

1 **..Title**

2 **Lease of Truxtun Park to Kayak Annapolis, LLC** – For the purpose of approving the lease of  
3 certain City-owned property at Truxtun Park to authorize the operation of a kayak water touring  
4 business; and matters generally relating to said lease.

5 **..Body**

6  
7 **CITY COUNCIL OF THE**  
8 **City of Annapolis**

9  
10 **Ordinance 28-15**

11  
12 **Sponsored by: Mayor Pantelides**

13  
14 **Referred to**

15 Environmental Matters  
16 Finance

17  
18  
19 **AN ORDINANCE** concerning

20  
21 **Lease of Truxtun Park to Kayak Annapolis, LLC**

22  
23 **FOR** the purpose of approving the lease of certain City-owned property at Truxtun Park to  
24 authorize the operation of a kayak water touring business; and matters generally relating to said  
25 lease.

26  
27 **WHEREAS**, the City of Annapolis and Kayak Annapolis, LLC have entered into a Lease  
28 Agreement to lease certain City-owned property at Truxtun Park under certain terms and  
29 conditions; and

30  
31 **WHEREAS**, the Annapolis City Council believes that the proposed lease would benefit the City;  
32 and

33  
34 **WHEREAS**, the lease setting forth the details of the rental has been prepared and is considered  
35 satisfactory; and

36  
37 **WHEREAS**, the City is willing to lease the property to Kayak Annapolis, LLC for the purposes  
38 described and in accordance with the terms and conditions set forth in the Lease Agreement  
39 attached hereto and incorporated herein; and

40  
41 **WHEREAS**, Article VI, Section 11(b) of the Charter of the City of Annapolis requires City  
42 Council approval to authorize such a lease; and

43  
44 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**  
45 **CITY COUNCIL** that the Lease Agreement, a copy of which is attached hereto and made a part

1 hereof, between Kayak Annapolis, LLC and the City of Annapolis for the lease of certain  
2 municipal property, is hereby approved and authorized.  
3

4 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**  
5 **ANNAPOLIS CITY COUNCIL** that in accordance with Article III, Section 8 of the Charter of  
6 the City of Annapolis, the proposed lease of City-owned property will better serve the public  
7 need for which the property was acquired.  
8

9 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY**  
10 **THE ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its  
11 passage.  
12

13  
14  
15 **EXPLANATION**

16 CAPITAL LETTERS indicate matter added to existing law.

17 ~~Strikethrough~~ indicates matter stricken from existing law.

18 Underlining indicates amendments  
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**CITY OF ANNAPOLIS LEASE AGREEMENT**

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**THIS LEASE AGREEMENT** (“Lease”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between The City of Annapolis, a municipal corporation of the State of Maryland (“City”), and KAYAK ANNAPOLIS LLC, a Maryland limited liability company, its successors and assigns (collectively, the “Tenant”).

**WHEREAS**, the City is the fee simple owner of land commonly known as Truxtun Park and as more particularly described in Attachment A attached hereto and incorporated herein (the “Premises”); and

**WHEREAS**, the Tenant wishes to lease the Premises for the purpose of operating a kayak water touring business; and

**WHEREAS**, the City is authorized to lease the Premises pursuant to Article VI, Section 11(b) of the City Charter; and

**WHEREAS**, the parties desire to enter into this Lease that defines the rights, duties, and liabilities of the parties.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Tenant agree as follows:

**1. Term.**

a. The City leases to the Tenant and the Tenant hereby leases from the City the Premises for a Term commencing on May 1, 2015 and terminating on June 30, 2016 (the “Original Term”), unless sooner terminated in accordance with the provisions of this Lease.

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, this Lease shall automatically renew for two (2) successive terms of one (1) year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a “Renewal Term” and collectively the “Renewal Terms”). Each Renewal Term shall commence and run with the City fiscal year (July 1<sup>st</sup> – June 30<sup>th</sup>).

c. The City expressly reserves the right to adjust any rent for any Renewal Term.

**2. Use of Premises.**

a. The Tenant may use and occupy the Premises during the Term of this Lease only for the purpose of operating a kayak water touring business (the “Business”) and for no other purpose whatsoever. The Tenant’s operating season for the Business generally runs from May 1<sup>st</sup> through October 30<sup>th</sup>, which may vary slightly depending on weather conditions.

