

**LEASE AGREEMENT BETWEEN
THE CITY OF LA CROSSE
AND
LA CROSSE PETTIBONE BOAT CLUB, INC.**

THIS LEASE AGREEMENT (hereinafter referred to as the "Lease") is made and entered into this _____ day of _____, 2013, intended to be effective November 1, 2013, by and between **City of La Crosse**, a municipal corporation (hereinafter referred to as the "City"), and the **La Crosse Pettibone Boat Club, Inc.**, a Wisconsin Corporation (hereinafter referred to as the "Club").

1. **Premises.** The City hereby agrees to lease to Club those certain Premises and improvements thereon in the City of La Crosse, County of La Crosse, State of Wisconsin, more particularly described as:

*A legal description and map for said premises is attached hereto as **Exhibit "A"**, which is made part of this Lease and incorporated herein by this reference.*

2. **Leased Area.**

- A. Club accepts the Premises and all improvements thereon "as is" and acknowledges that it has inspected the Premises and all improvements thereon and determined them to be suitable for Club's use. Club agrees that it is not relying on any oral or written representations of City concerning the Premises (including but not limited to dimensions, soil conditions, environmental conditions, municipal restrictions, or uses by adjoining or third parties) and all improvements thereon. There is no warranty or representation given by the City as to the condition of the Premises and all improvements thereon.
- B. The Club acknowledges and admits that substantial portions of the Premises are at risk of flooding on an annual basis and as such has been designated by the State of Wisconsin and the United States government as floodway, flood fringe or flood plain. These areas are subject to extensive rules and regulations related to the use of the same, by local, state and federal agencies which the Club agrees to be in full compliance, at its own expense, during the entire term of this Lease and any renewal of the same.

3. **Allowed Operations and Uses within the Premises.**

- A. For and in consideration of the covenants, conditions and agreements hereinafter contained, City hereby grants permission to Club to use the Premises for the docking and storing of personal boats, boat houses,

marina, sundry sales, Club member boat repair and maintenance and the operation a full service restaurant. City understands and agrees that the all boat docks, piers, ramps from shoreline, and portable storage building are personal property of the Club. All uses are subject to compliance with uses allowed within the flood zoned areas.

- B. No other businesses, activities, or uses may take place on the Premises on either a permanent or temporary basis without the advance written consent and agreement of any additional terms and conditions set forth by the City, which shall include both the City Council and the Park Board.
- C. In the event of a vacancy, City Residents will be given priority over non-City Residents when renting boat slips.
- D. In conducting any of the above operations or uses, the Club and any sublessees must be in full compliance with all of the codes, ordinances, statutes, rules and regulations of the City of La Crosse, County of La Crosse, State of Wisconsin and the United States Government and any of their committees, boards, agencies or commissions.

4. **Term.** The commencement date for this Lease shall be November 1, 2013 with the initial term expiring on October 31, 2023. ~~City and~~ Club may renew this Lease for up to two (2) additional periods of five years. At each renewal period, the minimum rent and percentage rent set forth in paragraph 5(A)(1)(a) and 5(A)(1)(b) below will increase by one hundred fifty percent (150%) of the fee paid in the last year of the then current term. Club must invoke a renewal term by delivering written notice to the City y no later than three (3) months prior to, nor any sooner than (5) five months prior to the expiring lease term.

5. **Fees and Accounting.**

A. *Fee Payment.*

1. *Annual Lease Fee.*

- a. For the Lease year commencing November 1, 2013, and each Lease year thereafter, the Club agrees to pay to the City as a fee a sum equal to two and one half percent (2.5%) of any and all gross income derived or originated from the Premises, regardless of the source of the same, or Twenty Thousand and 00/100 Dollars (\$20,000), whichever is greater (hereinafter the "Annual Lease Fee").
- b. If construction for the proposed new Restaurant Building is not started/completed by NovemberMay-3 1, 2014, the Club agrees to pay to the City as the Annual Lease Fee a sum

equal to two and one half percent (2.5%) of any and all gross income derived or originated from the Premises, regardless of the source of the same or Thirty – two Thousand Dollars (\$32,000.00), whichever is greater, until the new Restaurant Building is completed, at which time the Annual Lease Fee shall then be calculated using the formula in paragraph 5(A)(1)(a).

