

SQUIRE PATTON BOGGS (US) LLP

CLOSING AND RELATED DOCUMENTS

**ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY
STRAIGHT LEASE TRANSACTION
(DUAL DEVELOPMENT LLC PROJECT)**

Closing Date: December 29, 2021

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(DUAL DEVELOPMENT LLC PROJECT)
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MEMORANDUM OF LEGAL PAPERS

The following is a list of the legal documents, which will be necessary for the transcripts of proceedings in connection with the above-mentioned transaction. It is requested that ten (10) copies of all items be prepared for distribution as follows:

Essex County Industrial Development Agency (the “Agency”)	IDA
Briggs Law Firm LLP (“Counsel to the Agency”).....	AC
Dual Development LLC (the “Company”)	PB
Lemery Greisler LLC (“Company’s Counsel”).....	CC
Squire Patton Boggs (US) LLP (“Bond Counsel”)	SPB
Harris Beach, PLLC (“Bank Counsel”)	BC

**ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY
STRAIGHT LEASE TRANSACTION
(DUAL DEVELOPMENT LLC PROJECT)**

Closing Date: December 29, 2021

Closing Documents

<u>Doc. No.</u>	<u>Basic Documents</u>
1.	Project Agreement (the “Project Agreement”) between the Essex County Industrial Development Agency (the “Agency”) and Dual Development LLC (the “Company”), dated as of December 29, 2021.
2.	Agency Lease, dated as of December 29, 2021, between the Agency, as lessor, and the Company, as lessee (the “Agency Lease”).
3.	Company Lease Agreement, dated as of December 29, 2021, between the Company, as lessor, and the Agency, as lessee, (the “Company Lease Agreement”).

<u>Doc. No.</u>	<u>Closing Documents Delivered By the Agency</u>
4.	Certified copy of Chapter 563 of the Laws of 1973 of the State of New York (the “State”) (Section 914-a of the General Municipal Law), as amended.
5.	Certificate as to establishment of the Agency and as to appointment of the Members thereof and compliance with Title 18-A of the General Municipal Law certified by the Secretary of State of New York.
6.	Certificate as to by-laws of the Agency.
7.	Certificate as to Final Approving Resolution of the Agency.
8.	Certificate as to (1) the Inducement Resolution of the Agency dated April 22, 2021, (2) Public Hearing proceedings and (3) Final Approving Resolution of the Agency dated June 23, 2021.
9.	Certificate of the Agency as to Signatures, Incumbency, No Litigation and Other Matters.
10.	Certificate as to Representations and Warranties of the Agency contained in Section 2.1 of the Project Agreement.

Doc. No. Closing Documents Delivered by the Company

11. General Certificate of the Company together with the following: (a) Operating Agreement and all amendments thereto, (b) Articles of Organization of the Company and any amendments thereto and (c) Certificate of Good Standing from the New York State Department of State.
12. Certificate as to Representations and Warranties of the Company contained in Section 2.2 of the Project Agreement.
13. Certificate of the Company as to Signatures, Incumbency, No Litigation and Other Matters, including designating the Authorized Company Representative(s).
14. Certificate Regarding Environmental Compliance

Legal opinions

15. Opinion of Briggs Law Firm LLP, Counsel to the Agency.
16. Approving Opinion of Squire Patton Boggs (US) LLP, Bond Counsel.
17. Opinion of Lemery Greisler LLC, Counsel to the Company.

PROJECT AGREEMENT

Between

DUAL DEVELOPMENT LLC

and

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Dated December 29, 2021

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Exhibit A-1 – Description of the Land

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Exhibit A-3 – Description of the Equipment

Exhibit B – Forms of Agency Lease and Company Lease Agreement

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated as of December 29, 2021 (the “Agreement”), is between the ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”), a public benefit corporation of the State of New York (the “State”), duly organized and existing under the laws of the State, with principal offices located at 7566 Court Street, PO Box 217, Elizabethtown, New York 12932, and DUAL DEVELOPMENT LLC, a limited liability company (the “Company”), with principal offices located at 15 Shelbourne Drive Clifton Park, New York 12065.

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 straight-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 leased to the Company by the Agency pursuant to that certain Agency Lease dated the date hereof (the “Agency Lease”), for the (i) acquisition, construction, reconstruction and equipping of a building in North Elba, New York, to be operated by the Company as an approximately 185-unit hotel, including the removal of the existing Quality Inn Hotel (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 straight-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 execute and deliver a “straight-lease transaction” within the meaning of

Section 854 (15) of the Act in which the Company will lease the Project to the Agency upon the terms and conditions hereinafter set forth in the Company Lease Agreement, and the Agency will lease the Project to the Company upon the terms and conditions set forth in the Agency Lease, and in furtherance of such purposes, on April 22, 2021 (“Inducement and Authorization Date”) the Agency took official action with respect to the Leased Property, authorizing the undertaking of the Project, and on June 23, 2021, the Agency adopted an Resolution with respect to the straight-lease transaction for the benefit of the Company with respect to the Project; and

WHEREAS, the Project is owned by the Company, but deemed under the control of the Agency pursuant to the Company Lease Agreement and the Agency Lease for purposes of providing the benefits of the Act to the Company; and

WHEREAS, the Company has made an application to Pioneer Bank (the “Bank”), located in Albany, New York for construction/permanent financing in the form of a bank loan in the amount of \$26,200,000.00 (the “Bank Loan”) to be used by the Company to undertake the financing of the Project; and

WHEREAS, as security for the Bank Loan, the Agency and the Company shall grant a mortgage in the Project to the Bank (the “Bank 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, the Company Lease Agreement or the Agency Lease shall ever constitute a general debt or obligation of the Agency, the County or the State with respect to the Project;

ARTICLE I DEFINITIONS

Section 1.1 Definitions. In addition to the words and terms defined or capitalized in the recitals of this Agreement and 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 Lease” means the agreement between the Agency and the Company pursuant to which the Agency will lease the Project to the Company for the Lease Term.

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

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

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

“Bank” means Pioneer Bank, a bank or trust company located in Albany, New York and authorized to do business in the State of New York.

“Bank Mortgage” means the mortgage on the Project dated as of December 29, 2021, by and among the Company, the Agency and the Bank in the principal amount of the Bank Loan.

