

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Golden Gate Yacht Club

Plaintiff,

v.

Societe Nautique de Geneve

Defendant

Club Nautico Espanol de Vela,

Intervenor-Defendant

Index No. 602446/07  
(IAS Part 49; Cahn, J.)

**MEMORANDUM OF LAW OF PLAINTIFF GOLDEN GATE YACHT CLUB IN  
OPPOSITION TO DEFENDANT SOCIETE NAUTIQUE DE GENEVE'S MOTION FOR  
LEAVE TO RENEW AND REARGUE**

January 2, 2008

Attorneys for Plaintiff

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Plaintiff Golden Gate Yacht Club (“GGYC”) respectfully submits this memorandum of law in opposition to Defendant Societe Nautique de Geneve’s (“SNG’s”) motion for leave to renew and reargue.

## ARGUMENT

### I. SNG’S MOTION IS TOO LITTLE, TOO LATE -- AND MUCH TOO INACCURATE

A litigant is perfectly free to change counsel after an adverse ruling on summary judgment, as SNG has here. But, a movant cannot change earlier submitted sworn testimony, misrepresent the issues raised on the cross-motions for summary judgment, and change its theories and arguments. That is precisely what SNG has done in a transparent effort to manufacture a factual dispute (even though it initially moved for summary judgment) and thereby further delay its compliance with the Court’s November 27, 2007 decision granting GGYC summary judgment.

#### A. SNG’s Motion Contradicts Its Prior Sworn Statements

This Court concluded that “GGYC is Challenger of Record.” (Decision at 18.)<sup>1</sup> SNG now resorts to fabricating reasons for the Court to revisit its November 27, 2007 Decision, claiming that the description of the challenging vessel’s dimensions contained in the Certificate

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<sup>1</sup> As used herein, “Decision” refers to the Court’s Memorandum Decision, dated November 27, 2007; “SNG Mem.” refers to SNG’s Memorandum of Law, dated December 27, 2007; “Meyer Aff.” and “Meyer Ex.” refer respectively to the Affidavit of Fred Meyer, dated December 27, 2007 and to the exhibits attached thereto; “Petrocelli Ex.” refers to the exhibits attached to the Affirmation of Gina M. Petrocelli, dated January 2, 2008.

accompanying GGYC's Written Notice of Challenge did not comply with the requirements of the Deed of Gift ("Deed").<sup>2</sup>

In his sworn affidavit, submitted by SNG on its motion for summary judgment, Hamish Ross, the General Counsel of SNG's representative racing team (Alinghi), stated that "[o]n the certificate provided with GGYC's bid, the dimensions of the vessel GGYC proposes to race include a length on load water-line of 90 feet and a beam at load water-line of 90 feet. *These dimensions can only be for a multi-hulled vessel -- presumably, a catamaran.*" (9/21/2007 Ross Aff. ¶ 36.) (emphasis supplied.) SNG's previous counsel, White & Case, made the same assertion in SNG's September 21, 2007 brief in support of SNG's motion for summary judgment. (9/21/2007 SNG Mem. at 9.) From Mr. Ross's affidavit, it is clear that (1) SNG considered the content of GGYC's Written Notice of Challenge and Certificate well before seeking summary judgment; (2) SNG knew and acknowledged that the Notice of Challenge and Certificate described the challenging vessel as a multi-hull vessel; and (3) SNG expressly raised the issue of the content of GGYC's Written Notice of Challenge and Certificate on its summary judgment motion. Mr. Ross's unequivocal assertion that "[t]hese dimensions can only be for a multi-hulled vessel" constitutes a judicial admission. *See Vanriel v. A. Weissman Real Estate*, 283 A.D.2d 260, 260 (1st Dep't 2001) ("trial court properly deemed [third-party defendant's] arguments, made in support of its cross motion for summary judgment seeking to dismiss plaintiff's complaint, to be judicial admissions.")

Now comes SNG's new counsel -- late to the starting line -- claiming that "[i]n light of the Court's Decision . . . SNG *commenced to study* GGYC's Notice of Challenge" (SNG Mem.

