

**GROUND LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of the 9<sup>th</sup> day of November, 2021 (the "Effective Date"), by and between the VILLAGE OF COLD SPRING (the "Landlord" or "Owner"), a municipal corporation, having an address at 85 Main Street, Cold Spring, New York 10516 and COLD SPRING BOAT CLUB, INC., (the "Tenant"), a New York nonprofit corporation having an address of 5 New Street, P.O. Box 318, Cold Spring, New York 10516.

WHEREAS, Landlord and Tenant are parties to that certain lease dated June 2, 2003, which was amended by an Agreement dated May 2, 2015 (collectively, the "Original Lease"); and

WHEREAS, the Original Lease term is set to expire on June 9, 2024; and

WHEREAS, Landlord and Tenant mutually desire to terminate the Original Lease as of the Effective Date and enter into this Agreement subject to the terms and conditions set forth herein.

**WITNESSETH:**

In consideration of the mutual covenants herein contained and of other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree as follows:

1. **Demised Premises.**

(a) Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions hereof, land situated at the waterfront of the Hudson River commonly known as the "Boat Club" and more particularly shown on Exhibit A attached hereto (the "Demised Premises"). The Demised Premises consists of a portion of the parcel of land with Tax Map No. 48.12-1.51

(b) Tenant accepts the Demised Premises in its "as is" condition as of the date hereof and Landlord shall have no obligation to do work in and to the Demised Premises to render them ready for Tenant's occupancy. Tenant acknowledges that Landlord has not made any representations as to the condition of the Demised Premises or the suitability of the Demised Premises for Tenant's intended use.

(c) Tenant shall permit Landlord or its designees, if no reasonable alternative exists, to erect, use, maintain, and repair pipes, cables, conduits and wires, in, under, to and through

the Demised Premises, as and to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper operation and maintenance of any portion of the Demised Premises or adjacent properties. All such work shall be done, with not less than seven (7) days prior written notice to Tenant, except in the event of an emergency, in which event no such notice shall be required, and so far as practicable, in such manner as to avoid unreasonable interference with Tenant's use of the Demised Premises.

(d) The Demised Premises is subject to an Environmental Easement and Site Management Plan NYSDEC Site number 340026 (the "EE&SMP"). All work performed by Landlord or Tenant or each of their respective agents, employees, and/or affiliates within the Demised Premises must not fail to comply with the applicable conditions of the EE&SMP.

2. Tenant's Improvements.

(a) Tenant shall not construct any building or other improvements on the Demised Premises, including but not limited to expansions of the dock area as it exists as of the Effective Date and as depicted in Exhibit A, without the express prior written consent of Landlord, which approval may be withheld or denied for any reason in Landlord's sole absolute discretion. If Landlord grants such approval, any Tenant's construction work shall be done in a good and workmanlike manner and in accordance with all applicable laws.

(b) Before commencement of any construction work, Tenant shall procure or cause to be procured and thereafter maintain, at its own cost and expense, workers' compensation insurance and Builder's Risk Insurance and owner's contractors' general liability insurance, for the mutual benefit of Landlord and Tenant, expressly covering the additional hazards due to the construction work. All such insurance shall be obtained from a company and in such limits as are reasonably acceptable to Landlord. The owner's contractor's general liability insurance shall be in the amount of \$2,000,000.00 with respect to injury or death in any one accident or occurrence.

(c) If a lien for labor, services, materials, or supplies in connection with Tenant's construction work shall arise, or be created, or be filed by anyone upon or against the Demised Premises, or the building or improvements thereon, or to be erected on the Demised Premises or any of the equipment therein, Tenant shall, within thirty (30) days, bond or discharge such lien. Provided that Tenant shall have bonded any such lien, Tenant shall have the right to contest in good faith any lien and Tenant shall not be deemed in default under this Lease so long as Tenant is diligently pursuing its legal remedies with respect to any such lien.

(d) All such improvements shall become the property of the Owner at the expiration or termination of the lease.

3. Term.

(a) The term ("Term") of this Lease shall commence on the Effective Date and continue for a period of twenty (20) years, subject to the provisions of this Section 3.

(b) The first "Lease Year" shall be the period commencing on the Effective Date and ending twelve (12) calendar months thereafter. Each succeeding twelve (12) calendar month period thereafter shall be a "Lease Year". Any basic annual rent payable for a portion of a month shall be prorated based upon the number of days in the applicable calendar month.

4. Rent.

(a) Tenant covenants to pay to Landlord for and during each of the Lease Years of the Term, a basic annual rent at the rate described here:

<u>Term</u>	<u>Per Annum</u>	<u>Per Month</u>
Lease Years 1-3	\$12,000.00	\$1,000.00
Lease Years 4-8	\$24,000.00	\$2,000.00
Lease Years 9-13	\$26,497.94	\$2,208.16
Lease Years 14-18	\$29,255.87	\$2,437.99
Lease Years 19-20	\$32,300.84	\$2,691.74

The basic annual rent shall be payable in equal monthly installments, in advance, without notice or demand, on or before the first (1<sup>st</sup>) day of each month during the Term of this Lease. All payments of such monthly installments shall be to Landlord at the address of Landlord hereinabove set forth or at such other address as Landlord may designate. The foregoing notwithstanding, Tenant may pay the annual rent that is due for each entire Lease Year in advance of the commencement of such Lease Year.

(b) It is the intention of the parties that the basic annual rent payable hereunder shall be net to Landlord, so that Landlord shall have no costs or expenses with respect to the Demised Premises during the Term, so that this Lease shall yield to Landlord, net, the basic annual rent specified herein during the Term of this Lease, and so that all costs, expenses and obligations of every kind and nature whatsoever relating to the Demised Premises shall be paid by Tenant from the Effective Date of the Lease.

5. Taxes and Utility Expenses.

(a) Tenant shall, during the Term of this Lease, pay and discharge, as additional rent, punctually, as and when the same shall become due and payable, and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, special and

general assessments (including assessments for benefits from public works or improvements), water rents, rates and charges, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary and ordinary, unforeseen as well as foreseen, accruing during or allocable to the Term of this Lease, which shall or may, during the Term, be charged, levied, laid, assessed, imposed, become due and payable, or become liens upon, for or with respect to this Lease or the Demised Premises or any part thereof, or any buildings or other improvements thereon, or appurtenances thereto, or the use or occupation thereof, or personal property owned by Tenant thereon or therein, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the Federal, State, County, Municipal Governments or of any other governmental authority whatsoever (all of which are hereinafter referred to as "Taxes").

(b) Tenant shall only be responsible for its pro rata share of real estate taxes for the parcel on which the Demised Premises is located.

(c) Tenant agrees to pay promptly, as and when the same become due and payable, all water, sewer, electricity, fuel, gas, supplemental refuse removal, heat, steam, and all other utilities supplied to Demised Premises during the Term. Landlord shall not be responsible for any garbage or recyclable removal within the Demised Premises, including but not limited to dumpsters.

6. Use, Restrictions and Additional Covenants:

(a) Permitted Use. Tenant shall use and occupy the Demised Premises for the operation of a boat club to provide storage, access, ingress, and egress for Boats to and from the Hudson River, and is entitled to uninterrupted peaceful and quiet enjoyment of the Demised Premises upon possession, subject to the provisions of the Lease. Tenant will not suffer or permit the Demised Premises, or any portion thereof, to be used by the public in any way as might tend to impair Landlord's title thereto. The term "Boat" or "Boats" shall mean motorized or non-motorized boats, including but not limited to canoes and kayaks.

(b) Prohibited Uses. Notwithstanding anything to the contrary herein, Tenant may not use the Demised Premises in any way: (i) which is a public or private nuisance or produces excessive noise; (ii) which produces noxious, toxic, caustic or corrosive fuel or gas; (iii) which produces fire, explosion or other damaging or dangerous hazard (including the storage, display or sale of explosives or fireworks except as set forth in subsection (g) below); (iv) as living quarters, sleeping apartment or lodging rooms; (v) as anything other than as a Permitted Use.

(c) Boats and equipment must be stored in an orderly fashion and in a manner that reduces the visual impact to adjoining properties.

(d) Tenant shall provide access to launch into the Hudson River for residents of the Village of Cold Spring, New York (the "Village"), at times and circumstances determined to be safe and convenient to the Tenant and reasonably convenient to such residents. Tenant may establish pre-scheduled hours for the launching and removal of Boats, provided that Tenant shall publish its schedule at the entrance of the Demised Premises and shall make the schedule available to Residents upon request. Tenant shall not be required to provide free access for any commercial enterprise of a Village resident or any non-resident of the Village. Tenant shall be permitted to collect reasonable docking fees from members or other users of the docking area subject to all applicable laws.

(e) Tenant shall permit any resident of the Village to become a member of Tenant's organization/Boat Club without sponsorship provided that any such applicant satisfies all applicable requirements of membership specified in the Tenant's Bylaws (e.g., payment of dues), a copy of which is attached hereto as Exhibit B. Tenant shall promptly provide a copy to Landlord of its Bylaws then in effect during the Term in the event of an amendment or revision thereto.

