proof to attest to the truth of these facts.

\_\_\_\_\_  
NOTARY PUBLIC