

## **2013 LEASE AGREEMENT FOR HARLEY-DAVIDSON POLICE MODELS**

This agreement made and entered into between PETERSON'S HARLEY-DAVIDSON OF MIAMI, L.L.C., designated as the lessor, and City of Key West Police Department, designated as the lessee, made this \_\_\_\_ day of \_\_\_\_\_, 2013 for the purpose of leasing to the Lessee ( 3 )\_ HARLEY-DAVIDSON Police motorcycles under the following terms and conditions:

### **1. EQUIPMENT-**

2013 HARLEY-DAVIDSON model FLHP ROADKING Police solo motorcycle with the complete description provided on attached specification sheet.

### **2. AGREEMENT TERM-**

The terms of this Agreement shall commence as of the date of delivery of the aforesaid police motorcycles and thereafter for a period of twenty-four (24) months. At the end of the Agreement Term, the City shall have the option of returning the 2013 models and acquiring 2015 models under the same equipment items and for the same terms and conditions as set forth herein. If Lessee decides not to retain the 2013 model motorcycles, they must be returned to Peterson's Harley-Davidson of Miami, L.L.C. Motorcycles leased under this Agreement are to be used for police and related activities: off-duty details, funeral escorts and parades only. Any other use shall require the prior written consent of Lessor.

### **3. PAYMENT PERIOD-**

Lessee shall pay monthly payments in the amount of \$500.00 for each motorcycle. Payments include the cost of equipment, payment of interest, full maintenance and administrative costs less the residual value of the motorcycle. Monthly rental, per motorcycle, shall be payable by the Lessee to Lessor on the 5th day of each month during the term of this lease.

#### 4. INSURANCE-

At its own expense, the lessee shall carry casualty insurance in the amount of \$2,000,000 with respect to the motorcycle and shall carry Public Liability and Property Damage Insurance sufficient to protect the actual cash value of the equipment and to protect the Lessor from Liability in all events. The Lessee shall carry Worker's Compensation covering all its employees working on, in, or about the motorcycle.

The Lessee shall furnish to the Lessor certificates or other satisfactory evidence of all insurance coverage described above as required by the terms and conditions of this agreement. The Lessor shall be named as additional insured and loss payee.

#### 5. HOLD HARMLESS INDEMNIFICATION BETWEEN PARTIES-

Subject to the provisions and monetary limitations of Section 768.28 (5), Florida Statutes, which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Lessee shall and does hereby indemnify and save the Lessor harmless from any and all liability arising out of the leasing, renting, operation, control, use, delivery and/or return of the Motorcycle including, but not limited to injuries causing personal injury, property damage and/or death, except for damages resulting from a design fault in the product, but shall be credited with any amounts received by the Lessee with respect thereto from liability insurance by the Lessee. The indemnification shall include all costs and expenses including Attorney's fees incurred by the Lessor in connection with any suits or actions resulting from and special liability. Nothing contained herein is intended nor shall be construed to waive Lessee's right and immunities under common law and Section 768.28, Florida Statutes.

#### 6. LIENS-

The Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to the motorcycle, except with respect to the respective rights of the Lessor as herein provided. Lessee shall promptly, as its own expense, take such actions as may be necessary to duly discharge any such mortgage,

pledge, lien, charge, encumbrance or claim not excepted above if the same shall arise at any time due to the Lessee's action or inaction.

#### 7. TAXES AND FEES-

The Lessee shall pay any necessary taxes or fees, including but not limited to Sales and Use Tax, Excise Tax, Personal Property Tax, assessments, penalties, licenses, fees, registration fees, freight and transportation charges, permits and any similar charges imposed on the ownership, possession or use of the Motorcycle during the term of the Agreement. Both parties recognize that the \_\_\_\_\_ is tax exempt under Florida Law.

#### 8. CARE AND USE OF EQUIPMENT-

The Lessor agrees to maintain the Motorcycle pursuant to the Manufacturer's Standard Preventative maintenance Contract and/or recommendation. All repairs shall be made at PETERSON'S HARLEY-DAVIDSON OF MIAMI, L.L.C., 19400 NW 2ND AVE, MIAMI, FLORIDA 33169. The Lessee, at its own cost and expense, shall ensure delivery of the Motorcycle to PETERSON'S HARLEY-DAVIDSON OF MIAMI, L.L.C., 19400 NW 2ND AVE, MIAMI, FLORIDA 33169, at regular intervals set up by the Lessor in accordance with the Service Schedule attached hereto as Exhibit 2.