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<sup>2</sup> For ease of reference, the Deed of Gift is attached hereto as Appendix I.

at 6) and claiming that the accompanying Certificate describes only a mono-hull vessel -- not a multi-hull -- and that it is “self-contradictory”. (SNG Mem. at 7.) (emphasis supplied.) As support for this change in course, SNG submits the affidavit of Alinghi Vice-Commodore Fred Meyer, in which he categorically denies the prior sworn statement of Alinghi’s General Counsel that SNG had submitted before the arrival of its new counsel. Whereas Mr. Ross had sworn that the “dimensions can only be for a multi-hulled vessel,” Mr. Meyer states that “SNG understands and expects that the challenging vessel of GGYC shall be a keel yacht (not a multi-hulled vessel).” (Meyer Aff. ¶ 17.)

But there is more. Not only does the Meyer Affidavit contradict the sworn statement of Alinghi’s General Counsel, it contradicts Mr. Meyer’s own prior public statements. When thought and speech were original to him -- and before SNG retained new counsel -- Mr. Meyer expressed no doubt about the meaning of GGYC’s Certificate, when he stated in a July 24, 2007 press release by SNG’s agent, ACM, that GGYC made “demands for a private match race in *catamarans*.” (Petrocelli Ex. A at 1.) (emphasis supplied.)

**B. SNG’s Motion Misrepresents What Issues Were Decided On Summary Judgment**

As the central predicate of its motion, SNG asserts, incorrectly, that the validity of GGYC’s Written Notice of Challenge and Certificate was not an issue before the Court on the cross-motions for summary judgment. (SNG Mem. at 2.) It certainly was. The validity of GGYC’s Written Notice of Challenge and Certificate was raised as an issue in GGYC’s Verified Complaint. It stated that “[o]n July 11, 2007, GGYC representatives hand-delivered . . . a *valid formal challenge* to sail the 33<sup>rd</sup> America’s Cup.” (Verified Complaint ¶ 10.) (emphasis supplied.) In a section *entitled* “GGYC Issued a Valid Notice of Challenge,” the Verified

Complaint detailed GGYC's compliance with the Deed of Gift's requirements regarding the notice of challenge and certificate. (Verified Complaint ¶¶ 39-41.) The Verified Complaint expressly requests -- as relief for all of its causes of action -- "[a] declaration that GGYC's challenge is valid." (Verified Complaint at p. 11.)

SNG moved to dismiss all claims in GGYC's Verified Complaint, and for summary judgment on all claims. On its cross-motion for summary judgment, GGYC argued that "[t]he Deed requires SNG to accept GGYC's valid challenge . . . ." (10/5/2007 GGYC Mem. at 1.) The Rule 19-a Statement that GGYC filed in support of its cross-motion for summary judgment stated that "GGYC delivered its Notice of Challenge for the 33<sup>rd</sup> America's Cup to SNG on July 11, 2007." (10/5/2007 GGYC 19-a Stmt. ¶ 22.) In its response, SNG "disputes" that "GGYC delivered a valid challenge for the 33<sup>rd</sup> Cup." (10/12/2007 SNG 19-a Resp. ¶ 22.)

The Court recognized that "SNG move[d] for summary judgment dismissing *all* claims alleged by GGYC in this action," and that GGYC "seeks . . . a declaration that GGYC's challenge is valid," as well as other relief. (Decision at 2, 9.) (emphasis supplied.)

While the validity of GGYC's challenge was an issue before the Court on cross-motions for summary judgment, SNG chose not to argue that the content of GGYC's Written Notice of Challenge and Certificate failed to comply with the Deed's requirements. Rather, SNG chose to rely on its argument that the GGYC challenge was invalid because CNEV's claimed earlier challenge was valid. This is fatal to SNG's motion for leave to renew and reargue, as demonstrated in the next section.

**C. SNG's Post-Decision Arguments Are Too Late, as a Matter of Law**

The law does not permit SNG to make “successive fragmentary attacks upon a cause of action but [movant] must assert all available grounds when moving for summary judgment.” *Phoenix Four, Inc. v. Albertini*, 245 A.D.2d 166, 167 (1st Dep’t 1997). Under New York law successive motions for summary judgment cannot be made in the guise of motions to renew and reargue. As the court held in *Soto v. City of New York*, 37 A.D.3d 589, 589 (2d Dep’t 2007) (citations omitted):

While denominated a motion for leave to renew and reargue, the defendant's motion was actually its second motion for summary judgment. The defendant violated the rule against filing successive motions for summary judgment as the evidence, which derived from the deposition testimony of its own witness, and grounds submitted in the second motion, could have been submitted on the original motion. Accordingly, the defendant's motion was properly denied.

