



ESSEX COUNTY – STATE OF NEW YORK
JOSEPH A. PROVONCHA, COUNTY CLERK
 7559 COURT ST, PO BOX 247, ELIZABETHTOWN, NY 12932

COUNTY CLERK'S RECORDING PAGE
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BOOK/PAGE: 1965 / 172
 INSTRUMENT #: 2019-3608

Receipt#: 2019228400
 Clerk: CD
 Rec Date: 10/01/2019 02:11:00 PM
 Doc Grp: D
 Descrip: LEASE
 Num Pgs: 53
 Rec'd Frm: HOLCOMBE ABSTRACT

Party1: SARANAC LAKE RESORT OWNER L L C
 Party2: ESSEX COUNTY INDUSTRIAL DEV
 AGENCY
 Town: NORTH ELBA

Recording:	
Cover Page	0.00
Recording Fee	0.00
Cultural Ed	0.00
Records Management - Coun	0.00
Records Management - Stat	0.00
Affidavit	5.00
TP584	5.00

Sub Total: 10.00

Transfer Tax	
Transfer Tax - State	0.00
Transfer Tax - County	0.00

Sub Total: 0.00

Total: 10.00
 **** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
 Transfer Tax #: 401
 Transfer Tax
 Consideration: 0.00

Total: 0.00

I hereby certify that the within and foregoing was recorded in the Essex County Clerk's Office.

Joseph A. Provoncha
 Essex County Clerk

Record and Return To:

NORFOLK LAW
 1936 SARANAC AVE SUITE 106
 LAKE PLACID NY 12946

****Notice** Information may change during the verification process and may not be reflected on this page**

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Ground Lease") is made the 25th day of September, 2019 between Saranac Lake Resort Owner. LLC, a New York limited liability company, located and authorized to do business in the State of New York (referred to herein as "Lessor") and Essex County Industrial Development Agency, a public benefit corporation of the State of New York (the "State"), duly organized and existing under the laws of the State (herein referred to as "Lessee").

W I T N E S S E T H:

WHEREAS, Lessor owns a fee interest free and clear of all encumbrances in the real property described in Exhibit A hereto (the "Land"), except for Permitted Encumbrances, as defined in the Ground Lease Project Agreement by and between the Lessor and Lessee, dated September 25, 2019 (the "Project Agreement"), a form of which is attached hereto as Exhibit B, and agrees to lease to Lessee the Land; and

WHEREAS, capitalized terms that are not defined in this Ground Lease shall have the meaning set forth in the Project Agreement; and

WHEREAS, This Ground Lease and any and all modifications, amendments, renewals and extensions hereof shall be subject and subordinate to the Mortgage, as that term is defined in the Project Agreement, with respect to the Project until the Mortgage is satisfied, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases in and to the Mortgage

WHEREAS, Lessee will maintain this Ground Lease free and clear of liens and encumbrances during the Lease Term, subordinate to the terms of the Loan and Mortgage with the Bank; and

WHEREAS, Lessor has applied to Lessee for financial assistance for the purpose of financing the costs of (i) the acquisition, construction and equipping of a 93-key LEED certified hotel with 3,000 square feet of meeting space, full-service spa, fitness center, banquet facilities, two food and beverage outlets and a 36-slip marina to be located on Lake Flower in the Village of Saranac Lake, County of Essex, New York, to be operated by Lessor as a hotel (the "Facility"); (ii) the acquisition and installation of various machinery, equipment and furnishings for the Facility (the "Equipment"), and (iii) certain necessary preliminary and incidental expenses related thereto (the Facility and the Equipment hereinafter collectively referred to as the "Project"); and

WHEREAS, in connection with the Project, Lessor proposes to convey a ground leasehold interest in the Land to Lessee, subject to the terms and conditions of, and to the extent provided by, this Ground Lease; and

WHEREAS, pursuant to the Project Agreement, the Lessee shall hold a requisite interest

R+R: Norfolk Law.
1936 Saranac Ave.
Suite 106
Lake Placid, NY 12946

in the Project under the applicable provisions of Title 18-A of the State General Municipal Law to establish the Lessee's ownership or control of the Project in order to grant Lessor certain tax incentives under State law.

NOW, THEREFORE, in consideration of the covenants contained herein, Lessor and Lessee agree as follows:

SECTION 1. Grant, Premises and Term. Lessor hereby leases to Lessee, and the Lessee hereby leases from Lessor, the Land, subject to the Lessor's rights, benefits and burdens in the Project Agreement, for a term commencing on the date of delivery of this Ground Lease and expiring on the Fixed Termination Date, as that term is defined in the Project Agreement.

SECTION 2. Rent. The annual rental due under this Ground Lease shall be one dollar (\$1.00) through the Fixed Termination Date, as that term is defined in the Ground Lease Project Agreement. The entire rent due shall be due and payable upon the execution of this Ground Lease, and Lessor hereby acknowledges receipt of such payment.

SECTION 3. Improvements. During the term of this Ground Lease, Lessor shall have the duty and obligation, for which Lessor has provided valuable consideration, to construct, erect, and install certain additions or improvements on the Land, subject to the terms and conditions set forth in the Project Agreement. Title to any additions or improvements hereafter constructed, installed or erected on the Land by Lessor shall remain vested in Lessor and shall be and become the sole and absolute property of Lessor.

SECTION 4. Lessor's Waivers. Except as set forth in Section 9 of this Ground Lease, Lessor hereby waives:

- (a) any and all rights to terminate this Ground Lease, except for the Lessee's failure to perform under the terms of the Project Agreement; and
- (b) any and all rights it may have to commence or bring any action or proceeding whereby this Ground Lease may be terminated or the rights of Lessee hereunder may be limited or diminished.

SECTION 5. Quiet Enjoyment and Possession. Lessor covenants and agrees that Lessee may peaceably and quietly enjoy the Land during the term of this Ground Lease subject to the terms of the Project Agreement.

SECTION 6. Restrictions Upon Disposition. Lessee shall not sell, convey, transfer, encumber or otherwise dispose of its rights under this Ground Lease without the prior written consent of the Lessor.

SECTION 7. Limited Recourse. Notwithstanding anything to the contrary contained herein, no recourse under any obligation, covenant or agreement of Lessee contained in this Ground Lease shall be had against any incorporator, stockholder, officer, director, agent or employee of Lessee, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Ground Lease is solely a corporate obligation of Lessee, and that no personal liability whatever

shall attach to or be incurred by the incorporators, stockholders, officers, directors, agents or employees of Lessee, as such, or any of them under or by reason of any of the obligations, covenants or agreements of Lessee contained in this Ground Lease, or implied therefrom, and that any and all personal liability for breaches by Lessee of any of such obligations, covenants or agreements, either at common law or at equity, or by statute or constitution, of every such incorporator, stockholder, officer, director, agent or employee is hereby expressly waived as a condition of and in consideration for the execution of this Ground Lease.

SECTION 8. Environmental Covenant and Indemnity. Lessor shall not cause or permit the storage, use, escape, disposal or release of hazardous substances in, on or with respect to the Land in any manner not in compliance with the environmental laws and requirements. Lessor shall indemnify and hold Lessee harmless from and against any and all liability, claim of liability, claims, suits, costs, expenses, causes of action, personal liability and property damage (including without limitation reasonable attorney's fees) arising out of a breach by Lessor of its covenant in the preceding sentence or resulting from the presence of hazardous substances on the Land. Furthermore, Lessor shall indemnify and hold Lessee harmless from and against any and all liability, claim of liability, claims, suits, costs, expenses, causes of action, personal liability and property damage (including without limitation reasonable attorney's fees) arising out of a breach by Lessor of its representations, warranties and covenants above. The foregoing covenants and indemnities shall survive the expiration or earlier termination of this Ground Lease; provided, however, that Lessor shall not be required to indemnify Lessee from any matter arising from Lessee's gross negligence or willful misconduct.

SECTION 9. Default by Lessee Under the Project Agreement. It is expressly understood and agreed by Lessor and Lessee that a default or breach by Lessee under the Project Agreement shall constitute a termination of this Ground Lease.


