

BOAT STORAGE AGREEMENT

Storage of Private Boat at the Sunnyside Paddling Club Outdoor Compound



THIS AGREEMENT effective as of the day of 20 (the “**Effective Date**”), by and between the **Sunnyside Paddling Club** (also known as the **SPC**) having an office at the Sunnyside Pavilion, 1755 Lakeshore Blvd West, Toronto, Ontario M6S 5A3 E-mail: customerservice@sunnysidepc.ca

| | | |
|----------|----------------|----------------|
| Name: | | |
| Address: | | |
| City: | Province: | Postal Code: |
| E-mail: | Evening Phone: | Daytime Phone: |

(“**User**”).

WHEREAS User desires boat storage facilities for the boat described as:

| |
|---------------------------------|
| Boat Type: |
| Make/Model: |
| Identifying Marks, Colour, etc: |

(together with any replacement or substitute boat, the “**Boat**”);

AND WHEREAS SPC maintains boat storage facilities adjacent to Sunnyside Pavillion as indicated below, (collectively, the “**Boat Storage Facilities**”; each a “**Boat Storage Facility**”) and SPC desires to allocate to User the following boat storage space for the storage of the Boat:

| |
|--------------------------------|
| Boat Storage Space Slot Number |
|--------------------------------|

(together with any replacement or temporary boat storage space, the “**Allocated Space**”), on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the premises and mutual covenants set out in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Term of Agreement.** This Agreement shall commence on the Effective Date and remain in full force and effect until _____ **[Insert Date]**, unless extended pursuant to Section 13, or earlier terminated under this Agreement (the “**Term**”). This Agreement may be renewed on such terms as may be mutually agreed by SPC and User.
- 2. Boat Storage Space.**
 - (a) SPC hereby grants to User the right to occupy and use the Allocated Space to store the Boat during the Term, provided that User pays the annual Boat Storage Fee and complies with the terms and conditions set out in this Agreement.
 - (b) SPC, in its sole discretion, reserves the right to allocate to User at any time during the Term on written notice to User a replacement or temporary boat storage space in place of the Allocated Space, and SPC may enter the Allocated Space and move the Boat to such replacement or temporary boat storage space without notice to User. Without limiting the generality of the foregoing, SPC reserves the right to move a Boat to a less accessible boat storage space if the Boat is inactive, as determined by SPC in its sole discretion, or to a temporary boat storage space pending removal of the Boat in the event of termination of this Agreement.

- (c) User may submit a written request to SPC for a replacement boat storage space if he or she believes that the Allocated Space is inappropriate for his or her needs. SPC may, in its sole discretion, consider any such request and any decision made by SPC shall be final and binding.

3. **Fees and Payment.**

(a) During the Term, User shall pay to SPC, the annual boat storage fee established by SPC from time to time for the Allocated Space (the "**Boat Storage Fee**") for a 12 month period from the date of signing of this agreement (a "**Storage Year**"). As of the Effective Date, the Boat Storage Fee for the Allocated Space is \$250 per Storage Year for small boat craft (Outrigger Canoes 1 and 2 Person, SUPs) and \$400 for Large Craft (Canoes). User agrees that the Boat Storage Fee shall be subject to change, may vary with the type or location of boat storage space, and will be established on an annual basis by SPC, in its sole discretion. The Boat Storage Fee is exclusive of all applicable sales, excise or use taxes levied in connection with the provision of the Allocated Space. (b) The Boat Storage Fee is due and payable in full on or before each Storage Year , payable by EMT to customerservice@sunnysidepc.ca using password "spc2020". The Boat Storage Fee is non-refundable.

4. **Conditions of Use.** User agrees to comply with the following terms and conditions at all times during the Term:

- (a) User may not allow any other persons inside the compound or pavilion under any circumstance without the expressed authorization of SPC
- (b) User may not store any boat or other equipment in the Allocated Space other than the Boat, provided that if the Boat is an outrigger, User may store the Boat, one ama and one pair of iakos in the Allocated Space;
- (c) User may not store the Boat in any boat storage space other than the Allocated Space;
- (d) User must open and close the pavilion and compound as per procedures document provided
- (e) the Boat must be wholly or partially owned by User;
- (f) the Boat must be maintained in seaworthy condition, as reasonably determined by SPC in consultation with User and persons with knowledge of such types of equipment;
- (g) User may not modify or alter the Allocated Space without the prior written consent of SPC;
- (h) User may not use the Allocated Space in a manner that obstructs or interferes with the occupation or use of any adjacent boat storage spaces;
- (i) User must promptly notify SPC of any changes to the description of the Boat stored in the Allocated Space;
- (j) User must be a member of SPC in good standing; and
- (k) User must promptly notify SPC of any changes to User's contact information set out on the first page of this Agreement.