Similarly, SNG knew of the content of GGYC’s Written Notice of Challenge and Certificate but chose not to make the arguments that it now asserts on the motion for leave to renew and reargue.

SNG is precluded from introducing the Meyer Affidavit, and arguments based on it, for an entirely separate and independent reason. When it disputed that “GGYC delivered a valid challenge for the 33<sup>rd</sup> Cup” in its response to paragraph 22 of GGYC’s Rule 19-a Statement, it did not present the evidence (Meyer Affidavit) upon which it now relies for the motion for leave to renew and reargue, as would have been required by Commercial Division Rule 19-a.

(10/12/2007 SNG 19-a Resp. ¶ 22.)<sup>3</sup> SNG was required to “lay bare its proof” in its summary

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<sup>3</sup> SNG’s failure to submit the Meyer Affidavit in support of its denial of GGYC’s Rule 19-a Statement (at paragraph 22) violates Commercial Division Rule 19-a(d)’s requirement that “Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be

judgment papers and cannot now seek to present any additional evidence. *See, e.g., Silberstein, Awad & Miklos, P.C. v. Carson*, 10 A.D.3d 450, 451 (2d Dep't 2004).

SNG's motion for leave to reargue also fails to meet the standards prescribed in CPLR 2221(d). First, the Court did not misapprehend or overlook the issue of the validity of GGYC's challenge. Rather it decided the issue and it addressed the parties' expressed contentions and grounds for relief. The court cannot be faulted for overlooking an argument that SNG never raised. Second, SNG cannot present new or different arguments on a motion to reargue. *See, e.g., Frisenda v. X Large Enters. Inc.*, 280 A.D.2d 514, 515 (2d Dep't 2001) (holding that a "motion for reargument ... is not designed to offer a party an opportunity to argue a new theory of law not previously advanced by it."); *William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27 (1st Dep't 1992) (holding that "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided ..... or to present arguments different from those originally asserted.") (citations omitted.)

Nor does SNG's motion meet the standards for a motion to renew under CPLR 2221(e). The contents of GGYC's Written Notice of Challenge and Certificate were well known to SNG at the time of its motion for summary judgment; it was indeed referenced in SNG's submissions on summary judgment and its supporting affiant, Hamish Ross, swore that he knew what it meant. (*supra* pp. 1-2). *See Pahl Equip. Corp.*, 182 A.D.2d at 27.

Moreover, SNG's motion must fail because SNG is bound by its judicial admissions, as set forth on page 2 of this memorandum. *See, e.g., Vanriel*, 283 A.D.2d at 260 (holding that "the trial court properly deemed [third-party defendant's] arguments, made in support of its cross

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followed by citation to evidence submitted in support of or in opposition to the motion." 22 NYCRR § 202.70 Rule 19-a(d).

motion for summary judgment seeking to dismiss plaintiff's complaint, to be judicial admissions and precluded [third-party defendant] from introducing evidence contradicting these admissions.")

**D. SNG's Claims Regarding the Validity of GGYC's Written Notice Of Challenge And Certificate Are Not Only Too Late, They Are Wrong**

The reason, no doubt, that SNG's original counsel demurred on its new counsel's untimely new arguments is easy to discern: the new theories are all wrong.

In its sixth paragraph, the Deed of Gift identifies the information that the Challenger of Record must provide in its written notice of challenge to describe its challenging vessel:

Accompanying the ten months' notice of challenge there must be sent the name of the owner and a certificate of the name, rig and following dimensions of the challenging vessel, namely, length on load water-line; beam at load water-line and extreme beam; and draught of water. (App. I at 1.)

In compliance with the Deed, GGYC's written Notice of Challenge was accompanied by a "Certificate of Name, Rig and Specified Dimensions of Challenging Vessel." (Meyer Ex. C at 1.) In addition to identifying the name, owner and rig of GGYC's vessel, the Certificate identifies the "Length on Load Waterline," the "Beam at Load Waterline," the "Extreme Beam," the "Draught of water (hull draft)" and the "Draught of water (boards down)." That is all the information that the Deed requires.

