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GROUND LEASE PROJECT AGREEMENT  
between  
TRAILHEAD RESORT, LLC  
and  
ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Dated: February 28, 2020

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This Table of Contents is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Ground Lease Project Agreement.

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## **GROUND LEASE PROJECT AGREEMENT**

THIS GROUND LEASE PROJECT AGREEMENT, dated February 28, 2020 (the “Agreement”), is between the ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”), a public benefit corporation of the State of New York (the “State”), with principal offices located at 7566 Court Street, PO Box 217, Elizabethtown NY 12932, and Trailhead Resort, LLC, a New York State limited liability company, authorized to do business in the State (the “Company”), with an address at 5410 State Route 28N, Newcomb, New York 12852.

### **WITNESSETH**

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 (i) the acquisition, construction, reconstruction and equipping of a building in Newcomb, New York, to be operated by the Company as a resort, including a restaurant and four glamping sites with access to 185 feet of lakefront and docking (the “Facility”); (ii) the acquisition and installation of various machinery, equipment and furnishings for the Facility, including substantial rehabilitation (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 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 December 5, 2019 (“Inducement and Authorization Date”) the Agency took official action with respect to the Leased Property, authorizing the undertaking of the Project, and on January 31, 2020 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 Project 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 real property tax exemption through a Payment in Lieu of Taxes Agreement (“PILOT Agreement”) to be executed by and between the Agency, the Company, the County, the Town of Newcomb and the Newcomb Central School District.

WHEREAS, the Company has received financial assistance for the Project in the form of a loan (the “Loan”) for \$233,000 from Development Authority of the North Country, (the “Mortgagee”) to be secured by an interest in the Project and used by the Company to undertake the financing of the Project (as the same may be amended, modified, restated, extended, consolidated and assigned from time to time, 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 this Agreement, the Ground Lease, the PILOT Agreement and the Resolution.

“Agreement” means this 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.

“Building” means that certain building to be renovated at 5410 State Route 28N, Newcomb, New York 12852, and as described in the recitals of this Agreement.

“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.

“Collateral Assignment” means an asset assignment in which ownership rights are transferred only as an additional security for a loan, and revert to the assignor when the loan is repaid.

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

“Company” means Trailhead Resort, LLC, a New York limited liability company, organized and existing under the laws of the State of New York and registered to do business in 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 and the PILOT Agreement 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.

“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 for incorporation in the Leased Property or for use in connection with the Leased Property.

“Fixed Termination Date” means the date immediately preceding the tenth (10<sup>th</sup>) anniversary of the Commencement Date, as such immediately preceding date may be extended pursuant to Article X.

“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.

“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 December 5, 2019, and December 18, 2019 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 the Ground Lease.

“Leased Property” means that certain property located at 5410 State Route 28N, Newcomb, New York 12852.

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

“Mortgage” means that certain Mortgage dated as of April 1, 2019 by and between the Company and the Mortgagee, as the same may be amended, modified, restated, extended, consolidated and assigned from time to time.

“Mortgagee” means Development Authority of the North Country, a New York authority and public benefit corporation.

“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 the Loan made by the Mortgagee and secured by the Mortgage and other documents evidencing and/or securing the Loan.

“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.

“State” means the State of New York.

“Unrented Space” means space in the Project which, at the time in question, is not (or has not been previously) subject to a bona fide sublease or to an Affiliate of the Company.



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 November 4, 2019 (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, subject and subordinate in all respects to the terms of the Loan and Mortgage with the Mortgagee.

(f) The Agency has consented to the Company's entering into the Loan and the Agency's granting and subordinating its interest in the Ground Lease to the Mortgagee 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 New York 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 and the Mortgage 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 ground 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 the property 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 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). The Company will not lease any Unrented Space in the Project to any subtenant relocating from within the State without the prior written consent of the Agency granted in accordance with Section 4.6 hereof. The foregoing shall survive the termination of this Agreement unless and until (i) there is no Unrented Space in the Project, or (ii) all Benefits (hereinafter defined) subject to recapture under Section 7.4 hereof have been recaptured, whichever shall first occur. Without the financial assistance from the Agency the Company would not have undertaken the rehabilitation of the Facility.

(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.

(s) The Company has received the prior written consent of the Mortgagee to enter into the Ground Lease with the Agency as evidenced in Exhibit B hereto.

