

## SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (this "Amendment"), dated May \_\_, 2018 is made among **THE CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "City") and **HAMPTON WATERSPORTS LLC** and **VIRGINIA BEACH WATERSPORTS LLC**, Virginia limited liability companies, (individually and collectively "**Tenant**"), having a principal place of business at 909 Harvest Trail, Chesapeake, Virginia 23322.

### RECITALS

A. The City and Tenant are parties to that certain Lease Agreement dated March 22, 2017, as amended by that certain First Amendment to Lease Agreement dated December 11, 2017 (collectively, the "Agreement") for the leasing of following described premises located at Buckroe Beach. Specifically:

40,200 square feet variable width on the public beach - (the "**Beach**")-Exhibit A;  
1,500 square feet (30' x 50'), LRSN: 12007407- (the "**Concession Facility**")-Exhibit B;  
and  
500 square feet (10' x 50'), LRSN: 12006702 – (the "**Storage Area**")

B. Tenant has notified the City of its intention to renew the Lease for one (1) year but has requested various changes to the original Lease provisions.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Tenant agree as follows:

1. Incorporation of Recitals. The parties represent and warrant that the recitals to this Amendment are accurate and correct and incorporate them in this Amendment.

2. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

3. Substitution of Exhibits. Exhibits A, B and C shall be substituted by the new Exhibits A, B and C attached hereto and made a part hereof.

4. Adjustment to Section 3. Section 3 shall be amended changing the date in the second paragraph to March 24, 2022.

5. Adjustment to Section 4(a) and 4(e). Section 4(a) shall be amended to delete the Annual Fee structure and replace with the following Annual Fee schedule for years two-2018, three-2019 and four-2020:

2018-2020 Fee Schedule		
Gross Sales Rental & Concessions Combined	Escalation	Fee Due
\$25,000	\$300	
\$50,000	\$300	\$600
\$55,000	\$100	\$700
\$60,000	\$100	\$800
\$65,000	\$100	\$900
\$70,000	\$100	\$1,000
\$75,000	\$100	\$1,100
\$80,000	\$100	\$1,200

The Annual Fee for Renewal Term year five- 2021 shall be negotiated if and when Tenant gives the City timely notice to renew the Lease.

Section 4(e) shall be amended by adding the following:

In addition to the Annual Fee, Tenant shall pay all applicable (1) real property taxes applicable to the Demised Premises; (2) personal property taxes on any equipment, fixtures, or furnishings that Tenant owns or uses on the Demised Premises; and (3) any other taxes related to Tenant's use of the Demised Premises, including but not limited to, retail sales and use taxes, admissions taxes, and food and beverage taxes, and any penalty, interest, and/or fees assessed thereon. The City shall not be responsible for payment of any such taxes, fees, penalties, or interest.

6. Adjustment to Section 5(a). Section 5(a) shall be amended by adding the following:

Tenant shall allow the Director to verify with the City's Commissioner of the Revenue (the "**Commissioner**") actual revenues generated from or by Tenant's operations and attributed to the City pursuant to Code of Virginia §58.1-3840 et. seq. and Hampton City Code §37-251 et. seq. and shall complete any authorization form(s) requested by the Commissioner for that purpose.

7. Adjustment to Section 7(b) and 7(d). Section 7(b) shall be amended by deleting the provision and replacing it with the following:

Tenant has non-exclusive rights to serve pre-packaged or hot and cold food and beverages within the confines of the Concession Facility. Tenant may place tables, chairs and umbrellas within the confines of the Concession Facility, with the prior approval of the City to ensure that the furniture is similar in style and color to the furniture purchased by the City for the Buckroe area. Tenant shall remove and store tables, chairs and umbrellas on a nightly basis and in the event of inclement weather. The City shall not be responsible for any loss of tables, chairs and umbrellas or any other equipment stored at the Concession Facility or upon the Demised Premises.

Section 7(d) shall be amended by adding the following:

The aforesaid exclusive rights are not applicable to individuals who use their own watersports equipment in the Buckroe Beach area.

Except as amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment as of the date first set forth above.

**CITY OF HAMPTON**

By: \_\_\_\_\_  
Mary B. Bunting, City Manager

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Dept. of Parks, Recreation &  
Leisure Services

**APPROVED AS TO FORM &  
LEGAL SUFFICIENCY:**

\_\_\_\_\_  
City Attorney

HAMPTON WATERSPORTS LLC

By: [Signature]  
Jeremy Churchill, Managing Member

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Chesapeake, to-wit:

I, the undersigned, Notary Public in and for the City/County and State aforesaid, do hereby certify that Jeremy Churchill, Managing Member of Hampton Watersports LLC, has acknowledged the foregoing instrument before me in my City and State aforesaid and is either personally known to me or has produced VA drivers license as identification.

GIVEN under my hand this 1 day of May, 2018.

[Signature]  
NOTARY PUBLIC

My commission expires: 07/31/2020

Registration No. 7693897



VIRGINIA BEACH WATERSPORTS LLC

By: [Signature]  
Jeremy Churchill, Managing Member

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Chesapeake, to-wit:

I, the undersigned, Notary Public in and for the City/County and State aforesaid, do hereby certify that Jeremy Churchill, Managing Member of Virginia Beach Watersports LLC, has acknowledged the foregoing instrument before me in my City and State aforesaid and is either personally known to me or has produced VA Drivers license as identification.

GIVEN under my hand this 1 day of May, 2018.

[Signature]  
NOTARY PUBLIC

My commission expires: 07/31/2020

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