

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (“Agreement”) is between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia, (“City” or “Licensor”) and **YOUTH SAILING VIRGINIA, INC.**, a Virginia non-stock corporation organized and existing under the laws of the Commonwealth of Virginia, and exempt from federal taxation pursuant to Internal Revenue Code §501(c)(3) (“Licensee”).

RECITALS

The City leases from the Fort Monroe Authority (“FMA”) certain real property on Fort Monroe and located in the City, commonly referred to as 100 Stilwell Road (the “Rec Center”), pursuant to that certain lease agreement dated October 10, 2011 (“Rec Center Lease”), attached hereto as Exhibit B and incorporated herein by this reference.

The Rec Center is adjacent to a body of water known as Hampton Mill Creek (“Mill Creek”).

The City, in cooperation with FMA, obtained permission to construct a pier over the state waters of Mill Creek that attaches to land which is subject to the terms and conditions of the Rec Center Lease (“Mill Creek Pier”).

Licensee desires to use a portion of the Mill Creek Pier (the “Licensed Area”), as that area is further described on Exhibit A, incorporated herein by this reference, for the purpose of storing and launching boats, offering “learn to sail” programs for the community, water sports and safety programs, and competitive sailing programs for high school-aged youth, college students, and the public (the “Licensed Activity”).

NOW, THEREFORE, in consideration of the promises and undertakings of the parties, and other good and valuable consideration, the City grants to Licensee a revocable license to enter upon the Licensed Area and use the Licensed Area for the Licensed Activity, subject to the following terms and conditions:

1. Recitals. The parties acknowledge and agree that the recitals stated above are correct and accurate, and are fully incorporated herein.

2. Term: The term of this Agreement shall commence on February __, 2019 (“Commencement Date”) and shall continue for a period of one (1) year following that date (the “Initial Term”). Subject to the provisions for early termination set forth in Section 11, this Agreement shall renew itself annually for up to four (4) additional one (1) year periods (each such period a “Renewal Term”; the Term and Renewal Term collectively referred to as the “Term” for all other purposes herein) on the same terms and conditions set forth herein unless either party notifies the other in writing on or before the 10th day of January in the calendar year in which expiration of this Agreement is desired. In no event shall the Term of this Agreement extend beyond February __, 2024.

3. Consideration. The City shall not charge Licensee rent or other similar charge solely for the use of the Licensed Area as set forth in this Agreement.

4. Use:

(a) The Licensed Area shall be used by the Licensee solely for the purposes of the Licensed Activity; and Licensee shall have all rights and privileges to conduct all activities authorized under the terms of this Agreement, provided, however, that this Agreement shall not be construed in any manner to grant Licensee or those claiming under Licensee the exclusive right to use the Licensed Area. In addition, the City reserves the right (1) to offer kayak and paddleboat rentals, to be stored at and launched from the Mill Creek Pier; and (2) to conduct and/or authorize others to conduct events in the Licensed Area, upon written notice to Licensee. Licensee agrees to cooperate with the City as necessary to facilitate any such events.

(b) Licensee shall be permitted to use that portion of the grounds surround the Rec Center for the purposes of ingress and egress to the Licensed Area; however, this Agreement shall not be construed to grant Licensee any other rights in or access to the Rec Center, other than those rights and access available to the general public.

5. Risk Management: Licensee shall provide for or perform regular inspections of the Licensed Area and its facilities for cleanliness, safety, and need for repair, which shall be in addition to inspections that may be conducted by the City. Licensee shall create a system of documentation for the results of those inspections and shall promptly report the results of those inspections to Sean Clark, Deputy Director, (“Parks Point of Contact”), who may be reached via email at sean.clark@hampton.gov, and by phone at (757)728-3219 or (757) 902-6288. In addition, Licensee shall:

(a) develop standard operating policies procedures for safety and emergencies, including procedures for documenting and responding to accidents, injuries and other incidents;

(b) train Licensee’s personnel, volunteers, and any others responsible for the in taking accident reports and responding to injuries; and

(c) report any accidents or injuries to the Parks Point of Contact and the Hampton Department of Risk Management within 24 hours of occurrence, except for injuries requiring transport to an emergency facility which shall be reported immediately.

Licensee shall provide all policies and procedures that relate to use of the pier, including safety policies, accident and injury reporting procedures, and pier inspection reporting to the City for approval and consultation prior to any use of the Licensed Area.

