

Participant Agreement, Release and Acknowledgment of Risk

ASSUMPTION OF RISK AND INDEMNIFYING RELEASE AGREEMENT

WARNING: PLEASE READ CAREFULLY BEFORE SIGNING; BY SIGNING THIS RELEASE YOU WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE. Consider that you are assuming both physical and legal risks which have potential financial implications for yourself and/or undersigned minors should you be injured or have a loss of life while participating in Sioux Empire Water Sports LLC., SoDak SUP Yoga LLC. Friessen Development Inc. activities identified below.

WAIVER AND RELEASE OF LIABILITY AGREEMENT

DISCLAIMER – This Waiver and Release Agreement is applicable to all renters, operators, passengers, participants, visitors, observers and users of equipment, services provided by Flow and Paddle. For purposes of this Waiver and Release, the term "LESSORS" fully extends to Lake Lorraine owners, Friessen Development Inc. and all principles, and subsidiaries of Sioux Empire Water Sports LLC., SoDak SUP Yoga LLC,). d/b/a FLOW AND PADDLE.

Furthermore Sioux Empire Water Sports LLC. SoDak SUP Yoga LLC., WPA certified instructors, Yoga instructors, Certified SUP Yoga instructors, Certified SUP Fitness instructors, Trained specialist, CPR trained specialist, guides, educators, Administrators, Directors, Agents, Members, Volunteers, and Employees, Other participants, any sponsors, and, if applicable, Lake Lorraine owners, Friessen Development Inc., and Lessors of premises on which the activity takes place, each considered one of the "LESSORS" herein. Lessors does lease to the undersigned hereafter referred to as the LESSEE) Watercrafts, equipment and services and is RELEASED FROM ALL LIABILITY FOR ANY CLAIM, LAWSUIT, RESPONSIBILITY, MONETARY DEMAND, LOSSES FROM INJURIES, MEDICAL BILLS, DAMAGE TO PROPERTY, OR OTHER DAMAGES ON MY ACCOUNT CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE "LESSORS" OR OTHERWISE, INCLUDING NEGLIGENT RESCUE OPERATIONS; AND I FURTHER AGREE that if, despite this RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT I, or anyone on my behalf, makes a claim against any of the Releases, I WILL INDEMNIFY, SAVE, AND HOLD HARMLESS EACH OF THE LESSORS from any litigation expenses, attorney fees, loss, liability, damages, or cost which any may incur as the result of such claim.

If any other rental agreement is supplemented with this Release, the provisions of this Release will prevail over any clauses in the rental agreement that is inconsistent with this Release. The undersigned agrees that he/she is also signing this Release on behalf of named minor as the parent, guardian, relative, care provider, party host or guest Renter agrees that he/she will disclose all potential operators, riders, passengers, and users, participants of any service or equipment. Renter further agrees that in the event that he/she fails to notify Flow and Paddle of all potential operators, riders, passengers, or users of said, service or equipment, he/she will be personally liable for any damage from the undisclosed individuals, even if such damages arise out of the negligence or fault of Sioux Empire Water Sports LLC. SoDak SUP Yoga LLC, Lake Lorraine owners, Friessen Development Inc.

Specifically renter personally acknowledges and accepts all liability and cost arising from any damages to the **"Water Fountain"** regardless if it is unintentional, beyond your control, whether it is operating or not. Furthermore I agree to maintain a 50 foot distance or greater from **"Water Fountain"** at all times. I understand my session can and will be disrupted, canceled for non-compliance at operators discretion without refund.

ACKNOWLEDGEMENT OF RISKS – The undersigned hereby acknowledges and assumes all of the risks of participating Activities. I understand that some but not all of the risk I assume are listed and fully extend to BigSiouxRiverTours, KayakSouthDakota, PaddleSiouxFalls rentals and services.

