

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is entered into as of February __, 2023 by and between the City of Lake Elsinore, a municipal corporation ("City"), and JTS Rentals LLC, a California limited liability company ("Licensee").

RECITALS

This License is made with reference to the following facts which are a substantive part hereof:

A. City desires to encourage and promote public recreational activities at Lake Elsinore.

B. City is the owner of certain real property located at the City of Lake Elsinore Launch Pointe Recreation Destination & RV Park, 32040 Riverside Dr., Lake Elsinore, CA 92530, Assessor Parcel Number 379120008 ("Launch Pointe").

C. Licensee desires to operate a Watercraft Rental Business at a designated location at Launch Pointe from April 1, 2022 through March 31, 2027 in a professional and safe manner.

D. City finds that the Watercraft Rental Business, as defined herein, shall not interfere with, but rather will contribute to the safety and convenience of the general public in the use and enjoyment of, and the enhancement of recreational and educational experiences available in the City and such business is compatible with the general development plans for Lake Elsinore.

E. Licensee desires to obtain from the City a License in order to conduct exclusive Watercraft Rental Business within the designated area at Launch Pointe in accordance with the terms and conditions set forth herein.

NOW THEREFORE, based on the foregoing and the promises, covenants and undertakings contained in this License, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Licensee agree as follows:

1. Definitions. The following terms shall have the meanings set forth below.

"Boats" means a conventional vessel in excess of 13 feet in length and propelled by an such as a pontoon board, speed boat or fishing boat.

"City" means the City of Lake Elsinore, a municipal corporation.

"Director" means the City's Community Services Director or designee.

"Kayak" means a light narrow boat that has both ends tapered to a point and propelled by a double-bladed paddle.

"Launch Pointe" is defined in Recital B.

"Licensee" means JT's Rentals, LLC, and its principals.

"PWC" means a personal watercraft, a vessel 13 feet in length or less, propelled by an engine, that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

“Rental Office” means the modular container or containers placed near the launch ramps of Launch Pointe as shown on the Site Map attached hereto as Exhibit A. Licensee is authorized to use the address of Launch Pointe at 32040 Riverside Dr., Lake Elsinore, CA 92530 to identify the general location of the Rental Office for the purposes of advertising and other promotional materials, maps and navigation systems, provided, however, that Licensee shall not use this address for the purpose of receiving mail.

“SUP” means stand up paddleboard, a surfboard-like apparatus propelled by a single paddle.

“Term Commencement Date” means the date upon which this License has been fully executed by the parties hereto.

“Watercraft” means a Boat, PWC, Kayak, and/or SUP.

“Watercraft Rental Business” means the rental of Watercraft to be conducted at the Rental Office and operations related thereto as further set forth in Section 6.

2. License Term. This License is effective from and after the License Commencement Date through December 31, 2026 (“License Term”). A “License Year” is a period of twelve (12) consecutive calendar months commencing on each January 1 of the License Term, except for the first License Year which commences on the License Commencement Date and ends on December 31, 2022. Except as otherwise specifically stated in this License, references to the “License Term” shall include the original License Term and any extension, renewal or holdover thereof.

3. License Fee.

A. Guaranteed Minimum Annual License Fee. From and after the Term Commencement Date, Licensee shall pay to City during each License Year a Guaranteed Minimum Annual License Fee (“GMALF”) in the amount of \$25,000, payable in five equal \$5,000 installments no later than the first day of May, June, July, August and September of each License Year.

B. Annual Increase to GMALF. The GMALF set forth in Section 3.A shall be increased annually commencing on January 1 of each License Year commencing on January 1, 2023 and each License Year thereafter (each of which day shall be referred to as an “Adjustment Date”). Each Adjustment Date shall be numbered in sequence (e.g., First Adjustment Date, Second Adjustment Date, Third Adjustment Date, etc.). Each such annual increase in GMALF shall be determined as follows:

As used in this License, “Index” means the Consumer Price Index for All Urban Consumers (CPI-U) for the Riverside Area, as published by the United States Department of Labor, Bureau of Labor Statistics. The GMALF will be adjusted to reflect the percentage increase (but not any decrease) in the Index for the month of January of the current License Year, compared with the month of January that is twelve (12) preceding such Adjustment Date.