1  
2           b.       The Tenant shall not, and is prohibited from, selling, consuming, delivering, or  
3 possessing any alcoholic beverages on the Premises, including any office barge. The Tenant may  
4 sell non-alcoholic beverages to their customers or clients, as part of the Business, and only for  
5 consumption in the kayaks during tours.  
6

7           c.       The Tenant shall be prohibited from using, providing or allowing any amplified  
8 music or other amplified sound(s) on the Premises. The Tenant shall comply with Chapter 11.12  
9 of the City Code, as may be amended, concerning public peace and order.  
10

11           d.       The Tenant shall obtain the City's prior approval before parking any kayaks,  
12 canoes, paddle boards, or other water crafts or boats on trailers on the Premises.  
13

14           e.       The Premises shall not be open to the public, for the Business, or to any of the  
15 Tenant's customers or clients during any hours that Truxtun Park is closed, either by City Code  
16 or the City Director of Recreation and Parks; provided, however, that the Tenant may be on the  
17 Premises during these closed hours for administrative purposes only, including, but limited to,  
18 paperwork, accounting, maintenance/repairs, and clean-up.  
19

20           f.       The Tenant accepts the Premises in "as is" condition. The City makes no  
21 representation or warranty with respect to the condition or state of the Premises, or its fitness for  
22 any particular use.  
23

24           g.       The Tenant shall not use or occupy or permit the Premises, or any part thereof, to  
25 be used or occupied, nor do or permit anything to be done in or on the Premises in a manner  
26 which would in any way (1) violate any of the terms of this Lease; (2) cause or create a public or  
27 private nuisance in or on the Premises; (3) tend to impair or interfere with the character,  
28 reputation or appearance of the Premises; or (4) commit waste upon the Premises.  
29

### 30           **3. Rent.**

31  
32           a.       The Tenant shall pay the City One Thousand Four Hundred Dollars and No Cents  
33 (\$1,400.00) in rent for the Original Term, and thereafter, the Tenant shall pay the City One  
34 Thousand Two Hundred Dollars and No Cents (\$1,200.00) in annual rent for each of the  
35 Renewal Terms (collectively, the "Rent"). Each payment shall be made promptly when due, in  
36 advance, on July 1<sup>st</sup> of the Original Term and July 1<sup>st</sup> of each Renewal Term, without deduction,  
37 set off or counterclaim whatsoever, and without demand. All payments shall be made payable to  
38 the "City of Annapolis" and shall be sent or delivered to the Director, Department of Recreation  
39 and Parks, 273 Hilltop Lane, Annapolis, Maryland 21401.  
40

41           b.       The Rent expressly does not include any Commercial Annual Mooring Permit  
42 Fees, as applicable, which the Tenant shall pay separately (and in addition to the Rent) in  
43 accordance with Section 15.20.110 of the City Code, as may be amended.  
44

45           c.       The Tenant shall also pay as additional rent all sums, taxes, assessments, costs,  
46 expenses and other payments which the Tenant under any of the provisions of this Lease

1 assumes or agrees to pay (the “Additional Rent”), and in the event of any nonpayment thereof,  
2 the City shall have all the rights and remedies provided in this Lease and/or by law or at equity.  
3 Except as otherwise provided for in this Lease, any Additional Rent shall be due and payable  
4 thirty (30) calendar days after receipt of notice of amount due and payable. All payments shall be  
5 made payable to the “City of Annapolis” and shall be sent or delivered to the Finance Director,  
6 Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401.  
7

8 d. In the event the Rent or Additional Rent under this Lease, or any part thereof,  
9 shall remain unpaid for a period of fifteen (15) business days after the day on which it is due,  
10 then in addition to all other sums due by the Tenant under this Lease, the Tenant shall pay the  
11 City as Additional Rent: (1) late fees equal to five percent (5%) per month of the unpaid amount,  
12 and (2) if an action of any type is filed in any court, reasonable attorneys fees.  
13

14 e. The Tenant shall prepare and timely submit tax returns for the Admissions and  
15 Amusement Tax to the Comptroller of Maryland under Activity Code 015, “Boat Rides and  
16 Excursions”, and identifying the subdivision as the “City of Annapolis.” The Tenant shall  
17 provide a copy of all such tax returns to the City simultaneously with its submission to the  
18 Comptroller of Maryland.  
19

#### 20 **4. Quiet Enjoyment.**

21  
22 The Tenant may peaceably and quietly have, hold and enjoy the Premises for the Term  
23 of this Lease subject, however, to the terms of this Lease and compliance with these terms.  
24

