

AMENDED
CITY OF STURGEON BAY
FINANCE/PURCHASING & BUILDING COMMITTEE
TUESDAY JUNE 8, 2021
Council Chambers, City Hall - 421 Michigan Street
4:00pm

1. Roll call.
2. Adoption of agenda.
3. Public comment on agenda items and other issues related to finance & purchasing.
4. ***Consideration of: Scenic Tour Boat Lease Agreement***
5. Convene in closed session in accordance with the following exemptions:

Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. Wis. Stats. 19.85(1)(e)

- a. Consideration of: Tax Incremental Financing assistance for WWP Development, LLP proposed development within Tax Increment District #4 (West Waterfront Redevelopment Area).
- b. Consideration of: Purchase of Property –Parcel #281- 10-85380605 – 368 S Jefferson Street.
- c. Consideration of: Purchase of Property –Parcel #281-64-73000102 – 1317 Shiloh Road.

Move to reconvene in open session to take formal action upon preceding subject of closed session, if appropriate; or to conduct discussion or give further consideration where the subject is not appropriate for closed session consideration. The Committee may adjourn in closed session.

6. Review bills.
7. Adjourn.

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR.

Notice is hereby given that a majority of the City Committees may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of a Committee, does attend, this may constitute a meeting of the aforementioned Committee and is noticed as such, although no formal action will be taken at this meeting.

Posted:
Date: 06/7/21
Time: 2:45pm
By: TM

Finance/Purchasing & Building Committee Members:
Helen Bacon, Chair
Seth Wiederanders, Vice Chair
Dan Williams



City of Sturgeon Bay
421 Michigan Street
Sturgeon Bay, WI 54235
jvanlieshout@sturgeonbaywi.org

Joshua J. Van Lieshout
City Administrator

920-746-6905 (Voice)
920-746-2905 (Fax)

Memorandum

To: Common Council
From: Josh Van Lieshout, Administrator
Re: Agenda Items
Date: May 26, 2021

Item: Consideration of Sturgeon Bay Scenic Boat Tours

Discussion: Throughout the City's recent history a number of tour boats have operated from the City's waterfront, including the Lollipop, Harbor Lady, and most recently the Chicago Fire Boat. These have been complimented by any number of charters, operating from several private marinas in and around the bay of Sturgeon Bay, as well as boat rental opportunities.

As we have learned in the absence of the Fire Boat, some people do not wish to invest in the time or expense of a sailing charter or rent a pontoon boat. Furthermore, navigating the bay of Sturgeon Bay and Green Bay can be an intimidating thing for people unaccustomed to large bodies of water. As a waterfront community with substantial market share of the Door County tourism industry, visitors, residents and guests to the community expect to be able experience the waters of Sturgeon Bay.

To fill the gap left by the departure of the Chicago Fire Boat, the has sought a new tour boat service provider. To accomplish this the City published a request for proposals or RFP on March 22, 2021, responses were due April 22, 2021, providing a site description, services available, and so forth.

A number of telephone inquiries were made to the City, however only one written response to the RFP was received from Cody Bolton. The RFP, Mr. Bolton's response and summary of the response are attached to this memo.

In short, Mr. Bolton is proposing to operate a motor vessel, capable of transporting up to 75 passengers on four trips per day between Lake Michigan and the bay of Green Bay. Mr. Bolton is proposing a lease fee \$6,000 per year.

The proposal adequately responds to the points raised in the RFP. Certainly Mr. Bolton has demonstrated success operating other similar ventures in Door County.

The draft lease agreement is premised upon the Sarter Tug agreement. special conditions concerning cooperation with Maritime Museum, waterfront festivals (antique and wooden boat show, tall ships) and bridge openings were added. This language for these points was taken from the former Fireboat lease.

Recommendation: Enter into a lease agreement for dock space for the purpose of tour boat operations.

LEASE

This Lease, Including Lakebed Sublease (this "**Lease**") is dated effective the ____ day of _____, 2020 (the "**Effective Date**") between CITY OF STURGEON BAY, a Wisconsin municipality ("**Lessor**") and FISH CREEK SCENIC BOAT TOURS, LLC doing business as STURGEON BAY SCENIC BOAT TOURS and Cody Bolton., a Wisconsin limited liability corporation ("**Lessee**"). Each of Lessor and Lessee may be referred to herein as a "**Party**," and together as the "**Parties**."