- 1) Changing water flow, tides, currents, white caps, wave action and wakes
- 2) Collisions with any of the following: "The Water Fountain" in the lake which you are strictly prohibited from getting closer than 50 feet or other participants, other boats, watercrafts, shore, equipment, manmade, fixed or natural objects, rocks trees;
- 3) Collision with others, capsizing, sinking or other hazard which results in wetness, injury, exposure to the elements, hypothermia, drowning and/or death to self, child, friend, family or pet.
- 4) Attack by or encounter with insects, birds, animals and marine life forms.
- 5) Equipment failure, Capsizing or any form of Operator error

- 6) My sense of balance, physical coordination, ability to operate equipment, swim and/or follow directions; or misdirection.
- 7) Wind, inclement weather, lightning, variances and extremes of wind, weather, and temperature
- 8) Falling off equipment, over-exertion, failed attempts at yoga moves, challenges, stunts, sustaining lacerations or contracting illnesses including but not limited to COVID-19;
- 9) Injury on or around the lake walk, bike path, trail, shore line, retainer wall, rock wall.
- 10) Negligent actions or omissions of the RELEASEE, facilities staff, instructors, yoga teachers, trainers, volunteers, guides, owners, employees, defects in the facilities or equipment, or unexpected malfunction or breaking of the equipment or apparatuses; Improper, lack of or inadequate instruction or supervision regarding the use of the rental services or equipment; administering or failing to administer first aid or emergency treatment.
- 11) Heat or sun related injuries or illnesses, including sunburn, sunstroke or dehydration of these risks is not complete and that unknown or unanticipated risks may result in injury, illness or death.

EXPRESS ASSUMPTION OF RISK- The undersigned hereby agrees that he/she is renting, operating or using services and equipment at his/her own risk. The undersigned agrees that he/she is voluntarily participating in all activities related to Flow and Paddle, the rental, operation, or use of the rental equipment, participation in SUP Yoga, Training, Instruction, observation, participation of any kind. I further understand that the employees of protected parties cannot control or monitor all of the activities and actions of other patrons at all times, and that all risks of injury cannot be eliminated. I further understand that the actions and activities of other patrons or inaction of employees could cause me injuries. The undersigned assumes full responsibility for all the risks of personal injury, accidents or illness, including but not limited to sprains, torn muscles and/or ligaments; fracture or broken bones; eye damage; cuts, wounds, scrapes, abrasions, and/or contusions; head, neck, and/or spinal injuries; animal or insect bite or attack; shock, paralysis, drowning, and/or death; and any resultant expenses from any of the foregoing risks and assumes all risk injury, illness, damage or loss that might result, regardless of the cause, even if the risks arise out of the negligence or fault of Sioux Empire Water Sports LLC, SoDak SUP Yoga LLC. Lake Lorraine Owners, Friessen Development Inc.

WAIVER/RELEASE OF LIABILITY- By the execution of this Release, the undersigned voluntarily releases, forever discharges and agrees to indemnify and hold harmless Lake Lorraine Owners, Friessen Development Inc., Sioux Empire Water Sports LLC., SoDak SUP Yoga LLC. Flow and Paddle from any and all liability of any nature for any and all injuries or damage arising from personal injuries sustained by the undersigned or any minor children under the undersigned's custody, care, and control, as a result of any and all activities related to the service, rental, operation, participation or use of equipment provided regardless of the cause including but not limited to bringing your own equipment. The undersigned assumes full responsibility for any such injuries or damages or death which may occur, and further agrees that Sioux Empire Water Sports LLC, Flow and Paddle, SoDak SUP Yoga LLC, Lake Lorraine owners, Friessen Development Inc., shall not be liable for any loss, damage or theft of personal property. The undersigned specifically agrees that Sioux Empire Water Sports LLC, SoDak SUP Yoga LLC., Lake Lorraine owners, Friessen Development Inc. shall not be responsible for such injuries, death, damages, loss or theft. **EVEN IN THE EVENT OF NEGLIGENCE OR FAULT BY** Sioux Empire Water Sports LLC., SoDak SUP Yoga LLC. or Lake Lorraine owners, Friessen Development Inc., whether such negligence is present at the signing of this Release or takes place in the future as this waiver is to extend the entire year of 2023.

