

**ORDINANCE NO. 20-126**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH OWEN SOUND TRANSPORTATION COMPANY, LIMITED, FOR THE UTILIZATION OF DOCKAGE SPACE AT THE JACKSON STREET PIER; AND DECLARING THAT THIS ORDINANCE TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the City and Owen Sound Transportation Company, Limited, entered into a Lease Agreement on May 24, 1995, for the purpose of docking ferries and the loading and unloading of passengers and motor vehicles onto and off the ferries, which expired on April 30, 2004, and subsequently was extended by addendum for the past sixteen (16) years; and

**WHEREAS**, the agreement permitted Owen Sound Transportation Company, Limited, to provide ferry service between Sandusky and Pelee Island, Ontario, Canada and other points along the Lake Erie Shoreline and at the time was critical to providing water transportation between United States and Canada which has existed for approximately fifty (50) years prior to the original lease agreement; and

**WHEREAS**, Owen Sound Transportation Company, Limited, approached the City to enter into a new long-term Lease Agreement given the improvements and alterations that have been completed to the Jackson Street Pier; and

**WHEREAS**, the initial term of the Lease Agreement will commence in 2020 and terminate April 30, 2027, effective annually during the travel season from May 1<sup>st</sup> through September 30<sup>th</sup>, with two (2), three (3) year renewal periods; and

**WHEREAS**, the City will receive a total of \$800,000.00 during the initial term of the Lease Agreement with \$114,285.71 being paid in Years 1-4 annually and \$114,285.72 annually from Years 5-7 and all revenue will be deposited in the Capital Fund during the initial term and revenue during the renewal terms will be deposited in the General Fund; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the Lease Agreement and allow for operational planning so the Pelee Islander can continue service at the Jackson Street Pier when the international travel bans are lifted and the ferry services resume; and

**WHEREAS**, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Community Development, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a

Lease Agreement with the Owen Sound Transportation Company, Limited, for the utilization of dockage space at the Jackson Street Pier with the initial term commencing in 2020 and terminating on April 30, 2027, effective during the travel season from May 1<sup>st</sup> through September 30<sup>th</sup> annually, substantially in the same form as attached to this Ordinance and marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as being consistent with the objectives and requirements of this Ordinance and with carrying out the City's public purposes.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter upon its passage, and its due authentication by the President, and the Clerk of the City Commission of the City of Sandusky, Ohio.



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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION

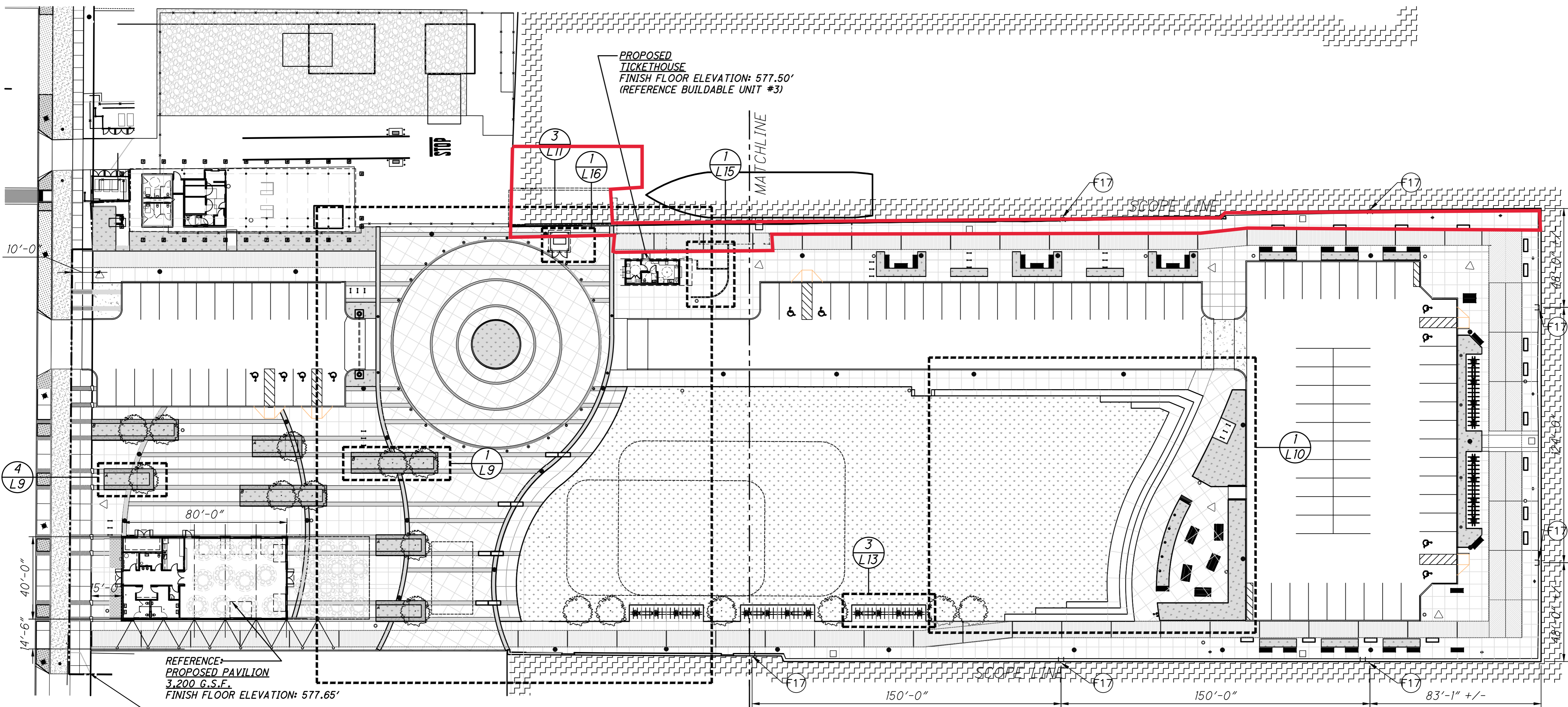


ATTEST: 

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MCKENZIE E. SPRIGGS  
CLERK OF THE CITY COMMISSION

Passed: August 24, 2020



REFERENCE:  
PROPOSED PAVILION  
3,200 G.S.F.  
FINISH FLOOR ELEVATION: 577.65'

LINE INDICATES LIMITS OF PROJECT SCOPE:  
EXTEND BEYOND R.O.W. AND STOP AT NORTH  
EDGE OF ASPHALT PATHWAY. WORK OUTSIDE OF  
PROJECT LIMIT LINE BY OTHERS.

LEGEND

## LEASE AGREEMENT

This Lease Agreement made and entered into at Sandusky, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Sandusky, Ohio, an Ohio chartered municipal corporation, hereinafter referred to as the “Lessor” acting by and through the City Manager of the City of Sandusky, Ohio and pursuant to the authorization contained in Ordinance No. \_\_\_\_\_; and the Owen Sound Transportation Company, Limited, of Owen Sound, Ontario, Canada, hereinafter referred to as the “Lessee.”

### WITNESSETH:

**Whereas**, it is the intention and desire of the Lessee to assume the responsibility for the operation of ferry service between the City of Sandusky, Ohio and Pelee Island, Ontario, Canada and other points on Lake Erie Shoreline of Ontario, Canada; and

**Whereas**, the Lessor is the owner of a dock facility located within the municipal limits of the City of Sandusky, Ohio and upon the Sandusky Bay, which is known as the Jackson Street Pier; and

**Whereas**, for a period of some seventy-five (75) years, more or less, there has continuously maintained a ferry service between the City of Sandusky, Ohio and Pelee Island, Ontario, Canada and points along the Lake Erie Shoreline of Ontario, Canada; and

**Whereas**, it is the intention and desire of the parties hereto that the Lessee lease a portion of the Jackson Street Pier boat dock as set forth hereinbelow for the purpose of docking not more than two (2) ferries, the loading and unloading of passengers and motor vehicles, and the pursuit of other functions incident thereto; and

**Now therefore**, in consideration of the mutual covenants herein contained, the parties hereto agree as set forth hereinbelow:

### SECTION 1- GRANT OF LEASE

Lessor, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by the Lessee, does hereby lease to the Lessee and the Lessee does hereby lease the property described in Exhibit “A” attached and incorporated herein (the “Leased Premises”), together with, as part of the parcel with all improvements located thereon.

