

**Memorandum  
Public Works Department**



**To:** City Manager  
**Subject:** Coast Guard Auxiliary Lease Change and Renewal at Sunset Marina  
**Date:** September 14, 2020  
**Number:** 2020-147

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The Coast Guard Auxiliary leases space at Sunset Marina. The Coast Guard Auxiliary Flotilla 93 is a group of local Flotillas that make up Flotilla 9-11, which is led by Michael Brooks, United States Coast Guard Auxiliary, Flotilla 9-11, Black Hawk Park, Eighth Western Rivers District.

The current lease states this insurance requirement:

*TENANT shall, during the entire term of this Lease Agreement, keep in full force and effect a commercial general liability policy of insurance with a minimum amount of coverage of 1,000,000.00 per occurrence. The policy shall name LANDLORD and F3 MARINA as an additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the LANDLORD and F3 MARINA thirty (30) days prior written notice. The insurance shall be with an insurance company approved to do business in the State of Illinois and a current copy of the policy or certificate of insurance shall be delivered to the LANDLORD and F3 MARINA.*

*TENANT will and does indemnify LANDLORD and F3 MARINA and save it harmless.*

The attached letter was presented to the City Attorney and later to the Public Works Director. An email from the Human Resources Risk Manager provided insight that the City's representative at USI Insurance Services advised that the requirements could be waived, from an insurance perspective, with City Council approval.

**Recommendation**

It is recommended that the City Council approve waiving the current insurance requirement. Upon approval, the City Attorney will prepare the waiver based on the Federal Torts Claims Act, 28 USC Sec 2671-2680, stating that through this act the Coast Guard Auxiliary is exempt from providing private insurance coverage.

**Submitted by:** Michael T. Bartels, Public Works Director  
Denise Browning, F3 Marina, Sunset Marina General Manager

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**Approved by:** Randall D. Tweet, City Manager

U.S. Department of  
Homeland Security

**United States  
Coast Guard  
Auxiliary**



**U.S. COAST GUARD AUXILIARY**  
District 8 Western Rivers  
**DISTRICT LEGAL OFFICE**

**Nick Critelli, DSO-LP**  
317 Sixth Avenue  
Suite 950  
Des Moines, IA 50309  
Nick.Critelli@uscg-aux.ia.us

May 8, 2020

Atty. Dave Morrison  
1515 4<sup>th</sup> Ave. Suite 301  
Rock Island, IL 612012

VIA EM ONLY: dmorrison@mmcwlaw.com

RE: U.S. Coast Guard Auxiliary LEASE

Dear Dave,

Further to our telephone call, this will confirm that the U.S. Coast Guard Auxiliary is an agency established by Congress in 14 USC Sec 823 as a nonmilitary organization administered by the Commandant of the United States Coast Guard under the direction of the Secretary of the Department of Homeland Security. The U.S. Coast Guard Auxiliary, in the manner and to the extent provided by the Federal Tort Claims Act, 28 USC Sec 2671-2680 may be liable for damage or loss of property, personal injury or death caused by the acts or omissions of the U.S. Coast Guard Auxiliary in using the licensed premises. We cannot provide private insurance coverage.

Please call if you have any questions. My direct cell number is 515-669-1166

Very truly yours,

A handwritten signature in blue ink that reads "Nick Critelli".

DSO-LP NICK CRITELLI, USCGAUX  
District Legal Office  
Eighth Western Rivers Region

CC: FC Michel Brooks, USCGAUX  
DCO COMO Tracy E. DeLaughter, USCGAUX

## LEASE AGREEMENT

THIS AGREEMENT made and entered into this 1<sup>st</sup> day of April, A.D 2020, by and between the CITY OF ROCK ISLAND, Illinois, a Municipal Corporation, LANDLORD, and the U.S. COAST GUARD AUXILIARY, TENANT.

### WITNESSETH:

That the said LANDLORD does hereby LEASE to the said tenant, the following described property, located at Sunset Marina, situated in the City of Rock Island and the State of Illinois, to be used as CLASSROOM, MEETING ROOM, AND OFFICE.