SNG asks the Court to add words to the Deed, in violation of New York law, when it asserts that GGYC must provide additional "detail," to its description of the challenging vessel. (SNG Mem. at 8 n. 5.) Nowhere does the Deed require the challenger to specify "whether it intended a catamaran or trimaran," to specify the "dimensions for each of the hulls," the height of the mast or "whether the overall beam includes only hulls that are in the water." (*Id.*)

Moreover, SNG's purported justification for changing its view of the meaning of the description of GGYC's challenging vessel makes no sense. SNG claims that GGYC's Certificate refers to a "keel yacht;" and SNG seeks to advance the nonsensical inference that GGYC's Certificate describes a 90' x 90' mono-hull, which is essentially a barge. SNG bases this contention solely on the presumption that a 90' x 90' multi-hull cannot have a keel. As the *Sailor's Illustrated Dictionary* states, a "keel" is "a structural member that is the backbone of the ship; it runs along the centerline of the bottom." (Petrocelli Ex. D at 240.) SNG submits nothing to suggest that one or more hulls of a multi-hull cannot contain such a "structural member." SNG's reliance on the International Sailing Federation ("ISAF") rules is entirely misplaced. The use of the term "Keelboat" to describe a class of boats in the ISAF rules (Meyer Ex. G ¶ 18.2.1.(b)) does not inform the meaning of the term "keel yacht," as used in GGYC's Certificate. GGYC's Certificate refers to a "keel yacht," not a "Keelboat" as defined in the ISAF rules. Simply because the ISAF has a classification entitled "Keelboat," alongside classifications of vessels entitled "Multihull," does not mean that only mono-hull vessels have keels or that multi-hull vessels cannot or do not have keels, as SNG seeks to imply. Indeed multi-hull vessels have keels, as illustrated by the pictures contained in the attached Appendix II.

More to the point, the notice of challenge requirements in the Deed do not require the notice to include any description of the type, the ISAF boat class, the model, the color or the make of the challenging vessel, or whether there is a center board, a dagger board, a keel or no keel at all. The Deed requires only the stipulated dimensions, which GGYC's Certificate indisputably provided.

SNG also contends that "GGYC's Notice of Challenge fails to give 10 months notice to the Defender as required by the Deed of Gift." (SNG Mem. at 8.) SNG makes the ludicrous

argument that the Written Notice of Challenge, dated July 11, 2007 was invalid -- *at that time* -- because, after its delivery, GGYC was compelled to bring this lawsuit to remedy SNG's breach of the terms of the Deed and to enforce GGYC's rights as challenger. (SNG Mem. at 9.) SNG cannot be found to benefit in this way from its own breach of the terms of the Deed. GGYC's Written Notice of Challenge complied with the Deed of Gift, in that it gave ten months notice by naming "4 July 2008 as the date of the first race, 6 July 2008 and 8 July 2008 as the dates for the second and, if necessary, third races." (Meyer Ex. B at 2.)

SNG also contends that GGYC's Written Notice of Challenge contains improper race dates. According to SNG, the Deed of Gift requires the challenger to notice race dates so that "one *week day* shall intervene between the conclusion of one race and the starting of the next race." (SNG Mem. at 9.) (emphasis supplied.)

SNG contradicts itself again. SNG has consistently maintained in its submissions on summary judgment that a notice of challenge containing race dates separated only by a Saturday is valid under the Deed. Specifically, SNG has asserted on the cross-motions for summary judgment that CNEV's purported notice of challenge, which also described race dates separated only by a Saturday, was valid under the Deed.<sup>4</sup> Its previous counsel stated that "[h]aving received a valid challenge from CNEV, SNG is prohibited under the Deed from entertaining another Challenger of Record . . ." and that "[u]nder the terms of the Deed, CNEV is the valid Challenger of Record and SNG is bound to honor CNEV's challenge." (9/21/2007 SNG Mem. at 2, 2-3.) Indeed, in its letter rejecting GGYC's challenge, SNG states that "The first challenge

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<sup>4</sup> CNEV purported to "name [Wednesday] 1<sup>st</sup> July 2009 as the date of the first race and [Friday] 3<sup>rd</sup> and [Sunday] 5<sup>th</sup> July 2009 as the dates of the second and third races respectively." (Petrocelli Ex. E at 1.)

received by Societe Nautique de Geneve following its successful defence of the America's Cup on 3rd July 2007 was a challenge from Club Nautico Espanol de Vela. *It is a valid challenge under the terms of the Deed of Gift in all respects.*" (Meyer Ex. D at 1.) (emphasis supplied.) Despite these admissions<sup>5</sup>, SNG's new counsel now asserts that an intervening Saturday in its race dates renders GGYC's Written Notice of Challenge "facially deficient." (SNG Mem. at 9.)