“Building” means that certain building to be renovated and or constructed in the Town of North Elba, New York, and as described in the recitals of this Agreement and constituting a part of the Project.

“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.

“Closing” means December 14, 2021 or such later date the Company Documents are executed and delivered.

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

“Company” means Dual Development LLC, a New York limited liability company, organized and existing under the laws of the State of New York, its successors and assigns, and any surviving, resulting or transferred corporation or other entity, or Affiliate.

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

“Company Lease Agreement” means the agreement between the Company and the Agency pursuant to which the Company will lease the Land together with the Facility to the Agency for the Lease Term.

“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 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 .

“Fixed Termination Date” means the date immediately preceding the eleventh (11th) 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; a national health pandemic 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, the Company or the Bank.

“Inducement and Authorization Date” means April 22, 2021.

“Inducement Resolution” means the resolution of the board of directors of the Agency adopted on April 22, 2021.

“Land” means the parcel of land located in North Elba, New York on which the Project is situate which is subject to the Company Lease Agreement.

“Lease Term” means the period commencing from the date of this Agreement to the Fixed Termination Date or such earlier date as provided in Section 5.1 of the Company Lease Agreement.

“Mortgage” means the Bank Mortgage.

“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 there are no permitted encumbrances with respect to the Agency’s interest in the Agency Lease and the Company Lease Agreement; Permitted Encumbrances with respect to the Project and the Company are (i) those acceptable to the Bank prior to making the Bank Loan and liens of the Bank with respect to the Project including the Bank Mortgage and certain UCC filings and (ii) “Permitted Encumbrances” as such term is defined in the Agency Lease.

“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.

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

“Resolution” means the final approving resolution of the Agency adopted on June 23, 2021.

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

“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 to a permitted subtenant 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 leasehold interest to the Land 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 Agency Lease and to perform its obligations hereunder and thereunder.

(c) Neither the execution and delivery of this Agreement and the Agency Lease, nor the performance of the obligations under or consummation of the transactions contemplated by this Agreement or the Agency 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 April 14, 2021 (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 and that 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 creating employment and preventing unemployment and economic deterioration.

(e) The Agency will maintain the Agency Lease free and clear of liens and encumbrances during the Lease Term.

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

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

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State, 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 actual 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 company 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 entering into the Company Lease Agreement with the Agency, except for Permitted Encumbrances.

(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) Except for that certain \$4,000,000 incentive note by the Company in favor of Choice Hotels International, Inc., the Company has no material liabilities, direct or contingent, except those disclosed in this Agreement which materially adversely affects or in the future may materially adversely affect the business, operations, properties or assets of the Company, which have not been set forth herein or in a document, certificate or other writing delivered to the Agency prior to the commencement of the Lease Term.

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

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

(j) None of the representations delivered by the Company pursuant to this Agreement nor any representation of the Company contained in any other document, certificate or statement furnished to the Agency, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

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

(l) No person other than the Company and a permitted subtenant permitted hereunder (or an assignee or subtenant of a permitted subtenant) is or will be in use, occupancy or possession of any portion of the Project during the term 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 Project located within the State (but outside of the County). The Company will not lease any Unrented Space in the Project to any permitted subtenant relocating from within the State without the prior written consent of the Agency granted in accordance with Section 4.7 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 have located the Facility outside of the State.

(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) and all regulations promulgated thereunder, and the Company is not the subject of a consent order, investigation or inquiry by the State Department of Environmental Conservation with respect to the Project or other assets of the Company.

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

ARTICLE III TRANSFER TO AGENCY; TRANSFER TO COMPANY

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 Company Lease Agreement.

Section 3.2 Transfer to Company. The Agency has simultaneously with the transfer of the Land referred to in Section 3.1 of this Agreement, transferred the Project to the Company pursuant to and subject to the Agency's interest in and rights under the Agency Lease.

Section 3.3 Rental Payments. The Agency, as lessee, hereby agrees to pay to the Company, as lessor under the Company Lease Agreement, (i) an initial payment in the amount of \$1.00 to be paid at Closing on the date thereof 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.

Section 4.3 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Company as agent for the Agency, it being the intent of the parties that no operating expenses of the Company and no purchases of equipment or other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project. The Company acknowledges and represents that it is familiar with the laws of the State as applicable to Sales Taxes and it understands that a failure to comply with such applicable law (or with the terms and conditions of this Agreement) may result in the loss by the Company of the exemption from Sales Taxes and other benefits hereunder.

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

"This contract is being entered into by Dual Development LLC, a New York limited liability company (the "Company"), in its capacity as agent for and on behalf of the Essex County Industrial Development Agency (the "Agency") in connection with a certain project of the Agency, consisting of the acquisition and construction of the facilities therein (the "Project"), such Project to be located in the Town of North Elba, New York. The capital improvements, materials,

machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this contract, agreement, invoice, bill or purchase order shall be exempt from the sales and use tax levied by the State of New York, and the County of Essex, if any, provided that the Company must provide vendors with a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) for all purchases intended to be exempt from State and local sales and use taxation, and the Company hereby represents that this contract, agreement, invoice, bill or purchase order is in compliance with the terms of the IDA Agent or Project Operator Exempt Purchase Certificate. By execution or acceptance of this contract, agreement, invoice, bill or purchase order, the vendor, contractor or supplier hereby acknowledges the terms and conditions set forth in this paragraph.”

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

(c) The sales and use tax exemption to be provided, subject to submission of a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate):

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

(ii) shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for incorporation into or use (A) at the Project, and (B) solely by the Company and its Affiliates and, subject to the further limitations set forth in subparagraph “(v)” below, by a Permitted Subtenant (and not with any intention to sell, transfer or otherwise dispose of any such items of Exempt Property to a Person as shall not constitute the Company or an Affiliate or a Permitted Subtenant);

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

(iv) shall not be available for the purchase of (A) rolling stock, (B) computer equipment or software (except such as are required for the Building management office or for the operation of Building systems such as HVAC, fire alarms, or elevators), (C) fine art, objects d’art or other

similar decorative items, (D) electricity, gas, fuel oil and other utilities, or (E) maintenance or cleaning services or supplies; and;

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

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

(d) The Company shall annually file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as are or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company or agents of the Company in connection with the Project and the Leased Property as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Company shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The sales tax exemption shall not be granted by the Agency unless the Company shall have completed and submitted to the Agency Form ST-340 in the form provided by the Tax Department. In addition, the Company shall not permit any sub-contractor or sub-agent to avail itself of the sales tax exemption until the Company shall have submitted to the Agency a completed Form ST-340 in respect to such sub-contractor or sub-agent. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State. At the time of execution of this Agreement, the Company shall deliver to the Agency copies of all such annual reports filed with the Department of Taxation and Finance prior to the Commencement Date.