City shall notify Licensee of each annual increase in GMALF, in writing, as soon as reasonably possible following each Adjustment Date. If the Index ceases to be published, is published less frequently, or altered in some other manner, then the most nearly comparable Index or procedure as determined by City will be substituted.

C. Percentage License Fee. In addition to the GMALF hereinabove agreed to be paid by Licensee, Licensee shall pay to City at the time and in the manner herein specified an additional license fee (sometimes referred to herein as "Percentage License Fee") as follows:

Boats (Pontoon Boats, Ski/Speed Boats, Fishing Boats). Revenue Share based on annual Gross Sales of Boat related Rental Business:

Gross Sales of Boat Rental Business	Revenue Share Percentage
\$0 - \$200,000	2%
\$200,001 – \$300,000	3%
More than \$300,000	5%

PWC. Revenue Share based on annual Gross Sales of PWC related Rental Business:

Gross Sales of PWC Rental Business	Revenue Share Percentage
\$0 - \$200,000	2%
\$200,001 – \$300,000	3%
More than \$300,000	5%

Kayak and SUP. Revenue Share based on annual Gross Sales of Kayak and SUP related Rental Business:

Gross Sales of Kayak and SUP Rental Business	Revenue Share Percentage
\$0 - \$100,000	5%
More than \$100,000	10%

Within fifteen (15) days after the end of each calendar month of the License Term, commencing with the fifteenth (15th) day of the month following the Term Commencement Date, and ending with the fifteenth (15th) day of the month next succeeding the last month of the License Term, Licensee shall furnish to City a statement in writing, certified by Licensee to be correct, showing the total Gross Sales made in, upon, or from the Rental Office during the preceding calendar month (or fractional month at the beginning of the License Term if the Term Commencement Date is other than the first day of a month). Licensee shall also furnish to City a statement of the annual Gross Sales of Licensee within thirty (30) days after the close of each calendar year. Licensee shall pay the Percentage License Fee on a monthly basis within fifteen (15) days following the end of each calendar month during the License Term.

D. The term "Gross Sales", as used herein, means the total gross receipts of all goods, wares and merchandise sold and leased including the actual charges for all services performed by Licensee and fees charged by Licensee and by anyone including subtenant, licensee or concessionaire in, at, from, or arising out of the use of the Rental Office, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without reserve or deduction or inability or failure to collect, including but not limited to sales, leases and services: (a) where the orders therefore originate in, at, from, or arising out of the use in whole or part of any portion of the Rental Office, whether delivery or performance is made from the Rental Office or from some other place and regardless of the place of bookkeeping for, payment of, or collection of any accounts; or (b) made or performed by mail, telephone, or internet orders received or filled in, at,

or from the Rental Office; or (c) made or performed by means of mechanical or other vending machines in the Rental Office (unless such vending machines are for Licensee's employees' exclusive use only); or (d) which Licensee, or any subtenant, licensee or concessionaire, in the normal and customary course of its business, would credit or attribute to its operations at the Rental Office or any part thereof.

Any deposit accepted and retained by Licensee shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Licensee receives payment therefore. Gross Sales shall not include sales taxes, luxury taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services and collected from customers. In calculating Gross Sales, there shall be excluded (or deducted if previously reported or included in Gross Sales):

- i. Cash refunds made to customers in the ordinary course of business;
- ii. Proceeds from the sales of fixtures, equipment, or property which are not stock-in-trade, including bulk sales not in the ordinary course of business;
- iii. Receipts from vending machines used solely by Licensee's employees;
- iv. Goods returned to sources or transferred to or from another store or warehouse owned by or affiliated with Licensee not for the purpose of avoiding the inclusion of the sales price in Gross Sales;
- v. Sums received in the settlement of claims for loss of, or damage to goods; and
- vi. Sales of gift certificates from the Rental Office, provided, however, any gift certificate redeemed at the Rental Office shall be included in Gross Sales when redeemed.