LIABILITY TO THIRD PARTIES – The undersigned hereby agrees that he/she will indemnify and hold harmless Lake Lorraine owners, Friessen Development Inc., Sioux Empire Water Sports LLC, SoDak SUP Yoga LLC., for all personal injuries, property damages, or any other damages to any and all third parties, including but not limited to, operators and passengers of other boat's and minor children under the undersigned's custody, care, and control as a result of any and all activities related to participation of service, rental, operation, or use of equipment provided even if such damages arise out of the negligence or fault of Sioux Empire Water Sports, LLC. SoDak SUP Yoga LLC. Or Friessen Development Inc.

ACKNOWLEDGEMENT OF WAIVER AND RELEASE – The undersigned states that he/she has had sufficient time to review the Waiver and Release and to ask any questions associated with said Release. The undersigned further states that he/she has carefully read the foregoing Waiver and Release, knows the contents thereof, and has signed this Release as his/her own free act. With the knowledge that signing this Release is a requirement for rental, operation, and use of said equipment. Furthermore regarding use of one's own equipment the undersigned takes full responsibility and accepts the same risk by damage, injury, death. The undersigned further warrants that he/she is fully aware that he/she is waiving any and all legal rights he/she may have to bring a legal action to assert any claim of negligence against, personal damage or injury. Lake Lorraine Owners, Friessen Development Inc., Sioux Empire Water Sports LLC., SoDak SUP Yoga LLC. for any reason.

Policy's and Guidelines:

- MAINTAIN A 50 FT. DISTANCE FROM THE WATER FOUNTAIN AT ALL TIMES. (SESSION WILL END WITHOUT WARNING OR REFUND, POTENTIALLY TERMINATING ALL FUTURE SERVICES)
- Lake use and amenities at your own risk (No Lifeguards provided).
- US Coast Guard PFD Guidelines are to be followed at all times.
- SUP leash must be worn at all times on lake.
- Must be at least 13 years of age in order to operate a Pedal boat, Adult Kayak or Paddleboard.
- 12 yrs or younger require a 16yr old + on Pedal Boat.
- Switching seating positions must be prohibited unless at a designated shore, no seating positions may be changed while on the water.
- Youth Kayaks ages 6 - 12 (Require Supervision and have limited lake access unless Parent is on water).
- There is a maximum of 5 people per pedal boat, 2 per SUP (Including Child) 8 per Paradise Pad, 2 Per Yoga Dock.
- Waivers required to be signed by Parent/Guardian 18yrs + for any minor
- All watercrafts must be returned to the dock 30 mins before close.
- Alcohol, drug use is strictly prohibited. If under the influence you will be denied or session termed with no refund.
- The possession or use of firearms is strictly prohibited.
- Watercrafts are to be operated in a manner that will not infringe upon the rights or safety of other paddlers, or endanger lives and property of others.
- Reckless behavior and operation of watercrafts or equipment will result in termination of your session and you may be held responsible for any injuries or damage arising from such recklessness.
- No classes or rentals during inclement or threatening weather.
- No motorized boats.
- No Swimming.
- No Fishing.
- Operator reserves the right to deny service in good faith.
- We observe and uphold the weight limits posted by manufacturers.
- We reserve the right to exclude any person we deem to be incapable of meeting the rigors of participating in the activities or who refuses or is unwilling to follow the directives of the activity leaders.
- There may not be rescue or medical facilities, first aid, or the expertise necessary to deal with the Injuries and damages to which you may be exposed.
- Events involving outdoor activities are subject to weather conditions and may need to be modified or changed depending on weather conditions that day.
- We reserve the right to change, modify, postpone or even cancel without notice
- No refunds will be provided.
- Rescheduling and reservation modifications are for eligible participants only
- An additional hour will be charged if return time is exceeded by 15 minutes
- You will be charged for lost paddles, broken, damaged property or equipment at cost
- Must adhere to posted Age and weight requirements
- Must avoid collisions and contact with others or objects.
- Must follow South Dakota Game Fish and Parks Boating Safety
- Must follow the nautical flow of traffic in Pedal Boats
- Do not switch seats unless at a designated shore
- No bumping into other watercrafts.
- Do not rock the Pedal Boats.
- We do not offer Pedal boat or Kayak lessons however a staff member will show you the basics to get you started.
- Youth Kayaks require Adult Supervision
- Youth Kayaks have designated area of lake unless Parent/ Guardian is on water.
- Please watch suggested how to videos.
- Do not shore at or near rocks.