Further, as a part of this agreement, the Lessee, its officers, agents, employees, successors, invitees, and licensees shall enjoy the license and right of access to said pier, and to the property of the City of Sandusky, Ohio appurtenant thereto, in common with the City of Sandusky, Ohio, and other lawful users thereof, to the extent that said access is reasonably incidental to the use by the Lessee of the dockage space leased hereunder.

Additionally, if the building and/or area currently used by Lessee for the purpose of ticket sales shall become unavailable to the Lessee for its said purpose, the Lessor may choose to replace or repair the structure at the Lessor's sole discretion and the design or redesign of the structure will be at the Lessor's sole discretion.

The Lessee shall pay in full and shall hold the Lessor harmless from any and all utility costs and expenses related to the Lessee's use and occupancy of said structure, and the use and occupancy by its vessels of the subject of the premises.

#### **SECTION 2 - CUSTOMS**

Upon availability of funds, the Lessor shall provide a facility for use by the United States Customs and Border Protection in conjunction with their requirements relative to the arrival and departure of Lessee's vessels. If the Lessor is unable to provide the required facility, the Lessor or the Lessee shall have the right to terminate this Agreement, subject to the Termination Section 6 hereinbelow.

#### **SECTION 3 - TERM**

This Agreement is for an initial term of seven years and shall begin on June 1, 2020 and terminate on April 30, 2027.

#### **SECTION 4 – RENT**

Lessee agrees to pay the Lessor and the Lessor agrees to accept, during the term hereof, at such place the Lessor shall from time to time direct by notice to the Lessee, annual rent set forth in the following table:

Year 1: \$114,285.71, first payment due on or before November 1, 2020

Year 2: \$114,285.71

Year 3: \$114,285.71

Year 4: \$114,285.71

Year 5: \$114,285.71

Year 6: \$114,285.71

Year 7: \$114,285.71

A late fee of 5% of the annual rent shall be assessed if payment is not postmarked or received by Lessor on or before June 1<sup>st</sup> annually. Lessee acknowledges that said rent payments include costs for capital improvements made by Lessor based upon promises made by Lessee that Lessee would lease the premises. Lessor made said improvements to the premises with the understanding that Lessee will reimburse Lessor through annual rent payments that include the costs of said improvements. Lessor acknowledges that if Lessor causes said lease to be terminated or otherwise prevents Lessee from leasing said premises, then Lessor acknowledges that Lessee does not owe any future rent payments that may become due under the annual rent table (above).

This proration of rent payments or waiver of future rent payments only applies in situations where Lessor terminates or prevents Lessee from leasing said premises. The proration or waiver of future rent payments does not apply in situations expressly outlined in Section 6 and Section 16 of this Agreement.

Further, Lessee shall be responsible for and shall pay all utility expenses incidental to the Lessee's actual use of the demised premises.

#### **SECTION 5 - RENEWAL OPTION**

This Agreement is renewable for two (2) three (3) year renewal periods at an annual rate of \$12,000 beginning in May 1, 2027. The rental rate shall be subject to a three percent (3%) annual rent increase for both renewal terms. Either party must give thirty (30) days written notice if they do not desire to renew the Agreement. Upon failure to give such notice, this Agreement

will automatically renew for a period of three (3) years on the same terms. This notice requirement shall continue for all subsequent renewal periods.

#### **SECTION 6 – TERMINATION**

Termination shall not affect any obligations of either party for conduct occurring on or prior to the effective date of termination. Should the U.S. Customs and Border Protection, or similar office, terminate their agreement with the Lessor, then the Lessor may terminate this agreement. Termination shall not affect the obligation of Lessee to pay entire balance of \$800,000.00, should there be a balance, of costs of improvements.