The reason for SNG's admissions, submitted by its previous counsel, can be found in the text of the Deed. First, the Deed's notice requirements (contained in the sixth paragraph) do not state that a "week day" shall intervene between the dates noticed in the written challenge. (App. I at 1.) In the eighth paragraph, the Deed sets forth numerous conditions for a one-on-one match between the challenger and the Defender *in the event that the parties cannot mutually agree.* (App. I at 2.) By its terms, that paragraph does not set out the requirements of the Written Notice of Challenge. It describes numerous particular and precise details of the match that must be held if the parties fail to mutually consent to other terms ("Default Match"), including, for example the following description of the "first race, twenty nautical miles to windward and return; the second race an equilateral triangular race of thirty-nine miles . . ." It also prescribes that "one week day shall intervene between the conclusion of one race and the starting of the next race." SNG's attempt to apply any of these provisions, including the "week day" provision, of this section to the Deed's requirements for a challenger's written notice of challenge violates the plain language of the Deed of Gift and fundamental principles of New York law. Under New York law, a trust must be read as a whole and cannot be interpreted to produce absurd results. *See, e.g., In re Estate of Swords*, 157 N.Y.S. 2d 688, 690 (N.Y. Sur. Ct. 1956) ("The language of the will cannot be interpreted as requiring such an absurd result."); *Smith v. Brown & Jones*, 633

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<sup>5</sup> *See supra* p. 2.

N.Y.S.2d 436, 442 (N.Y. Sup. Ct. 1995) (“An unreasonable interpretation or an absurd result should be avoided.”); *Farrell Lines, Inc. v. City of New York*, 30 N.Y.2d 76, 83 (1972) (holding that “rules of construction of contracts require, whenever possible, that an agreement should be given a ‘fair and reasonable interpretation’”).) If the notice of challenge were required to include the “week day” requirement, it would also be required to include all the other prescribed details of a Default Match (such as that the first race should be “twenty nautical miles to windward and return.”) Such an absurd reading of the Deed is prohibited under New York law. If the Deed were to require such a result it could have so provided in the notice of challenge paragraph.

A notice of challenge specifying race dates with only an intervening Saturday complies with the Deed’s notice requirements for another reason. The term “week day” includes Saturday within the meaning of the Deed of Gift. SNG proffers no support for the notion that “week day” as used in the Deed excluded Saturday, because there is no support for that presumption. Thus, had SNG made this argument on summary judgment, it would have failed for lack of any admissible evidence. Now, on SNG’s motion, even if such evidence were permitted (which it is not), such evidence would conclusively demonstrate that Saturday was considered a week day at the time of the Deed’s drafting, in the 19th century in the United States. Just by way of illustration, *The Johnson's Dictionary*, published in 1836, defined “weekday” as “any day except Sunday.” (Petrocelli Ex. B at 375.) Sixty years later in 1895, the *Webster Academic Dictionary, Dictionary of the English Language (Abridged from Webster's International Dictionary)*, included this entry: “Week day, any day of the week except Sunday.” (Petrocelli Ex. C at 631.) And, consistent with this evidence of common usage before the twentieth century, numerous reported decisions of various federal and New York courts uniformly include Saturday as one of the “week days” and refer to Sunday as the only non-week day. *See, e.g., Tiffit v. Buffalo*, 25

A.D. 376, 380 (4th Dep't 1898) (stating "By the notice the plans and specifications were on exhibition during only three *week days, September fourth, Thursday; fifth, Friday, and sixth, Saturday.*") (emphasis supplied).<sup>6</sup>