SECTION 10. Indemnity. Notwithstanding the foregoing, the Lessor shall forever indemnify and hold harmless the Lessee against any adverse claim against title to the Project, including attorney's fees and expenses.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: 
Name: Darren Darrah
Title: Chairman

SARANAC LAKE RESORT OWNER, LLC
a New York limited liability company

By: 
Name: Joseph Milne
Title: President

STATE OF NEW YORK)
) SS:
COUNTY OF ESSEX)

On this 4 day of September 2019, before me, a Notary Public in and for said County and State, personally appeared Darren Darrah, Chairman, of the Essex County Industrial Development Agency and acknowledged the signing of the foregoing instrument and that the signing is their voluntary act and deed on behalf of the Board and the voluntary and corporate act and deed of the Board.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[Notarial Seal]

Jody C. OLCOTT
Notary Public

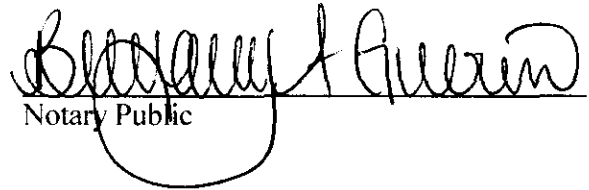
JODY C OLCOTT
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ESSEX COUNTY
NO - 01OL0049640
MY COMM. EXPIRES OCTOBER 23, 20~~22~~²³

STATE OF NEW YORK)
) SS:
COUNTY OF ESSEX)

On this 25 day of September 2019, before me, a Notary Public in and for said County and State, personally appeared James A. Milne of Saranac Lake Resort Owner, LLC and acknowledged the signing of the foregoing instrument and that the signing is their voluntary act and deed on behalf of the Company and the voluntary and corporate act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[Notarial Seal]


Notary Public

Brittany A. Guerin
Notary Public, State of New York
No. 01Y06325401
Qualified in Essex County
My Commission Expires 05/26/2023

EXHIBIT A

DESCRIPTION OF THE LAND

All that certain parcel of land being situate in Lots 12 & 13, Township No. 11, Old Military Tract, Village of Saranac Lake, Town of North Elba, County of Essex, and State of New York; being more particularly bounded and described as follows:

Beginning at a point on the west bounds of Lake Flower Avenue (also known as NYS Route 86), said point being on the north bounds of property described in a deed to Fogarty's Marina Property, LLC, recorded in Liber 1576 at page 295 in the Essex County Clerk's Office, said point being located South 62°29'10" East 1.49 feet from a ¾" iron pipe; thence

- 1) North 62°29'10" West 1.49 feet to a ¾" iron pipe found, 0.3' high, and continuing on the additional distance of 124.07 feet to a ¾" iron pipe, and continuing on the same course an additional distance of 127.14 feet to a ¾" iron pipe, and continuing on the same course an additional distance of 19.0 feet to the shoreline of Lake Flower, and continuing on the same course to the historical low water mark of Lake Flower; thence
- 2) Northerly along said historical low water mark of Lake Flower to a point on the south bank of Livingston Brook, on the south bounds of Parcel 2 of property described in a deed to Mueller Capital Partners, Inc., recorded in Liber 1384 at page 310; thence
- 3) Northeasterly along the south bank of Livingston Brook to a point on the south line of property described in a deed to Robert Walasky and Kimberly Walasky, recorded in Liber 970 at page 144; thence
- 4) Easterly along the south bank of Livingston Brook, to a point on the west bounds of Lake Flower Avenue; thence
- 5) South 2°53'50" East along the west bounds of Lake Flower Avenue, 22.00 feet to a concrete highway monument, and continuing on the same course an additional distance of 29.00 to a point; thence the following two courses along the west bounds of said Lake Flower Avenue
- 6) South 30°21'35" West 403.76 feet to a 5/8" rebar with cap found, 0.1' below grade; thence
- 7) South 29°47'20" West 120.46 feet to the beginning.

Bearings are based on Grid North for the east zone of the New York State Coordinate System.

Containing approximately 4.6 acres of land, more or less, including lands below water, all as shown on a survey map prepared by Stacey L. Allott, LS of Geomatics Land Surveying, PC last revised on September 10, 2019 and certified on September 11, 2019;

The description above being a composite description of three properties described in the following deeds:

- 1) Deed to Saranac Lake Resort Owner, LLC, dated May 29, 2018, and recorded on June 27, 2018, as Instrument No. 2018-2524;
- 2) Deed to Saranac Lake Resort Owner, LLC, dated May 30, 2018, and recorded on June 27, 2018, as Instrument No. 2018-2529; and,
- 3) Deed to Saranac Lake Resort Owner, LLC, dated May 18, 2018, and recorded on May 30, 2018 as Instrument No. 2018-2107.

EXHIBIT B
FORM OF GROUND LEASE PROJECT AGREEMENT

GROUND LEASE PROJECT AGREEMENT
between
SARANAC LAKE RESORT OWNER, LLC
and
ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY,

Dated: September 25, 2019

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Testimonium
Signatories
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- Exhibit A-1 – Description of the Land
- Exhibit A-2 – Description of the Facility
- Exhibit A-3 – Description of the Equipment
- Exhibit A-4 – Form of Ground Lease
- Exhibit B – Letter of Authorization for Sales Tax Exemption
Schedule A
- Exhibit C – Form of Sales Tax Exemption Application

GROUND LEASE PROJECT AGREEMENT

THIS GROUND LEASE PROJECT AGREEMENT, dated September 25, 2019 (the "Agreement"), is between the ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation of the State of New York (the "State"), duly organized and existing under the laws of the State, with principal offices located at 7566 Court Street, PO Box 217, Elizabethtown NY 12932, and Saranac Lake Resort Owner, LLC, a New York limited liability company, located and authorized to do business in the State of New York (the "Company"), with an address at 2047 Saranac Avenue, Suite 201, Lake Placid, NY 12946.

W I T N E S S E T H

WHEREAS, the New York State Industrial Development Agency Act (the "Enabling Act", hereinafter defined), constituting Title 1 of Article 18-A of the General Municipal Law, authorizes and empowers industrial development agencies to promote the economic welfare and prosperity of the inhabitants within the community, including the County of Essex, New York (the "County"), to actively promote, attract, encourage and develop economically sound commerce and industry within the County, and to make and execute ground lease agreements, security documents, and other contracts and instruments necessary or convenient in the exercise of such powers; and in order to fulfill those purposes the Agency desires to facilitate the Project (hereinafter defined); and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Agency was established by Chapter 563 of the Laws of 1973 of the State of New York (Section 914-a, Title 2 of Article 18-A of the General Municipal Law, as heretofore amended and supplemented) for the benefit of Essex County and the inhabitants thereof; and

WHEREAS, the project will consist of the Land (hereinafter defined) to be ground leased to the Agency by the Company pursuant to this Agreement, for the (i) the acquisition, construction and equipping of a 93-key LEED certified hotel with 3,000 square feet of meeting space, full-service spa, fitness center, banquet facilities, two food and beverage outlets and a 36-slip marina to be located on Lake Flower in the Village of Saranac Lake, County of Essex, New York, to be operated by the Company as a hotel (the "Facility"); (ii) the acquisition and installation of various machinery, equipment and furnishings for the Facility (the "Equipment"), and (iii) certain necessary preliminary and incidental expenses related thereto (the Facility and the Equipment hereinafter collectively referred to as the "Project"), all subject to the terms and conditions hereof; and

WHEREAS, the Company has represented that the Project is expected to maintain or increase employment, tourism and public access to recreational facilities in the County and has made additional factual representations concerning itself and the Project upon which the Agency is relying in entering into this Agreement; and the provision by the Agency of financial assistance to the Company through a ground lease transaction has been determined to be necessary in order for the Project to be economically viable; and if the Agency does not provide such financial assistance, the Company could not feasibly proceed with the Project; and

WHEREAS, to facilitate the Project, the Agency and the Company have entered into negotiations to enter into a "straight lease transaction" within the meaning of Section 854 (15) of

the Act in which the Company will ground lease the Project, including all building, fixtures and appurtenances and additions thereto and substitutions and replacements thereof, to the Agency upon the terms and conditions hereinafter set forth and in the Ground Lease, and, in furtherance of such purposes, on September 26, 2018 (“Inducement and Authorization Date”) the Agency took official action with respect to the Project, authorizing the undertaking of the Project, and on January 30, 2019, the Agency adopted an authorizing resolution with respect to such Project; and

WHEREAS, the Project is owned by the Company, but deemed under the control of the Agency pursuant to the Ground Lease, and, in connection with this Agreement, the Company wishes to ground lease the Land to the Agency and the Agency wishes to ground lease the Land from the Company for the Lease Term; and

WHEREAS, the only financial assistance being sought by the Company in connection with the Project is the exemption of sales tax on building materials, furniture, fixtures and equipment.

WHEREAS, the Company has received financial assistance for the Project in the form of a loan (the “Loan”) for approximately \$13,000,000 from Champlain National Bank (the “Bank”) to be secured by an interest in the Project and used by the Company to undertake the financing of the Project (the “Mortgage”).