(f) Village residents who choose to become members of the Club shall have priority as to the assignment of Boat slips over non-residents who join in the same year.

(g) Notwithstanding anything to the contrary herein, ramp and slip access on the Demised Premises shall be available at all times to the Cold Spring Fire Company (or any successor thereto) and any organization which conducts voluntary rescue operations, including but not limited to the Putnam County Sheriff's Department, in the event of any emergency. In addition, Landlord/Village shall be permitted to use the Demised Premises Village for the purpose of loading and launching fireworks barges.

(h) Tenant shall not, without the prior written consent of Landlord, construct, erect or maintain any barricades, fences, obstructions, wall, curb, landscape, barrier or any other impediment protruding above the ground surface level of the Demised Premises so as to in any way or manner limit, impair, impede or hinder access to the Demised Premises other than the automatic remote gate which is currently located at the Demised Premises (provided that Tenant shall provide the Village Board and emergency services with access to the gate code at all times).

7. Compliance with Law. During the Term, Tenant shall, at its own cost and expense, promptly observe and comply, and cause all of its invitees to comply, with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the Federal, State, County and Municipal Governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto, or any buildings or other improvements now or hereafter thereon, or any part thereof, or the use thereof, including but not limited to the sale or consumption of alcohol, whether the same are in force at the commencement of the Term of this Lease or may in the future be passed, enacted or directed. Tenant shall pay all costs, expenses,

liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants herein. Tenant shall also comply with and execute all rules, requirements, and regulations of the Board of Fire Underwriters or similar body, and all insurance companies with policies of insurance at any time in force with respect to the Demised Premises.

8. Maintenance, Repairs and Replacements.

(a) Tenant shall, at Tenant's own cost and expense, put, keep and maintain in good order and safe condition, and promptly make **all** necessary repairs, replacements and renewals to the Demised Premises, and improvements thereon, including docks and building(s), if any, during the Term, structural and nonstructural, extraordinary and ordinary, foreseen and unforeseen. Tenant's maintenance obligations include but are not limited to the repair, replacement, or renewal of the bulkhead located on the Demised Premises (the "Bulkhead") as further described in subsection 8(d) below. Tenant shall use all reasonable precaution to prevent waste, damage or injury to the Demised Premises and any building and other improvements thereon. Tenant shall also, at Tenant's own cost and expense, put, keep and maintain the curbs and sidewalks upon the Demised Premises in good order and safe condition, and will promptly make all necessary repairs, replacements and renewals thereto. All such repairs, replacements and renewals shall be performed in a good and workmanlike manner, shall be at least substantially equal in quality and usefulness to the original work and shall be of a first-class character and shall not diminish the overall value of the Demised Premises. Tenant shall notify Landlord of any necessary repairs, replacements, or renewals and submit plans of anticipated work to Landlord prior to commencing such work for Landlord's approval not to be unreasonably withheld.

(b) Tenant shall, at its sole costs and expense, be responsible for landscaping and maintenance of the driveway, parking area, gate, and concrete pad.

(c) Tenant shall be responsible to keep the Demised Premises in a good and safe condition, free of ice, snow, and debris.

(d) The parties acknowledge and agree that the Bulkhead located on the Demised Premises was damaged in August 2021 during the Original Lease term. The parties have been fully apprised of the extent of such damage, and Tenant expressly agrees to assume all responsibility, at Tenant's sole cost and expense, for the repair, replacement, or renewal of the Bulkhead as soon as practicable following execution of this Lease. Notwithstanding anything to the contrary herein, the Bulkhead may be constructed of any suitable and appropriate materials, provided, however, that the plans and materials must be presented to and approved by the Landlord prior to commencing any such repair, replacement, or renewal of the Bulkhead.

(e) Notwithstanding anything to the contrary herein and subject to Section 13 of this Lease, any and all work, alterations, repairs, replacements, and/or renewals to the Demised Premises and improvements thereon, including docks and building(s), if any, performed by non-members of the Boat Club shall be conducted by fully licensed and insured contractors, without exception.

9. No Liens. If, because of any act or omission of Tenant, or any of Tenant's agents, employees, or contractors, any instrument which may form the basis for any mechanic's lien or other lien, charge or order for the payment of money, shall be filed against Landlord or any portion of the Demised Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record, by payment, bonding or otherwise, within thirty (30) days after written notice from Landlord to Tenant thereof, and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Nothing contained in this Lease shall be construed as a consent on the part of Landlord to subject the estate of the Landlord in the Demised Premises to liability for any lien, it being expressly understood that the Landlord's estate shall not be subject to such liability.

10. Indemnification. Except to the extent caused by Landlord's willful misconduct, Tenant shall indemnify and save harmless Landlord from and against any and all liability, claim, cost, expense, damage, penalties or judgments: (i) arising from any misrepresentation, breach, non-performance or violation by the Tenant, or Tenant's agents, employees, contractors, licensees or invitees of any covenant or provision of this Lease; or (ii) arising from injury to person or property sustained on or about the Demised Premises; or (iii) arising from the negligent or willful misconduct of Tenant or its agents or employees. Tenant shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter. Landlord shall have no responsibility whatsoever for damage to personal property located on the Demised Premises.

11. Assignment and Subletting.

(a) Except as set forth in this Section 11, Tenant may not assign or sublease this Lease without Landlord's prior written consent, which consent may be withheld for any reason or no reason in Landlord's sole and absolute discretion. For the avoidance of doubt, Tenant may not rent out or enter into a short-term sublease for the Demised Premises with any third-parties without the prior consent of Landlord.

(b) Provided that this Lease shall be in good standing and that Tenant shall not be in default of any of its obligations hereunder, Tenant may, without Landlord's consent, assign this Lease to any wholly owned subsidiary of Tenant or to any corporation or entity resulting from a merger or consolidation of the Tenant entity, provided that: (i) the Demised Premises shall be

used only for the Permitted Use, and (ii) the successor shall execute an instrument in writing reasonably satisfactory to Landlord's counsel fully assuming all of the obligations and liabilities imposed upon Tenant hereunder and shall deliver the same to Landlord.

(c) No assignment or subletting hereunder, whether or not with Landlord's consent, shall release Tenant from any obligation under this Lease, and Tenant shall continue to be primarily liable hereunder. If Tenant's assignee or sublessee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing its remedies against the assignee or sublessee. Consent to one assignment or subletting shall not be deemed a consent to any subsequent assignment or subletting. Landlord may consent to subsequent assignments or modifications of this Lease or sublettings without notice to Tenant and Tenant shall not be relieved of liability under this Lease.

(d) Landlord may assign this Lease without the consent of Tenant on written notice to Tenant.

12. Surrender of Demised Premises. Except as otherwise provided in this Lease, Tenant shall on the last day of the Term, or sooner termination of this Lease, peaceably and quietly surrender the Demised Premises to Landlord. The Demised Premises shall be surrendered in good condition and repair as required by Section 8 of this Lease, reasonable wear and tear occurring after the last necessary repair, replacement or renewal excepted. Before surrendering the foregoing, Tenant shall remove all its trade fixtures, equipment and other personal property therefrom. At the option of the Landlord all property not so removed shall be deemed abandoned by the Tenant and shall thereupon become the property of the Landlord, or Landlord may remove such property in any manner that the Landlord shall choose and store the said property without liability to Tenant for loss thereof. Tenant agrees to pay to Landlord, on demand, any and all expenses incurred in such removal, including court costs and reasonable attorneys' fees and storage charges on such property for any length of time the same shall be in the Landlord's possession. Without limiting the foregoing, Landlord, at its option, without notice, may sell said abandoned property or any part of the same at private sale and without legal process for such price as the Landlord may obtain and apply the proceeds of such sale to any amounts due under this Lease and the expense incident to the removal and sale of said property.

In the event Tenant remains in possession of the Demised Premises after the expiration of the Term of this Lease (the "Holdover Period") without Landlord's prior written consent (i.e., pursuant to ongoing negotiations to renew the Lease that are taking place in good faith), in addition to any damages to which Landlord may be entitled or other remedies Landlord may have by law, Tenant shall pay to Landlord a monthly rental for the Holdover Period as follows: (i) for the first month of the Holdover Period, at the rate of 150% of the monthly basic annual rent payable during the last Lease Year of the Term of this Lease, plus all items of additional rent and other charges with respect to the Demised Premises payable by Tenant during the last Lease Year of the Term of this



Lease; and (ii) for each month of the Holdover Period after the first month, at the rate of 200% of the monthly basic annual rent payable during the last Lease Year of the Term, plus all items of additional rent and other charges with respect to the Demised Premises payable by Tenant during the last Lease Year of the Term. Nothing herein contained shall be deemed to give Tenant any right to remain in possession of the Demised Premises after the expiration of the Term of this Lease. The sum due to Landlord hereunder shall be payable by Tenant upon demand. Acceptance of any payments due under this provision shall not establish a new tenancy of any sort and will not prejudice Landlord's right to remove Tenant as a holdover tenant.