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

Section 4.5 Indemnity. (a) The Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims, demands, expenses (including attorney's fees and expenses) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed, excluding personal and corporate income taxes in respect of payments received by the Agency under the Company Documents), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Project or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Leased Property, (iii) any defects (whether latent or patent) in the Project, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, or (v) the execution and delivery by the Company of, or performance by the Company of, any of its obligations under this Agreement or any other Company Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of the 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.

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

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials (hereinafter defined) on, from, or affecting the Project in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and 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 Project 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 adjoining 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 (y) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities. The obligation of the Company to defend, indemnify, and hold harmless each Indemnified Party under Section 4.5(a) shall extend to any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Project, (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of

this paragraph shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

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

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

Section 4.6 Compensation and Expenses of the Agency. The Company will 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. All fees, costs and expenses of the Agency, counsel for the Agency and special transaction counsel to the Agency will be paid in the invoice amount presented to the Company by or on behalf of the Company at the Closing by federal funds wire transfer to the account designated by the payee.

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

Section 4.8 Financial Statements; No-Default Certificates.

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

(b) The Company shall deliver to the Agency on January 1 of each year beginning after the Commencement Date (i) a certificate of an Authorized Representative of the Company as to whether or not, to the knowledge of such Authorized Representative after due inquiry, as of the close of the immediately preceding calendar year, and at all times during such year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Company Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he or she shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of

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

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

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

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

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 in the Company Lease Agreement, the Agency shall have during the Lease Term, sole and exclusive possession of its leasehold interest in the Land and Facility, subject to the Company’s interests pursuant to the Agency Lease.

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 condition as its operations will permit, and (c) in compliance with all Federal, State and local laws, rules, regulations, court decisions and administrative orders which appertain to the Project.

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

Section 5.4 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, except for Permitted Encumbrances, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charge, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project or any part thereof or the interest therein of the Agency, the Company or the Bank, if any, as their respective interests may appear, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) at its expense shall give notice thereof to the Agency and the Bank, if any, and take all action as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis thereof. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or service or the furnishing of any materials that would give rise to any Lien against the respective interests of the Agency or the Bank, if any, in the Project.

(b) The Company may at its sole expense contest after prior written notice to the Agency or the Bank, if any, 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 such proceeding shall suspend the execution or enforcement of such Lien against the Project or any part thereof or interest therein of the Agency, the Company or the Bank, if any, or against any of the installments or other amounts payable under this Agreement.

Section 5.5 Insurance Required. Throughout the Lease Term, the Company will maintain or cause to be maintained at its sole cost and expense, with one or more financially sound and reputable insurers authorized to do business in the State, insurance with respect to the Project against loss, damage or public liability claims (including worker's compensation claims) of the kind customarily insured against by corporations of established reputation engaged in similar businesses, including insurance protecting against fire, lightning and other casualties to be insured against as required by the Agency or the Bank, if any, 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 Bank,

as appropriate, if any, and the Agency, at the start of the Lease Term and within ten (10) days of obtaining such insurance subsequent to the start of the Lease Term.

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

The Company releases the Agency and the Bank from, agrees that the Agency and the Bank shall not be liable for, and agrees to indemnify and hold harmless the Agency and the Bank, 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 or the Bank.

Section 5.6 Title Insurance. The Company will promptly obtain or cause to be obtained insurance on the title of the Project issued by a qualified title insurance company which title insurance shall continue in effect for the Lease Term, showing the Company as the fee owner of the Project and the Agency's interest in the Company Lease Agreement, subject to the Bank Mortgage and Permitted Encumbrances.

Section 5.7 Liability. The Net Proceeds of the insurance carried pursuant to the provisions of Section 5.5 hereof, to the extent it relates to public liability insurance or worker's compensation insurance, shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.8 Damage or Destruction. Subject to the rights of the Bank, if any, 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, subject to the rights of the Bank, if any, be used by the Company for payment of the costs of such rebuilding, repairing or restoring the Project.

Section 5.9 Condemnation. In the event that title to or use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or by any person acting under governmental authority, any proceeds from any award or awards in respect of the Project made in such condemnation or eminent domain proceedings shall during the Lease Term, after payment of all expenses incurred in connection therewith, be paid to the Bank or 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 5.9, the Company may elect to apply the proceeds from such award in the manner prescribed in Section 5.8 hereof with respect to insurance proceeds.

Section 5.10 Flood Insurance. The Company will promptly obtain or cause to be obtained flood insurance, if so required by the Bank.

ARTICLE VI
SALE, ASSIGNMENT AND SUBLETTING

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

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

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

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

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

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

(v) the Company has received prior written consent from the Bank, and no objection from the Agency, if applicable; 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, the Company Lease Agreement or the Agency Lease 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 or agreement on its part to be performed under this Agreement, the Company Lease Agreement or the Agency Lease 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 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, (b) the failure by the Company within one hundred twenty (120) days to lift any execution, garnishment or attachment of such consequence as will impair the Company’s ability to carry out its obligations hereunder, (c) 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 one hundred twenty (120) days, (d) 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 (e) 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 one hundred twenty (120) 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 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 15 days after written notice of such Event of Default is issued by the Agency to the Company, the Agency may take any one or more of the following remedial steps:

(a) The Agency may 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 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 (6th) 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 (3rd) or fourth (4th) year after the Commencement Date; or

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

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

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

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

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

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

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

(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.

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.

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

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

Section 8.3 Rights of Access to the Project. The Company agrees that the Agency and the duly authorized agents of any of Agency should have the right at all reasonable times, to enter upon the Leased Property to examine and inspect the Project.

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.