#### 25 **5. Utilities/Services.**

26  
27 a. The Tenant shall pay all costs and expenses incurred by the City as a result of the  
28 Tenant’s use of the Premises under this Lease, including, but not limited to, utilities, parking and  
29 transportation, facilities and services, police services, fire services and any other City services as  
30 Additional Rent. The City shall invoice the Tenant monthly for such services, and the Tenant  
31 shall remit payment in accordance with Paragraph 3(c) above.  
32

33 b. The Tenant, at its sole cost and expense, may install temporary electrical  
34 equipment, lines and other devices required to provide power/electricity to the Premises. All  
35 such equipment shall be in compliance with the National Electric Code and all required City  
36 permitting, and subject to inspection by the City. All such equipment, including any power  
37 demand from such equipment, shall not limit or restrict the City’s operations at the  
38 Harbormaster’s Boar Operations base, and shall not overload the services generally required by  
39 the City on or near the Premises. If the Tenant does limit or restrict the City’s operations and/or  
40 overload any services on or near the Premises, the Tenant shall pay all costs, expenses and  
41 damages related to such actions as Additional Rent.  
42

43 c. The Tenant shall be responsible for keeping the Premises free of debris, trash and  
44 refuse, and shall place (or cause to be placed) all trash and recycling in the appropriate  
45 receptacles provided by the City for the Premises.  
46

1           **6. Alterations.**  
2

3           a.       The Tenant shall not make or cause to be made any alterations, additions, or  
4 improvements to the Premises without obtaining the prior written consent of the City that may be  
5 withheld in the City's sole and absolute discretion. All work done in accordance with any  
6 approved alterations, additions, or improvements shall be done in a good and workmanlike  
7 manner, by professionals licensed in the State of Maryland, in compliance with any necessary  
8 governmental permits and other approvals, and in accordance with all applicable laws and  
9 ordinances of any public authority having jurisdiction over the Premises.  
10

11           b.       The Tenant shall retain ownership of all of its trade and business equipment and  
12 furnishings from time to time installed on the Premises. The Tenant may remove any such  
13 fixtures, equipment or furnishings at any such time during the Term and shall remove all of it  
14 prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the  
15 Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by  
16 the Tenant within thirty (30) calendar days of City invoicing. Any such property not removed at  
17 the expiration of the Term shall be deemed abandoned and, at the election of the City, shall  
18 become the property of the City without payment of any kind to the Tenant, without increasing  
19 the City's liability to the Tenant, and for any disposition of it as the City decides to make with  
20 any costs for such disposition invoiced as Additional Rent to the Tenant.  
21

22           **7. Repairs and Maintenance.**  
23

24           a.       The Tenant, at its own cost and expense, shall keep and maintain the Premises and  
25 any appurtenances to the Premises in good order and condition, and cause no waste or damages  
26 thereto. At the expiration of this Lease, the Tenant shall surrender the Premises broom clean and  
27 in the same order and condition in which they were on the commencement date, ordinary wear  
28 and tear accepted.  
29

30           b.       If the City is required to make any repairs to such portions of the Premises by  
31 reason, in whole or in part, of the negligent or willful act or failure to act by the Tenant or the  
32 Tenant's employees, agents, contractors, guests or invitees, the City may collect the cost of any  
33 and all such repairs from the Tenant as Additional Rent, which shall be due and payable by the  
34 Tenant within thirty (30) calendar days of City invoicing.  
35

36           c.       The City shall have no liability to the Tenant by reason of any inconvenience,  
37 annoyance, interruption, or injury to business or other use or occupancy arising from making any  
38 repairs or changes that the City is required or permitted to make in or to any portion of the  
39 Premises, or by law.  
40

41           **8. Signs.**  
42

43           The Tenant shall not to place or maintain any sign, whether permanent or temporary, on  
44 the Premises, without first submitting proof copies of such sign to the City, including a map or  
45 diagram showing all proposed locations of the sign, and obtaining the City's prior written

1 consent. The Tenant shall maintain any sign, as may be approved by the City, and shall repair  
2 and replace when necessary to keep in good condition and repair at all times.  
3

4 **9. Driveways, Footways and Parking Areas.**  
5

6 a. The Tenant's employees, agents, contractors, clients, guests, and invitees shall be  
7 entitled to the non-exclusive use, free of charge, but in common with others, of the driveways,  
8 footways and parking areas within the Premises, subject to any rules and regulations as the City  
9 may, from time to time, require. The Tenant shall not block access to the Premises by emergency  
10 vehicles. The Tenant shall not leave or permit others to leave any vehicles overnight on the  
11 Premises, including its driveways and parking areas.  
12

