

PIER USE AGREEMENT

Between the City of Madison and Pontoon Porch LLC
For the 2023-2026 Calendar Years
At Law Park and Olin Park

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and Pontoon Porch LLC, a Wisconsin limited liability company (hereinafter referred to as “User”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, the City is the owner of certain park lands in the City of Madison, Dane County, Wisconsin, including Law Park, which park lies between John Nolen Drive and Lake Monona, from roughly North Shore Drive extended northeast to South Blair Street extended, and Olin Park, which lies along the southwest shore of Lake Monona; and,

WHEREAS, within Law Park the City of Madison Parks Division (“MPD”) has provided certain amenities to encourage the use of Law Park and the enjoyment of the urban lakeshore, including an accessible pier located in the lakeshore area immediately southwest and adjacent to the Monona Terrace Community and Convention Center (“Monona Terrace”) roughly at South Fairchild Street extended and approximately 100 feet northeast of the Monona Terrace driveway off of John Nolen Drive, as shown on attached Exhibit A (“Premises”); and,

WHEREAS, within Olin park, the MPD operates a public boat launch, which launch includes piers and a parking area for launch users; and,

WHEREAS, User operates a commercial pontoon boat rental operation where small groups are able to rent an accessible double-decker pontoon boat for private outings on Lake Monona for two to three hours at a time, with the User provided operator transporting the customers to various locations on Lake Monona to allow the customers to engage in recreational activities such as swimming and fishing from the pontoon, or simply to enjoy the Lake; and,

WHEREAS, there are limited private points of access on Lake Monona that can accommodate the loading and unloading of passengers for a commercial boat rental operation; and,

WHEREAS, since 2013, User and the City have entered into a series of Pier Use Agreements wherein User was allowed to use the Premises for picking-up and dropping-off passengers as part of User’s pontoon boat rental business, the most recent agreement expiring on December 31, 2022; and,

WHEREAS, User and the City desire to renew the pier use agreement to allow for User’s continued use of the Premises as part of User’s pontoon boat rental business; and

WHEREAS, through 2021, the City was not able to allow User to use the City's piers in Olin Park due to a separate lease agreement that has since expired. User would like to use the Olin Park boat launch piers for loading and unloading purposes on three (3) occasions each contract year, which use is agreeable to the Parks Division.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Pier Use Agreement ("Agreement") is to set forth the terms and conditions upon which the City will allow User to use the Premises, the surrounding Law Park area, and the nearby Monona Terrace property, for picking-up and dropping-off passengers as part of the operation of User's pontoon boat rental business. In addition, User will be allowed to use the City's boat launch piers in Olin Park on three occasions each contract year for these same purposes. It is contemplated by the Parties that User shall store, service, repair, load or otherwise care for the pontoon boat at a location other than a City park.
2. Grant and Description of Premises. City does hereby grant to User the non-exclusive right to use the Premises, and the Olin Park boat launch piers on three occasions, for picking-up and dropping-off passengers as part of the operation of User's pontoon rental business, as set forth in this Agreement. This Agreement only applies to User's existing pontoon boat, pictures of which are attached hereto as Exhibit B (the "Boat").
3. Term. This Agreement shall run from the effective date of this Agreement through December 31, 2023. Unless this Agreement is terminated under Section 22, this Agreement may be renewed for three (3) additional 1-year terms through 2026, running from April 1 of each year through December 31 of each year, upon written notice by User to the City no later than March 1 of the renewal year of the Agreement. The City's decision to renew or not renew the Agreement for the upcoming year will be based upon the User's performance under this Agreement and the availability of the Premises or the Olin Park boat launch, and solely that of the Parks Superintendent, or his/her designee. User acknowledges and understands that Law Park may become completely unavailable due to lakefront work by the City. The decision to renew or not renew the Agreement is not reviewable. The City shall inform User within ten (10) days of receipt of User's notice of its intent to renew the Agreement.
4. Special Conditions of Use. In entering into this Agreement, User agrees to the following special terms and conditions regarding the User's use of the Premises, the surrounding Law Park area, and the nearby Monona Terrace property, and the Olin Park boat launch:
 - A. Use of Premises. User may only use the Premises to pick-up and drop-off passengers for the Boat. User may not store any equipment or supplies at the Premises and shall keep the Premises, and the surrounding parkland and Monona Terrace property, including the driveway off of John Nolen Drive and the Monona Terrace ground level parking lot area north of the Premises, free from all rubbish, debris, materials and the like that are attributable to User or User's customers,

invitees, employees, agents or contractors. User's customers may load and unload supplies on the Boat at the Premises, but User may not engage in any loading or unloading of supplies, rubbish, equipment or other materials at the Premises, at Law Park, or at Monona Terrace without the prior written approval of the Parks Superintendent, or designee, or the Executive Director of Monona Terrace, or designee, as the case may be.

