

AGREEMENT

THIS AGREEMENT is made on this ___ day of _____, 20__ by and between the CITY OF KEY WEST, FLORIDA, hereinafter called "City" and the Executive Adventures LLC dba World Sailfish Championship, hereinafter called "World Sailfish".

WITNESSETH:

WHEREAS, World Sailfish desires to hold an annual event commonly referred to as the World Sailfish Championship at Mallory Square in the City of Key West; and

WHEREAS, the parties desire to set forth their mutual understanding in a formal Agreement; and

WHEREAS, World Sailfish requires the provision of additional or extraordinary support services from City in order that said the said event may be held in Key West, Florida.

NOW, THEREFORE, in consideration for the mutual promises and covenants contained herein, it is mutually agreed between City and the World Sailfish as follows:

1. Term:

The term of this agreement shall be for five (5) years commencing on the ___ day of _____, 2011, and shall apply to World Sailfish Championship activities to be held during the years 2012 through 2016 for a period of ten days annually. Each year, no fewer than 90 days before the event, World Sailfish shall supply the City the schedule of events for that year, which shall become an attachment to this Agreement.

2. Demised Area:

World Sailfish shall have the use of Mallory Square and parking spaces in the adjacent parking lot as shown on the attached Exhibit "A", hereinafter the "Demised Area". City reserves the right, upon notice given within 30 days after the event ends, to re-locate the event for the succeeding year to a comparable sized area in the Truman Waterfront upon completion of the park improvements. In the event that World Sailfish does not agree with the re-location, World Sailfish shall have the right at its sole option and as its sole remedy, to terminate this agreement, within 30 days of the receipt of the re-location notice.

3. Use:

- a. World Sailfish may utilize the Demised Area for the purposes of holding activities consistent with the World Sailfish Championship including the placement of tents for the event, Sponsor Village, food and alcohol, and concert area.

- b. World Sailfish shall work with the City who will coordinate the use of the Demised Area with the Cultural Preservation Society, Waterfront Playhouse, and all other businesses surrounding Mallory Square to provide for minimum business disruption. In no circumstance shall World Championship's use of the Demised Area negatively affect ingress and egress to Mallory Square.
- c. World Sailfish will comply with all laws and city ordinances governing use of city property, including but not limited to, consumption of alcohol, noise control and exemptions, and will obtain any and all necessary permits, including special event permits, licenses and/or approvals that may be required.

4. User Fees

- a. World Sailfish shall pay the City a user fee, to include 8 parking spaces, as follows:

2012	\$3500.00
2013	\$4000.00
2014	\$4500.00
2015	\$5000.00
2016	\$5000.00

There will be no additional charge for the parking lot should the event choose to have a free concert for the City.

- b. Additionally, World Sailfish agrees to make charitable contributions to local and/or national 501(c)3 organizations of World Championship's choosing. World Sailfish agrees to provide to the City an affidavit and accounting of the revenue and distribution of the charitable contributions within 90 days of the completion of the event, annually.

5. Payment for City Services

- a. Pursuant to section 6-26 of the Code of Ordinances of the City of Key West, World Sailfish shall pay the actual cost for the provision of additional or extraordinary services, as requested by World Sailfish, and provided by the City, in addition to all other fees provided for in section 6-26. No later than 30 days after World Championship ceases use of the Demised Area each year of the event, the City will provide to World Sailfish an itemized invoice of actual costs incurred for all services, in accordance with the then current rate schedule, rendered in connection with the events approved by this Agreement. No later than 30 days after receipt of the said invoice, World Championship shall make payment to City. Should there be any additional costs incurred by the city as the result of additional labor or equipment provided by the City, World Sailfish shall be informed by the City as soon as practical and prior to providing the service. World Sailfish may elect to provide the additional services required.
- b. World Sailfish Championship shall submit a security plan for approval by the City.

Should the City determine that additional security is required, World Sailfish will contract and pay for security that may be provided by private Class D guards or law enforcement officers from the Key West Police Department, for the required number of personnel for the event. Proof of said contracts for security must be furnished to and approved by the City at least ten days before the event.