13 b. With reasonable notice to the Tenant, the City may restrict access to, temporarily  
14 close, construct, adjust, reduce or perform such other acts to all or any portion of the driveways,  
15 footways and parking areas as the City determines to be necessary or appropriate.  
16

17 **10. Non-Discrimination.**  
18

19 a. The Tenant shall not discriminate against any person with regard to membership  
20 policies, employment practices, or in the provision of or access to services based on race, color,  
21 religion, national origin, ancestry, sex, age, or disability.  
22

23 b. This provision shall not be construed to prevent the Tenant from rendering  
24 services pursuant to this Lease to categories of individuals with specific needs.  
25

26 **11. Assignment.**  
27

28 The Tenant shall not assign or sublet this Lease, or permit other persons to occupy the  
29 Premises, or grant any license or concession for the Premises without the prior written approval  
30 of the City.  
31

32 **12. Security, Property Loss Damage.**  
33

34 a. The Tenant and the City shall cooperate with each other and use their respective  
35 best efforts to ensure public safety protection and adequate traffic control for the Premises during  
36 the Term of this Lease.  
37

38 b. The City, its elected officials, appointees, directors, employees, agents,  
39 contractors and representatives (the "Indemnified Parties") shall not be liable for any damage to  
40 property of the Tenant or of others located on the Premises or entrusted to its or their employees  
41 nor for the loss of any property by theft or otherwise, nor for any injury or damage to persons or  
42 property resulting from theft, casualty, acts of God, fire of every nature and type, explosion,  
43 electricity, wind, water, rain or snow, or from any other cause whatsoever; nor shall the City be  
44 liable for any such damage caused by operations in construction of any public or quasi-public  
45 works. All property of the Tenant kept or stored on the Premises shall be so kept at the risk of  
46 the Tenant only and the Tenant shall indemnify, defend and hold the Indemnified Parties

1 harmless from any claims arising out of damage to the same, including subrogation claims by the  
2 Tenant's insurance carrier.

3  
4 **13. Compliance with Laws.**

5  
6 a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents  
7 and permits necessary for the lawful use of the Premises for the purposes of this Lease. The  
8 Tenant, at its sole cost and expense, shall promptly comply with and do all things required by  
9 any notice served upon it or upon the City in relation to the Premises or any part thereof, from  
10 any of the departments or agencies of the City, a county, the State of Maryland, or the United  
11 States, if the same shall be caused by the Tenant's use of the Premises. The Tenant shall pay all  
12 costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the  
13 failure of the Tenant to comply. Failure to comply with this Paragraph shall constitute a breach  
14 of this Lease, and the City may terminate this Lease for default in accordance with Paragraph 20.

15  
16 b. The Tenant shall have three (3) calendar days to correct any violation arising  
17 under Title 15 of the City Code, as may be amended, and/or a reasonable time not to exceed ten  
18 (10) calendar days to correct any other violation, unless such violation relates to public safety, in  
19 which case the City Director of Recreation and Parks and/or the City Harbormaster may order a  
20 temporary suspension of the Tenant's Business and other operations pending correction of the  
21 violation.

22  
23 **14. Insurance.**

24  
25 a. The Tenant, at its sole cost and expense, shall maintain in full force and effect  
26 during the Term of this Lease, and any Renewal Term, the following insurance coverages  
27 insuring against claims that may arise from or in connection with the Tenant's operation and use  
28 of the Premises.

29  
30 1. Commercial General Liability Insurance Policy, including contractual  
31 liability and property liability insurance for the Premises, written on an occurrence basis,  
32 in adequate quantity to protect against legal liability arising out of this Lease, but no less  
33 than \$1,000,000.00 per person and \$3,000,000.00 per occurrence in the  
34 aggregate/umbrella policy, using a Combined Single Limit for bodily injury and property  
35 damage.

36  
37 2. Workers' Compensation as required by Maryland law and, when required,  
38 the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard  
39 Other States coverage; Employers' Liability coverage with limits of at least \$100,000.00  
40 each accident, \$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

41  
42 b. On all Commercial General Liability Insurance policies, the City, its elected  
43 officials, appointees, directors, employees, agents, contractors and representatives shall be  
44 named as additional insureds, which shall be shown on insurance certificates furnished to the  
45 City.



1 c. Such policy or policies of insurance shall contain a provision by which the insurer  
2 waives any right of subrogation against the City arising out of any loss covered by such  
3 insurance.

