



# REQUEST FOR PROPOSALS

## SALE OF REAL PROPERTY

### Utica Historic Marina

16 Harbor Lock Road  
Utica, New York 13502

Issue Date: July 30, 2018



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## INTRODUCTION

The City of Utica, New York, in partnership with the Utica Industrial Development Agency, hereby requests proposals from qualified parties for the sale of real property commonly referred to as the 'Utica Historic Marina'. Located on the east side of North Genesee Street, between the Mohawk River and the Erie Canal, the building was constructed in 2001 with the intent that it be operated as a seasonal, City-managed facility welcoming Canal boaters with the facilities and services typical of marinas (boat docks, tie-offs, showers, gas, pump-outs, electrical hook-ups, etc.). At the same time, the facility was meant to showcase the City of Utica and encourage boaters to visit the many land-based tourist attractions, along with the various shops and restaurants, available in the Greater Utica area.

In the fifteen years since its opening, however, the City of Utica has acknowledged that the original intent to operate the building as a marina remains unfulfilled and that the use of the facility has now morphed into a year-round restaurant and banquet space. As the City has no interest in competing with the private sector, proposals consistent with this Request For Proposals (RFP) are now being entertained for the possible sale of the 'Utica Historic Marina'.

Given the involvement of the Utica Industrial Development Agency, the sale of this property will be carried out in compliance with Section 2897 – Disposal of Public Authority Property of Article 9, Title 5-A of the NY Public Authorities Law and with the Utica Industrial Development Agency's Property Disposition Policy. Additionally, the disposition process shall be conducted under the supervision and direction of the Contracting Officer of the Utica Industrial Development Agency.

## PROPERTY DETAILS

Situated on the south bank of the Erie Canal, the 'Utica Historic Marina' boasts a strategic location along this important waterway between Sylvan Beach and Oneida Lake to the west and Albany and its confluence with the Hudson River to the east (see Figure 1 below for site map).

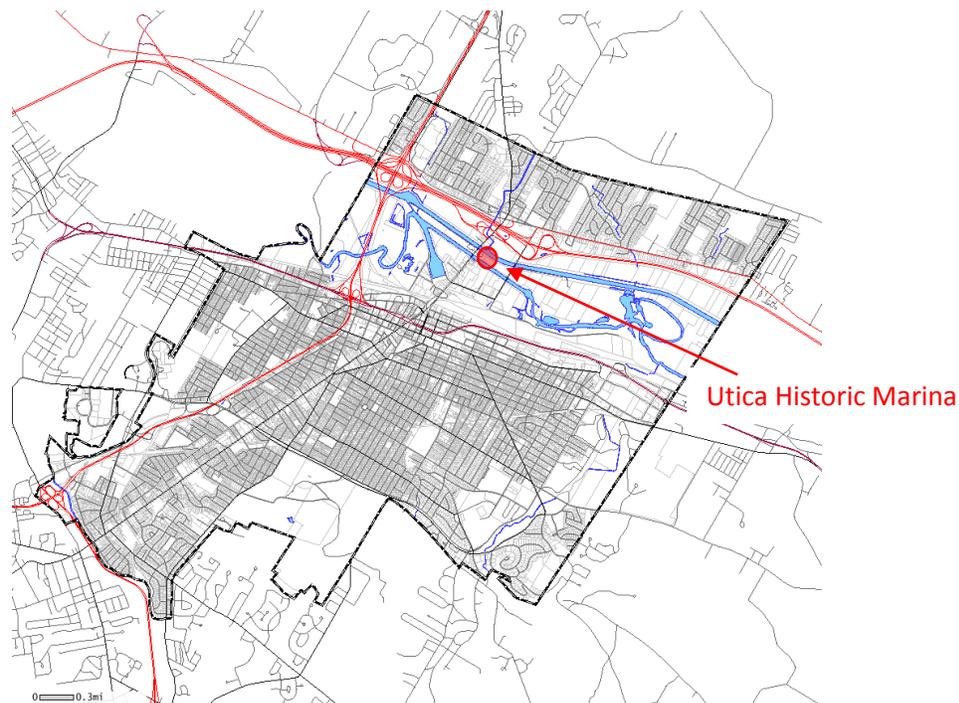


FIGURE 1 – City of Utica map

The entire marina facility that is the subject of this RFP includes the following:

- the 8,000 square-foot, two-story marina building that is currently home to Aqua Vino restaurant;
- the docking, bulkhead wall, concrete promenade and covered patio along the Erie Canal;
- an improved surface parking lot with thirty-one parking spaces;
- a portion of the grassy field/gravel lot within Harbor Lock Road.

A detailed survey of the entire facility is included in Exhibit A.

The marina building was constructed by Charles A. Gaetano Construction Corporation. Built on a mat foundation with large retaining walls, the building utilizes structural steel for the frame with brick masonry on all four exterior walls. The roofing system is comprised of wood trusses and asphalt shingles. The building is serviced with a single passenger elevator.

The upper level of the building (its second story) is at the same grade as the parking lot. Virtually the entire upper level is dedicated to an open, single room that is currently utilized for meeting and banquet space, save for men's and women's bathrooms at the western end of the space. Access to the passenger elevator requires entry into the banquet space, though current and previous lessees of the building have used room dividers to separate the banquet attendees from the general public using the elevator to access the first floor of the building. A floor plan for the building is included in Exhibit B and photographs of the building, both interior and exterior, are included in Exhibit C.

The facility's lower level (its first story) is currently occupied by Aqua Vino, a restaurant that leases the building from the City; a copy of the lease agreement between the City of Utica and the owners of Aqua Vino is included in Exhibit D. As evidenced by the building floor plans and the photographs in Exhibits B and C respectively, the lower level is comprised of a small bar, a dining room and the standard back-of-the-house spaces for freezers, refrigerators, storage, kitchen and food preparation.

Additionally, it should be noted that a Zagster station currently occupies space at the entrance to the upper level of the Marina, given the proximity of the Marina to the statewide Canal trail. The City has an annual contract with Zagster for this particular location that expires every year in July. One of the conditions of the sale of the Marina will be that the Zagster station is allowed to stay until July 2019.

It is important to note for the purposes of this RFP that the marina was constructed by the City of Utica on land leased to the City from the State of New York/Canal Corporation. In 2017, the City began working with the Canal Corporation to acquire the land in order to create the valuable, salable property which is the subject of this RFP; that transfer was finalized recently at a cost of \$50,000 to the Utica Industrial Development Agency which is to be reimbursed to the Agency from the proceeds of the sale.

## SUBMISSION REQUIREMENTS

All proposals shall fully and completely address each of the items listed and described below. Please submit an appropriate level of detail for each item to allow for adequate review and evaluation of your proposal.

- Cover Letter
- Bid Amount
- Identification of Bidder, including disclosure of all partners
- Bidder Qualifications
- Proposed Vision
- Financial Capability

## Cover Letter

The proposal must include a cover letter signed by a principal or officer authorized to represent the attached proposal on behalf of the bidder.

## Bid Amount

The proposal must include a bid amount for the property; said bid amount shall be an all-cash purchase price offer. For the purposes of this sale, the City of Utica, in partnership with the Utica Industrial Development Agency, has established an undisclosed reserve. Failure of any and all bids to meet or exceed the reserve shall result in immediate rejection of the bids in question.

Additionally, a refundable deposit of ten thousand dollars (\$10,000) in the form of a cashier's check shall be attached to each proposal, made out to the Utica Industrial Development Agency. Only the successful Bidder's check will be deposited; all others shall be returned. The deposit of the successful bidder shall be credited to the purchase price at closing. Should a sale of the property to the successful bidder fail to be consummated, the costs incurred by the City of Utica and the Utica Industrial Development Agency following approval of the sale by both entities will be reimbursed from the deposit; all remaining funds will be refunded.

In order to better inform potential respondents regarding the manner by which the City, in partnership with the Utica Industrial Development Agency, arrived at its undisclosed reserve, a copy of the latest appraisal for the property in question is attached in Exhibit E.

## Identification of Bidder

Each proposal shall include a complete disclosure of the Bidder's entity (i.e., corporation, partnership, joint venture, etc.) and identification of all parties, individuals or entities, having a beneficial interest in the proposal. Additionally, the proposal shall identify any relationship that the Bidder may have with a parent corporation, subsidiaries, joint ventures or other entities. If a joint venture is proposed as the Bidder, the proposal shall detail the percentage of ownership of each entity shall be specified and all relationships relative to this particular proposal (financial, liability, decision-making and otherwise) shall be fully described.

## Bidder Qualifications

The ability of the Bidder to own, operate and manage a facility of this size is of particular interest to the City of Utica and the Utica Industrial Development Agency, particularly given its potential to grow the facility and offer considerably more services to boaters on the Canal than the City was historically able to offer. Experience in development and management of marina-style facilities will be viewed positively.

To that end, each proposal shall include a comprehensive list of all relevant development projects in which the Bidder and proposed associates have participated. The proposal shall also describe the relationship of the Bidder or the proposed associate to the listed projects (i.e., developer, owner, operator, manager, etc.) and indicate the location, size and scale of each listed project.

## Proposed Vision

In the right hands, the Utica Historic Marina holds tremendous potential to offer so much more to boaters along the Canal as well as to local and regional residents. For boaters, the Marina will be the first impression that many of them have of the City of Utica. For that reason alone, the evaluation of all proposals received in response to this RFP will be weighted heavily on the Bidder's short- and long-range vision for the facility and the investments that are proposed in order to bring that vision to fruition.

Each proposal shall describe, in detail, the Bidder's vision for the future utilization of the property. Additionally, each proposal shall list the improvements planned for the facility, an estimated total cost for such improvements and a schedule for when said improvements could be expected to be completed.

### Financial Capability

For each of the principal parties comprising the proposed Bidder team, each proposal shall include the following:

- A certified financial statement for each of the principal parties of the Bidder, current within six months or, upon request, an audited statement current within twelve months;
- A list of names and addresses of bank(s) and/or other financial institution(s) references;
- A statement indicating how the Bidder proposes to finance the purchase and future development of the property, describing the proposed source and amount of equity investment and the proposed source of financing, including probable terms and conditions of the financing.
- A statement indicating whether any member of the Bidder's team, its officers or partners has ever declared bankruptcy. If so, state the date, court jurisdiction and amount of liabilities and assets. Additionally, the statement shall indicate whether any member of the Bidder's team, its officers or partners has ever lost a property to tax foreclosure in the City of Utica, is in arrears on current property tax payments to the point of facing imminent tax foreclosure or has an ownership interest in real property within the City of Utica that is noncompliant with property maintenance codes.

One (1) hardcopy of the proposal and 1 electronic copy of the full proposal in PDF are to be submitted to the following address:

City of Utica  
Board of Contract & Supply  
Attn: Mr. J. Michael Mahoney – Board Secretary  
One Kennedy Plaza  
Utica, New York 13502

Proposals are to be submitted no later than 3:00 PM local time on Thursday, September 6, 2018. The envelope of the submitted hardcopy shall clearly state "Utica Historic Marina Acquisition Proposal". Only those proposals received prior to the date and time indicated above will be considered; all other responses will be returned unopened. All proposals must remain firm for a period of not less than ninety (90) days after September 6, 2018. All proposals become the property of the City of Utica and the Utica Industrial Development Agency upon submission and will not be returned.

### INQUIRIES

Inquiries regarding this Request For Proposals shall be directed in writing to:

City of Utica  
Department of Urban & Economic Development  
Attn: Mr. Brian Thomas, AICP – Commissioner of Urban & Economic Development  
One Kennedy Plaza  
Utica, New York 13502  
Fax: 315-797-6607  
E-Mail: bthomas@cityofutica.com

All inquiries shall be made in writing and submitted to the above contact no later than 4:30 PM on Tuesday, August 28<sup>th</sup>. Responses to all inquiries will likewise be made in writing and posted on the City's website: <http://www.cityofutica.com>.

All inquiries regarding this Request For Proposals shall be made according to the protocol detailed above. Any attempts to make inquiries or contact with officials or personnel of the City of Utica or the Utica Industrial Development Agency or the owners of the Aqua Vino restaurant will not receive a response.

## SCHEDULE

The anticipated schedule for the conveyance of this property is as follows:

Advertisement and release of the RFP	Monday, July 30, 2018
Mandatory Pre-Proposal Walk-Through	Friday, August 17, 2018; 10 AM
Deadline for submission of questions in writing	Tuesday, August 28, 2018, 4:30 PM
Proposal Submission Deadline	Thursday, September 6, 2018; 3:00 PM
Possible interview(s) with short-list of respondents	Week of September 24, 2018
Review/Approval by Utica Board of Estimate & Apportionment	Early October
Review /Approval by Utica Industrial Development Agency	Early November

## MANDATORY PRE-PROPOSAL WALK-THROUGH

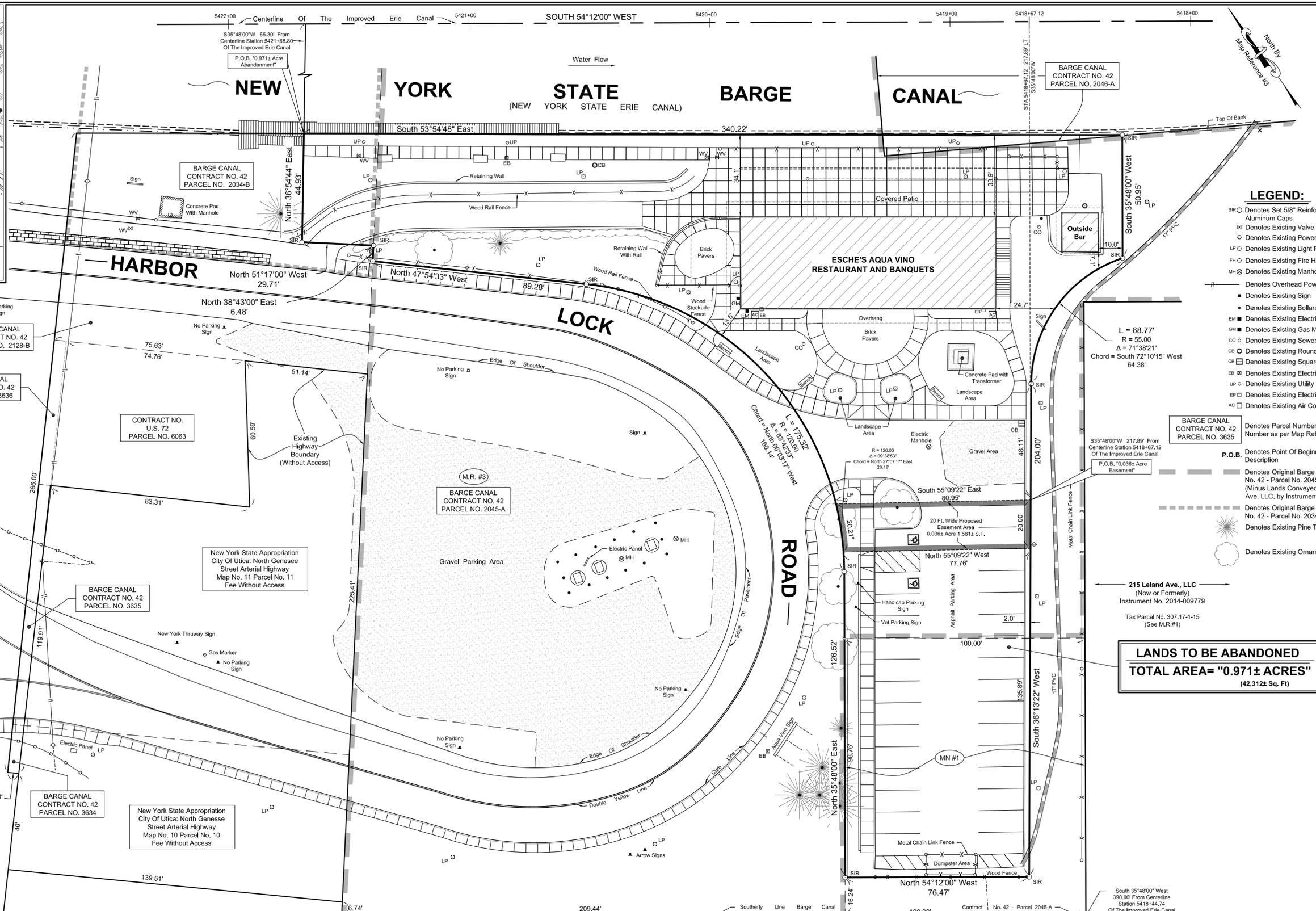
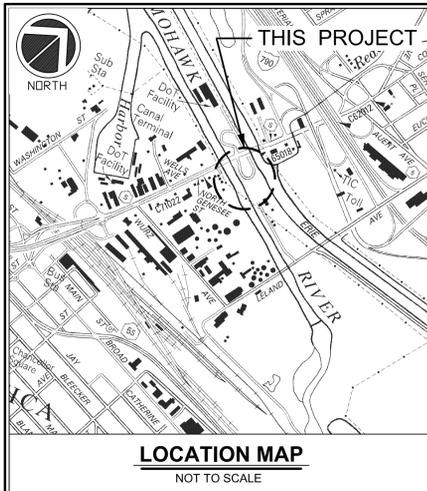
A Pre-proposal walk-through of the building has been scheduled for Friday, August 17, 2018 at 10 AM to provide an opportunity for potential respondents to personally view all aspects of the property. During this walk-through, City and Utica Industrial Development Agency staff will review the RFP document and respond to questions regarding the requirements of the RFP, which will later be posted to the web page referenced above. **Attendance at this walk-through is mandatory.** Attendees should bring their own copy of the RFP as no copies will be made available at the walk-through.