Use of equipment. In order to assist in providing for the safety of me, "my children" also herein includes undersigned minors I certify as follows:

-My children and I will properly use all safety equipment being provided and will comply with any height, weight, or age restrictions imposed and follow and obey all posted and stated warnings.

-My children and I do not have any health problems that would be negatively impacted by participation in these activities.

-My children and I have sufficient physical abilities and skills to safely participate in the activities, and we have no pre-existing physical or medical conditions that might be impacted or worsened by use of services or equipment.

My children and I understand to blow the whistle to alert someone of an emergency.

-I will not use or allow my children to participate if any of us are under the influence of any drugs, alcohol or medications that may impair our physical activities or judgment.

-I agree to follow (and cause my children to follow) all safety rules and to alert staff of any rules violations or dangerous behavior of other participants.

-I understand that my failure or refusal to abide by the safety rules or instructions and directions of the staff can lead to the immediate revocation of my right to use the services caren participate in activities if any of us have been diagnosed with behavior disorders or are taking any behavior modification medications.

-I will inform the staff immediately if I or my children feel any unusual discomfort while participating in the activities and will immediately stop (or cause my children to stop) participation in the activities.

Authorization.

-I hereby authorize the Flow and Paddle to do the following:

to administer emergency first aid and CPR to myself and to my children when deemed necessary by the staff.

-To secure emergency medical care or transportation if deemed necessary by staff, and I agree to assume all risk and costs of emergency medical care or transportation and the risk of receiving such care.

In consideration of the services of Sioux Empire Water Sports LLC., SoDak SUP Yoga LLC., Lake Lorraine owners, Friessen Development Inc., agents, volunteers, staff, participants, employees, instructors, guides, contractors and any entity acting in any capacity on their behalf (hereinafter collectively referred to as "the concessionaire's"), **I do hereby release and discharge the concessionaire's from liability**, on behalf of myself, my children, my parents, my heirs, assigns, personal representative and estate as follows:

I acknowledge and accept the hazards of watersports (Pedal Boating, Stand UP Paddle Boarding, SUP Yoga, Yoga, Kayaking, Canoeing, Fitness related exercise, training, instruction) entailing known and unanticipated risks, which could result in physical or emotional injury, paralysis, death, or damage to myself, to property, or to third parties. I understand that such risks cannot be eliminated without jeopardizing essential qualities of the activity. The risks include, capsizing, drowning, hit by watercraft, sunburn, dehydration or many other potential injuries. Also, "the concessionaire's" have difficult jobs. They seek safety but are not infallible. They may fail to or inaccurately assess a participant's fitness or abilities in good faith and knowledge. They may give inadequate warnings, guidance, or instructions, and the equipment being used may malfunction suddenly without warning, or due to lack of care maintenance or inspection. Some of the risks and hazards are foreseeable, but some are not.

