

*****AMENDED*****

**AGENDA FOR REGULAR COMMON COUNCIL MEETING
SUPERIOR, WISCONSIN
Tuesday, July 18, 2017**

6:30 p.m. - Government Center, Board Room 201

8. BUSINESS BY DEPARTMENT HEADS

Finance Director Vito

- 8.6** Requesting approval of amended lease agreement between the City of Superior and Sailboats, Inc. (As approved at the July 13, 2017 Finance Committee)

In compliance with Wisconsin Open Meetings Law, this agenda was:

Posted: Government Center, Court House, & Public Library, Faxed to: Daily Telegram, Public Library, July 14, 2017 ****

**AMENDMENT NO. 3 TO
AMENDED AND RESTATED
LEASE AGREEMENT
BETWEEN THE
CITY OF SUPERIOR, WISCONSIN
AND
SAILBOATS, INC.**

This Amendment is made and entered into effective _____, 2016~~7~~, by and between THE CITY OF SUPERIOR, WISCONSIN (hereinafter referred to as the “City”) and SAILBOATS, INC., a Minnesota corporation (hereinafter referred to as “Sailboats, Inc.”).

R E C I T A L S

WHEREAS, the City, as lessor, and Sailboats, Inc., as lessee, entered into an Amended and Restated Lease Agreement dated April 20, 2005 (hereinafter “the 2005 Lease”), for the lease of real property relating to the Barker’s Island Marina; and

WHEREAS, the City and Sailboats, Inc. entered into an Amendment to Amended and Restated Lease Agreement dated May 5, 2010 (hereinafter “the First Amendment”) and an Amendment No. 2 to Amended and Restated Lease Agreement dated August 1, 2015 (hereinafter “the Second Amendment”) and, along with the 2005 Lease and the First Amendment hereinafter referred to collectively as “the Original Lease”); and

WHEREAS, the term of the Original Lease expires April 30, 2022; and

WHEREAS, the City and Sailboats, Inc. have agreed to extend the term of the Original Lease as herein provided; and

WHEREAS, the City and Sailboats, Inc. desire to modify certain other provisions of the Original Lease, as hereinafter provided; and

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties contained herein, each of them does hereby represent, covenant, and agree with the other as follows:

1. Extended Term. The term of the Original Lease is hereby extended to, and shall terminate on, April 30, 2036.
2. Capital Expenditures by Sailboats, Inc.
 - (a) Sailboats Inc. agrees to expend the sum of no less than \$200,000.00 for capital expenditures improving the Leased Property during the term of this Lease. **Capital expenditures are identified as those items that are at least \$5,000 and have a useful asset life of 5 years or more.** At least annually Sailboats Inc. and the City shall meet and confer in connection with the identification and prioritization of those capital

expenditures. The construction of any new structures on the Leased Property shall be subject to the approval of the City. On or before February 1 of each calendar, Sailboats Inc. shall provide to the City a report of all capital improvements completed by Sailboats, Inc. pursuant to this section 2 during the prior calendar year.

- (b) Upon termination of this Lease, all capital improvements completed by Sailboats, Inc. pursuant to this section 2 shall become the property of the City.
- (c) The City agrees to provide reasonable cooperation to Sailboats Inc. in connection with any leasehold financing undertaken by Sailboats Inc. for the purpose of financing capital expenditures improving the Leased Property during the term of this Lease.

3. Section C of Article I of the Original Lease is hereby deleted.

4. Insurance. Sections B and C of Article VIII of the Original Lease (Insurance) are hereby amended to provide as follows:

“B) The City shall provide fire, extended coverage, vandalism and malicious mischief insurance on the piers and buildings (but not any contents, including boats or other property stored in the Storage Building Project) naming Sailboats, Inc. as an additional insured as its interest may appear. In the event of a fire loss or other damage to piers or buildings covered by this insurance, proceeds of insurance shall be applied to the repair, restoration and/or reconstruction of the damaged property as expeditiously as possible, and the parties agreed to cooperate in connection with the repair, restoration and/or reconstruction of the damaged property. Sailboats, Inc. shall be responsible for any fire, extended coverage, vandalism and malicious mischief insurance on its own equipment and supplies.

C) Sailboats, Inc. shall indemnify and hold the City harmless for any personal injury to persons using the Leased Premised (including the buildings, piers, slips, improvements and equipment) cause by the negligence of Sailboats, Inc. and/or its employees.”

5. **Section G of Article V of the Original Lease is hereby deleted.**

6. Mutual Release. By execution of this amendment, Sailboats, Inc. and the City do hereby mutually release each other from and for any and all claims, suits or causes of action arising out of or in any manner related to Sailboats, Inc. prior payment of electric utility charges and related taxes incurred for the purpose of powering City utilities.

7. Except as amended herein, the terms of the Original Lease remain in full force and effect.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the City and Sailboats, Inc. have caused this Amendment No. 3 To Amended And Restated Lease Agreement to be duly executed as of the date first above written.

CITY OF SUPERIOR

Mayor

City Clerk

STATE OF WISCONSIN)
)ss.
COUNTY OF DOUGLAS)

Personally came before, this ____ day of _____, 2016~~7~~, ~~Bruce C. Hagen~~ **Jim Paine** and Terri Kalan, Mayor and City Clerk of the City of Superior respectively, to me known to be the persons who executed the foregoing instrument, and to me known to be the Mayor and City Clerk of said City of Superior, and acknowledged that they executed the foregoing instrument as such officers as the deed of said City by its authority.

Notary Public

SAILBOATS, INC.

By: _____

Its: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF DOUGLAS)

Personally came before, this ____ day of _____, 2016~~7~~,
_____, the _____ of Sailboats, Inc., to me known to be the person who
executed the foregoing instrument, and to me known to be the _____, and acknowledged
that he executed the foregoing instrument as such officer of the corporation by its authority.

NotaryPublic