- c. The City department spokesperson or contact person providing the services shall immediately advise the City Manager of the action to add extra labor or equipment.
- d. World Sailfish may utilize public restrooms and agrees to have the public toilets attended, pressure washed, cleaned and provide tissue and towels or World sailfish may provide portable toilets at their cost including a premises cost if they are located outside of the demised area.
- e. World Sailfish will provide trash receptacles for use during the events. World Sailfish shall pay costs for the pick-up and disposal charges for the referenced trash receptacles. Cardboard trash receptacles are not permitted. In each instance that the sponsoring organization closes a street, it shall provide additional garbage cans.
- f. World Sailfish will adhere to the recycling plan of the City of Key West, which provides that one (1) recycling container for every one (1) trash barrel will be used and that they be placed side by side.
- g. World Sailfish shall not utilize electric services and will depend solely on generated power for its use.

6. Security Deposit

World Sailfish agrees to provide a security deposit in the amount of \$5000 at least thirty (30) days prior to the event each year for the faithful performance of all repairs necessary due to damage caused by World Sailfish, its agents, employees, invitees. The parties agree to walk through and inspect the premises before and after the event to confirm exact condition of the premises and any necessary repairs. World Sailfish shall have the right to make any repairs as determined by the inspection within 90 days thereof. In the event that there is no damage the City will refund the security deposit within ten (10) business days of the inspection.

7. Insurance and Indemnity Requirements.

World Sailfish shall:

- a. Provide comprehensive liability insurance insuring itself and City against all claims of damages or injury to persons or property arising for any reason as a result of the activities associated with events permitted by City. The insurance policy shall be written by a solvent insurance company in good standing and shall provide minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Three Million

Dollars (\$3,000,000) aggregate and in the event that alcohol is being served and/or sold One Million Dollars (\$1,000,000) in liquor liability. This policy shall show City as an additional named insured and a copy shall be provided to the Special Events Section of the City Manager's Office no later than three weeks before the event.

- b. World Sailfish agrees to protect, defend, indemnify, save and hold harmless the City of Key West, all of its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the World Sailfish, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of the City, all its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. World Sailfish agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the City by reason of such claim or demand, World Sailfish shall, upon written notice from the City, resist and defend such action or proceeding by counsel satisfactory to the City. World Sailfish shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City whether performed by World Sailfish, or by persons employed or used by World Sailfish.

8. Assignment and Hypothecation

This Agreement is not transferable or assignable, except as provided by Resolution of the Key West City Commission.

9. Default, Remedies

In the event that World Sailfish fails to comply with the terms of this agreement, the City shall have the right to terminate the Agreement upon thirty days written notice which shall be delivered pursuant to Section 11 hereof.

10. Termination.

Either party may terminate this agreement by giving the other party written notice within 30 days of the end of the event each year.

11. Independent Contractor

World Sailfish is an independent contractor with respect to the City. No employee or agent of World Sailfish shall be entitled to the wages or benefits of an employee of the City of Key West.

12. Notice

All notices, demands, or other writings in this Agreement provided to be given or made or sent, or which may be given or made or sent, by either party to this Agreement to the other, shall be deemed to have been fully given or made or sent when made in writing and received by hand delivery or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination and addressed as follows:

To City:	City Manager P.O. Box 1409 Key West, FL 33040
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To World Sailfish	Executive Adventures, LLC 635 Court Street, Suite 202 Clearwater, FL 33756
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The address to which any notice, demands, or other writing may be given or made or sent to any party mentioned above may be changed by written notice.

13. Severability

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be impaired thereby, but such remaining provisions shall be interpreted and enforced so to achieve, as near as may be, the purpose of this Agreement to the extent permitted by law.

14. Governing Law.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

15. Entire Agreement.

This Agreement sets forth all the covenants, promises, agreements, and understandings between the City and World Sailfish. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the City or World Sailfish unless reduced to writing and duly executed by both parties.

IN WITNESS WHEREOF, World Sailfish and City hereby accept and agree to abide by the terms and condition set forth herein, and have hereunto executed this Agreement, this _____ day of _____, 20__.

CITY OF KEY WEST

By _____
JIM SCHOLL, CITY MANAGER

ATTEST:

CHERYL SMITH, CITY CLERK

EXECUTIVE ADVENTURES, LLC DBA WORLD
SAILFISH CHAMPIONSHIP

By _____
CHRIS KING, MANAGING MEMBER

ATTEST:

Secretary

Exhibit "A" Demised Area