13. Insurance.

(a) Tenant, at Tenant's sole cost and expense, and for the mutual benefit of Landlord and Tenant, shall maintain: (i) general and comprehensive public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Demised Premises, and on, in or about the adjoining sidewalks, streets and passageways, such insurance to afford protection with limits of not less than \$2,000,000.00 for the death or injury of one person, \$2,000,000.00 for death or injury to more than one person in one accident or occurrence and \$2,000,000.00 for damage to property; (ii) workers compensation insurance with respect to all persons performing any repairs, replacements, alterations, additions or other work on the Demised Premises; (iii) contractual liability insurance with respect to any repair, restoration, alteration, construction, restoration or rebuilding work occurring upon the Demised Premises so as to further secure the indemnification obligations of Tenant hereunder; and (iv) such other forms of insurance as may be reasonably required by Landlord or as may be customarily carried for properties similarly used in the same general location for any work or activities occurring on the Demised Premises.

(b) Clauses (ii) and (iii) of subsection 13(a) shall not apply, however, to work described therein that is performed solely by members of the Boat Club without compensation (i.e., on a voluntary basis).

(c) Tenant hereby waives any and all claims it may have against the Landlord for personal injury or property damage arising from work described in clauses (ii) and (iii) of subsection 13(a) that is performed solely or partly by members of the Boat Club during the Term, including, but not limited to, claims that would be covered by the insurance described in clauses (ii) and (iii) of subsection 13(a) if the work were instead performed solely by third-party contractors, and releases Landlord from such claims. In addition, Tenant shall cause each and every member of the Boat Club to waive and release Landlord from such claims, as a condition of their membership in the Boat Club, by signing the waiver and release form provided in Exhibit C attached hereto, as follows: (i) for every person who is a member of the Boat Club as of the Effective Date, Tenant shall furnish Landlord with a copy of such person's signature upon the Effective Date; (ii) for any persons who becomes a member of the Boat Club after the Effective

Date, Tenant shall furnish Landlord with a copy of that person's signature within five (5) days after such person becomes a member.

(d) Tenant shall also maintain insurance covering all owned, non-owned and hired or borrowed vehicles of Tenant used in connection with its activities on the Demised Premises, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit, insuring for bodily injury, death and property damage.

(e) All policies of insurance shall include Landlord as an additional insured. All policies shall further provide that they may not be cancelled, terminated or changed except after at least ten (10) days' prior written notice to Landlord.

(f) All policies of insurance required hereunder shall be issued by insurance companies of recognized responsibility and duly licensed and authorized to transact business in the State of New York. Tenant agrees to deliver to Landlord, prior to the commencement of the Term of this Lease, and thereafter not later than ten (10) days prior to the expiration of any such policy, certificates of all such policies of insurance, together with proof of the payment of the initial or renewal premiums therefor. Such insurance shall be non-cancellable without thirty (30) days' prior written notice to Landlord. All policies of insurance shall provide that any loss payable shall be payable notwithstanding any act or negligence of Tenant.

14. Alterations by Tenant. Tenant agrees that it will make no alterations, improvements or additions to Demised Premises without the prior written consent of the Landlord. Without limiting the foregoing, such alterations, improvements or additions shall be in accordance with all applicable requirements of regulatory, local, state, and federal agencies including but not limited to those requirements described in Section 26 herein. All such alterations, improvements and additions to which Landlord consents shall be performed in a good and workmanlike manner, shall be at least substantially equal in quality and usefulness to the original work at the Demised Premises and of a first-class modern character, and shall not diminish the overall value of the Demised Premises. In advance of the performance of any of the foregoing work by Tenant, Tenant shall provide Landlord with certificates evidencing workers' compensation insurance, which insurance shall be effected under an enforceable policy issued by insurers of recognized responsibility licensed to do business in New York and shall provide that such policy shall not be cancelled without at least thirty (30) days prior written notice to Landlord and any mortgagee of Landlord.

15. Signs. It is understood and agreed that Tenant shall post a clear, prominent, and permanent sign at the entrance to the Demised Premises substantially as set forth on Exhibit D attached hereto which states, at a minimum, the hours of operation, rules, and regulations regarding access to the Demised Premises for both residents and non-residents. Tenant agrees that any and all signs installed by it shall be in compliance with all applicable federal, state and local

governmental laws, rules, ordinances, regulations or appeal thereof and shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld. Further, Landlord shall approve or object to the Tenant's proposed signage within thirty (30) calendar days of receipt of plans for the signage from Tenant.

16. Destruction.

(a) The complete or partial destruction or damage by fire or other casualty of the Demised Premises shall not, except as provided in this Section 16, terminate this Lease, nor entitle Tenant to surrender possession of the Demised Premises, to terminate this Lease, or to any abatement or reduction in the basic annual rent, additional rent and other charges payable by Tenant under this Lease, any law or statute to the contrary notwithstanding.

(b) In the event that, at any time during the Term of this Lease, the Demised Premises shall be damaged or destroyed in whole or in part by fire or other cause, Tenant shall, at its own cost and expense, in accordance with the conditions contained in this Lease, cause the same to be repaired, replaced or rebuilt (hereinafter called the "Restoration") as promptly as possible as nearly as possible to its condition prior to such damage or destruction. Prior to commencing the Restoration work, Tenant shall submit to Landlord the plans and specifications therefor and no work shall commence until Landlord and applicable local, state, and federal agencies shall have approved such plans and specifications, which approval shall not be unreasonably withheld. Landlord shall approve or object to the plans and specifications within fourteen (14) calendar days of receipt of the plans from Tenant.

(c) Insurance proceeds to be applied to pay or reimburse Tenant for the payment of the cost of the Restoration shall be paid out from time to time as the Restoration progresses in accordance with usual construction lending practices.

(d) If the insurance proceeds paid as a result of any such damage and destruction are insufficient to pay the entire cost of the Restoration, Tenant agrees to pay the deficiency.

(e) Notwithstanding the provisions of subsections (a) through (d) hereof, in the event of fire or other casualty to Demised Premises occurring during the last year of the Term hereof, and in the further event that such damage or destruction shall be so extensive as to preclude the conduct of Tenant's normal operations for in excess of ninety (90) days, Tenant shall promptly notify Landlord of the occurrence of such casualty, and Landlord and Tenant shall each have a period of forty-five (45) days from and after the date of receipt of notice in the case of Landlord, and forty-five (45) days from and after the date of occurrence of the damage or destruction in the case of the Tenant, within which to terminate this Lease by notice to the other. In the event both Landlord and Tenant shall fail to give notice of termination within said forty-five (45) day period,

Tenant shall thereupon be obligated and required to repair and restore Demised Premises pursuant to subsections (a) through (d) hereof.

(f) In the event either Landlord or Tenant shall terminate this Lease pursuant to subsection (e) hereof, the notice so terminating this Lease shall specify a date of termination, and, upon the occurrence of such date, this Lease shall cease, terminate and expire as if such date had been originally fixed for the expiration of the Term hereof, and all accrued basic annual rent and additional rent shall be paid, and all of Tenant's other obligations hereunder shall be performed, up to the effective date of termination.

(g) No destruction or damage to the Demised Premises or any part thereof by fire or any other casualty shall, except as above provided, permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the full basic annual rent and additional rent, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Demised Premises, or any part thereof, or to any suspension, abatement, diminution or reduction of basic annual rent or additional rent on account of any such destruction or damage.

17. Default.

(a) (i) If the Tenant shall fail to pay any installment of basic annual rent, or any additional rent or other charges payable by Tenant hereunder within five (5) days after written notice to Tenant that the same has not been paid when due (provided that Landlord shall not be required to furnish notice to Tenant on more than one (1) occasion each Lease Year); or (ii) if the Tenant shall fail to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and shall continue such failure without curing the same for a period of thirty (30) days after written notice thereof (except for any such default which, with due diligence, is not susceptible of being cured within such thirty (30) day period, the time permitted to the Tenant to cure such default shall be extended for as long as shall be reasonably necessary to cure such default, provided Tenant commences to cure such default during such thirty (30) day period and diligently pursues such cure to completion), then in any one or more of such events, Landlord may, at its option, give to Tenant a notice of election to end the Term of this Lease upon a date specified in such notice, which date shall be not less than ten (10) days after Landlord shall give such notice, and upon the date specified in said notice, the Term and estate hereby vested in Tenant shall cease, and any other right, title and interest of Tenant shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire Term of this Lease had elapsed, and Tenant shall then quit and surrender to Landlord the Demised Premises, and all trade fixtures, furnishings and equipment therein or thereon. Upon such termination, or at any time thereafter, Landlord may recover possession of the Demised Premises by any lawful means and remove Tenant and any or all occupants of the Demised Premises and their effects.