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 10.1 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 SUBORDINATION AND NON-ATTORNMEN

Section 9.1 Subordination to Mortgage. This Agreement and any and all modifications, amendments, renewals and extensions hereof shall be subject and subordinate to any mortgage, security agreement or collateral in favor of the Bank, as its interests may appear, with respect to the Project, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 9.2 Non-Attornment. The Agency shall maintain a leasehold interest in the Land pursuant to the straight lease arrangement herein and in the Agency Lease and the Company Lease Agreement and the Agency shall not be bound to the Bank, or such other party under the terms, covenants and conditions of this Agreement or of the Agency Lease or the Company Lease Agreement, and the Agency shall not attorn to, and shall not be liable to and shall not recognize the Bank, or such other party as the Agency's new landlord for the balance of the term of this Agreement upon and subject to all the terms and conditions thereof, and this Agreement and the rights of Agency and the Company hereunder shall continue in full force and effect under this Agreement between the Agency and the Company or such other party upon all the terms, covenants, and agreements set out in the Agency Lease and the Company Lease Agreement.

ARTICLE X MISCELLANEOUS

Section 10.1 Notices. All notices, certificates and other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered by hand or mailed by first class mail, postage prepaid, addressed as follows:

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

With a copy to: Jennifer Briggs
Briggs Law Firm LLP
2296 Saranac Avenue
Lake Placid, New York 12946

(b) If to the Company: Dual Development LLC
15 Shelbourne Drive
Clifton Park, New York 12065
Attention: Bhavik Jariwala

Attention: Bhavik Jariwala

with a copy to:

Lemery Greisler LLC
Attn: Charles Dumas, Esq.
60 Railroad Place, Suite 502
Saratoga Springs, New York 12866

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 10.1. The Company, the Agency and the Bank, if any, may, by notice given under this Section 10.1, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.2 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 10.3 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 10.4 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 December 29, 2021.

Section 10.5 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 10.6 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 10.7 Term of Agreement. This Agreement shall become effective upon its delivery and shall continue in effect until the expiration of the Lease Term.

Section 10.8 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 10.9 Filing and Recording. The Company and the Agency covenant that they will cooperate with a bank, if any, in all recording, filing and re-recording or re-filing of all financing statements, continuation statements, notices and other instruments required by

applicable law to be required by law in order fully to preserve and protect the rights of such bank in this Agreement and the Bank Mortgage related thereto as against creditors of, or for value from, the Agency and the Company.

Section 10.10 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.

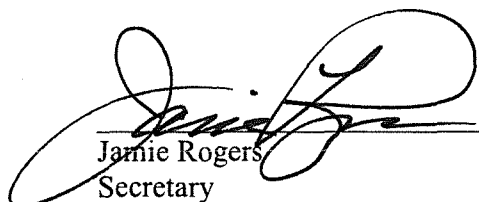
Section 10.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.


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:


Jamie Rogers
Secretary

By: 
Darren Darrah
Chairman

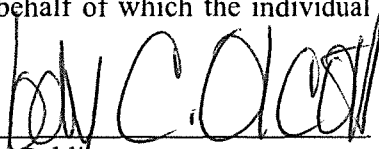
DUAL DEVELOPMENT LLC

By: _____
Name: Bhavik Jariwala
Title: Managing Member

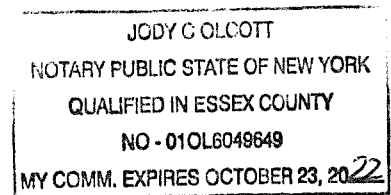
[Signature Page to Project Agreement]

STATE OF NEW YORK)
 ss:
COUNTY OF ESSEX)

On this 8 day of December 2021 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.



Notary Public



STATE OF NEW YORK)
 ss:
COUNTY OF _____)

On this ____ day of December 2021 before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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)

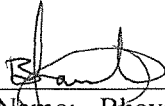
ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

ATTEST:

By: _____
Darren Darrah
Chairman

Jamie Rogers
Secretary

DUAL DEVELOPMENT LLC

By:  _____
Name: Bhavik Jariwala
Title: Managing Member

[Signature Page to Project Agreement]

STATE OF NEW YORK)
 ss:
COUNTY OF ESSEX)

On this _____ day of December 2021 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.

Notary Public

STATE OF NEW YORK)
 ss:
COUNTY OF ALBANY)

On this 27th day of December 2021 before me, the undersigned, a notary public in and for said state, personally appeared Bhavik Jariwala 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.

SUSAN A. NIXON
NOTARY PUBLIC-STATE OF NEW YORK
No. 02Ni6094947
Qualified in Rensselaer County
My Commission Expires 06/30/2023



Notary Public

[Notary Page to Project Agreement]

EXHIBIT A-1
DESCRIPTION OF THE LAND

Appendix C-1

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a $\frac{3}{4}$ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North $35^{\circ} 50' 20''$ East, 170.94 feet to a point marked by a $\frac{5}{8}$ inch iron rod, and said course passing through a $\frac{3}{4}$ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North $44^{\circ} 43' 35''$ West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of $36^{\circ} 02' 24''$ and a chord course of North $26^{\circ} 42' 23''$ West, 110.64 feet, to a non-tangent point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $26^{\circ} 38' 08''$ East, 344.49 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod, said course passing thru a $\frac{5}{8}$ inch iron rod at a distance of 102.75 feet;

Thence, North $43^{\circ} 41' 01''$ East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South $60^{\circ} 53' 55''$ East, 143.17 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $29^{\circ} 06' 05''$ West, 273.71 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $09^{\circ} 13' 57''$ East, 53.82 feet to an angle point marked by a $\frac{1}{2}$ inch drill hole in ledge rock;

Thence, South $56^{\circ} 06' 56''$ East, 298.00 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $78^{\circ} 51' 15''$ East, 107.56 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod;

Thence, South $11^{\circ} 08' 45''$ East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South $43^{\circ} 59' 13''$ West, 157.32 feet from the aforementioned point;

Thence, South $82^{\circ} 00' 10''$ West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a $\frac{3}{4}$ inch iron pipe, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North $50^{\circ} 26' 02''$ West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a $1\frac{1}{4}$ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

EXHIBIT A-2
DESCRIPTION OF THE BUILDING

ESSEX COUNTY, NEW YORK
PART OF
SECTION: 42,33
BLOCK: 1
LOT: 2,200

EXHIBIT A-3
DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed and installed in connection with the Essex County Industrial Development Agency Lease Transaction (Dual Development LLC Project) located in the Town of North Elba, County of Essex, New York.

