



## TERMS AND CONDITIONS

### FOR GAVINS POINT YACHT CLUB EQUIPMENT USE AGREEMENT

In this Contract, the words “my” “me” “I” “you”, “your”, and “Operator” shall refer to the Operator named above where appropriate. The words “club” “we”, “our”, “us”, and “Management” shall refer to the Gavins Point Yacht Club, the land and property associated with the Gavins Point Yacht.”

**EQUIPMENT USAGE:** We hereby allow you, and you hereby agree to use our sailing boats and associated items which can or may consist of sailing vessels, rigging, safety devices, life jackets, flotation devices, rope, sails, and other items associated with sailing and sailing activities (“Equipment”).

**You agree to abide by the following:**

TERMS and CONDITIONS, BELOW, and all additional written rules and procedures posted at the Club or delivered to you in any manner.

- All Club Equipment is to be used by authorized, and current Club members only.
- The minimum age to operate any Club Equipment without an adult present on the watercraft is 14.
- You will notify any Club officer of the intended use of any Equipment via verbal, text, email methods, AND document such use in the official Club log-book located in the large storage box on Hobie Beach.
- You will operate any Club Equipment in a safe and proper manner, and in accordance with the rules of the laws of South Dakota and the United States of America.
- You will operate any Club Equipment in a safe and proper manner including, but not limited to the maneuvering of any vessel on the water, on the beach, or while transitioning between beach/water so as to ensure your safety, and the safety of others, and keep safe from all hazards whether on land, on water, or below the water.
- You acknowledge that operating any Equipment (sailboat, kayak, or any other vessel) requires a skill, and an understanding of the mechanics of each vessel, to ensure it is properly set up, launched, operated, and returned safely.
- You will only operate Club Equipment within your own skills and limitations to ensure your safety, and for the safety of anyone who may be with you.
- You understand that weather conditions can change rapidly, and it is necessary for you to monitor changing weather conditions so-as-to to operate any Equipment within your skills and abilities, for your safety, and the safety of others.
- As a parent or guardian, you take full responsibility for the use of any Club vessel by a minor (under age 18) who is under your control/authority. You further acknowledge that it is your responsibility to have an awareness of said minor's skills and competency, and will only allow said minor's use of any Equipment if they can do so safely.
- As a parent or guardian you will not permit the independent use of any Club Equipment by a minor under your authority who is also under 14 years of age.
- You understand it is your responsibility to wear a personal flotation device.
- When finished using any Club Equipment, you will ensure all Equipment is properly returned/stowed, and secured.
- The Operator shall be solely responsible for any, and all loss or damage to the property, caused by the Operator.
- No pets are allowed on Club Equipment.
- You understand that failure to follow any of these guidelines may result in the loss of use of any Club Equipment.

**UNCONDITIONAL LIABILITY WAIVER AND RELEASE OF GAVINS POINT  
YACHT CLUB**

I hereby agree to participate and/or engage in the use of the Equipment and the Club upon the understanding and agreement that:

1. I REPRESENT TO THE CLUB THAT I AM PHYSICALLY CAPABLE OF PARTICIPATION IN SAILING SPORTS AND CAN SAFELY SWIM AND THAT I AM COMFORTABLE WITH THE WATER. I WARRANT AND REPRESENT TO YOU THAT I HAVE NO DISABILITY, IMPAIRMENT OR AILMENT PREVENTING ME FROM ENGAGING OR PARTICIPATING IN ACTIVITY THAT WILL BE DETRIMENTAL OR INJURIOUS TO MY HEALTH, SAFETY, OR PHYSICAL CONDITION WHEN SAILING AT THE CLUB.
2. I AM AWARE OF THE RISKS OF ILLNESS, SEVERE INJURY, INCLUDING DEATH, DISMEMBERMENT, BLINDNESS DUE TO POKING OR HEAD INJURY, PARALYSIS, AND OTHER LIFE ALTERING INJURIES THAT ARE INHERENT IN SAILING; THESE INJURY RISKS INCLUDE, BUT ARE NOT LIMITED TO FALLS, CRASHES, BROKEN BONES, SOFT TISSUE INJURIES OF ALL TYPES, DROWNINGS, BOAT COLLISIONS, INJURIES OR BITES/ENCOUNTERS WITH INSECTS AND NATURALLY OCCURRING ANIMALS AT THE CLUB, AND ALL OTHER MANNERS OF INJURIES ARISING FROM SAILING OR USE OF THE CLUB, WHETHER OR NOT THE INJURY OR EVENT IS SPECIFICALLY NAMED ABOVE (ALL THE "ASSUMED RISKS"). I AM PARTICIPATING IN THE CLUB'S EQUIPMENT USAGE PROGRAM UPON THE EXPRESS UNDERSTANDING THAT I HEREBY INDEMNIFY, WAIVE AND RELEASE AND AGREE NOT TO SUE THE CLUB OR ANY INDIVIDUAL MEMBER, OFFICER, EMPLOYEE, OR AGENT OF THE CLUB OR ASSOCIATED INDIVIDUALS, MANAGERS, LESSOR'S EMPLOYEES, DIRECTORS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, "RELEASEES") FOR DAMAGES OR INJURIES OF ANY KIND AND FURTHER RELEASE AND ABSOLVE ANY RELEASEES FROM ANY AND ALL CLAIMS, COSTS, LIABILITIES, EXPENSES OR JUDGEMENTS, INCLUDING ATTORNEY'S FEES AND COURT COSTS (HEREAFTER REFERRED TO AS THE "CLAIMS") ARISING OUT OF MY PARTICIPATION IN OR USE OF THE CLUB OR EQUIPMENT, OR ANY ASSUMED RISKS, ILLNESS OR INJURY RESULTING THEREFROM, AND HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS RELEASEES FROM AND AGAINST ANY AND ALL SUCH CLAIMS. THIS WAIVER APPLIES REGARDLESS OF THE CAUSE OF ACTION PLEAD, OR LEGAL THEORY OF RECOVERY AND WHETHER SOUNDING IN LAW, CONTRACT, OR EQUITY.
3. I RECOGNIZE SAILING IS NOT SAFE AND INHERENTLY DANGEROUS AND CARRIES A HIGH DEGREE OF LIKELIHOOD THAT I COULD BE SUBJECT TO ONE OF THE ASSUMED RISKS, AS SUCH, I AGREE TO TAKE APPROPRIATE ACTIONS TO PROTECT MY OWN SAFETY AND HEALTH, INCLUDING FOLLOWING ALL SIGNS AND DIRECTIONS POSTED AT THE CLUB AND WEARING THE MOST APPROPRIATE PROTECTIVE GEAR THAT I CHOOSE. I ASSUME FULL RESPONSIBILITY FOR MYSELF, AND SHALL INDEMNIFY, DEFEND AND HOLD RELEASEES HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY INCURRED BY THEM.
4. **THIS DOCUMENT RELEASES ALL THE RELEASEES FOR PERSONAL INJURY, WRONGFUL DEATH, AND PROPERTY DAMAGE FROM ANY CAUSE, INCLUDING BY NEGLIGENCE. I HAVE READ THIS WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, FULLY UNDERSTAND ITS TERMS, AND UNDERSTAND THAT I AM GIVING UP SUBSTANTIAL RIGHTS, INCLUDING MY RIGHT TO SUE. I ACKNOWLEDGE THAT I AM SIGNING THE AGREEMENT FREELY AND VOLUNTARILY AND INTEND BY MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY SOUTH DAKOTA AND/OR NEBRASKA LAW.**