RECITALS:

This Lease is entered into upon the basis of the following facts, understandings and intentions of the Parties:

A. Lessor has title to a parcel of real estate, described as the sheet piling waterfront dock space adjacent to the following described line: Commencing at the intersection point of the south line of Madison Avenue and a meander line as described in the Job No. 14524, plat of survey, prepared by Stephen P. Meneau, dated October 27, 1994, thence along said meander line S34°03'11"E, 158.84 feet; N45°01'12"E, 20 feet to the point of beginning; thence continuing N45°01;12"E 75 feet.

B. The Parties desire to enter into this Lease to set forth their respective rights and obligations as to the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Grant of Lease. Lessor hereby leases the Property on the terms set forth in this Lease. The use of the Property is subject to the terms of this Lease.

(a) Dock Wall and Work Area. The Leased Property shall include 75 feet of dock wall described as follows:

Commencing at the intersection point of the south line of Madison Avenue and a meander line as described in the Job No. 14524, plat of survey, prepared by Stephen P. Meneau, dated October 27, 1994, thence along said meander line S34°03'11"E, 158.84 feet; N45°01'12"E, 20 feet to the point of beginning; thence continuing N45°01;12"E 75 feet.

(b) Ticketing area. The site of a ticketing area structure to be installed upon the Leased Property shall be agreed upon by Lessor and Lessee after the execution of this Lease, at which time a depiction of the structure and location will be added to this lease and shown as EXHIBIT A to this lease agreement.

(c) Upon execution, this Lease supersedes and replaces any others.

2. "AS, IS" Lease. The Leased Property is leased to Lessee "as is, where is," with no representations or warranties. Lessee is familiar with the Leased Property and, in entering into this Lease, is not relying on any information provided or that could be provided by Lessor regarding the nature or condition of the Leased Property.

3. Lessor Improvements. No later than 12 months after the commencement of this Lease, Lessor, at its expense, shall have completed the improvements identified as a part of the West Waterfront Promenade Project, serving the Leased Property. The type of improvements may include, electrical lines; utility pedestals for electric service; asphalt and concrete paving, landscaping and other miscellaneous site improvements. Lessor has sole control over the nature, location and means and methods of constructing the Lessor Improvements.

4. Non-Exclusive Lease. With the exception of the Dockage Rights and any structures Lessor may allow Lessee to maintain on the Leased Property, the Leased Property is leased to Lessee on a non-exclusive basis. Without limitation, Lessor will be constructing and maintaining a walking and biking path, public promenade and other public amenities running parallel to the shoreline with the boundaries of the Leased Property (the "**Path**"). Lessor shall be responsible for all costs and maintenance and upkeep of the Path.

5. Use. The Leased Property shall be used by Lessee only for the following activities:

(a) The mooring of on tour boat owned or leased by Lessee. Other vessels, including but not limited to recreational boats, barges, commercial fishing vessels, charter fishing boats, ferries, and freighters shall not be moored to the leased dock wall except by written permission from the Lessor. The moored tour baots shall not extend beyond the limits of the leased dock wall described in paragraph 1(a), but mooring lines may extend to the nearest bollard beyond those limits, if necessary to safely secure the vessels to the dock wall.

(b) Minor maintenance of vessels, provided that all equipment and materials needed to do the work is performed and stored on the vessel. No dry-dock type work shall be performed at the site and no vessel shall be placed upon the shore. Any maintenance of vessels that is beyond the nature of routine preventative maintenance shall require prior written approval of the Sturgeon Bay Harbor Master. Minor maintenance can be categorized as washing, sweeping, general cleaning, touch up painting, routine maintenance of equipment, propulsion, and electronics. It is not system repairs, grinding, chipping, blasting, welding, etc.

(c) Storage of equipment and materials used in the ordinary course of Lessee's tour boat operation shall be kept on the tour boat or offsite.

Lessee's use of the Leased Property shall comply with all applicable federal, state, and local statutes, laws, regulations and codes, including, without limitation, all environmental laws. Lessee shall not interfere with the use of the Leased Property by any persons who are allowed to use the same, including, without limitation, (i) members of the public using the Path and (ii) Lessor and its agents and contractors in the construction and maintenance of the Path.