## SELECTION CRITERIA

The selection of the successful Bidder will be based on the following criteria, listed in no particular order:

- Completeness of the proposal in its response to this Request For Proposals;
- Purchase price offered for the property;
- Financial capability of Bidder;
- Short- and long-range vision for the property;
- Ability of Bidder to implement vision

# Exhibit A – Property survey



**LEGEND:**

- SIR O Denotes Set 5/8" Reinforced Rod with Aluminum Caps
  - X Denotes Existing Valve
  - Denotes Existing Power Pole
  - LP ○ Denotes Existing Light Pole
  - PH ○ Denotes Existing Fire Hydrant
  - MH ○ Denotes Existing Manhole
  - Denotes Overhead Power Pole Line
  - ▲ Denotes Existing Sign
  - Denotes Existing Bollard
  - EM ■ Denotes Existing Electric Meter
  - GM ■ Denotes Existing Gas Meter
  - CO ○ Denotes Existing Sewer Cleanout
  - CB ○ Denotes Existing Round Catch Basin
  - CS ■ Denotes Existing Square Catch Basin
  - EB □ Denotes Existing Electric Box
  - UP ○ Denotes Existing Utility Pedestal
  - EP □ Denotes Existing Electric Panel
  - AC □ Denotes Existing Air Conditioning Unit
- Denotes Parcel Number and Contract Number as per Map Reference #2
- P.O.B. Denotes Point Of Beginning Of Legal Description
- Denotes Original Barge Canal Contract No. 42 - Parcel No. 2045-A (Minus Lands Conveyed To 215 Leland Ave, LLC, by Instrument No. 2014-009779)
  - - - - - Denotes Original Barge Canal Contract No. 42 - Parcel No. 2034-B
  - Denotes Existing Pine Tree
  - Denotes Existing Ornamental Tree

**LANDS TO BE ABANDONED**  
**TOTAL AREA= "0.971± ACRES"**  
 (42,312± Sq. Ft.)

**MISCELLANEOUS NOTE:**

MN #1 This land was acquired by the Board Of Commissioners for changing the channel of the Mohawk River in 1897. The Board of Commissioners conveyed the lands required for river straightening purposes to the State of New York by deed dated January 7, 1909, on file in the State Controller's office.

**MAP REFERENCES:**

- (M.R. #1) "Map Of Abandoned Barge Canal Lands" City Of Utica - Oneida County - State Of New York By The Commissioners Of The Land Office on May 1952 and on file in the Office of the Department of the State as Map No. 398
- (M.R. #2) "Barge Canal - State Of New York" Map showing location of channel, structures, appropriated lands and terminals of the Erie, Champlain, Oswego, and Cayuga and Seneca Canals, as improved under Chapter 147, Laws of 1903, Chapter 391, Laws of 1909, and Chapter 746, Laws of 1911, and amendatory Laws. Middle Division - Erie Canal - Section 5 Station 5399 To Station 5431 Sheet 4
- (M.R. #3) "Amended Map Of Land, Formerly Appropriated By The State Of New York As Parcel No.2045 From The Owner Or Owners In The Town Of Deerfield, County Of Oneida And State Of New York For The Use Of The Improved Canals" Contract No. 42 - Parcel No. 2045-A By Division Engineering dated June 14, 1917 and approved on October 3, 1917 and filed in the Office of the Superintendent of Public Works on January 30, 1918.

**SCALE: 1" = 20 FEET**



"I HEREBY CERTIFY TO THE NEW YORK STATE CANAL CORPORATION THAT THIS IS AN ACCURATE MAP PREPARED BY ME OR UNDER MY DIRECTION AND SUPERVISION, FROM AN ACTUAL FIELD SURVEY, PERFORMED IN ACCORDANCE WITH THE NEW YORK STATE CANAL CORPORATION SURVEY MAP AND DESCRIPTION PROCEDURE (TAP-919)."

*Bruce W. Snyder*  
 Bruce W. Snyder P.L.S. #60195  
 Date: 09-06-2017

Unauthorized Alteration Or Addition To A Survey Map Bearing A Licensed Land Surveyor's Seal Is A Violation Of Section 7209-2, Of The New York State Education Law.

**DELTA**  
 ENGINEERS, ARCHITECTS, & LAND SURVEYORS

4873 NYS Route 5, Vernon, NY 13476  
 Tel: 315.953.4200  
 Fax: 315.953.4202  
 Website: www.deltaengineers.com

Date: November 03, 2015 Scale: 1" = 20 Feet  
 File / Project No. 2015.033.001

Bruce W. Snyder LS #050195  
 Date Sealed: September 6, 2017

THIS SHEET BEING MAP NUMBER 977 SHOWS CERTAIN LANDS AND STRUCTURES ABANDONED FOR CANAL PURPOSES PURSUANT TO SECTION 51 OF THE CANAL LAWS UPON EXECUTION OF THE OFFICIAL ORDER

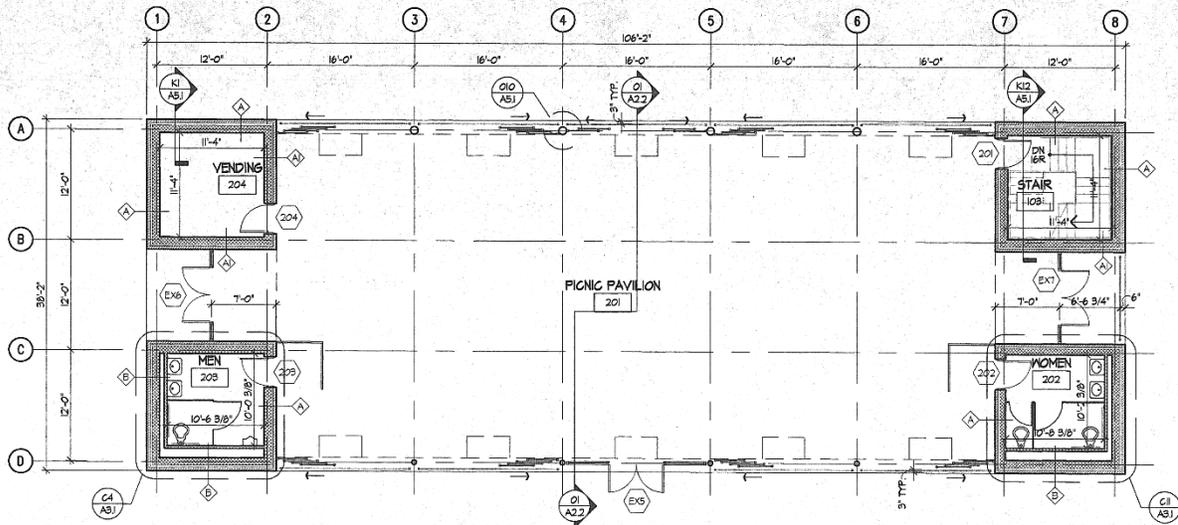
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

HOWARD GOEBEL, P.E.  
 DEPUTY DIRECTOR, ENGINEERING & MAINTENANCE

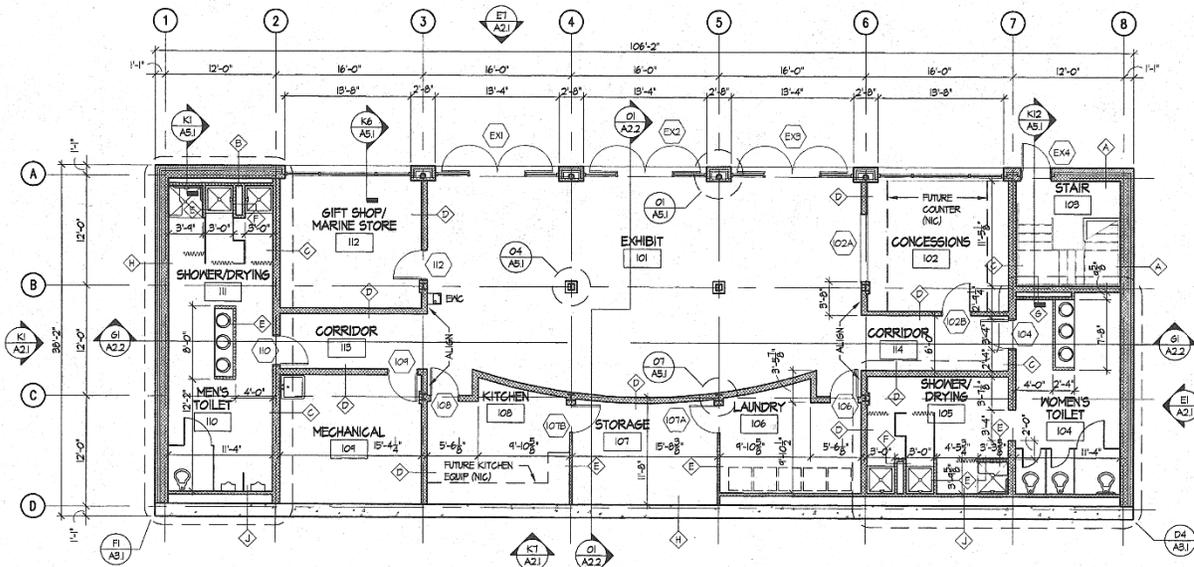
New York State  
 Canal Corporation Map  
 Showing Proposed Abandoned  
 Barge Canal Lands  
 City Of Utica, County Of Oneida  
 State Of New York

977

# Exhibit B – Building Floor Plans



**E10** UPPER LEVEL FLOOR PLAN  
**A1.1** scale: 1/8" = 1'-0"



**K10** LOWER LEVEL FLOOR PLAN  
**A1.1** scale: 1/8" = 1'-0"



**NOTE:** These plans were part of the original set of construction drawings; alterations and/or changes in intended use of spaces have likely occurred since construction was completed.

# Exhibit C - Photographs



View of south face of marina from parking lot



View of parking lot from upper level of marina



View of outdoor stairs to lower level of marina



View of covered patio area along bulkhead wall



View east along bulkhead wall



View of Erie Canal from west side of upper level



View of entrance and rear wall of elevator shaft



View of upper level from SE corner



View of upper level from NE corner



View of upper level from NW corner



View of upper level from SW corner



View of elevator doors on upper level



View of lower level from elevator



View of Aqua Vino restaurant



View of back-of-the-house prep/storage area



View of back-of-the-house sink/dishwasher area



View of back-of-the-house food prep area



View of back-of-the-house food prep/storage area

# Exhibit D – Aqua Vino Lease

## OCCUPANCY AGREEMENT

This Lease Agreement is made Dec 24, 2014, between the **City of Utica Industrial Development Agency**, a public corporation organized and existing under the laws of the State of New York with principal offices located at Utica City Hall, One Kennedy Plaza, Utica, New York, (Landlord) and **ED VENTURES d/b/a Aqua Vino Restaurant & Catering** at the Utica Marina, with principal offices at 16 Harbor Lock Road, Utica, New York 13501 (Tenant);

**WHEREAS**, the Utica Industrial Development Agency is a subtenant of the City of Utica, of a certain permit between the City of Utica and the New York State Canal Corporation (“Canal Permit”) for the premises known as the Utica Historic Marina (“Premises”) (a copy of such permit is attached hereto as **Exhibit A**); and

**WHEREAS**, Tenant previously responded to a request for proposals and has made a proposal to operate a restaurant and dock facility on the Premises,

**NOW, THEREFORE**, the parties agree as follows:

1. **Premises.** Landlord hereby leases the Tenant and the Tenant hereby leases the Premises from the Landlord which includes the lower and upper levels and the area under canopy cover to the rear of the building (the “Building”) located on the premises in the City of Utica, County of Oneida, and State of New York on the southerly side of the Erie Canal, immediately easterly of Genesee Street, which Building is shown as “Marina Center” on **Exhibit “B”** attached hereto. In addition, the Tenant, its agents, suppliers, customers, guests, etc. shall have the non-exclusive right to use the exterior premises for activities normally related to Tenant’s use of the Premises as provided in Section 3 below. In doing so, Tenant’s shall not place or permit to be placed, any

obstructions that would prevent the use of the dock area as required by the Canal Permit and an area adjacent to the parking lot for picnic purposes by the public in general.

Tenant accepts the Building and Premises "as is" and the Landlord will provide those items which are identified on the attached **Exhibit "C"**, which items thereon are accepted "as is" and shall be maintained pursuant to the terms hereinafter stated.

2. **Access.** The parties understand that public ingress and egress, public parking and use of the Department of Transportation Sanitary Sewer Facilities is authorized by a Permit for Use of State Owned Property between the City of Utica and the New York State Department of Transportation (the "DOT Permit") (a copy of this permit, dated September 14, 2007, is attached hereto as **Exhibit "D"**). Tenant represents that it has read Exhibit A and Exhibit D, and agrees for itself and for the benefit of the City of Utica, and the landlord, to abide by the terms thereof and understands the limitations. The parties understand that the City of Utica will make all reasonable efforts to continue full access to the Premises under these Permits, but cannot guarantee that they will continue in full force and effect and this Agreement is made subject to such Permits.

3. **Use of Premises.** Tenant shall have the exclusive use of the Premises and Building on a daily basis to operate a restaurant and bar business and to otherwise develop, provide, manage, maintain, oversee, stock and supply the basic services for which the Marina was intended and which are established by the Canal Permit and required by the Request for Proposals (the "Basic Services") except for those goods and services in regard to the sale of gasoline during the Season and Hours of Operation as outlined in the proposal by Tenant ("Tenant's Response") (a copy of which is attached hereto as "**Exhibit E**"). Tenant shall be required to provide those Basic Services which

shall include the sale of food and beverages, alcoholic or otherwise, as well as vending machines, sales of sundries, docking facilities and the sale of consumable goods and services to the public in a manner that is appropriate to the overall facility. In addition, the Tenant may develop, operate and control areas within the Building that have no current designed use for services and sales to the public, such as parties, banquets, meetings, etc. Such additional operation and services shall not interfere or diminish the Basic Services referred to above and shall advance the basic purpose of elimination of blight and urban decay. City, however, shall have the right to use the Building's main floor banquet room with the table, chairs, accessories and facilities, on two separate (2) occasions per year at no cost. Such use shall be on a twenty-eight (28) day notice unless waived by Tenant and shall be agreed to in advance by Tenant, which shall not be unreasonably withheld. In such cases of City use, the City will be responsible for the set-up of the room, and for the clean-up following the event as well, restoring the room to the set-up and condition it was found. Such occasions of the City use shall not include use of the kitchen facilities and equipment, except as separately agreed upon by the parties in each such case of City use. Tenant shall use Premises for no other purpose without the written consent of the landlord.