**RULES AND REGULATIONS:** Member agrees to abide by all membership rules and regulations, which may be posted at the Club, issued orally, published in a newsletter, or posted to the website. These rules may be amended from time to time at Management's discretion.

**ENTIRE AGREEMENT:** This Contract constitutes the entire and exclusive agreement between the parties. Any promises, representations, understanding and/or agreement pertaining directly or indirectly to this Contract,

Primary Membership Name/Number: \_\_\_\_\_

which is not contained herein, are of no force or effect.

**ALCOHOLIC BEVERAGES ARE PROHIBITED ON OR WHILE USING THE EQUIPMENT: No alcoholic beverages or controlled substances are allowed to be carried or consumed at the Club while using the Club's Equipment or consumed or carried onto the Equipment. Anyone who is, or is alleged, to be under the influence of alcoholic beverages or controlled substances shall be removed from the Equipment or the Club as appropriate.**

## **Parental Consent Liability Waiver and Covenant Not To Sue**

**IF YOU ARE UNDER THE AGE OF 18 YOUR PARENTS OR GUARDIANS MUST READ AND SIGN BELOW. IF THE OPERATOR IS UNDER 18 YEARS OLD, TWO OR BOTH PARENTS MUST SIGN UNLESS ONLY ONE PARENT IS LIVING OR UNLESS ONLY ONE PARENT HAS SOLE LEGAL CUSTODY. IF ONLY ONE PARENT SIGNS, HE OR SHE WARRANTS AND REPRESENTS THAT HE OR SHE HAS SOLE LEGAL CUSTODY OF THE CHILD.**

I am the parent or guardian of the child identified in the information section of the Equipment Usage Agreement, the Operator is under the age of 18. I as parent or legal guardian have read the Section entitled LIABILITY WAIVER AND RELEASE OF GAVINS POINT YACHT CLUB, and acknowledge the inherent risks of sailing and recognize that this sport is considered dangerous, and that injury or death is a risk. I have specifically explained to the Operator about the Assumed Risk that the child has undertaken and explained to the child that he is giving up the right to sue indefinitely. I sign below on behalf of my child or guardianship and agree to the LIABILITY WAIVER AND RELEASE of all the Releasees on behalf of the child, having first informed my child of the Assumed Risk and gained my child's consent. I also agree that should this release and waiver not to sue be invalid on behalf of my child, so that the child may bring a cause of action against any of the Releasees, that I or we as individuals, will indemnify, defend, and hold harmless the Releasee's from the claims of the child identified in the Operator information section, and that I or we will defend and indemnify the Releasees, to the extent stated in the Section entitled LIABILITY WAIVER AND RELEASE OF Gavins Point Yacht Club, from all claims of the child on behalf of which I/we are signing.

Date: \_\_\_\_\_

Name of minor Member, (print) \_\_\_\_\_

Parent's Name, (print) \_\_\_\_\_ Parent's Signature, sign) \_\_\_\_\_

Parent's Name, (print) \_\_\_\_\_ Parent's Signature, sign) \_\_\_\_\_