

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of October 2014, by and between the **CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter (“Lessor”), and **UPPER PENINSULA COMMUNITY ROWING CLUB, INC.**, a Michigan corporation, of 3114 Island Beach Road, Marquette, Michigan 49855, hereinafter (“Lessee”).

Recitals

- A. Lessor is the owner and operator of real estate, more specifically described on the attached Exhibit “A” (“Premises”).
- B. Lessee desires to lease and Lessor is willing to lease to Lessee the Premises in accordance with the terms and conditions contained herein.
- C. Lessor, at a Marquette City Commission meeting on September 8, 2014 approved the construction of a boathouse to be located on the Premises.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Leased Premises

- 1.1 Lessor leases to Lessee the Premises shown in Exhibit “A”.

2. Term of Lease

- 2.1 The term of this lease shall be for twenty-five (25) years from the date of this agreement; however this lease shall terminate five (5) years from the date of this agreement in the event Lessee does not complete construction of the boathouse at Lessee’s sole expense within five (5) years of the date of this agreement. Upon completion of construction of the boathouse, Lessor shall become the owner of all improvements made to the Premises.

3. Rent

- 3.1 Lessee shall not be required to pay rent to Lessor.
- 3.2 In lieu of rent paid to Lessor, Lessee shall be responsible for all costs associated with construction of the boathouse, including relocation of a portion of the existing bike path and construction of a parking area and any necessary utilities. Once constructed Lessee shall be responsible for performing maintenance, operation, cleaning and repair of the Premises (including public areas located within the building), including all costs associated therewith.

3.3 Lessee shall timely pay all utilities and special assessments assessed against the Premises.

4. Use of Leasehold Premises

4.1 Lessee shall use the Premises for water oriented recreation only, and not for any purpose that would:

- a) be deemed hazardous to the public or adjoining premises, including but not necessarily limited to fire, and environmental type hazards;
- b) constitute a violation of any public law or requirement;
- c) cause damage or injury to the Premises or any part of it (ordinary wear and tear excepted);
- d) constitute a public or private nuisance;
- e) alter the appearance of the Premises, except as provided herein, without prior written approval of the Lessor;
- f) permit noise or odors to be unreasonably dispelled from the Premises;
- g) permit refuse to accumulate in or around Premises; or
- h) obstruct entryways.

5. Terms Related to Construction

5.1 Lessee agrees to develop, at Lessee's sole expense, architectural and engineering plans for the boathouse to be constructed on the Premises required to meet the specific needs of Lessee for Lessee's intended uses. Lessee shall be responsible for all design, bidding, financing and construction of the boathouse, and Lessee shall obtain Lessor's written approval of all such plans and specifications prior to beginning any construction activity.

5.2 Lessee shall not begin construction until satisfactory evidence of adequate funding has been provided to the City Commission and the City Commission has approved the commencement of construction.

5.3 Construction may only take place Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

6. Conditions After Construction is Complete

6.1 The following terms are specifically intended to specifically apply after construction of the boathouse is completed:

- a) Lessee shall assume all operation, maintenance, cleaning and repair of the Premises upon completion of construction.
- b) Lessor shall have no obligation to provide financial support, financial

maintenance or financial improvement of the Premises.

- c) Lessor shall have no obligation to maintain or operate any portion of the boathouse, including the public areas, at any time.
- d) The Premises shall only be used exclusively for water oriented recreation and for purposes consistent therewith.
- e) In the event Lessee does not adequately operate, maintain, clean and/or repair the Premises, Lessor, upon 30 days written notice, may terminate this agreement.
- f) Lessee shall be solely responsible for the maintenance and repair of all of Lessee's fixtures, furniture and equipment and keep them in a safe condition and good repair.
- g) All signage used by Lessee shall be maintained in good condition and repair.
- h) If the Premises is partially or completely damaged by fire or other peril, the damage shall be fully repaired by Lessee at Lessee's sole expense.
- i) The building located on the Premises shall be kept open for public use during the normal operating hours of the building.

7. Insurance and Indemnity

- 7.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's fire, boiler, sprinkler, water damage, and extended coverage insurance policies covering the Premises and contents therein. Lessor will provide Lessee with a copy of any and all relevant insurance policies.
- 7.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased. Lessor will provide Lessee with a list of any such activities.
- 7.3 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage. Lessee shall provide Lessor with a copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.
- 7.4 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing; such

cost to include attorneys' fees) resulting or occurring by reason of Lessee's construction on or use of the Premises.

8. Assignment/Subletting

8.1 Lessee may assign or sublet the Premises or portions thereof with the consent of the Lessor, which consent shall not be unreasonably withheld.

8.2 In no event shall a sublease be allowed that would jeopardize the tax-exempt status of the City.

9. Surrender of Leasehold Upon Termination of Lease

9.1 All construction and improvements shall be at Lessee's expense and shall be considered fixtures and owned by Lessor upon completion of construction. Upon the expiration or termination of this lease, Lessee shall surrender the Premises in good order and condition, ordinary wear and tear excepted, and shall remove all of its property, fixture and equipment from the premises. In removing its equipment, Lessee shall be solely liable for repairing any and all damages to the Premises. In the event the Lessee fails to remove its equipment, and Lessor is required to do so, all costs and expenses incurred by Lessor in removing same and restoring the leasehold to usable condition shall be the financial responsibility of the Lessee.

10. Miscellaneous

10.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

10.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

10.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.

10.4 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

10.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.

10.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

10.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately followed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

The parties have set their hands on the day and year first above written.

LESSOR
CITY OF MARQUETTE

LESSEE
UPPER PENINSULA COMMUNITY
ROWING CLUB, INC.

Robert Niemi, Mayor

By:
Its:

David J. Bleau, Clerk

APPROVED AS TO CONTENT:

L. Michael Angeli, Acting City Manager

APPROVED AS TO FORM:

Ronald D. Keefe, City Attorney