EXHIBIT B
FORMS OF AGENCY LEASE AND COMPANY LEASE

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

DUAL DEVELOPMENT LLC

AGENCY LEASE

DATED AS OF DECEMBER 29, 2021

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AGENCY LEASE

THIS AGENCY LEASE dated as of December 29, 2021 (“Agency Lease”) by and between the ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 7566 Court Street, PO Box 217, Elizabethtown, New York 12932 (the “Agency” or “Lessor”), as landlord, and DUAL DEVELOPMENT LLC, a limited liability company organized and existing under the laws of the State of New York and having an address at 15 Shelbourne Drive Clifton Park, NY 12065 (the “Company”), as tenant;

W I T N E S S E T H:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Lessor was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 563 of the Laws of 1973 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Lessor, by resolution adopted on June 23, 2021 (the “Resolution”), resolved to undertake a project (the “Project”) consisting of (A) (1) the acquisition of an interest in an approximately 6.25 acre parcel or parcels of land constituting tax map parcel 42.33-1-2.200 and located in the Town of North Elba, New York (the “Land”), (2) the acquisition, construction, reconstruction and equipping of a building (the “Facility”) to be located on the Land to be operated by the Company as an approximately 185-unit hotel, including the removal of the existing Quality Inn Hotel and (3) the acquisition and installation in the Facility of certain machinery, equipment and furnishings (the “Equipment” and together with the Land and the Facility, collectively, the “Project Facility”), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain “financial assistance” (as defined in the Act) in the form of an exemption from state and local sales tax; and;

WHEREAS, the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Agency Lease is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York, pursuant to the provisions of the Act (as hereinafter defined); and

WHEREAS, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Agency Lease have in all respects been duly authorized;

NOW, THEREFORE, THE LESSOR AND THE COMPANY HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

SECTION 1.1 DEFINITIONS. The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agency Lease and of any agreement supplemental hereto shall have the respective meanings specified in this Section 1.1.

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 855 of the Laws of 1971 of the State.

“Agency Lease” means this lease agreement, as said lease agreement may be amended or supplemented from time to time in accordance with the terms hereof.

“Authorized Representative” means the person or persons at the time designated to act in behalf of the Lessor or the Company, as the case may be, by written certificate furnished to the Company and the Lessor and signed on behalf of (A) the Lessor by an officer thereof and (B) on behalf of the Company by an officer, member or manager thereof.

“Bank” means Pioneer Bank located in Albany, New York.

“Bank Loan” means the loan or loans from the Bank to the Company in the principal amount of \$26,200,000.00 evidenced by the Bank Note.

“Bank Mortgage” means the mortgage or mortgages dated the date hereof in the aggregate principal amount of \$26,200,000.00 from the Company in favor of the Bank, as said mortgage, security agreement and assignment of rents and leases may be modified, supplemented, consolidated or amended from time to time.

“Bank Note” means the promissory note or notes, dated the date hereof, in the aggregate principal amount of \$26,200,000.00 executed and delivered by the Company to the Bank, as said promissory note may be amended, modified, supplemented, consolidated or extended.

“Bill of Sale to the Company” means the bill of sale from the Lessor to the Company (substantially in the form shown in Exhibit “C” to the Agency Lease) to be delivered to the Company upon satisfaction of the conditions set forth in the Agency Lease.

“Bill of Sale to the Lessor” means the bill of sale from the Company to the Lessor conveying the Company’s interest in the Equipment.

“Bond Counsel” means Squire Patton Boggs (US) LLP or such other attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and reasonably acceptable to the Lessor.

“Business Day” means a day on which banks located in New York City are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing Date” means the date of the execution and delivery of this Agency Lease by the Company and the Lessor.

“Code” means the Internal Revenue Code of 1986, as amended and regulations of the Department of Treasury promulgated thereunder and under the Internal Revenue Code of 1954, as amended.

“Company” means Dual Development LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and permitted assigns.

“Company Lease Agreement” means that certain company lease of even date herewith by and between the Company, as landlord, and the Lessor, as tenant, as said company lease may be amended or supplemented from time to time in accordance with the terms thereof.

“Completion Date” means the date which is certified by an Authorized Representative of the Company as the date of completion of the construction of the Facility and the installation of the Equipment pursuant to this Agency Lease and the Project Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Construction Period” means the period (A) beginning on the date of commencement of construction of the Facility and installation of the Equipment, and (B) ending on the Completion Date.

“Equipment” means the materials, machinery, equipment, fixtures or furnishings acquired described in Exhibit “B” attached to this Agency Lease.

“Event of Default” means any of those events defined as Events of Default by the terms of this Agency Lease, the Company Lease Agreement and the Project Agreement, and/or any other document now or hereafter executed by the Agency and the Company in connection with the Project Facility.

“Facility” means the building constructed or to be constructed on the Land and to be operated as a hotel.

“Governmental Authority” means the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

“Land” means a leasehold interest in the property located in the Town of North Elba, County of Essex, State of New York as more particularly described on Exhibit A to this Agency Lease.

“Lease” or “Leases” means any agreements of lease or sublease with respect to all or portions of the Project Facility, as said agreements of lease or sublease may have been or may from time to time be hereinafter modified, extended and revised, and any future lease or sublease affecting any portion of the Project Facility.

“Lease Term” shall have the meaning assigned to such term in Section 5.2 hereof.

“Leasing Documents” means the Company Lease Agreement, the Bill of Sale to the Lessor, this Agency Lease, the Project Agreement and any other document now or hereafter executed by the Lessor and the Company in connection with the Project Facility, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“Lessor” means (A) the Essex County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which the Essex County Industrial Development Agency or its successors or assigns may be a party.

“Lien” means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s warehousemen’s and carriers’ liens and other similar encumbrances, affecting real property. For the purposes hereof, a Person shall be deemed to be the owner of Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Lien Law” means the Lien Law of the State.

“Local Authority” means any Governmental Authority, which exercises jurisdiction over the Project Facility.

“Local Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority or a Local Authority, respectively.