NOW, THEREFORE, in consideration of these premises and the mutual covenants contained herein, and in order for the Agency and the Company to provide benefits to the Agency’s residents, the parties hereto covenant, agree and obligate themselves as follows; provided that no covenant, agreement or obligation of the Agency under this Agreement shall ever constitute a general debt or obligation of the Agency with respect to the Land;

ARTICLE I DEFINITIONS

Section 1.1 Definitions. In addition to the words and terms defined elsewhere herein, the following words and terms shall have the respective meaning set forth below unless the context otherwise requires:

“Act” means the New York State Industrial Development Agency Act, constituting Chapter 1030 of the Laws of 1969 of the State of New York (Title 1 of Article 18-A of the General Municipal Law) and Chapter 563 of the Laws of 1973 of the State of New York (Section 914-a, Title 2 of Article 18-A of the General Municipal Law, as heretofore amended and supplemented).

“Affiliate” of a Person means a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term “control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

“Agency” means the Essex County Industrial Development Agency, a governmental agency and instrumentality constituting a public benefit corporation of the State, and its successors and assigns.

“Agency Documents” means the Ground Lease Project Agreement, the Ground Lease, the Resolution, the Mortgage and the Subordination and Consent Agreement.

“Agreement” means this Ground Lease Project Agreement, dated the date hereof, by and between the Agency and the Company.

“Authorized Agency Representative” means the person at the time designated to act on behalf of the Agency by a written certificate furnished to the Company containing the specimen signature of such person and signed on behalf of the Agency by its Chairman or Vice Chairman. Such certificate may designate an alternate or alternates.

“Authorized Company Representative” means the person at the time designated to act on behalf of the Company by a written certificate furnished to the Agency containing the specimen signature of such person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates.

“Bank” means Champlain National Bank.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions are authorized by law or executive order to remain closed.

“Commencement Date” means the date this Agreement was executed and delivered.

“Company” means Saranac Lake Resort Owner, LLC, a New York limited liability company, located and authorized to do business under the laws of the State of New York, its successors and assigns, and any surviving, resulting or transferred corporation or other entity, or Affiliate.

“Company Documents” means this Agreement, the Ground Lease, the Mortgage and any other document related thereto to which the Company is a party.

“Company Property” means any and all machinery and equipment, data processing equipment, furniture, furnishings, trade fixtures and other personal property owned, leased or used by the Company, with respect to which no sales or use tax exemption shall have been received pursuant to the Sales Tax Letter.

“Construction Period” means a period of time commencing on or about September 1, 2019 and terminating no later than December 31, 2020.

“County” means the County of Essex, a municipality and political subdivision of the State.

“Equipment” means the personal property but not building fixtures located in the Project.

“Exempt Property” means only tangible personal property, building materials, furniture, fixtures and equipment, conveyed to or acquired by the Agency in connection with the Project on or before the end of the termination of this Agreement at the end of the Lease Term, in accordance with Section 10.7 hereof or, if the acquisition was made prior to the Commencement Date, in reliance on the Sales Tax Letter, for incorporation in the Leased Property or for use in connection with the Leased Property.

“Facility” means that certain building to be renovated and or constructed at 250 Lake Flower Avenue, on Flower Lake, Saranac Lake, New York, and as described in the recitals of this Agreement.

“Fixed Termination Date” means the end of the term of the Construction Period or September 1, 2020, whichever is later.

“Force majeure” includes, without limiting the generality of such term, acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any official of the government of the United States of America or of any State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

“Ground Lease” means that Ground Lease Agreement entered into by and between the Company and the Agency dated September 25, 2019, pursuant to which the Company ground leased the Land to the Agency.

“Independent Accountant” means an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency.

“Independent Counsel” means an attorney or attorneys or a firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency or the Company.

“Inducement and Authorization Date” means September 26, 2018, and November 8, 2018 with respect to the TEFRA hearing.

“Land” means the parcel of land on which the project is situate which is subject to the Ground Lease.

“Lease Term” means the period commencing from the date of this Agreement to the Fixed Termination Date or such earlier date as provided in Section 9 of the Ground Lease.

“Leased Property” means that certain property located at 234, 238, 248 & 256 Lake Flower Avenue, Saranac Lake, New York, Lot: 32.214-5-2, 3 & 4 and 32.230-1-4

“Loan” means a loan or loans from the Bank, as lender, to the Company, as Borrower, to finance the Project, or other loans from the Bank or its affiliates to the Company.

“Mortgage” means the Mortgage dated as of September 25, 2019 by and between the Company, the Agency and the Bank.

“Net Proceeds”, when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means (1) the Loan made by the Bank and secured by the Mortgage; (2) any judgment lien against the Company so long as such judgment is being contested in good faith and execution thereon is stayed; and (3) any liens on the Project for taxes, assessments, levies, fees, water and sewer fees, and other governmental and similar charges and any liens of mechanics, materialmen, laborers, suppliers or vendors for work or services performed or materials furnished in connection with the Project that are not due and payable or that are not delinquent, the amount or validity of which are being contested and execution thereon is stayed or, with respect to liens of mechanics, materialmen, laborers, suppliers or vendors that have been due for less than ninety (90) days.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

“Prime Rate” means the rate of interest published in The Wall Street Journal from time to time as the Prime Rate. If more than one Prime Rate is published in The Wall Street Journal for a day, the average of the Prime Rates shall be used, and such average shall be rounded up to the nearest one-quarter of one percent ($\frac{1}{4}\%$).

“Project” has the meaning provided in the recitals of this Agreement.

“Sales Tax Exemption Application” means an annual application from the Company to the Agency, commencing on January 1, 2019, containing an estimate of the costs of the Project to be incurred in the next succeeding calendar, a form of which is attached hereto as Exhibit C.

“Sales Taxes” means any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

“Sales Tax Letter” means the initial Letter of Authorization for Sales Tax Exemption, which the Agency has made available to the Company and which shall terminate on January 1, 2020, a form of which is attached hereto as Exhibit B, and future letters issued by the Agency upon the receipt of a Sales Tax Exemption Application.

“State” means the State of New York.

“Subordination and Consent Agreement” means the Subordination and Consent Agreement, dated September 25, 2019, between the Agency, the Company and the Bank.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by the Agency. The Agency hereby represents and warrants that:

(a) The Agency is a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State duly created and existing pursuant to the Act.

(b) The Agency has a ground lease interest to the Project subject only to the Permitted Encumbrances. Under the provisions of the Act, the Agency has full power and authority to enter into this Agreement and the Ground Lease and to perform its obligations hereunder and thereunder.

(c) Neither the execution and delivery of this Agreement and the Ground Lease, nor the performance of the obligations under or consummation of the transactions contemplated by this Agreement or the Ground Lease, violates or will violate any law or governmental order, conflicts or will conflict with any material term or provision of any agreement or instrument to which the Agency is a party or by which it is bound, or constitutes or will constitute a material breach of or default under any such agreement or instrument.

(d) The Agency finds, based on the information provided by the Company in the application requesting financial assistance dated August 20, 2018 (the "Application") submitted by the Company to the Agency, that without the financial assistance from the Agency the facility would not be built in the State of New York and the acquisition and construction of the Project will further the public purposes of the Act for which the Agency was created by promoting economically sound industry for the purpose of preventing unemployment and economic deterioration.

(e) The Agency will maintain the Ground Lease free and clear of liens and encumbrances during the Lease Term, subordinate to the terms of the Loan and Mortgage with the Bank pursuant to the Subordination and Consent Agreement.

(f) Upon review of the terms of the Loan and the Mortgage, the Agency has consented to the Company's entering into the Loan and the Agency's granting its interest in the Ground Lease to the Bank in the Mortgage.

The Agency makes no warranty, either express or implied, as to the actual or designated capacity of the Project, as to the suitability of the Project for the purposes of this Agreement, as to the condition of Project, or that the Project will be suitable for the Company's purposes or needs.

Section 2.2 Representations and Warranties by the Company. The Company hereby represents and warrants that:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, is located and authorized to do business in the State, and has full power and authority to enter into this Agreement and the Company

Documents and to perform its obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Agreement and the Company Documents on its behalf.

(b) There is no action or proceeding pending or, to the knowledge of the Company, threatened against the Company before any court or administrative agency that adversely affects the ability of the Company to perform its obligations under this Agreement or the Company Documents. Neither the execution and delivery of this Agreement or the Company Documents, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts or will conflict with, or results or will result in a breach of the terms, conditions, or provisions of any corporate restriction or of any court or governmental agency, or any agreement or instrument to which the Company is now a party or by which it is presently bound, or constitutes or will constitute a default under any of the foregoing.

(c) The Company intends to operate the Project, or cause the Project to be operated, in accordance with this Agreement and as a qualified "project" in accordance with and as defined in the Act, from the start of the Lease Term to the expiration or earlier termination of the Lease Term.