6. Fueling and Servicing of Vessels. Between the hours of 10:00 AM and 9:00 PM during the months of May through October, Lessee shall not fuel or perform other servicing activities that require fuel trucks, septic trucks or similar commercial vehicles entering the Leased Property. All connections must have means of drip/spill containment place beneath them. Any spill must be reported to the Director of Municipal Services within 12 hours and the U. S. Coast Guard if required. The cleaning of any spill or leak from lessee's fueling or other servicing activities performed on the Leased Property or adjacent areas is the responsibility of the Lessee.

7. Parking. Lessee may use the public parking lot adjacent to the Madison Avenue. At no time will Lessee, Lessee's employees, vendors or contractors be allowed to park on the Path.

8. Access. Lessor shall provide to Lessee Path access from an adjoining City parking lot to the Leased Property. The location, width, and construction material of the access driveway shall be at the discretion of the Lessor, but shall be sufficient to allow safe ingress and egress of the vehicles typically used in the servicing supplying fuel or holding tank services (such as fuel trucks and septic tank trucks). The location, width and construction material of the Path may be altered by the Lessor, provided continual access to the Leased Property is maintained, except during any periods of construction or maintenance of such Path.

9. Cooperation. Lessee shall cooperate with Door County Maritime Museum in all regards as to the use of the leased premises including but not limited to parking, ticketing, refuse, utilities, toilets, wireless internet service.

10. Events. Lessee shall remove its vessel during Maritime Festival Events. This shall include reasonable periods before and after festival events to accommodate festival set up and coordination. Current festivals include: Door County Maritime and Wooden Boat Festival and Tall Ships Festival.

11. Bridge Openings. Lessee understands that frequent unscheduled bridge openings is disruptive to local highway traffic Lessee agrees to arrange tour boat arrival and departure times with regular bridge openings and shall require no more than two unscheduled bridge openings per day between Memorial Day and Labor day, an no unscheduled bridge openings at any other time.

12. Signs. The Lessee may erect/install one sign identification sign near Madison Avenue driveway entrance to the public parking lot. The sign shall be subject to Sturgeon Bay Sign Code and shall not exceed 12 square feet. The lessee may also erect/install operational and security signs within the Leased Property provided such signs do not exceed 2 square feet and are subject to approval of the Lessor.

13. Term. The Term of this Lease shall commence on June 1, 2021 and shall continue until midnight on December 31, 2025 (the "Term"), provided, however, that, if neither Lessor nor Lessee has given notice of an intention to terminate this Lease within 120 days of the scheduled termination date and Lessee is then and until the scheduled termination date in strict compliance with the terms of this Lease, the Term shall automatically extended for successive one year renewal terms. Reference to the "Term" shall include the renewal term, unless the context indicates otherwise.

14. Rent. The rent for the Leased Property shall consist of Base Rent, as defined below, and amortization of the Lessor Improvements.

(a) Base Rent. Lessee shall pay to Lessor when and as due annual base rent in the amount of \$6,000 plus any applicable sales tax ("**Base Rent**"), payable in advance in semi-annual installments, the first such installment, prorated as appropriate, due upon the execution of this Lease and subsequent installments due on or before July 1 and January 1 of each year. Each year, the Base Rent shall be subject to increase, based on any increase in the *Consumer Price Index for Urban Wage Earners and Clerical Workers* (CPI-W) issued by the Bureau of Labor Statistics (or successor thereto) ("**CPI**") measured as of September 30 of the preceding year. For example, Base Rent payments due July 1, 2021 and January 1, 2022, will be increased by the same percentage as the percentage increase in the CPI as of June 1, 2021 measured against the CPI as of September 30, 2020. Base Rent shall remain unchanged in the event of a percentage decrease in the CPI. All payments of Base Rent shall be due and payable absolutely, without offset, counterclaim, recoupment or other charge.

15. Taxes. Lessee shall pay when and as due all real estate, personal property and other taxes assessed against the Leased Property, Lessee's personal property and Lessee's income as well as all assessments levied against the Leased Property. To the extent the Leased Property constitutes only a part of property having a single tax parcel, Lessee shall pay a prorated share of all real estate based on the relation of the square footage the land constituting the Leased Property bears to the square footage of the land constituting the entire tax parcel property, plus the full tax assessed on the improvements upon the Leased Property. Lessee shall not be deemed to be in violation of this paragraph if Lessee fails to pay a tax when and as due, as long as such failure is based on a bona fide dispute over such tax, Lessee promptly and diligently pursues resolution of the dispute and Lessee has deposited with Lessor either a sum equal to 150% of the amount of the tax claimed due or security satisfactory to Lessor in Lessor's sole discretion.