2. *Non-Resident Surcharge.* For the Lease year commencing November 1, 2013, and each Lease year thereafter, the Club agrees to pay to the City as a surcharge an amount equal to the ~~lesser~~greater of ten percent (10%) of the Club's seasonal slip, riverfront or boat house rate or one hundred dollars (\$100) for each non-resident slip, riverfront or boathouse rental (hereinafter the "Non-Resident Surcharge").
3. *Boat House Fee.*
 - a. For the Lease year commencing November 1, 2013, and each Lease year thereafter, the Club agrees to pay the City as a fee, the additional sum of five hundred dollars (\$500) for each Boat House located at the Premises (hereinafter the "Boat House Fee").
 - b. The definition of a Boat House shall be the same as defined by the Wisconsin Department of Natural Resources.
 - c. This Boat House Fee will be increased annually by any increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average, All Items, Not Seasonally Adjusted 1982-84=100 for each Boat House located at the Premises. It may not be reduced below five hundred and 00/100 dollars.
4. The minimum Annual Lease Fee shall be paid in two equal installments of Fifty percent (50%) each, with ~~at the first~~ payment due on ~~November~~July 1st and ~~at the second~~ payment due on July ~~1st~~1st ~~November 15th~~ of each year of the Lease. (For example, if the minimum Annual Lease Fee is Twenty Thousand and 00/100 Dollars (\$20,000.00) a payment of Ten Thousand and 00/100 Dollars (\$10,000) each will be made, with ~~at the first~~ payment due on ~~November~~July 1st and ~~at the second~~ payment due on July~~November~~ ~~1st~~1st ~~15th~~ of each year of the Lease.)
5. The Non-Resident Surcharge and Boat House Fee, shall be paid in one installment due on May 1st each year of the Lease.

6. Late Payment Penalty and Interest:
 - a. Any amounts due the City shall be paid, without demand, at the Office of the Treasurer, 400 La Crosse Street, 2nd Floor, La Crosse, WI 54601.
 - b. If any and all amounts due under this Lease are not made within five (5) days of the original due date, a late payment penalty of ten percent (10%) of the amount due will be assessed and added to the amount due.
 - c. In addition, any and all amounts required to be paid to the City, if not paid when due shall accrue interest at the rate of eighteen percent (18%) per annum from and after their due date until paid.
7. All Amounts paid under this Agreement, including the Boat House Fee payments and the Non-Resident Surcharge will be deposited into the Pettibone Park Improvement Fund.

B. *Definition of Gross Income.* The term “Gross Income” as used in this Lease shall mean the gross amount received or derived from any source whatsoever on the Premises, by either barter, cash, credit or trade (whether payment is actually received for sales credit or not) from all sales or merchandise, services and from income from all other sources derived from business conducted on the Premises, including orders received on the Premises but filled elsewhere.

C. *Deductions from Gross Income.* There shall be excepted from the Club’s gross income, as such term is used herein, the amount of all sales tax receipts which are required to be accounted for by Club to any government or governmental agency, any Boat House Fee paid to the City and the Non-Resident Surcharge.

D. *Accounting.*

1. The Club shall keep, or cause to be kept, full, complete and proper books, records and accounts of all income and expenses of any and all **Club** activities which generate any income whatsoever upon the Premises. All such books, records and accounts, including any sales tax reports that the Club may be required to furnish to any governmental agency, shall, at all reasonable times, be open to the inspection of the City, City’s auditor or other authorized representative or agent at no cost to City or City’s agents. If the Club fails to supply any and all records when asked or attempts to charge a fee or cost of any kind for inspection, reproduction, review

or duplication of these records, it will be an immediate monetary default under the terms and conditions of this Lease.

2. All books shall be maintained on an accrual accounting basis.

3. *Records.*

a. On or before April 30th of each year, the Club shall furnish the City with a balance sheet and income statement, reviewed and approved by an accountant chosen by the Club, certifying all income and expenses from all operations in or on the Premises, divided by each department or operation. These records shall clearly set forth the gross income made in or from the Premises during the Lease year just concluded and the authorized deductions, if any, therefrom.

b. On or before April 30th of each year, the Club shall provide the City signed copies of all state and federal tax returns and all sales tax reports for the prior year for the Club and for all activities which derived income from, in or on the Premises. In the event that Club obtains an extension on filing its tax returns and/or sales tax reports, such tax returns and/or report shall be provided to City as required in this provision by June 30th of said year.

c. Public Records:

i. Club understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, Club agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Lease for a period of not less than seven (7) years after the termination or expiration of this Lease. Additionally, Club agrees to indemnify and hold harmless City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Club's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that Club decides not to retain its records for a period of seven (7) years, then it shall provide written notice to City whereupon City shall take custody of said records assuming such records are

not already maintained by City. This provision shall survive the termination this Lease.

