

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 13 day of June 2021, by and between **THE CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter "**LESSOR**", and **SUPERIOR KAYAKING COMPANY, LLC**, a Michigan limited liability company, with a mailing address of P.O. Box 495, Marquette, Michigan 49855, hereinafter "**LESSEE**".

Recitals

- A. Lessor is the owner of the real property and beachfront located at 1 Peter White Dr. at Presque Isle Park in the City of Marquette.
- B. Lessee desires to lease and Lessor is willing to lease to Lessee a section of beach located near Superior Watershed offices as shown in Exhibit "A" located on Lessor's real property in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Leased Premises

- 1.1 Lessor leases to Lessee space as shown in Exhibit "A", hereinafter "**PREMISES**".

2. Term of Lease

This lease shall run from May 15, 2021 through September 15, 2021. Prior to Lessee's first day of operations, Lessee will meet with City employees to discuss logistics for the use of the Premises.

3. Rent

The rent shall be \$147.00/month, based on 1,000 square feet of beach front and 600 square feet of parking space at \$1.10/square foot for a total of \$588.00 for the lease term, due by the May 20th each year this lease is in effect.

4. Use of Premises

- 4.1 Lessee shall use the Premises only for launching and retrieving kayaks and other non-motorized boats from the sandy beach area.
- 4.2 Lessee shall not use the Premises for any purpose that would:
 - a) be deemed hazardous to the public or adjoining premises including, but not necessarily limited to, fire, and environmental type hazards;
 - b) constitute a violation of any public law or requirement;
 - c) cause damage or injury to the Premises, or any part of it (ordinary wear and tear excepted);
 - d) constitute a public or private nuisance;
 - e) interfere with other uses of the Premises; or
 - f) permit refuse to accumulate in or around leasehold.

g) prohibit or restrict public access across and through the Premises.

5. Use of Public Areas by Lessee

Lessee and its invitees shall have the right to use all public areas, subject however to all rules and regulations regarding these areas. Lessee and its invitees shall only use the designated parking area as shown on Exhibit A, or if the designated parking area is full Lessee and its invitees may use any legal parking space adjacent to the Premises. Lessee is permitted to display temporary signage in common areas in accordance with all City ordinances.

6. Non-exclusive Use of Premises

Lessee acknowledges that its use of the Premises is not exclusive and that Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the Premises.

7. Maintenance and Repair

7.1 Lessee shall be solely responsible for the maintenance and repair of all of Lessee's tangible personal property located or used on the Premises and shall keep them in a safe condition and good repair.

8. Insurance and Indemnity

8.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's insurance policies covering the Premises.

8.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased.

8.3 Lessee at its sole expense shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.

8.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

8.5 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing, such cost to include attorneys' fees) resulting or occurring by reason of Lessee's use and occupancy of the Premises.

8.6 Lessee at its sole expense shall follow the safety guidelines regarding water sport outfitters as set forth in Exhibit B.

9. Assignment/Subletting

9.1 Lessee shall not assign or sublet the Premises or any part thereof without the express prior written consent of the Lessor.

- 9.2 Lessor may freely assign its rights and obligations under this Lease Agreement to any third party pursuant to a Purchase and Sale Agreement, Land Contract or similar instrument.

10. Use of Premises by Lessor

Lessor reserves for itself and its contractors and agents the right to enter the Premises at reasonable times for the purpose of inspecting, maintaining, installation, operation and repair services of the Premises or adjacent real property.

11. Covenant of Quiet Enjoyment

Lessor warrants and represents that it has full authority to execute this lease for the above term. Lessor covenants that upon Lessee paying the rents and performing its covenants and duties prescribed herein, Lessee may, except as otherwise described herein, have the non-exclusive and reasonable right to have, hold and enjoy the Premises.

12. Lessor's Right to Perform Lessee's Obligation

If Lessee defaults in the observance or performance of any term or covenant of this lease, Lessor may, without thereby waiving the default, remedy the default at Lessee's expense. If, in connection therewith, Lessor makes any expenditure or incurs any obligation for the payment of money or in instituting, prosecuting, or defending any action or proceeding commenced before or during the term of this lease, or after the expiration or termination of this lease including, but not necessarily limited to, legal expenses and attorneys' fees, Lessee shall pay to Lessor on demand the sums paid or obligations incurred together with legal fees and costs.

13. Default by Lessee

- 13.1 If the Lessee fails to perform any obligation under this agreement within 30 days after receiving written notice of the default from the Lessor; the Lessor may terminate this lease.

- 13.2 In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand, the Lessor's costs for curing any defaults, as additional rent under this lease.

- 13.3 The rights and remedies of Lessor shall be cumulative as more particularly provided by law or in equity pursuant to the laws of the State of Michigan.

14. Surrender of Leasehold Upon Termination of Lease

If upon termination of the lease, Lessee has failed to remove its trailer and rowing shells, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

15. Miscellaneous

- 15.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

- 15.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

- 15.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.
- 15.4 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.
- 15.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.
- 15.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- 15.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately followed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

The parties have set their hands on the day and year first above written.