4  
5 d. The Tenant shall insure and protect itself against injury, loss or damage to its  
6 property arising from any cause whatsoever, including omission, fault, negligence or other  
7 conduct of the City, through procurement of insurance coverage, without subjecting the City to  
8 liability to the Tenant for any injury, loss or damage which may be insured against, and further,  
9 without subjecting the City to subrogation claims of any insured.

10  
11 f. The Tenant shall submit to the City, simultaneously with the execution of this  
12 Lease, Certificates of Insurance evidencing the coverage required by this Lease before  
13 commencing the Term of this Lease. Such certificates shall provide that the City be given at least  
14 thirty (30) calendar days prior written notice of any cancellation of, intention not to renew, or  
15 material change in coverage.

16  
17 g. The Tenant's insurance policy or policies shall not relieve the Tenant of any of its  
18 responsibilities or obligations under this Lease or for which the Tenant may be liable by law or  
19 otherwise.

20  
21 h. The Tenant's insurance policy or policies shall be issued by an insurance  
22 company(s) authorized to do business within the State of Maryland.

23  
24 i. The required insurance shall be primary to any other valid and collectable  
25 insurance.

26  
27 **15. Indemnification.**

28  
29 a. The Tenant shall indemnify, defend and hold the Indemnified Parties harmless  
30 from and against all liability for injuries to persons, including death, and damage to the Premises  
31 arising from acts or omissions of the Tenant, its officers, agents, employees, contractors, patrons,  
32 volunteers, guests or invitees resulting in connection with this Lease. The Tenant shall also  
33 indemnify, defend and hold the Indemnified Parties harmless from and against any and all  
34 liabilities, claims, suits, or demands which may be made against the Indemnified Parties by any  
35 third party arising from the alleged violation of any third party's trade secrets, proprietary  
36 information, trademark, copyright, patent rights, or other intellectual property rights, or from the  
37 alleged violation of unfair competition, defamation, invasion of privacy, anti-discrimination laws  
38 or regulations, or any other right of any person or entity in connection with the Tenant's use of  
39 the Premises or the Property under this Lease.

40  
41 b. Tenant indemnification does not limit any immunity which the Indemnified  
42 Parties are entitled to assert, and includes all costs and expenses, including attorney's fees,  
43 whether or not related to administrative or judicial proceedings.

44  
45 c. The City, in its sole discretion, may participate in handling its own defense or  
46 exclusively handle its own defense, and select its own attorneys, including the City Attorney.

1 The indemnification for attorney fees applies whether or not the City Attorney or other attorney  
2 handles the defense.

3  
4 d. The Tenant shall reimburse the City as Additional Rent, within thirty (30)  
5 calendar days after invoicing for such reimbursement, for any damage to the Premises caused by  
6 the negligence or willful misconduct of the Tenant, its officers, agents, employees, contractors,  
7 patrons, volunteers, guests or invitees.

8  
9 **16. Impairment of the City's Title.**

10  
11 The Tenant shall not have the right, power, or permission to do any act or to make any  
12 agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien,  
13 charge, or other encumbrance on the estate of the City in the Premises. The Tenant shall not  
14 permit any part of the Premises to be used by any person or persons or by the public at any time  
15 or times during the Term of this Lease, in such manner as might tend to impair the City's title to  
16 or interest in the Premises, or in such manner as might make possible a claim or claims of  
17 adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to, or  
18 with respect to the Premises.

19  
20 **17. Taxes and Assessments.**

21  
22 a. The Tenant shall pay all impositions including all state, county and City taxes  
23 (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind  
24 and nature whatsoever, including all interest and penalties on them, which shall or may accrue or  
25 be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments  
26 before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the  
27 City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax  
28 or assessment is payable in installments over a period of years, the Tenant shall be liable only for  
29 payment of those installments falling due and payable during the Term, with appropriate pro-  
30 ration in case of fractional years.

31  
32 b. Taxes and assessments shall not be deemed to include any municipal, state or  
33 federal income taxes assessed against the City, or any municipal, state or federal capital levy,  
34 estate, succession, inheritance or transfer taxes of the City, or any franchise taxes imposed on the  
35 City, or any income, profits or revenues tax, assessment or charge imposed on the rent received  
36 as such by the City under this Lease.

37  
38 **18. The City's Right of Entry.**

39  
40 a. The City and its employees, representatives, agents, and servants, including any  
41 builder or contractor employed by the City, shall have the absolute unconditional right at any and  
42 all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the  
43 case of an emergency where no such notice is required), to enter the Premises for any of the  
44 following purposes: (a) to inspect the Premises; (b) to make such repairs and/or changes in the  
45 Premises as the City may deem necessary or proper; (c) to enforce and carry out any provision of

1 this Lease; (d) for any purpose relating to the safety, protection or preservation of the Premises;  
2 or (e) for any other purpose related to the enforcement of this Lease.