4. **Duration.** This Lease will run for a period of ten (10) years commencing on November 1, 2012 and ending on October 31, 2022. The rent shall be Two Thousand Seven Hundred and 00/100 (\$2,700.00) per month for the first five (5) year period (2012-2017). The parties further agree that the rent for the second five (5) year period of this Agreement (2017-2022) shall be Three Thousand and 00/100 (\$3,000.00) per month.

Landlord also grants to the tenant an option to renew this Occupancy Agreement for one (1) additional period of five (5) years from the expiration of the term on October 31, 2022, from November 1, 2022 to October 31, 2027 (upon the same terms and conditions as contained in this Occupancy) except for the option to renew. Such option to renew shall be upon the condition that the Tenant is not in default of any of the terms and conditions of this Agreement and the rent due for the additional five (5) year period shall be subject to renegotiation between the parties. To exercise such option for the five (5) year renewal period, Tenant must give landlord written notice of its intention to do so by April 30, 2022.

5. **Rent.** Tenant will pay to the landlord for rent as follows:

The Tenant shall pay rent for each year during the first Term of this Agreement commencing on the first (1<sup>st</sup>) day of May 2013, and the first (1<sup>st</sup>) of each month thereafter the amount of Two Thousand Seven Hundred Dollars (\$2,700.00) per month until November 1, 2017 (\$18,900.00 annually). Effective May 1, 2018, the Tenant agrees to pay rent commencing on the first (1<sup>st</sup>) day of May 2018 and the first (1<sup>st</sup>) of each month thereafter in the amount of Three Thousand Dollars (\$3,000.00) per month until November 1, 2022 (\$21,000.00 annually). Based on the fact the canal is watered and dewatered at different times throughout the year and has recently been closed for a period of time during the usual season when it is watered, the monthly rent will only be paid for the months of May through November for each year (7 months per year) when the canal is watered. In addition, due to the fact the building has not been insulated and heating and cooling costs are prohibitive to the tenant, the parties have agreed to only have the rental paid for the seven (7) month period described above. In the event the Landlord

provides improvements to address the building's efficiency, the terms of rent may be changed upon agreement of the parties.

The Rent payments shall be made by Tenant to the Utica City Comptroller on behalf of the Landlord.

6. **Utilities.** Tenant shall be responsible for providing and paying for all utilities, including, but not limited to gas, water, sewer, solid waste removal and electricity for the Premises and for exterior lighting including but not limited to parking lot security lights, landscaping lights, etc.. Street lights are not included in this provision and are the responsibility of the Landlord. Tenant has previously arranged for the utilities in its name.

7. **Security Deposit.** Tenant has previously deposited with the Utica City Comptroller, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a security deposit for the duration of the Lease on or about August 1, 2007. The security deposit has been placed by the Comptroller in a separate interest bearing account. Interest will accrue toward the security deposit as may be earned. Landlord will retain the security deposit plus the accrued interest as security for the performance of Tenant's obligations under the Lease. Upon termination, and successful performance of all Tenants obligations, the security deposit, together with such interest as may be accrued, will be returned to the Tenant.

8. **Capital Improvements.** (a) Attached hereto as **Exhibit "F"** is a list of the fixtures and capital improvements that Tenant may, but shall not be obligated to provide and install at its expense but only after receiving the consent of the City. Such list includes the identification of each item and the actual cost thereof. All such items

shall be new and of good quality, have identification and state the actual cost thereof. Prior to occupancy of the Premises, Tenant shall provide Landlord with actual, signed invoices, for each piece of such improvements, showing from whom purchased, date purchased, description of the item and total cost which shall become part of Exhibit "F". Such items and improvements will remain on the Premises and become the sole property of the Landlord upon termination of this Lease. If fixtures or improvements are purchased and/or installed by the Tenant after the date of this Occupancy Agreement and this lease is terminated at any time prior to the conclusion of this ten (10) year term, Landlord will pay Tenant the actual cost of these fixtures or capital improvement as stated in the invoices included in Exhibit "F", reduced by one-tenth for each year or a portion of a year since the date of this Occupancy Agreement. Should there be any indebtedness due on any item listed on Schedule "F" that Landlord seeks to retain, Landlord may assume the balance and that indebtedness shall be deducted from the depreciated value due to Tenant. Should the debt exceed the depreciated value, Tenant shall owe Landlord the difference as additional rent.

(b) Equipment to be retained by Tenant: Attached as "**Exhibit "G"**" is a list of the equipment and property which the Tenant shall provide as its sole cost and expense but which shall remain property of the Tenant to be removed by the Tenant upon termination of this Lease. All such equipment shall be new and of good quality at the time of installation. Prior to occupancy of the Premises, Tenant shall provide Landlord with actual, signed invoices, for each piece of such equipment, showing: From whom purchased, description of the item and total cost which will become part of Exhibit "G". Upon termination of this Lease, Landlord, if not in default, shall have the option by

notice in writing to Tenant of at least thirty (30) days to the expiration of the term, of purchasing from Tenant, Tenant's Schedule "G" equipment and fixtures and personal property installed pursuant to this subsection (b), including any replacement items. Should Tenant agree, such purchase shall be made at depreciation of twenty percent (20%) for each year or fraction thereof since the date of purchase. If there be any debt due against any item selected by Landlord, the debt shall be deducted from the depreciated value and Landlord may assume the debt and the difference to Tenant. Should the debt balance exceed the depreciated value and Landlord assumes the debt, Tenant shall owe the Landlord the difference as additional rent.

Tenant shall not suffer or permit any mechanic's liens to be filed against the Premises, or the lease hold estate created, or any part of it, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Tenant or any subtenant or suffer or permit any other lien to attach to the Premises or any part thereof or the lease-hold estate created here.

9. **Duration of Season and Hours of Operation.** The Canal is watered from mid May and dewatered in November. The minimum season of operation shall be May 1<sup>st</sup> through November 31<sup>st</sup>. During that time, Tenant shall keep the Premises open to the public on a daily basis and provide a reasonable and adequate level of Basic Services, including food and beverages, dock services, and restroom facilities as outlined in the Schedule included in Tenant's Response which is Exhibit "E". Tenant may operate the Premises year round at Tenant's discretion. If Tenant wishes to keep the facility open at any other time from November 1<sup>st</sup> to April 30<sup>th</sup>, Tenant shall make arrangements with

the Director of Facilities before doing so, which consent will not be unreasonably withheld.

10. **Prices.** Tenant shall fix the prices to be charged by Tenant for food, goods or services provided on the Premises. Such prices shall be reasonable and commensurate with local pricing and what is typical for a marina facility.

Tenant shall provide the public use of the restrooms, parking lot spaces, exterior seating spaces and dock area plaza free of charge, so long as such public usage is related otherwise to the use of the leased premises or use of the recreation facilities related to the canal.

11. **Alterations.** Tenants shall make no structural alterations improvements, or changes including those referred to in Tenant's Response which is Exhibit "E" without the prior written consent of the Director of Facilities and the New York State Canal Corporation. All alterations to the Premises shall be in conformity with the general architectural criteria established by the Landlord and shall be in keeping with the design criteria of the Building in which these alterations may be made.

12. **Underlying Agreements.** Tenant understands that this Lease is subordinate to and subject to the terms and conditions of various underlying agreements: These agreements include:

- (a) A permit for use of state-owned property issued by the New York State Department of Transportation to the City of Utica, dated September 14, 2007, a copy of which is attached hereto as Exhibit "B";

- (b) New York State Canal Corporation Permit between the New York State Canal Corporation and the City of Utica, the basic terms of which are as shown as Exhibit "A";
- (c) A project agreement between the City of Utica and the Utica Industrial Development Agency, a copy of which is attached hereto as **Exhibit "H"**.

The terms and conditions of all three agreements are incorporated herein by reference and Tenant shall comply with all the terms and conditions of these agreements and perform the obligations of the landlord and/or the City of Utica in each case. Tenant represents that it has read the above agreements and understands their terms. In the event of an inconsistency between this Lease and the Canal Corporation Permit, the terms and conditions of the Canal Corporation Permit shall prevail.

It is understood by the parties that the aforementioned permits issued by the New York State Department of Transportation and the Canal Corporation, in each case, require the prior approval of the respective issuing entity before the Landlord may make any sub-lease, sub-permit, or assignment of any rights thereunder. Landlord agrees to make all reasonable efforts to secure any and all approvals of this Agreement between Landlord and Tenant as may be required under the aforementioned permits, the operating agreement between landlord and the Utica Industrial Development Agency, or any other permit, permission, license or agreement under which the Landlord claims authority to grant Tenant the use, occupancy and operation of the subject premises. Landlord shall provide Tenants with written proof of such approvals prior to the signing of this Agreement.

With respect to the permits issued by the New York State Department of Transportation and the Canal Corporation, Landlord shall take all reasonable steps necessary to keep such permits valid and in effect, including the timely payment of all required fees and charges. Landlord shall notify the Tenant in writing within twenty-four (24) hours of any demand, request, or statement of intent on the part of the issuing entity to terminate, modify, amend, renegotiate, or otherwise change any of the above mentioned permits, and shall provide Tenant with a true and complete copy of any written correspondence or any other documents related thereto.

13. **Maintenance Required by Landlord.** The Landlord shall be responsible for the plowing and removal of snow from the parking lot.

Landlord shall, at Landlord's expense, maintain and make all structural repairs (except those made necessary by the fault of the Tenant) to the Premises. Landlord shall not be liable to Tenant for damages or for abatement in rent on account the Landlord's failure to perform the work required of Landlord here, unless or until Tenant shall have notified Landlord in writing of the necessity of the performance of such work and Landlord shall have had a reasonable time to perform.

14. **Maintenance Required by Tenant.** Tenant agrees to provide the necessary management and labor, and continuously maintain the Premises, including all the items of property listed on Exhibit C, F and G, all operating equipment, utility equipment and services, and connections on the Premises, janitorial and custodial services, trash and garbage removal services, and any and all other related services necessary to maintain the Premises in good, safe, sanitary condition and repair throughout the term on this Lease, ordinary wear and tear excepted. Such related services shall

include, but not be limited to, cleaning of the grease traps and removal of the waste on at least a monthly basis. Tenant shall provide the daily and usual housekeeping maintenance of the Premises; Tenant shall be responsible for the planting, care and maintenance of the grass, trees and landscaping and the grounds in general. The supplies and equipment necessary for maintenance shall be provided for by the Director of Facilities at the Tenant's expense. Tenant shall keep clean the exterior areas of the Premises, including the exterior plaza, tables and chairs, sidewalks, parking lot and dock areas.

Tenant shall provide for the daily removal and disposal of garbage and not allow garbage, rubbish and refuse to accumulate in the interior or exterior of the Premises in an unsanitary or unsightly manner. Landlord will provide a fenced area for the placement of waste and rendering containers. Tables and chairs and other portable items provided by the City shall be brought inside and secured by the Tenant every night and when the Premises are not open to the public. Tenant shall be responsible for the care, maintenance, and repair of tables and chairs and other equipment provided by the City as shown on Exhibit "C" and will return them to the City upon termination of the Lease in good operating condition, as they were when delivered, reasonable wear and tear expected. Should Tenant be required to replace any item on Exhibit "C" by purchase, that item shall be removed from Exhibit "C" and will be added to and governed by the terms of Exhibit "G". Tenant shall keep the premises free of infestation and provide extermination as necessary. Tenant shall use due care so as not to damage the landscaped area. Tenant is responsible for snow removal and/or deicing of the sidewalks.

15. **Repairs.** Tenant shall keep all equipment and fixtures, furnishings and other property installed by it in good condition and repair, ordinary wear and tear excepted. Tenant shall be responsible and shall, at its sole cost and expense, repair any damage caused by it, its guests caused during operating hours.

16. **Docking Facility.** Tenant shall operate the docking facility in accordance with the rules and regulations of the New York State Canal Corporation. Tenant may charge up to One and 00/100 Dollar (\$1.00) per foot per day for Boat Docking for the services provided in connection with the docking facilities. Tenant may adopt reasonable rules and regulations regarding the use of docking facilities, so long as same are consistent with rules and regulations of the New York State Canal Corporation and submitted in advance for approval by the Director of Facilities and posted publicly thereafter.

17. **Signs.** All signage installed by the Tenant shall be subject to the approval of the Director of Facilities, which will not be unreasonably withheld. Tenant shall install appropriate signage for Tenant's business at its expense and Tenant will be responsible for obtaining permission from the appropriate authorities with regard to any off site signage.

18. **Removal of Equipment by Tenant.** Upon the termination of this Lease by lapse of time or otherwise, except for Tenant's default, Tenant shall have the right, and upon direction from Landlord, shall be obliged to remove all equipment and fixtures and personal property installed or located within the Premises by Tenant other than that described in Exhibit "F" and those items on Exhibit "G" as identified by Landlord which shall become the property of the Landlord. Tenant shall not remove pipes, conduit and

wiring, which Tenant may have installed and which may be affixed to or embedded in walls, ceilings and floors. Whether this equipment shall be deemed real or personal property, Tenant shall remove its equipment and fixtures and personal property prior to the last day of Lease and restore the Premises to the condition in which they were in when originally delivered to Lessee, ordinary wear and tear excepted. Tenant shall be deemed to have abandoned to the landlord any of the equipment and fixtures and personal property which it has failed to remove from the demised Premises after the last day of the Lease, unless the Landlord has granted a further period in writing for this purpose.

19. **Security.** Tenant shall be responsible to see to it that proper security is in place for the Building, including that the doors are locked at all times that the Building is not in use. Tenant shall provide Landlord with copies of keys to all doors within the Building.

20. **Rules and Regulations – Licenses.** Tenant shall comply with all local, state and federal statutes, law, rules and regulations regarding the operating of the Premises, including but not limited to those by the Health Department, Weights and Measures, OSHA, HUD, Labor Laws, etc.. In addition, Landlord shall have the authority to adopt reasonable rules and regulations governing the exterior of the Premises. Tenant shall obtain, at its sole cost, all necessary licenses and permits related to the operation of the Premises, with the exception of the registration of the fuel pumps, which remains the responsibility of the City of Utica.

21. **Assignment and Sub-letting.** Tenant shall not assign this Lease or any interest, nor let or under let the said Premises, nor any part thereof, to any other person without the prior written consent of the Landlord which may be granted in its sole

discretion. One consent by Landlord shall not be deemed to consent to a subsequent assignment or sub-lease. Consent is hereby given to an assignment by the Tenant of the Tenant's rights and obligations under this Lease to an operating corporation or other entity so long as the Tenant remains a principle of the operating entity and responsible for any by the terms of this Lease.

22. **Insurance.** Tenant, at the expense of Tenant, shall keep in force, during the term of this Lease, insurance, issued by responsible insurance companies and in form acceptable to the Corporation Counsel of the City of Utica, for the protection of the City of Utica, the Landlord and the Canal Corporation as their respective interests may appear, against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to or recovered from Landlord, City of Utica and Canal Corporation by reason of damage to the property of, injury to or death of any person or persons on account of any matter which may occur on the Premises. The policy or policies shall be in the amount of One Million Dollars (\$1,000,000.00) with respect to any one accident or disaster, and One Million Dollars (\$1,000,000.00) with respect to property damage, and One Million Dollars (\$1,000,000.00) per occurrence with respect to automobile liability, unless some greater amount is requested by a Governmental Agency with appropriate jurisdiction by reason of the agreements with by the City of Utica and referenced herein. These policies shall also protect Landlord against products liability and liability related to food products in the amounts set forth above and protect landlord against damage to the Building, the grounds and Landlord's personal property. The policies in question shall designate the City of Utica, the Landlord, and the Canal Corporation as additional insureds.

(b) **Dramshop insurance.** Prior to the storage, sale, use or giving away of alcoholic beverages on or from the Premises by Tenant or any other person, Tenant, at its expense, shall obtain a policy or policies of insurance issued by responsible insurance companies and in form acceptable to the Corporation Counsel of the City of Utica, saving harmless and protecting Landlord, the City of Utica and the Canal Corporation against any and all damages, judgments, claims, liens, costs and expenses arising by reason of any such storage, sale, use or giving away of alcoholic beverages on or from the Premises. The police or policies of insurance shall be in the amount of at least Two Million Dollars per occurrence.