16. Utilities. Lessee shall pay when and as due all charges for utilities, including, but not limited to, fuel, electricity, telephone, cable, water, sewerage and gas used upon or serving the Leased Property. All utilities shall be maintained in the name of Lessee. Upon request of Lessor, Lessee shall promptly provide Lessor with proof of payment of utility charges.

17. Maintenance. Lessee shall maintain in good condition and repair, or replace as necessary, the Leased Property and the improvements thereon and shall reimburse Lessor for all repairs thereto that are made necessary as a result of Lessee's failure to do so and any misuse or neglect by Lessee or any of its employees, contractors, agents, customers or guests. Lessor may periodically inspect the Leased Property as Lessor determines appropriate. If Lessee fails to perform any maintenance or repair within 30 days after written notice from Lessor, Lessor may perform such maintenance or repair and invoice Lessee for the cost thereof plus 10% of such cost. The cost of such maintenance shall be payable by Lessee as additional Rent. Lessee shall provide Lessor and its contractors with such access to the Leased Property as is required in connection with the maintenance of the Leased Property. Lessee shall not do any remodeling, maintenance or mechanical repairs (other than minor mechanical repairs handled by service calls) without first notifying Lessor that such work will need to be done, and obtaining Lessor's approval to the contractors Lessee proposes to do such work, provided. When the work is completed, Lessee shall

notify Lessor of its completion. Lessor may inspect the work for compliance with any applicable codes, or require Lessee to have the work inspected. Lessee shall not allow any lien to attach to the Leased Property.

18. Alterations. Lessee shall not make any alterations to the Leased Property without the consent of Lessor, which may be withheld in Lessor's reasonable discretion. Any alterations that are approved by Lessor shall be performed by contractors who have been preapproved by Lessor and who, before commencement of any work upon the Leased Property, shall have provided Lessor with adequate proof of general liability, professional liability and worker compensation insurance in amounts satisfactory to Lessor, in Lessor's discretion, which shall name Lessee and Lessor as additional insureds. All alterations shall be made to industry standards and shall comply with all applicable laws, codes and regulations. All alterations made by Lessee shall become the property of Lessor upon the termination of this Lease, unless Lessor elects not to accept the same, in which case, they shall be removed or otherwise handled as set forth in paragraph 23 below.

19. Insurance. During the Term, Lessee shall keep in full force and effect, at its expense: (a) a policy of commercial general liability insurance covering the Leased Property and the building, with a combined single limit of not less than \$2,000,000; and (b) an all-risk/special cause of loss insurance policy insuring the Lessee's fixtures, equipment, furniture and other items of personal property of Lessee located on or within the Leased Property, in an amount not less than their full replacement cost, together with business interruption insurance, and worker compensation insurance in amounts as required by statute. All policies of liability and casualty insurance to be carried by Lessee shall name Lessor as additional insured parties and shall be in form and substance reasonably satisfactory to Lessor. A copy of the paid-up policies evidencing such insurance or certificates of insurers certifying to the issuance of such policies shall be delivered to Lessor prior to the Commencement Date and upon renewals not fewer than 30 days prior to the expiration of such coverage.

20. Indemnification of Lessor.

(a) Lessee shall indemnify, save, hold harmless, and defend Lessor and its directors, officers, employees, agents, insurers and attorneys and their respective successors and assigns (each a "**Lessor Indemnified Party**" and, cumulatively, the "**Lessor Indemnified Parties**") for any loss, injury, death, or damage to persons or property occurring or caused by any act, omission, negligence, or intentional misconduct of Lessee relating to the use or occupancy of the Leased Property or presence upon the Leased Property of Lessee or any occupant, subtenant, visitor, contractor, consultant or user of any portion of the Leased Property at the request of or with the permission of Lessee (except to the extent caused by the breach of this Lease, negligence or intentional misconduct of Lessor or its employees, invitees, agents or subcontractors) and Lessee shall indemnify, hold harmless and defend the Lessor Indemnified Parties against all claims, liability, loss, damage or expense whatsoever (including reasonable attorneys' fees) on account of any such loss, injury, death, or damage. This indemnification shall survive the expiration or earlier termination of this Lease as provided in this Lease.