(b) In any case where Landlord has recovered possession of the Demised Premises by reason of Tenant's default, Landlord may, at Landlord's option, occupy the Demised Premises, or may relet the Demised Premises or any part thereof, for a term or terms to expire prior to, at the same time as, or subsequent to, the expiration date of this Lease, and receive the rent therefor, applying the same first to the payment of such expenses as Landlord may have incurred in connection with the recovery of possession, then to the expenses of reletting, including brokerage and reasonable attorneys' fees and then to the payment of damages in amount equal to the basic annual rent and additional rent hereunder and to the cost and expense of performance of the other covenants of Tenant as herein provided. Tenant agrees, whether or not Landlord has relet, to pay to Landlord damages equal to the basic annual rent, additional rent and other sums herein agreed to be paid by Tenant, less the net proceeds of the reletting, if any, as ascertained from time to time, and the same shall be payable by Tenant on the several rent payment days above specified. In reletting the Demised Premises, as aforesaid, Landlord may grant commercially reasonable rent concessions reasonably required to relet the Demised Premises, and Tenant shall not be credited therewith. No such reletting shall constitute acceptance of surrender of Demised Premises or be deemed evidence thereof. Tenant shall not be entitled to any surplus accruing as a result of any reletting. If Landlord elects pursuant hereto to occupy and use the Demised Premises or any part thereof during any part of the balance of the Term as originally fixed, there shall be allowed against Tenant's obligation for basic annual rent, additional rent or damages as herein defined, during the period of Landlord's occupancy, the reasonable value of such occupancy, not to exceed in any event the basic annual rent herein reserved or an appropriate portion thereof, and such occupancy shall not be construed as a release of Tenant from liability hereunder.

(c) Upon termination or recovery of possession by Landlord on default, Tenant and Tenant's creditors and representatives shall thereafter have no right, legally or equitably, in or to the Demised Premises, or any part thereof, or in or to the repossession of same, or in or to this Lease, and Tenant hereby waives all right of redemption which is or may hereafter be provided by statute.

(d) The specified remedies to which Landlord may resort under the terms of this Section are cumulative and are not intended to be exclusive of any or all other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach by Tenant of any provision of this Lease. Without limiting the generality of the foregoing, Landlord shall have the right to institute summary dispossess proceedings against Tenant under all circumstances from time to time permitted by law. In the event judgment for possession shall be entered in favor of Landlord and against Tenant in any such proceedings, Tenant shall thereafter remain liable to Landlord as provided in subsection (c) above as if Landlord had terminated this Lease by reason of Tenant's default pursuant to subsection (a) above.

(e) It is mutually agreed by and between Landlord and Tenant that they hereby waive trial by jury in any action, proceeding or counter-claim brought by either of the parties

hereto against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use of the Demised Premises or claim of injury or damage.

18. Condemnation.

(a) If the entire Demised Premises, or a substantial part thereof (hereby defined to be any taking of one-third (1/3) or more of the Demised Premises) shall be taken or condemned (a "Taking") by any governmental authority or any other entity having powers of eminent domain, this Lease shall terminate effective on the date of transfer of possession in connection with the Taking, and the parties agree that the aggregate of all awards or payments shall be paid over to Landlord (or if required by the holder of a mortgage affecting the Demised Premises to which this Lease is subordinate, to such holder), and, distributed as follows:

(i) So much of such net award attributable to the Landlord's fee interest in the Demised Premises without any reduction thereof for the value of this Lease, and such amount as shall be required to remove any building or any other improvements, or the remaining portion thereof, on the portion of the Demised Premises not taken, shall first be paid to the Landlord.

(ii) So much of such net award attributable to any building and other improvements on the Demised Premises as is available for distribution after the payment made pursuant to paragraph (i) of this subsection (a) shall, to the extent of the then value of such building and other improvements placed on the Demised Premises by Tenant subsequent to the execution of this Lease, less the amount of the payment made pursuant to paragraph (i), be paid to the Tenant and Landlord as follows: Tenant shall be entitled to the sum of (1) that part of the aforementioned sum which shall be the result of multiplying the said sum by a fraction the numerator of which shall be the number of full Lease Years remaining in the Term of this Lease and the denominator of which shall be the number of full Lease Years of the Term of this Lease, (2) reasonable expenses including but not limited to legal, brokerage, and permitting fees and expenses to procure a new lease, and (3) reasonable relocation expenses; and the Landlord shall be entitled to the balance of the aforementioned sum.

(b) In the event of a Taking of less than a substantial part of the Demised Premises, this Lease shall continue in full force and effect as to the part of the Demised Premises not so taken or condemned and there shall be a corresponding pro rata reduction in the rent. The net award or payment shall then be paid to the Landlord and shall be disbursed as follows:

(i) Landlord shall receive such portion thereof as is equal to the then fair market value of the portion of the land included in Demised Premises included in or adversely affected by the Taking; then

(ii) there shall be disbursed to Tenant such portion of the balance of the net award or payment as is required for the purpose of rebuilding, repairing or restoring any building and any other improvements damaged or destroyed by such Taking or condemnation; then

(iii) the balance of the net award or payment, if any, shall be paid to the Landlord.

(c) The Demised Premises, or any part thereof, shall be deemed condemned or taken in condemnation within the meaning of this Lease, if, after the institution of condemnation proceedings in respect of the Demised Premises, or any part thereof or the promulgation or official filing of any notice of intention to condemn the Demised Premises, or any part thereof or any notice or declaration serving a similar purpose, the Demised Premises or the part sought or intended to be condemned is sold and transferred by Landlord to the condemnor or its designee in or as part of a negotiated sale, and in such event title to the Demised Premises or such part thereof (unless previously divested) shall be deemed divested when such transfer takes place.

(d) Except as provided in this Section, Tenant shall have no rights or claims in connection with, or resulting from, any Taking. Without limiting the foregoing, in no event shall Tenant have any claim against Landlord for the value of any unexpired portion of the Term of this Lease.

19. Subordination.

(a) Tenant covenants that its rights under this Lease, upon the written request of Landlord, shall be and become subject and subordinate to the operation and effect of any mortgage(s) now existing or hereafter placed upon the Demised Premises, if any, without any further written document from Tenant. Tenant agrees to attorn to any successor to Landlord's interest in this Lease and/or in the Demised Premises and to execute any instrument reasonably required by Landlord to further effectuate the provisions hereof.

(b) In the event that any mortgagee of the Demised Premises shall succeed to the interests of the Landlord under the within Lease, it is understood and agreed that said mortgagee shall not in any event be or become liable for any act or omission of any prior landlord (including the Landlord); or be subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord); or be bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord); or be bound by any amendment or modification of the within Lease made without its consent; or be bound to return any security deposit under the within Lease unless the same shall actually come into possession of said mortgagee.

(c) Tenant further agrees that neither the foreclosure of any mortgage affecting the leasehold title of the Demised Premises, nor any proceedings brought by the holder of any such mortgage to recover possession of the Demised Premises shall, by operation of law or otherwise, result in the cancellation or termination of this Lease or the obligations of Tenant hereunder, and Tenant covenants and agrees to attorn to any successor to Landlord's interest in this Lease and/or in the Demised Premises or to the holder of any such mortgage (or Landlord's interests therein) at any foreclosure sale, provided that in any such case this Lease and Tenant's interest shall not be disturbed and shall be recognized by any successor to Landlord's interests hereunder or by any such mortgagee or purchaser for the period(s) in which this Lease remains in good standing.

(d) If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Landlord and each mortgagee of the Demised Premises whose name and address shall previously have been furnished to Tenant, and (ii) until a period of thirty (30) days for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such mortgagee of the Demised Premises shall have become entitled under such mortgage to remedy the same, except for any act or omission which is not susceptible of being cured within such thirty (30) day period, in which event the time permitted to such mortgagee to cure such act or omission shall be extended for so long as shall be reasonably necessary to cure such default, provided such mortgagee commences promptly and diligently proceeds to cure such act or omission.

20. Notices. Every notice, approval, consent, or other communication required by this Lease shall be in writing and shall be sent postage prepaid by United States registered or certified mail, return receipt requested, or by overnight delivery service, directed to the other party, at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Section 20. All notices shall become effective upon receipt or rejection of receipt by the addressee.

21. Access to Demised Premises.

(a) Tenant shall permit Landlord and Landlord's agents to enter the Demised Premises at all reasonable hours for the purpose of inspecting the same, or of making repairs, replacements or renewals that Tenant may neglect or refuse to make in accordance with the terms, covenants and conditions of this Lease. This provision is not to be construed as an increase of Landlord's obligations under this Lease, it being expressly agreed that the right and authority hereby reserved does not impose, nor does Landlord assume by reason thereof, any responsibility or liability whatsoever for the repair, care or supervision of the Demised Premises, or any improvement, equipment or appurtenance on or of the Demised Premises. The performance of such repairs, replacements or renewals by Landlord under this Section 21(a) shall not constitute a



waiver of Tenant's default in failing to perform the same. Landlord shall not, in any event, be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of making repairs, replacements or renewals or the performance of any work on the Demised Premises or on account of bringing materials, supplies and equipment into or through the Demised Premises during the course thereof, and the obligations of Tenant under this Lease shall not thereby be affected in any manner whatsoever.

(b) Upon prior notice to Tenant, Landlord and Landlord's agents shall have the right to enter the Demised Premises to exhibit the Demised Premises to prospective purchasers, prospective mortgagees, and prospective tenants, but as to prospective tenants, only during the last six (6) months of the Term of this Lease. During the final six (6) months of the Term, Landlord may place customary "For Lease" signs on the Demised Premises in such manner as to not unreasonably interfere with Tenant's business and Tenant agrees that such signs may remain unmolested upon the Demised Premises.

