

AGREEMENT

This agreement (“Agreement”) made as of _____, 2024 between the Village of Croton-on-Hudson, (the “Village”), a New York municipal corporation with offices at One Van Wyck Street, Croton-on-Hudson, New York 10520, and Hudson River Kayak Outfitters LLC, d/b/a Hudson River Recreation LLC (“HRR”), a New York Limited Liability Company having its principal address at P.O. Box 619, Croton-on-Hudson, New York 10520.

WITNESSETH

WHEREAS, HRR is in the business of providing kayak rentals, lessons, and tours, and has provided such services to the Villages residents and visitors pursuant to previous agreement(s) with the Village; and

WHEREAS, the Village Board has determined that it is in the Village’s interest to have HRR continue to provide such recreational programs and services to its residents and visitors pursuant to the Village of Croton Kayak Program Operational Plan incorporated herein and attached hereto as Exhibit A (the “Kayak Program”),

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and for other good and valuable consideration, the sufficiency and the receipt hereof are hereby acknowledged, the parties hereby agree as follows:

1. This Agreement shall be effective as of the date hereof, and its term (the “Initial Term”) shall extend until midnight on December 1, 2029 unless terminated pursuant to the terms herein. At the end of the Initial Term, this Agreement will renew for one (1) additional five year term (the “Renewal Term”) upon written request of HRR to the Village and approved resolution of the Village Board of Trustees. The request must be received by the Village no later than October 31, 2029.

2. HRR shall operate the Kayak Program each year from March 1st through December 1st (the “Kayak Season”).

3. HRR shall have non-exclusive use of the Echo Canoe Boat Launch, Croton-on-Hudson, New York (located south of the Croton-Harmon Train Station), defined as the parking lot, ramp, and open space area (the “Boat Launch Area,” shown on Exhibit B), for the sole purpose of conducting the Kayak Program during each Kayak Season, subject to the conditions herein. HRR understands that the Boat Launch Area is open to the public, and HRR shall not monopolize or unreasonably interfere with the public’s use or enjoyment of the Boat Launch Area. Notwithstanding the foregoing, the Village agrees that it will not allow another commercial entity to operate recreational kayak programs from the Boat Launch Area during the term of this Agreement.

4. During each Kayak Season, HRR may, at its sole expense, locate two (2) 8’Wx20’D storage container (the “Containers”) and a trailer or shed to be used by staff in an area between the salt shed and the Echo Canoe Boat Launch as shown on Exhibit C (the “Storage Area”). Before locating the Container, HRR shall seek Village’s approval in writing of the type and material of the Container and such approval shall not be unreasonably withheld or denied. HRR shall not permit the display of any advertising or promotional materials on the Container or in the Storage Area. The security of the Container and contents therein shall be the sole responsibility of HRR, and HRR shall ensure that the Container and contents therein are secure and locked at all times when not in immediate use. HRR shall use the Container only for the storage of kayaks and items incidental to the Kayak Program.

5. HRR shall run the Kayak Program from the Boat Launch Area during each Kayak Season.

6. In consideration of this Agreement, HRR shall pay to the Village \$1,684 for use of the Storage Area no later than June 1, 2025 (the “Storage Fee”). The Storage Fee shall be payable by June 1 of each successive year and shall increase as follows:

June 1, 2026: \$1,853

June 1, 2027: \$2,038

June 1, 2028: \$2,242

June 1, 2029: \$2,466

If the Renewal Term outlined in Section 1 of this agreement is exercised, the Storage Fee shall increase by 10% in each year of the Renewal Term.

7. HRR shall also pay to the Village the greater of \$1,125 or 9.25% of HRR's gross income from the operation of the Kayak Program at the Boat Launch Area (the "Operation Fee). The Operation Fee shall be payable by March 1 of each year following the Kayak Program. The Operation Fee shall increase to 9.5% for the payment due March 1, 2026, 9.75% for the payment due March 1, 2027, 10% for the payment due March 1, 2028 and 10.25% for the payment due March 1, 2029.

If the Renewal Term outlined in Section 1 of this agreement is exercised, the Operation Fee shall increase by 0.25% in each year of the Renewal Term.

8. For the purpose of verifying the gross income received from HRR's operation of the Kayak Program at the Boat Launch Area, HRR shall upon request and within a reasonable time thereafter furnish to the Village a verified income report compiled by an Independent Certified Public Accountant.