E. The Licensee shall keep at the Rental Office (and shall require any permitted subtenant to keep at the Rental Office) full, complete and proper books, records and accounts of its daily Gross Sales, both for cash and on credit, of each separate department and concessionaire at any time operated in the Rental Office. The City and its authorized agents and employees shall have the right at any and all times, during regular business hours, to examine and inspect all of the books and records of the Licensee, including any sales and use tax reports or returns pertaining to the business of the Licensee conducted in, upon, or from the Rental Office, for the purpose of investigating and verifying the accuracy of any statement of Gross Sales and to allow an audit of the business of Licensee to be made by a certified public accountant of City's selection. If the statement of gross sales previously made to City is found to be inaccurate, then and in that event, there shall be an adjustment, and one party shall pay to the other on demand such sums as may be necessary to settle in full the accurate amount of such Percentage License Fee that should have been paid to City for the period or periods covered by such inaccurate statement or statements. If such audit discloses an inaccuracy of greater than FIVE PERCENT (5%) error with respect to the amount of Gross Sales reported by

Licensee for the period of such report, then the Licensee shall immediately reimburse City the cost of such audit; otherwise the cost of such audit shall be paid by the City. If such audit shall disclose an under-reporting of Gross Sales of more than TEN PERCENT (10%) with respect to the amount of Gross Sales reported by Licensee for the period covered by such report or shall disclose a consistent or intentional under-reporting of Gross Sales as commercially understood within Licensee's business sector or general accounting standards applicable to Licensee's business, such discrepancy or under-reporting shall be deemed conclusively a material breach of this License and shall entitle City to all of the remedies provided in this License, including the right to terminate the License.

4. License. Provided that all of the terms and conditions of this License are fully satisfied, the City hereby grants to Licensee an exclusive license to conduct the Watercraft Rental Business within Launch Pointe. The Watercraft Rental Business shall only be conducted from the Rental Office. The Licensee shall operate all vessels in accordance with all applicable laws, ordinances, resolutions, policies and rules governing the use of Lake Elsinore. Licensee shall not permit any noxious or offensive activity to be carried on upon any portion of Launch Pointe, nor shall anything be done or maintained on the Launch Pointe which may be or become an annoyance or nuisance. The License is subject to all liens, encumbrances, covenants, conditions, restrictions, rights, rights of way, dedications and other matters of title (whether or not of record) existing on the date of this License.

5. Security Deposit. On or before Term Commencement Date, Licensee shall deposit with City a security deposit of \$500 ("Security Deposit"). The Security Deposit shall be held by City as security for the faithful performance by Licensee of all of Licensee's obligations under this License. The Security Deposit shall not bear interest. If any License Fee shall be overdue and unpaid, or if Licensee shall fail to observe or perform any of its obligations under this License, then City may, at its option and without prejudice to any other remedy which City may have on account thereof appropriate and apply such Security Deposit or so much thereof as may be necessary to compensate City in respect of the payment of the License Fee or damage sustained by City due to such breach on the part of Licensee; and Licensee shall forthwith upon demand restore such Security Deposit to the original sum deposited and failure to do so shall be considered a default under this License. Should Licensee comply with all of its obligations under this License and promptly pay all of the License Fee, the balance of the Security Deposit shall be returned in full to Licensee following the end of the License Term.