(c) **Fire Insurance.** Each party shall keep its interest in the Premises, the Buildings located on the Premises, and the equipment and fixtures and other property located on the Premises, insured at its own expense against fire, extended coverage and such other risks as it may choose by policies issued by responsible insurance companies.

(d) **Workers Compensation.** Tenant shall procure and obtain workers' compensation insurance during the entire term of this Lease in the maximum amounts required by law.

(e) **Policies of Insurance.** The original of all insurance policies required to be carried by Tenant pursuant to this Section 23 shall be submitted to landlord on request at all reasonable hours for is inspection, and certificates shall contain a provision that the respective insurers will not cancel the insurance coverage required under this Lease without first giving thirty (30) days prior written notice to Landlord or the other named insured. At all times that Tenant is operating any of its restaurant operations under it, it shall maintain in full force valid insurance policies of the kind and in the amounts and

with the type of companies required by this Lease. The coverages required in the above paragraphs are intended to duplicate the coverage that the Landlord and the City of Utica are required to provide, pursuant to the permits from the Department of Transportation (attached as Exhibit "D") and the Permit between the City of Utica and the New York State Canal Corporation (Exhibit "A"). These requirements are subject to change and in the event that the New York State Department of Transportation or the New York Canal Corporation amend or modify the coverage requirements or impose additional insurance requirements, the Tenant agrees to provide such coverage under this Lease as well. All insurances shall name the Landlord, the City of Utica, the New York State Department of Transportation, and the New York State Canal Corporation as additional insured.

23. **Indemnity.** The Tenant hereby agrees to indemnify the Landlord against and to defend and hold the Landlord harmless from any and all claims or demands for loss or damaged property or for personal injury or death to any person arising from Tenant's activities on the demised premises or the exterior areas adjacent thereto, except for the portion which has been noted as the canal trail.

24. **Fire or Other Casualty.** Tenant must give landlord prompt notice of fire, accident, damage or dangerous or defective condition. If the Premises cannot be used totally because of fire or other casualty, Tenant is not required to pay rent for the time the Premises are unusable. If part of the Premises can not be used, Tenant must pay rent for the usable part. Landlord shall have the right to decide which part of the Premises is usable. Landlord need only repair the damaged structural parts of the Premises. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not

responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under landlord's control.

If the fire or other casualty is caused by an act or neglect of Tenant, Tenant's employees or invitees, or at the time of the fire or casualty Tenant is in default in any term of this Lease, then all repairs will be made at Tenant's expense and Tenant must pay the full rent with no adjustment. The cost of the repairs will be added rent.

Landlord has the right to demolish or rebuild the Building if there is substantial damage by fire or other casualty. Landlord may cancel this lease within thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the premises to landlord on or before the cancellation date in the notice and pay all rent due to the date of the fire or casualty. If the Lease is canceled Landlord is not required to repair the Premises or Building. The cancellation does not release Tenant of liability in connection with the fire or casualty. This Section is intended to replace the terms of New York Real Property Law Section 227.

25. **Eminent Domain.** If the whole or any part of the Premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this Lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of said Lease.

26. **Default – Notice.** It is expressly understood and agreed that in case the Premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this Lease or if default be made in the performance of any

of the covenants and agreements in this Lease contained on the part of the Tenant to be kept and performed, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, order, regulations and requirements of the Federal, State and City Government or of any and all their Departments and Bureaus, applicable to said premises, or if the Tenant shall file or there by filed against Tenant a petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the landlord may, if the Landlord so elects, at any time thereafter terminate this Lease and the term hereof on giving to the Tenant five days' notice (the "Notice") in writing of the Landlord's intention to do so, and this Lease and the term hereof shall expire and come to an end on the date fixed in the Notice for the expiration thereof. Such Notice may be given by mail to the Tenant addressed to the Premises.

27. **Landlord's Right of Entry.** The Landlord shall have the right to enter in and upon said Premises at all reasonable hours of the day during said term to ascertain if said Premises are kept in proper repair and condition.

28. **No Waiver.** The failure of the Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that the landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

29. **Waiver of Right to Redeem.** Tenant waives the right to redeem under any law of the State of New York.

30. **Default.** This Lease is made upon the express condition that if the Tenant fails to pay the rent reserved herein or any part thereof after the same shall be due and such failure shall continue for a period of fifteen (15) days after written notice thereof from the landlord to the Tenant, or if the Tenant fails or neglects to perform, meet or observe any of the Tenant's other obligations hereunder and such failure or neglect shall continue for a period of fifteen (15) days after written notice thereof from the landlord to the Tenant, then the landlord at any time thereafter, by written notice to the Tenant, may lawfully declare the termination of this Lease and reenter the premises or any part thereof and expel, remove and put out the Tenant or any person or persons occupying said premises and may remove all personal property there from without prejudice to any remedies which might otherwise be used for the collection of arrears or rent or for the breach of covenant or conditions. Notwithstanding any other provision of this Lease, the curing of an alleged default requiring more than the payment of money or the work of curing said default cannot be reasonably accomplished within the time periods provided herein, and where the Tenant has commenced upon the said work of curing said default and is diligently pursuing same, then the Tenant shall be entitled to a reasonable time extension to permit the completion of said work of curing said default, as a condition preceding to any reentry by the Landlord or termination of this Lease by the landlord and any defect that is cured shall not thereafter be grounds for a reentry or termination.

31. **Reentry and Inspection.** The Tenant shall permit the landlord and its agents to enter the Premises at all reasonable times to inspect same, to make such repairs as to the Premises as the Landlord is obligated to make or elects to make, to post notices of non-responsibilities for alterations or additions or repairs.

32. **No Waste, Nuisance or Unlawful Use.** Tenant shall not commit or allow to be committed any waste on the Premises, create or allow any nuisance to exist on the Premises or use or allow the Premises to be used for any unlawful purpose.

33. **Abandonment.** The Tenant agrees not to vacate or abandon the Premises at any time during the demised term. Should the Tenant vacate or abandon the Premises or be dispossessed by due process of law or otherwise, such abandonment, the vacation or dispossession shall be a breach of this Lease and, in addition to any other rights which the Landlord may have, the landlord may remove any personal property belonging to Tenant which remains on the Premises and store same, such removal and storage to be for the account of the Tenant.

34. **Notices.** All notices to be given to either party shall be in writing, deposited in the United States Mail, with postage pre-paid and addressed to the parties as follows:

**For the LANDLORD:** Joseph H. Hobika, Sr., Esq.  
Chairman of the Board  
Utica Industrial Development Agency  
1 Kennedy Plaza  
Utica, New York 13502

**With a copy to:**

Corporation Counsel's Office  
Utica City Hall  
1 Kennedy Plaza  
Utica, New York 13502

Director of Facilities  
Utica City Hall  
1 Kennedy Plaza  
Utica, New York 13502

**For the Tenant:**

ED VENTURES, LLC.  
d/b/a Aqua Vino Restaurant & Catering at Utica Marina  
16 Harbor Lock Road  
Utica, New York 13501

35. **Holding Over.** Any holding over after the expiration of any term with the consent of the landlord shall be construed to be a tenancy from month to month and shall be on the terms and conditions herein specified so far as equitable.

36. **Relationship of Parties.** It is understood and agreed that the relationship of the parties hereto is strictly that of Landlord and Tenant and that Landlord has no ownership in the Tenant's enterprise and that this Lease shall not be construed as a joint venture or partnership. The Tenant is not and shall not be deemed to be an agent or representative of the Landlord.

37. **Miscellaneous.**

(A) This Lease shall be construed and enforced in accordance with the laws of the State of New York.

(B) Any addendum or amendment of this Lease must be in writing, signed on behalf of the parties hereto. This Lease and the exhibits attached hereto, constitutes the entire agreement of the parties and there should be no oral modification thereof.

(C) If the Landlord files an action or proceeding to enforce any covenants of this Lease or for breach of any covenant herein, Tenant agrees to pay reasonable costs and attorney's fees for the services of Landlord's attorney providing that Landlord is successful in its claim. Similarly, if the Tenant files an action or proceeding to enforce any covenants of this lease for breach of any covenant herein, Landlord agrees to pay reasonable costs and attorneys fees for the services of Tenant's attorneys provided that

Tenant is successful in its claim. This instrument shall be binding upon and shall inure to the benefit of these parties and their respective successors, legal representatives and assigns. This paragraph shall not be deemed to authorize Tenant to make an assignment of its interest in this Lease except as above expressly provided for.

Dated: December 24, 2014

**UTICA INDUSTRIAL DEVELOPMENT  
AGENCY**

**By: Joseph H. Hobika, Sr.  
Chairman of the Board**

Joseph H. Hobika, Sr.

**Landlord**

Dated: 12/24, 2014

**ED VENTURES, LLC.**

**d/b/a Aqua Vino Restaurant & Catering  
at Utica Marina**

**By:** [Signature]

**Tenant**

STATE OF NEW YORK )

COUNTY OF ONEIDA )

On this 24<sup>th</sup> day of DECEMBER, 2014, before me personally came **Joseph H. Hobika, Sr.**, Chairman of the Utica Industrial Development Agency, to me known, who being by me duly sworn, did depose and say that he resides in the City of Utica; that he is the Chairman of the Board of the Utica Industrial Development Agency, the corporation described in and which executed the above instrument, and that he signed his name thereto by like order.

[Signature]  
Notary Public

MERIMA SMAJIC  
Notary Public in the State of New York  
Qualified in Oneida County 02SM6298695  
My Commission Expires Mar. 17, 20 18

**EXHIBIT A**



New York State Canal Corporation  
**REAL ESTATE PERMIT**  
 FOR USE AND OCCUPANCY OF  
 NEW YORK STATE  
 CANAL CORPORATION PROPERTY

Permit No. C21356

Plate No.  
 Use Code ACC DOC PRK MAR  
 CPM No. --  
 CI Sta. 0  
 Side  
 Parcel Nos.  
 Buoy No.  
 County Oneida

Permittee Name CITY OF UTICA  
 BILLING ADDRESS LINDA FETATO  
 1 KENNEDY PLAZA  
 UTICA NY 13501

Telephone Number 315-792-0152

Property Description: A portion of Canal Land - South side of the Erie Canal

Property Location: Mohawk River- GENESEE ST, UTICA

Town/Village/City City of Utica SBL

**GENERAL PERMIT CONDITIONS:**

1. Permit to use and occupy the above identified New York State Canal Corporation property for the purpose of **TO CONTINUE OPERATION OF CANALSIDE SERVICES PUBLIC PARK DOCKING FACILITIES, FISHING ACCESS, WELCOME CENTER, OVERLOOK AREA, RESTAURANT AND BANQUET FACILITY.**

This permit shall not be assigned or transferred without the prior written consent of the Canal Corporation. Any attempt to assign, transfer or convey any right, title or interest to the above identified property without such prior written consent will be considered an automatic revocation of this permit.

2. The fee for this use and occupancy permit shall be \$5,000.00 per year, beginning July 01, 2007. The applicant agrees that if the fee is not paid within fifteen (15) days after it has become due, a late charge of two (2) percent per month on the outstanding balance will be due and owing to the New York State Canal Corporation.

3. Upon payment of the initial permit fee, a canal identification plate will be provided to the permittee. The canal identification plate must be attached to a stationary object and it must be conspicuously visible from the water.

4. The fee is due at the beginning of the permit period and each succeeding year thereafter unless otherwise stated. The fee by check, bank cashier's check or money order, is payable to the New York State Canal Corporation within thirty (30) days of the date of invoice, at:

New York State Canal Corporation  
 200 Southern Boulevard  
 Post Office Box 22058  
 Albany, New York 12201-2058

5. The applicant is responsible for (a) all property repairs, improvements, and maintenance; (b) compliance with applicable Federal, State and local laws, ordinances, codes, and rules and regulations including but not limited to complying with the building code and obtaining local building permits required; and (c) obtaining all other required permits from Federal, State, and local agencies, including, but not limited to, the U.S. Army Corps of Engineers, New York State Department of Environmental Conservation, and Town or City Departments.

6. The applicant agrees (a) to allow the New York State Canal Corporation, The New York State Thruway Authority or their representatives to inspect periodically the permit area; (b) to indemnify and to hold harmless the People of the State of New York, the New York State Canal Corporation and the New York State Thruway Authority from any loss or claim by reason of any use or misuse of the permit area; (c) to maintain the property in a neat, clean, and sanitary condition; (d) not to subrent nor assign the permit area; (e) not to place or store any hazardous or toxic materials, as defined in applicable State and Federal laws, on the permit area; and (f) not to make any alterations, excavations, modifications, or improvements of any kind without written permission from the New York State Canal Corporation.

7. The applicant agrees to provide a certificate of general liability insurance in the amount of \$1,000,000.00 (combined property damage and/or bodily injury, including death) single limit per occurrence for the protection of the permittee, the People of the State Of New York, the New York State Canal Corporation, and the New York State Thruway Authority, as additional insured. General liability insurance is to be provided by an insurance company licensed in New York State. The insurance company is required to provide thirty day written notice of cancellation to the Canal Corporation.

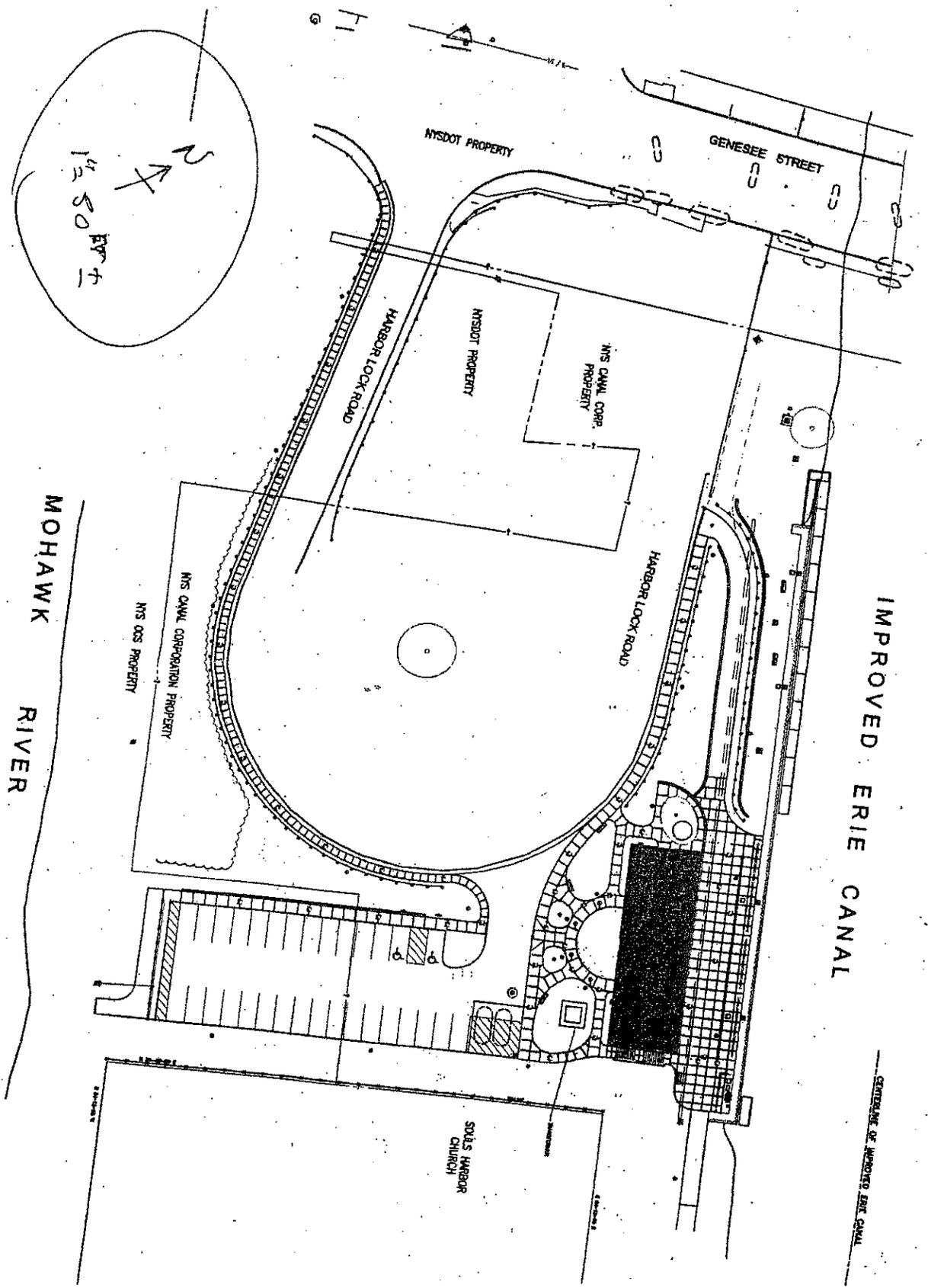
8. Neither the New York State Canal Corporation nor the New York State Thruway Authority shall be responsible for any loss of real property or personal property.