- ii. If the City receives any public records request for information related to the Club or any activities upon the Premises leased to the Club, the City will notify the Club of the request and allow the Club to decide whether to challenge the release of those records, as may be allowed by law. Any challenge shall be at the expense of the Club and the Club agrees to indemnify the City from and all expenses, penalties, fees, costs or fines related to the same.
 - iii. All records and information obtained under this agreement may be shared with any and all City staff, elected officials, Board members or commission members or with any entity contracted by the City for any City purpose, including but not limited to bonding, insurance, assessments, legal or financial matters
 - iv. Any and all information obtained under this agreement may be released to the public, as part of an enforcement proceedings or compliance and verification proceedings related to this agreement.
- d. On or before June 1st of each year, the Club shall submit to the City Board of Park Commissioners for review and approval ~~the fees and rates to be charged for the next year for uses and activities on the Premises,~~ any proposed slip rental agreements, ~~and~~ the proposed members agreement with the Club and the rules and regulation for the upcoming year. On or before June 1st of each year, the Club shall submit to the City Board of Park Commissioners for review the fees and rates to be charged for the next year for uses and activities on the Premises. For the first year of this agreement, this information will be provided and reviewed as part of the lease approval process and attached to this Agreement as **ExhibitAppendix "D"**.
- e. Slip occupants and residency:
- i. On or before June 1st of each year, the Club shall provide the City signed copies of all slip rental agreements, showing name, address, rate paid for the current seasons slip rental and resident, non-resident

status. Any additions or changes must be supplemented by September 1st of each year.

- ii. Residency shall be defined as the permanent domicile of the party. For a business, residency is determined by the domicile of the majority owner or president of the business.
- iii. The name on the rental agreement must be the same as the occupant of the slip and the owner of the boat or Boat House.

E. *Year-End Adjustment.*

- 1. On or before April 30th of each year, a final adjustment and accounting for the preceding Lease year shall be had to determine the gross income of the preceding Lease year and the amount of percentage fee due the City for the preceding Lease year. This accounting shall be forwarded to the City in a written format, in form and substance satisfactory to the City.
- 2. In the event the amounts of percentage fees due for said year is more than what was actually paid by the Club then a payment representing the balance due shall be made with the accounting set forth above.

6. **Audit of Books and Records.**

- A. The City may, at City's expense, audit the books and records of the Club, its sublessees, assignees for any activities which generates any income at all from the Premises, to determine compliance with the obligations of this Lease. The Club agrees to assist and comply with all instructions related to the same and shall ensure that any and all agreements for use of the Premises allow the City full access to all records necessary to comply with this provision.
- B. If there is a determination by the audit or of an error in the books and records of the Club or sublessees which would result in a payment to the City of Five Hundred and 00/100 Dollars (\$500.00) or more, the costs of the audit shall be borne by the Club.

7. **Security Deposit.**

- A. ~~The Club shall pay a security deposit to City equal to the sum of twenty thousand dollars (\$20,000). Said security deposit shall be paid in five (5) installments of four thousand dollars (\$4,000) each paid annually~~

~~commencing on or before August 1, 2013, and on August 1 each and every year until the deposit has been paid in full.—The Board of Park Commissioners reserves the right to charge a security deposit in the future in its sole and absolute discretion.~~

- B. These Security Deposit funds may only be drawn by the City to cover defaults in fee payments, water and sewer bills, utilities, and any amounts due under this Lease and/or to refund deposits collected by Club in the event of default and termination of this Lease. If there is no default, the deposit, less any deductions, will be released within sixty (60) days of surrender of the Premises to the City. If there is a default, the deposit will not be released until the final computation of all damages and deductions are made by the City. If City draws from the deposit, this ~~does~~**DOES** NOT cure the default. The default continues until the amount due is paid in full and/or all funds drawn from the Security Deposit by the City are replenished by the Club.

8. **Compliance with all Laws.**

- A. Club shall, at its own cost and expense, be responsible to promptly comply and conform with all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and city governments and of any and all other governmental authorities or agencies affecting the Premises or its use, and Club shall, at its own cost and expense, make all additions, alterations or changes to the Premises or any portion thereof as may be required by any governmental authority or agency.
- B. Club shall, during the entire term of this Lease, comply with all applicable federal, state, and local environmental laws, ordinances and amendments thereto and rules and regulations implementing the same, together with all common law requirements, which relate to discharge, emission, waste, nuisance, pollution control, hazardous or toxic substances and other environmental matters as the same shall be in existence during the term hereof. All of the foregoing laws, regulations and requirements are hereinafter referred to as Environmental Laws. Club shall obtain all environmental licenses, permits, approvals, authorizations, exemption, classifications, certificates and registrations (hereinafter collectively referred to as Permits) and make all applicable filings required of Club under the Environmental Laws to operate at the Premises. The Permits and required filings shall be made available for inspection and copying by City at Club's offices upon reasonable notice and during business hours. Club shall not cause or permit any flammable explosive, oil, contaminant, radioactive material, hazardous waste or material, toxic waste or material or any similar substance (hereinafter collectively referred to as Hazardous Substances) to be brought upon, kept or used in or about the Premises

except for small quantities of such substances as is necessary for the business conducted upon the Premises provided that Club shall handle, store, use and dispose of any such Hazardous Substance in compliance with all applicable laws and the highest standards prevailing in the industry for the storage and use of such substances or materials, and in a manner which is safe and does not contaminate the Premises. The Club shall give the City written notice of the identity of such substances or materials.

C. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of any Hazardous Substance on or about the Premises by any occupant of the Premises during the Lease term, then the reasonable costs thereof shall be reimbursed by Club to City upon demand. Club shall deliver to City Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the Premises. Club shall also, from time to time, at City's request, execute such other affidavits, representations and the like concerning Club's best knowledge and belief regarding the presence of Hazardous Substances on the Premises. Club agrees to indemnify and hold City harmless from any liability, claim or injury, including reasonable attorney fees and the cost any required or necessary repair, clean-up, remediation or detoxification, arising out of (i) the use, manufacture, handling, storage, disposal or release of any Hazardous Substances by Club, its agents and employees and any subtenant and its agents and employees on, under or about the Premises, or (ii) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Premises by Club or any occupant of the Premises or the operation of Club's business on the Premises during the term of the Lease. The foregoing indemnification shall survive the expiration or earlier termination of this Lease. It is agreed that City shall also indemnify Club for any payment the Club is required to make with regard to necessary testing, repair, cleanup, remediation, or detoxification with regard to any environmental damage which existed prior to Club's occupancy of the Premises. City shall also hold harmless for any liability Club may have to any third party as a result of any environmental claim or condition prior to Club's occupancy of the Premises. Notwithstanding anything to the contrary in this Lease, the City retains all of its liability limitations and immunities available to it under Wisconsin law.

D. The Club will obtain the Wisconsin Clean Marina designation within two years ~~and maintain the rating for the duration of this Lease.~~

9. **Signage.** Club's previously approved signs located on the Premises may continue, provided all permits are current for the same. In the event that Club seeks to modify, alter, or add signs on the Premises, such signs and their location must comply with all codes and ordinances of the City and be approved in advance by the Park Board. Club is responsible for all costs and expenses

associated with signs, including but not limited to the installation, maintenance, and removal of signs. An inventory of existing signage must be taken and agreed to between the City and Club and must be verified that all current signage has the required permits.

10. **Ownership and Control of Club.**

- A. Club states that as of the date of signing of this Lease, all members/shareholders and persons and entities with any interest in the Club's corporation are disclosed on the attached **Exhibit "B"** which is incorporated herein by this reference as if set forth in full.
- B. If there is a change in the number of members by twenty percent (20%) or more, or if the Club is ever converted from a non-stock or not for profit corporation, then such transfer or change in ownership must be approved in advance, in writing, by the City and the Park Board. This approval may be reasonably withheld and the City may also decide to renegotiate the entire lease agreement, including, but not limited to, increasing any and all fees and costs and requiring personal guarantees.
- C. On an annual basis, on or before ~~May 1st~~ ~~February 15th~~ of each year, a disclosure signed and authenticated by the Secretary and President of the corporation setting forth the current Officers, Directors and Members of the Club, shall be provided to the City

11. **City's Right of Entry and Inspection.**

- A. *Right of Entry.* City shall have the right to enter the Premises from time to time, without or without advance notice, for the purpose of verifying compliance with the terms and conditions of this Lease. City shall have the right to enter the Premises without notice in the case of emergency.
- B. *Inspection of Records.* City may also request any and all records from Club pertinent to this Lease, at no cost, upon ten (10) days advance notice for the purpose of verifying compliance with the terms and conditions of this Lease.

12. **Repairs and Improvements.**

- A. The Club agrees to construct a new Restaurant Building on the Premises, as indicated on the plan presented with this Lease attached as **Exhibit "C"**, and to cause to be extended City Sewer Service to the Premises at an estimated cost of one million one hundred forty-eight thousand dollars (\$1,148,000). The assessed value of the new restaurant building on the personal property tax return shall be no less than eight hundred fifty thousand ~~One Million~~ Dollars (~~\$850,000.00~~ ~~1,000,000.00~~) as of January 1,

2015. If the assessment is less than ~~eight hundred fifty thousand One Million and 00/100~~ Dollars (~~\$850,000.00~~1,000,000.00), then the Club agrees to pay an increased rental charge equal to the difference between a personal property tax assessment of ~~eight hundred fifty thousand One Million and 00/100~~ Dollars (~~\$850,000.00~~1,000,000.00) in value, less the actual personal property tax paid on the assessed value of the new building. (The City ~~will provide up to~~~~has already paid the sum of~~ one hundred fifty thousand dollars (\$150,000.00) ~~toward~~ the cost of the sewer portion of the project-extension.)