6. Licensee's Conditions to Operating the Watercraft Rental Business. Licensee agrees to comply with the following conditions:

- A. Rental Business.
 - i. JT's Rentals, LLC shall obtain and maintain a City of Lake Elsinore Business License.
 - ii. Operate a Watercraft rental business from Rental Office.
 - iii. Licensee shall provide a minimum of five (5) Boats and five (5) PWCs for rental from the Rental Office on Friday, Saturday, Sunday and all nationally recognized holidays from May 1st through September 30th from 10:00 a.m. to 6:00p.m. Licensee has the option to rent Watercraft from the Rental Office on all other days during the License Term from sunrise to sunset.

- iv. It is the responsibility of the Licensee to ensure that the area for using Watercraft is safe and that there is sufficient water depth to safely operate such Watercraft.
- v. The Watercraft offered for rental shall be in good operating condition and meet or exceed all State of California and federal safety standards for the public rental of such Watercraft. Watercraft are to be licensed and identified as follows:
 - Each PWC vessel shall display the City's Commercial Pass sticker at all times. The sticker shall be affixed to the vessel within four inches of the vessel's C.F. numbers on the port side. The Commercial Pass is good for a full calendar year (Jan-1 to Dec-31). The City shall provide, at no additional charge, Commercial Lake Use Passes to be kept with each vessel at all times while on the Lake.
 - Each Boat and PWC must be registered with the California Department of Motor Vehicles as a vessel for livery. The certificate of number (CF#s) must be displayed on both sides of the bow.
 - All Boat and PWC vessels shall be labeled as a rental with the company name, clearly visible within 50 feet. An acceptable labeling would be "JT's Rentals".
 - The Licensee shall properly equip the any Watercraft consistent with State of California boating laws.
 - Fueling of Boats and PWCs shall be restricted to a designated area away from the shoreline and boat launch. The designated refueling area shall be fitted with secondary containment which at a minimum shall consist of an impervious ground covering and four inch (4") berms on all four (4) sides. (i.e., tarp overlaying pool noodles).
 - The Licensee shall be responsible for maintaining the Watercraft and safety equipment in good and substantial repair and condition.
 - The Licensee shall maintain a retrieval Watercraft for recovery of disabled Boats and PWCs.
- vi. Licensee shall design, administer and promote the Rental Business to allow the general public ("Participants") to rent Watercraft. In order to assure the highest standard of safety to the Participants, Licensee shall require that:
 - Each Participant follow applicable rules and regulations.
 - Each Participant complete a "Boat and PWC Renter Orientation Checklist" or a similar checklist approved by the Director.

- Each Participant sign the "Waiver & Release Agreement" in the form attached hereto as Exhibit B. The Licensee shall provide the signed "Waiver & Release Agreements" to the City at the end of every month.
 - Each Participant shall be given a copy of the safety flyer.
 - Each Participant have a U.S. Coast Guard approved, wearable and properly sized Life Jackets, provided by Licensee.
- vii. Licensee shall provide, maintain, and repair at its sole cost and expense the materials, supplies, and equipment necessary for the proper conduct of the activities contemplated under this License.
- viii. Licensee shall, in cooperation with the City, maintain web presence for boat rentals to continue under the Launch Pointe brand and Licensee's name to maximize customer base, adding the additional watercraft rentals available at Launch Pointe (that is, PWC, SUP, and Kayak rentals).
- ix. Licensee may install, at its expense and at a location approved by the Director, beach docks for operation of PWC rentals on the water.
- x. Licensee shall establish and maintain a reservation system for Watercraft rental to the general public allowing for advance reservations as determined by Licensee and a priority reservation system for Participants with confirmed guest reservations at Launch Pointe allowing such Launch Pointe guest to reserve a Watercraft up to sixty (60) days in advance

B. Maintenance of Launch Pointe.

- i. City shall provide reasonable non-exclusive ingress and egress through Launch Pointe to the Rental Office for purposes of operating the Watercraft Rental Business. With respect to the use of the Rental Office and the Boat Launch, Licensee shall:
- Maintain the Rental Office in a condition that matches the level of maintenance of Launch Pointe. The Rental Office and surrounding area shall be free from weathered or tattered equipment and free from trash and debris.
 - Licensee shall grant access to the City to review and inspect the Rental Office with no notice.
 - All temporary advertisement banners, must be maintained and free from discoloration and signs of weathering.