## II. CNEV'S ALLEGED NOVEMBER 2007 REGATTA DOES NOT WARRANT REARGUMENT OR RENEWAL

CNEV's Trofeo Desafio Espanol event of November 24 and 25 does nothing to remedy CNEV's failure to meet the annual regatta requirement of the Deed of Gift. It is irrelevant that CNEV held the Trofeo Desafio Espanol on November 24 and 25. As the Court stated in its Decision, "that CNEV may someday comply with the conditions of the Deed has no bearing on GGYC's valid challenge that it issued after the date of CNEV's invalid challenge, but prior to such time as CNEV may fulfill the conditions of the Deed." (Decision at 16.) Moreover, SNG fails to meet CPLR 2221's standard for a motion for leave to renew, which must be based "upon new facts not offered on the prior motion." Under the rule, those facts must have existed at the time of the original motion, but CNEV's Trofeo Desafio Espanol occurred weeks after the parties' October 2007 summary judgment motion. *See, e.g., Foley v. Roche*, 68 A.D.2d 558, 568 (1st Dep't 1979).

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<sup>6</sup> *See also Baltimore & P. R. Co. v. Fifth Baptist Church*, 108 U.S. 317, 320 (1883) ("the railroad company . . . ran about 60 trains . . . during week-days, and about 10 trains on Sundays"); *The Shand*, Case No. 12,702, 1879 U.S. Dist. LEXIS 204, at \*8 (S.D.N.Y. 1879) ("The custom house interposed no restriction whatever on . . . its continuing day and night, week days and Sundays."); *People v. Krank*, 110 N.Y. 488, 490 (1888) ("There is nothing in either of these exceptions to call the attention of the court to the distinction between a sale on a week day and one on Sunday."); *Lyman v. Young Men's Cosmopolitan Club*, 28 A.D. 127, 128 (1st Dep't 1898) ("selling intoxicating liquors on Sunday and on week days"); *People ex rel. Linton v. Brooklyn Heights R.R. Co.*, 69 A.D. 549, 555 (2d Dep't 1902) ("the Brooklyn Heights Railroad Company discontinued the direct service . . . on Sundays and holidays, and upon week days."); *Fish v. Coolidge*, 47 A.D. 159, 162 (3d Dep't 1900) ("the driver . . . had the right to drive it for that purpose upon week days but not upon Sunday.")

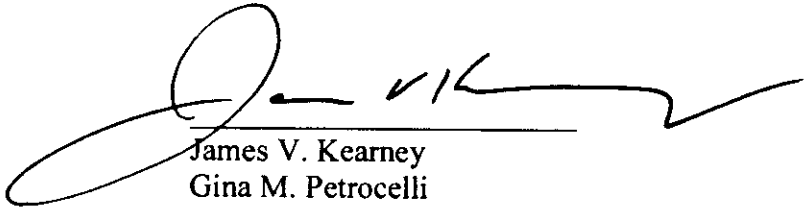
**III. CONCLUSION**

For the foregoing reasons, GGYC respectfully requests that the Court deny SNG's motion for leave to renew and reargue SNG's Motion to Dismiss and for Summary Judgment and GGYC's Cross-Motion for Summary Judgment.

New York, New York  
January 2, 2008

Respectfully submitted,

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**APPENDIX I**

# DEED OF GIFT

This Deed of Gift, made the twenty-fourth day of October, one thousand eight hundred and eighty-seven, between George L. Schuyler as sole surviving owner of the Cup won by the yacht AMERICA at Cowes, England, on the twenty-second day of August, one thousand eight hundred and fifty-one, of the first part, and the New York Yacht Club, of the second part, as amended by orders of the Supreme Court of the State of New York dated December 17, 1956, and April 5, 1985.

## WITNESSETH

That the said party of the first part, for and in consideration of the premises and of the performance of the conditions and agreements hereinafter set forth by the party of the second part, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto said party of the second part, its successors and assigns, the Cup won by the schooner yacht AMERICA, at Cowes, England, upon the twenty-second day of August, 1851. To have and to hold the same to the said party of the second part, its successors and assigns, IN TRUST, NEVERTHELESS, for the following uses and purposes:

This Cup is donated upon the conditions that it shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries.