9. HRR shall leave the Storage Area and Boat Launch Area reasonably clean from trash and rubbish at the end of each day of operation. HRR shall supervise all equipment at all times, and HRR shall never leave unattended any watercraft, including kayaks, paddleboards, canoes and other boats. By the close of business each day, HRR shall remove or store in the Container all equipment, including watercraft paddleboards, and boats. If any equipment, including watercraft, paddleboards, and boats, are left unattended at any time, the Village may, at its sole discretion, remove or secure such equipment, and HRR shall be responsible for reimbursing the Village for such work.

10. At the end of the Initial Term, the Renewal Term, or earlier termination of this Agreement, HRR shall leave the Storage Area and Boat Launch Area in good order and condition, damages by elements and reasonable wear and tear excepted. HRR shall not be responsible for trash, debris or damage caused by the general public who are not HRR's customers.

11. HRR shall comply with all laws, rules, orders, ordinances, and regulations applicable to its operations. HRR shall exercise reasonable professional skill and judgment in all aspects of its operations under this Agreement.

12. HRR shall indemnify and defend the Village, its officers, employees, agents, and volunteers against, and save it, its officers, employees, agents and volunteers harmless from and against any and all claims, actions, losses, damages, liabilities, judgments, and expenses

(including, but not limited to, reasonable attorneys' fees) incurred in connection with loss of life, personal injury, and/or damage to property relating to or arising out the Kayak Program, HRR's operations in the Storage Area or Boat Launch Area, and out of this Agreement. The Village shall have no responsibility under this Agreement for the security or protection of HRR, its employees, guests, customers, nor for the security or protection of HRR's or its customers' property.

13. HRR shall maintain in effect throughout the duration of this Agreement all insurance specified in Exhibit D. HRR shall provide to the Village proof of such insurance before it may commence operation of the Kayak Program, and HRR warrants that such proof represents full compliance with the insurance requirements specified in Exhibit D.

14. This Agreement may be terminated by either party for any or no reason upon ninety (90) days prior written notice. Upon such termination, HRR shall immediately remove the Container from the Storage Area and cease operation of the Kayak Program, and the Village shall return to HRR a prorated sum of the compensation already paid to the Village.

15. A default of this Agreement shall mean a failure to cure any breach of this Agreement continuing ten (10) days following delivery of written notice specifying the nature of the alleged breach and offering and opportunity to cure, unless such breach relates to matters of health or safety, in which case it must be cured immediately. In the event of default, the non-defaulting party may terminate the agreement and/or take any available action under law or equity.

16. All notices, demands, and other communications required or permitted hereunder shall be sufficiently given if delivered in person or mailed by certified mail, postage prepaid, addressed as follows:

If to HRR:

John Clark
Hudson River Recreation
P.O. Box 619
Croton-on-Hudson, New York 10520

If to the Village:

Village Clerk
Village of Croton-on-Hudson
1 Van Wyck Street
Croton-on-Hudson, New York 10520

17. This Agreement, and the Exhibits annexed hereto, constitute the entire contract

between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether written or oral, of the parties, and there are no representations, warranties, or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

18. The validity and construction of this Agreement shall be governed by the laws of the State of New York.

19. No delay or omission on the part of any party hereto in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

20. All Exhibits referred to in this Agreement are integral parts of this Agreement as if fully set forth herein.

21. HRR shall not assign its rights or delegate its duties under this Agreement without the prior written consent of the Village Board of Trustees, whose approval will not be unreasonably withheld. Subject to this provision, this Agreement shall bind the parties hereto and their respective successors and assigns. While the intent of this Agreement is to benefit the Village's residents and visitors by providing recreational services, there is no intention to give any third party legally enforceable rights, either as "third party beneficiaries" or otherwise.

22. This Agreement may be amended, but only writing, signed by the parties hereto.

23. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument. This Agreement may be executed electronically, and signatures received electronically shall be deemed of the same force and effect as original signatures.

24. All provisions in this Agreement that, by its or their nature, would reasonably be expected to be performed after the termination of the Agreement shall survive and be enforceable after termination.

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

Hudson River Recreation

By: _____

John Clark _____

Date

Village of Croton-on-Hudson

By: _____

Bryan T. Healy, Village Manager

Date

John Clark

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

Notary Public