- B. The Club, during the term of this Lease or any extension or renewal of this Lease, shall, at its expense, make all repairs as shall be reasonably necessary to keep said Premises in good condition and repair. Club shall be responsible for maintaining its trade fixtures, furniture and personal property, including but not limited to all docks, boat slips, buildings, loading ramps, and utility services. City shall be responsible for maintaining the public access areas, including but not limited to the sidewalks, roadways, parking areas and grass areas. As a municipal corporation, City's maintenance is contingent upon certain approvals and funding allocations by its governing body.
- C. Prior to the commencement of any work, other than standard repairs and maintenance, all improvements must be approved in advance by the Park Board and proper permits obtained. The aforementioned new restaurant building work in paragraph A above shall be deemed approved with the execution of this document, subject to applicable codes and permitting.
- D. The Club further agrees that all damage or injury done to the Premises by the Club, its sublessees, invitees and guests shall be repaired by the Club at its expense. The Club agrees, at the expiration of this Lease or upon the earlier termination thereof, to quit and surrender said Premises in good condition and repair, reasonable wear and tear excepted.

13. Assignment and Subletting.

- A. The Club shall not assign this Lease or any interest therein, nor let or underlet the Premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person without the advance written consent of the City, which shall include both the City Council and its Park Board. This consent may be withheld for any reason.
- B. Notwithstanding the above, Club, should it so chose, may sublease the operation of the restaurant facility to a qualified operator, only upon the prior written consent of the City and the Board of Park Commissioners. Consent shall not be unreasonably withheld.

- C. All subleases, assignees and sublessees are bound by the terms and conditions of this Lease, regardless of any statement to the contrary within any sublease or assignment document.
- D. Club grants to the City the right to enforce the terms of any sublease and further the right to enforce this Lease on any sublessee or assignee.

14. **Secured party's right to cure Club's defaults.**

- A. Club shall have the right to assign for security purposes, subject to prior approval of the City and Board of Park Commissioners, which approval will not be unreasonably withheld, all or any part of its rights under this Lease, provided that no such encumbrance shall extend to or affect the City's ownership or reversionary interest in the Premises.
- B. City shall accept the mortgagee's performance of any of Club's covenants or other obligations under this Lease, within the time provided in this Lease with the same force and effect as though performed by Club.
- C. This provision does NOT grant to any mortgagee the right to assign the Club's rights under this Agreement to any other party without the advance written consent of the City and the Board of Park Commissioners

15. **Estoppel certificate.**

- A. City shall within forty-five (45) days' prior written notice from Club execute, acknowledge, and deliver to Club a statement in writing confirming Club's leasehold interest and whether, so far as City knows, Club is current in its Lease obligations.
- B. If the Club makes a request, for an estoppels certificate, the Club agrees to pay the full costs incurred by the City, either through City staff at a rate determined by the City or the fees and costs of third persons contracted by the City to audit the books and records of the Club and all activities on the Premises, to fully review the Premises to ensure compliance with any and all laws and ordinances applicable to the premises and to verify full compliance with all terms and conditions of this agreement.
- C. The City may at its option extend the time set forth in paragraph 15(a) for up to ninety (90) days to complete the verification requested.

16. **Insolvency.** If any proceedings in bankruptcy or insolvency are filed against the Club, or if any writ of attachment or writ of execution is levied upon the interest herein of the Club and such proceedings or levy shall not be released or dismissed within sixty (60) days thereafter, or if any sale of the Lease hold

interest hereby created or any part thereof should be made under any execution or other judicial process, or if the Club shall make any assignment for benefit or creditors or shall voluntarily institute bankruptcy or insolvency proceedings, the City, at City's election, may re-enter and take possession of said Premises and remove all persons therefrom and may, at City's option, terminate this Lease.

17. ~~Costs and Attorney Fees. Club shall pay all costs, expenses and reasonable attorney fees that may be incurred or paid by City in enforcing the covenants and agreements of this Lease, whether or not litigation is commenced.~~ Intentionally Omitted.

18. **Default.** The occurrence of any of the following shall constitute a default by the:

- A. Failure to timely pay any amounts due under this Lease if the failure continues for a period of ten (10) days after written notice has been given to the of the Default.
- B. *Abandonment and Vacation of the Premises.* Failure to occupy and operate the Premises for twenty (20) consecutive days may, at the option of the City, be deemed an abandonment and vacation. Regarding the requirement to occupy and operate, City understands that Club's active operation season for boating is from approximately April 1 until October 31.
- C. Failure to supply any documents or records required under this Lease.
- D. Club's willful or malicious substantial injury to the Premises or commission of waste to the same.
- E. Club's making of an assignment for the benefit of creditors, (which is not approved in writing, in advance by the City), the filing of any tax liens or Judgments against the Club, which have not been timely appealed, or the failure to pay any amounts due the City for any purposes whatsoever.
- F. Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after notice has been given to the Club to cure the default. This time frame for curing the default may be extended in the sole discretion by the Park Board or City Council upon a showing by Club of reasonable efforts to correct the same and that the cure cannot be made with the thirty (30) day notice period.
- G. Sale or transfer of more than twenty percent (20%) of the personal property owned by the Club, without advance City and Board of Park Commissioners written approval.

