

## *SkiSeth Training Center Site Release*

### **RELEASE, WAIVER AND LIMITATION OF LIABILITY AGREEMENT**

In consideration of the use of the lakes, parks, grounds, facilities, boats and equipment belonging to, operated by or in the possession of Seth Stisher, LLC d/b/a SkiSeth Training Center, its members, club members, officers, directors, agents and employees, together with Seth Stisher individually and Acorn Haven, LLC (collectively, the "Released Parties"), the undersigned hereby agrees, for himself or herself, and for his or her heirs, executors, administrators and/or assigns, or in the case of an adult signing for a minor child, for such child and the child's heirs and assigns (collectively, the "Releasing Party"), as follows.

**1. RISK FACTORS.** The Releasing Party understands and acknowledges that the activities of water skiing, slalom skiing, trick skiing, water ski jumping, wake boarding, wake skating, swimming and related water sport and towed water sport activities, and other recreational activities (collectively, the "Activities") now or in the future offered at the Seth Stisher Training Center, including but not limited to the lake and parks, judging area, pavilion, lawns, and related property and structures (collectively, the "Facility") all involve risks such as but not limited to the following: 1) falling, 2) drowning, 3) colliding with fixed objects, including the shoreline, lake bottom, water, objects floating upon or submerged in the water, skis, water ski course buoys and anchoring apparatus and the water ski jump, 4) being run over by the boat, 5) becoming entangled in and/or dragged by the ski rope, 6) colliding with fixed or moveable objects, 7) being bitten or attacked by alligators and snakes, or 8) all other manners of injury (collectively, the "Risks"), all of which might result in abrasions, lacerations, concussions, broken bones, torn muscles, ligaments or cartilage, punctures, broken ear drums, blindness, injury to ankles, knees, shoulders, hips, elbows, wrists, head, ribs, neck, back or other bones, ligaments and tendons and/or internal injuries, head and brain injuries and other types of personal injury and/or property damage (the "Potential Injuries") which might result from the activities themselves, the acts of the Released Parties or others, or the unavailability of emergency care. These risks include RISK OF PROPERTY DAMAGE, BODILY INJURY, PARALYSIS, LOSS OF LIMB(S), LOSS OF VISION, HEARING OR OTHER SENSES, AND/OR DEATH.

**2. ASSUMPTION OF RISK.** The Releasing Party ASSUMES ALL RISKS, FORESEEN AND UNFORESEEN, AND INVOLVED WITH OR ARISING FROM THE ACTIVITIES, including without limitation those Risks described in Section 1 above. If injured while at the Facility or while participating in the Activities, the Releasing Party covenants not to sue the Released Parties. If suit is nevertheless commenced and not dismissed, the Releasing Party agrees to limit any recovery for pain, suffering or loss of enjoyment of life to not more than 50% of his or her combined loss of income and medical expense, and the Releasing Party waives and releases any claim for punitive damages or consequential damages, including but not limited to loss of consortium or extreme emotional distress damages.

**3. SKILLS AND TRAINING.** The Releasing Party acknowledges that he, she or the minor for whom he or she is signing has the skills, qualifications, physical abilities and training necessary to engage in the Activities. The Releasing Party agrees that if he or she has any questions as to what skills, qualifications or training are necessary to properly participate in the Activities, singularly or collectively, then they shall direct such questions to the Facility management before engaging in any Activities.

**4. INDEMNIFY AND DEFEND.** The Releasing Party agrees to INDEMNIFY AND DEFEND the Released Parties against, and hold them harmless from, any and all CLAIMS, including attorney fees, which in any way arise from the Activity which is the subject of this agreement (the "RELEASED CLAIMS") The RELEASED CLAIMS include but are not limited to those risks described in Section 1, including but not limited to any liability arising from any act of, or any failure to act by, any of the RELEASED PARTIES, their employees or volunteers, other parties utilizing any of the FACILITIES, the RELEASING PARTY, the below named minor or anyone else.

**5. DAMAGE TO FACILITIES.** The Releasing Party agrees to pay any and all damages to any real or personal property of the RELEASED PARTIES caused by the Releasing Party whether caused negligently, willfully or otherwise.

**6. LEGAL FEES.** In the event of any controversy, claim or dispute between the parties arising out of or relating to this agreement or the breach hereof, or the Activities, the substantially prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney fees and costs. This provision shall not apply to attorney fees paid or to be paid to a plaintiff's attorney pursuant to any type of contingency fee agreement whereby the amount to be paid to the attorney depends on the ultimate success of the litigation and/or the size of any settlement or judgment obtained in any action seeking compensation for personal injury, death or property damage, but shall apply to the defendants' legal fees in the event such litigation is substantially resolved in favor of the Released Parties.

**7. AGREEMENT.** This Agreement shall be construed according to the laws of the State of South Carolina, or the laws of the State of New York, whichever laws shall provide the Released Parties with the greatest protection and limitation of liability under this Agreement. Any action or proceeding commenced against the RELEASED PARTIES shall be exclusively venued in a court of competent jurisdiction located in Charleston County, SC. The RELEASING PARTY waives jurisdiction of the Federal Courts if such jurisdiction is based on diversity of citizenship. If any part of this Agreement is deemed void or unenforceable, the remaining portions shall remain in full force and effect.