5. **Damage to Property.** During the Term, User shall in the course of his or her use of the Allocated Space take all reasonable steps (including the locking of gates after use of the Boat Storage Facility) to protect the Boat Storage Facility housing the Allocated Space and any boats and other equipment owned by other users housed therein ("**Protected Property**") from any damage and theft and shall be responsible for all damage and theft to the Boat Storage Facility housing the Allocated Space and any Protected Property. If User damages the Boat Storage Facility or any Protected Property in the course of his or her use of the Allocated Space, through negligence, wilful misconduct or otherwise, User shall be responsible for the making good of such damage at his or her cost and expense.

6. **Compliance with Laws.** User shall comply with all applicable federal, provincial and municipal laws, regulations and bylaws and with any rules and regulations established by SPC and the City of Toronto, in effect from time to time regarding the storage of the Boat and the use of the Boat Storage Facilities and the Allocated Space, and no approval by SPC hereunder shall act as a waiver of any such requirements.

Hazardous Conditions; Repairs and Maintenance. User shall at all times be diligent in his or her use of the Allocated Space and will examine and inspect the Boat Storage Facilities and the Allocated Space prior to each use for hazardous or dangerous conditions, including, without limitation, equipment and facilities that have been damaged or made unsafe by vandalism, improper use, normal wear, inadequate maintenance or the actions of other persons. User

accepts all risks of loss or injury (including death) arising from by any activity undertaken in hazardous or dangerous conditions. User shall promptly inform SPC in writing of any hazardous or dangerous conditions at the Boat Storage Facilities of which he or she becomes aware. SPC, without notice to User, may inspect, repair, maintain or replace any part of the Boat Storage Facilities, including the Allocated Space, in its sole discretion, without obligation to do so.

7. **No Warranties.** SPC makes no representations or warranties as to the Boat Storage Facilities or the Allocated Space or the condition or suitability thereof for the Boat or User's purposes and SPC provides, and User accepts, the Allocated Space on an "as-is, where-is" basis.
8. **Risk of Loss.** User acknowledges and agrees that the Boat Storage Facilities are shared use facilities among SPC's members and SPC does not have the resources to continuously monitor the Boat Storage Facilities. The Boat and any other property of User of any kind stored within, on or about the Allocated Space or the Boat Storage Facilities shall be at the sole risk of User. None of SPC, The City of Toronto or their respective administrators, directors, officers, contractors, Agents, members, invitees, volunteers and employees shall be liable to User or any person, including, without limitation, any co-owner of the Boat, for any damage to, or loss of, any property or any injury (including death) to any person relating to the Boat or any other property stored within, on or about the Allocated Space or the Boat Storage Facilities arising from any cause whatsoever, including, but not limited to: fire, theft, vandalism, water damage, mysterious disappearance, rodents, acts of God, or the negligence or wilful misconduct of SPC, The City of Toronto or their respective administrators, directors, officers, contractors, Agents, members, invitees, volunteers or employees. In this Agreement, "**Agents**" shall include any person or organization acting at the direction of or in coordination with SPC.
9. **Insurance:** User acknowledges that SPC carries no insurance for any damages, losses, liabilities, claims, costs and expenses (including legal fees) of any kind whatsoever and howsoever arising (collectively, "**Losses**") that User may suffer or incur in the occupation and use of the Allocated Space and the Boat Storage Facilities or otherwise under this Agreement. User shall be solely responsible for procuring and maintaining adequate insurance coverage at his or her own expense. SPC accepts no liability for the adequacy or inadequacy of any particular insurance policy selected by User.
10. **Indemnification and Release.**
 - (a) User will indemnify and save harmless SPC, The City of Toronto and their respective administrators, directors, officers, contractors, Agents, members, invitees, volunteers and employees (collectively, the "**Indemnified Parties**") from any Losses that the Indemnified Parties may suffer or incur as a result of:
 - (i) the occupation and use of the Allocated Space and the Boat Storage Facilities by User or any other users of the Boat, including, without limitation, any co-owner of the Boat, including any personal injury (including death) or property damage or loss occurring in connection therewith;
 - (ii) the negligence or wilful misconduct of User or any other users of the Boat in or about the Allocated Space or the Boat Storage Facilities; and
 - (iii) any breach by User of any term of this Agreement.This indemnity will survive expiration or earlier termination of this Agreement.
 - (b) User hereby releases and discharges the Indemnified Parties from any and all Losses suffered or incurred, or alleged to be suffered or incurred, by User or any person claiming through User, including, without limitation, any user or co-owner of the Boat, arising out of the occupation and use of the Allocated Space or the Boat Storage Facilities by User or otherwise under this Agreement, including, without limitation, the removal and/or sale of the Boat or other equipment hereunder, even if due to the negligence or wilful misconduct of any of the Indemnified Parties. This release will survive expiration or earlier termination of this Agreement.
11. **Limitations of Liability.** UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL SPC OR THEIR RESPECTIVE ADMINISTRATORS, DIRECTORS, OFFICERS, CONTRACTORS, AGENTS, MEMBERS, INVITEES,

VOLUNTEERS AND EMPLOYEES BE LIABLE TO USER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY CO-OWNER OF THE BOAT, FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SPC and the City of Toronto HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OF ANY CLAIM BY ANY OTHER PARTY.

