

Offered by: _____

Seconded by: _____

RESOLUTION APPROVING A BOAT DOCKING PERMIT WITH PARADISE LADY LLC FOR BOAT DOCKING AT BOOM ISLAND

WHEREAS, the MPRB has determined that there is public interest in having an excursion boat and sightseeing boat operate out of Boom Island on the Mississippi River; and

WHEREAS, the Park Board and SkipperLiner entered into an agreement for SkipperLiner to provide excursion boat services out of Boom Island;

WHEREAS, SkipperLiner is in default of the agreement and deemed insolvent,

WHEREAS, the Park Board’s agreement with SkipperLiner is deemed void because of SkipperLiner’s insolvency;

WHEREAS, the continued service of an excursion boat and charter boat operation is in the best interest of the public and the MPRB;

WHEREAS, Paradise Lady, LLC has operated the excursion boat, the Minneapolis Queen, and the charter boat, the Paradise Lady, on the Mississippi River since 2004;

WHEREAS, Paradise Lady, LLC desires to obtain an exclusive permit to dock both its excursion boat and its charter boat at Boom Island;

WHEREAS, Paradise Lady, LLC will be limited to an exclusive permit to dock at Boom Island

NOW THEREFORE, be it resolved by the Commissioners of the Minneapolis Park & Recreation Board as follows:

The President and Secretary of the Board are authorized to execute the boat docking permit with Paradise Lady, LLC for boat docking at Boom Island

Vote:

| Commissioner | Aye | Nay | Abstain | Absent |
|--------------|-----|-----|---------|--------|
| Bourn | | | | |
| Erwin | | | | |
| Fine | | | | |
| Kummer | | | | |
| Olson | | | | |
| Tabb | | | | |
| Vreeland | | | | |
| Wielinski | | | | |
| Young | | | | |

BOAT DOCKING PERMIT
Minneapolis Park and Recreation Board
Ordinance PB4-92

THIS PERMIT is issued as of the ____ day of _____, 2010 (the 'Effective Date"), by and between the City of Minneapolis, acting by and through its Park and Recreation Board (the "MPRB") and Paradise Lady, LLC..

Whereas, the MPRB has determined that there is public interest in having an excursion boat and sightseeing boat operate out of Boom Island on the Mississippi River;

Whereas, the MPRB issued a Request for Proposals for Excursion Boat Operators on November 21, 2003;

Whereas, SkipperLiner, a excursion boat operator, responded to the MPRB's request for bids;

Whereas, on February 4, 2004, the Park Board awarded SkipperLiner a 10 Year contract with a 5 Year renewal for operating excursion boats out of Boom Island;

Whereas, the Park Board and SkipperLiner entered into an agreement for SkipperLiner to provide excursion boat services out of Boom Island;

Whereas, SkipperLiner is in default of the agreement and deemed insolvent,

Whereas, the Park Board's agreement with SkipperLiner is deemed void because of SkipperLiner's insolvency;

Whereas, the continued service of an excursion boat and charter boat operation is in the best interest of the public and the MPRB;

Whereas, Paradise Lady, LLC has operated the excursion boat, the Minneapolis Queen, and the charter boat, the Paradise Lady, on the Mississippi River since 2004;

Whereas, Paradise Lady, LLC has been a reliable and safe operator of both the excursion boat and the charter boat;

Whereas, Paradise Lady, LLC desires to obtain an exclusive permit to dock both its excursion boat and its charter boat at Boom Island;

Whereas, the MPRB desires to have Paradise Lady, LLC dock both its excursion boat and its charter boat at Boom Island; and

Whereas, Paradise Lady, LLC will be limited to an exclusive permit to dock at Boom Island

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this DOCKING PERMIT, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Definitions.

- a. *Dock* means the docking facility at Boom Island.
- b. *Dredging* means clearing the docking area for mooring and launching of a boat from Boom Island.
- c. *Permit* means the granting of a docking permit as outlined in Minneapolis Park and Recreation Board Ordinance PB4-92 .
- d. *Permit Holder* means Paradise Lady, LLC.