“Permitted Encumbrances” means and includes: (i) in the case of real properties, easements, restrictions, exceptions, reservations or defects which, in the aggregate, do not interfere with the continued use of such properties for the purposes for which they are used and do not affect the value thereof; (ii) liens, if contested in good faith by appropriate proceedings as allowed pursuant to Section 8.8 of this Agency Lease; (iii) existing leases by the Company of real and personal property; (iv) mortgage liens and/or security interests granted by the Company from time to time, (v) liens arising out of or created by the Leasing Documents; and (vi) such other encumbrances as may be consented to, from time to time, by the Lessor and the Company.

“Person” shall mean any legal entity, including without limitation an individual, a corporation, a company, a voluntary association, a partnership, a trust, an unincorporated organization or a government, or any agency, instrumentality or political subdivision thereof.

“Project” means that project undertaken by the Lessor consisting of (A) the acquisition of the Land, (B) the construction of the Facility and (C) the acquisition and installation in the Facility of the Equipment.

“Project Agreement” means that certain uniform agency project agreement of even date herewith by and between the Company and the Lessor as said uniform agency project agreement may be amended or supplemented from time to time in accordance with the terms thereof.

“Project Facility” means the Land, the Facility and the Equipment.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority or a Local Authority, respectively.

“Resolution” means the resolution duly adopted by the Lessor on June 23, 2021 authorizing the execution and delivery of the Leasing Documents to which the Lessor is a party.

“SEQRA” means the New York State Environmental Quality Review Act constituting Article 8 of the New York state Environmental Conservation Law and the regulations promulgated thereunder.

“State” means the State of New York.

“Unassigned Rights” means (A) the rights of the Lessor granted pursuant to Sections 2.2(D), 3.1, 4.1(C), 5.4, 6.3, 6.4, 8.1, 8.2, 8.3, 8.5, 8.7, 8.8, 8.9, 9.1, 9.2, 9.4, 11.3, 12.1(B) and 12.10 of this Agency Lease, (B) the moneys due and to become due to the Lessor for its own account or the members, officers, agents and employees of the Lessor for their own account pursuant to Sections 2.2(D), 4.1, 5.4, 6.3, 6.4, 8.2, 10.2, 10.4 and 12.10 of this Agency Lease, and (C) the right to enforce the foregoing pursuant to Article X of this Agency Lease.

SECTION 1.2 INTERPRETATION. In this Agency Lease, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Agency Lease refer to this Agency Lease, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Agency Lease;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa; and

(C) any certificates, letters or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

(D) any provision of this Agency Lease or the Company Lease Agreement notwithstanding, in the event a right or obligation of the Agency or the Company is described or otherwise treated inconsistently with a right or obligation of the Agency or the Company described in the Project Agreement, the provisions of the Project Agreement control.

ARTICLE 2

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LESSOR. The Lessor makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Lessor is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company, the Project constitutes and will constitute a “project” as such quoted term is defined in the Act. By proper official action the Lessor has been duly authorized to execute, deliver and perform this Agency Lease and the Leasing Documents to which it is a party.

(B) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of the other Leasing Documents by the Lessor will conflict with or result in a breach by the Lessor of any of the terms, conditions or provisions of the Act, the by-laws of the Lessor or any order, judgment, restriction, agreement or instrument to which the Lessor is a party or by which it is bound, or will constitute a default by the Lessor under any of the foregoing.

(C) The Lessor has undertaken the Project and will lease the Project Facility to the Company pursuant to this Agency Lease, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided herein and in Article IX and Section 10.2(A)(3) hereof, the Lessor, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge

as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Agency Lease.

SECTION 2.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing and in good standing under the laws of the State of New York, has power to enter into this Agency Lease and to carry out its obligations hereunder, has been duly authorized to execute this Agency Lease and is qualified to do business in all jurisdictions in which its operations or ownership of Property so require.

(B) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agency Lease will (1) result in a breach of or conflict with any of the terms, conditions or provisions of the articles of organization or operating agreement or any agreement, instrument, order or judgment to which the Company is a party or by which the Company is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which it or any of its Property may be bound or affected, or (3) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign), having jurisdiction over the Company or any of the Property of the Company.

(C) The Project will not result in the removal of a facility or plant of the Company or any contemplated occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any contemplated occupant of the Project Facility located within the State except to the extent the foregoing is reasonably necessary to discourage said occupant or occupants from removing such other plant or facility to a location outside the State or to preserve the competitive position of said occupant or occupants in its/their respective industry/industries.

(D) The Company shall cause all notices required by law to be given, and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of all Governmental Authorities applying to or affecting the operation of the Facility (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Facility), and the Company will defend and save the Lessor and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(E) The acquisition, construction and installation of the Project Facility will not have a significant impact on the environment within the terms of SEQRA and the statewide and

local regulations thereunder. The Company hereby covenants to comply with all mitigation measures, requirements and conditions, if any, enumerated in the negative declaration issued by the Town of North Elba Planning Board under SEQRA with respect to the Project and in any other approvals issued by any other Governmental Authority.

(F) So long as this Agency Lease shall be in effect, the Project Facility is and will continue to be a “project” as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Leasing Documents or which the Lessor, advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a “project” as such quoted term is defined in the Act.

(G) The Company is in possession of all local land use and zoning approvals relating to the construction and operation of the Facility for its intended purpose and the Facility and the operation thereof complies and will comply with all applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authority having jurisdiction over the Facility.

(H) The Company as agent of the Lessor will apply the proceeds of the Bank Loan received under the Bank Note towards costs associated with the acquisition, construction and equipping of the Project Facility, and incidental costs associated therewith.

(I) Except as provided in Section 9.4 hereof, all items comprising the Equipment shall remain in the Facility at all times during the Lease Term.

ARTICLE 3

CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE LESSOR. The Company has conveyed or will convey, or will cause to be conveyed, a leasehold interest in the Land and the Facility and a fee interest in the Equipment to the Lessor pursuant to the Company Lease Agreement and the Bill of Sale to the Lessor. The Company hereby represents and warrants that it has good and marketable title to the Project Facility, free and clear of all Liens except for Permitted Encumbrances and the Company Lease Agreement and agrees that it will defend, indemnify and hold the Lessor harmless from any expense or liability due to any defect in title thereto. The Company shall pay all (i) costs, expenses, taxes and charges incurred in connection with such conveyance and transfer, and (ii) taxes, assessments and other charges and impositions of the Project Facility attributable to periods prior to the date of this Agency Lease.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Leasing Documents, provided that such use (1) causes the Project Facility to qualify or continue to qualify as a “project” under the Act and (2) does not tend, in the reasonable judgment of the Lessor, to bring the Project Facility into disrepute as a public project.

