

REYBURN SAILING SCHOOL AGREEMENT

This Agreement is entered into by and between the Erie Yacht Club ("EYC") and the Erie Yacht Club Foundation (the "Foundation"), effective June 1, 2017 (the "Effective Date").

Recitals

WHEREAS, EYC is a Pennsylvania Non-profit Corporation which is classified as a social club under Section 501(c)(7) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Foundation is a Pennsylvania Non-profit Corporation which is classified as a charitable organization under Section 501(c)(3) of the Code;

WHEREAS, EYC owns and operates a social club commonly known as the "Erie Yacht Club" which is situated on approximately fifty-nine (59) acres of property on Presque Isle Bay in Erie, Pennsylvania;

WHEREAS, the primary purpose of the EYC is to afford its members the opportunity to enjoy boating on Presque Isle Bay and Lake Erie, and to provide its members other social and recreational activities;

WHEREAS, the charitable purposes of the Foundation include, among others: (1) to promote the establishment and operation of activities which further the understanding and knowledge of sailing, boating and the use of watercraft of all types; (2) to provide scholarships and support to economically disadvantaged children to enable them to participate in maritime related educational activities and competitions; and (3) to foster excellence from the Erie, Pennsylvania, area in regional, national and international boating competitions and events.

WHEREAS, EYC has traditionally conducted a number of activities related to teaching boating skills and other skills relating to the safe operation of both sailboats and motor boats;

WHEREAS, EYC annually conducts a boating school commonly known as the "Reyburn Sailing School" (the "School"), facilitates various collegiate sailing activities, as well as other activities relating to boating education;

WHEREAS, the activities of EYC with respect to the School and other boating education efforts are consistent with, and help to further the charitable purposes of, the Foundation;

WHEREAS, pursuant to that certain Use Agreement dated of even date herewith, the Foundation and EYC have set forth terms and conditions under which the Foundation will fund scholarships for economically disadvantaged children to attend the School;

WHEREAS, in addition to providing scholarships, the Foundation may, from time to time, desire to provide financial support for the School generally; and

WHEREAS, the parties desire to set forth the terms and conditions under which Foundation may, from time to time, provide financial support for the School.

NOW, THEREFORE, and intending to be legally bound hereby, the parties agree as follows:

1. Recitals. The Recitals to this Agreement are incorporated herein by reference as if fully set forth herein.

2. Financial Support.

2.1. Generally. Subject to the terms, conditions and limitations of this Agreement, the Foundation may, from time to time, provide financial support ("Support") for the School, and EYC agrees to accept such Support subject to such terms, conditions and limitations. This Agreement is continuing in nature and shall apply to all Support which may hereafter be provided by the Foundation to EYC for the School.

2.2. Further Conditions. The Foundation reserves the right to place terms and conditions on any particular Support provided by the Foundation to EYC which are in addition to those set forth in this Agreement. Such additional terms and conditions may include, but are not limited to, specifying a particular use for the Support in question.

3. No Commitment of Financial Support. Nothing herein shall be construed as requiring the Foundation to provide Support for the School. The determination of whether to provide Support, and if so, the amount of such Support, shall be solely within the discretion of the Foundation.

4. Certain Terms, Conditions and Limitations.

4.1. Use of Support. Support provided by the Foundation for the School shall be used solely for the purpose of defraying direct costs incurred by EYC in operating the School. Support may not be used to defray indirect expenses of EYC for the School, such as (but not limited to) the allocation of administrative overhead incurred generally by EYC in conjunction with the operation of the School. As set forth in Section 7.2, below, EYC shall maintain adequate records to demonstrate compliance with the requirements of this Section.

4.2. Section 501(c)(3) Requirements. So long as this Agreement is in effect, EYC shall operate the School in a manner which is consistent with all requirements which are applicable to programs operated by an organization described in Section 501(c)(3) of the Code. Such requirements include, but are not limited to:

- (a) EYC shall operate the School on a non-discriminatory basis, *i.e.*, participation in the School shall not be restricted on the basis of race, gender, age, disability or otherwise: *Provided, however*, that the foregoing shall not be construed as limiting the ability of the School to restrict or decline participation in the School with respect to an individual for legitimate, safety based reasons.
- (b) EYC shall not limit participation in the School to members of EYC. Participation shall be open to the public generally.
- (c) EYC shall make reasonable efforts to promote the School to the general public.
- (d) The School shall not be operated in a manner which results in private inurement or any other form of private benefit which would otherwise be prohibited with respect to any organization described in Section 501(c)(3) of the Code.