Term of Permit. The initial term of the Permit shall commence upon execution by the parties and continue through December 31, 2010.

3. MPRB Obligations. The MPRB shall:

- e. Provide a docking facility suitable for two (2) 149 passenger boats;
- f. Provide water hook-up, a sewer hook up and an electrical hook up to the Permit Holder;
- g. Provide and be solely responsible for the cost of 100 AMP electric service to the Dock;
- h. Allow Permit Holder use of a land based facility to dispense tickets for the boats; and
- i. Mow grass and trim vegetation on the grounds adjacent to the land based facility in a manner consistent with the MPRB's practices for similar facilities within its system.

MPRB does not warrant that any of the services referred to in this section will be free from temporary interruption for reasons beyond MPRB's control. Such temporary interruption of service shall never be deemed a violation of this Permit by the MPRB or make the MPRB liable to Permit Holder for damages, or relieve Permit Holder from performance of Permit Holder's obligations under this Agreement.

4. Permit Holder Responsibilities. The Permit Holder shall:

- a. Provide two (2) 149 passenger boats that meet all requirements of the United States Coast Guard;

- b. Be solely responsible for all local and state taxes of any type;
 - c. Be solely responsible for all waste removal from vessels; and
 - d. Be solely responsible for all dredging and costs incurred therein required to dock and launch their vessels.
5. Assumption of Risks. The Permit Holder assumes all risk of loss or damage of business or property related to the Permit, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism or other cause. MPRB shall not be liable to the Permit Holder, or those claiming through the Permit Holder, for injury, death or property damage occurring on, in, or about the Dock except as may be caused by the willful misconduct or negligence of MPRB. Nothing herein shall be deemed to be a waiver of any limits of liability granted MPRB under statutory or common laws.
6. Consideration for Use of Facilities. As for consideration to the MPRB for the right of the Permit Holder to have a docking permit, Permit Holder shall compensate the MPRB pursuant to the terms of this Section.
- a. *Initial Annual Permit Fee:* Permit Holder shall pay the balance of the 2010 minimum fee of \$35,000 by September 15, 2010 to the MPRB for the right to dock at Boom Island.
7. Payment of Others. The Permit Holder shall be solely responsible for and shall pay all of the Permit Holder's employees, agents, and subcontractors furnishing service, labor, equipment, or materials.
8. Assignability. The rights and obligations of Permit Holder under the conditions of this Permit shall not be assignable or transferable.
9. Compliance of all Laws; Ability to Perform. The Permit Holder shall comply with all applicable federal, state, regional, and local laws, ordinances and regulations applicable to the Permit Holder. The Permit Holder represents and warrants to MPRB that if a license is required, the Permit Holder is duly licensed and qualified to conduct business in the State of Minnesota.
10. Affirmative Action Compliance. The Permit Holder agrees to comply, in writing, with all applicable equal opportunity and affirmative action laws, directives and regulations of the federal, state, and local governing bodies or agencies thereof, including specifically Chapter 139 of the Minneapolis Code of Ordinances.
11. Nondiscrimination. The Permit Holder shall not discriminate against any employee, applicant for employment, or party seeking to retain the Permit Holder's services based on race, color, creed, religion, ancestry, gender, national origin, affectional preference, disability, age, marital status, status with regard to public assistance, or status as a disabled veteran or veteran of the Vietnam era. The Permit Holder shall include a similar nondiscrimination provision in all subcontracts into which it enters for performance of its obligations hereunder.