ARTICLE 4

ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROJECT FACILITY

SECTION 4.1 SALES TAX PROVISIONS. (A) The Company shall, on behalf of the Lessor, promptly acquire, construct and install the Project Facility.

(B) The Lessor hereby appoints the Company its true and lawful agent during the Construction Period to perform under the following authority in compliance with the terms, purposes and intent of the Leasing Documents, and the Company hereby accepts such agency: (1) to acquire, construct and install the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition, construction and installation of the Project Facility, with the same powers and with the same validity as the Lessor could do if acting in its own behalf including, but not limited to, the appointment of subagents for such purposes, and (3) to pay all fees, costs and expenses incurred in the acquisition, construction and installation of the Project Facility.

(C) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Project Facility), and the Company will defend, indemnify and save the Lessor and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(D) To the extent required by applicable law, the Company, as agent for the Lessor, will cause (1) compliance with the requirements of Article 8 of the Labor Law of the State, and (2) any contractor, subcontractors and other Persons involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the Labor Law of the State. The covenant in this subsection is not intended as a representation that Article 8 of the Labor Law of the State applies.

(E) The Company agrees to file with the Department of Taxation and Finance of the State in a manner and at the time prescribed thereby, information relating to the extent of exemption from sales and use tax claimed with respect to the acquisition, construction and installation of the Project Facility all in compliance with Section 874 of the General Municipal Law of the State. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO COMPLY WITH THE PROVISIONS OF SAID SECTION 874 SHALL RESULT IN A REVOCATION OF ANY SALES TAX ABATEMENT EXTENDED BY THE LESSOR.

(F) The Company acknowledges and agrees that to the extent it (i) utilizes the exemption from New York State and local sales and use tax in a manner inconsistent with the intent of this Agreement and/or (ii) attempts to obtain an exemption from New York State and/or local sales and/or use tax which exceeds the scope of the exemption conferred by the provisions

of this Agreement, it will be subject to a recapture of such inconsistent or excessive exemption benefits by the Lessor in accordance with the provisions of Section 875 of the General Municipal Law of the State, the provisions of which are hereby incorporated herein by reference. The Company agrees to cooperate with the efforts of the Lessor to recapture such inconsistent or excessive exemption benefits and any failure to do so shall constitute an Event of Default hereunder.

ARTICLE 5

LEASE OF PROJECT FACILITY; RENT; CONVEYANCE OF PROJECT FACILITY

SECTION 5.1 LEASE OF PROJECT FACILITY. The Lessor hereby leases the Project Facility to the Company, and the Company hereby leases the Project Facility from the Lessor, for and during the term hereinafter provided and upon and subject to the terms and conditions hereinafter set forth. The Company assumes and agrees to perform and discharge all of the Lessor's obligations under the Lease Documents during the Lease Term, and shall enforce all claims arising under any representation, warranty, covenant, indemnity, guarantee or agreement in the Lease Documents.

SECTION 5.2 DURATION OF TERM. The term of this Agency Lease shall become effective upon its delivery and shall expire on December 14, 2031 or such earlier date as this Agency Lease may be terminated as hereinafter provided (the "Lease Term"). The Lessor shall deliver to the Company and the Company shall accept sole and exclusive possession of the Project Facility simultaneously with the execution of this Agency Lease.

SECTION 5.3 QUIET ENJOYMENT. So long as no Event of Default shall have occurred and be continuing, and except as otherwise expressly provided herein or in the Leasing Documents, the Lessor will not disturb the Company in its peaceful and quiet enjoyment of the Project Facility, which shall be free from any interference, repossession or disturbance by the Lessor.

SECTION 5.4 RENT AND OTHER AMOUNTS PAYABLE. The Company shall pay rent for the Project Facility as follows:

(A) The Company has remitted to the Lessor its administrative fee in the amount of \$157,529.

(B) Within seven (7) days after receipt of a demand therefor from the Lessor accompanied by any supporting evidence or documentation therefor reasonably requested by the Company, the Company shall pay to the Lessor the sum of the reasonable and actual expenses of the Lessor and the officers, members, agents and employees thereof incurred by reason of the Lessor's lease of the Project Facility or in connection with the carrying out of the Lessor's duties and obligations under this Agency Lease or any of the other Leasing Documents and any other reasonable and actual fee or expense of the Lessor, including reasonable and actual attorneys' fees, with respect to the Project Facility, the sale of the Project Facility to the Company, any of the other Leasing Documents, the payment of which is not otherwise provided for under this Agency Lease.

(C) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.4 for a period of more than thirty (30) days from the date such payment is due, the Company shall pay the same together with interest thereon at a rate equal to two percent (2%) per month or the maximum permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

SECTION 5.5 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any rights of set-off, recoupment or counterclaim the Company may otherwise have against the Lessor. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease, or terminate this Agency Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition of the Land, the construction of the Facility or the installation of the Equipment, any material defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Lessor to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease.

(A) Nothing contained in this Section 5.5 shall be construed to release the Lessor from the performance of any of the agreements on its part contained in this Agency Lease, and, in the event the Lessor should fail to perform any such agreement, the Company may institute such action against the Lessor as the Company may deem necessary to compel performance or recover damages for non-performance; provided, however, that the Company shall look solely to the Lessor's estate and interest in the Project Facility (other than the Unassigned Rights), for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Lessor in the event of any liability on the part of the Lessor, and no other Property or assets of the Lessor or members, officers, agents (other than the Company) or employees of the Lessor shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Agency Lease, the relationship of the Lessor and the Company hereunder or the Company's purchase of and title to the Project Facility, or any other liability of the Lessor to the Company.

ARTICLE 6

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY. The Company agrees that during the period that the Agency Lease is outstanding it will (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage

and depreciation, ordinary wear and tear excepted, (2) make all repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) deemed necessary by the Company, in the Company's reasonable discretion, and (3) operate the Project Facility in a sound and economic manner.

SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, before the imposition of any penalties, fees or interest for late payment of the same, respectively become, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements, provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during all periods that sums payable by the Company hereunder or under any of the other Leasing Documents are due and owing.