Any organized Yacht Club of a foreign country, incorporated, patented, or licensed by the legislature, admiralty, or other executive department, having for its annual regatta an ocean water course on the sea, or on an arm of the sea, or one which combines both, shall always be entitled to the right of sailing a match of this Cup, with a yacht or vessel propelled by sails only and constructed in the country to which the Challenging Club belongs, against any one yacht or vessel constructed in the country of the Club holding the Cup.

The competing yachts or vessels, if of one mast, shall be not less than forty-four feet nor more than ninety feet on the load water-line; if of more than one mast they shall be not less than eighty feet nor more than one hundred and fifteen feet on the load water-line.

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races; but no race shall be sailed in the days intervening between November 1st and May 1st if the races are to be conducted in the Northern Hemisphere; and no race shall be sailed in the days intervening between May 1st and November 1st if the races are to be conducted in the Southern Hemisphere. Accompanying the ten months' notice of challenge there must be sent the name of the owner and a certificate of the name, rig and following dimensions of the challenging vessel, namely, length on load water-line; beam at load water-line and extreme beam; and draught of water; which dimensions shall not be

exceeded; and a custom-house registry of the vessel must also be sent as soon as possible. Center-board or sliding keel vessels shall always be allowed to compete in any race for this Cup, and no restriction nor limitation whatever shall be placed upon the use of such center-board or sliding keel, nor shall the center-board or sliding keel be considered a part of the vessel for any purposes of measurement.

The Club challenging for the Cup and the Club holding the same may, by mutual consent, make any arrangement satisfactory to both as to the dates, courses, number of trials, rules and sailing regulations, and any and all other conditions of the match, in which case also the ten months' notice may be waived.

In case the parties cannot mutually agree upon the terms of a match, then three races shall be sailed, and the winner of two of such races shall be entitled to the Cup. All such races shall be on ocean courses, free from headlands, as follows: The first race, twenty nautical miles to windward and return; the second race an equilateral triangular race of thirty-nine nautical miles, the first side of which shall be a beat to windward; the third race (if necessary) twenty nautical miles to windward and return; and one week day shall intervene between the conclusion of one race and the starting of the next race. These ocean courses shall be practicable in all parts for vessels of twenty-two feet draught of water, and shall be selected by the Club holding the Cup; and these races shall be sailed subject to its rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift, but without any times allowances whatever. The challenged Club shall not be required to name its representative vessel until at a time agreed upon for the start, but the vessel when named must compete in all the races, and each of such races must be completed within seven hours.

Should the Club holding the Cup be for any cause dissolved, the Cup shall be transferred to some Club of the same nationality, eligible to challenge under this deed of gift, in trust and subject to its provisions. In the event of the failure of such transfer within three months after such dissolution, such Cup shall revert to the preceding Club holding the same, and under the terms of this deed of gift. It is distinctly understood that the Cup is to be the property of the Club subject to the provisions of this deed, and not the property of the owner or owners of any vessel winning a match.

No vessel which has been defeated in a match for this Cup can be again selected by any Club as its representative until after a contest for it by some other vessel has intervened, or until after the expiration of two years from the time of such defeat. And when a challenge from a Club fulfilling all the conditions required by this instrument has been received, no other challenge can be considered until the pending event has been decided.

AND, the said party of the second part hereby accepts the said Cup subject to the said trust, terms, and conditions, and hereby covenants and agrees to and

with said party of the first part that it will faithfully and will fully see that the foregoing conditions are fully observed and complied with by any contestant for the said Cup during the holding thereof by it; and that it will assign, transfer, and deliver the said Cup to the foreign Yacht Club whose representative yacht shall have won the same in accordance with the foregoing terms and conditions, provided the said foreign Club shall, by instrument in writing lawfully executed, enter with said part of the second part into the like covenants as are herein entered into by it, such instrument to contain a like provision for the successive assignees to enter into the same covenants with their respective assignors, and to be executed in duplicate, one to be retained by each Club, and a copy thereof to be forwarded to the said party of the second part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused its corporate seal to be affixed to these presents and the same to be signed by its Commodore and attested by its Secretary, the day and year first above written.

GEORGE L. SCHUYLER, (L.S.) In the presence of THE NEW YORK YACHT CLUB H. D. Hamilton. by Elbridge T. Gerry, Commodore (Seal of the New York Yacht Club) John H. Bird, Secretary

**APPENDIX II**

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