### 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 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 4.4 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 4.4 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 4.4.

(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 that, to the best of the Company's knowledge no prior owner of the Project or any tenant, subtenant, prior tenant or prior subtenant have used 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. 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 4.4(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 4.4, 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 4.4, 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 4.4 shall survive and remain in full force and effect after the termination of this Agreement.

Section 4.5 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 4.6 Retention of Interest in Ground Lease. The Agency shall not sell, assign, mortgage, 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 the Mortgagee and any purported disposition without such consent shall be void.

Section 4.7 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 and (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; 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 4.8 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, 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 4.9 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 4.10 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 or against any of the payable under this Agreement, (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, subject to the Permitted Encumbrances.

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 at 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 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.

Subject to the terms of the Permitted Encumbrances, all proceeds of insurance against Project damage shall be made payable to the Company, Mortgagee, the Agency as their respective interests may appear. Anything herein to the contrary notwithstanding, but subject to the terms of the Permitted Encumbrances, 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 5.5 Liability. The Net Proceeds of the insurance carried pursuant to the provisions of Section 5.4 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 5.6 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 5.7 Condemnation. Subject to the terms of the Permitted Encumbrances, 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 5.7, the Company may elect to apply the proceeds from such award in the manner prescribed in Section 5.7 hereof with respect to insurance proceeds.

Section 5.8 Flood Insurance. The Company will promptly obtain or cause to be obtained flood insurance, if so required by the Agency.

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 and the Mortgagee, nor may the Company sublease the Project except for subleases, the form of which shall be acceptable to the Agency.

(a) Except for the Mortgage and any Collateral Assignments with Mortgagee which have been preapproved, 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 20 days before the proposed transfer or commencement date; and

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

(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 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

(g) The imposition of a lien on the Project, other than a Permitted Encumbrance or a lien being contested as provided in Section 4.10(b) of this Agreement; or

Notwithstanding anything to the contrary set forth herein, the subleasing of space in the Project in violation of the restrictions contained in Section 2.2(m) hereof shall not constitute an Event of Default solely by reason of such violation, provided that (i) the Company shall have repaid the pro-rated Benefits subject to recapture under Section 7.4 due to such subleasing, and (ii) such subleasing shall not have been determined by any court to be a violation of the Act.

Section 7.2 Remedies on Default. Whenever any Event of Default shall have occurred and be continuing hereunder for 60 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 take whatever action at law or in equity as may appear necessary or desirable, including an action for damages, injunction or specific performance; or

(b) The Agency may suspend or terminate the real property tax exemption or suspend or terminate any other financial assistance that the Agency may have or may in the future provide; or

(c) 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 sixth (6<sup>th</sup>) 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 two (2) years after the Commencement Date; or

(B) fifty per cent (50%) of the Benefits if the Recapture Event occurs during the third (3<sup>rd</sup>) or fourth (4<sup>th</sup>) year after the Commencement Date or;

(C) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the fifth (5<sup>th</sup>) year after the Commencement Date.

(b) The term “Benefits” shall mean, collectively, all exemptions from any applicable real property tax, and any filing and recording fees, if applicable, 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 60 days after written notice of such Event of Default is issued by the Agency to the Company and to the Mortgagee, affirming the Mortgagee’s right, but not obligation, to cure any default;

(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) [Reserved].

(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 Financial Assistance provided and promptly pay over Recapture amounts.

(f) Recapture is merely against the Company and shall not be an obligation of Mortgagee or the Property.

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 of New York, except that it may, but only with the written consent of the Agency, merge, convert, 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 Leased 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, stipulation, 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
- (b) If to the Company: Trailhead Resort, LLC  
5410 State Route 28N  
Newcomb, New York 12852.  
Attention: Kelly Stamas Audino

with a copy to:

Jennifer Briggs, Esq.  
Briggs Law Firm LLP  
2296 Saranac Avenue  
Lake Placid, New York 12946

A duplicate copy of each notice, certificate 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 February 28, 2020.

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 Mortgagee, in all recording, filing and re-recording or re-filing of all mortgages, financing statements, continuation statements, notices and other instruments

permitted under applicable law to be required by law in order fully to preserve and protect the rights of the Mortgagee in this Agreement in connection with the Loan and/or 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 Third-Party Beneficiary. Mortgagee is a third-party beneficiary of this Agreement.

