

USE AGREEMENT

This Agreement is made and entered into by and between the Erie Yacht Club ("EYC") and the Erie Yacht Club Foundation (the "Foundation"), effective as of June 1, 2017 ("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, EYC has traditionally conducted a number of activities related to teaching boating skills and other skills relating to the safe operation of both sail boats and motor boats;

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, in furtherance of its charitable purposes, the Foundation has constructed, owns and operates a maritime education center (the "Center") on real property of EYC which real property is leased by the Foundation from EYC pursuant to that certain Amended and Restated Ground Lease dated as of the Effective Date (the "Lease");

WHEREAS, the Foundation owns certain assets, and may hereafter own other assets, which are useful in carrying out its charitable activities, including, without limitation, one or more watercraft, boat trailers, floating docks, boating equipment, and boating gear;

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 and safety;

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, the Foundation and EYC desire to set forth the terms and conditions under which the Foundation and EYC can cooperate in the furtherance of their respective missions, to the extent that such missions overlap in the area of boater education.

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

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

2. Use of the Center by EYC.

2.1. Uses Related to Foundation's Charitable Purposes.

2.1.1. Generally. Subject to the terms and conditions of this Agreement, EYC may, from time to time, use the Center for purposes of carrying out activities which are consistent with, and directly further, the charitable purposes of the Foundation. Such uses include, but are not limited to, uses for School related activities and other boater education activities.

2.1.2. Rental. Unless otherwise agreed by the parties in writing, no rental shall be charged EYC for use of the Center for purposes described in Section 2.1.1, above.

2.1.3. Expenses. All out-of-pocket expenses associated with the use of the Center by EYC as contemplated by Section 2.1.1, above, shall be paid by EYC. Such expenses include, but are not limited to, utilities, insurance, personnel costs, and the like.

2.1.4. Scheduling; Frequency of Use. The scheduling of the use of the Center for activities described in Section 2.1.1, above, shall be solely at the discretion of the Foundation. Any such scheduling shall not materially interfere with the Foundation's use of the Center for its own activities: *Provided, however,* that the Foundation and EYC shall exercise reasonable efforts to coordinate their use of the Center to maximize the use of the Center for activities which further the charitable purposes of the Foundation, it being the objective of the Foundation to maximize the use of its assets for the furtherance of the Foundation's charitable purposes.

2.2. Uses of the Center Not Related to Foundation's Charitable Purposes.

2.2.1. Generally. The parties understand that EYC may, on occasion, request the use of the Center for activities which do not directly further the charitable activities of the Foundation. The Foundation, in its sole discretion, may permit such use, subject to the terms, conditions and limitations of this Agreement and the Lease and any agreement into which the Foundation and EYC may enter with respect to a specific use.

2.2.2. Rental. EYC shall pay to the Foundation a rental for the use of the Center for activities as described in Section 2.1.1, above. Such rental shall not be less than the greater of: (1) fair market rental for the Center; or (2) such rental as is charged by the Foundation to unrelated third parties for uses of the Center similar to the use of the Center by EYC. Such rental shall in all events be sufficient to cover all incidental costs which may be incurred by the Foundation in connection with such use, including (without limitation) utilities and janitorial costs. Notwithstanding the foregoing, the rental payable by EYC to the Foundation shall be reduced to the extent of the fair market value of services, goods and utilities as are supplied by EYC free of charge to the Foundation pursuant to the terms of the Lease.

2.2.3. Limitations. Permission to use the Center for uses described in Section 2.2.1, above, shall be at the sole discretion of the Foundation. In no event shall any use of the Center by EYC, and/or the frequency of use of the Center by EYC, be of such a nature as to cause the Foundation to fail to comply with any and all statutory and regulatory requirements and restrictions as are applicable to organizations described in Section 501(c)(3) of the Code.

3. Use of the Equipment Owned by the Foundation.

3.1. Uses Related to the Foundation's Charitable Purposes.

3.1.1. Generally. Subject to the terms, conditions and limitations of this Agreement, EYC may, from time to time, use equipment (including, without limitation, watercraft, boat trailers, floating docks, boating equipment, and boating gear) owned by the Foundation for purposes of carrying out activities which are consistent with, and directly further, the charitable purposes of the Foundation. Such uses include, but are not limited to, uses for School-related activities, collegiate sailing activities, and other boater education and safety activities.

3.1.2. Rental. Unless otherwise agreed by the parties in writing, no rental shall be charged EYC for the use of Foundation equipment for purposes described in Section 3.1.1, above.

3.1.3. Expenses. All out-of-pocket expenses associated with the use of Foundation equipment by EYC, as contemplated by Section 3.1.1, above, shall be paid by EYC. Such expenses include, but are not limited to, fuel, insurance, personnel costs, and the like.

3.1.4. Scheduling; Frequency of Use. The scheduling of the use of the Foundation's equipment for activities described in Section 3.1.1, above, shall be solely at the

discretion of the Foundation. Any such scheduling shall not materially interfere with the Foundation's use of such equipment for its own activities: *Provided, however,* that the Foundation and EYC shall exercise reasonable efforts to coordinate their use of the Foundation's equipment for activities which further the charitable purposes of the Foundation, it being the objective of the Foundation to maximize the use of its assets for the furtherance of the Foundation's charitable purposes.