The Lessee shall protect the motorcycle from deterioration other than normal wear and tear, shall use the Motorcycle for Police related activities only, without abuse, and shall not make modifications, alternations or additions to the Motorcycle (other than normal operating accessories or controls) without written consent of the Lessor, which shall not be unreasonably withheld.

The Lessor, shall have the right, during regular business hours to enter upon the premises where the Motorcycle is located in order to inspect, observe or otherwise protect the Lessor's interest and the Lessee shall afford them the opportunity to do so.

#### 9. DAMAGE OR DETERIORATION OF MOTORCYCLES-

In the event the Motorcycle is partially damaged or destroyed due to the actions of the Lessee or its employees prior to the end of this agreement, the Lessee will promptly have the Motorcycle repaired and restored to its original condition and working order. Any damage done to lease motorcycles during the officers training will be repaired as soon as the training is completed at Lessee's expense. This includes damage done to engine, transmission, brakes and not just the paint and body parts. All repairs must be done at the Lessor's repair facility. In case of theft or total loss of the Motorcycle, the replacement value of the Motorcycle shall be \$23,000.00 minus 2% for each month the agreement is in effect.

#### 10. SELECTION OR RIDER-

The Lessor reserves the right to reject any rider of his Motorcycle so as to be assured that proper handling and care is exercised.

#### 11. RIDER RESPONSIBILITY AND PRIVILEGES-

The rider will be responsible for keeping the motorcycle clean and is required to report any defects or abnormalities. The rider shall be allowed to use the motorcycle to go back and forth to work provided that it is fully insured at all times by the lessee and the distance is no more than thirty (30) miles each way.

#### 12. EVENTS OF DEFAULT AND REMEDIES-

Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default

A. Lessee shall fail to make any periodic payment, or to pay any other payments required to be paid hereunder, or

B. Lessee shall fail to keep any such other term, covenant or condition contained herein.

Upon the occurrence of an event of default as specified above, and upon the failure of Lessee to remedy such event of default with all reasonable dispatch within a period of thirty (30) days,

Lessor or its assigns shall have the right, at its option without any demand or notice, to pursue any of the following remedies:

1) by written notice to Lessee, declare an amount equal to all payments due during the agreement term to be immediately due and payable as liquidated damages and not as a penalty, whereupon the same shall become immediately due and payable.

2) re-enter and take possession of the equipment, enforce this agreement or terminate the agreement, and repossess the equipment and sell or lease the equipment for the account of the Lessee, holding Lessee liable for all payments up to the effective date of such leasing or selling and for the difference in the purchase price, rental and other amounts paid by the Lessee or purchaser pursuant to such lease or sale and the amounts payable by Lessee hereunder, and

3) any action at law or in equity as may appear necessary to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this agreement upon failure to comply with any term, covenant or condition contained herein.

#### 13. MAINTENANCE AND EQUIPMENT-

Lessor shall provide full maintenance and tires for the motorcycle at no cost to the Lessee. Physical damages and clutch replacement are the exception. The lessee will pay for parts only on all clutch replacements/repairs. Lessor shall not supply Lessee with gasoline or radios. All maintenance shall be done at PETERSON'S HARLEY-DAVIDSON OF MIAMI, L.L.C., 19400 NW 2ND AVE, MIAMI, FLORIDA 33169.

#### 14. SUBLEASE OR ASSIGNMENT-

Neither the Lessor, nor the Lessee may assign this lease. Neither the Lessor nor the Lessee may effect the subleasing of the motorcycle.

15. TERMINATION-

This agreement may be terminated by either party for any cause, upon thirty (30) days written notice by the terminating party. Lessor shall be entitled to lease payments due or incurred to the date of such termination.

16. ENTIRE AGREEMENT; AMENDMENTS-

This Agreement constitutes the entire agreement between Lessor and the Lessee, and all negotiations and oral understandings are merged herein. No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement and signed by each Party.

17. CONSENT TO JURISDICTION-

The Parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any action to enforce this Agreement shall be in Miami-Dade County, Florida.

18. GOVERNING LAW-

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

19. HEADINGS-

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

20. SEVERABILITY-

If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21. WAIVER-

The waiver by either Party of any failure on the part of the other Party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

22. COSTS AND ATTORNEY'S FEES-

If either Lessor or Lessee is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing Party shall be entitled to recover from the other Party all such costs and expenses, including but not limited to costs and reasonable attorney's fees.

In witness whereof, the parties hereto have caused this agreement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Ace Armstrong  
General Manager  
Peterson's Harley-Davidson of Miami, LLC

\_\_\_\_\_  
City Manager  
City of \_\_\_\_\_