Section 9.12 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 in all respects to the Mortgage with respect to the Project, until the Mortgage is satisfied of record by Mortgagee, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases in and to the Mortgage. In the event of a conflict between the terms of this Agreement and the Mortgage and/or the other Permitted Encumbrances, the terms of the Mortgage and the other Permitted Encumbrances shall control. The subordination of this Agreement shall be automatic, without the execution of any further subordination agreement by the Company or the Agency. Nonetheless, if the Mortgagee requires a further written subordination agreement, the Company and the Agency agree to execute, acknowledge and deliver the same.

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

**TRAILHEAD RESORT, LLC**

By:   
Name:  
Title: Manager

STATE OF NEW YORK            )  
  ss:  
COUNTY OF ESSEX            )

On this 27 day of February, 2020 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 - 010L6049649  
COMM. EXPIRES OCTOBER 23, 2022

STATE OF NEW YORK            )  
  ss:  
COUNTY Essex            )

On this     day of February, 2020 before me, the undersigned, a notary public in and for said state, personally appeared Anthony F. Audino 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.

Mary A. Pound  
Notary Public

MARY A. POUND  
Notary Public, State of New York  
Registration No. 01PO4933473  
Qualified in Essex County  
Commission Expires May 31, 2022

**EXHIBIT A-1**  
**DESCRIPTION OF THE LAND**

[to be Provided by the Company]

*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 1 of 4

**SCHEDULE A DESCRIPTION**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, with the buildings and improvements thereon erected, situate, lying and being in the Town of Newcomb, County of Essex, State of New York and being a part of Lot 16 Richard's Survey in Township 27 of Totten and Crossfield's Purchase and being a part of the property locally known as the Lake Harris Hotel Lot; more particularly described as follows:

BEGINNING at an iron rod and plastic survey cap set in the northerly bounds of New York State Route 28N. Said point of beginning is located  $108^{\circ} 36' 35''$ , a distance of 67.5 feet (20.574 meters, +/-) from a concrete monument found in the north highway bounds at baseline station 576 + 84, right 57; said point of beginning is also located  $19^{\circ} 57' 05''$  a distance of 597.4' +/- (182.09 meters +/-) from the common lot corners of Lots 8, 9, 16 and 17 of said Richard's Survey.

THENCE  $15^{\circ} 36' 25''$  a distance of 419.0 feet (127.71 meters  $\pm$ ) to an iron pipe found on or near the shore of Lake Harris.

THENCE continuing  $15^{\circ} 36' 25''$  to low water level of Lake Harris.

THENCE southeasterly along the low water level of Lake Harris to a point that is a continuation of the azimuth  $0^{\circ} 32' 00''$  from the iron pipe found marking the northwest corner of the parcel conveyed to Norman Bureau by deed dated 14 August 1963 and recorded 28 August 1963 in Book 412 Page 513 and later corrected in deed dated 27 July 1970 and recorded 17 August 1970 in Book 490 at Page 372.

THENCE  $180^{\circ} 32' 00''$  to said iron pipe continuing  $180^{\circ} 32' 00''$  a distance of 195.0 feet (59.463 meters +/-) to an iron pipe found marking the southwest corner of the above mentioned Norman Bureau lot.

*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 2 of 4

THENCE 134° 50' 55" a distance of 68.5 feet (20.879 meters +/-) along the southerly bounds of the Norman Bureau lot to an iron rod and plastic survey cap set.

THENCE 203° 22' 45" a distance of 122.9 feet (37.46 meters +/-) to an iron rod and plastic survey cap set in the northerly bounds of the aforementioned New York State Route 28N.

THENCE 288° 36' 35" a distance of 256.33 feet (78.131 meters +/-) along the north bounds of the New York State Route 28N to the point of beginning.

CONTAINING 1.86 acres ± (or 0.75 hectare ±) of land.

SUBJECT to easements and restrictions of record. The magnetic Azimuth used was observed on the site March 11, 1984.

BEING part of the parcel conveyed by Mary Ford Halladay to Harland H. Stubing by deed dated December 17, 1954 and recorded February 21, 1955 in Book 321 of Deeds at page 587.

ALSO being the same property intended to be described in a deed dated and recorded 22 January 1980 from Harland Stubing to Olive Dolan in Book 701 of Deeds at page 123.