#### **SECTION 7- USE OF PROPERTY BY LESSEE**

The lessee shall utilize the demised premises, and shall exercise the rights afforded it hereunder for the docking of the ferry vessel known as the "Pelee Islander," or other vessels engaged in ferry service for the appropriate loading and unloading of motor vehicles and passengers onto and from the same, and for functions directly related and necessarily incident thereto; and the Lessee hereby irrevocably elects not to claim depreciation or an investment credit for federal income tax purposes with respect to the described premises; this irrevocable election is binding on the Lessee and all successors in interest under this lease. In the event, however, the Lessee hereafter elects to substitute another vessel or other vessels for either or both of the said "Pelee Islander," the same shall be susceptible to service and use in conjunction with the improvements of the subject premises. In the event the Lessee elects to make substitutions of vessels which are not so susceptible, the Lessee shall bear fully the cost and expense of modifying and adjusting such improvements to accommodate the same, which include, but not limited to, dredging and any ramp improvements.

#### **SECTION 8 – NON-EXCLUSIVE USE**

That the parties hereto expressly acknowledge that other entities and individuals enjoy or may enjoy the privilege of utilizing the docking slip in common with the Lessee, portions of the premises demised hereunder and/or affected hereby, including, but not by way of limitation, the right of Lake Erie Island Cruises LLC (Goodtime) or any successor thereto or assign thereof, to

utilize a portion of the dockage space, the area at the Jackson Street pier, and the Lessee covenants and agrees that it will exercise its rights hereunder so as to avoid interference with the same; The Lessee enjoys hereunder the right to utilize the demised premises for the purposes allowed it as to the "Pelee Islander" from May 1<sup>st</sup> through September 30<sup>th</sup>, annually. In the event that emergency circumstances, or unforeseen events or occurrences beyond the control or direction of the Lessee necessitate the occupation or use of the subject premises by the Lessee beyond or in addition to the time periods set forth herein, and allowed the Lessee hereby, the Lessee shall be afforded the privilege to so occupy and use the premises to the extent and for a duration which are reasonably necessary under the circumstances, with the understanding that said occupation and use shall be effected in a manner calculated and designed to minimize the impact and effect upon the lawful and permitted use of the premises by Lake Erie Island Cruises LLC (Goodtime).

Should the Lake Erie Island Cruises LLC (Goodtime) or any successor company fail to utilize the dock, the City will use its best efforts to assist Lessee in finding linepersons.

#### **SECTION 9 – TENANT TO OBEY LAWS AND MITIGATE DAMAGE**

The Lessee shall not use or occupy, or suffer or permit the use or occupation of the premises at issue hereunder or a portion thereof for any purpose contrary to law, or to the rules or regulations of any public authority, or in any manner so as to increase the risk of personal or property damage other than that necessarily incident to the use thereof in a manner consistent herewith.

#### **SECTION 10 – DAMAGE**

Lessee shall make full and complete compensation for any damage caused to the Lessor's physical property, normal wear and tear excepted, by the Lessee's negligent act or omission, and/or that of any of its officers, employees, servants, agents, contractors, licensees, or invitees, or those for whom it is in law responsible, or for damage attributable to the equipment owned, operated and/or used by the Lessee, its officers, employees, servants, agents, contractors, licensees, or invitees, or those for whom it is in law responsible



## **SECTION 11 – LIMITATION OF DAMAGES AND REMEDIES**

Even if advised of the possibility of such damages, in no event shall the Lessor be liable for (i) personal injury or property damages, or (ii) lost profits, work stoppage, or any other special, indirect or consequential damages of any kind. In the event of the Lessor's breach or failure to perform any obligation under this Agreement, the Lessor's entire liability and the Lessee's exclusive remedy shall be, at the Lessor's option, either (i) return of the monetary consideration paid to the Lessor under this Agreement minus the costs of construction of the improvements attributable to the Lessee (\$800,000.00), or (ii) the Lessor's performance of any obligation that failed to satisfy the terms of this Agreement.