9. This permit is revocable by either party on thirty (30) days written notice. Whereupon it shall be the responsibility of the permittee to remove, at permittee's expense, all structures and works located in the permit area. Upon failure of the permittee to remove such works and structures, the New York State Canal Corporation or its representatives may without further notice summarily enter upon and remove from said premises any and all encroachments and property of the permittee at the permittee's own cost and expense.

10. The applicant understands that the fee may be updated periodically. Failure to pay the new fee will result in the permit's cancellation.

11. In accordance with all applicable statutes, the applicant agrees not to discriminate because of race, creed, color, sex,

**EXHIBIT B**



IMPROVED ERIE CANAL

MOHAWK RIVER

NYS DOT PROPERTY

GENESEE STREET

NYS DOT PROPERTY

NYS CANAL CORP. PROPERTY

HARBOR LOCK ROAD

HARBOR LOCK ROAD

NYS CANAL CORPORATION PROPERTY

NYS OGS PROPERTY

ST. PAUL'S HARBOR CHURCH

CENTRELINE OF IMPROVED ERIE CANAL

24 1/2 80 FT

**EXHIBIT C**

**EXHIBIT "C"**

<b><u>Item #</u></b>	<b><u>Description</u></b>	<b><u>Value</u></b>
1	Advance Tabco 14" Deep Scullery Sink Model 7-6-582	\$ 575.00
2	Faucet Unit Wall Spray	\$ 210.00
3	Advance Tabco Sink Model 871016	\$ 305.00
4	Faucet-16" Spout, 8" Center Hole	\$ 52.00
5	Grease Interceptors-50LB Capacity w/25 gal Flow Rate Per Min Model 683309	\$ 430.00
6	Wall Covering for Kitchen, Service Area and Prep Area	\$ 1,000.00
7	Quick Disconnect, Gas Appliance Connectors (4) at \$175	\$ 700.00
8	14 Foot Custom Built S/S Hood per N.F.P.A. 96 with Ansul R102 6 Gal, Per UL300	\$ 7,000.00
9	Installation Hood w/ Welded S/S Duct Gravity Air Make-Up and Motorized Air Intake Damper & 1/2 HP Jenn Air Fan S/S 20 gauge sheets in cooking Hood Area	\$ 4,700.00
10	Engineering /Architecture Proposal Fee	\$ 5,000.00
11	Cornelius 300 Series Commercial Ice System (Machine)	\$ 1,872.00
12	Bunn- 4 Bunner Pour Over Machine for Coffee	Rented
13	20 Cubic Foot Freezers (2) @\$500 each	\$ 1,000.00

**EXHIBIT D**

Original Owner \_\_\_\_\_  
Original Tenant \_\_\_\_\_  
Airspace Occupant   X    
Subsequent Occupant \_\_\_\_\_

NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REAL ESTATE DIVISION  
PERMIT FOR USE OF STATE-OWNED PROPERTY

P.I.N. 2000.04.201 CASE/INVENTORY NO. Permit Account No. 21428

Property Location: East and west sides of North Genesee Street immediately south of the bridge over the Erie Canal (see attached sketch).

Project: City of Utica, North Genesee St. Arterial Hwy., Wells Ave. to NYS Thruway

Map No. (s) Portions of Maps 3, 10, 11, 12, 13, 14, 15 and 40

Parcel No. (s) 3, 10, 11, 12, 13, 14, 15 and 51 respectively County Oneida

City/Village Utica Town \_\_\_\_\_

THIS PERMIT, made this 14<sup>th</sup> day of SEPTEMBER, in the year 2007 between

City of Utica  
Attn: Anthony Arcuri  
1 Kennedy Plaza  
Utica, NY 13502

hereinafter referred to as "Permittee", and the COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the State",

WITNESSETH:

WHEREAS the State is the owner of the above identified property, hereinafter referred to as "property" or "premises"; and

WHEREAS the Permittee wishes to use and occupy said property;

NOW, THEREFORE, the State hereby grants this permit to the permittee, subject to the following covenants and conditions:

1. The property covered by this permit shall be used only for the purpose of:  
public ingress and egress to the City of Utica Erie Canal Marina Park, public parking, and connection to and use of the Department's sanitary sewer facilities (as shown on the attached plan), and for no other purpose whatsoever.
2. The fee to be charged shall be: \$1PW per year beginning 09/01/2007.
3. Payment of the fee is due on the first of the month unless otherwise stated. Fee must be paid by check, bank cashier's check or money order payable to "Department of Transportation" and mailed or delivered to:

New York State Department of Transportation  
Revenue Unit, POD #52  
50 Wolf Road  
Albany, New York 12232

4. The Permittee understands and agrees that if the full amount of the fee as stated herein is not paid within thirty days from the date billed as indicated on the bill; invoice, interest penalties and collecting fees will be imposed under the provisions of Chapter 55 of the Laws of 1992.
5. The Permittee understands and agrees that the fee charged by the State may periodically be updated to reflect fair market value and the Permittee will enter into a new permit for the new fee if the Permittee wishes to remain in occupancy. Failure to execute a new permit will require Permittee to immediately vacate the premises.
6. The Permittee acknowledges the State's right to collect a security deposit. This sum will be retained as security to ensure faithful performance of the permit and compliance with all terms by the Permittee. The State hereby acknowledges receipt of N/A received on \_\_\_\_\_ by \_\_\_\_\_.
7. This permit supersedes the permit number 21388 issued to the City of Utica in the amount of \$1.00/PW per year approved by the Director, Real Estate Division on 5/06/2003.
8. Permittee, at the Permittee's expense and for the term of the permit, shall furnish and show evidence of General Liability Insurance coverage issued by an insurance carrier licensed to do business in the State of New York for the protection of the State of New York and Permittee against any claims, suits, demands or judgments by reason of bodily injury, including death, and for any claims resulting in property damage occurring on or in proximity to the permit area.  
  
Such General Liability Insurance shall be in the amount no less than Self Ins (combined property damage and/or bodily injury, including death) single limit per occurrence, and shall name the People of the State of New York as an additional insured.  
  
The Permittee will furnish the State with a certificate of insurance, with a (30) thirty day(s) prior written notice of any cancellation or major change in the policy conditions. The permit shall be voided if insurance is canceled, modified or lapses.  
  
Approval of this permit shall be contingent upon receipt, by the State, of a copy of a properly executed insurance certificate.
9. Permittee is responsible for any repairs, improvements or maintenance work of any kind on the property at Permittee's expense. The State may, at any time, periodically inspect the premises to determine whether same is in good repair and maintenance, structurally sound, and that no unsafe, hazardous, unsanitary, or defective conditions exist.
10. Permittee hereby agrees to admit State representatives and prospective purchasers or permittees to examine these premises during reasonable business hours.
11. Permittee shall not place or store, or allow others to place or store, any flammable, explosive hazardous, toxic or corrosive materials, debris of any description, garbage or any materials commonly referred to as "junk" within the permit area, except fuel kept in the fuel tanks of legally parked vehicles allowed under the terms of this permit. Failure to comply with this provision may result in a ten (10) days written notice of cancellation of the permit in accordance with Provision 16 of the permit. The permittee is responsible for the removal of these materials and/or all expenses incurred in their removal.

12. All arrangements of services for utilities, removal of garbage, rubbish, litter, snow and ice will be made by the permittee at the permittee's expense, unless hereafter specified. The State shall have no responsibility to provide any services not specifically set forth in writing herein. Permittee shall comply with all local and State building standards/codes in the installation or repair of any utilities including but not limited to electricity and plumbing. Permittee is responsible for keeping and maintaining the premises in a safe and clean condition, for the regular and prompt removal of garbage, rubbish, litter, snow and ice. Permittee shall be responsible for preventing damages to the plumbing system and premises caused by lack of heat or water damage from leaks.
13. Permittee is responsible to maintain the occupancy in compliance with any and all applicable local, State, and Federal laws, ordinances, codes, rules and regulations affecting the use of the property. Permittee shall not conduct or allow any use or activity on the premises inconsistent with law and shall not conduct or allow any use or activity on the premises which may require a permit or other approval by a government agency without having lawfully obtained such permit or approval.
14. The parties acknowledge that this instrument is not a lease but is merely a permit to occupy and use, and therefore a landlord-tenant relationship is not hereby created; and further, that since this is not a lease, Section 5-321 of the General Obligations Law does not apply to this permit to the extent permitted by law.
15. The State shall have no responsibility whatever for the loss or destruction of any improvements made by the permittee or for personal property stored or being used on the premises.
16. This permit shall be renewed automatically for successive terms of one month each unless canceled by either party. Cancellation by the State requires thirty (30) days written notice, except for cause, in which event cancellation can be effected on ten (10) days written notice. Permittee may cancel this permit by giving thirty (30) days written notice.
17. Permittee shall not sublet the premises nor assign or transfer the permit to any other parties in part or in whole without the prior written consent of the State. Failure to comply with this provision may result in ten (10) days written notice of cancellation of the permit by the State, and the State may immediately take possession and terminate all rights of the permittee as of such moment.
18. It is understood and agreed by and between the parties that the permittee will ( ) will not (X) be entitled to any relocation benefits provided under State and Federal law.
19. Permittee agrees and understands that the State is under no obligation to sell the property to the permittee and that no commitment, express or implied, is made by the State to give the permittee any preemptive right of purchase.
20. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Neither shall the permittee discriminate in the use of this premises or any access thereto if such premises is used as a public accommodation or in connection with a public service.
21. Permittee hereby agrees to indemnify and save harmless the State from any claim or loss including legal expenses by reason of the use or misuse of the premises under this permit and/or from any claim or loss by reason of any accident or damage to any person or property being on said premises, caused by permittee, its employees, agents or invitees.

22. If any of the provisions of this permit are held invalid, such invalidity shall not affect or impair other provisions herein which can be given effect without the invalid provisions, and to this end the provisions of this permit are severable.

23. Additional provisions to permit: **SEE ATTACHED.**

**ACCEPTANCE:**

In consideration of the granting of the permit, the undersigned accepts all of the above terms, conditions and provisions.

Soc. Sec. No. \_\_\_\_\_

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

Fed. I.D. No. 15-6000418

City of Utica

BY: Timothy J. Julian, Mayor

ITS: \_\_\_\_\_

STATE OF NEW YORK )

COUNTY OF Oneida )

SS: \_\_\_\_\_

On the 18<sup>th</sup> day of September, in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy J. Julian, 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 person upon behalf of which the individuals(s) acted, executed the instrument.

CATHERINE M. MACK  
Notary Public, State of New York  
Reg.# 01MA6061896  
Appointed in Oneida County  
My Commission Expires July 23, 2009

Catherine M. Mack  
(Notary Public)

RECOMMENDED:

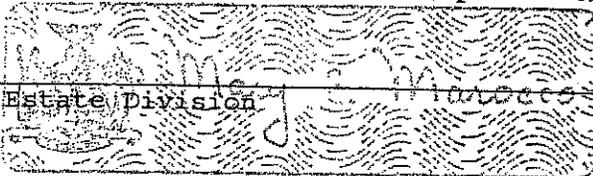
Joan O. Crofield  
Regional Real Estate Officer

Date 09/20/07

APPROVED: Commissioner of Transportation for the People of the State of New York

BY:

Director, Real Estate Division



Date 09/25/07

23. ADDITIONAL PROVISIONS:

The attached maps are made a part thereof.

Renewal of this permit will include review of the permit fee by "the state." Future fees may be derived from analysis of the gross sales and/or volume of business being done by the City of Utica and/or private vendors using the Erie Canal Marina Park site.

A highway work permit must be obtained from the Resident Engineer prior to commencing any work within the permit area.

Necessary approval must be granted from the Canal Corp. and any other agency that may be affected.

**EXHIBIT E**

**REQUEST FOR PROPOSALS  
UTICA ERIE CANAL MARINA  
FACILITY MANAGEMENT**

**INTRODUCTION**

**General Description**

The Historic Utica Erie Canal Marina, located on the Erie Canal at 16 Harbor Lock Road, which is directly east of the North Genesee Street bridge, Utica, New York. Presently has been utilized as a restaurant/banquet facility.

The amenities of this City owned facility include a 8,000 square foot two-story masonry structure, 180-foot pier head wall docking, 100-foot small craft docking, a plaza on the canal, passive recreational areas, fueling island, and parking lot. It is situated on the south waterfront bank of the Erie Canal. For a full description of the interior and exterior facilities available, refer to Appendix A. Several drawings of the Marina are included with Appendix B.

The City of Utica invites proposals for management operations of the Marina facilities by qualified firms or individuals. The agreement between the selected Proposer and the City of Utica shall on a sub-lease basis, with an agreed rental payment paid to the City. In selection of the successful Proposer, primary consideration shall be given to Proposals with the most responsive facilities management and operation plan, capitalization and development of the existing facility, and the experience, organization and financial ability of the Proposer. During the review of the Proposals, the City reserves the right to request detailed statement and evidence of the Proposer's experience, organization and financial ability.

The Proposal shall include a requested length of contract, which merit shall be considered in conjunction with a planned capital development and investment.

**BASIC ELEMENTS/REQUIREMENTS OF THE REQUEST FOR PROPOSAL (RFP)**

**Definitions and Ownership**

City-Refers to the City of Utica, owner of the Marina facilities, and the City's authorized representatives.

State-Refers to the State of New York Canal Corporation, owner of the land area.

Manager-Refers to the Lessee who will enter into a contract with the City of Utica, its subcontractors, employees and agents.

Site-Refers to the boundaries of land leased to the City by the State which contain the Marina facility.

### **Scope of Requested Management**

The City requests the operation and control of the docking facilities, gas island, exterior seating plazas, parking and any and all amenities and services current at the site including but not limited to restrooms, and all places within the building. Development, operation and control of additional exterior and interior concessions and services is encouraged and shall be included in the Proposal.

Proposal shall include a plan of the operations of the existing facilities, including planned subcontractors and number of employees, and development of new services, including capitalization of new equipment, its value and schedule.

### **Services and Sales to the Public**

The Manager shall provide free to the public the use of restrooms, parking spaces and exterior seating places, including safe land access to and enjoyment of the dock areas.

The Manager shall provide sales of food, beverages, sundry items, consumables, gasoline and diesel, dock space, and any and all items appropriate to the facilities.

Proposal shall include a list of the proposed concessions, by the use of existing facilities and any proposed new development.

### **Season of Operation**

Canal is watered by the State in mid-April and de-watered in November. Minimum season of operation requested in the Proposal shall be May 1 to October 30. Proposals may include a year round operation.

Proposer shall have ability to institute a start up operation by June 1, 2007. Proposal shall include outline of start operation and successive levels.

### **Utilities**

Payment of the electric, gas and water utilities shall be by the Tenant/Manager for the length of the contract.

### **Payment to the City**

Proposal shall include a form and manner of payment to the City as a monthly payment.

### **Insurances**

Workmen's Compensation Insurance and New York State Disability Insurance as required by law shall be maintained by the Manager.