12. Interest of Members of MPRB and Park & Recreation Staff. No member of the governing body, officer, employee, or agent of the MPRB who exercises any functions or responsibilities in the carrying out of this Permit to which this shall have any interest, financial or otherwise direct or indirect, with the Permit Holder. The MPRB may terminate this Agreement if the MPRB has reasons to believe that gratuities in any form were offered or given by the Permit Holder or any representative of the Permit Holder to any officer or employee of the MPRB for receiving favorable treatment with respect to the award of, or the making with respect to the performance of, this Permit.
13. Insurance. This Permit shall be effective only upon approval by the MPRB of acceptable evidence of the insurance coverage in amounts not less than that referenced in Minnesota Statutes Section 466.04 issued by reputable insurers authorized to conduct insurance in the State of Minnesota. Such insurance shall be in force on the date of execution of this permit and shall remain continuously in force until the termination of this Permit. The Permit Holder shall provide evidence of workers' compensation insurance covering its employees in accordance with statutory requirements, and evidence of general liability insurance naming the MPRB its officers and employees as additional insureds under the policy.
14. Equal Opportunity Statement. The Permit Holder shall comply with the provisions of all applicable federal, state, and local statutes, ordinances, and regulations pertaining to human rights and non-discrimination including, without limitation, Minnesota Statutes Section 181.53 and Chapter 363 and the Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.
15. Default. If the Permit Holder ceases operations out of Boom Island or fails to comply with any of its obligations under this Permit, it shall be in default. If such default is not cured by Permit Holder within thirty (30) days, or ten (10) days in the event of any monetary default, after mailing of written notice of the conditions of default, the Permit Holder does hereby authorize and fully empower MPRB to cancel and terminate this Permit, and to remove all of Permit Holder's property from the MPRB's premises. MPRB's failure to give immediate notice of default or agreement to allow more than thirty (30) days to cure a default, shall in no way constitute a waiver of any remedy available to MPRB upon default by Permit Holder.

16. Automatic Termination. Notwithstanding any other provision contained herein, this agreement shall automatically terminate upon the occurrence of any of the events described below:

- a. A petition by or against Permit Holder under the bankruptcy laws of the United States, which petition is not dismissed within ninety (90) days from the date of such filing;
- b. The assignment by Permit Holder of its assets for the benefit of creditors under any state insolvency laws;
- c. Conduct by Permit Holder of its business under any trustee or other person appointed pursuant to judicial proceedings;
- d. The taking by a court of jurisdiction of the Permit Holder and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;
- e. The appointment of a receiver of the Permit Holder's assets; or
- f. A lapse in the insurance coverage the permit holder is required to maintain pursuant to Section 13 above which continues for ten (10) days after notice by MPRB to permit holder specifying such lapse in such insurance coverage.

17. Permit Holder's Obligations Upon Termination. Upon the expiration or termination of this Permit, Permit Holder shall remove, at its expense, all of its goods and effects and other items of personal property and equipment, repairing any damage caused, and leave the MPRB's property and Dock in as good order, condition and repair as the same were in at the commencement of this Permit, reasonable wear and tear, fire and casualty excepted. Goods and effects not removed by Permit Holder at the expiration or termination of this Permit shall be considered abandoned and MPRB may retain or dispose of the same as it deems expedient.

18. Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

19. Notices. All notices or communications relating to this Agreement shall be in writing and shall be deemed given upon hand delivery or deposit in the United States mail, return receipt requested, and addressed as follows:

To the MPRB:
Minneapolis Park and Recreation Board

To Permit Holder:
Dave Lawrance
Paradise Cruises

Attention: General Manager

20. Independent Contractor. The MPRB and the Permit Holder agree that the relationship created by this Permit is that of independent contractor, and not of employer and employee, a joint venture or a partnership. The Permit Holder retains the sole and exclusive right to control the manner, time, place and means by which the services are performed under this Permit. The Permit Holder shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the Permit. The Permit Holder shall be responsible for the compensation and benefits of the Permit Holder's employees and for payment of all federal, state and local taxes payable with respect to any amounts paid to the Permit Holder. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the permit holder, including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax and state unemployment tax.

21. Governing Law This permit shall be construed in accordance with governed by the laws of the State of Minnesota.

22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this permit as of the year and date first written above.

FOR THE MPRB

FOR THE PERMIT HOLDER

The City of Minneapolis, acting by
and through its Park and Recreation Board

By: _____
President

By: _____

Its: _____

By: _____
Secretary