## **SECTION 12 - ASSIGNMENT AND SUBLETTING**

Lessee shall not assign this Agreement, any portion thereof, and/or any of its rights hereunder, or to sublet said premises or any part thereof, or to permit or suffer boats, ships, or watercraft other than those specifically identified herein to occupy or to utilize the same without the herein express prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessor acknowledges and agrees that the following does not constitute an assignment or sublet, and does not require the consent of the Lessor for the same, the use or occupation of all or part of the premises by any governmental agency, ministry, department, or corporation affiliated with the Province of Ontario for or in relation to any use which is consistent with the terms and provisions of the Agreement.

Lessee shall have the right to assign its obligations and rights under this Agreement to any successor resulting from a merger, or in connection with a sale of all or substantially all of the assets of Lessee; provided, however, that Lessee provides the Lessor with an executed form of assignment and assumption evidencing the successor in interest's assumption of liability for the full and faithful performance of all the terms, covenants, conditions and provisions under this Agreement.

### **SECTION 13 – SURRENDER**

Lessee covenants and agrees to deliver up and to surrender to the Lessor the possession and control of the premises upon the expiration of this Agreement or upon its termination as herein provided in as good condition and repair as same shall be at the commencement of the said term, natural and normal wear excepted. Lessee shall be liable to the Lessor for any damage to the premises beyond natural and normal wear.

### **SECTION 14 – SECURITY INTEREST IN THE PREMISES**

In no event shall Lessee assert any ownership interest in or to the premises. Lessee shall not grant or permit any person or business entity to assert a security or other interest in the premises. At all times during the term of this Agreement, Lessee shall ensure that the premises is identified as being owned by the Lessor.

### **SECTION 15 – DEFAULT**

If Lessee fails to keep and perform any of the covenants of this Agreement after having been given 30 days to cure said default, or if Lessee shall abandon or vacate said premises during the term of this Agreement, or make assignment for the benefit of creditors, or if the interest of the Lessee in said premises shall become subject to sale under execution or legal process, or if the leasehold is seized by a trustee in bankruptcy, or if a receiver is appointed is appointed for the Lessee by a court, the Lessor may, at the election of the Lessor, cancel and terminate this Agreement, re-enter the premises, and again have, repossess, and enjoy the same, and this Agreement shall cease and be void., except as otherwise specifically set forth herein below, without prejudice to any remedies of the Lessor which may otherwise be available at law; and, then and in any such event, Lessor shall be entitled to receive from the Lessee, in addition to any and all actual damages which the Lessor may suffer as a result of such occurrence, as liquidated damages in relation to the same, any and all balances of rental consideration provided hereunder for any and all periods of the leasehold interested created hereby, which then remain unpaid, whether due or not yet due, including the costs of improvements (\$800,000.00).

### **SECTION 16 – ACT OF GOD**

In the case of damage to the leased premises by an act of God or other casualty, the Lessor shall have the option to terminate this Agreement or to repair the premises. If the Lessor elects to make such repairs, Lessor shall attempt to make any such repairs within a reasonable time. If the premises are partially untenable, the rent shall be prorated to an extent corresponding with the part that is untenable, and for the period corresponding with the period in which the premises are partly or entirely untenable, but in no event will this alleviate the Lessee's liability for costs of improvements (\$800,000.00).

### **SECTION 17 – MAINTENANCE**

During the term of this Agreement, Lessor shall be responsible for all routine maintenance at its own cost, in coordination with the Lake Erie Island Cruises (Goodtime) or any successor company, in order to keep this docking facility in a safe and operating condition. Should there be maintenance, repairs, upgrades, or requirements needed to conform to the requirements of U.S. Customs and Border Protection Lessor may renegotiate the Rents due under Section 4 above. Nothing in this section impacts Lessee's continued responsibilities and covenants under Sections 11 and 12 above.

### **SECTION 18 – NON-WAIVER OF DEFAULTS**

Any failure of the Lessor at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions or rights, and shall not affect or impair the same, or the right of the Lessor to avail itself of the same.