C. Special Events; Closure.

- i. Licensee shall notify the Director in writing, at least sixty (60) days in advance, of any special event request and obtain a Special Events Permit in accordance with applicable provisions of the City's Municipal Code.
- ii. City reserves the right to schedule special events in the Lake. Licensee shall be notified of dates and type of event no less than thirty (30) days in advance. Under no circumstances shall City be required to compensate Licensee as a result of such events, provided, however, that City may provide an alternative temporary location upon which to operate the Rental Business.
- iii. City reserves the right to close the Lake and/or Launch Pointe or portion thereof without notice for reasons of potential adverse health, safety and other unforeseen situations. Under no circumstances shall City be required to compensate Licensee as a result of such a closure. The City may or may not temporarily relocate operations depending on the conditions of the health or safety concern.

7. City's Obligations Related to the Watercraft Rental Business. City agrees to comply with the following conditions:

A. Responsibilities of City.

- i. City shall provide the container or containers that comprise the Rental Office.
- ii. City shall provide storage space for all Watercraft at Launch Pointe (either in a container that is part of the rental office or a designated area within Launch Pointe).
- iii. City shall cooperate with Licensee in marketing and advertising of the Watercraft Rentals offered at Launch Pointe, including allowing advertisement of rental operations to be displayed on Launch Pointe Façade.
- iv. City shall provide parking for one (1) vehicle per Watercraft Rental, a list must be provided to Launch Pointe's manager no later than 24 hours prior to rental date.
- v. City shall provide designated dock space for docking prior to Watercraft rental and retrieving Watercraft upon completion of rental.

8. Liens. Licensees shall not suffer or permit to be filed or enforced against Launch Pointe any mechanics', laborers', materialmen's, contractors', subcontractors' or any other liens arising from any work performed or caused to be performed by the Licensee as a result of the use of the Launch Pointe by the Licensee or the public. Licensee shall pay all such liens before any action is brought to enforce the same against Launch Pointe. City shall have the right to post and maintain on the Launch Pointe such Notices of Non-responsibility as desired by City or as may be provided by law.

9. Suspension of Watercraft Rental Business. City may, in the exercise of its discretion, suspend operation of the Watercraft Rental Business when the City deems Licensee's operation of the Watercraft Rental Business as failing to follow the safety requirements as set forth in Section 6 and/or otherwise needlessly endangering the public's health and safety.

10. Inspections. The City hereby reserves the right to enter upon the Rental Office at any time to inspect, investigate, and survey the Rental Office, the Watercraft and the Watercraft Rental Business as deemed necessary for administration and enforcement of the terms of this License, or to determine the need for any actions necessary for operation of the Watercraft Rental Business as provided herein.

11. Independent Contractor. It is understood that Licensee shall act as and be an independent contractor and shall not act as an agent or employee of the City. Licensee acknowledges that the use provided hereunder is intended by City to result in the access to and enjoyment in the particular water-related activities conducted. Licensee has the sole responsibility for ensuring that the activities are conducted in a reasonable and prudent manner.

12. Compliance with Laws. Licensee shall comply with all applicable federal, state and local laws, codes, ordinances and regulations. Licensee shall not have any outstanding charges with any local, state, or federal regulatory agencies.

13. Permits. Licensee represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals which are legally required of Licensee. Licensee represents and warrants to City that Licensee shall, at its sole cost and expense, keep in effect or obtain at all times during the License Term, any licenses, permits, insurance and approvals which are legally required of Licensee. Licensee shall also maintain a City of Lake Elsinore business license.