H. In the event of default, any amounts due the City under this agreement shall be levied as a special tax, special assessment or special charge as that term may be defined under Chapter 74 or Chapter 66 of the Wisconsin Statutes, or any other applicable chapter against the personal property located on the Premises.

19. **Non-Waiver of Default.**

- A. The subsequent acceptance of a payment of any sums under this agreement by the City shall not be deemed a waiver of any preceding breach of any obligation hereunder by the Club other than the failure to pay the particular amount so accepted.
- B. The failure by the City to assert or notice a default under this Lease in a timely manner is not considered a waiver or acceptance of the default.

20. **Insurance.** Unless otherwise specified in this Lease, the Club shall, at its sole expense, maintain in effect at all times during the usage of the Premises, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

- A. *Worker's Compensation and Employers Liability Insurance.* The Club shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. The Club shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least one million dollars (\$1,000,000.00) each accident, one million dollars (\$1,000,000.00) disease policy limit, and one million dollars (\$1,000,000.00) disease each employee.
- B. *Commercial General Liability and Automobile Liability Insurance.* The Club shall provide and maintain the following commercial general liability and automobile liability insurance:
 - 1. *Coverage.* Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
 - a. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
 - b. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)
 - 2. *Limits.* The Club shall maintain limits no less than the following:

- a. *General Liability.* Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
 - b. *Automobile Liability.* Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
 - c. *Umbrella Liability.* Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.
- C. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISP endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Club; products and completed operations of the Club; premises occupied or used by the Club; and vehicles owned, leased, hired or borrowed by the Club. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
 2. For any claims related to this Lease, the Club's insurance shall be primary insurance as respects the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to it.
 3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.

4. The Club's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. Each insurance policy required by this Lease shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or the Club, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
 6. Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the Club for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
 7. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations, liability explosion, collapse, underground excavation, and removal of lateral support and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 8. All of the insurance shall be provided on policy forms and through companies satisfactory to the City, and shall have a minimum AM Best's rating of A- VII.
- D. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- E. *Evidences of Insurance.* Prior to execution of the Lease, the Club shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Lease. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- F. *Subleases.* In the event that the Club employs other lessees (sublessees) as part of its use under this Lease, it shall be the Club's responsibility to require and confirm that each sublessee meets the minimum insurance requirements specified above.

- G. Club shall, at its own cost and expense, during the Lease term carry insurance against fire, vandalism, malicious mischief and such other perils as are from time to time included in a standard extended coverage endorsement, insuring all trade fixtures, furnishings, equipment and all other items of Club's personal property located at the Premises.
21. **Utilities and Services.** Club shall, in its own name, pay when due any and all charges for all utilities for the Premises. Under no circumstances shall City be responsible for any interruption of any utility service.
22. **Destruction of Premises.**
- A. In the event of a total or partial destruction of the Premises, not including any structures, buildings, or personal property, during the term from any cause, the City shall forthwith repair the same, provided funding is appropriated for such repairs and the repairs can be made within ninety (90) days under the laws and regulations of state, federal, county or municipal authorities.
- B. Should the total or partial destruction result from causes covered by the fire and extended coverage insurance furnished by the Club, the insurance proceeds shall be made available to the Club to affect the required repairs.
- C. If such repairs cannot be made within ninety (90) days, this Lease may be terminated at the option of either party.
23. **Alterations and Improvements.**
- A. *Structural changes.* The Club shall not make, or suffer to be made, any structural alterations or improvements of the real property without prior review and the advance written consent of both the Park Board and City. All such alterations or improvements shall be made in accordance with any applicable local, state and federal laws and regulations. Any additions to, or alterations of, the real property improvements shall become at once a part of the realty and belong to the City. If written consent of the City to any proposed alterations shall have been obtained, the Club agrees to advise the Park Board in writing of the date upon which such alterations will commence in order to permit the City to post notice of no responsibility. The Club shall further provide verification of the alteration's or improvements' value to the City Engineer, City Assessor and City Finance Director. Upon completion of any alteration or improvement, Club shall provide City with a copy of the as-built plans and blueprints for the same.