CITY OF MARQUETTE

SUPERIOR KAYAKING COMPANY, LLC

Jennifer A. Smith, Mayor



By: Alexandra Jarvis
Its: Owner

Kyle Whitney, City Clerk

Approved as to Substance:

, City Manager

Approved as to Form:

Suzanne C. Larsen, City Attorney

EXHIBIT A

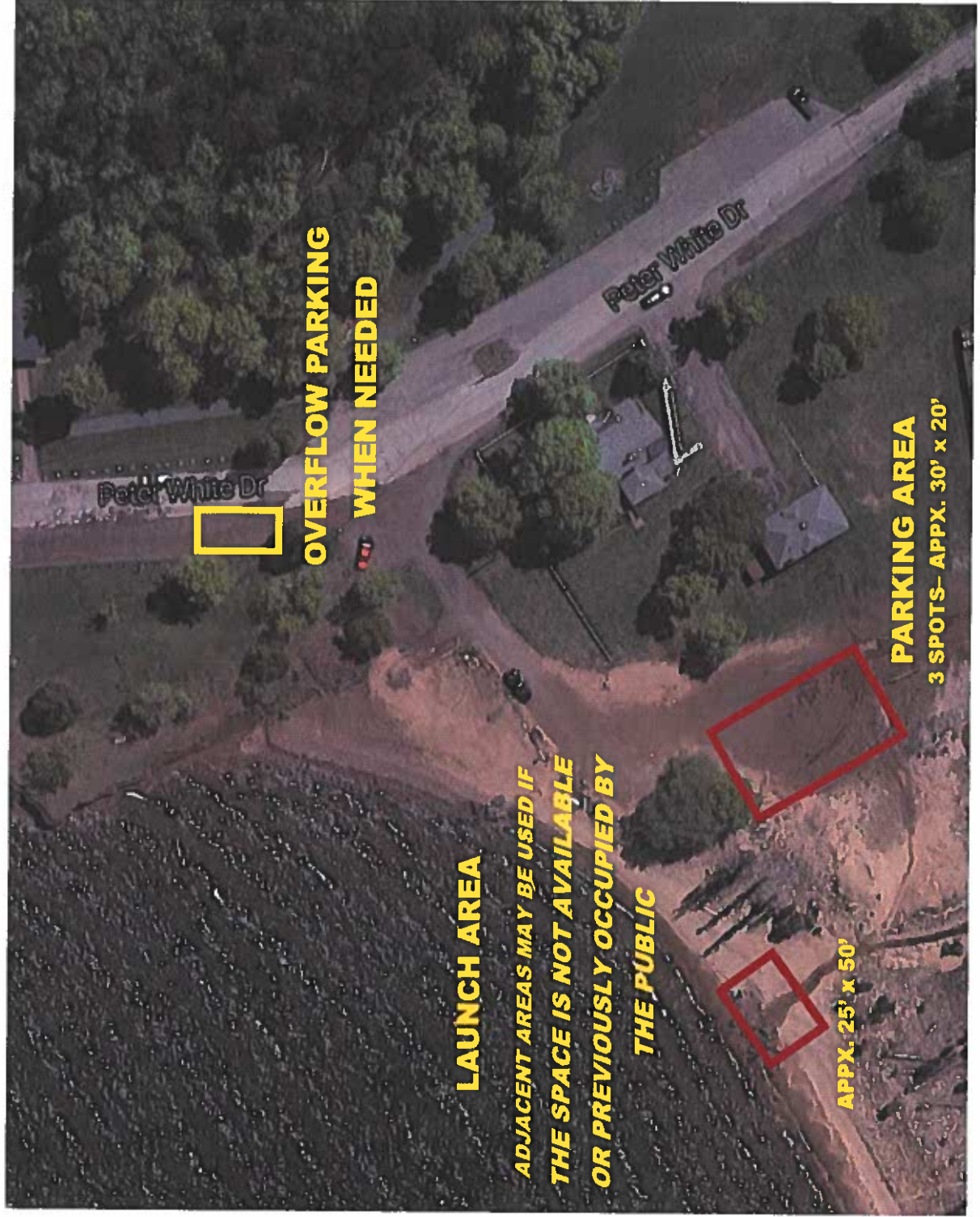


Exhibit B

General Equipment to be Provided

- Sea Kayaks (single or tandem) with front & rear floatation, declines, tow line attachment
- One spare paddle per four boats
- One paddle float and bilge pump per two boats

Equipment to be Carried by Guide

- VHF Radio with weather radio
- Spare clothing for 2-4 people in dry bag
- First Aid Kit
- Repair kit (may include duct tape, mini tool, etc)
- Spare water and food

Safety Equipment to be Provided by Outfitter

- USCG approved PFD
- Sprayskirt
- Whistle
- Paddle
- Dry bags
- Water proof container for emergency medications

Required Certifications

- CPR and First Aid
- Certification/Assessment as a kayak instructor and/or kayak trip leader at a level appropriate to paddling on Lake Superior such as ACA Coastal Kayaking or equivalent training.
 - Issued by a national organization such as the American Canoe Association, Paddle Canada, and/ or British Canoe Union.
 - Can be in training, having completed training and taking assessment within the year.

Operations

- Guide/leader will operate in conditions at or below level of training/certification/assessment.
- All activities are lead and accompanied by at least one guide per five kayaks with a maximum of ten kayaks per tour. Tours must have sufficient time in between groups to ease congestion of parking and patrons at Presque Isle Park.
- All equipment is to be routinely inspected, properly fitted, and in good working order.