(d) The Land is owned free and clear in fee simple title by the Company prior to granting a ground lease interest to the Agency, except for the Ground Lease and Permitted Encumbrances. The Company will incur no indebtedness secured by the Project except for the Loan, the Mortgage, Permitted Encumbrances, and leases or purchase money financing to acquire furniture, fixtures and equipment for the Project, without the written consent of the Agency.

(e) To the best knowledge of the Company, the operation of the Project in the manner contemplated by this Agreement will not conflict with any zoning, building, environmental, safety or other regulations and requirements of governmental authorities applicable thereto. The Company has caused the Project to be designated in accordance with all such regulations and requirements which the Company believes to be applicable thereto.

(f) The real estate and other fixed assets of the Company constituting the Project are subject to no mortgage or lien except for Permitted Encumbrances.

(g) The Company has no material liabilities, direct or contingent, except those disclosed in this Agreement and there is no fact presently known to the Company which materially adversely affects or in the future may materially adversely affect the business, operations, properties or assets of the Company, which have not been set forth herein or in a document, certificate or other writing delivered to the Agency prior to the commencement of the Lease Term.

(h) Except in the normal course of the business, the Company has not made any investments in, advances to, or guarantees of, the obligations of any company, individual or other entity outstanding other than those disclosed to the Agency.

(i) The Company has filed all required Federal, State and local tax returns as they have become due and no claims have been assessed by any Federal, State or local authorities with respect to such taxes.

(j) None of the representations delivered by the Company pursuant to this Agreement nor any representation of the Company contained in any other document, certificate or statement

furnished to the Agency, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

(k) The financial assistance (within the meaning of the Act) provided by the Agency to the Company through the straight lease transaction (within the meaning of the Act) as contemplated by this Agreement is reasonably necessary to induce the Company to proceed with the Project, provided however the only financial assistance to be received by the Company is sales tax exemption.

(l) The Company will not seek additional financial assistance from the Agency without first applying to the Agency for such financial assistance. The Company will not permit any Person to claim any tax incentive or entitlement to financial assistance through the Agency by virtue of this Project Agreement.

(m) The transaction contemplated by this Agreement will not result in the removal of any property, plant or facility of the Company or any other occupant or user of the Project from one area of the State (but outside of the County) to within the County or in the abandonment of one or more facilities or plants of the Company or any other occupant or user of the Leased Property located within the State (but outside of the County). Without the financial assistance from the Agency the Company would not have constructed the Facility in the State of New York.

(n) Undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(o) This Agreement and the other Company Documents constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

(p) The Application requesting financial assistance is true, correct and complete in all material respects.

(q) The Company has complied with the requirements of the State Environmental Quality Review Act, as amended, Article 8 of the Environmental Conservation Law of the State of New York and all regulations thereunder.

(r) Upon the completion of the construction relating to the Leased Property, the Company will obtain a valid certificate of occupancy and any other permits required by any governmental agency or regulatory body having jurisdiction.

ARTICLE III
TRANSFER OF GROUND LEASE TO AGENCY

Section 3.1 Transfer to Agency. The Company has or will transfer, or will cause to be transferred, to the Agency the Company's interest in the Land pursuant to the Ground Lease.

Section 3.2 Rental Payments. The Agency, as lessee, hereby agrees to pay to the Company, as lessor, (i) an initial payment in the amount of \$1.00 to be paid at closing on the date hereof and (ii) lease rentals for the Project in an amount equal to One Dollar (\$1.00) per annum during the Lease Term.

ARTICLE IV
THE PROJECT

Section 4.1 Costs and Expenses Related to the Agreement. The Company shall pay (i) all of the reasonable costs and expenses in connection with the preparation of this Agreement and memoranda thereof, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such memoranda or other instruments or documents, if required, and (ii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

Section 4.2 Condition of Project. (a) During the term of this Agreement, the Company will keep the Project in good and safe operating order and condition, ordinary wear and tear excepted, and will make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the continuity of the operation of the Company's business at the Leased Property. All replacements, renewals and repairs shall be comparable in quality and class to the original work and be made and installed in compliance with the applicable requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project, or to furnish any utilities or services for the Project; and the Company hereby assumes full responsibility therefor.

(b) The Company shall have the right to make such alterations, replacements or additions to the Project or any part thereof from time to time as it in its sole discretion may determine to be desirable, provided that (i) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, and (ii) such additions or alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Project shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances.

(c) No benefit to the Company provided in the Agency Documents shall continue after the Fixed Termination Date.

Section 4.3 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited

to purchases of Exempt Property effected by the Company as agent for the Agency, it being the intent of the parties that no operating expenses of the Company and no purchases of personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project. The Company acknowledges and represents that it is familiar with the laws of the State as applicable to Sales Taxes and the Sales Tax Letter, and it understands that a failure to comply with such applicable law (or with the terms and conditions of the Sales Tax Letter or this Agreement) may result in the loss by the Company of the exemption from Sales Taxes and other benefits hereunder.

(b) The Company covenants and agrees that after the date hereof it shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Company for Exempt Property as agent for the Agency in connection with the Project:

“This contract is being entered into by Saranac Lake Resort Owner, LLC, a New York limited liability company, located and authorized to do business in the State (the “Company”), in its capacity as agent for and on behalf of the Essex County Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency, consisting of the acquisition and construction of the facilities therein (the “Project”), such Project to be located at 234, 238, 248 & 256 Lake Flower Avenue, Saranac Lake, New York, as more particularly described in Exhibit A hereto. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this contract, agreement, invoice, bill or purchase order shall be exempt from the sales and use tax levied by the State of New York, and the County of Essex, if any, if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Company hereby represents that this contract, agreement, invoice, bill or purchase order is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this contract, agreement, invoice, bill or purchase order, the vendor, contractor or supplier hereby acknowledges the terms and conditions set forth in this paragraph.”

If the Company shall fail to include, incorporate by reference or otherwise cause any new contract, agreement, invoice, bill or purchase order entered into after the date hereof to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Company shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Company shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the Prime Rate plus three percent (3%) per annum, from the date of such taking.

(c) (i) The Agency shall make an initial Sales Tax Letter available to the Company on the Commencement Date. The Agency, at the sole cost and expense of the Company, shall also execute such other authorizations, letters and documents as

may be reasonably necessary to permit the Company to obtain the intended benefits hereunder.

(ii) The initial Sales Tax Letter shall be dated the Inducement and Authorization Date, and shall be effective for a term commencing on the Inducement and Authorization Date and expiring on the Fixed Termination Date.

(iii) Annually, thereafter, on or before December 31st of each year, commencing December 31, 2019 and ending upon the earliest of (A) the termination of this Agreement, or (B) the termination of the Sales Tax Letter pursuant to Section 4.3 hereof, the Company shall deliver to the Agency a Sales Tax Exemption Application substantially in the form attached hereto as Exhibit C. Such application shall contain an estimate of the costs of the Project to be incurred for the next succeeding calendar year and, upon its approval of thereof, the Agency shall provide an updated Sales Tax Letter to the Company.

(iv) The authorizations set forth in the Sales Tax Letter shall automatically be suspended after notice to the Company that the Company is in default under this Agreement until the Company shall pay any amounts due, and/or perform all of its obligations, with respect to any such default.

(v) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter:

(A) shall not be available for payment of any costs other than the costs of the Project, or for any items personally other than those items located, or to be located, at the Project site;

(B) shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for incorporation into or use (i) at the Project, and (ii) solely by the Company and its Affiliates;

(C) shall be available only for the purchase of tangible personal property having a useful life of not less than one year and which is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure;

(D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 4.3 (c)(iv) hereof; provided, however, that in the event the Company shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver;

(E) shall not be available for the purchase of (i) rolling stock, (ii) computer equipment or software (except such as are required for the Facility management office or for the operation of the Facility's systems such as HVAC, fire alarms, or elevators), (iii) fine art, objects d'art or other similar

decorative items, (iv) electricity, gas, fuel oil and other utilities, or (v) maintenance or cleaning services or supplies; and

(F) shall not be available subsequent to the termination of this Agreement.

(vi) In the event that the Company shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 4.3(c)(v) hereof, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Prime Rate plus three percent (3%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company.