22. Payments by Landlord. Tenant covenants and agrees that, if it shall at any time fail to make a payment or perform any act which Tenant is obligated to make or perform under this Lease or any mortgage secured or collaterally secured by this Lease and if Landlord determines in its reasonable judgement that not performing such act would result in material harm to Landlord, Landlord may but shall not be obligated to, and without waiving or releasing Tenant from any obligations of Tenant in this Lease contained, make any such payments or perform any such act in such manner and to such extent as Landlord, in its discretion, shall determine to be necessary and, in exercising any such rights, pay necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys' fees. All sums so paid by Landlord and all necessary and incidental costs and expenses in connection with the performance of any such act by Landlord shall be deemed additional rent hereunder and shall be payable to Landlord on demand or, at the option of Landlord, may be added to any rent then due or thereafter becoming due under this Lease.

23. Construction of Lease.

(a) This Lease shall be governed by, construed and enforced in accordance with the laws of the State of New York.

(b) In construing this Lease, masculine or feminine pronouns shall be substituted for those neuter in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

(c) The section headings in this Lease are inserted only as a matter of convenience and for reference in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

(d) The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns, subject to the provisions of Section 11.

(e) Landlord shall have, with respect to all monetary payments to be made by Tenant hereunder, whether to Landlord or to a third party, all rights and remedies which Landlord has under this Lease and at law and in equity, with respect to the payment of basic annual rent, and, for purposes of such rights and remedies, all of such monetary payments shall constitute additional rent (whether or not so designated in this Lease).

24. No Recording. This Lease shall not be recorded, except as may be required by law, but either party hereto may record a memorandum of lease.

25. Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the basic rent and additional rent herein reserved, and performing and observing the covenants, conditions and agreements hereof upon the part of the Tenant to be performed and observed, shall and may peaceably hold and enjoy the Demised Premises during the term hereof, without any interruption or disturbance from the Landlord, its successor and assigns, subject, however, to the terms of the Lease and any mortgages covering Demised Premises.

26. Environmental Law Compliance.

(a) Tenant shall not cause or permit the release, discharge, or disposal nor the presence, use, transportation, generation, or storage of any Hazardous Materials (as hereinafter defined) in, on, under, about, to, or from the Demised Premises by either Tenant, Tenant's employees, agents, contractors, or invitees (for this Section 26 only, all of the foregoing shall be collectively referred to as "Tenant") other than the use of such materials in de minimis quantities reasonably necessitated by the Tenant's regular business activities.

(b) Tenant further agrees and covenants to Landlord, its agents, employees, affiliates and shareholders (for this Section 26 only, all of the foregoing shall be collectively referred to as "Landlord") the following:

i. To comply with all Environmental Laws (as hereinafter defined) in effect, or which may come into effect, applicable to the Tenant or Tenant's use and occupancy of the Demised Premises;

ii. To immediately notify Landlord, in writing, of any existing, pending or threatened (a) investigation, inquiry, claim or action by any governmental authority in connection with any Environmental Laws; (b) third party claims; (c) regulatory actions; and/or (d) contamination of the Demised Premises;

iii. To investigate, monitor, remediate, and/or clean up at Tenant's expense any Hazardous Materials or other environmental condition on, about, or under the Demised Premises required as a result of Tenant's use or occupancy of the Demised Premises;

iv. To keep the Demised Premises free of any lien imposed pursuant to any Environmental Laws; and

v. To indemnify, defend, and save Landlord harmless from and against any and all claims (including personal injury, real, or personal property damage), actions, judgments, damages, penalties, fines, costs, liabilities, interest, or attorney's fees that arise, directly or indirectly, from Tenant's violation of any Environmental Laws or the presence of any Hazardous Materials on, under or about the Demised Premises.

(c) Tenant's obligations, responsibilities, and liabilities under this Section 26 shall survive the expiration of this Lease.

(d) For purposes of this Section 26 the following definitions apply:

"Hazardous Materials" shall mean (i) any "hazardous waste" and/or "hazardous substance" defined pursuant to any Environmental Laws; (ii) asbestos or any substance containing asbestos; (iii) polychlorinated biphenyls; (iv) lead; (v) radon; (vi) pesticides; (vii) petroleum or any other substance containing hydrocarbons; (viii) any substance which, when on the Demised Premises, is prohibited by any Environmental Laws; and (ix) any other substance, material, or waste which (x) by any Environmental Laws requires special handling or notification of any governmental authority in its collection, storage, treatment, or disposal or (y) is defined or classified as hazardous, dangerous or toxic pursuant to any legal requirement.

"Environmental Laws" shall mean: any and all federal, state and local laws, statutes, codes, ordinances, regulations, rules or other requirements, relating to human health or safety or to the environment, including, but not limited to, those applicable to the storage, treatment, disposal, handling and release of any Hazardous Materials, all as amended or modified from time to time.

27. No Waiver. The failure of Landlord or Tenant to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Lease or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such term, covenant, condition, provision, agreement or option. A receipt and acceptance by Landlord of basic annual rent, additional rent or any other payment, or the acceptance of performance of anything required by this Lease to be performed by Tenant with knowledge of the breach of any term, covenant, condition, provision or agreement of this Lease, shall not be deemed a waiver of such breach, nor shall any such acceptance of basic

annual rent or additional rent in a lesser amount than is herein provided for (regardless of any endorsement on any check, or any statement in any letter accompanying any payment of rent) operate or be construed either as an accord and satisfaction or in any manner other than as a payment on account of the earliest basic rent or additional rent then unpaid by Tenant. No waiver by Landlord or Tenant of any term, covenant, condition, provision or agreement of this Lease shall be deemed to have been made unless expressed in writing and signed by the party waiving same. Neither acceptance of the keys nor any other act or thing done by Landlord during the term hereof shall be deemed an acceptance of surrender by Tenant of Demised Premises and this Lease, unless such surrender shall be accepted in an agreement in writing signed by Landlord.

28. Entire Agreement. This Lease sets forth all the promises, inducements, agreements, conditions and understandings between Landlord and Tenant relative to the Demised Premises and there are no promises, agreements, conditions or understandings either oral or written, express or implied, between them, other than as are herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each of said parties.

29. Representations.

(a) Tenant represents and warrants that: (i) Tenant has the full right, power, and authority to enter into this Lease and to perform its obligations and covenants hereunder for the entire tenancy created hereby; (ii) if not a natural person, Tenant is duly organized or formed, validly existing and in good standing under the laws of the state of its organization or formation, and Tenant is qualified to do business in the State of New York; (iii) the undersigned is duly authorized to execute, deliver and perform this Lease on behalf of Tenant, and all necessary action to authorize the execution, delivery and performance of this Lease on behalf of Tenant has been properly taken; (iv) this Lease constitutes the valid and legally binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies; and (v) the execution, delivery and performance by Tenant of this Lease do not and will not (y) conflict with, or violate any provision of, any law having applicability to Tenant or (z) conflict with, or result in any breach of, or constitute a default under, any agreement to which Tenant is a party.

(b) Landlord represents and warrants that: (i) Landlord has the full right, power, and authority to enter into this Lease and to perform its obligations and covenants hereunder for the entire tenancy created hereby; (ii) if not a natural person, Landlord is duly organized or formed, validly existing and in good standing under the laws of the state of its organization or formation; (iii) the undersigned is duly authorized to execute, deliver and perform this Lease on behalf of Landlord, and all necessary action to authorize the execution, delivery and performance of this Lease on behalf of Landlord has been properly taken; (iv) this Lease constitutes the valid and

legally binding obligation of Landlord, enforceable against Landlord in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies; and (v) the execution, delivery and performance by Landlord of this Lease do not and will not (y) conflict with, or violate any provision of, any law having applicability to Landlord or (z) conflict with, or result in any breach of, or constitute a default under, any agreement to which Landlord is a party.

30. ADA Compliance. Tenant shall not cause or permit any violation of the Americans with Disabilities Act (the "ADA") to occur on, or about the Demised Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Demised Premises, damages for the loss or restriction of use of rentable or usable space, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultation fees and expert fees) that arise during or after the Term as a result of such violation. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any remedial work required by any federal, state, or local governmental agency or political subdivision because of any ADA violation present on or about the Demised Premises. Tenant shall be permitted to make such alterations to the Demised Premises as may be necessary to comply with the ADA, at Tenant's sole expense and upon the prior written consent of Landlord. Without limiting the foregoing, if the presence of any ADA violation on the Demised Premises caused or permitted by Tenant results in remedial work on the Demised Premises, Tenant shall promptly take all actions at its sole expense as are required by any authority to comply with the ADA; provided that Landlord's consent to such actions shall first be obtained, which shall not be reasonably withheld.

31. Force Majeure. Anything in this Agreement to the contrary notwithstanding, neither party shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if such non-performance shall be due to any strike, lockout, civil commotion, warlike operation, invasion, pandemic rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing through Act of God or any other similar or dissimilar cause whatsoever beyond the control of that party. Notwithstanding the foregoing, the provisions of this Section 31 shall not apply to, and shall not permit any delay in the payment of any installment of basic annual rent or additional rent or any other sums due hereunder.