The following minimum liability insurances through an insurance carrier licensed in the State of New York are required. Insurances shall name the City of Utica and the New York State Canal Corporation as additional insured. Proposal shall include an acknowledgment of the insurances and ability to acquire same.

General Liability Insurance with limits of not less than \$2,000,000.00, per occurrence, which shall include Product Liability, for claims of damages and damages of bodily injuries or death of persons, and damage or destruction of property.

Automobile Liability Insurance with limits of not less than \$1,000,000.00, per occurrence, which shall cover all owned, non-owned, and hired cars used by the Manager in connection with the management of the facility.

Liquor Liability Insurance with limits of not less than \$2,000,000.00, per occurrence, for claims of damage and damages of bodily injuries or death of persons, and for all damages arising from injury to or destruction of property in any one accident, subject to that limit per accident. (If applicable to the Proposal).

### **Maintenance**

Proposal shall include plan of the daily and usual interior maintenance of the interior facility, which includes sweeping, washing, disinfecting, scrubbing and maintenance of all surfaces, facilities, food areas, windows and places within the Marina. Include also the maintenance plan for the exterior seating plaza, and dock areas, garbage removal and disposal.

Planting, care, cutting and maintenance of landscaping and grass, snow plowing shall be provided by the City Parks Department.

Maintenance of facilities such as HVAC, electrical, gas, and the overall structure shall be provided by the City.

### **Alcoholic Beverages**

Sale of alcoholic beverages is permitted when operated under the rules and regulations and licensing of the State of New York. If included in the Proposal, a detailed summary of its sale location on the premises, hours of sale, management and control shall be included.

### **Lease With The State**

The contract between the City and the Manager shall comply with the terms of the lease between the State and the City.

### **Permits**

Health, labor, OSHA, and all regulatory permits shall be the responsibility of the Manager. The Proposal shall acknowledge the ability to acquire same.

### **Experience and Ability**

Proposal shall include a detailed summary of experience and history in the type of management operation requested. Include annual revenues of business experience.

### **Prevailing Wages**

Payment of New York State Prevailing Wages for occupations of persons employed by the Manager at the Marina facility is required. The Proposal shall acknowledge the payment of same.

### **Execution of Contract**

The Marina Committee anticipates selection of the successful Proposal by May 1, 2007. Within ten (10) days of notification of its selection, the Proposer shall sign a contract prepared by the City of Utica Corporation Counsel and provide all insurances.

### **Site Visits**

Proposers are encouraged to visit the Marina prior to submission of their Operations Plan. Please contact Michael Mahoney at (315) 792-0152 to make arrangements for a site tour.

### **Questions and Addenda**

Questions regarding this RFP may be submitted in writing to the City Engineering Department by fax at (315) 792-0236. Proposers may personally contact Michael Mahoney. Changes, clarifications or modifications to the RFP shall be issued by written addenda.

### **Submission of Operations Plan**

Qualified firms shall submit a detailed Proposal to Michael Mahoney, Engineering Department, 1 Kennedy Plaza, Utica, New York 13502, by 2:00 p.m., local time, on April 19, 2007. Exclusions to the 'Scope of Requested Management' section of the RFP shall be clearly stated. There shall be no exclusions to the other basic requirements of the RFP. The plans will be reviewed by the City of Utica Marina Committee and evaluated based on the criteria described in this RFP.

### **Presentations**

Following the review, selected firms will be involved to further describe their proposal before the Marina Committee. Firms will be contacted by April 24, 2007 to establish a time and date to meet with the Committee. Format for the presentation shall include a 30-minute description of the Operations Plan followed by a question and answer period. All presentations shall be completed by April 27, 2007.

# REQUEST FOR PROPOSALS UTICA MARINA FACILITY OPERATIONS

## Appendix A Scope of Services

This Appendix is provided to describe the existing facilities at the Marina. See Appendix B for location plan and drawings of the facilities.

### Facilities Available at Utica Marina

- The Utica Marina is a two-story masonry structure with a total of about 8,000 square feet, overlooking the historic Erie Canal.
- The upper level consists of a 80' x 36' open area with restrooms along the sides. There is also a concession room at this level and the stairway. The elevator is located in the center of this level, adjacent to the south wall.
- The lower level features another 64' x 18' open area. Facilities on this level include the men's and women's restrooms, mechanical room, phone room, 15' x 13' concession room and the 15' x 12' storage room.
- Also available on the lower is a 130' x 30' concrete patio overlooking the Erie Canal.
- The concession room is supplied with 120v electrical outlets.
- The Marina is accessible from the canal and from Genesee Street. The New York State Thruway Exit 31 is less the ½ mile away.
- For canal travelers, the downtown district of the City of Utica is about two (2) miles south of the Marina. A commercial and motel district is less than ½ mile away.
- The Marina offers 180' of concrete pier for docking large vessels and 100' of low level docks, catering to smaller vessels, located at the west end.
- Four (4) dockside bollards are located on the pier, offering eight hook-ups for overnight docking. The bollards include electricity (50 amps), water, telephone and TV lines.
- All facilities are handicap accessible and there is an elevator, conveniently located for those who require it.
- Parking is available for 28 passenger cars and two (2) handicap accessible vehicles.

*AquaVino Restaurant & Catering at the Utica Marina*  
*16 Harbor Lock Road*

Contact Information:

Robert Esche 315-534-5269/ Alicia Dicks 315-796-2813

FINAL  
Submitted 7/

May 10, 2007

CONFIDENTIAL SUBMITTAL

AQUAVINO RESTAURANT & CATERING

Statement of Purpose

ED Ventures is dedicated to creating a unique **Entertainment Destination** at downtown Utica's Marina that provides a hospitable, full service restaurant/bar & banquet hall specializing in a distinguished variety of seafood and American fare, while maintaining and promoting public accessibility to the NYS Canal, recreation trail and current public space amenities.

Concept

**AquaVino Restaurant & Catering** will offer a full service lunch menu in a relaxed and pleasurable atmosphere providing quality food and spirits to downtown businesses, the local community and the diverse needs of tourists. In addition, fine dining will be offered in the evening complete with first-class service and a signature menu enhanced daily with seasonal specials. The concept is to maintain and promote an authentic riverside café experience reminiscent of downtown Utica's celebrated days of its past. A primary objective for ED Ventures' is to reintroduce the community to its waterfront. ED Ventures has the expertise to attract special events, for example, movies on the barge, symphony on the water, etc. These types of family-oriented programs are successful in many communities along the Hudson River and will be the responsibility of ED Ventures to secure, promote and organize.

Marketing

Comprehensive marketing plan includes radio, TV and print ad covering the up-state marketplace; advertising with statewide travel advertisers, advertise with traveling sports teams, web-based advertising, and local promotional campaigns at regional events as well as local colleges and universities.

Competition

Limited competition exists for such a unique entertainment venue, as proposed by ED Ventures, on the water. Well established restaurant owners may make a success at this location, however, ED Ventures brings exceptional and distinct value to this proposal. First and foremost, the principle, a professional athlete, brings celebrity to the project. The celebrity component in this partnership project brings a new level of venue to the region, not unlike his peers have done in other Cities. The principle is a Mohawk Valley grown sports celebrity that has an intense interest in reinvesting in this community. AquaVino is his first venture and he has successfully attracted an amalgamation of experienced talent and skill to manage and promote the restaurant effectively and efficiently.

Balancing celebrity with the tasteful, contemporary, welcoming appeal of the restaurant and banquet facility, this proposal stands alone in bringing new vitality to the Marina and downtown Utica.

### Venue

The **AquaVino** Restaurant & Catering is uniquely positioned in downtown Utica. Adjacent to the NYS Erie & Barge Canal, the Canal Recreation Way and Exit 31 of the NYS Thruway, the Marina building is naturally postured as a distinctive destination. ED Ventures goal is to enhance public awareness through a comprehensive advertising campaign promoting the marina and the many amenities offered. The two-story existing building will be wholly utilized and, in phases, be completely redesigned. In addition, improvements will be made to existing deck (located on west side of building) to accommodate storage needs, permitting the kiosk building, currently used for storage, to be fully operable for outdoor vending activities serving the needs of boaters, riverside tourists and those accessing the trail system.

#### **Proposed Phase One Design Plan**

1. Elevator Realignment: Install elevator that has access from both sides, allowing customers to enter building and proceed directly downstairs to the restaurant without disturbing banquet activities **OR**; appropriately enclose outdoor stairwell on the east side to accommodate a separate entrance from the restaurant.
2. Banquet Room: Create a more intimate setting introducing contemporary lighting and custom window treatments
3. Restaurant: Enhance color scheme and install historic prints of the City of Utica
4. Building Entrance: Landscaping & signage improvements that welcome and attract interest
5. Readapt current storage usage of showers and underutilized space
6. Adapt additional footage (if made available from east-side adjacent property owner) for public amenities and additional storage.

#### **Proposed Phase Two Design Plan (Year two/three)**

1. Complete Redesign and Upgrade of Interiors
2. Install wine cellar
3. Construct outdoor deck accommodating expanded outdoor space for banquet facility overlooking the Marina; enclosing, with sliding glass walls, the restaurant space below. As a result, additional tables will be made available all-year round in the restaurant.

### Experience

ED Ventures has been incorporated since March 2005 as a new joint venture in real estate and business development. The principals of ED Ventures are also members of a local non-profit organization that has a proven track record of successfully promoting and managing large-scale events. For example, the organization developed and managed a 3-day hockey tournament, attracting professional players from across the country, leveraging community participation and surpassing fundraising goals. In addition, the organization has generated an expanding and successful track record in coordinating an annual golf tournament for several years that has attracted unprecedented corporate sponsorship and celebrity interest. Ed Ventures has the expertise, proficiency, and wherewithal to successfully promote and operate **AquaVino** as a regional destination, attracting appropriate talent and management to the food service and entertainment aspects of the business. Essential management positions have been selected as follows. NYS Prevailing Wage rates will be applied to all employees.

**Operations & Management Employee Structure:**

1. **Operations Manager:** 8 years experience as director of operations for entire division of Taco Bell.
2. **Chef:** Specializing in American Progressive Cuisine; Bachelor Degree in Applied Science and Culinary Arts from Johnson & Wales Culinary Institute; 8 years experience as line chef, 3 years experience Chef; employment history includes an internship at Vermont's famous Dorset Inn and the Alexander Hamilton in Clinton.
3. **Floor Manager:** Bachelor degree in Marketing from Utica College; 10 years at Marc Seneca Inn; 8 years at Alexander Hamilton as head waiter; coordinator of private home parties & banquets.
4. **General Staff:** additional 5-15 staff personnel to fulfill restaurant and marina operations.

**Operating Details****First Floor: AquaVino Restaurant****Afternoon: Casual Lunch**

- A. Lunch: full service
- B. Outdoor vending Available for public access (seasonal food vending kiosk, vending machines)
- C. Occasional Special Event Theme Celebrations

**Evening Dining Room**

- A. Diner: full service
- B. Live entertainment one - two nights per week (Friday and Saturday)
- C. Special Event Theme Celebrations: Wine Bar, Cigar Bar, Evening with Jazz, Big Screen Festivals (Wimbledon Series, Championship Professional Sports Series etc).

**Second Floor: Marina Banquet Room**

- A. By appointment only Banquets, Parties & Catered Events
- B. Available afternoon, evening, and Sunday morning brunch

**Hours of Operation**

Serving Lunch 11:30 – 3:30 daily, Monday - Saturday

Serving Dinner 5:00 – 9:30 Daily, Wednesday – Saturday

Serving Brunch 7:00 AM – 3:00 PM Sundays

Catering needs of private banquet parties 7 days a week on market demand

**Outdoor Amenities to be Negotiated**

- A. Fully landscaped grounds
- B. Special event series on the Canal: music, movies, etc.
- C. Enhanced property security
- D. Paved parking available for an Additional 32 cars
- E. Valet parking (under DOT bridge)

Grand Opening Schedule

Grand Opening with ED Ventures Principle Rob Esche: August 2007

Insurances & Regulatory Permits

The following insurances will be acquired for operations:

1. Workman's Compensation Insurance
2. New York State Disability Insurance
3. General Liability Insurance not less than \$2,000,000, per occurrence
4. Automobile Liability Insurance not less than \$1,000,000, per occurrence
5. Liquor Liability Insurance not less than \$2,000,000, per occurrence
6. Health Permit
7. Liquor Permit
8. Labor Permits
9. OSHA Permits

This location will remain a public benefit with access to the canal and canal trail. ED Ventures anticipates the City's continued cooperation in providing winter plowing of vehicular and pedestrian access and parking area and targeted assistance in the maintenance of public spaces.

Contract Length & Payment Schedule

Year One - five: Lease rate starts August 2007 with monthly lease rate of \$2,500<sup>1</sup>

Renegotiation for an additional 5-year option is at the full discretion of ED Ventures with an understanding that the annual lease rate for years 6 - 10.

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<sup>1</sup> ED Ventures agrees to submit \$2,000 monthly, unless AquaVino shows annual net operating revenue over \$250,000, which will raise the monthly rate to a maximum of \$2,500 monthly.

**EXHIBIT F**

**OCCUPANCY AGREEMENT**  
City of Utica IDA & ED Ventures LLC  
DBA Aqua Vino

**EXHIBIT G**

Items ED Ventures will purchase for the premise that will not remain with the premise.

<b><u>Item</u></b>	<b><u>Value</u></b>
Knife Sets	<b>\$1,000</b>
Wine Refrigerator Cellar	<b>\$1,200</b>
Audio Visual (Two Flat Screens, Computer, Telephone System	<b><u>\$12,000</u></b>
<b>Total Value</b>	<b>\$14,200</b>

policy of general liability and other insurance coverage required under the Lease.

4. That this UIDA designation of the City as agent by the UIDA may be terminated by either party upon 6 months notice but the Occupancy Agreement with any Operator will stay in effect pursuant to its terms.

City of Utica

*Need Signature?*

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

Utica Industrial Development Agency

By: Joseph H. Hobika  
JOSEPH. H. HOBIKA  
CHAIRMAN

# Exhibit E - Appraisal

# **DONATO REAL ESTATE APPRAISAL & CONSULTING**

**REAL ESTATE APPRAISERS - NEGOTIATIONS - RELOCATIONS**

**641 James Street, Utica, New York 13501**

**Telephone**  
**(315)798-1010**

**Fax**  
**(315)798-1105**

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## **SUMMARY APPRAISAL REPORT**

### **PREPARED FOR**

City of Utica  
Corporation Counsel  
1 Kennedy Plaza  
Utica, NY

### **PROPERTY ADDRESS**

Aqua Vino Restaurant  
Harbor Lock Road  
City of Utica, County of Oneida  
State of New York

**DATE OF INSPECTION:** July 13, 2018

**DATE OF VALUATION:** July 13, 2018

**DATE OF REPORT:** July 13, 2018

### **PREPARED BY**

Frank Donato  
NYS Certified General Real Estate Appraiser  
License #46-22996

**DONATO REAL ESTATE APPRISAL & CONSULTING**  
**641 James Street**  
**Utica, New York 13501**  
**(315) 798-1010**

July 3, 2018

Kate Hartnett, Esq.  
City of Utica  
Corporation Counsel  
1 Kennedy Plaza  
Utica, NY

Re: Appraisal Report - Aqua Vino Restaurant  
Harbor Lock Road  
Utica, New York  
Tax Map Number - 307.17-1-16

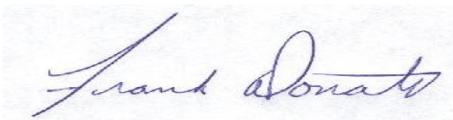
Dear Ms Hartnett:

At your request, I have inspected and appraised the above property. The purpose of the appraisal is to estimate the leased fee market value as of July 13, 2018. The function of the appraisal is to determine a market value for possible sale.

It is our opinion and conclusion that the leased fee estate of the herein described property as of July 13, 2018 is **\$ 385,000.**

This transmittal letter is followed by the certification of the appraisers and a complete summary appraisal report further describing the subject property and containing the reasoning and conclusions leading to the final estimate of value.