I agree and to accept and assume all of the risks existing in this activity. My participation is purely voluntary, and I elect to participate in spite of the risks. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless "the concessionaire's" as listed herein from any and all claims, demands, or causes of action, which are in any way connected with my participation in this activity or my use of "the concessionaire's" equipment or facilities, including any such claims which allege negligent acts or omissions of "the concessionaire's". Should "the concessionaire's" or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this agreement, I agree to indemnify and hold them harmless for all such fees and costs. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage to myself and all for whom I am signing on their behalf. I further certify that I have no medical or physical conditions which could interfere with my safety in this activity, and I am willing to assume - and bear costs of - all risks that may be created, directly or indirectly, by any such condition whether I know about it or not.

I acknowledge that if anyone is hurt, injured, dies, or property is damaged during my participation in this activity, I may be found in a court of law to have waived my rights to maintain a lawsuit against Sioux Empire Water Sports

LLC., SoDak SUP Yoga LLC., Lake Lorraine Owners, Friessen Development Inc., its agents, affiliates, sponsors, advertisers, officers, employees, volunteers, staff, instructors, guides, contractors and any other persons acting in any capacity on their behalf, on the basis of any claim from which I have released them herein. I have had sufficient opportunity to read the documents entitled PARTICIPANT AGREEMENT, RELEASE AND ACKNOWLEDGMENT OF RISK & the SAFETY RULES. I have read and understood these documents, & agree to be bound by the terms. I understand that ALL PARTICIPANTS MUST BE GOOD SWIMMERS & use lifejackets in accordance with the United States Coast Guard laws. I further agree to indemnify and hold harmless "the concessionaire's" from claims brought by, or on behalf of Minors (under 18), and which are in any way connected with such use or participation by any Minors. I will fully supervise ALL persons using equipment for which I have signed and assumed responsibility. I agree to pay for any loss or damage done to ANY watercraft or property including **Water Fountain** as a result of our participation.

I agree to DISCHARGE, COVENANT NOT TO SUE, AND AGREE TO INDEMNIFY AND SAVE AND HOLD HARMLESS EACH OF THE RELEASEES FROM ALL LIABILITY, CLAIMS, DEMANDS, LOSSES, OR DAMAGES ON THE MINOR'S ACCOUNT CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY NEGLIGENCE OR OTHERWISE, INCLUDING NEGLIGENT RESCUE OPERATIONS AND FURTHER AGREE THAT IF, DESPITE THIS RELEASE, I, THE MINOR, OR ANYONE ON THE MINOR'S BEHALF MAKES A CLAIM AGAINST ANY OF THE "CONCESSIONAIRES" NAMED ABOVE, I WILL INDEMNIFY, SAVE, AND HOLD HARMLESS EACH OF THE "CONCESSIONAIRES" FROM ANY LITIGATION EXPENSES, ATTORNEY FEES, LOSS LIABILITY, DAMAGE, MEDICAL OR COST ANY MAY INCUR AS THE RESULT OF ANY SUCH CLAIM.

Release of images. I consent to the recording of me or my children's activities, our physical likeness, and/or voice through photography, videography, or electronic or digital recordings. I further consent to the businesses use of such recordings or photography without receiving compensation for any purpose, including for advertising, promoting, or for enforcing this agreement. I agree that Sioux Empire Water Sports, LLC., SoDak SUP Yoga LLC., and Friessen Development Inc., will be the exclusive owner of all rights, including copyrights, to the images, audio and video taken.

Sioux Empire Water Sports LLC, SoDak SUP Yoga LLC., Lake Lorraine Owners, Friessen Development Inc., accepts no liability for loss, death, damage, injury, or illness occurring during my participation time.

This agreement and waiver extends to any and all rentals or services provided by Flow and Paddle for the entire year of 2023.

The laws of South Dakota shall govern the provisions of this agreement, and is intended to bind the signor, my heirs, personal representatives, and anyone acting on my behalf.

I have carefully read and agree to the terms and conditions above.

RENTER _____ DATE _____

Additional Operators or Passengers 1) _____ 2) _____

Minors

3) _____ 4) _____ 5) _____