- B. *Liens.* The Club shall keep the Premises free from any and all liens arising out of any work performed, materials furnished or obligations incurred by Club. Upon request, the Club shall provide verification, certification and proof that no liens or other encumbrances exist on any part of the Premises or portion thereto. In the event such liens or encumbrances exist, then the Club shall obtain a release of the same or other appropriate documentation extinguishing such lien or encumbrance following receipt of a fifteen (15) day notice from the City or Park Board.
24. **Lease Termination.** For reasons other than default, the Lease may terminate for the following reasons:
- A. A change in the laws, rules or regulations governing lands located in flood areas that make any of the operations located on the Premises illegal or require the cessation of such activities.
 - B. Notwithstanding any other provision contained herein, the Lease shall automatically terminate upon the occurrence of any of the events described below:
 - 1. A petition by or against the Lease Holder under the bankruptcy laws of the United States;
 - 2. The assignment by Lease Holder of its assets for the benefit of creditors under any state insolvency laws;
 - 3. Conduct by Lease Holder of its business under any trustee or other person appointed pursuant to judicial proceedings;
 - 4. The taking by a court of jurisdiction of the Lease Holder and its assets pursuant to proceedings brought under the provisions of any federal or state reorganization act;
 - 5. The appointment of a receiver of the Lease Holder's assets; or
 - 6. A lapse in the insurance coverage the Lease Holder is required to maintain pursuant to this Lease.
25. **Abandonment.** The Club agrees not to vacate or abandon the Premises at any time during the demised term. Should the Club vacate or abandon said Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of this Lease, and in addition to any other rights which the City may have, the City may remove any personal property belonging to the Club which remains on the Premises and store the same, such removal and storage to be for the account of and at the

expense of the Club. The Security Deposit of the Club may be used to pay any removal, transportation, cleaning and storage fees incurred by the City.

26. **Laws and Regulations.** The Club, at its own cost and expense, shall comply promptly with all laws, rules and orders of all federal, state and municipal governments or departments which may be applicable to the Premises, and shall likewise promptly comply with the requirements of the Board of Fire Underwriters concerning the Premises.

27. **Notices.** All notices to be given to the City and Club shall be in writing, and either personally delivered or deposited in the United States mail, certified or registered, with postage prepaid, and addressed as follows:

City: City of La Crosse
Attn: City Clerk
400 La Crosse Street
La Crosse, WI 54601

copy to: City of La Crosse
Attn: City Attorney
400 La Crosse Street
La Crosse, WI 54601

and: City of La Crosse
Attn: Director of Parks and Recreation
400 La Crosse Street
La Crosse, WI 54601

Club: La Crosse Pettibone Boat Club, Inc.
P.O. Box 1042
La Crosse, WI 54602-1042

copy to: Attorney Gerard O'Flaherty
O'Flaherty Heim Egan & Birnbaum, Ltd
201 Main Street, Suite 1000
La Crosse, WI 54601

Change of address by either party must be by notice given to the other in the same manner as above specified.

28. Intentionally Omitted

29. **Relationship of Parties.** It is understood and agreed that the relationship of the parties hereto is strictly that of landlord and tenant. The City is the owner of the Premises, but this Lease shall not be construed as a joint venture or partnership.

The Club is not and shall not be deemed to be agent or representative of the City.

30. **Personal Property.** The City acknowledges it has no interest in any of the personal property of the Club, except in the event of a default of this agreement or an abandonment of the personal property by the Club until the termination of the Lease. Club will pay all personal property taxes assessed against its improvements.

31. **Defense and Indemnification.**

A. To the fullest extent allowable by law, Club hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives and volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before, during or after the use of the Premises and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Club or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Lease. Club's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Lease.

B. In any and all claims against the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Club, any sublessee, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Club or any sublessee under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

C. No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Lease or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Lease. Any conflict or ambiguity

arising between any indemnity provisions in this Lease shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the Premises is located.

- D. Club shall reimburse the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Club's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
32. **Third-Party Benefits and Assignment.** This Lease is entered into for the sole and exclusive benefit of the parties to the Lease and their respective successors and assigns; no third-party is intended to receive or be entitled to any rights hereunder, except as set forth herein.
33. **Choice of Law.** This Lease shall be governed by the laws of the State of Wisconsin and any action concerning the Lease shall be venued in the Courts of the State of Wisconsin and the parties hereby submit to the personal jurisdiction of the Courts of Wisconsin, both Federal and State, in any action with respect to this Lease and agree that any State Court action shall be venued in the Circuit Court of La Crosse County, Wisconsin. Any claims against the City are governed by the statutes, law and rules for claims against municipalities. The parties agree that in the event of a dispute, all parties waive the right to a trial by jury.
34. **Surrender of Possession.**
- A. At the expiration or termination of this Lease, whether by lapse of time or otherwise, Club shall surrender the Premises including any of Club's alterations, additions, and improvements, but excluding Club's equipment, personal property and furnishings, in good condition and repair, reasonable wear and tear excepted.
 - B. Upon the termination of this Lease, Club shall have the right to remove from the Premises all trade fixtures, furniture or other personal property which may have been installed on the Premises by Club but expressly excluding ductwork and any electric installations. It is further understood that any and all signs placed on or about the Premises by Club shall remain the sole property of Club and may be removed by Club within a reasonable amount of time. Club shall repair any damages occasioned by the placement, maintenance or removal of any such property or signs.
35. **Access by the Public.**

