



Legislation Text

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File #: O-28-15, Version: 1

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

**CITY COUNCIL OF THE  
City of Annapolis**

**Ordinance 28-15**

**Sponsored by: Mayor Pantelides**

**Referred to**

Environmental Matters  
Finance

**AN ORDINANCE** concerning

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

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

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

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

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

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

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

**SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the Lease Agreement, a copy of which is attached hereto and made a part hereof, between Kayak Annapolis, LLC and the City of Annapolis for the lease of certain municipal property, is hereby approved and

authorized.

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

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

#### EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments

### CITY OF ANNAPOLIS LEASE AGREEMENT

**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.

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

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

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

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

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

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

## **3. Rent.**

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

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

c. The Tenant shall also pay as additional rent all sums, taxes, assessments, costs, expenses and other payments which the Tenant under any of the provisions of this Lease assumes or agrees to pay (the “Additional Rent”), and in the event of any nonpayment thereof, the City shall have all the rights and remedies provided in this Lease and/or by law or at equity. Except as otherwise provided for in this Lease, any Additional Rent shall be due and payable thirty (30) calendar days after receipt of notice of amount due and payable. All payments shall be made payable to the “City of Annapolis” and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401.

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

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

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

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

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

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

b. The Tenant, at its sole cost and expense, may install temporary electrical equipment, lines and other devices required to provide power/electricity to the Premises. All such equipment shall be in compliance with the National Electric Code and all required City permitting, and subject to inspection by the City. All such equipment, including any power demand from such equipment, shall not limit or restrict the City’s operations at the Harbormaster’s Boar Operations base, and shall not overload the services generally required by the City on

or near the Premises. If the Tenant does limit or restrict the City's operations and/or overload any services on or near the Premises, the Tenant shall pay all costs, expenses and damages related to such actions as Additional Rent.

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

## **6. Alterations.**

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

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

## **7. Repairs and Maintenance.**

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

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

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

## **8. Signs.**

The Tenant shall not to place or maintain any sign, whether permanent or temporary, on the Premises, without first submitting proof copies of such sign to the City, including a map or diagram showing all proposed

locations of the sign, and obtaining the City's prior written consent. The Tenant shall maintain any sign, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

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

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

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

**10. Non-Discrimination.**

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

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

**11. Assignment.**

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

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

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

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

**13. Compliance with Laws.**

a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents and permits

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

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

#### **14. Insurance.**

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

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

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

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

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

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

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

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

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

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

## **15. Indemnification.**

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

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

c. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

## **16. Impairment of the City's Title.**

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

## **17. Taxes and Assessments.**

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever,



including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Tenant shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-ration in case of fractional years.

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

### **18. The City's Right of Entry.**

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

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

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

### **19. Reservation of Governmental Authority.**

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

### **20. Defaults or Breach.**

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

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

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

3. The Tenant's any general assignment or general arrangement for the benefit of creditors, the filing by or against the Tenant of a petition to have the Tenant adjudged a bankrupt or a petition for

reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against the Tenant, the same is dismissed within sixty (60) calendar days), the appointment of a trustee or receiver to take possession of substantially all of the Tenant's property located in the Premises or the Tenant's interest in this Lease where such seizure is not discharged or bonded within ten (10) business days, the attachment, execution or other judicial seizure of substantially all of the Tenant's interest in this Lease, where such seizure is not discharged or bonded within ten (10) business days.

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

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

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

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

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

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

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

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

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

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

a. On the last day or earlier termination of this Lease, the Tenant shall vacate the Premises and leave it in good condition and repair, normal wear and tear excepted. If the Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the City after the termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease, to the extent applicable.

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

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

### **23. Modification.**

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

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

### **24. Representations and Warranties.**

The Tenant represents and warrants to the City that:

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

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

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

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

**25. Access to Records.**

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

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

**26. Remedies Cumulative and Concurrent.**

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

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

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

**28. Independent Contractor Status.**

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

**29. Binding Effect.**

The terms of this Lease shall be binding on and enforceable against the parties and their respective successors and assigns.

**30. Governing Law.**

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

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

**31. Recitals.**

The Recitals of this Lease are incorporated into this Lease.

**32. Severability.**

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

**33. Survival.**

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

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

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

**35. Authorization.**

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

**36. Counterparts.**

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

**37. Notice.**

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

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

To the Tenant: Kayak Annapolis, LLC  
1804 St.Margarets Rd.  
Annapolis, MD 21409  
Attn: Katie Vonderheide Owner

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

WITNESS: KAYAK ANNAPOLIS, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: (Seal)  
Title:

ATTEST: CITY OF ANNAPOLIS

\_\_\_\_\_  
Regina C. Watkins-Eldridge, MMC,  
City Clerk  
By: \_\_\_\_\_  
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:

\_\_\_\_\_  
Bruce T. Miller, Director  
Finance Department

\_\_\_\_\_  
Thomas C. Andrews  
City Manager

REVIEWED AND APPROVED BY:

\_\_\_\_\_  
Michael Morris, Director  
Department of Recreation and Parks

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

**ATTACHMENT A**

**PREMISES**

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.