3  
4 b. As applicable, the Tenant shall provide the City with a complete and current set of  
5 keys to all entrances and exits to the Premises.

6  
7 c. The City shall use reasonable efforts to minimize interference to the Tenant's  
8 business or use of the Premises or the Property when making inspections or repairs, but the City  
9 shall not be required to perform the inspections or repairs at any time other than during normal  
10 working hours.

11  
12 **19. Reservation of Governmental Authority.**

13  
14 The City reserves the right at all times to exercise full governmental control and  
15 regulation with respect to all matters connected with this Lease not inconsistent with the terms of  
16 this Lease.

17  
18 **20. Defaults or Breach.**

19  
20 a. The occurrence of any one (1) of the following events shall constitute a Default  
21 or Breach under the terms of this Lease:

22  
23 1. Failure by the Tenant to make any payment of Rent, Additional Rent or  
24 any other payment required to be made by the Tenant under this Lease and the Tenant  
25 fails to remedy such default within five (5) business days after any such payment is due  
26 and payable.

27  
28 2. Failure by the Tenant to observe or perform any of the covenants,  
29 conditions or provisions of this Lease.

30  
31 3. The Tenant's any general assignment or general arrangement for the  
32 benefit of creditors, the filing by or against the Tenant of a petition to have the Tenant  
33 adjudged a bankrupt or a petition for reorganization or arrangement under any law  
34 relating to bankruptcy (unless in the case of a petition filed against the Tenant, the same  
35 is dismissed within sixty (60) calendar days), the appointment of a trustee or receiver to  
36 take possession of substantially all of the Tenant's property located in the Premises or the  
37 Tenant's interest in this Lease where such seizure is not discharged or bonded within ten  
38 (10) business days, the attachment, execution or other judicial seizure of substantially all  
39 of the Tenant's interest in this Lease, where such seizure is not discharged or bonded  
40 within ten (10) business days.

41  
42 4. Vacating or abandonment of the Premises by the Tenant.

43  
44 5. Any material misrepresentation by the Tenant to the City in connection  
45 with the negotiation or execution of this Lease.

1           b.     Upon the occurrence of a Default or Breach, the City may, after giving the Tenant  
2 ten (10) calendar days written notice, proceed in the following manner:  
3

4               1.     Terminate this Lease and the Tenant's right to possession of the Premises  
5 and with or without legal process, re-enter and take possession of the Premises and  
6 remove the Tenant, any occupant and any property therefrom, without being guilty of  
7 trespass or being liable to any suit, action or prosecution therefore, which liability the  
8 Tenant hereby expressly waives, and without relinquishing any rights of the City against  
9 the Tenant. Notwithstanding such re-entry and termination of this Lease, the Tenant shall  
10 remain liable to the City for any payments or damages, including, but not limited to,  
11 outstanding Rent and Additional Rent and attorneys' fees, due or sustained prior thereto;  
12 or  
13

14               2.     Maintain the Tenant's right to possession, in which case this Lease shall  
15 continue in effect, whether or not the Tenant shall have abandoned the Premises. In such  
16 event, the City shall be entitled to enforce all of the City's rights and remedies under this  
17 Lease, including the right to recover the Rent and Additional Rent as it becomes due  
18 hereunder.  
19

20           c.     No act or omission by the City shall be deemed to be an acceptance of a surrender  
21 of the Premises or a termination of the Tenant's liabilities under this Lease, unless the City shall  
22 execute a written release of the Tenant. The Tenant's liability under this Lease shall not be  
23 terminated by the execution by the City of any new lease for all or any portion of the Premises or  
24 the acceptance of rent from any assignee or subtenant.  
25

26           d.     The City, in its sole discretion, may afford the Tenant a reasonable time to cure  
27 any default or breach of this Lease before declaring a Default or Breach and terminating this  
28 Lease.  
29

### 30           **21. Termination for Convenience.**

31  
32           The City may terminate this Lease for convenience, for any reason, and at any time by  
33 providing thirty (30) calendar days prior written notice to the Tenant. Any such termination of  
34 this Lease by the City shall not discharge the Tenant from any obligation it may have to the City  
35 by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise  
36 (or the circumstances, events or basis of which shall occur or arise) prior to such termination,  
37 whether the same be known or unknown at the time of such termination. The City shall prorate  
38 the Rent, and any Additional Rent, as of the date of termination for convenience.  
39