Sincerely:

A handwritten signature in blue ink that reads "Frank Donato". The signature is written in a cursive style and is positioned above the printed name and title.

Frank Donato  
N. Y. S. Certified General Real Estate Appraiser  
Cert # 46-22996

## **UNDERLYING ASSUMPTIONS AND LIMITING CONDITIONS**

The appraisal report has been made with the following assumptions and limiting conditions:

1. It is assumed that the legal description as obtained from public records is correct. No responsibility is assumed for matters legal in nature, and title to the property is assumed to be good and marketable unless otherwise stated.
2. Unless otherwise stated, the property is appraised free and clear of any or all liens or encumbrances.
3. Information, estimates and opinions furnished to the Appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy of such items furnished the Appraiser can be assumed by the Appraiser.
4. The plot plans and exhibits in this report are included only to assist the reader in visualizing the property. I have made no engineering survey of the property.
5. Possession of this report or a copy thereof does not carry with it the right of publication nor may it be used for any purpose by any but the client without the previous consent of the appraiser and then only with proper qualifications.
6. The appraiser herein by reason of this appraisal is not required to give future consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
7. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate valuations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
8. Unless otherwise stated, personal property has not been included in this report.
9. Disclosure of the contents of this report is governed by the Bylaws and Regulations of the Appraisal Foundation. Neither all nor any part of the contents of this report shall be disseminated to the public without the written approval of the author.
10. I assume that after a visual inspection, there are no hidden or unapparent conditions of the property, including the mechanical equipment, subsoil or structures which would render the property more or less valuable. I assume no responsibility for such conditions or for engineering which might be required to discover such factor.

11. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicted on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

12. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to the property value, the identity of the Appraiser, professional designations, reference to any professional appraisal organizations, or the firm with which the Appraiser is connected), shall be used for any purpose by anyone but the client specified in the report, the borrower if appraisal fee paid by same, the mortgage or its successors and assigns, mortgage insurers, consultants, professional appraisal organizations, any state or federally approved financial institution, any department, agency, or instrumentality of United States or any state or the District of Columbia, without the previous written consent of the Appraiser; nor shall it be conveyed by anyone to the public through advertising, public relations, news, sales, or other media, without the written consent and approval of the Appraiser.

13. The appraisal may be subject to change upon more information becoming available regarding the subject property and the existing lease.

## CERTIFICATION AND STATEMENT OF LIMITING CONDITIONS

**CERTIFICATION** I Certify that, to the best of my knowledge and belief:

-the statements of fact contained in this report are true and accurate.

-the report analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal , impartial, and unbiased professional analyses, opinions, and conclusions.

-I have no present or prospective interest in the property that is the subject of this report and no personal interest with the parties involved.

-I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment

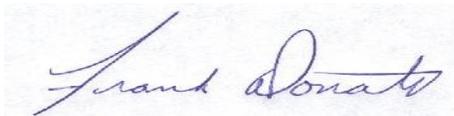
-my engagement in this assignment was not contingent upon developing or reporting predetermined results.

-my compensation or completion of this assignment is not contingent upon the development or reporting of a predetermined value or direction in the value that favors the cause of the client, the amount of the value opinion , the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

-my analyses, opinions, and conclusions were developed , and this report has been prepared, in conformation with the *Uniform Standards of Professional Appraisal Practices*.

-I have made a personal inspection of the property that is the subject of this report.

-no one provided significant real property appraisal assistance to the person(s) signing this certification. The subject land was appraised by the subject appraiser on April 10, 2016. I also previously appraised the subject property on April 30, 2016. I have not performed any other services on the subject property within the last 36 months.



July 13, 2018

Frank Donato  
N. Y. S. Certified General Real Estate Appraiser  
Cert # 46-22996

Date

**SUBJECT PHOTO SHEET**  
**Aqua Vino Restaurant, Utica**



Front of Subject Property

## SUMMARY OF SALIENT FACTS

Property Location:	Aqua Vino Restaurant, Harbor Lock Road, Utica, N Y
Property Rights Appraised:	Leased Fee
Date of Inspection:	July 13, 2018
Date of Valuation:	July 13, 2018
Tax Map Number:	307.17-1-16
Site Description	The Subject site is an "L" Shaped inclining to level parcel with 340.22 feet of frontage along New York State Barge Canal and irregular depths, containing .971 acres or 42,312 square feet. Per attached survey, the subject has a 20 foot wide easement. See attached survey
Improvement Description:	The subject site is improved by a two story restaurant containing 8,000 square feet with covered outdoor patio and 180 foot pier head dock wall. The improvements are considered to be in overall good condition.
Final Estimate of Value:	<b>\$ 385,000</b>

## **PURPOSE OF APPRAISAL**

The purpose of the appraisal is to estimate the market value of the subject property as of July 13, 2018.

## **FUNCTION OF THE APPRAISAL**

The function of the appraisal is to estimate the market value of the subject for possible sale.

## **PROPERTY INSPECTION**

The property was inspected on July 13, 2018 by Frank Donato for the purpose of the appraisal.

## **EFFECTIVE DATE OF APPRAISAL**

The effective date of the appraisal is April 10, 2016, the date of inspection.

## **OWNERSHIP HISTORY**

The subject site is currently owned by City of Utica. The subject site was purchased on July 5, 2018 from People of the State of New York. The subject parcel (land only, improvements were owned by the City of Utica) was purchased for \$ 50,000. The sale is not considered arms-length since the subject was not exposed or marketed to the open public.

## **SCOPE OF APPRAISAL**

The purpose of the appraisal is to determine an estimated market value. The subject is commonly known as Aqua Vino Restaurant, Lock Harbor Road, City of Utica, State of New York. The public records and survey map were used to determine legal information, ownership, and site information. The client for this report is City of Utica, as potential seller of the property. Users of the report will be the client only for decisions related to the sale of the property.

Per client request all approaches to value will be considered and the results will be reported in a summary format. The depth of discussion in this report is specific to this report and needs of the client based on conversation with client.

To determine the market value the exterior of the subject was inspected. The condition and description of improvements are derived from personal inspection of the property and information provided by client. The subject neighborhood and similar neighborhoods in the subject marketing area were considered in the collection of potential comparable sales and confirmed with persons familiar with the properties and transactions.

The appraisal process is set forth to conform with the Uniform Standards of Professional Appraisal Practice guidelines for report writing as outlined in Standard Rule 2-2.

Per client request, the appraisal will be completed with a complete analysis considering all approaches to value and the vacant land value. The reports will be reported in a summary format. The appraisal is not authorized for use by persons other than client and listed users or for any other function. The appraiser is not responsible for any unauthorized use of this report. The depth of discussion in this report is specific to this report and the needs of the client to fulfill the purpose and function of this report, while not resulting in a misleading or erroneous appraisal report.

The appraisers lack the knowledge and experience with regard to the detection and measurement of hazardous substances. Therefore, this assignment does not cover the presence or absence of such substances as discussed in the General Underlying Assumption section. However, any visual or obviously known hazardous substances affecting the property will be reported, and an indication of its impact on value will be discussed.

The appraiser is a New York State Certified General Real Estate Appraiser (Certification number 46000022996), with more than 25 years of experience appraising all types of residential and commercial real estate. The general certification is the highest appraisal certification available from New York State and allows the holder to appraise any type of property within the state regardless of use or value. The certification ensures that the holder has completed extensive course work and training along with a variety of different types of appraisals and a state qualifying exam.

The appraiser is familiar with the subject's marketing area and has completed appraisals of a large scope of commercial properties including properties similar to the subject. A list of appraisers' qualifications are attached in the addendum of this report.

## **TYPE OF VALUE ESTIMATED**

The type of value requested by the client is market value.

## **MARKET VALUE DEFINITION**

Market value is defined as follows: “the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

## **PROPERTY RIGHTS APPRAISED**

The subject improvements were leased at effective date of appraisal. The improvements are leased from December 24, 2014 to October 31, 2022. A copy of the lease is attached in the addendum section of this report. Since the subject is leased with a minimum of 4+ years remaining in the base term, the subject will be valued under leased fee estate. There is also an option for the tenant to renew the lease for an additional five year term, however, per lease, the rent is to be re-negotiated at that time. Leased fee estate is the value of the rights retained by the owner of the property.

## **PERSONAL PROPERTY**

Personal property such as furniture, tools and all items not permanently attached to the real estate are not included in this report. Trade fixtures or chattel included in this report, based on their installation and intent of installer, will be discussed in the improvement section of this report.

## **LOCATION AND IDENTIFICATION OF SUBJECT PROPERTY**

The subject property is located in the City of Utica within the County of Oneida, State of New York.

Oneida county is in the geographic center of New York State, within a four hour drive of 25% of the population of the nation and within 750 miles of 50% of the population of the United States and Canada.

The county has a population of approximately 230,000 people with well defined urban, suburban, and rural areas. Major employment is mostly smaller locally owned companies with employment ranging from 5 to 75 employees. The largest employer in the county is the Oneida Indian Nation (Turning Stone Casino).

The City of Utica, has the largest population in the county. The central part of the city is made up mostly of older single and 2-4 family homes built between 1900 and 1925. Development within the city includes single family ranch and cape cod style homes, mostly tract housing built just after World War II of fair to average quality, in the northern part of the city. These homes have been moderately to well maintained and appear to be generally in average condition. The western section has mostly older single and 2-4 family homes built between 1900 and 1925. The quality of construction based on period materials and workmanship is good, however the properties generally display lower level of maintenance with many absentee landlords and an older owner occupied population. The properties in this section of the city appear to range from poor to average condition. The southern and eastern parts of the city are generally older with the central section built between 1900 and 1925. The central section of the city is mostly older 2-4 family homes made with quality period materials and workmanship. The homes display a wide variety of condition and maintenance ranging from poor to average. As development expanded from the central section, the homes are predominately single family with a higher level of maintenance and recent updates.

The subject is located in the northern section of the City of Utica along just off of North Genesee Street. Genesee Street bisects the city dividing East Utica and West Utica. The city's downtown district is also located along Genesee Street. The subject immediate area is a highway/service commercial setting to fulfill the needs of local and out-of-area tourists. The subject area connects the north and south sections of the city for local travelers. Thruway exit 31 ( the only Thruway exit and the major access allowing access to the Adirondack Mountains and Fulton Chain of Lakes) is located in the immediate area. The immediate area is improved 100% by commercial properties, containing locally owned and regional chain restaurants, hotels/motels and gas stations/convenience stores.

The immediate area is also undergoing a change with the development of the Harbor Area. The city has recently approved a group to submit plans for development of a Harbor offshoot of the Mohawk River. Preliminary plans include development of retail/ some type of housing ( loft apartments or condominiums) and some type of recreational offerings. Since the final developments plans have not been disclosed or approved, and a time-table for development has not been established, the impact on the subject area can not be determined or speculated on.

The subject is being appraised as a vacant parcel along the east side of Harbor Lock Road between the Erie Canal and Mohawk River. The area is bound to the north by Weaver Street and the south by the Mohawk River. The subject parcel, is county tax amp number 307.17-1-16.

### **SITE DESCRIPTION**

The following site description is based on personal inspection of the subject property, information provided by client and information available in public records.

The subject site, located off of Harbor Lock Road is a generally level, irregular “L” shaped parcel with 340.22 feet of frontage along the south side of Erie Canal with depths of 50.95 feet and 44.93 feet. The parcel then follows a curved line 294.00 feet and 391.12 feet with a rear dimension of 76.46 feet. The parcel contains 42,312 +/- feet or .971 acres.

The above parcel is encumbered by a 20 foot wide easement containing 1,581square feet or .036 acres. The subject parcel borders Harbor Lock Road.

See attached Map and Survey.

No other easements or encroachments were observed at time of inspection. Title documentation has not been provided or researched to determine if easements are present. The appraisal is being completed as if no other easements exist and the subject has marketable title with warrantee deed.

The routine inspection of the subject and nearby area disclosed no unusual adverse conditions affecting the land, but no responsibility is accepted for discovering or evaluating subsoil, hidden or unusual environmental conditions as referred to in the Underlying Assumptions.

A review of the Flood Hazard Map shows that at least a portion of the property appears to be located in a designated flood area. The subject is located in community number 36065C panel 0752, zone C & zone A, dated September 27, 2013. Any question regarding this designation should be referred to FEMA, whose maps are more detailed.



## **ZONING**

The subject area is zoned LC-Land Conservation by the City of Utica. The LC is designated for areas in and around flood plains. The subject is an operating restaurant and parking area. The uses have been in effect for a number of years and the use is considered legal.

## **ASSESSMENT AND TAXES**

The subject property is assessed for \$ 371,250, which results in an equalized value of \$ \$ 550,000 and a tax burden of \$ \$ 25,000 +/- per year.

## **IMPROVEMENT DESCRIPTION**

The following improvement description is based on personal inspection of the interior and exterior of the property and information provided by client.

The site is improved by a two level 8,000 squar foot restaurant facility with upper level banquet facility with bar area and (2) half baths and lower level bar area, dining area, (2) .5 bathrooms and commercial kitchen. The building features an elevator servicing both levels, an outdoor patio along the water and glass wall along the rear of the building overlooking the water.

This building is considered to be in overall good condition.

The site is also improved by a macadam parking area for 30 +/- vehicle and a 180 foot concrete pier for docking .

Subject Photos



Front of Subject



Rear of Subject

Subject Photos



Subject Interior



Subject Interior

Subject Photos



Kitchen Area



Kitchen Area

Subject Photos



Kitchen Area



Kitchen Area

Subject Photos



Kitchen Area



Kitchen Area

Subject Photos



Upper Level Bar



Water Frontage

## Subject Photos



## Side Patio



## Parking Area

## **DEFINITION OF HIGHEST AND BEST USE**

This definition applies to highest and best use of land as vacant and improved. Where the site has been improved, the highest and best use may very well be concluded to be different from the existing use. The existing use will continue; however, unless and until land value exceeds the total value of the property in its existing use, which relates to a change in demand or deterioration of improvements.

The highest and best use of both land as though vacant and property as improved must meet four criteria. The highest and best use must be (1) physically possible, (2) legally permissible, (3) financially feasible, and (4) maximally productive. These criteria are usually considered sequentially; a use may be physically possible, but this is irrelevant if it is feasibly impossible or legally prohibited.

Only when there is a reasonable possibility that one of the prior, unacceptable conditions can be changed, the proposed use can be considered on that basis. A full analysis may be included in the report when the conclusions are based on techniques applied to identify the highest and best use among two or more potential users.

(The Appraisal of Real Estate, 10th edition by Appraisal Institute, 1992)

### **HIGHEST AND BEST USE - AS VACANT**

The highest and best use of the subject parcel as improved is service commercial development with proper government approval.

### **HIGHEST AND BEST USE - AS IMPROVED**

As stated earlier, the site is improved by a two story restaurant containing 8,000 +/- square feet, paved parking area and covered outdoor patio in overall good condition. After this analysis, taking into account the size of the site, other developmental possibilities, and quality and design of the current structures, the best use of the property was considered to be continued use of current improvements under current use.

## **LEASE/ OCCUPANCY**

At time of inspection, the subject improvements were leased from City of Utica Industrial Development Agency to ED Ventures. The lease is attached in the addendum section of this report. Per attached lease, the subject rent is \$ 3,000/month for 7 months or \$ 21,000 annually with tenant responsible for utilities. The landlord is responsible for structural repairs and exterior maintenance, insurance and taxes.

## **MARKETABILITY AND EXPOSURE TIME**

The exposure time of the subject, based on sales of similar properties, is considered to be 9 -12 months. The exposure time is forecast based on professional marketing and reasonable asking price. The subject is encumbered by a lease as described in this report. The lease is at a rate lower than market. This adversely effects the subject market value and marketability since the subject has a negative cash flow for the remainder of the lease. No other conditions were observed that would adversely effect the marketing of the subject based on the assumptions contained in this report.

## **VALUATION ANALYSIS**

In estimating the market value of the subject property, the cost, income capitalization and sales comparison approaches to value were considered. Each approach is defined along with an analysis as it pertains to the subject.