- B. Use of Monona Terrace Property. User and User's customers, invitees, employees, agents or contractors may use the Monona Terrace property, including the driveway off of John Nolen Drive, the ground level parking area, the parking ramp, and all other facilities in the same manner as any other member of the public. User acknowledges that parking in the ground level parking area at Monona Terrace is only by permit issued by Monona Terrace.
- C. Use of Olin Park Boat Launch. User may use the boat launch piers at the Olin Park boat launch, for pick-up and drop-off purposes only, up to three (3) times each contract year with prior approval of the Parks Superintendent. User shall provide the MPD with at least seven (7) days advance notice of such use, although shorter notice may be provided if acceptable to the Parks Superintendent. Use may be denied by the City if the launch is unavailable. User may not store any equipment or supplies at Olin Park and shall keep the area around the Olin Park boat launch free from all rubbish, debris, materials and the like that are attributable to User or User's customers, invitees, employees, agents or contractors. User's customers may load and unload supplies on the Boat at the boat launch, but User may not engage in any loading or unloading of supplies, rubbish, equipment or other materials at Olin Park prior written approval of the Parks Superintendent, or designee. Parking in the Olin Park boat launch parking lot is subject to existing City ordinances.
- D. Docking Restrictions. User shall limit its use of the Premises and Olin Park to no more than thirty (30) minutes in any one hour period, for no more than two (2) hours cumulative daily. Such use of the Premises and Olin Park shall occur no earlier than 7 a.m. and no later than 10 p.m. User may only dock at the Premises and Olin Park while actually picking-up and/or dropping off customers. User must secure the chain at the end of the pier prior to leaving the pier. During occasions when User is not actively picking up or dropping off customers, User shall keep its Boat at least one-hundred (100) feet from the shoreline of Law Park and all City boat launches. If User needs access to the Premises beyond these restrictions, prior approval from the Parks Superintendent, or designee, must be obtained.
- E. Docking Period. User may use the Premises and Olin Park from April 15 through October 31 during the term of this Agreement, unless the Premises or Olin Park is otherwise unavailable as set forth in Subsection 4.T., or as otherwise agreed to by User and the Parks Superintendent.
- F. Manner of Docking. In using the Premises and the Olin Park boat launch, User shall make every effort to minimize obstructing the use of the Premises and the

Olin Park boat launch by other users, and shall be courteous to other waterway users, including other boaters, fishers, and swimmers.

- G. Duty of Care. User, User's employees, contractors, agents, customers, and invitees shall exercise reasonable care when crossing the Capital City Trail, a well traveled bike path running through Law Park, to access the Premises, and User shall take reasonable efforts to ensure that User's employees, contractors, agents, customers, and invitees exercise such reasonable care when crossing the Capital City Trail. Similar care shall be exercised when accessing the Boat at the Olin Park boat launch.
- H. Equipment Safety. User shall maintain its equipment, including safety equipment, in a safe working order at all times.
- I. Modifications and Improvements to Premises. User shall not make any modifications or changes to the Premises or Olin Park except with the prior written approval of the Parks Superintendent, or designee.
- J. Maintenance and Repairs of the Premises, Law Park, Olin Park and Monona Terrace.
 - 1) The City shall be responsible for all maintenance, repair and cleaning of the Premises, Law Park, Olin Park and Monona Terrace, except as set forth in Subsection 4.A above.
 - 2) Notwithstanding the foregoing, User shall be responsible for the cost and expenses of repairs/replacements to the Premises, Law Park, Olin Park and Monona Terrace required by reason of acts or omissions of User, User's employees, or User's invitees, customers, vendors, licensees or contractors. User shall give the City written notice of the necessity for repairs/replacements coming to the attention of User, following which the City shall have a reasonable time to undertake and complete such repairs. Any costs or expenses attributable to User under this Subdivision shall be payable to the City within thirty (30) days of the receipt of an invoice from the City.
- K. Permits and Licenses. User agrees, at its own expense, to obtain and keep current all licenses and permits necessary for the operation of User's business, and to comply with all Federal, State, County and City statutes, ordinances, rules and regulations applicable to User's business and the operation of the Boat. User also agrees that only properly licensed employees of User shall operate the Boat. User agrees to obtain all inspections by the Health Department, Fire Department or any other governmental agency that are required to operate the User's pontoon boat rental operation. User shall provide the Parks Division with proof of such compliance upon request. Failure to comply with this provision shall be a default under this Agreement.