### **SECTION 19 – ENTIRE AGREEMENT/MODIFICATION**

This Agreement supersedes any and all agreements, both oral and written, between the Lessor and Lessee with respect to the lease of the premises and contains all of the covenants and agreements between the City and Lessee. Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement. Any

modification to this Agreement shall be effective only if it is in writing and signed by both the Lessor and Lessee.

#### **SECTION 20 – DISCLAIMER OF WARRANTIES**

Lessor disclaims and excludes all warranties, express and implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, concerning the premises leased under this Agreement. The Parties acknowledge and agree the premises shall be leased and accepted “AS IS” with all defects.

#### **SECTION 21 – BIND AND INURE**

This Agreement and all of the terms, covenants, conditions, and provisions hereof shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assigns.

#### **SECTION 22 – REPAIRS AND MAINTENANCE OF SURROUNDING AREA**

During the term of this Agreement, or the extension thereof, Lessor may be engaged in the modification, repair, and/or improvement of the Jackson Street Pier, including the premises demised hereunder or affected hereby. Such modifications repairs, and/or improvements will be carried out by the Lessor without unreasonable interference with the quiet enjoyment by the Lessee of its rights and interest in the premises created by this Agreement.

#### **SECTION 23 – INSURANCE**

During the effective periods of this lease or any extension or renewal thereof, the Lessee hereby acknowledges and agrees that its assumption of loss of the premises shall attach upon the commencement of this Agreement. Lessee shall, at its sole expense, obtain and maintain throughout the term of this Agreement insurance for its vessels. Lessee shall provide Lessor with adequate and appropriate evidence of such policy.

#### **SECTION 24 – CURRENCY**

All references to dollar amounts in this Lease Agreement are deemed to be in US currency.

**SECTION 25 – GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio.

**SECTION 26 – NOTICE**

Unless otherwise specified, all notices, communications and consents required by this Agreement shall be given or served in writing and forwarded by email, with proof of service retained, and certified mail, return receipt requested, to:

For the City: City Manager  
City of Sandusky  
240 Columbus Avenue  
Sandusky, Ohio 44870  
ewobser@ci.sandusky.oh.us

With a copy to: Law Director  
City of Sandusky  
240 Columbus Avenue  
Sandusky, Ohio 44870  
thayberger@ci.sandusky.oh.us

For Owen Sound Transportation: XXXXXX  
XXXXX  
XXXXX  
XXXXX  
XXXXX

The date of receipt of all notices, communications, and consents shall be the date of email as long as proof of sending is provided, if not, the date of receipt shall be the date of receipt via certified mail.

**SECTION 27 – SEVERABILITY**

If any of the provisions of this Agreement are found or deemed by a Court of competent jurisdiction to be invalid, or unenforceable, they shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable.

**SECTION 28 – SECTION HEADINGS**

All section headings are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, Owen Sound Transportation and the City of Sandusky have duly executed this Agreement.

**Lessee: The Owen Sound Transportation Company, Limited**

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

Province of Ontario)

)ss:

District of Nipissing)

Before me, a Notary Public, personally appeared \_\_\_\_\_ on the \_\_\_\_\_ day of August, 2020, who, after having been first duly sworn, acknowledged that they are the persons identified hereinabove, they are properly authorized and empowered to execute this document for and on behalf of The Owen Sound Transportation Company, Limited, and that the same was their free act and deed.

Notary Public:

\_\_\_\_\_

**Lessor: The City of Sandusky, Ohio**

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

The State of Ohio)

)ss:

Erie County)

Before me, a Notary Public, personally appeared City Manager, Eric Wobser, on the \_\_\_\_\_ day of August, 2020, who, after having been first duly sworn, acknowledged that he is the person identified hereinabove, that he is properly authorized and empowered to execute this document for and on behalf of the City of Sandusky, Ohio, and that the same was his free act and deed.

Notary Public:

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Justin D. Harris, Interim Law Director  
City of Sandusky, Ohio