The cost approach is an indication of value which combines the value of the land under its highest and best use, and the depreciated reproduction or replacement cost of the improvements. Depreciation is the loss in value due to wear and tear, design and plan, or neighborhood influence. The cost approach is based upon the principle of substitution which states that a purchaser would most likely not pay more for a property than the cost of obtaining an equally desirable substitute site, and the cost of replacing equally desirable and useful improvements assuming no costly delay is involved in making the substitution.

In the income capitalization approach, the projected or current rental income from the property is shown with deductions for vacancy and collection losses and expenses. The applicable capitalization method and appropriate overall capitalization rates are developed and used in computations to lead to an indication of value.

The sales comparison approach or market approach is the method of estimating value whereby the subject property is compared with similar properties that have sold or for which listing prices or offering figures are known. The information on typically comparable properties is used and comparisons are made to the subject property to demonstrate a probable price if offered on the market.

All sales are preferably located within the same marketing area or similar neighborhoods. The sales comparison approach is a systematic procedure for comparative analysis. Market supported adjustments are necessary to the comparable sales since no two properties are identical. If the comparable sale property is inferior to the subject for a particular characteristic, the sale price is enhanced by an appropriate adjustment factor. If the comparable sale property is superior to the subject, then the sale price is reduced by a corresponding adjustment factor. For unit cost adjustments of square footage, the larger properties are positively adjusted since the larger the size, the smaller the unit cost, and conversely, smaller properties require negative adjustments since the smaller the size, the larger the unit cost.

### **APPRAISAL PROBLEM**

The subject site, as stated earlier, contains approximately .97 acres and is improved by a two story commercial restaurant facility with 8,000 +/- square feet in overall good condition.

The property will be valued using the Income Capitalization and Sales Comparison Approaches. The Cost Approach will not be utilized due to the difficulty in determining accrued depreciation of older structures. The land value is not necessary to fulfill the function of this report. Also this report is being communicated in a summary format. The exclusion of the Cost Approach and the summary format will not result in a misleading or erroneous report.

Site and improvements will be valued based on their contribution to the total property. The site and improvements will be valued on a whole-to-whole basis with individual components based on their enhancement to the entire real estate.

### **INCOME CAPITALIZATION APPROACH**

The Income Capitalization Approach has been applied, based on market rents, typical vacancies for similar properties, typical market operating expenses and a market derived overall capitalization rate to estimate the value. In appraisal terminology, with regard to income properties, value is normally defined as “the present worth of future rights to income.”

The value estimate using this approach is derived by estimating the market rent of the property, deducting all applicable expenses, capitalizing the resulting net operating income to obtain the present value of the forecasted income stream. This method provides an objective estimate of what an informed investor would pay for the subject property.

A market survey was done to determine rental rates for similar properties within the subject's marketing areas. Adjustments are made to the rentals for physical characteristics and rental conditions which differ from the subject. All rental data were verified with persons familiar with the properties. The rentals were analyzed to determine the economic rent of the subject.

A search of the subject marketing area was completed to determine a market rent for the commercial area.

The subject is currently leased for \$ 21,000 per year (\$ 2.63/sq ft) with the owner responsible for exterior maintenance, taxes, insurance and structural repairs. The subject is leased from 2014 to 2022. Since the lease has more than 4 years remaining, the actual lease price will be used, even though the market rent is \$ 10.00/sq. ft. to \$ 12.00/sq. ft.

### **VACANCY AND COLLECTION LOSS**

The subject is leased to a single tenant with owner responsible for exterior maintenance and structural repairs. The typical vacancy rate for restaurants in the subject marketing area range from 5% to 25%. Based on the subject actual rent being below market, the vacancy rate would be at low end of range. Based on the above, the estimated vacancy rate for the subject under contract rent is 5%.

### **EXPENSE ANALYSIS**

As stated earlier, the subject would most likely rent on a net, net basis with tenant responsible for gas and electric within leased space.

**Management:** The typical management fee on this type of complex leased on a net, net basis is 2% to 6% of effective gross income. In this instance a management fee of 4% is deemed adequate. As stated above, the typical market rent for the subject is approximately \$ 11.00/sq ft resulting in a typical annual market rent of \$ 88,000 and a typical management expense of \$ 2,640 ( \$ 88,000 x 3%)

**Insurance:** This expense is an owner expense, the estimated insurance expense is \$ 5,000 per year.

**Legal, Accounting, Advertizing, Etc.:** This expense refers to business charges generally incurred with building ownership. This expense includes income tax preparation, telephone, office expenses, annual legal expenses, etc. Since no historic expenses are available, this will be estimated using similar properties.

**Reserve For Replacement:** This item is an annual amount set aside for the replacement of mechanical items and items that “wear out” such as the roof. Typically the reserve is determined by the amount to replace the item is divided by the life expectancy of the item (example- roof replacement cost \$2,500, life expectancy 20 years, therefore \$125 must be set aside each year for the replacement of the roof). The reserve can be reflected as a percentage of effective gross income or based on the square footage of the building. For the subject property type, a typical reserve for restaurants is \$ .50/sq ft or \$ 4,000 per year ( \$ .50/sq ft x 8,000 sq ft ) including attached equipment.

**Utilities:** Per attached lease, the utilities are paid by tenant.

**Maintenance:** The owner is responsible for interior and exterior maintenance. The estimated maintenance expense is \$ 6,000 per year.

**Taxes:** As determined earlier, the estimated annual tax burden is \$ 25,000.

### **POTENTIAL GROSS INCOME**

Restaurant- \$ 3,000/month x 7 months = \$ 21,000

Total Annual Potential Income = **\$ 21,000**

Vacancy & Collection Loss-Commercial Area ( 5%) = \$ 1,050

Effective gross income = **\$ 19,950**

**Expenses:**

Management	\$ 2,640
Insurance	5,000
Legal, acct.,etc.	2,000
Reserve & Replacement	5,000
Maintenance	6,000
Taxes	25,000

**TOTAL OPERATING EXPENSES** **\$ 45,640**

**NET OPERATING INCOME** **\$ (25,690)**

The value can be generally determined in two ways using the net operating income, either using a debt coverage ratio or a capitalization rate. The debt coverage ratio is the ratio of net operating income to annual debt service. This method works best with market derived ratios of net operating income to debt service. The local market is not active enough to have enough verified ratios to apply to the subject to achieve a reliable value indication. The capitalization method is based on a weighted average of the constant percentage required to amortize a mortgage ( mortgage constant) and a reasonable return on the investor equity ( equity yield). This is generally referred to as the "band of investments technique". The mortgage rate, amortization period and loan-to-value ratio are those typical of local, regional and national commercial institutions in effect as of the valuation date in this appraisal report, for properties similar to the subject.

## **CAPITALIZATION RATE**

There are a number of methods to determine a capitalization rate for the subject property, the Band of Investments will be used in this instance since market derived capitalization rates and market derived debt coverage ratios could not be extracted from our market.

Conversation with local commercial lenders and investors were used to establish to estimated expected equity dividend rates, loan to value ratios, equity yield rates and overall capitalization rates.

**Loan to Value Ratio** The loan to value ratio is the relationship between the required down payment percentage of the loan and the percentage of the loan that would be invested by a lending institution via a mortgage note. Per conversation with local lending institutions, typical loan to value ratios for similar properties are 25% down payment or equity investment and 75% mortgage or lender investment.

**Equity Yield Rates** This is the expected return to an investor for the investor down payment. Per conversation with local investors, a rate of return range in the local market for similar properties generally range from 10% to 15%. Based on the above, an equity yield rate of 12 % will be used.

**Equity Dividend Rates** This is the return required by the bank on the mortgage investment. to an investor for the investor down payment. Per conversation with local lending institutions, interest rates for similar properties generally range from 5.00 % to 7.0 %. Based on the above, an interest rate of 6.0 % will be used.

**Term of Loan** : The typical loan term in the local market is 20 years.

**Band of Investment Technique:** The band of investment technique uses a mortgage constant multiplied and equity yield rate multiplied by the loan to value ration to determine the capitalization rate. The mortgage constant is the amount to amortize a \$ 1.00 loan at a specific interest rate for a specific term. To determine the mortgage constant, an interest rate of 6.0 % will be used over a 20 year term. This will be then multiplied by the 75% to represent the lending institution portion of the total investment. The equity portion of the capitalization rate will be determined by multiplying the expected yield rate of 12% multiplied by the 25% investor down payment of the total investment

**BAND OF INVESTMENT TECHNIQUE  
MORTGAGE/EQUITY RATIO**

$$\begin{array}{rcl} \text{Mortgage } 75 \times .08597^* & = & .06448 \\ \text{Equity } .25 \times .12^{**} & = & \underline{.03000} \\ & & .09448 \end{array}$$

\*Mortgage constant to amortize a 20 year mortgage at 6.0 % interest

\*\*Expected return to an investor on down payment.

**INDICATED VALUE VIA THE INCOME APPROACH**

The value of the subject is found by dividing the net operating income by the overall capitalization rate.

$$\text{Value} = \text{Net Operating Income} \div \text{Overall Capitalization Rate}$$

**The subject has a negative net income, therefore the capitalization rate can not be applied.**

## **SALES COMPARISON APPROACH**

The sales comparison approach or market approach is based upon a comparison of prices for similar competitive properties in the same market representing arm's length transactions. This approach works best in an active market where these prices serve as good indicators of the most probable selling price of the subject property as of valuation date.

Comparable sales are analyzed and adjusted based on property rights conveyed, market conditions, terms of financing, conditions of sale, differences in physical characteristics, and location. The adjusted sales price should be what the comparable property would have sold for if it has possessed similar characteristics of the subject at the time of the sale.

All comparables used are closed sales which are located within the subject's marketing area. Sale conditions, as well as other pertinent data, is confirmed with listing or selling agents or other persons directly involved in the transfer. All adjustments are market derived and based on contribution

**SALES COMPARISON GRID**

	<b>SUBJECT</b>	<b>COMPARABLE 1</b>	<b>COMPARABLE 2</b>	<b>COMPARABLE 3</b>
	Harbor Lock Utica	1700 N James St Rome	3955 Edgebrook New Hartford	470 Whitesboro St Utica
Grantee	N/A	Rasberries of Rome	Kellogg Station, LLC	Caliber Club Realty LLC
Grantor	N/A	Kessler Family LLC	Patrick McCann	Food Giants, LLC
Tax Map #	307.17-1-16	224.013-1-3&4	339.016-1-6	318.34-1-4
Sale Price	N/A	\$ 350,000	\$ 520,000	\$ 750,000
Price/SF	N/A	\$136.51/ SF	\$143.81/SF	\$ 76.43/ SF
Value Date	7/13/18	4/17/14	5/11/17	2/27/17
Cond. of sale	Normal	Normal	Normal	Normal
Financin	Market	Market	Market	Market
Adj. Unit Price	N /A	\$ 136.51/SF	\$143.81/SF	\$ 76.43/SF
Site Size/Loc	.97 Acres/ Adeq	.64 Ac/ Adeq	3.80 Ac/ Adeq -20%	1.39 Ac/Adeq -15%
Location	Average	Good -30%	Similar	Inferior +30%
Blg Size GBA	8,000 sq ft	2,564 sq ft -15%	3,616 sq ft -15%	9,812 sq ft + 15%
Cond	Average	Inferior +20%	Similar	Similar
Other	Rest. Equipment	Similar	Similar	Similar
Net Adjustment		- 25%	- 35%	+30%
Price Per Unit		<b>\$ 102.11/sq ft</b>	<b>\$93.48/sq ft</b>	<b>\$ 99.36/sq ft</b>

## EXPLANATION OF ADJUSTMENTS

Building size adjustments are based on a unit cost theory of diminishing return, which states that larger buildings generally sell for less per square foot, requiring a positive adjustment and vice versa.

No resale of similar properties could be found to justify a trend adjustment, therefore no trend adjustments were made.

### Comparable One

Comparable one is a restaurant building that required adjustment for superior location in an commercial corridor in an area of similar properties. The comparable also required adjustment for inferior overall condition and smaller square footage.

### Comparable Two

Comparable two is a restaurant building that required an adjustment for larger site and smaller square footage.

### Comparable Three

Comparable three is a restaurant building that required adjustment for larger site, inferior location in an area with less population and exposure and larger square footage.

## **RECONCILIATION OF SALES COMPARISON APPROACH**

When the comparables are reasonably adjusted, they form a range of unit value from \$ 93.48/s.f. to \$ 102.11/s.f. With equal consideration given to each comparable, a unit value of \$ 100.00/sq ft is indicated, resulting in a market value of \$ 800,000.

A market value is determined by multiplying subject square footage X unit value:

$$8,000 \text{ s.f.} \times \$ 100.00/\text{s.f.} = \$ 800,000(\text{R})$$

## Comparable Sales



Comparable One



Comparable 2

## Comparable Sales



Comparable 3

## FINAL RECONCILIATION

The Income Capitalization Approach and Sales Comparison Approach were utilized in estimating the market value of the subject property. These approaches to value have produced the following indications of market value for the subject:

Income Capitalization Approach: \$ Negative  
Sales Comparison Approach: \$ 800,000

Properties similar to the subject are generally owner occupied, however the subject is encumbered by a lease until 2022, which is at a below market rental rate.

An investor in the subject property would need to purchase the subject property with cash, since the existing lease results in a net negative cash flow and a lending institution would most likely not lend on a property with a negative cash flow. An investor would require a return on the purchase price. An investor, based on the current lease, would also have an annual lost of approximately \$ 26,000 ( as determined by the cash flow analysis contained in this report). An investor would also require a return on this loss ( an investor would require a return based on the theory of opportunity cost, and a prudent investor would need to get a return on this investment or would invest the funds in another property or investment that would produce a return.) Typical real estate returns are 8% - 12% on down payment or purchase price and typical annual return on investment ( annual loss). Based on the above, a prudent investor would require an 10% return on the annual loss and purchase price ( the real estate expected rate of return is higher than some other investment options based on additional risk of change in market and lack of liquidity of real estate). It must be noted that an investor will be losing money annually for the remainder of the lease and would most likely not be able to finance the property for the remainder of the lease (4 years). To arrive at the estimated “as is” market value taking into consideration the existing lease, the indicated value via the sales comparison approach will be used minus any investment for purchase and annual loss and return on investment for the purchase price and annual loss. The indicated above value is \$ 800,000. The annual loss is \$ 26,000 and the expected return on this annual loss is 10% ( compounded), which results in a total expense of \$ 133,000 ® ( 26,000 x 4 years with a compounded 10% return annually). A return would also be expected on the purchase money used. Using the \$ 800,000 above, an expected annual return would be \$ 80,000, which also must be compounded for the four years remaining on the lease until the property could be refinanced. Based on the above, an 10% annual return on an \$ 800,000 investment compounded annually is \$ 408,000 ®. An investor investing \$ 800,000 with a 10% return over 4 years would have a net gain of \$ 408,000 from that investment. Based on the above, the loss to an investor in the subject property is \$ 133,000 ( annual \$ 26,000 loss with 10% return on that money for 4 years ) and \$ 408,000 ( return if \$ 800,000 was invested into another investment or property with \$ 800,000 invested over 4 years with a 10% return). Based on the above, an investor purchasing the subject property would have a total loss of \$ 133,000 for annual loss with 10% compounded return and \$ 408,000 on return on purchase price, for a total of \$ \$ 541, 000. This must be deducted from the \$ 800,000 value indicated to arrive at the “as is” value considering the lease. Based on the above, the “as is” market value considering the effects of the lease is \$ 259,000 ( \$ 800,000 -\$ 541,000). It must be noted that each year the value will increase as the lease has fewer remaining years and therefore less years of loss of money. The final estimate of value would be a number between the sales comparison approach (\$ 800,000) and the \$ 259,000 current value since the value would increase and an investor would have an \$ 800,000 property ( assuming the market remains at least constant and the condition of the property is maintained ) in approximately 4 years. Based on the above, the subject has an estimated market value of \$ 385,000 as of July 13, 2018. As stated above, is must be noted that the subject value would increase each year until the lease expires then the value would be the value indicated by the sales comparison approach.