(vii) In any calendar year during the term hereof, in which the Company makes purchases in reliance on the Sales Tax Letter, the Company shall, on or before January 1 of the following year:

(A) deliver to the Agency a certificate of an Authorized Representative of the Company, in the form annexed hereto as Schedule A, certifying (i) as to each sales or use tax exemption availed of by the Company, the dollar amount of same and the date availed of, all as availed of by the Company in the immediately preceding calendar year, and the specific items of Project costs to which they shall relate, (ii) that all such sales or use tax exemptions so availed of were in compliance with the provisions of the Sales Tax Letter and of this Section 4.3, and (iii) as to the dollar amount of all sales and use tax exemptions availed of by the Company from the Commencement Date through the end of the calendar year period to which such certificate shall relate; and

(B) deliver to the Agency, at the Agency's request, an opinion of an Independent Accountant to the effect that such Independent Accountant has audited the use by the Company of the Sales Tax Letter for the preceding calendar year, and has audited the terms and provisions of the Sales Tax Letter and of this Section 4.3 and has further audited the certificates of the Company provided in paragraph (A) above for the preceding calendar year, and such certificates were properly prepared and accurately reflect the matters certified therein.

(viii) Upon request by the Agency of, and reasonable notice to the Company and subject to the Company's confidentiality requirements, the Company shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Company and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary

to indicate in reasonable detail those costs to which the Company shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(ix) The Company shall obtain covenants for the benefit of the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Company to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Letter for any purpose other than for the Project.

(d) The Company shall observe and comply with the terms and conditions of the Sales Tax Letter.

(e) The Company shall annually file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as are or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company or agents of the Company in connection with the Project and the Leased Property as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Company shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Sales Tax Letter shall not be delivered by the Agency unless the Company shall have completed and submitted to the Agency Form ST-60 in the form provided by the Tax Department. In addition, the Company shall not permit any sub-contractor or sub-agent to avail itself of the Sales Tax Letter until the Company shall have submitted to the Agency a completed Form ST-60 in respect to such sub-contractor or sub-agent. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Company by the Agency which is in the Company's possession or in the possession of any agent of the Company. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State. At the time of execution of this Agreement, the Company shall deliver to the Agency copies of all such annual reports filed with the Department of Taxation and Finance prior to the Commencement Date.

Section 4.4 Taxes, Assessments and Charges. The Company shall pay all real property taxes and all other taxes which are required to be paid by the Company (a) under this Agreement and (b) by law (all such taxes shall hereinafter be referred to as "Impositions"). The Agency shall promptly forward to the Company any notice, bill or other statement received by the Agency concerning any Imposition. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

Section 4.5 Indemnity. (a) The Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the

Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims, demands, expenses (including attorney's fees and expenses) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed, excluding personal and corporate income taxes in respect of payments received by the Agency under the Company Documents), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Project or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Leased Property, (iii) any defects (whether latent or patent) in the Project, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, or (v) the execution and delivery by the Company of, or performance by the Company of, any of its obligations under this Agreement or any other Company Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Company or its respective directors, officers, partners, employees, agents or servants or persons under the control or supervision of the Company or any other Person who may be about the Project, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

Notwithstanding the foregoing, the Company shall forever indemnify and hold harmless the Agency against any adverse claim against title to the Project, including attorney's fees and expenses.

(b) The Company releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters referenced above, absent gross negligence or willful misconduct. Each Indemnified Party, as the case may be, shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 4.5 such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time, absent gross negligence or willful misconduct, shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 4.5.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials (hereinafter defined) on, from, or affecting the Project in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and the Company makes no covenant, warranty or representation with respect to any prior owner of the Project, or any tenant, subtenant, prior tenant or prior subtenant, use of Hazardous Materials on,

from or affecting the Leased Property in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; further, the Company acknowledges that extensive environmental remediation work has been conducted on the Leased Property for which the New York State Department of Environmental Conservation has provided a final clean report. The Company shall, during the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project), to the extent required by applicable law, keep or cause the Leased Property to be kept free of Hazardous Materials. Without limiting the foregoing, during the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project) the Company shall not cause or permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant, a release of Hazardous Materials onto the Project or onto any other property. During the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project), the Company shall comply with and use its best efforts to ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; provided, however, that if any such tenant or subtenant shall be an Affiliate of the Company, the obligation of the Company with respect to such Persons shall be absolute and not limited to best efforts. During the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project), the Company shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Project (i) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, and (ii) in accordance with the orders and directives of all Federal, state and local governmental authorities. The obligation of the Company to defend, indemnify, and hold harmless each Indemnified Party under Section 4.5(a) shall extend to any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Project, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C.

§§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

(d) For the purposes of this Section 4.5, the Company shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(e) To effectuate the purposes of this Section 4.5, the Company will provide for and insure, in the public liability policies required in this Agreement, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section by naming the Agency as an additional insured under such policies. Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 4.5 shall survive and remain in full force and effect after the termination of this Agreement.

Section 4.6 Compensation and Expenses of the Agency. The Company shall pay the reasonable fees, costs and expenses of the Agency together with any fees and disbursements incurred by counsel and special transaction counsel to the Agency in performing services for the Agency in connection with this Agreement or any other Company Document.

Section 4.7 Retention of Interest in Ground Lease. The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its interest in the Ground Lease or any part thereof during the term of this Agreement, without the prior written consent of the Company and any purported disposition without such consent shall be void.

Section 4.8 Financial Statements; No-Default Certificates.

(a) The Company agrees to furnish to the Agency, upon request therefor by the Agency, a copy of the most recent fiscal year annual report of the Company and its subsidiaries (including, if set forth in the Company's annual report, balance sheets as at the end of such most recent fiscal year and the related statements of income, earnings, retained earnings and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles and practices, certified by an Independent Accountant.

(b) The Company shall deliver to the Agency on January 1 of each year beginning after the Commencement Date (i) a certificate of an Authorized Representative of the Company as to whether or not, to the knowledge of such Authorized Representative after due inquiry, as of the close of the immediately preceding calendar year, and at all times during such year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Company Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he or she shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Company with respect thereto; (ii) a certificate of an Authorized Representative of the Company that the insurance it maintains complies with this Agreement, that such insurance has been in full force and effect at all times

during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect; and (iii) an affidavit of an Authorized Representative of the Company swearing that, through the date thereof, all costs for which the Company has obtained sales tax exemptions by reason of the Sales Tax Letter were proper costs of the Project. Upon request by the Agency, cost invoices as to each purchase referred in the affidavit described in the preceding clause (iii) shall be made available to the Agency for inspection. In addition, upon twenty (20) Business Days' prior request by the Agency, the Company will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Company either stating that to the knowledge of such Authorized Representative after due inquiry, no default under or breach of any of the terms hereof which, with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Company shall immediately notify the Agency of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Company Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

Section 4.9 Further Assurances. The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Agency reasonably deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 4.10 Further Encumbrances. The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Leased Property or any part thereof, or the interest of the Company in the Leased Property or this Agreement, except for the Permitted Encumbrances.

Section 4.11 Discharge of Liens (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project or any part thereof or the interest therein of the Agency or the Company, other than Liens for Impositions not yet payable, Permitted Encumbrances, or liens being contested as permitted in subsection (b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or

the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project.

(b) The Company may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Project or any part thereof or interest therein, or in this Agreement, of the Agency or the Company, (2) neither the Project nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Company nor the Agency would be in any danger of any civil or criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Company shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

ARTICLE V MAINTENANCE OF PROJECT; TAXES AND INSURANCE

Section 5.1 Quiet Enjoyment of Project. The Company covenants with the Agency that so long as the Agency observes and performs the terms, conditions, and covenants on the Ground Lease, the Agency shall have during the Lease Term, sole and exclusive possession of its ground lease interest.

Section 5.2 Maintenance and Repair. Except to the extent otherwise permitted or contemplated by this Article of this Agreement, the Company, at the Company's expense, will maintain, preserve and keep the Project and appurtenances thereto (a) in good repair, working order and condition, (b) in reasonably safe conditions as its operations will permit, and (c) in compliance with all Federal, State and local laws, rules, regulations, court decisions and administrative orders which appertain to the Project.

Section 5.3 Current Expenses. The Company shall pay or cause to be paid, all costs of maintaining and operating the Project including, without limitation, all taxes, excises and other governmental charges lawfully levied against the Project or with respect to the interest of the Company in the Project or to the use of the Project. It shall not be a breach of this Section 5.3 if the Company fails to pay any such taxes or charges during any period in which the Company is in good faith contesting the validity or the applicability thereof to the Project, unless the procedures applicable to contesting such proceedings are for a refund or abatement.

Section 5.4 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, except for Permitted Encumbrances, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charge, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project or any part thereof or the interest therein of the Agency or the Company, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) at its expense shall give notice thereof to the Agency and take all action as may be necessary or appropriate to

obtain the discharge in full thereof and to remove or nullify the basis thereof. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or service or the furnishing of any materials that would give rise to any Lien against the Agency's interest, if any, in the Project.