5. Indemnification. EYC hereby agrees to indemnify and hold harmless the Foundation, its officers, directors, employees, and representatives (collectively, the "Foundation Indemnitees") against all claims, losses, damages, and liabilities (collectively, "Claims"), arising out of or relating to: (1) the operation of the School; and (2) any breach of this Agreement by EYC. The foregoing indemnification obligation shall not apply to Claims arising out of or relating to the sole negligence or willful misconduct of the Foundation

6. Term and Termination.

6.1. Term. This Agreement shall commence as of the Effective Date. This Agreement shall continue in effect until terminated in accordance with Section 6.2 below.

6.2. Termination.

6.2.1. Mutual Agreement. This Agreement may be terminated at any time upon the mutual written agreement of the parties.

6.2.2. Upon Notice. Either party may terminate this Agreement upon thirty (30) days written notice to the other party.

6.2.3. Upon Default. Either party may terminate this Agreement upon an event of default by the other party. For purposes of this Agreement, an "event of default" shall be deemed to have occurred if the defaulting party fails to cure a default under this Agreement within ten (10) days after having received written notice of the default in question and demand for cure from the non-defaulting party. Termination under this Section 6.2.3 shall be effectuated by a separate written notice of termination from the non-defaulting party to the defaulting party following failure of the defaulting to effectuate a cure within the ten (10) day period specified herein.

6.2.4. Effect of Termination. Upon termination of this Agreement, all obligations of the parties under this Agreement shall terminate: *Provided, however,* that all obligations and liabilities under this Agreement accruing prior to or upon termination shall survive termination. Those provisions of this Agreement which by their express terms or by their operation are intended to survive termination, shall survive termination. Such provisions include, but are not limited to, Section 5 above, this Section 6, and Section 7 below.

7. Other Provisions.

7.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the parties with respect thereto. This Agreement may only be amended or modified by a writing which has been executed by authorized representatives of each party.

7.2. Recordkeeping. EYC shall create and thereafter maintain reasonably detailed records of all uses of Foundation Support by EYC pursuant to the terms of this Agreement. Such records shall be created on a reasonably contemporaneous basis with the use of such Support. Such records shall set forth the dates and nature of the uses of any Foundation Support. The Foundation shall have the right to inspect such records during EYC's business hours and to make copies thereof.

7.3. Notice. Any notice required or permitted to be given under this Agreement shall be effective if made in writing and delivered or sent to the recipient certified mail, return receipt requested, to the following person and address:

If to EYC: Erie Yacht Club
 PO Box 648
 Erie, PA 16512
 Attention: General Manager

If to the Foundation: Erie Yacht Club Foundation
 PO Box 648
 Erie, PA 16512
 Attention: Chairman

A party may change its address for receiving notice by giving written notice thereof to the other party in accordance with this Section 7.3.

7.4. Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any applicable principles of conflicts of law which would direct the applications of the laws of another jurisdiction.

7.5. No Assignment. This Agreement may now be assigned by either party without the prior written consent of the other party, which consent may be withheld in the other party's sole discretion.

7.6. Refund of Support. In the event that EYC defaults under this Agreement and fails to timely cure such default, EYC shall refund to the Foundation any Support provided by the Foundation during the period such default was in existence and all Support which was previously supplied by the Foundation to the extent such Support was intended to defray EYC expenses for operating the School during the time period in which EYC was in default.

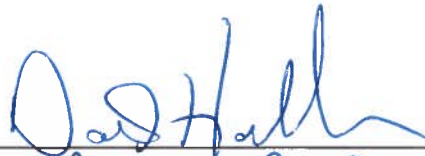
7.7. Effective Date. The parties hereto agree and acknowledge that the Effective Date of this Agreement shall be June 1, 2017, regardless of the actual date(s) of the parties' execution hereof.

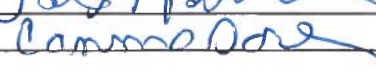
IN WITNESS WHEREOF, the parties, by their duly authorized representatives have executed this Agreement effective the day and year first above written.

ERIE YACHT CLUB

By

Title







ERIE YACHT CLUB FOUNDATION

By

Title





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