

**GREEN'S PARK ACCESS MANAGEMENT AGREEMENT
BETWEEN THE VILLAGE OF LAKE ORION AND PEDAL BOAT PUB, LLC**

THIS AGREEMENT is entered into this ____ day of _____, 2024, by and between the **VILLAGE OF LAKE ORION**, whose address is 21 East Church Street, Lake Orion, MI 48362 (hereinafter referred to as the "Village") and **PEDAL BOAT PUB, L.L.C.**, a Michigan Limited Liability Company, whose address is 495 Shady Oaks St., Lake Orion, MI 48362 (hereafter referred to as (the "Pub") and the foregoing shall collectively be referred to as the parties.

WHEREAS, the parties to this Agreement mutually desire to cooperate in the utilization of the Village owned Green's Park and boat dock for the drop off and pick up of passengers, including use of the bathrooms; and,

WHEREAS, the Village of Lake Orion would not be liable for pedal boat passengers, staff, equipment or operations; and,

WHEREAS, the patrons of the Pedal Boat Pub shall abide by the ordinances regarding no alcohol in the Village Park or in public; and,

WHEREAS, the Village has agreed to provide this service at Green's Park, in the Village of Lake Orion to the patrons of the "Pub."

NOW, THEREFORE, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

1. DATES/HOURS OF OPERATION. The Village parking lot at Green's Park is accessible to the Pub from May 1, 2025, to October 31, 2025, between the hours of 7:00 a.m. and 9:30 p.m., Sunday – Saturday. Any different times than the ones listed in this provision shall only be by an additional and separate written agreement with the Village and signed by both parties.

2. TERM: This Agreement shall have a term from May 1, 2025, through October 31, 2025. The Village shall have the right to unilaterally terminate this Agreement, with or without cause, on thirty (30) days written notice.

3. COMPENSATION. The Pub agrees it shall provide compensation for patron access to the Village owned lot at a cost of \$2.00 per person on the Pub boat. Remittance shall be paid on the last day of each month with all payments completed in full by November 30, 2025.

4. GOOD MORAL CHARACTER. The Pub shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. INSURANCE SUBMISSION REQUIREMENTS: The Pub has submitted proof to the Village that it meets all Village insurance requirements. Insurance, with coverage amounts at no less than the Village's minimum requirements, must be held by the Pub throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of acceptance of the terms of this Agreement.

6. HOLD HARMLESS: The Pub will obtain a written hold harmless agreement as provided by the Village from each passenger.

7. CONFIDENTIAL AND OR PROPRIETARY INFORMATION: The Pub acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Pub recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the Village. Therefore, the Pub agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Pub shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Pub further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

8. INDEPENDENT CONTRACTOR: The Pub and the Village agree that the Pub is acting as an independent contractor with respect to the Pub's role in providing services to the Village pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Pub nor its employees shall be construed as employees of the Village. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the Village nor the Pub shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Pub shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the Village, or be deemed an employee of the Village for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the Village.

9. COMPLIANCE WITH LAWS: The Pub agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the Village, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which the Pub is subject, the Pub hereby agrees to be bound by all Federal, State, or Village of Lake Orion ordinances, rules, regulations and policies as are amended from time to time, and including without limitation

the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

10. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS: Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the Village, by and through its Village Manager, to terminate this Agreement, or at the Village's option, the Village may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Pub.

11. INDEMNIFICATION: To the fullest extent permitted by law, the Pub and any entity or person for whom the Pub is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the Village of Lake Orion, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Village, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the Pub including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the Village.

12. STANDARD INSURANCE REQUIREMENTS:

The Pub shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: The Pub shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

For Sole Proprietorships: The Pub shall complete and furnish to the Village prior to the commencement of work under this Agreement a signed and notarized Sole Proprietor Form, for sole proprietors with no employees or with employees, as the case may be.

B. Commercial General Liability Insurance: The Pub shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A)

Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractor Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following **Additional Insureds: The Village of Lake Orion, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.** This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

D. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, the Pub shall deliver renewal certificates and/or policies to the Village at least (10) days prior to the expiration date.

E. Proof of Insurance Coverage: The Pub shall provide the Village of Lake Orion at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the Village of Lake Orion, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) If so requested, Certified Copies of all policies mentioned above will be furnished.

F. Maintaining Insurance: Upon failure of the Pub to obtain or maintain such insurance coverage for the term of the Agreement, the Village of Lake Orion may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the Village of Lake Orion shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. WRITTEN NOTICES: Written notices regarding this Agreement shall be addressed to the following:

Village: Village of Lake Orion
ATTN: Sonja Stout, Clerk/Treasurer
21 East Church Street
Lake Orion, MI 48362

The Pub: Pedal Boat Pub, LLC
495 Shady Oaks St.
Lake Orion, MI 48362
Attn: Marcella Robinette

14. AMENDMENTS: No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

15. WAIVER OF BREACH: No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

16. COMPLETE AGREEMENT: The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of the Pub's agreement with the Village of Lake Orion. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the Village and the Pub shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

17. DIRECT OR INDIRECT INTEREST: If, after the effective date of this Agreement, any official of the Village, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Pub, the Village shall have the right to terminate this Agreement without further liability to the Pub if the disqualification has not been removed within thirty (30) days after the Village has given the Pub notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

18. FAILURE TO PERFORM. If the Pub fails to perform its obligations hereunder, the Village may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

19. LEGAL PROCEEDINGS: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 52-3 District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award

of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in a federal or state court with jurisdiction over Oakland County, Michigan.

IN WITNESS WHEREOF, the parties hereto agree to be bound by the above terms and conditions, and the Pub, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

PEDAL BOAT PUB, LLC,
A Michigan Limited Liability Company

By: _____
Marcella Robinette

Its: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this _____ day of _____, 2024 before me personally appeared Marcella Robinette who acknowledged that with authority on behalf of Pedal Boat Pub, LLC to do so she signed this Agreement.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

VILLAGE OF LAKE ORION

By: _____
Darwin D. P. McClary,
Village Manager

By: _____
Sonja Stout, Clerk/Treasurer

Approved:



Mary M. Kucharek, Village Attorney
(Approved as to form)