### 40           **22. Surrender of Premises.**

41  
42           a.     On the last day or earlier termination of this Lease, the Tenant shall vacate the  
43 Premises and leave it in good condition and repair, normal wear and tear excepted. If the  
44 Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the  
45 Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in  
46 vacating the Premises, including, without limitation, any claims made by any succeeding tenant

1 or other occupant founded on such delay. Any holding over with the consent of the City after the  
2 termination of this Lease shall be construed to be a tenancy from month-to-month upon the same  
3 terms and conditions as provided in this Lease, to the extent applicable.  
4

5 b. On the last day or earlier termination of this Lease, the Lessee shall, within thirty  
6 (30) calendar days and at its own cost and expense, dismantle and remove all of its personal  
7 property from the Premises. Any such property not removed at the expiration of this Lease in  
8 accordance with the preceding sentence and Lessee's continued failure to remove the same  
9 within thirty (30) calendar days after receipt of notice from the City, shall be deemed abandoned  
10 and, at the election of the City, shall become the property of the City without payment of any  
11 kind to the Lessee, without increasing the City's liability to the Lessee, and for any disposition of  
12 it as the City decides to make.  
13

14 c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with  
15 the Tenant present if possible, to determine the condition of the Premises, Any items determined  
16 to be in need of correction or repair shall be corrected or repaired by the City, and shall be  
17 invoiced by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.  
18

19 **23. Modification.**  
20

21 a. This Lease sets forth the entire agreement between the parties relative to the  
22 subject matter of this Lease. No representation, promise or condition, whether oral or written, not  
23 incorporated herein shall be binding upon either party to this Lease. This Lease shall not be  
24 waived, amended or modified except in writing and signed by the authorized representative(s) of  
25 both parties.  
26

27 b. No act by any representative or agent of the City, other than such a written  
28 agreement and acceptance by the City, shall constitute an acceptance thereof.  
29

30 **24. Representations and Warranties.**  
31

32 The Tenant represents and warrants to the City that:  
33

34 a. The Tenant is a limited liability company organized under the laws of the State of  
35 Maryland, qualified to do business and in good standing in the State of Maryland, and authorized  
36 to conduct the business in which it is engaged and as described in this Lease.  
37

38 b. The Tenant is authorized to execute, deliver and perform this Lease.  
39

40 c. The Tenant has been represented (or has had the opportunity to be represented) in  
41 the execution of this Lease by independent legal counsel.  
42

43 d. The representations set forth in the Lease shall be true and valid throughout the  
44 Term.  
45  
46

1           **25. Access to Records.**  
2

3           a.       At any time during normal business hours with reasonable prior notice from the  
4 City, and as often as the City may deem necessary, the Tenant shall make available to and allow  
5 inspection and copying by the City, its employees or agents, of all books, records, accounts,  
6 reports, information and documentation of the Tenant related to the subject matter of this Lease,  
7 including, but not limited to, all contracts, invoices, payroll, and financial audits.  
8

9           b.       The Tenant shall maintain all books, records, accounts, reports, information and  
10 documentation required under this Lease for a period of at least three (3) years after the date of  
11 termination of this Lease including any renewals, except in the event of litigation or settlement of  
12 claims arising from the performance of this Lease, in which case the Tenant shall do so until  
13 three (3) years after final adjudication of such litigation or settlement of claims.  
14

15           **26. Remedies Cumulative and Concurrent.**  
16

17           No remedy provided by this Lease or reserved to the City is intended to be exclusive of  
18 any other remedies provided for in this Lease, and each such remedy shall be cumulative, and  
19 shall be in addition to every other remedy given under this Lease, or now or hereafter existing at  
20 law or in equity or by statute. Every right, power and remedy given to the City shall be  
21 concurrent and may be pursued separately, successively or together against the Tenant, and every  
22 right, power and remedy given to the City may be exercised from time to time as often as may be  
23 deemed expedient by the City.  
24

25           **27. Waiver of Remedies for Breach or Default.**  
26

27           No failure or delay by the City to insist upon the strict performance of any term,  
28 condition or covenant of this Lease, or to exercise any right, power or remedy consequent upon a  
29 breach or default thereof, shall constitute a waiver of any such term, condition or covenant or of  
30 any such breach or default, or preclude the City from exercising any such right, power or remedy  
31 at any later time or times.  
32

33           **28. Independent Contractor Status.**  
34

35           Nothing contained in this Lease shall be construed to constitute the Tenant as an agent,  
36 representative or employee of the City, or to create any relationship between the parties other  
37 than landlord and tenant.  
38

39           **29. Binding Effect.**  
40

41           The terms of this Lease shall be binding on and enforceable against the parties and their  
42 respective successors and assigns.  
43  
44  
45

1  
2       **30. Governing Law.**  
3

4       a.       In all actions arising from this Lease, the laws of the State of Maryland shall  
5 govern, and the venue for all actions initiated pursuant to this Lease shall be exclusively the  
6 Courts of Anne Arundel County, Maryland.