VIZ. Area to be leased is the east 20' feet more or less in the structure known as the "Showroom Building" and containing approximately 980 square feet as shown on the attached floor plan marked "Exhibit A" and made a part hereof by reference.

The term begins on the 1<sup>st</sup> day of April, 2020 on a month to month basis ending no later than the 31<sup>st</sup> day of March 2020. This agreement may be terminated at any time by either party upon 30 day written notice.

TENANT agrees to pay as rent for said premises, the sum of ONE DOLLAR (\$1.00) per year by April 1<sup>st</sup>, 2020.

TENANT shall be allowed to erect and maintain a Coast Guard Radio antenna on the exterior wall on the south side of the leased premises. Tenant agrees to remove said antenna upon termination of this agreement.

TENANT shall pay the total gas and electric charges on the premises during the term of the lease.

TENANT acknowledges that the subject property is subject to flooding and agrees that the LANDLORD and F3 MARINA shall not be liable for, nor required to repair, any damage to the leased premises or TENANT'S equipment and personal property [due to flooding or](#) for not providing flood protection.

TENANT agrees not to make any improvements, alterations, or additions to the leased premises without prior written approval of the LANDLORD and TENANT shall obtain all necessary permits prior to making said improvements, alterations, or additions.

TENANT shall be responsible for providing and maintaining fire extinguisher in the leased area, and shall pay for any and all service charges necessary.

TENANT shall be responsible for maintaining the interior of the leased area. The LANDLORD shall be responsible for maintaining the exterior of the leased premises, the wiring, and plumbing systems.

TENANT shall, during the entire term of this Lease Agreement, keep in full force and effect a commercial general liability policy of insurance with a minimum amount of coverage of 1,000,000.00 per occurrence. The policy shall name LANDLORD and F3 MARINA as an additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the LANDLORD and F3 MARINA thirty (30) days prior written notice. The insurance shall be with an insurance company approved to do business in the State of Illinois and a current copy of the policy or certificate of insurance shall be delivered to the LANDLORD and F3 MARINA.

TENANT will and does indemnify LANDLORD and F3 MARINA and save it harmless

from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in,

upon or at the Demised Premises or the occupancy or use by TENANT of the Demised Premises or any part thereof which claims damage and liability are occasioned wholly or in part by any act or omission of TENANT, its agent, employees, contractors, sublessee, concessionaires or licensees. This indemnity shall apply in connection with claims, causes of action or judgments arising out of the premises owned by LANDLORD and managed by F3 MARINA upon which the Demised Premises are located, in the event of the carelessness and neglect of TENANT, its agents, employees, contractors, sublessee, concessionaires or licensees. It is further expressly agreed and understood that acts of TENANT'S agents, guests, invitees and patrons, whether authorized by TENANT or not, shall be considered to be the express act of TENANT and the TENANT shall, for the purposes of this Lease, be deemed responsible and chargeable for any and all acts or omissions of whatever kind or nature which are performed, permitted, allowed, or tolerated by TENANT and his/her agents, guests, invitees and patrons.

LANDLORD and F3 MARINA shall not be liable for any damage occasioned by failure to keep said premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam or other pipes, electric wires or sewage, or the bursting, leaking or running of any cistern, tank, wash-stand, water-closet or wastepipe; in, above, upon or about said building or premises, nor for damage occasioned by water, snow, or ice being upon or coming through the roof, sky light, trap door, entrance, yard, plaster or appliances; nor for any damage resulting from fire, explosion, failing or otherwise, nor for any damage arising from acts or neglect of co-tenants or other occupants of the same building, or any owners or occupants of adjacent or contiguous property, except to the extent that any such loss or damage is caused by

LANDLORD'S and F3 MARINA “wanton and willful conduct”.