(b) Lessor shall indemnify, save, hold harmless, and defend Lessee and its directors, officers, employees, agents, insurers and attorneys and their respective successors and assigns (each a “**Lessee Indemnified Party**” and, cumulatively, the “**Lessee Indemnified Parties**”) for any loss, injury, death, or damage to persons or property occurring or caused by any act, omission, negligence, or intentional misconduct of Lessor or any employee of Lessor or other party retained by Lessor to perform work upon or make improvements to the Leased Property.

(c) Hazardous Materials Indemnification. Lessee shall abide by all Environmental Laws regarding its use of Hazardous Materials on the Leased Property and any ways of access to the Leased Property by Lessee or anyone upon the Leased Property at the request of Lessee and shall indemnify, save, hold harmless, and defend the Lessor Indemnified Parties for all such use of Hazardous Materials.

(d) Indemnification Procedures.

(i) In the case of claims made by a third party (a “Third Party Claim”) with respect to which indemnification is sought, the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, whether one or more, shall give prompt notice to Lessee or Lessor, as applicable, of any such Third Party Claim made upon it. If the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, fails to give such notice, such failure shall not preclude the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, from obtaining such indemnification but its right to indemnification may be reduced to the extent such delay materially prejudiced the defense of the Third Party Claim or increased the amount of liability or cost of defense.

(ii) Assumption of Defense. Unless (i) Lessor or Lessee, as applicable, is also a party to such Third Party Claim and the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, determines that joint representation would be inappropriate, or (ii) the Lessee or Lessor, as applicable, fails to provide reasonable assurance to the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, of Lessee’s or Lessor’s, as applicable, financial capacity, Lessee or Lessor, as applicable, shall defend such Third Party Claim and provide indemnification with respect to such Third Party Claim), by notice to the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, given not later than ten (10) days after receipt of the notice to assume the control of the defense, compromise or settlement of the Third Party Claim, provided that such assumption shall, by its terms, be without cost to the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, and provided Lessee or Lessor, as applicable, acknowledges in writing its obligation to (i) not settle any Third Party Claim where such settlement of the Third Party Claim would have a material adverse effect on the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, without the prior written consent of the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, which consent shall not be unreasonably withheld and (ii) indemnify the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, in accordance with the terms contained in this section in respect of the Third Party Claim.

(iii) Pursuit of Defense/Cooperation/Legal Fees. Upon the assumption of control of any Third Party Claim by Lessee or Lessor, as applicable, as set out in subsection (ii) immediately above, Lessee or Lessor, as applicable, shall diligently proceed with the defense,

compromise or settlement of the Third Party Claim at its sole expense, including if necessary, employment of counsel reasonably satisfactory to the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, and, in connection therewith, the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, shall cooperate fully, but at the expense of Lessee or Lessor, as applicable, with respect to any out-of-pocket expenses incurred, to make available to the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, all pertinent information and witnesses under the Lessor Indemnified Party's or Lessee Indemnified Party's, as applicable, control, make such assignments and take such other steps as in the opinion of counsel for Lessee or Lessor, as applicable, are reasonably necessary to enable Lessee or Lessor Indemnified Party, as applicable, to conduct such defense. The Lessor Indemnified Party or Lessee Indemnified Party, as applicable, shall also have the right to participate in the negotiation, settlement or defense of any Third Party Claim at its own expense. The Lessor Indemnified Party or Lessee Indemnified Party, as applicable, shall not settle any Third Party Claim without the prior written consent of Lessee or Lessor, as applicable,, such consent not to be unreasonably withheld.

(iv) Failure of Indemnifying Party to Assume Defense. If Lessee or Lessor, as applicable, does not assume control of a Third Party Claim as permitted in subsection (ii) above, the Lessor Indemnified Party or Lessee Indemnified Party, as applicable, shall be entitled to make such settlement of the Third Party Claim as in its sole discretion may appear advisable, and such settlement or any other final determination of the Third Party Claim shall be binding upon Lessee.