Section 5.5 Insurance Required. Throughout the Lease Term, the Company will maintain or cause to be maintained at its sole cost and expense, with one or more financially sound and reputable insurers authorized to do business in the State, insurance with respect to the Project against loss, damage or public liability claims (including worker's compensation claims) of the kind customarily insured against by corporations of established reputation engaged in similar businesses, including insurance protecting against fire, lightning and other casualties to be insured against as required by the Agency and broad form extended coverage covering malicious perils and "all-risk of physical loss" endorsements, and otherwise in such types and amounts as are customarily carried under similar circumstances by such other corporations, subject to a deductible amount not exceeding \$25,000.00. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies of the Company. The Company shall submit insurance policies or proof of insurance to the Agency, at the start of the Lease Term and within ten (10) days of obtaining such insurance subsequent to the start of the Lease Term.

All proceeds of insurance against Project damage shall be made payable to the Company, and the Agency as their respective interests may appear. Anything herein to the contrary notwithstanding, the Company shall have the right to settle all claims under any insurance policy referred to in this Agreement without the consent of the Agency.

The Company releases the Agency from, agrees that the Agency, shall not be liable for, and agrees to indemnify and hold harmless the Agency from any liability for any loss or damage to Project or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project (except as may arise through the gross negligence or willful misconduct of the Agency).

Section 5.6 Liability. The Net Proceeds of the insurance carried pursuant to the provisions of Section 5.5 hereof, to the extent it relates to public liability insurance or worker's compensation insurance, shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.7 Damage or Destruction. Immediately after the occurrence of any damage or destruction to the Project, the Company shall determine whether rebuilding, repairing or restoring such damage or destruction is practicable and desirable. Any Net Proceeds of insurance received in respect of such damage or destruction may be used by the Company for payment of the costs of such rebuilding, repairing or restoring the Project.

Section 5.8 Condemnation. In the event that title to or use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or by any person acting under governmental authority, any proceeds from any award or awards in respect of the Project made in such condemnation or eminent domain proceedings shall during the Lease Term, after payment of all expenses incurred in connection therewith, be paid to the Company. If only part of the Project is taken in condemnation or by

exercise of the power of eminent domain as provided in this Section 5.8, the Company may elect to apply the proceeds from such award in the manner prescribed in Section 5.8 hereof with respect to insurance proceeds.

Section 5.9 Flood Insurance. The Company has obtained reports from the Federal Emergency Management Agency verifying that flood insurance is not required for the Project, and the Company shall promptly provide copies of such reports to the Agency if requested by the Agency in writing.

ARTICLE VI SALE, ASSIGNMENT AND SUBLETTING

Section 6.1 Assignment and Subletting. Except as otherwise provided herein and in this Section 6.1, this Agreement may not be assigned by any party without the express written consent of the others, nor may the Company sublease the Project except for subleases, the form of which shall be acceptable to the Agency.

(a) The Company may not sell or assign its interest in the Project or this Agreement, or sublease all or substantially all of the Project in whole to a single subtenant unless:

(i) the sale, sublease or assignment shall not cause the Project to cease being a "project" under the Act;

(ii) in the case of a transfer of the Company's entire right, title and interest in the Project, the transferee shall have assumed all of the obligations of the Company under this Agreement, including the obligation to utilize the Project as a qualified "project" within the meaning of the Act;

(iii) the use or occupation of the Project by the transferee, assignee or sublessee shall not cause the Project or the Agency to be in violation of any of the prohibitions contained in §862 of the General Municipal Law;

(iv) the Company shall provide to the Agency a copy of the proposed contract of sale, sublease or assignment in substantially final form no later than twenty (20) days before the proposed transfer or commencement date; and

(v) the Company has received prior written consent from the Agency;
and

(b) Provided that the conditions set forth in subsections (a)(i) through (a)(v) above are satisfied, the Agency shall not object to a sale or assignment of the Company's interest in the Project or this Agreement, or a sublease of all or substantially all of the Project, to an entity which is reasonably capable of performing the obligations of the Company under the Company Documents (including, without limitation, all fixed, contingent and potential monetary obligations).

(c) Except as otherwise set forth in subsections (a) and (b) above, the Company shall have the right to sublet any space within the Facility without the consent of the Agency so long as

(i) the Agency is not in violation of §862, subd. 1, of the Act (or, if the tenant is relocating from within the County of Essex, would cause the Agency to be in violation of §862, subd. 1, of the Act), and (ii) the Project continues to be used as a “project” under the Act.

(d) Notwithstanding anything hereinbefore provided to the contrary, any change or transfer of voting or other control of the Company or any person it controls, or any person which controls the Company or any person under common control with the Company, or any change in the Company due to a demutualization, conversion to a stock company, conversion to a public company, or similar conversion, shall not be deemed to be a sale, conveyance, lease or other change of ownership hereunder or otherwise be deemed to be a breach of any provision of this Agreement or any other Company Document.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) A default by the Company under this Agreement which remains uncured beyond the applicable notice and/or grace period provided hereunder;

(b) The failure of the Company to observe and perform any material covenant, condition representation or agreement on its part to be observed or performed under this Agreement which remains uncured beyond the applicable notice and/or grace period provided hereunder;

(c) Any representation made by the Company hereunder shall have been false in any material respect when made;

(d) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due so as to cause a lien against the Project other than a Permitted Encumbrance;

(e) Any sale, conveyance, lease or any other change of ownership of the Project, whether occurring voluntarily or involuntarily, or by operation of law or otherwise, by the Agency or the Company of their respective interest in the Project or any part thereof, or the granting of, any easements or restrictions or the permitting of any encroachments on the Project, except as permitted under the Company Documents or as otherwise approved by the Agency;

(f) The encumbrance by the Company with any debt secured by the Project or any interest in the Project other than Permitted Encumbrances, the Loan and the Mortgage without the written consent of the Agency;

(g) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (i) the failure by the Company within ninety (90) days to lift any execution, garnishment or attachment of such consequence as will impair the Company’s ability to carry out its obligations hereunder, (ii) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or

commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of ninety (90) days, (iii) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (iv) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within ninety (90) days of such appointment; or

(h) The imposition of a lien on the Project, other than a Permitted Encumbrance or a lien being contested as provided in Section 4.11(b) of this Agreement.

Section 7.2 Remedies on Default. Whenever any Event of Default shall have occurred and be continuing hereunder for fifteen (15) days after written notice of such Event of Default is issued by the Agency to the Company, the Agency may take any one or more of the following remedial steps:

(a) The Agency may suspend or terminate the Sales Tax Letter or require the Company to surrender the Sales Tax Letter to the Agency for cancellation or suspend or terminate any other financial assistance that the Agency may have or may in the future provide; or

(b) Subject to the provisions of Section 7.4 below, the Agency may terminate this Agreement upon written notice and convey the Property to the Company, in which case the Company shall be responsible for the restoration to the Agency of any and all benefits derived by the Company hereunder and not then vested in such amounts as the Agency shall reasonably determine would have been due and owing but for the participation of the Agency in the Project.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

Section 7.4 Recapture of Agency Benefits .

(a) It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Company for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

If there shall occur a Recapture Event (hereinafter defined) after the Commencement Date and prior to the second (2nd) anniversary thereof, the Company shall

pay to the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, the following amounts:

(A) one hundred per cent (100%) of the Benefits (hereinafter defined) if the Recapture Event occurs within the first year after the Commencement Date; or

(B) fifty per cent (50%) of the Benefits if the Recapture Event occurs after the first year but on or before the eighteen (18) month anniversary of the Commencement Date or;

(C) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the eighteen (18) month anniversary of the Commencement Date but before the twenty four (24) month anniversary of the Commencement Date.

(b) The term "Benefits" shall mean, collectively, all exemptions from any applicable sales or use tax, mortgage recording tax, transfer tax, and filing and recording fees derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement.

(c) The term "Recapture Event" shall mean any of the following events:

(1) The occurrence of an Event of Default by the Company under this Agreement which is continuing for a period of fifteen (15) days after written notice of such Event of Default is issued by the Agency to the Company;

(2) The Company shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(3) The Project or any material part thereof shall cease to constitute a qualified "project" under the Act;

(4) The Company shall have subleased all or any portion of the Project in violation of the limitations imposed by this Agreement (including, without limitation, Section 2.2(m) hereof), without the prior written consent of the Agency; provided, however, that any recapture of benefits by reason of the occurrence of a Recapture Event under this subparagraph (4) shall be prorated to the space so sublet in violation hereof, as follows: the amount of benefits otherwise payable to the Agency pursuant to subsection 7.4(a) above shall be multiplied by a fraction, the numerator of which shall be the number of rentable square feet of space so sublet, and the denominator of which shall be the aggregate number of rentable square feet in the Leased Property, both such numbers to be computed in like manner;

(5) The Company shall sell, lease, transfer or otherwise dispose of all or substantially all of its interest in the Project, except upon the consent of the Agency or by subleases otherwise permitted hereunder;

(6) The project is not entitled to receive the Benefits.