- L. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant User the right to sell or distribute any goods or services provided by City, nor does City grant User the right to use a City trade name, trademark, logotype, advertising, or other commercial symbol in any commercial advertisement or announcement. However, User may use the name of the City park where operations occur under this Agreement, along with referencing the Monona Terrace, but any such advertisement or announcement must also indicate that User's activities are not associated with or affiliated with the City or Monona Terrace.
- M. Signage. User is not permitted to erect any permanent signage at the Premises, in Law Park, in Olin Park or at Monona Terrace. However, User is permitted to place temporary signage at the Premises or in Law Park or Olin Park to assist customers in safety boarding and un-boarding the Boat, or accessing the boat, which signs, including the location and allowable periods of placement, shall be approved by the Parks Superintendent and/or the City's Zoning Administrator, or their designees. If User desires to place any temporary signage at the Monona Terrace, such signage, including the location and allowable periods of placement, must be authorized by the Executive Director of Monona Terrace and/or the City's Zoning Administrator, or their designees and may only be present during periods when User is using the Premises for boarding and un-boarding purposes.
- N. Alcohol. Law Park is alcohol free under Madison General Ordinances Sec. 8.24(1)(x), except with the prior approval of the Parks Division. In addition, open containers of alcohol are not allowed within Law Park or Olin Park under Sec. 8.24(2). By entering into this Agreement, City agrees that the Parks Division has authorized User's customers to transport closed alcohol containers across Law Park immediately prior to or immediately following their use of the Boat. User shall inform its customers of these restrictions as the customers exit from the Boat and User shall ensure that User's customers are not leaving the Boat with open containers of alcohol.
- O. Glass Containers. Law Park and Olin Park are glass free under Madison General Ordinances Sec. 8.24(3). User shall encourage its customers not to bring glass containers into the Parks, and shall not allow any customer to leave the Boat with a glass container.
- P. Vending. User shall not engage in any vending activities while using the City's parks without first obtaining a parks vending permit. Vending in a public park without a permit is a violation of Madison General Ordinances Sec. 8.17. Vending activity under this ordinance includes selling any foods, beverages, goods, services or lessons, and would include selling the pontoon porch rental service itself. Accordingly, all financial transactions involving the pontoon porch rental must occur off of City park lands unless User has a valid parks vending permit.
- Q. Parking and Access. This Agreement does not convey any special right to User, or User's employees, contractors, agents, customers, invitees, or any other third party,

to use City parking spaces, driveways, delivery areas, bike paths, pedestrian walkways or other locations to park vehicles and/or access the Premises. Any such use must be pursuant to the rules and regulations otherwise in place at the respective location, or as provided for in a separate agreement.

- R. Weapons Prohibition. User shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the Premises under this Agreement, except while upon User's Boat.
- S. Risk Assumption. City makes no representation on the depth or safety of the water at the Premises, and User accepts all risks associated with the docking activity under this Agreement.
- T. Other Restrictions on Use of Premises. User's use of the Premises is subject to the following additional restrictions:
- 1) Lake Conditions. User may only use the Premises or the Olin Park boat launch if lake conditions remain generally stable so that it is safe and reasonable for User and User's customers to use these locations as a passenger loading and unloading site for User's Boat. Moreover, City reserves the right to cause the interruption of User's use of the Premises or the Olin Park boat launch in the event that lake conditions result in unstable circumstances. Unstable circumstances would include, but not be limited to, very high or very low water, severe weather conditions including high wind and lightening, and strong waves. No advance notice of such determination by the City is necessary.
 - 2) Public Safety Considerations. City retains the right to cause the interruption of User's use of the Premises or the Olin park boat launch in the interest of public safety. The circumstances which would cause such interruption of operation include but are not limited to: a natural disaster or Act of God, a life-threatening fire, damage to the pier or launching facility, or a serious health and safety calamity. User waives any and all claims for damages or compensation from City in the event of said interruption. No advance notice of such determination by the City is necessary.
 - 3) Other Unavailability. The City reserves the right to make the Premises or the Olin Park boat launch unavailable, including limiting the permissible hours of use under Subsection 4.C., to User upon seven (7) days written notice of such unavailability. The City shall minimize any such unavailability, and shall make available alternative City piers on Lake Monona during the period of any such unavailability that lasts longer than six (6) hours. If alternative piers are used by User under this paragraph, the terms and conditions of this Agreement apply equally to that location during the period of such use.

- U. Payment. In consideration for the use of the Premises, User agrees to pay City an annual docking fee as follows:

2023: \$12,200
2024: \$12,500
2025: \$12,800
2026: \$13,100

Payment may be made in two equal installments, due April 1 and August 1. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) days of the due date. A late penalty of 5% of the amount due will be added onto late fee payments. If this Agreement is terminated under Section 14 or Section 22.B during the docking period set forth in Subsection 4.E, the City shall refund a prorated portion of the annual docking fee to User within thirty (30) days.