32. Broker. Landlord and Tenant represent and warrant to each other that they have not engaged or dealt with any broker or agent with respect to the Demised Premises. Landlord and Tenant shall defend, indemnify and hold the other harmless from and against all claims, losses and liabilities incurred by the indemnified party in connection with any claim or demand by any person

or entity for any broker's, finder's or other fee or compensation in connection with the indemnifying party's entry into this Lease.

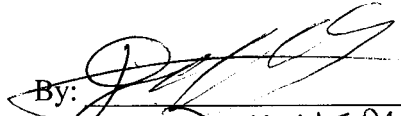
33. Partial Invalidity. If any term or provision of this Lease or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

34. Counterparts. This Lease may be executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signed copy of this Lease delivered by .pdf signature, facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Lease.

*Signature Page Follows*

IN WITNESS WHEREOF, the parties hereto have duly executed this Ground Lease Agreement the day and year first above written.

LANDLORD  
VILLAGE OF COLD SPRING

By:   
Name: DAVE MERANDY  
Title: MAYOR

TENANT  
COLD SPRING BOAT CLUB, INC.

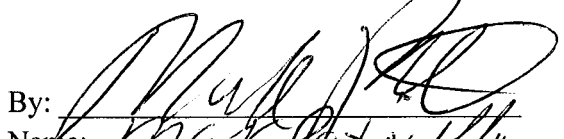
By:   
Name: Mark Bitpally  
Title: Commodore

EXHIBIT A

DEMISED PREMISES

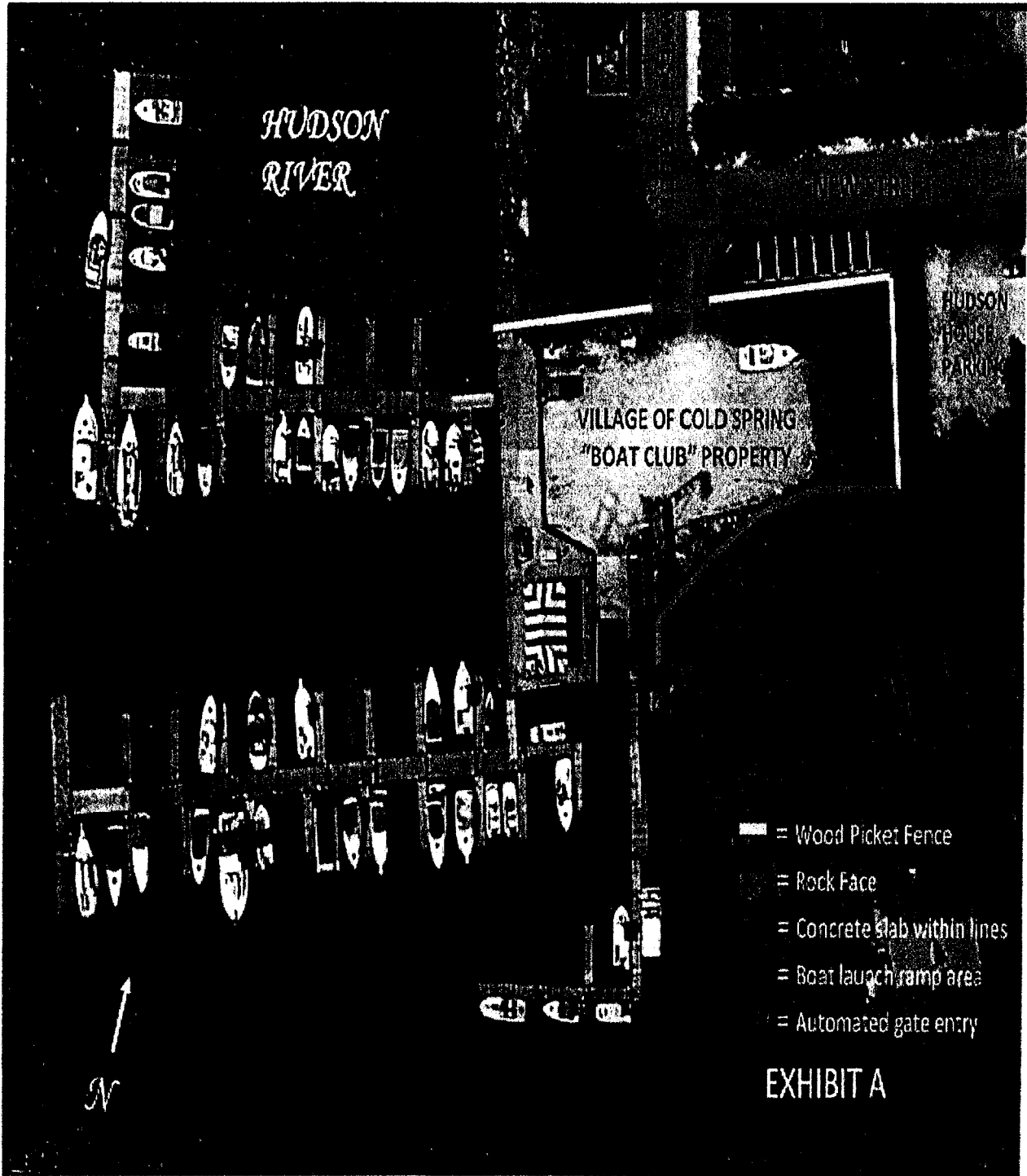




EXHIBIT B

By-Laws

See attached

# **THE COLD SPRING BOAT CLUB, INC.**

## **BY-LAWS**

### **ARTICLE I**

#### *Name, Seal and Burgee*

#### **Section 1: Name**

This Corporation shall be known as the "Cold Spring Boat Club, Inc."

#### **Section 2: Seal**

The Corporate seal of the club is to be circular in form with a diameter of approximately 1 1/2 inches and to consist of the words, "Cold Spring Boat Club, Inc. 1955", the first four words being contained between the inner and the outer ring, with the words, "Inc. 1955" in the center.

#### **Section 3: Burgee**

The Burgee will be a three (3) corner-type white device with letters CSBC in black.

### **ARTICLE II**

#### *Object*

The object of the Club shall be to provide docking and launching facilities for its members and the public; to encourage the sport of boating, seamanship and navigation; to preserve the scenic beauty and natural advantages of the Hudson; to render civic service to Cold Spring and Philipstown; and to promote good fellowship among its members.

### **ARTICLE III**

#### *Membership*

#### **Section 1: Regular Member**

1. Regular Member in Arrears: Members with dues, fees, fines or assessments in arrears shall be automatically suspended from the club, lose seniority, and not be guaranteed a slip. If the arrears are paid by the May meeting the suspension shall be automatically lifted. If the arrears are not paid by the May meeting, the member will be expelled from the club without additional warning. The expelled member may reapply for membership one Calendar year after his original expulsion. To do so, this member must pay the Initiation Fee, past monies due and all additional monies and fees due the Club as well as meeting all other membership requirements. Expelled members lose all seniority.

2. Member in good standing: Each member shall be required to attend three (3) regular meetings per year to be in good standing. Only members in good standing shall be permitted to vote in club elections. The September meeting shall count as one of the three required meetings.
  - A. Working Member: Members that must fulfill an annual work requirement as established annually by the Board of Governors.
  - B. Paying Member: Members that must pay an annual fee as set forth in the fee schedule, annually adjusted.

## **Section 2:** Life Member

A regular member who without interruption of regular membership has reached the age of 60 and has 15 accumulative years of regular membership, or a regular member who has 25 consecutive years of regular membership, shall become a Life Member and be exempt from dues and work assessments.

## **Section 3:** Associate Member

Anyone who supports the object of the Club may become an Associate Member. This membership shall be processed the same as that of a Regular Member (Article III, Section 5). There is an initiation fee and Annual dues for Associate Member established in the Article IX Fee Schedule. An Associate Member has the right to vote only on social events, does not hold seniority, and is not entitled to use the boating facilities, but does have the privilege of launching his/her craft if a Resident of Philipstown. The statement referring to residents using the ramp would also apply to the Associate member. An Associate Member is exempt from work parties. An Associate Member must meet the requirements of Article III, Section 1 to become a regular member.

## **Section 4:** Honorary Member

Anyone who has rendered extraordinary service to the Club or the Community may be made an Honorary Member. An Honorary Member is exempt from dues, holds no power to vote, and has no boating privileges.

## **Section 5:** Eligibility, Probation, Initiation

1. Any of the following constitutes eligibility for membership:
  - A. Residents of Cold Spring
  - B. Spouses and children of current regular members or spouses and children of former regular members (those who died in good standing, including those who switched from regular to associate).
  - C. Residents of Philipstown
2. An application for probationary regular membership, endorsed by two regular members shall be sent to the Treasurer, with the initiation fee and the annual dues for one year.