(7) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services.

(8) The Company failed to use property or services in the manner required by this Agreement, the Ground Lease, or any other agreement between the Company and the Agency with respect to the Project.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Leased Property, or (ii) the inability at law of the Company after the Leased Property shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Leased Property to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company or any Affiliate.

(d) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Project or any portion thereof made during the term of this Agreement, which notification shall set forth the terms of such Recapture Event and/or disposition.

(e) The Company covenants and agrees to cooperate with the Agency in their efforts to recapture sales tax and promptly pay over Recapture amounts.

(f) The failure of the Company to pay Recapture amounts to the IDA will be grounds from the Commissioner of Taxation and Finance (the "Commissioner") to collect sales and use taxes from the Company under Article 28 of the Tax Law, together with interest and penalties.

Section 7.5 Recourse Under the Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent (including counsel to the Agency) of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent (including counsel to the Agency) of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the County and neither the State nor the County shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of amounts payable to the Agency by the County hereunder; and provided further that recourse against the Agency hereunder or under any of the Company Documents shall be limited to the Agency's interest in the Project.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 Existence. During the Lease Term, the Company will maintain its existence as a limited liability corporation in good standing and its qualification to do business in the State, except that it may, but only with the written consent of the Agency, merge or consolidate into, or dissolve or liquidate following a transfer of all or substantially all of its assets as an entity, to

another entity organized under the laws of the United States, one of the states thereof or the District of Columbia, if the surviving, resulting or transferee entity is qualified to do business in the State and (i) assumes in writing all the obligations of the Company hereunder; (ii) immediately after the consummation of the transaction, and after giving effect thereto, the resulting entity has a net worth at least equal to the net worth of the Company immediately prior to the transaction (computed in accordance with generally accepted accounting principles); and (iii) as of the date of consummation of the transaction, the Agency shall be furnished with an opinion of Independent Counsel opining as to the compliance with item (i) of this Section 8.1 and with a certificate signed by the chief executive officer and chief financial officer of the resulting entity to the effect that the resulting entity is in compliance with item (ii) hereof.

Section 8.2 No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE LEASED PROPERTY OR THAT THE PROJECT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.3 Rights of Access to the Project. The Company agrees that the Agency and the duly authorized agents of the Agency should have the right at all reasonable times, to enter upon the Leased Property to examine and inspect the Project; provided the Agency or the duly authorized agents of the Agency provide the Company reasonable notice of their desire to enter upon the Leased Property to examine and inspect the Project and are accompanied by an authorized representative of the Company upon entering the Lease Property.

Section 8.4 Indemnification. Notwithstanding the fact that it is the intention of the parties that the Agency shall not incur any pecuniary liability, other than with respect to the Agency's acts or omissions in performing its obligations under this Agreement, by reason of the terms of this Agreement or by reason of the performance of any act by the Agency hereunder or thereunder, if the Agency nevertheless should incur any such pecuniary liability, the Company will indemnify and hold harmless the Agency, its members, officers, agents and employees, past, and present and future, against all claims arising out of the same, and the costs and expenses incurred in connection with any such claim or action or proceeding brought thereon. Upon written notice from the Agency, the Company will assume the defense of any such action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion, but consistent with the provisions of this Section 8.4. This Section 8.4 shall not apply to any losses, damages, claims, liabilities or expenses of the Agency which have been incurred or which have resulted from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents and employees.

Notwithstanding the foregoing, the Company shall forever indemnify and hold harmless the Agency against any adverse claim against title to the Project, including attorney's fees and expenses.

Section 8.5 No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent or employee of the Agency in his or her individual capacity. In the event of any default by the Agency

hereunder, the liability to the Company shall be enforceable only out of the Company's interest under this Agreement and there shall be no other recourse by the Company against the Agency, or any of its members, officers, agents or employees, past, present or future, or against any of the Project now or hereafter owned by it or them.

Section 8.6 Further Assurances and Corrective Instruments. The Agency and Company agree that they shall, from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as may reasonably be required for carrying out the intentions or facilitating the performance of this Agreement.

Section 8.7 Compliance with Environmental Laws. The Company shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that the acquisition, construction, operation and maintenance of the Project are carried out in substantial compliance with the applicable provisions of the New York State Environmental Conservation Law and applicable regulations promulgated thereunder by the New York State Department of Environmental Conservation.

Section 8.8 Depreciation and Investment Credit. It is the intention of the parties that deductions for depreciation and any investment tax credit or comparable credit which may be available in respect of the Project shall accrue to the benefit of the Company, and the Agency and the Company shall make any election and take other action in accordance with the Internal Revenue Code, as may be necessary to entitle the Company to take such deductions for depreciation or to derive such credit.

Section 8.9 Distribution of Agreement. Upon the execution and delivery of this Agreement, a counterpart of this Agreement shall be distributed by first class mail by the Agency to each of the notice parties set forth in Section 9.1 hereof, and upon the distribution and receipt of this Agreement, each of said notice parties and their respective counsel of record shall be presumed conclusively by the Agency to have knowledge of the terms and conditions of this Agreement.

ARTICLE IX MISCELLANEOUS

Section 9.1 Notices. All notices, certificates and other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered by hand or mailed by first class mail, postage prepaid, addressed as follows:

(a) If to the Agency: Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Director

with a copy to: Jennifer Briggs, Esq.
Briggs Norfolk LLP
2296 Saranac Avenue

Lake Placid, New York 12946

(b) If to the Company: Saranac Lake Resort Owner, LLC
1936 Saranac Ave, Suite 2-132
Lake Placid, NY 12946
Attention: James A. Milne

with a copy to: Bond Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202
Attn: Frank Patyi

A duplicate copy of each notice or other communication given under this Agreement to the Agency or the Company during the Lease Term shall also be given to each of the other parties referred to in this Section 9.1. The Company and the Agency may, by notice given under this Section 9.1, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2 Binding Nature of Agreement. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and assigns, subject, however, to the limitations contained in Sections 6.1 and 8.1 hereof.

Section 9.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render enforceable any other provision hereof.

Section 9.4 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on September 25, 2019.

Section 9.5 Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated without an agreement in writing and signed by the Agency and the Company.

Section 9.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; and such counterparts shall together constitute one and the same instrument.

Section 9.7 Term of Agreement. This Agreement shall become effective upon its delivery and shall continue in effect until the expiration of the Lease Term.

Section 9.8 Payment or Performance on Holidays. If the date for paying any rent payable pursuant to Section 3.2 of this Agreement, or the date for performance of any act or the exercising of any right, as provided in this Agreement, shall be a legal holiday or a day on which banking institutions in the State are authorized or required by law or executive order to remain

closed, such payment shall be made or act performed or right exercised on the next succeeding business day not a legal holiday nor a day on which such banking institutions are authorized by law to remain closed.

Section 9.9 Filing and Recording. The Company and the Agency covenant that they will cooperate with a bank, if any, in all recording, filing and re-recording or re-filing of all financing statements, continuation statements, notices and other instruments required by applicable law to be required by law in order fully to preserve and protect the rights of such bank in this Agreement as against creditors of, or for value from, the Agency and the Company.

Section 9.10 Captions. The captions and heading in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 9.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

ARTICLE X SUBORDINATION

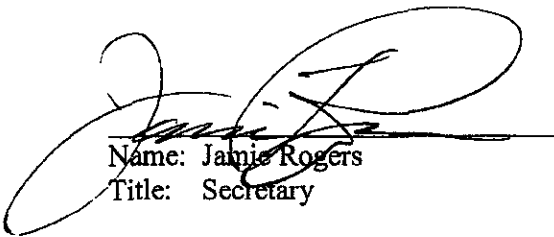
Section 10.1 Subordination to Mortgage. This Agreement and any and all modifications, amendments, renewals and extensions hereof shall be subject and subordinate to the Mortgage with respect to the Project until the Mortgage is satisfied, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases in and to the Mortgage.

IN WITNESS WHEREOF, the Agency has caused this Agreement to be executed in its corporate name and its corporate seal to be hereunto affixed and attested by its duly authorized officers and the Company has caused this Agreement to be executed by its duly authorized officer, all as of the date first above written.