5. Entire Agreement. The entire agreement of the Parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the Parties.
6. Status of User. It is agreed that User is an independent contractor and not an employee or representative of the City, and that any persons who User utilizes and provides for services under this Agreement are employees of User and are not employees of the City of Madison. In addition, it is agreed that by granting User the right to use the Premises and Olin Park for the purposes set forth herein, that the City is not granting User the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and User arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135 nor is it the intent of the Parties to do so.
7. Assignability and Subcontracting. User shall not assign or subcontract any interest or obligation under this Agreement without City's prior written approval. All of the services required hereunder shall be performed by User and employees of User. If User is a corporation, partnership, limited partnership, limited liability company, limited liability partnership or other entity that is not an individual person, then an assignment prohibited within the meaning of this provision shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or ownership interests, by which an aggregate of 50% or more of User's stock or ownership interests shall be vested in a party or parties who are not stockholders, partners, members or others who possess ownership interests in User as of the date hereof.
8. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to User the right to use Premises and the Olin Park boat launch for the purposes set forth herein.
9. Access to Premises. This Agreement gives the User the non-exclusive right to use the Premises and the Olin Park boat launch to temporarily dock its Boat for the purposes of picking-up and dropping-off passengers. In no case shall this limited grant of rights be

interpreted to preclude the City's or the public's access to the Premises or the Olin Park boat launch.

10. Amendments. This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the User and the Parks Superintendent, or his/her designee.
11. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or User shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or User therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
12. Indemnification. The User shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the User's and/or Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
13. Hazardous Substances; Indemnification. User represents and warrants that its use of the Premises and Olin Park will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. User further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

14. Insurance.

- A. Required Insurance. The User will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The User shall not commence work under this Agreement, nor shall the User allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
- 1) Commercial General Liability. During the life of this Agreement, the User shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, products and completed operations and watercraft liability (covering motorized and non-motorized watercraft whether owned, non-owned or hired) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. User's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. User shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.
 - 2) Worker's Compensation. During the life of this Agreement, the User shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The User shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. User shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - 3) Umbrella Liability. During the life of this Agreement, the User shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability, and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
- B. Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- C. Proof of Insurance, Approval. The User shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. User shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The User shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

- D. Notice of Change in Policy. The User and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- E. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, User shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
- F. Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City Finance Department
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

- 15. Non-Discrimination. In the performance of the services under this Agreement the User agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. User further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
- 16. Nondiscrimination Based on Disability. User shall comply with Section 39.05, Madison General Ordinances, Nondiscrimination Based on Disability in City-Assisted Programs and Activities. Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless assurance of compliance with Section 39.05 is provided by User prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property. User assures that, in providing any service at the Premises, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:
 - A. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
 - B. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
 - C. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;

- D. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- E. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- F. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- G. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

User shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USC A Sec 2000e-10).

- 17. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
- 18. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

City: Superintendent of Parks
City Parks Division
330 East Lakeside Street
Madison, WI 53715

Monona Terrace: Connie Thompson
Executive Director
Monona Terrace Community and Convention Center
One John Nolen Drive
Madison, WI 53703

User: Pontoon Porch LLC
c/o Joeseph W. Shulla
626 Piper Drive
Madison, WI 53711

With a copy to: Attorney Tyler Wilkinson
 Axley Brynelson, LLP
 2 East Mifflin Street, Suite 200
 Madison, WI 53703

19. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
20. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within Dane County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
21. Compliance with Applicable Laws. The User shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the User and its agents and employees, including those provisions of Wis. Stat. Ch. 183 regarding limited liability companies. The User's failure to comply with any such laws, ordinances or regulations, including carrying on any business except that which is appropriate to wind up and liquidate the business while administratively dissolved, shall be a default subject to Section 22 of this Agreement.
22. Default/Termination.
 - A. In the event User shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to User, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against User, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of User under this Agreement.
 - B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the User with ten (10) days written notice of termination.
23. Authority. User represents that it has the authority to enter into this Agreement. If the User is not an individual, the person signing on behalf of the User represents and warrants

that he or she has been duly authorized to bind the User and sign this Agreement on the User's behalf.

24. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

PONTOON PORCH LLC

Joe Shulla, President

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael R. Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-23-00____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2023 and approved by the Board of Parks Commissioners at its meeting on _____, 2023.

EXHIBIT A
Premises Map



EXHIBIT B
Pictures of the Pontoon Porch Boat