- A. The Treasurer shall report the application, with the names of the sponsors to the membership and the membership committee.
  - B. The membership Committee shall be the board of governors.
  - C. The Applicant must appear before the Board of Governors at their regular stated meeting.
  - D. The Applicant must provide proof of residency and discuss with the Board the terms which a probationary member is obliged to fulfill.
  - E. A two-thirds vote of the regular members present shall elect the candidate to membership.
3. Probationary Period: There shall be a one (1) year probationary period for all new members.
    - A. A Working Member is required to work the hours as set by the club. Failure to perform these required work hours will result in expulsion from the club upon proper notification.
    - B. A Paying Member is required to pay all dues and slip fees as set by the club, and on the date set by the club. Failure to perform will result in expulsion from the club.
  4. Membership in Article III, Section 5.1 may be opened or closed for subpart C with a bylaw change only.
  5. There is an initiation fee and annual dues for Regular members established in the Article IX Fee Schedule.
    - A. New Regular Members shall have the option to pay their initiation fee in full upon joining OR to pay the fee in TWO equal installments, upon joining, and with the next payment of annual dues.
    - B. Unpaid balances become due immediately if the Probationary Member that exercises this option 5A terminates their membership or changes membership class to Associate.
  6. All dues, slip fees, fines, assessments, storage, and other fees that the board shall enact from time to time, shall be invoiced in January of each year and be payable by April meeting of the same year. Those members whose invoices are not paid by the April meeting, shall be automatically suspended from the Club and therefore, not entitled to any of its privileges.
  7. When a member pays annual dues, he/she must provide the Club with a copy of their current Insurance. Boats will not be permitted in the water until the Club is in receipt of such proof. This will be done on an annual basis.

## **ARTICLE IV**

### *Officers*

#### **Section 1: Officers of Club**

The officers of the Club and their duties shall be:

1. **Commodore:**

- A. The Commodore shall command the squadron, preside at all meetings of the Club and Board of Governors and may call special meetings of each and shall be a member ex-officio of all committees.
2. **Vice Commodore:**
  - A. The Vice Commodore shall assist the Commodore in the discharge of his duties and preside at all meetings in his absence and shall be a member ex-officio of all committees at the discretion of the Commodore.
3. **Dock Master:**
  - A. The Dock Master shall be in full charge of all slips, and waterfront facilities. He shall organize and supervise all water-front work parties and keep an accurate record of each member's work hours. He shall also keep an accurate record of all member's crafts including: vessel description, serial number of both motor and boat, registration number, member's address and phone number. He shall get free dues and slip fees for one year.
  - B. The Dock Master shall have an assistant appointed by the Commodore and the Board of Directors.
  - C. The Dockmaster shall make a written report at the December meeting listing all delinquent work hours.
4. **Recording Secretary:**
  - A. Shall keep accurate minutes of each meeting including:
    - i. General topics and conclusions of all discussions.
    - ii. All motions as stated by individuals, including name and seconder and final vote.
    - iii. Brief on committee reports.
    - iv. Read previous minutes at each meeting.
    - v. Record the names of all members present.
  - B. Shall provide a member to substitute when absent who shall bring all records to the meeting and take minutes as prescribed.
  - C. Shall be custodian of the Club seal.
  - D. Maintain a safe depository for any documents the Board of Governors deems necessary.
5. **Corresponding Secretary:**
  - A. The Corresponding Secretary shall handle all Club correspondence, including notification to members of regular meetings, special meetings and work parties.
6. **Treasurer:**
  - A. Shall act as custodian and be responsible for all the Club's funds. All newly collected money shall become part of the operational fund and be covered by the budget. A separate reserve fund has been established by the Club and is under control of the members.
  - B. Shall collect, receive and dispense all Club monies.
  - C. Shall maintain complete records of all financial transactions including receipts for money received from Club members.
  - D. Shall make available all records, on request, to the Board of Governors.
  - E. All checks must be signed by the Treasurer and the Commodore or the Vice Commodore.

- F. At the discretion of the Board of Governors, the Treasurer will furnish a bond at the expense of the Club.
  - G. Render a financial report at each meeting.
  - H. Shall pay no bills without proper approval.
7. **Trustees:**
- A. There shall be three trustees who are members of the Board of Governors and shall audit the financial records after the September meeting and report on the same to the membership at the November meeting. They may also be designated members ex-officio of any committee at the discretion of the Commodore.

**Section 2:** Nomination of Officers

The chairman of the Nominations Committee, who shall be appointed at the July meeting, shall select three members for this Committee. It shall be the duty of the Nominating Committee to select candidates for all offices. The nominees must be announced at the August meeting. At that time, additional nominations may be made from the floor.

**Section 3:** Election of Officers

Election of officers shall be by written secret ballot at the September meeting; Trustees to serve for three years; all other officers to serve for one year, or until their successors are elected. Their term of office shall begin at the close of the December meeting. The Dockmaster elected at the September meeting will assist the present office holder during the Fall float removal.

**Section 4:** Removal from Office

Officers may be removed for misconduct or neglect of duty. Any member may make a motion to remove from office; if it has the support of the majority, a special committee shall be elected to investigate and report back at the next meeting. A vote will be taken and if two-thirds of the members concur, the office shall be declared vacant and a replacement elected.

**Section 5:** Filling of Vacancies

Any vacancy of office shall be filled for the remainder of the existing term by the members at the first opportunity.

**ARTICLE V**  
*Meetings*

**Section 1:** Regular Meetings

Regular Club meetings shall be held on the first Monday of each month from February through December. If the first Monday is a holiday the Board of Governors may choose an alternate date and announce it at the preceding meeting.

**Section 2:** Special Meetings

Special meetings may be called by the Board of Governors or upon request of five (5) members. Notice of the meeting must be given to all regular members 1 week prior to meeting. Notice must include business to be discussed and the meeting be limited to this business only. Notification will be by e-mail unless notification by regular mail is requested by the member.

**Section 3:** Quorum

A quorum shall consist of no less than ten (10) members, including two (2) members of the Board of Governors. Meeting to be headed by senior officer.

**Section 4:** Board of Governors

The Board of Governors shall meet with a quorum of five (5).

**Section 5:** Order of Meetings

- I. Tally of member, including names
- II. Minutes of last meeting
- III. Commodore Report
- IV. Secretary's Report
- V. Treasurer's Report
- VI. Correspondence
- VII. Dock Master Report
- VIII. Committee Reports
- IX. Membership
- X. Old Business
- XI. New Business
- XII. Adjournment

**ARTICLE VI**  
*Board of Governors*

**Section 1:** The Board

The Board of Governors shall include five officers; the Commodore, the Vice Commodore, the Dockmaster, the Secretary, the Treasurer, and three Trustees. One Trustee shall be elected at the September meeting each year for a three-year term.

**Section 2:** Duties of the Board

1. The Board of Governors shall have general supervision of the affairs of the Club between its business meetings, fix the hour and place of meetings, make recommendations to the Club and shall perform such other duties as are specified in the by-laws. The Board shall be subject to the orders of the Club, and none of its acts shall conflict with action taken by the Club.
2. Prepare a budget for submission to the membership at the November meeting to be voted upon at the December meeting of the Club. The Board is authorized to expend money allocated in the adopted budget, except in the case of capital expenditures over the amount established in the Article IX Fee Schedule. Such capital expenditures and the expenditure of any money in the Club's reserve fund must have the specific approval of the Club's members.
3. Negotiation of the building lease and the referral of the lease to the membership for approval.
4. Settle any disagreement between committees or members.
5. Review all infractions of the by-laws and recommend action to the membership.
6. A Special Assessment may be made as needed when ordered by the Board Of Governors, and must be approved at the Regular Meeting by the membership.

**Section 3:** Meetings of the Board

Unless otherwise ordered by the Board, regular meetings of the Board of Governors shall be held on the last Monday of each month from January through November. Special meetings of the Board can be called by the Commodore and shall be called upon the written request of three members of the Board.

**ARTICLE VII**  
*Committees*

**Section 1:** Public Relations Committee

1. Public relations committee shall consist of a chairman selected by the Commodore and one other member.
2. The Committee shall supply the press with information on all of the activities of the Club and whatever additional duties are prescribed by the Board of Directors.

**Section 2:** Property Committee

1. Consists of chairman; an officer selected by the Commodore and any additional members the chairman desires.



2. Duties: Responsible for maintaining the Club grounds. Responsible for maintaining equipment, minor repairs and maintenance of building. Authority to call work parties for such duties.

**Section 3:** Recreation and Entertainment Committee

1. Chairman to be appointed by the Commodore with one or more member of the Club

**Section 4:** Other Committees

1. Such other committees; standing or special; shall be appointed by the Commodore as the Club or the Board of Governors shall deem necessary to carry on the work of the club.