ALSO granting and conveying all rights, title and interest to the water rights to the driven well on the south side of Route 28N, locate in Lot 9 of Richard's Survey, as shown on the map to be filed herewith, including the well house, water mains and appurtenances to the water system presently supplying water to the Lake Harris House; together with the right to repair and maintain the system.

SUBJECT to any rights reserved or previously granted to others by Harland Stubing that may affect or limit the water usage.

PART of the water system and supply above described is located on lands conveyed by Mary Ford Halladay to Harland Stubing by deed dated September 11, 1956 and recorded October 29, 1956 in Book 340 of Deeds at page 153.



*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 3 of 4

A map of a survey by William E. Brannon, L.S., entitled "Hotel Lot" of Lake Harris Hotel Property, dated April 30, 1984, showing the above described premises, map filed May 17, 1984 in the Essex County Clerk's Office as Map # 3334.

ALL bearings shown above are azimuth bearings.

The above described premises are more recently described as follows:

Beginning at a point in the northerly boundary of New York State Route 28N, said point being the southwesterly corner of the lands now or formerly of Kevin S. Zilber and Allan D. Margolies, as recorded in the office of the Essex County Clerk in Book 1227 at Page 49, running thence from the point of Beginning westerly along the northerly boundary of New York State Route 28N North 71° 21' 25" West a distance of 256.33' to a point at the southeasterly corner of the lands now or formerly of Ancole, LLC, as recorded in the office of the Essex County Clerk in Book 1829 at Page 22, running thence northerly along the easterly boundary of lands now or formerly of Ancole, LLC, as recorded in the Office of the Essex County Clerk in Book 1829 at page 22 North 15° 36' 25" East a distance of 389.09' to a point, continuing thence northerly along the easterly boundary of the lands now or formerly of Ancole, LLC, as recorded in the office of the Essex County Clerk in Book 1829 at Page 22 North 15° 36' 25" East a distance of 9'± to the mean low water line of Harris Lake, running thence easterly along the mean low water line of Harris Lake for a distance of 175'± to the westerly boundary of the lands now or formerly of Kevin S. Zilber and Allan D. Margolies, as recorded in the office of the Essex County Clerk in Book 1227 at page 49, running thence southerly along the lands now or formerly of Kevin S. Zilber and Allan D. Margolies, as recorded in the office of the Essex County Clerk in Book 1227 at Page 49 South 00° 32' 00" West a distance of 24'± to a point, said point being located South 52° 00' 08" West a distance of 177.83' from the last mentioned point (tie line only), continuing thence southerly along the lands

*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 4 of 4

now or formerly of Kevin S. Zilber and Allan D. Margolies, as recorded in the office of the Essex County Clerk in Book 1227 at page 49 the following three (3) courses and distances:

1. South 00° 32' 00" West a distance of 186.10' to a point;
2. South 45° 09' 05" East a distance of 68.50' to a point;
3. South 23° 22' 45" West a distance of 122.90' to the point and place of Beginning.

**EXHIBIT A-2**  
**DESCRIPTION OF THE BUILDING**

ESSEX COUNTY, NEW YORK  
SECTION: 109.16  
BLOCK: 2  
LOT: 32.000

**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 (Trailhead Resort, LLC Project) located in Newcomb, New York.

**EXHIBIT A-4**  
**FORM OF GROUND LEASE**

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Ground Lease") is made the 28<sup>th</sup> day of February 2020 between Trailhead Resort, LLC, a New York limited liability company, authorized to do business in the State of New York (the "State") (referred to herein as "Lessor") and Essex County Industrial Development Agency, a public benefit corporation of 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 February 28, 2020 (the "Project Agreement") and agrees to lease to Lessee the Land; 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, of recording Mortgage, 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; and

WHEREAS, the Lessor has applied to the Lessee for financial assistance for the purpose of financing the costs of the acquisition, construction, reconstruction and equipping of a building in Newcomb, New York, to be operated by the Lessor as a resort, including a restaurant and four glamping sites with access to 185 feet of lakefront and docking and includes certain necessary preliminary and incidental expenses related thereto (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 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 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 Lessee 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.

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, the Permitted Encumbrances and the Mortgage.

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

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, offices, 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 Lessor Under the Project Agreement. It is expressly understood and agreed by Lessor and Lessee that a default or breach by Lessor 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.