3.2. Uses of Equipment Not Related to Foundation's Charitable Purposes.

3.2.1. Generally. The parties understand that EYC may, on occasion, request the use of Foundation equipment for activities which do not directly further the charitable activities of the Foundation. The Foundation, in its sole discretion, may permit such use, subject to the terms, conditions and limitations of this Agreement and any agreement into which the Foundation and EYC may enter with respect to a specific use.

3.2.2. Rental; Operating Costs. EYC shall pay to the Foundation a rental for the use of Foundation equipment as described in Section 3.2.1 above. Such rental shall not be less than the greater of: (1) fair market rental for the equipment; or (2) such rental as is charged by the Foundation to unrelated third parties for the use of such equipment. Notwithstanding the foregoing, the rental payable by EYC to the Foundation shall be reduced to the extent of the fair market value of services, goods and utilities as are supplied by EYC to the Foundation free of charge pursuant to the terms of the Lease. EYC shall be solely responsible for all costs which are incidental to the use of such equipment by EYC, including, without limitation, utilities, fuel, insurance, personnel costs and the like.

3.2.3. Limitation. Permission to use Foundation equipment for uses described in Section 3.2.1., above, shall be at the sole discretion of the Foundation. In no event shall any use of the Foundation equipment by EYC, and/or the frequency of use of the Foundation equipment by EYC, be of such a nature as to cause the Foundation to fail to comply with any and all statutory and regulatory requirements and restrictions and are applicable to organizations described in Section 501(c)(3) of the Code.

4. Foundation Scholarship Program.

4.1. Generally. Consistent with past practice, it is the intention of the Foundation to provide on an annual basis scholarships for economically disadvantaged children to participate in the School and School related activities. It is the intention of this Section 4 to set forth the framework for the administration of the Scholarship Program.

4.2. Identification of Recipients. Prior to the beginning of the boating season, the Foundation and EYC shall consult for the purpose of identifying the number of scholarships that will be provided by the Foundation for the boating season and any constraints on the number of scholarship recipients the School is able to accept for such season. Upon agreement by the Foundation and EYC with respect to the number of scholarship recipients, the Foundation and EYC shall cooperate and undertake such activities as are necessary to identify and recruit recipients of the scholarships. It is contemplated that such activities shall include, but not be

limited to, soliciting the assistance of the Boys and Girls Club and other agencies serving economically disadvantaged children in identifying potential scholarship recipients. The Foundation reserves the right to establish eligibility criteria for recipients and pertinent application requirements. The Foundation reserves the right to approve all scholarship recipients.

4.3. Acceptance of Scholarship Recipients. EYC agrees to accept all scholarship recipients into the School, provided that such recipients meet all EYC criteria for School participants. Notwithstanding the foregoing, any such criteria must be non-discriminatory in nature and may not be based on factors other than those necessary for the safety of the students and the safe and efficient operation of the School.

4.4. Tuition Discount. Tuition for scholarship recipients shall be paid directly by the Foundation to EYC. Such tuition shall be discounted so that the tuition paid by the Foundation shall never be greater than the amount of the tuition which would normally and customarily be charged by EYC to others for the School program in question.

4.5. Reporting. Following the end of each School program, EYC shall provide a written report to the Foundation detailing the attendance and performance of the scholarship recipients in the School program in question.

4.6. Cooperation. The parties agree to cooperate with one another in order to facilitate the efficient and effective implementation of the Scholarship Program. Without limiting the foregoing, EYC agrees to promptly advise the Foundation of any issues which may arise with a scholarship recipient, such as (but not limited to) attendance issues.

5. Liability; Insurance; Indemnification.

5.1. Generally. EYC shall be solely responsible for any damage caused to or incurred by any Foundation assets while in use by, or in the possession of, EYC, ordinary wear and tear excepted.

5.2. Insurance Coverage. EYC shall at all times maintain insurance coverages and amounts thereof which are commercially reasonable for similar organizations and activities, including but not limited to comprehensive general liability insurance coverage. The Foundation shall be named as an additional named insured on all such policies, where the Foundation has an insurable interest and is acceptable to the underwriters for such insurance carriers. EYC shall notify the Foundation in the event that an underwriter/insurance carrier refuses to add the Foundation to any policy.

5.3. 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 use or possession of any Foundation assets by EYC; (2) the operation of the School and the participation of Foundation scholarship recipients therein; and (3) 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 first above written. 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. Except as otherwise provided in the Lease, 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 assets by EYC pursuant to the terms of this Agreement. Such records shall be created on a reasonably contemporaneous basis with the use of such assets. Such records shall set forth the dates and nature of the uses of any Foundation

assets, as well as any rentals due with respect thereto. 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 the Foundation: Erie Yacht Club
PO Box 648
Erie, PA 16512
Attention: General Manager

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

[Signatures on next page.]

IN WITNESS WHEREOF, the parties, by their duly authorized representatives have executed this Agreement effective as of the Effective Date set forth above.

ERIE YACHT CLUB

By DoH Hall
Title Commodore

ERIE YACHT CLUB FOUNDATION

By James P. McBrien
Title CHAIRMAN

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