**ARTICLE VIII**  
*Regulations*

**Section 1:** Slips, Ramp, and Storage

1. Regular members are entitled to the use of one slip for their boat. After the Dockmaster has verified proof of ownership and proof of liability insurance he shall assign slips on the basis of seniority, previous years' assignment; size and type of boat; special needs of the members and availability. An assigned slip may be used only by the member and not be sublet. Based on availability and seniority a member may be allowed by the Board of Governors to have an additional boat or jet-ski docked outside his/her slip for an overnight, monthly, or seasonal rate established in the Article IX Fee Schedule.
  - A. Members that have not completed the full payment of initiation fees specified in Article 3, Section 5, Part A, shall not be assigned a permanent slip.
2. Slip fees shall be established in the Article IX Fee Schedule.
3. Any change in slip requirements shall be reported to the Dockmaster in writing at or before the April meeting.
4. Any regular member who sells his boat may:
  - A. Reserve a slip or mooring for future use by paying the fee established in the Article IX Fee Schedule. (The Boat Club reserves the right to temporarily assign use of the slip to another member) When the reserving member shows proof of registration and insurance for a boat to occupy the slip it will be vacated. The slip will be occupied in a timely manner.
  - B. Remain a Regular Member without reserving a slip. (Such a member retains his seniority, but during the remainder of that year cannot be guaranteed a slip if his needs change.)
  - C. Revert to an Associate Member. (Such a member may regain a Regular membership by notifying the secretary in writing. The secretary reports the change to the membership at the next meeting. If no slips are available at that time, the member will be placed on the waiting list on the basis of seniority.)

5. Fees for non-Philipstown residents' use of the boat ramp and overnight docking shall be established in the Article IX Fee Schedule.
6. Fees for winter storage of boats shall be established in the Article IX Fee Schedule. Storage assignment shall be determined by: previous years' assignments, size and type of boat, seniority, and special needs of members. An assigned space may be used only by the member.
  - A. Any Regular member who sells his boat or has it offsite for repairs may reserve his storage space for future use by paying the minimum fee established in the Article IX Fee Schedule. A reserved storage area may be temporarily assigned to another member. If a regular member wishes to store his boat in the yard and there is no available space at that time the member shall be placed on a waiting list on the basis of seniority.
7. All storage assignments will be made by the Board of Governors. Any change in storage requirements will be reported to the Board of Governors on or before the September meeting.
8. Any boat owner who uses the yard for winter storage and fails to launch his boat and remove his/her trailer by the Sunday before Memorial Day weekend will pay a daily fine established in the Article IX Fee Schedule unless he/she demonstrates hardship(boat under repair, illness, etc) acceptable to the Board of Governors at one of their scheduled meetings
9. The owner of any boat; except those that are being actively repaired; or any trailer left on the property or in the building between June 1 and October 1, will be assessed a monthly fine as established in the Article IX Fee Schedule.

## **Section 2: Work Details**

1. All Working Members shall participate in work hours as determined by the Board of Governors. The hours for the new boating season will be established by the Board of Governors at their February meeting.
2. Penalties for failure to perform work hours shall be assessed as follows:
  - A. 1st - 5th hours at the work hour penalty rate in the Article IX Fee Schedule.
  - B. 6th - 10th hours at twice the work hour penalty rate in the Article IX Fee Schedule.
  - C. 11th - 15th hours at four times the work hour penalty rate in the Article IX Fee Schedule.
  - D. 16th - 25th hours at six times the work hour penalty rate in the Article IX Fee Schedule.
3. Any Member who does not work their required hours must pay all appropriate fees specified in The Fee Schedule by the April meeting. Any amount unpaid at the April meeting will result in automatic Suspension. If the past due balance is not received at the May meeting they shall be automatically expelled from the club
4. Any member working on a committee shall be given credit against work hours. The Commodore, Secretary, and Treasurer shall be exempt from work hours, and in addition the Vice Commodore and each Trustee shall be given two hours for each meeting attended.

5. Any Regular member who wishes to become an Associate member must notify the club in writing or verbally before the general membership by the April meeting or be assessed the work hours for the first half of the year.
6. Additional work hours may be assessed for special projects upon a vote of two-thirds of the members present at a club meeting, provided that the members are notified of the vote in a notice of that meeting. The number of required hours and fines for unworked hours are to be voted on at that meeting.

### **Section 3: Boat Security**

1. Boats under 20 feet shall be secured with a minimum of 1/2" nylon rope.
2. Boats over 20 feet to 25 feet shall be secured with a minimum of 5/8" nylon rope.
3. Boats over 25 feet shall be secured with 3/4" line. No brass hooks will be allowed on fittings for securing boats. All lines used will be nylon or polypropylene.

### **Section 4: Commercial Activities**

No individual member or business enterprise may use the Club facilities for commercial gain without the permission of the membership.

### **Section 5: Use of Club Facilities**

Any group using the building or grounds must have a certificate of insurance.

### **Section 6: Acceptable Behavior**

1. All members are expected to act as ladies and gentlemen when on Boat Club property.
  - A. Disrespectful treatment of a member or guest will not be tolerated.
  - B. Disorderly conduct will not be condoned.
  - C. Physical or verbal abuse is not acceptable.
2. Any member of the Boat Club can bring to the attention of the Commodore and Trustees behaviors that do not meet these standards.
  - A. These complaints must be in writing and signed by a boat club member. Any complaint by someone other than a member, or not signed will be disregarded.
  - B. Upon receipt of such complaint the Commodore and the Board of Trustees will within 30 days convene a hearing that will be open to the general membership.
    - i. The hearing will require the individual submitting the complaint and the member who the complaint is against to appear in person.
    - ii. If the offender is a guest, the member who sponsored them onto Club property will appear before the board with the offending guest.
    - iii. If the member, or their guest fails to appear, they will be sanctioned in-absentia.
    - iv. These sanctions may include banning the member from the property for 30 days for a first offense, 90 days for a second offense, and a third offense may include ejection from the club.

3. Any person sanctioned will start with a clean slate if they remain sanction-free for a period of thirty-six(36) months.
4. Additionally guests do not have the rights of Boat Club members, and their sponsors are responsible for their guests actions.

### **Section 7: Club Property**

Any Member willfully destroying Club property will be subject to immediate suspension and possible expulsion.

### **Section 8: Memoriums**

The Club shall donate an amount established in the Article IX Fee Schedule to the family of a deceased member.

### **Section 9: Deleted**

### **Section 10: Deleted**

### **Section 11: Pets**

All members and guests' dogs and pets will be leashed and tethered to their owners at all times on Club property, and in accordance with Village laws.

No pets are allowed on Club property at any events where food is served. No pets are allowed in the building.

## **ARTICLE IX**

### *Fee Schedule*

#### **Section 1: Fee Schedule Authority**

1. The board of governors shall establish a Fee Schedule to be presented to the membership for approval annually at the December meeting.
2. Individual items on the Fee Schedule can be changed by a vote of the membership at any regular meeting provided the members are notified of the vote in advance of that meeting.
3. The updated Fee Schedule showing all amounts shall be attached to the bylaws and posted in the members' only section of the Boat Club website.

The Fee Schedule shall establish the fees for:

1. Initiation for Regular and Associate Members.
2. Dues for Regular and Associate Members.
3. Work hours for Regular Members.
4. Intentionally Blank
5. Winter and summer storage.

6. Slip fees for Regular Members.
  - A. Fees for Working Members.
  - B. Fees for Paying Members.
7. Winter storage fees for boats kept in the yard.
8. Non-Philipstown resident boat ramp fee.
9. Work hour penalty rate.
10. Overnight fees.
11. Storage fines.
12. Expenditure limits.
13. Special Assessments.

## **ARTICLE X**

### *Disbandment*

The Cold Spring Boat Club, Inc. cannot be disbanded as long as there are ten (10) or more Members willing and able to continue its operation, assume its obligations and pay its bills.

## **ARTICLE XI**

### *Parliamentary Authority*

Parliamentary authority shall be current edition of Robert's Rules of Order Newly Revised.

## **ARTICLE XII**

### *Amendment of By-Laws*

These by-laws can be amended at any regular meeting of the Club by a two-thirds vote of the regular members present, provided that the amendment has been submitted in writing at the previous meeting and the Members notified by email. Notification will be by e-mail unless notification by regular mail is requested by the member.

EXHIBIT C

**Waiver and Release of Claims**

The signatory below hereby knowingly and voluntarily waives any and all claims that she/he/they may have against the Village of Cold Spring for personal injury or property damage arising from any repair, replacement, restoration, alteration, addition, construction, rebuilding or other work that was or will be performed solely or partly by members of the Cold Spring Boat Club on the Demised Premises that is defined in the Ground Lease Agreement (“Lease”), including Exhibit A to the Lease, which was made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the VILLAGE OF COLD SPRING, a municipal corporation, having an address at 85 Main Street, Cold Spring, New York 10516 and COLD SPRING BOAT CLUB, INC., a New York nonprofit corporation having an address of 5 New Street, P.O. Box 318, Cold Spring, New York 10516.

Member of Cold Spring Boat Club

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name of signatory above).

Notary Seal:

\_\_\_\_\_  
Signature of Notary Public

EXHIBIT D

SIGNAGE

**THE COLD SPRING BOAT CLUB**  
**A MEMBER RUN CLUB SINCE 1955**  
**MOTORIZED AND NON-MOTORIZED BOAT MEMBERSHIPS**  
**AS WELL AS ASSOCIATE MEMBERSHIPS AVAILABLE.**  
**FOR GENERAL AND MEMBERSHIP INFORMATION**  
**VISIT [www.coldspringboatclub.com](http://www.coldspringboatclub.com)**