6. Risk of Loss to Licensee Property. The City shall not be responsible or liable for the damage, destruction, theft, or other loss of personal property of the Licensee, including, but not limited to boats or other gear that may be mounted or otherwise stored in the Licensed Area.

7. Rights of the City; Health, Safety, and Welfare. The City has the right to prohibit or otherwise limit access to the Licensed Area, without notice, in situations that threaten the public health, safety, and welfare, which shall be determined at the sole discretion of the City. Such situations include, but are not limited to, hurricanes, tropical storms, and other severe weather events, unruly or violent crowds, and crowds in excess of property capacity. The City shall not be liable for any costs or expenses incurred by Licensee as a result of any such closure or limited access.

8. Indemnification. Licensee shall be responsible for all actions of its volunteers, employees, agents, invitees, representatives, and any other party for which Licensee is or may be held liable and shall indemnify and hold harmless the City, and its agents, employees, and officials from and against any and all claims, loss, damage, injury, and liability whatsoever caused by, resulting from, arising out of, or in any way connected with the Licensed Activity or the use or occupation of the Licensed Area and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and other costs of defending against such claims, suits, actions and proceedings), unless such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the sole gross negligence of the City. Licensee shall assume on behalf of the City, and all entities claiming by, through or under the City, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against the City or any entity claiming by, through or under the City, whether or not Licensee is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent. Licensee shall bear the costs of all judgments and settlements in connection therewith. Maintenance of the insurance referred to in this Agreement shall not affect Licensee's obligations under this Section, and the limits of such insurance shall not constitute a limit on the liability of Licensee under this Section 8.

In connection with Licensee's use of the Licensed Area, any costs associated with violations of the law including, but not limited to, remediation, clean-up costs, fines, administrative, criminal or civil penalties or charges, and third party claims imposed on the City by any regulatory agency or by any third party as a result of the noncompliance with federal, state or local environmental laws and regulations or nuisance statutes by Licensee or by volunteers, employees, agents, invitees, representatives, and any other party for which Licensee is or may be held liable shall be paid by Licensee.

The provisions of this Section 8 shall survive the termination or expiration of this Agreement.

9. Insurance. Licensee shall secure and maintain in full force and effect at all times during the period this Agreement is in effect comprehensive general liability insurance in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, an aggregate limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00), and medical expense coverage of not less than Ten Thousand and 00/100 (\$10,000.00) per person injured. Prior to the commencement of this Agreement, Licensee must provide to the City's Risk Management Administrator all required certificates of insurance issued by an insurance company

With a copy to (which shall not constitute notice):

Jamie Shoemaker, Esq.
Patten, Wornom, Hatten, and Diamonstein
12350 Jefferson Avenue, Suite 300
Newport News, Virginia 23602

Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent, if sent by nationally recognized express mail service or (b) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

13. Assignment or Sublease. Licensee shall not assign or sublease its rights and duties under this Agreement or permit another party access to or use of the Licensed Area without the prior written consent of the City.

14. Authorizations. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

15. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the parties hereto and there are no other prior or contemporaneous agreements, oral or written, and this Agreement may not be supplemented, altered, modified, or otherwise amended in any way except in writing, signed by all parties. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original without production of any other counterpart. Any signature delivered via facsimile or other electronic means shall be deemed an original signature hereto.

16. Effective Date. The effective date of this Agreement shall be the date on which the City Manager signs the Agreement ("Effective Date").

17. Venue; Construction. This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Any and all suits

for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.

WITNESS the following signatures:

CITY OF HAMPTON, VIRGINIA

By: _____
Its: City Manager/Designee
Date: _____

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of February, 2019, by _____, as City Manager or her Designee and on behalf of the City of Hampton, Virginia who is duly authorized to act on its behalf and is personally known to me.

Notary Public

My commission expires: _____

Registration Number: _____

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

Patricia A. Melochick,
Sr. Deputy City Attorney

APPROVED AS TO CONTENT:

David McCauley,
Director, Parks, Recreation & Leisure Services

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE.]

YOUTH SAILING VIRGINIA, INC.

By: _____

Its: _____

Date: _____

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of February, 2019, by _____, in his capacity as _____ of Youth Sailing Virginia, Inc. and who is personally known to me or provided _____ as identification.

Notary Public

My commission expires: _____

Registration Number: _____

[END OF SIGNATURES.]