21. Destruction of or Damage to Leased Property. Unless caused by or resulting from events of nature (including but not limited to rainstorms, floods, lightning, fire or tornadoes), rioting, vandalism, or looting by third parties; war; or acts of state or governmental action prohibiting or impeding Lessor from performing its obligations hereunder or using the Leased Property for its intended purpose, the damage or destruction or partial damage or destruction of the Leased Property shall not release Lessee from any obligation hereunder. In case of such non-excluded damage or destruction, Lessee, at its sole cost and expense, shall promptly repair and restore the same to a condition as good or better than as existed prior to such damage or destruction. If such repair and replacement is not commenced and diligently pursued, then Lessee, at Lessor's election and in each case at Lessee's sole cost and expense, in the case of a failure to commence repairs, within 45 days of the date of such damage or destruction, and, in the case of failure to complete repairs, within 90 days of such damage or destruction, shall raze all damaged or destroyed improvements on the Leased Property and remove all debris from the Leased Property associated with such damage or destruction.

22. Prohibition of Involuntary Assignment. Neither this Lease nor the leasehold estate of Lessee nor any interest of Lessee hereunder in the Leased Property or in any improvements thereon shall be subject to involuntary assignment, transfer, or sale or to assignment, transfer, or sale by operation of law in any manner whatsoever, and any such attempt at involuntary assignment, transfer, or sale shall be void and, at the option of Lessor, shall terminate this Lease.

23. Events of Default.

(a) General Events of Default. If Lessee is in default in performing any of the terms and provisions of this Lease, Lessor shall give Lessee written notice of such default, and if Lessee fails to cure: (i) a monetary default within 10 days after Lessee's receipt of notice of default;

or (ii) a non-monetary default within 60 days after Lessee's receipt of notice of default, then and in any such event, without further notice or demand, Lessor may exercise all remedies afforded Lessor in this Lease. The foregoing notwithstanding:

(i) If Lessee's failure to perform a non-monetary obligation hereunder cannot reasonably be cured within the 60 days, Lessee shall have a reasonable additional time to cure, provided Lessee has commenced cure no later than 30 days after Lessor's notice of default and diligently pursues cure thereafter and cures within a total period, including the initial 60 days, of 120 days;

(ii) If the condition giving rise to the default threatens immediate or imminent harm to persons or property, as determined by Lessor in its discretion, Lessee shall immediately take action to prevent such harm and, in the absence of Lessee doing so, Lessor may take such actions and may charge to Lessee all expenses incurred by Lessor in taking such actions, which charges shall be due and payable by Lessee to Lessor no later than 10 days from Lessor's demand.

(b) Specific Events of Default. The following events shall also constitute Events of Default by Lessee under this Lease:

(i) Insolvency. Lessee admits in writing an inability to pay its obligations as they become due or becomes the subject of an involuntary insolvency proceeding, including, without limitation, a bankruptcy filing, an assignment for the benefit of creditors or a supplemental receivership that is not dismissed within 90 days of the date of its filing.

(ii) Judgments and Liens. A judgment is entered or award made against Lessee for an amount exceeding \$50,000 that is not satisfied or for which bond is not posted within 60 days of entry thereof; execution is levied against the Leased Property or Lessee's property; or the Leased Property or any other property of Lessee becomes subject to an involuntary lien that is not discharged within 60 days of filing.

(iii) Abandonment of Leased Property. Lessee abandons the Leased Property. Abandonment shall be defined as a failure to continue active operations on the Leased Property for 60 consecutive days or for 120 days in any one twelve-month period.

21. Remedies. If a default occurs which is not cured within the applicable cure period, then Lessor shall have the rights and remedies set forth below, which shall be distinct, separate, and cumulative and shall not operate to exclude or deprive a party of any other right or remedy allowed it at law or in equity:

(a) Termination of Lease. Lessor may terminate this Lease by giving to Lessee written notice of its election to do so, in which event the Term of this Lease shall end, and all right, title and interest of this Lessee shall expire, on the date stated in such notice. In the event of the termination of this Lease by Lessor for a Lessee Event of Default, Lessor shall be entitled to recover from Lessee all of the fixed dollar amounts of Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Lessee, or for which Lessee is liable or in respect of which Lessee has agreed to indemnify Lessor under any of the provisions of this Lease, which may be then owing and unpaid. Termination shall not affect

Lessee's indemnity obligations for any claims attributable to Lessee's acts, omissions or breach of this Lease occurring before the date of termination.