(SEAL)

**ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**



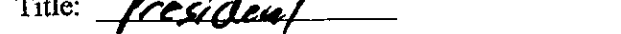
ATTEST:



Name: Jamie Rogers
Title: Secretary

By: 
Name: Darren Darrah
Title: Chairman

SARANAC LAKE RESORT OWNER, LLC
a New York limited liability company

By: 
Name: 
Title: 

STATE OF NEW YORK)
 ss:
COUNTY OF ESSEX)

On this 4 day of September, 2019 before me, the undersigned, a notary public in and for said state, personally appeared Darren Darrah personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jody C. OLCOTT
Notary Public

JODY C OLCOTT NOTARY PUBLIC STATE OF NEW YORK QUALIFIED IN ESSEX COUNTY NO - 010L8049849 MY COMM. EXPIRES OCTOBER 23, 2023
--

STATE OF NEW YORK)
 ss:
COUNTY ONEIDA)

On this ___ day of _____, 2019 before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

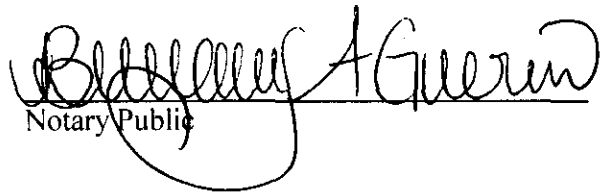
Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF ESSEX)

On this 25 day of September 2019, before me, a Notary Public in and for said County and State, personally appeared James A. Milne of Saranac Lake Resort Owner, LLC and acknowledged the signing of the foregoing instrument and that the signing is their voluntary act and deed on behalf of the Company and the voluntary and corporate act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[Notarial Seal]


Notary Public

Brittany A. Guerin
Notary Public, State of New York
No. 01Y06325401
Qualified in Essex County
My Commission Expires 05/26/2023

EXHIBIT A-1
DESCRIPTION OF THE LAND

All that certain parcel of land being situate in Lots 12 & 13, Township No. 11, Old Military Tract, Village of Saranac Lake, Town of North Elba, County of Essex, and State of New York; being more particularly bounded and described as follows:

Beginning at a point on the west bounds of Lake Flower Avenue (also known as NYS Route 86), said point being on the north bounds of property described in a deed to Fogarty's Marina Property, LLC, recorded in Liber 1576 at page 295 in the Essex County Clerk's Office, said point being located South 62°29'10" East 1.49 feet from a ¾" iron pipe; thence

- 1) North 62°29'10" West 1.49 feet to a ¾" iron pipe found, 0.3' high, and continuing on the additional distance of 124.07 feet to a ¾" iron pipe, and continuing on the same course an additional distance of 127.14 feet to a ¾" iron pipe, and continuing on the same course an additional distance of 19.0 feet to the shoreline of Lake Flower, and continuing on the same course to the historical low water mark of Lake Flower; thence
- 2) Northerly along said historical low water mark of Lake Flower to a point on the south bank of Livingston Brook, on the south bounds of Parcel 2 of property described in a deed to Mueller Capital Partners, Inc., recorded in Liber 1384 at page 310; thence
- 3) Northeasterly along the south bank of Livingston Brook to a point on the south line of property described in a deed to Robert Walasky and Kimberly Walasky, recorded in Liber 970 at page 144; thence
- 4) Easterly along the south bank of Livingston Brook, to a point on the west bounds of Lake Flower Avenue; thence
- 5) South 2°53'50" East along the west bounds of Lake Flower Avenue, 22.00 feet to a concrete highway monument, and continuing on the same course an additional distance of 29.00 to a point; thence the following two courses along the west bounds of said Lake Flower Avenue
- 6) South 30°21'35" West 403.76 feet to a 5/8" rebar with cap found, 0.1' below grade; thence
- 7) South 29°47'20" West 120.46 feet to the beginning.

Bearings are based on Grid North for the east zone of the New York State Coordinate System.

Containing approximately 4.6 acres of land, more or less, including lands below water, all as shown on a survey map prepared by Stacey L. Allott, LS of Geomatics Land Surveying, PC last revised on September 10, 2019 and certified on September 11, 2019;

The description above being a composite description of three properties described in the following deeds:

- 1) Deed to Saranac Lake Resort Owner, LLC, dated May 29, 2018, and recorded on June 27, 2018, as Instrument No. 2018-2524;
- 2) Deed to Saranac Lake Resort Owner, LLC, dated May 30, 2018, and recorded on June 27, 2018, as Instrument No. 2018-2529; and,
- 3) Deed to Saranac Lake Resort Owner, LLC, dated May 18, 2018, and recorded on May 30, 2018 as Instrument No. 2018-2107.

EXHIBIT A-2
DESCRIPTION OF THE FACILITY

ESSEX COUNTY, NEW YORK
SECTION:
BLOCK:
LOT: 32.214-5-2, 3 & 4 and 32.230-1-4

EXHIBIT A-3
DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machinery, building materials, furniture and items of personal property acquired, constructed and installed in connection with the Essex County Industrial Development Agency Ground lease Transaction (Saranac Lake Resort Owner, LLC Project) located in Saranac Lake, New York.

EXHIBIT A-4
FORM OF GROUND LEASE

Appendix A - 4

EXHIBIT B
Letter of Authorization for Sales Tax Exemption

[on file with IDA]

SCHEDULE A

**Certificate of Authorized Representative
Regarding Sales Tax Exemption**

Pursuant to the Ground Lease Project Agreement dated _____, 2019, between the Essex County Industrial Development Agency (the "Agency") and Lake Placid Hotel Partners, LLC (the "Company"), the undersigned does hereby certify:

1. That the aggregate dollar amount of all sales tax exemptions availed of or by the Company from January 1 through December 31, ____ is \$_____.

2. That the aggregate dollar amount of all sales tax exemption availed of or by the Company from the date of original issuance of the sales tax letter through _____, ____ is \$_____.

3. That all sales tax exemptions so availed are in compliance with the provisions of the Sales Tax Letter.

Dated: _____, 20__

By: _____
Name:
Title:

EXHIBIT C
FORM OF SALES TAX EXEMPTION APPLICATION

To: Essex County Industrial Development Agency
7566 Court Street, Elizabethtown
New York 12996

Re: Essex County Industrial Development Agency
Saranac Lake Resort Owner, LLC Project

Sales Tax Exemption
Application Number: _____

Date: _____, 20__

Gentlemen:

Pursuant to Section ____ of that certain Ground Lease Project Agreement dated _____, 2019 (the "Agreement") by and between the Essex County Industrial Development Agency (the "Agency"), and Saranac Lake Resort Owner, LLC (the "Company"), the Company is applying for a sales tax exemption letter to cover the following contract:

1. Project Name: Saranac Lake Resort Owner, LLC Project
2. Project Number: _____
3. Project Description: a 93-key LEED certified hotel with 3,000 square feet of meeting space, full-service spa, fitness center, banquet facilities, two food and beverage outlets and a 36-slip marina to be located on Lake Flower in the Village of Saranac Lake, County of Essex, New York
4. Application Period Covered by: _____
5. Description of Goods or Services Estimated to be Purchased During Period Covered: See Attached Schedule F-1
6. Total Estimated Project Cost for Period Covered (total estimated contract price of goods or services to be purchased): \$ _____

Appendix B-3

7 Amount of Total Estimated \$ _____
Project Cost normally subject to
State and Local Sales and Use
Taxes:

8. Anticipated Sales Tax Benefit: \$ _____

9. Cumulative Sales Tax Benefit
received by the Company to date
with respect to the Project (i.e. line
8 plus line 8 of all previous
applications):

(If additional space is required to complete this form, please attach a separate page)

SARANAC LAKE RESORT OWNER, LLC
a New York limited liability company

By: _____
Name:
Title:

STATE OF NEW YORK)
)
COUNTY OF ESSEX) SS.:

AFFIDAVIT
Exemption from Recording Fees

Jody Olcott, being duly sworn, deposes and says as follows:

1. I am the Co-Executive Director of the Essex County Industrial Development Agency (hereinafter "the County Agency") with offices in Elizabethtown, Essex County, New York.
2. The County Agency by reason of a certain ground lease between Saranac Lake Resort Owner LLC and the County Agency grants the County Agency control of certain premises located at 250 Lake Flower Avenue, Saranac Lake, New York 12983 (hereinafter "Ground Lease").
3. This affidavit is submitted to support a claim that the recording fees for said ground lease are exempt/waived due to the above stated facts.

Essex County Industrial Development Agency
By: Jody Olcott
Jody Olcott, Co-Executive Director

Sworn to before me this _____
day of 23, September, 2019.

Carol A. Calabrese
Notary Public

CAROL A. CALABRESE
NOTARY PUBLIC, STATE OF NY
NO.-01CA6139350
QUALIFIED IN ESSEX COUNTY
MY COMM. EXPIRES JAN. 9, 2022