14. Indemnification; Waiver. The parties agree and acknowledge that the Watercraft Rental Business which the Licensee will operate may require participants to perform strenuous or exacting physical activities; therefore, Licensee agrees to indemnify and hold City and its employees, officers, directors, agents and contractors (collectively, "City's Representatives") harmless, and to defend City and the City's Representatives with counsel reasonably satisfactory to City, from and against any and all liabilities, losses, actions, damages, obligations, judgments, costs and expenses (including, without limitation, attorneys' fees) (collectively, "Liabilities") which City or any of the City's Representatives may incur or suffer arising out of or in any manner connected with (i) the use of Launch Pointe by the Licensees or the public or (ii) the breach of or failure of Licensee to perform any of Licensees' covenants contained in this License.

15. Non-liability. To the fullest extent permitted by law, neither City nor any of the City's Representatives shall bear any responsibility for any Liabilities arising out of or in any manner connected with any person's use of Launch Pointe, and all persons using Launch Pointe do so completely at their own risk.

16. Insurance Requirements.

A. Insurance. Licensee, at Licensee's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Licensee shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Licensee shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Licensee for City. In the event that Licensee is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Licensee shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Licensee shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Licensee shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Licensee arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

iv. Watercraft Liability Coverage. Licensee shall maintain watercraft liability insurance appropriate for occurrence for bodily injury, personal injury and property damage, and cover such services whether they are provided by the Licensee or by its employees, subcontractors, or subcontractors. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

B. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability

arising out of work performed by or on behalf of the Licensee, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Licensee shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

D. Certificates of Insurance. Licensee shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

17. Amendment. This License may be amended, modified or terminated only by an instrument in writing executed by Licensee and City agreeing to amend, modify or terminate this License.

18. Survival. The obligations under this License shall survive the expiration of the License and the License Term; provided, however, in no event shall Licensee have the right to use Launch Pointe after the expiration of the License Term nor shall the public have the right to use Launch Pointe for such an operation after such time.

19. Licensee Defaults. For the purpose of this License, the term "Default by Licensee" shall mean the occurrence of any one or more of the following events:

- A. Failure by Licensee to pay when due any payment of the License Fee or any other sum of money payable under this License, provided that such failure shall continue for a period of five (5) days after the date Licensee receives written notice from City of such failure;

- B. Failure by Licensee to pay any premium for insurance required under this License, or any other sum required to be paid by Licensee pursuant to this License provided that such failure shall continue for a period of five (5) days after Licensee receives written notice from City of such failure or failure by Licensee to maintain any insurance required under this License;
- C. Failure of Licensee to manage, operate, maintain, or use the Rental Office for two consecutive weekends beginning May 1st through September 30th;
- D. Commencement of any action or proceeding by or against Licensee under any federal or state bankruptcy or insolvency law or other debtors relief law, whether now or hereafter in force, including (but not limited to) any action or proceeding to have Licensee declared bankrupt and any action or proceeding seeking reorganization of Licensee or seeking an arrangement with all or some of Licensee's creditors, whether or not a trustee or receiver is appointed, provided that such action or proceeding continues without dismissal for a period of ninety (90) days after its commencement;
- E. Appointment, either voluntarily or involuntarily, of a receiver, trustee, keeper, or other person to take possession of all or substantially all of the assets of Licensee, if such appointment and possession continues without dismissal for a period of ninety (90) days after commencement;
- F. Execution by Licensee of an assignment for the benefit of its creditors of all or substantially all of its assets that are available by law for the satisfaction of claims of judgment by creditors of Licensee; or
- G. Failure by Licensee to perform or comply with any other term, covenant, or provision of this License including, but not limited to, the obligation to operate the Watercraft Rental Business, not cured within five (5) days after Licensee receives written notice from City of the default (which notice shall specify the particulars of such default), or, in the case of a default reasonably requiring more than five (5) days to cure, not cured within a reasonable time after the giving of such notice, provided that the curing of the default is commenced within the five (5) day period after City gives Licensee notice of such default and is diligently and in good faith pursued and executed to completion.