SECTION 11. Subordination of Lessee's Interest. Lessee's interest in this Ground Lease is and shall be subject and subordinate to the Mortgage in all respects as described in the Project Agreement.

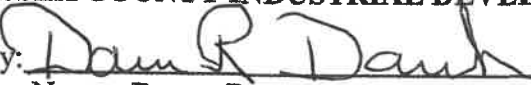
SECTION 12. Conflict of Terms. In the event of a conflict between the terms of the Mortgage and the Ground Lease, the Mortgage shall control.

SECTION 13. Third Party Beneficiary. Mortgagee is a third-party beneficiary of the terms and conditions of the Ground Lease.



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

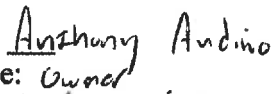
**ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: 

Name: Darren Darrah

Title: Chairman

**TRAILHEAD RESORT, LLC**

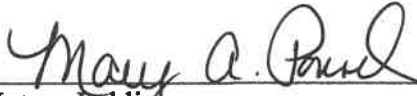
By:   
Title: Owner



***[Signature Page to Ground Lease]***

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

On the 20 day of February, in the year 2020, before me, the undersigned, personally appeared Anthony F. Audino, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public


MARY A. POUND  
Notary Public, State of New York  
Registration No. 01PO4933473  
Qualified in Essex County  
Commission Expires May 31, 20 22

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

On this 27 day of February 2020, 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]

  
Notary Public

JODY C OLCOTT  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED IN ESSEX COUNTY  
NO - 01OL6049649  
COMM. EXPIRES OCTOBER 23, 2022

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

**LEGAL DESCRIPTION**

[To be provided by Company]

*Westcor Land Title Insurance Company*

Title Number: 2018-0358T

Page 1 of 4

**SCHEDULE A DESCRIPTION**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, with the buildings and improvements thereon erected, situate, lying and being in the Town of Newcomb, County of Essex, State of New York and being a part of Lot 16 Richard's Survey in Township 27 of Totten and Crossfield's Purchase and being a part of the property locally known as the Lake Harris Hotel Lot; more particularly described as follows:

BEGINNING at an iron rod and plastic survey cap set in the northerly bounds of New York State Route 28N. Said point of beginning is located  $108^{\circ} 36' 35''$ , a distance of 67.5 feet (20.574 meters, +/-) from a concrete monument found in the north highway bounds at baseline station 576 + 84, right 57; said point of beginning is also located  $19^{\circ} 57' 05''$  a distance of 597.4' +/- (182.09 meters +/-) from the common lot corners of Lots 8, 9, 16 and 17 of said Richard's Survey.

THENCE  $15^{\circ} 36' 25''$  a distance of 419.0 feet (127.71 meters  $\pm$ ) to an iron pipe found on or near the shore of Lake Harris.

THENCE continuing  $15^{\circ} 36' 25''$  to low water level of Lake Harris.

THENCE southeasterly along the low water level of Lake Harris to a point that is a continuation of the azimuth  $0^{\circ} 32' 00''$  from the iron pipe found marking the northwest corner of the parcel conveyed to Norman Bureau by deed dated 14 August 1963 and recorded 28 August 1963 in Book 412 Page 513 and later corrected in deed dated 27 July 1970 and recorded 17 August 1970 in Book 490 at Page 372.

THENCE  $180^{\circ} 32' 00''$  to said iron pipe continuing  $180^{\circ} 32' 00''$  a distance of 195.0 feet (59.463 meters +/-) to an iron pipe found marking the southwest corner of the above mentioned Norman Bureau lot.

*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 2 of 4

THENCE 134° 50' 55" a distance of 68.5 feet (20.879 meters +/-) along the southerly bounds of the Norman Bureau lot to an iron rod and plastic survey cap set.

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CONTAINING 1.86 acres ± (or 0.75 hectare ±) of land.

SUBJECT to easements and restrictions of record. The magnetic Azimuth used was observed on the site March 11, 1984.

BEING part of the parcel conveyed by Mary Ford Halladay to Harland H. Stubing by deed dated December 17, 1954 and recorded February 21, 1955 in Book 321 of Deeds at page 587.

ALSO being the same property intended to be described in a deed dated and recorded 22 January 1980 from Harland Stubing to Olive Dolan in Book 701 of Deeds at page 123.