(b) Termination of Right of Possession. If Lessor terminates the right of Lessee to possession of the Leased Property without terminating this Lease, as provided above, then Lessor may recover from Lessee all the fixed dollar amounts of Rent accrued and unpaid for the period up to and including such termination date, plus all rents that were scheduled to be paid by Lessee through the end of the Term, accelerated to the date of termination of the right of possession, as well as all other additional sums payable by Lessee, or for which Lessee is liable or in respect of which Lessee has agreed to indemnify Lessor under any of the provisions of this Lease, which may be then owing and unpaid.

(c) Suit. Lessor may enforce the provisions of this Lease and may enforce and protect its rights hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, recovery of all money due or to become due from the other party under any of the provisions of this Lease and recovery of all direct damages incurred by reason of the Event of Default.

(d) Rights Cumulative. Except as otherwise expressly provided herein, the rights and remedies granted herein to Lessor shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights reserved to Lessor under the provisions of this Lease or by law.

(e) Attorney Fees. In any legal dispute regarding the negotiation, interpretation or enforcement of this Lease, if Lessor prevails, it shall be entitled to collect from the Lessee the reasonable attorney fees and costs incurred by Lessee relating to such proceeding. In any such proceeding, Lessor shall request a specific finding from the court as to which of the Parties is the prevailing Party.

(f) Lessor's Right to Cure. At any time following the occurrence of an Event of Default and upon not less than 30 days written notice to Lessee, Lessor may cure any default by Lessee under this Lease. Whenever Lessor so elects, all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in curing the default, together with interest thereon at an annual rate of 12% from the date of such payment, shall be payable as additional rent to Lessor on demand.

24. Surrender and Holding Over. On the last day of the Term of this Lease or upon any earlier termination of this Lease for any reason, Lessee shall surrender and deliver up the Leased Property, without delay and in good order, condition, and repair, free and clear of all occupancies and free and clear of all liens and encumbrances. Unless Lessor agrees otherwise, none of Lessee's personal property shall be and remain the Leased Property. If Lessee remains in possession after the expiration of the Term without a written agreement with Lessor, Lessee shall be a tenant at sufferance and liable to pay rent to Lessor in the amount of \$250.00 per day until Lessee has removed all of Lessee's property from the Leased Property, and there shall be no renewal of this Lease by operation of law.

25. Property Left on the Leased Property. If Lessee leaves any personal property, upon the Leased Property after the termination of this Lease and fails to remove the same within 30 days after the termination date, Lessor may deem such property abandoned by Lessee and either retain all or part of it or disposing of all or part of it, as Lessor deems appropriate, in its sole discretion and charge Lessee all costs incurred by Lessor for the storage, preparation for disposition and disposition of any such property.

26. Assignment. Lessee shall not assign or otherwise transfer its interest in this Lease without Lessor's prior, written consent, which may be withheld by Lessor in its sole discretion. In the event of any assignment or transfer, (i) Lessee shall remain liable for the performance of all the terms and conditions of this Lease that arose prior to the date of assignment or transfer, and (ii) no assignment or transfer shall be valid unless the assignee expressly assumes and agrees to perform, from and after the date of assignment or transfer, every covenant of this Lease that, by its terms, Lessee has agreed to keep and perform. No acceptance by Lessor of any performance to be done by Lessee from any person, firm, or corporation other than Lessee, shall discharge Lessee (except to the extent of the performance and payments so accepted by Lessor) from liability to perform any of the terms, covenants, conditions, and agreements set forth in this Lease.

27. Merger. In no event shall the leasehold estate or rights of Lessee hereunder merge with any interest, estate, or rights of Lessor in or to the Leased Property, such leasehold estate and rights of Lessee hereunder being distinct from Lessor's interest, estate, and rights in or to the Leased Property, notwithstanding that any such interests, estates, or rights shall at any time or times be held by or vested in the same person, corporation, or other entity.