In the event of any Default by Licensee under this License that is not cured by Licensee within any applicable grace period, and in addition to any and all other rights or remedies of City hereunder, or as provided by law or in equity, City may exercise the following remedies at its sole option:

- H. Termination. In the event of any Default by Licensee, City shall have the right to terminate this License and the License granted herein by giving Licensee written notice of termination. No act by or on behalf of City (such as entry onto the Rental Office by City to perform maintenance and efforts to seek another Licensee), other than giving Licensee written notice of termination, shall terminate this License. If City gives such notice, this License and the License Term, as well as the license, right, and interest of Licensee under this License, shall wholly cease and expire (except as to

Licensee's liability) on the date specified in such notice as if such date were the expiration date of the License Term without the necessity of re-entry or any other act on City's part.

- I. City shall be entitled to recover from Licensee, without limitation, as damages any amount necessary to compensate City for all the detriment proximately caused by Licensee's failure to perform its obligations under this License, or which in the ordinary course of things would be likely to result therefrom, including, without limitation, attorneys' fees and costs; provided, however, the City shall have no right to consequential damages.
- J. Right to Continue the License. City has the right, but not the obligation, to continue this License in effect after a Default by Licensee, and may recover License Fees when due for so long as City does not terminate this License. Upon a Default by Licensee, City's acts of preservation, efforts to find another Licensee, or the appointment of a receiver to protect its interest under this License shall not constitute a termination of Licensee's License interest.

Notwithstanding the foregoing, three (3) or more (consecutive or otherwise) Defaults by Licensee occurring within a 12-month period shall constitute an automatic default hereunder without any further obligation on the part of City in any way and shall entitle City to immediately terminate this License and the License granted herein by giving Licensee written notice of termination.

20. Default by City. For the purpose of this License, the term "Default by City" shall mean the occurrence of any one or more of the following events:

- A. Failure by City to provide access to the Rental Office;
- B. Default or breach by City of any other term, covenant, or provision of this License, other than providing necessary access to the Rental Office to the Licensee, not cured within fifteen (15) days after City receives written notice from Licensee of the default (which notice shall specify the particulars of such default), or, in the case of a default reasonably requiring more than fifteen (15) days to cure, not cured within a reasonable time after the giving of such notice, provided that the curing of the default is commenced within the fifteen (15) day period after Licensee gives City notice of such default and is diligently and in good faith pursued and executed to completion.

In the event of any Default by City under this License that is not cured by City within any applicable grace period of 48 hours, Licensee shall have all other rights and remedies available hereunder, or as provided by law or in equity, including the right to terminate this License or continue this License in effect, and collect all damages directly and indirectly caused by the Default by City (provided, however, Licensee shall have no right to consequential damages) and the right to enforce specific performance of this License.

21. Entire Agreement. This License includes Exhibits A, B, and C which is attached hereto and incorporated by reference herein. This License constitutes the complete exclusive statement of License between the City and Licensee. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this License.

- 22. No Automatic Renewal of License.** This license shall not automatically renew.
- 23. Construction.** Headings in this License are for convenience only and are not part of this License. When the context so requires, words in the masculine, feminine or neuter gender shall include each other gender; and words in the singular or plural shall include each other. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this License. This License is executed and delivered in the State of California and shall be construed and enforced in accordance with and governed by the laws of the State of California.
- 24. Severability.** In the event any portion of this License shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this License and the remaining part of this License shall remain in full force and effect, as fully as though such invalid, illegal and unenforceable portion had never been part of this License.
- 25. Controlling Law and Venue.** This License and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this License shall be held exclusively in a state court in the County of Riverside. The Licenses contained herein shall not be construed in favor or against either party, but shall be construed as if all parties prepared this License.
- 26. Interest.** Any amounts required to be paid by one party to the other party under this License shall bear interest from the date due until paid at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by applicable law.
- 27. Attorneys' Fees.** If any action is brought to enforce this License, the prevailing party(s) shall be entitled to recover all costs and expenses of the action including reasonable attorneys' fees.
- 28. Mediation.** The parties agree to make a good faith attempt to resolve any disputes arising out of this License through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.
- 29. Entire Agreement.** This License contains the entire agreement between the parties concerning the subject matter of this License and supersedes any and all other prior agreements, understandings, or negotiations concerning such subject matter.
- 30. Enforcement.** Enforcement of this License may be by any proceeding in law or in equity against any person or persons or entity or entities violating or attempting to violate any of the provisions of this License, and any party enforcing this License may seek to enjoin or prevent such violating party or parties from doing so, may seek to cause any violation to be remedied and/or to recover damages for any violation.
- 31. Notices.** All notices or other communications required or permitted under this License shall be in writing and shall be delivered personally or sent by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as set forth below.

Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Lake Elsinore
 Attn: City Manager
 130 South Main Street
 Lake Elsinore, California 92530

If to Licensee: JTS Rentals LLC
 Attn: John Alarcon
 32005 Sugarbush Lane
 Lake Elsinore, CA 92532

Any party may, by notice to the other, designate a different address for notices which shall be substituted for that specified above. All notices and other communications given as provided in this paragraph shall be effective upon receipt.

32. Counterparts. This License may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

33. Authority to Enter License; Administration. Licensee has all requisite power and authority to conduct its business and to execute, deliver and perform the License. The individual who has signed this License on behalf of the Licensee has the legal power, right, and authority to make this License and to bind Licensee. The City Manager of the City shall execute and administer this License on behalf of the City. The City Manager, or authorized representative, shall have the authority to issue interpretations, waive provisions, enter into amendments and extend the Initial Term of this License. Notwithstanding the foregoing, the City Manager may in his/her sole and absolute discretion determine that any matter in connection with this License will be presented to the City Council.

34. Prohibited Interest. Licensee maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Licensee, to solicit or secure this License. Further, Licensee warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Licensee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this License. For breach or violation of this warranty, City shall have the right to rescind this License without liability. For the term of this License, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this License, or obtain any present or anticipated material benefit arising therefrom.

IN WITNESS WHEREOF, the parties have executed this License on the date set forth below.

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

Date: _____, 2022

By: _____
Jason Simpson, City Manager

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

“LICENSEE”

JTS RENTALS LLC, California limited liability company

Dated: _____, 2022

By: _____
Lashel Trigg, Member/CEO

EXHIBIT A

SITE MAP

EXHIBIT B

WAIVER & RELEASE AGREEMENT

I, _____ (First, Middle, Last), fully understand that my participation in using a boat, personal water craft/jet ski, SUP, or Kayak as either the Licensee or as a passenger (hereinafter the "activity") in the waters of Lake Elsinore pursuant thereto exposes me to the risk of personal injury, death or property damage. I hereby acknowledge that I am voluntarily participating in this activity and agree to assume any such risks.

I hereby release, discharge, hold harmless and agree not to file a law suit against JT's Rentals, LLC and/or the City of Lake Elsinore, its officers, agents and employees for any injury, death or damage to or loss of personal property arising out of, or in connection with, my participation in the activity from whatever cause, including the active or passive negligence of JT's Rentals, LLC and for the City of Lake Elsinore or any other participants in the event class.

In consideration for being permitted to participate in the event class, I hereby agree, for myself, my heirs, administrators, executors and assigns, that I shall indemnify and hold harmless JT's Rentals, LLC and/or the City of Lake Elsinore its officers, agents and employees from any and all claims, demands, actions or suits arising out of or in connection with my participation in the event class.

I HAVE CAREFULLY READ THIS RELEASE/HOLD HARMLESS AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT IT IS A FULL RELEASE OF ALL LIABILITY AND I SIGN IT OF MY OWN FREE WILL.

Date: _____

Signature

Parent/Guardian if under age 18