ALSO granting and conveying all rights, title and interest to the water rights to the driven well on the south side of Route 28N, locate in Lot 9 of Richard's Survey, as shown on the map to be filed herewith, including the well house, water mains and appurtenances to the water system presently supplying water to the Lake Harris House; together with the right to repair and maintain the system.

SUBJECT to any rights reserved or previously granted to others by Harland Stubing that may affect or limit the water usage.

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*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 3 of 4

A map of a survey by William E. Brannon, L.S., entitled "Hotel Lot" of Lake Harris Hotel Property, dated April 30, 1984, showing the above described premises, map filed May 17, 1984 in the Essex County Clerk's Office as Map # 3334.

ALL bearings shown above are azimuth bearings.

The above described premises are more recently described as follows:

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*Westcor Land Title Insurance Company*

Title Number: **2018-0358T**

Page 4 of 4

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1. South 00° 32' 00" West a distance of 186.10' to a point;
2. South 45° 09' 05" East a distance of 68.50' to a point;
3. South 23° 22' 45" West a distance of 122.90' to the point and place of Beginning.



**EXHIBIT B**  
**CONSENT OF MORTGAGEE**

## CONSENT OF MORTGAGEE TO GROUND LEASE

I, James W. Wright, of Development Authority of the North Country, having a principal office at 317 Washington Street, Watertown, New York 13601 (the "Mortgagee") **HEREBY CERTIFYS** as follows:

1. The Mortgagee is a New York authority and public benefit corporation created by special act of the New York State Legislature under Title 29 of the Public Authorities Law.

2. The Mortgagee is the holder of a certain mortgage, dated April 1, 2019, (the "Mortgage") made by Trailhead Resort, LLC (the "Mortgagor") covering certain real property owned by the Mortgagor securing the entire principal amount of a loan from the Mortgagee to the Mortgagor in the principal amount of \$233,000 (the "Mortgage"), recorded in the Office of the County Clerk of Essex County, State of New York (the "State") on April 1, 2019, and subjecting property described in Exhibit A attached hereto to the lien of the Mortgage (the "Mortgaged Property").

3. The Mortgagor has applied to the Essex County Industrial Development Agency (the "Agency"), a public benefit corporation of the State, for financial assistance from the Agency to reduce the cost of renovating and equipping a restaurant and camping sites located in Newcomb, New York, to be located on the Mortgaged Property. Mortgagee relies on the representations of the Mortgagor and the Agency that the "Project" described in the Ground Lease, as hereinafter defined, refers to the same parcels of real property subject to the lien of the Mortgage.

4. To facilitate the reduction of costs of the Project to the Mortgagor, the Agency and the Mortgagor have entered a ground lease transaction in which the Mortgagor will ground lease the Project, including all buildings, fixtures and appurtenances and additions thereto and substitutions and replacements thereof, to the Agency upon the terms and conditions set forth and in the Ground Lease Agreement, dated February 28, 2020, between the Agency and the Mortgagor (the "Ground Lease") and a Ground Lease Project Agreement, between the Agency and the Mortgagor, dated February 28, 2020 (the "Project Agreement").

5. The Mortgagor has requested that the Mortgagee consent to the Mortgagor's entering into the Ground Lease and conveying an interest in the Mortgaged Property to the Agency through the Ground Lease pursuant to Section 1.11 of the Mortgage in order to carry out public purposes of the Agency and provide financial assistance to the Mortgagor.

6. Mortgagee relies on the representations of the Mortgagor and the Agency that the Mortgage is a Permitted Encumbrance, as that term is defined in the Project Agreement.

7. Mortgagee hereby approves and consent to the delivery and execution of the Ground Lease and the Project Agreement and the subjecting of the Mortgaged Property to the conveyance thereof to the Agency through the Ground Lease.

8. The Ground Lease and Project Agreement and any and all modifications, amendments, renewals and extensions thereto shall be subject to and subordinate to the Mortgage, as that term is defined in the Project Agreement. The Agency will cooperate with the Mortgagee in any enforcement action of the Mortgage with respect to the Mortgaged Property.

IN WITNESS WHEREOF, Mortgagee has executed and delivered this Consent this 12 day of February, 2020

Development Authority of the North Country

By: \_\_\_\_\_

  
Name: James W. Wright  
Title: Executive Director