- A. The public shall have access to all areas of the Premises or parking areas at any time for recreational purposes, including but not limited to walking, running, biking, and fishing without a fee or charge. This does not include access to the Club's buildings, trade fixtures, furnishings, equipment or other personal property, except as Club otherwise determines.
 - B. The public and Club shall follow all Rules and Regulations of the City related to the Premises and the park, including but not limited to closing due to flooding, park hours, and any other rules and regulations.
36. **Governmental Approvals.** Club acknowledges that several of the specific undertakings of the City described in this Lease may require approvals from the City's Common Council, City governing bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Club further acknowledges that this Lease is subject to appropriation by the City Common Council. City's obligation to perform under this Lease is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.
37. **Patents, Trademarks, Copyrights and Royalties.** Club assumes all costs arising from the use of patented, trademarked or copyrighted materials, equipment devices, processes or dramatic rights used in their conduct and agree to indemnify and hold harmless the City from all damage, costs and expenses on account of the use of any such materials, equipment, devices, processes or dramatic rights by the Club or its employees, agents, or licensees. Club agrees to pay all royalties, license fees and other charges accruing or becoming due by reason of any music, live or recorded, or other entertainment of any kind played, staged or produced by the Club, its agents, employees or licensees in the Premises.
38. **Jury Trial Waiver.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Lease. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
39. **Title to be Retained by City.** City shall retain title and ownership of the Premises together with all buildings, and improvements thereon without any payment whatsoever to Club.
40. **Non-Discrimination.** In the performance of the services under this Lease, Club agrees not to discriminate against any employee, subcontractor or applicant

because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.

41. **Holdover.** In the event Club remains in possession of the Premises after the expiration or termination of this Lease without the execution of a new lease, it shall be deemed to be occupying the Premises as a tenant from month-to-month, subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy until the termination of such tenancy. During any holdover period, Club shall pay a prorated rent in the amount equal to two hundred percent (200%) of the Annual Lease Fee paid for the last Lease term.
42. **Execution of Lease.** Club shall sign and execute this Lease on or before sixty (60) days of its approval by the La Crosse Common Council, and the Club's failure to do so will render the approval of the Lease by the La Crosse Common Council null and void, unless otherwise authorized.
43. **Miscellaneous.**
 - A. The paragraph captions in this Lease are for convenience only and shall not in any way limit, define, or construe the scope of any article of this Lease, nor offset the provisions thereof. All terms and words used in this Lease, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.
 - B. This Lease shall be construed in accordance with the laws of the State of Wisconsin as a Wisconsin contract. This Lease shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Lease shall be deemed to have been drafted by parties of equal bargaining strength.
 - C. The failure of either party to exercise or to complete the exercise of any right or remedy permitted hereunder shall not be deemed a waiver of that party's right to insist upon full performance of any condition hereof in the future.
 - D. Club affirms and agrees that City and its agents have made no representations or promises with respect to the Premises for the entry into of this Lease except as in the Lease expressly set forth and that no claim or liability shall be asserted by Club against City or its agents for breach of any representations or promises not expressly stated herein.

- E. None of the covenants, provisions, terms or conditions of this Lease to be kept or performed by City or Club shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the parties and delivered to this City and Club. This Lease contains the whole agreement of the parties.
- F. If any provisions of this Lease or any specific application shall be invalid or unenforceable, the remainder of this Lease shall not be affected and each provision of this Lease shall be valid and enforceable to the full extent permitted by law.
- G. The covenants, conditions, and terms of this Lease shall be binding upon the respective parties, their heirs, personal representatives, successors and assigns.
- H. The officers of the Club who are executing and attesting to this Lease hereby represent and warrant that they have full power, authority and right to execute this Lease and said officers represent and warrant that the execution and delivery of this Lease has been duly authorized by the Board of Directors of the Club's corporation, and the execution of this Lease by such officers is sufficient and legally binding on the Club.

IN WITNESS WHEREOF, the parties to this Lease cause this instrument to be executed by their authorized representatives on the day and year first above written.

CITY OF LA CROSSE

LA CROSSE PETTIBONE BOAT CLUB, INC.

Tim Kabat, Mayor

Mark Hyde, _____

Teri Lehrke, City Clerk

, _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B
LIST OF MEMBERS

EXHIBIT "C"

NEW RESTAURANT BUILDING PROJECT PLAN

EXHIBIT "D"

**RULES, REGULATIONS, RENTAL AGREEMENTS, BY-LAWS, ETC. FOR 2013 AND
2014**