7  
8       b.       The parties waive jury trial in all actions initiated pursuant to this Lease.  
9

10       **31. Recitals.**

11  
12       The Recitals of this Lease are incorporated into this Lease.  
13

14       **32. Severability.**

15  
16       If any of the provisions of this Lease are declared by a court or other lawful authority to  
17 be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected  
18 thereby and shall remain enforceable to the full extent permitted by law.  
19

20       **33. Survival.**

21  
22       Those paragraphs in this Lease which by their nature are intended to survive shall survive  
23 the termination of this Lease.  
24

25       **34. Time is of the Essence.**

26  
27       Time is of the essence with respect to each and every provision of this Lease.  
28

29       **35. Authorization.**

30  
31       This Lease is authorized by the City Council pursuant to O-28-15.  
32

33       **36. Counterparts.**

34  
35       This Lease may be executed in any number of counterparts and by the parties hereto in  
36 separate counterparts, each of which when so executed and delivered shall be deemed to be an  
37 original and all of which taken together shall constitute but one and the same instrument.  
38

39       **37. Notice.**

40  
41       Any notice required to be delivered shall be deemed to have been received when the  
42 notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with  
43 signed receipt to the following address and individual or such other address and/or such other  
44 individual as a party may identify in writing to the other party:  
45  
46

1 To the City: Director, Department of Recreation and Parks  
2 273 Hilltop Lane  
3 Annapolis, Maryland 21401  
4

5 To the Tenant: Kayak Annapolis, LLC  
6 1804 St.Margarets Rd.  
7 Annapolis, MD 21409  
8 Attn: Katie Vonderheide Owner  
9

10 **IN WITNESS WHEREOF**, it is the intent of the parties that the Tenant has signed this  
11 Lease under seal and, further, that the parties have executed this Lease the day and year first  
12 written above.  
13

14 WITNESS: KAYAK ANNAPOLIS, LLC

15  
16 \_\_\_\_\_ By: \_\_\_\_\_  
17 Name: (Seal)  
18 Title:  
19

20 ATTEST: CITY OF ANNAPOLIS

21  
22  
23 \_\_\_\_\_ By: \_\_\_\_\_  
24 Regina C. Watkins-Eldridge, MMC, Michael J. Pantelides, Mayor (Seal)  
25 City Clerk  
26

27 APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:  
28  
29

30 \_\_\_\_\_  
31 Bruce T. Miller, Director Thomas C. Andrews  
32 Finance Department City Manager  
33  
34

35 REVIEWED AND APPROVED BY:  
36  
37

38 \_\_\_\_\_  
39 Michael Morris, Director  
40 Department of Recreation and Parks  
41

42 APPROVED FOR FORM AND LEGAL SUFFICIENCY:  
43  
44

45 \_\_\_\_\_  
46 OFFICE OF THE CITY ATTORNEY  
47



**ATTACHMENT A**

**PREMISES**

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- 1. **Generally:** The Premises shall include the following:
  - a. The beach area, consisting of approximately sixty (60) linear feet, located in Hawkins Cove, Spa Creek, directly north of the Truxtun Park Boat Ramp and generally north of the fishing pier and the Harbormaster Boat Operations base.
  - b. Shared use of the parking areas in Truxtun Park to be utilized by the Tenant’s customers and clients, and by no more than four (4) simultaneous vehicles of the Tenant’s staff.
  
- 2. **Floating Barge Office:** The Premises may additionally include the Tenant’s right to maintain a floating barge office at the location described in 1(a) above. This floating barge office shall comply with: (a) all requirements of Title 15 of the City Code, as may be amended, as such requirements apply to annual (or private) mooring permits; and (b) the Annual Mooring Permit Regulations (27 Feb. 2007), as approved by the City Board of Port Wardens and as may be updated. In order for the Tenant to maintain this floating barge office, the Tenant shall complete and submit an Annual Mooring Permit Renewal for each year of the Term of the Lease, and shall pay all associated fees in accordance with Paragraph 3(b) of the Lease.