12. **Holding Over.** If, with SPC's consent, User remains in possession of the Allocated Space after the expiration of the Term and User is not in breach of this Agreement, User will be deemed to be occupying the Allocated Space on a month-to-month basis only, at a monthly boat storage fee equal to one-twelfth (1/12th) of the then-current annual Boat Storage Fee, payable in advance on the first day of each such month, and otherwise on the terms and conditions set out in this Agreement. Either party may terminate such overholding in accordance with the rights of termination under Section 14.

13. **Termination.** This Agreement may be terminated:
 - (a) by User at any time on seven(7) days prior written notice to SPC;
 - (b) by SPC at any time on 30 days prior written notice to User;
 - (c) by SPC immediately on written notice if the Allocated Space is not used within 30 days after the Effective Date, in which case User will be moved to the bottom of the boat storage waiting list;
 - (d) by SPC immediately on written notice, if, for any Storage Year, User has failed to pay the Boat Storage Fee on or before November 30th of such Storage Year, or if, for any overholding period, User has failed to pay the applicable monthly boat storage fee for two (2) consecutive months;
 - (e) by SPC immediately on written notice, if at any time during the Term, User breaches any term of this Agreement and fails to cure such breach within 14 days after written notice from SPC, including, without limitation:
 - (i) failing to remove unauthorized equipment from the Allocated Space;
 - (ii) failing to maintain the Boat in seaworthy condition;
 - (iii) failing to be a member of SPC in good standing; and
 - (iv) failing to comply with applicable laws;
 - (f) by SPC on 30 days prior written notice if the Boat is inactive, as determined in SPC's reasonable discretion, following consultation with User and persons with knowledge of such types of equipment;
 - (g) by SPC in accordance with Section 16; and
 - (h) by SPC immediately on written notice, in the event of termination of the agreement(s) with SPC, The City of Toronto under which SPC derives its rights of occupation and use in respect of the Boat Storage Facility housing the Allocated Space, as the case may be.

14. **Effect of Termination.** Subject to Section 13, in the event of the expiration or earlier termination of this Agreement:
 - (a) User shall cease all use of the Allocated Space except to permanently remove the Boat from the Allocated Space;
 - (b) User shall remove the Boat from the Allocated Space within 14 days after the effective date of termination;
 - (c) if this Agreement has been terminated by SPC for User's breach of the terms hereof, User shall pay to SPC as liquidated damages, the sum of five (5) dollars (\$5.00) for each calendar day after the effective date of termination until the Boat is removed from the Allocated Space, in cash or by cheque payable to "SPC" at the address set out on the first page of this Agreement. User agrees that such liquidated damages are fair and reasonable; and

(d) if the Boat or any unauthorized equipment remains in the Allocated Space 60 days after the effective date of termination, the Boat or equipment shall be deemed to be abandoned and SPC may re-enter the Allocated Space without notice to User, SPC may remove and/or sell or otherwise dispose of the Boat or equipment, and SPC may retain all proceeds from any such sale or disposition.

- 15. **Force Majeure.** If a party is delayed in the performance of its obligations under this Agreement (other than the payment of money) by an event outside its reasonable control, including, without limitation, acts of God and labour disputes, including strikes, lockouts, job actions or boycotts, the party delayed will be relieved of its obligations under this Agreement to the extent of the delay. The damage or destruction of the Boat Storage Facility housing the Allocated Space by fire or other casualty will not entitle User to any refund, abatement or reduction of any Boat Storage Fee paid under this Agreement nor extension of the Term, any law or statute now or in the future to the contrary notwithstanding. If the Boat Storage Facility housing the Allocated Space is destroyed or damaged in whole or in part in a manner that precludes its use for storing boats, SPC shall be under no obligation to rebuild or repair the such damage, and SPC may immediately terminate this Agreement upon written notice to User.
- 16. **No Assignment.** User may not assign, sublease, sublicense or otherwise transfer to any person his or her rights granted under this Agreement, without the prior written consent of SPC in its sole discretion.
- 17. **Independent Legal Advice.** USER CONFIRMS THAT HE OR SHE HAS READ THIS AGREEMENT BEFORE SIGNING IT, UNDERSTANDS THE TERMS AND CONDITIONS HEREOF AND THAT THIS AGREEMENT IS A LEGALLY BINDING CONTRACT. IF USER HAS ANY QUESTIONS CONCERNING THE CONTENT OF THIS AGREEMENT, USER ACKNOWLEDGES THAT HE OR SHE SHALL HAVE CONSULTED A LAWYER FOR INDEPENDENT LEGAL ADVICE.

IN WITNESS WHEREOF SPC and User have executed this Agreement as of the Effective Date.

Sunnyside Paddling Club by its authorized signatory:

Per:

Name:

Title:

SIGNED, SEALED AND DELIVERED in the presence of

Witness Signature

Witness Name

Witness Address

Witness Occupation

User Signature

User Name