TENANT agrees at all times, at its expense, to keep its merchandise, fixtures and any and all other property situated within the Demised Premises, including but limited to property owned by third parties, insured against fire, with extended coverage, in a reasonable and adequate amount to protect LANDLORD'S and F3 MARINA'S interests therein, whatever they may be. TENANT shall also carry fire and extended coverage insurance on the value of any improvements and alterations made to the Demised Premises by TENANT. Such insurance shall be carried with companies authorized to do business in the state.

TENANT shall obtain a written obligation of each insurance company to notify LANDLORD and F3 MARINA at least thirty (30) days prior to cancellation of such insurance. Such policies or duly executed certificates of insurance shall be delivered to LANDLORD and F3 MARINA prior to the commencement of TENANT'S occupancy hereunder, and renewals thereof as required shall be delivered at least (30) days prior to the expiration of the respective policy terms. The proceeds to TENANT of such insurance shall be applied for the repair or replacement of TENANT'S merchandise, fixtures and other property situated within the Demised Premises and to the repair and replacement of the improvements and alterations made by TENANT to the Demised Premises. If during the term of this lease the Demised Premises shall be destroyed by fire, the elements or any other cause, this Lease shall cease and become null and void from the date of such damage or destruction, and TENANT shall immediately surrender premises to LANDLORD and F3 MARINA. LANDLORD and F3 MARINA shall not be liable for any cost incurred by the TENANT due to displacement due to any of the aforementioned events which are out of the reasonable control of the LANDLORD and F3

MARINA.

The said TENANT shall permit the LANDLORD and F3 MARINA to have free access to the premises hereby leased for the purpose of examining or exhibiting same, or to make any needful repair or alteration of such premises, which said LANDLORD and F3 MARINA may see fit to make; also to allow to have placed upon said premises, at all times, notices of "FOR SALE" or "TO RENT ", and will not interfere with the same.

IT IS FURTHER AGREED by the said TENANT that neither TENANT nor TENANT'S legal representatives will sublet said premises or any part thereof, or assign this Lease, without the written consent of the LANDLORD and F3 MARINA had thereto, and that neither TENANT nor TENANT'S legal representatives will use said premises for any purpose calculated to injure or deface the same, or to injure the reputation or credit of the premises or of the neighborhood.

IT IS FURTHER AGREED that the TENANT shall keep said premises in a clean and healthy condition, in accordance with the Ordinances of the City Of Rock Island and all the rules, regulations, ordinances, laws or statutes of any governmental body.

AND, IT IS FURTHER EXPRESSLY AGREED between the parties, that if default shall be made in the payment of the rent above reserved, or any part thereof, or in any of the covenants or agreements herein contained to be kept by the TENANT or TENANT'S heirs, executors, administrators or assigns, it shall be lawful for LANDLORD and F3 MARINA or LANDLORD'S and F3 MARINA'S legal representatives to re-enter into and upon said premises, or any part thereof, either with or without process of law, and repossess the same and to distrain for any rent that may be due thereon, at election of said LANDLORD and F3 MARINA, and in order to enforce to forfeiture for nonpayment of rent, it shall not be necessary to make a demand on the same day the rent shall become due, but a demand and refusal or failure to pay at any time on the

same day or at any time on any subsequent day, shall be sufficient; and after such default shall be made, the TENANT, and all persons in possession under TENANT shall be deemed guilty of forcible detainer of said premises under the Statute.

TENANT shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by the LANDLORD and F3 MARINA in enforcing the covenants and agreement of this Lease provided that LANDLORD and F3 MARINA prevails in any litigation commenced by it to enforce the same.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

A Municipal Corporation, LANDLORD Attest: \_\_\_\_\_  
CITY OF ROCK ISLAND, ILLINOIS  
By: \_\_\_\_\_  
City Manager

Commander  
U.S. COAST GUARD AUXILARY  
Flotilla 9-11, 8<sup>th</sup> Western River, Station

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

U.S. COAST GUARD AUXILARY  
Flotilla 9-11, 8<sup>th</sup> Western River, Station  
By: \_\_\_\_\_