28. Miscellaneous.

(a) Notices. Notices or other communication hereunder shall be in writing and shall be sent by certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery at the respective addresses set forth below. Notice shall be deemed given upon receipt or refusal to accept delivery. The addresses below shall be presumed correct until a party sends notice according to the terms of this paragraph of a different address. Addresses are as follows:

If to Lessor: City of Sturgeon Bay
421 Michigan Street
Sturgeon Bay, WI 54235
Attn: Clerk

If to Lessee: Fish Creek Scenic Tours, LLC
2301 Flintridge Road
Sister Bay, Wisconsin 54234

(b) Entire Agreement. This Lease contains the complete understanding of the parties hereto with respect to all matters referred to herein, all prior representations, negotiations, and understandings being superseded by this Lease, provided, however, the terms of the Lakebed Lease are incorporated into this Lease to extent the same are referred to herein. To the extent the

terms of the Lakebed Lease are more restrictive as to Lessee's responsibilities regarding the Leased Property, the more restrictive provisions shall govern. Otherwise, this Lease shall govern.

(c) Interpretation. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee. Without limitation, any ambiguity in this Lease shall not be construed against the drafter, both Lessor and Lessee having materially participated in the negotiation and drafting of this Lease.

(d) Parties Bound. This Lease shall be binding on and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

(e) No Waiver. No waiver of any default of any obligation by either party shall be implied from any omission by the other party to take any action with respect to such default. To be enforceable, a waiver must be in writing, signed by an authorized representative of waiving party and indicating with specificity the provisions of this Lease being waived. No waiver of a present default shall constitute a waiver of any other default present or in the future, nor shall any such waiver constitute a waiver of the same default in the future, unless the waiver explicitly indicates as such.

(f) No Agency. Nothing in this Lease shall be deemed or construed to create the relationship of principal and agent or of limited or general partners or of joint ventures or of any other association between Lessor and Lessee.

(g) Severability. Each provision of this Lease and the application thereof to the Leased Property are hereby declared to be independent of and severable from the remainder of this Lease. If any provision contained herein is held to be invalid or to be unenforceable, such holding shall not affect the validity or enforceability of the remainder of this Lease, unless the determination of illegality would deprive either of the parties of the material benefits of this Lease.

(h) Governing Law. The laws of the State of Wisconsin shall govern the interpretation, validity, performance, and enforcement of this Lease.

(i) Exclusive Venue. Any legal proceeding involving the interpretation or enforcement of this Lease shall be venued exclusively in the circuit court for Door County, the Parties waiving the right to have any such proceeding held in any other venue. Any action brought in any venue other than the exclusive venue shall be dismissed or the venue changed at the expense of the Party that filed in such other venue.

(j) Recitals and Exhibits. The Recitals set forth above, and exhibits attached hereto, are incorporated and made a part of this Lease.

(k) Authority. The parties represent and warrant to each other that the persons signing the Party's behalf below have been duly authorized by all necessary action to execute and deliver this Lease and to bind that Party to its terms.

(l) Counterparts and Copies. This Lease may be signed in counterparts. Copies of this Lease shall have the same effect as originals, the best evidence rule not applying to this Lease.

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be executed the date first written above.

LESSOR:
CITY OF STURGEON BAY

By: _____
David J. Ward, Mayor

By: _____
Stephanie Reinhardt, Clerk

STATE OF WISCONSIN :
: SS.
COUNTY OF DOOR :

Personally came before me this ____ day of _____, 2021, the above-named David Ward, the mayor of the City of Sturgeon Bay, to me known to be the mayor of that city and the person who executed the foregoing instrument and acknowledged the same as to the act of that city by its authority.

* _____
Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN :
: SS.
COUNTY OF DOOR :

Personally came before me this ____ day of _____, 2021, the above-named Stephanie Reinhardt, the clerk of the City of Sturgeon Bay, to me known to be the clerk of that city and the person who executed the foregoing instrument and acknowledged the same as to the act of that city by its authority.

* _____
Notary Public, State of Wisconsin

My Commission: _____
LESSEE:
FISH CREEK SCENIC BOAT TOURS, LLC

By: _____
Cody Bolton

STATE OF WISCONSIN :
: SS.
COUNTY OF DOOR :

Personally came before me this ____ day of _____, 2020, the above-named Julie Sarter, the president of the Sarter Marine Towing Company, Inc., a Wisconsin corporation, to me known to be the president of that corporation and the person who executed the foregoing instrument and acknowledged the same as to the act of that corporation by its authority.

* _____
Notary Public, State of Wisconsin
My Commission: _____