(A) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company shall pay such taxes, assessments and other charges in accordance with the provisions of such subsection (A) and shall not defer, or be deemed entitled to defer such payment by reason of any such contest.

SECTION 6.3 INSURANCE REQUIRED. At all times during the Lease Term and/or that the Lessor is the owner of the Project Facility, the Company shall maintain or, with respect to the insurance required by subsection (E) of this Section 6.3, cause the general contractor to maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) (1) During any time when reconstruction or construction of the Project Facility shall take place, builder's "all-risk" (or equivalent coverage) insurance upon any work done or material furnished in connection with the reconstruction and construction of the Project Facility, with extended coverage for floods, vandalism, malicious mischief, debris removal and collapse insurance endorsements, issued to the Company and the Lessor as insureds, as their interests may appear, and written in completed value non-reporting form for the full completed insurable value of the Project Facility, and (2) at such time that builder's risk (or equivalent coverage) insurance is no longer available by virtue of completion of the acquisition, construction and installation of the Project Facility, insurance protecting the interests of the Company and the Lessor as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief, floods and other perils and casualties normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount not less than the full insurable value of the Facility; provided, however, that the Company may insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other Property.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance, which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility, including, but not limited to, all contractors and subcontractors.

(C) Insurance protecting the Company and the Lessor against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Agency Lease) and arising from personal injury or death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate commercial umbrella liability policy in excess of the basic coverage stated above protecting the Company and the Lessor with a limit of not less than \$5,000,000.

(D) During any period of construction or reconstruction, the general contractor and any subcontractor constructing, installing and equipping the Project Facility shall be required to carry workers' compensation and general comprehensive liability insurance containing coverages for premises operations, products and completed operations, explosion, collapse and underground damage hazard, contractor's protective, owner's protective and coverage for all owned, non-owned and hired vehicles with non-ownership protection from the general contractor or subcontractor's employees providing the following minimum limits:

(a) Workers' compensation and employer's liability - in accordance with applicable law, covering loss resulting from injury, sickness, disability and death of employees located at or assigned to the Facility or who are responsible for the construction of the Facility.

(b) Comprehensive general liability:

- (i) Bodily injury liability in an amount not less than \$1,000,000 for each accident and not less than \$2,000,000 for injuries sustained by two or more persons in any one accident.
- (ii) Property damage liability in an amount not less than \$1,000,000 for each accident and not less than \$2,000,000 in the aggregate for each year of the policy period.

(c) Comprehensive automobile liability:

- (i) Bodily injury liability in an amount not less than \$1,000,000 for each accident and not less than \$3,000,000 for injuries sustained by two or more persons in any one accident.

(E) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

(F) THE LESSOR DOES NOT IN ANY WAY REPRESENT OR WARRANT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR IN LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTERESTS.

SECTION 6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE. All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and reasonably satisfactory to the Lessor. The company or companies issuing the policies required by Sections 6.3(A) shall be rated "A" or better by A.M. Best Co., Inc. in the most recent edition of Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Lessor as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Lessor prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Lessor. Certificates satisfactory in form and substance to the Lessor to evidence all insurance required hereby shall be delivered to the Lessor on or before the Closing Date. The Company shall deliver to the Lessor on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding December 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Lessor evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease.

(A) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that if the premiums are not timely paid, the Lessor may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Lessor, together with interest, to the extent permitted by law, at a rate equal to two percent (2%) per month from the date on which such payment was due until the date on which the payment is made.

(B) (1) The Company shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under Section 6.3 unless the Lessor is included therein as a named insured.

(2) Each of the policies required pursuant to Section 6.3 hereof shall, to the extent commercially available, waive (a) any right of subrogation against any Person insured under such policy, and (b) any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy.

SECTION 6.5 APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) hereof shall be applied

as provided in Section 7.1 hereof and (B) the Net Proceeds of the insurance required by Section 6.3(B), 6.3(C), 6.3(D) and 6.3(E) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

ARTICLE 7

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 DAMAGE OR DESTRUCTION. If the Project Facility shall be damaged or destroyed, in whole or in part, the Company shall give the Lessor prompt written notice thereof. As between the Lessor and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied to replace, repair, rebuild or restore the Project Facility if the Company shall notify the Lessor that, in the Company's sole judgment, the Company does not deem it practical or desirable to so replace, repair, rebuild or restore the Project Facility. The Lessor shall have no obligation to rebuild or restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the term of this Agency Lease shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Agency Lease) shall terminate as of the date of such payment and the Lessor shall transfer to the Company, without recourse or warranty, all right, title and interest of the Lessor in and to the Project Facility.

SECTION 7.2 CONDEMNATION. If title to, or the use of, the Project Facility shall be taken by Condemnation, the Company shall give the Lessor prompt written notice thereof. As between the Lessor and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Net Proceeds of any Condemnation award shall not be applied to restore the Project Facility if the Company shall notify the Lessor that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. The Lessor shall have no obligation to restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the term of this Agency Lease shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Agency Lease) shall terminate as of the date of such payment and the Lessor shall transfer to the Company, without recourse or warranty, all right, title and interest of the Lessor in and to the Project Facility.

SECTION 7.3 ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys shall automatically become part of the Project Facility and subject to the Leasing Documents as if the same were specifically described herein.

ARTICLE 8

SPECIAL COVENANTS

SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY LESSOR; ACCEPTANCE "AS IS". THE LESSOR MAKES NO WARRANTY, EITHER EXPRESS OR

IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT POSSESSION OF THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE LESSOR FOR ANY CONDITION NOW, HERETOFORE OR HEREAFTER EXISTING. NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2 HOLD HARMLESS PROVISIONS. (A) The Company hereby (i) releases the Lessor and its members, officers, agents (other than the Company) and employees from, (ii) agrees that the Lessor and its members, officers, agents (other than the Company) and employees shall not be liable for, and (iii) agrees to indemnify, defend and hold the Lessor and its members, officers, agents (other than the Company) and employees harmless from and against: any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Lessor's undertaking the acquisition, construction and installation of the Project Facility, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Lessor's financing, acquiring, constructing, installing, owning or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility and any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Project Facility, all liabilities or claims arising as a result of the Lessor's obligations under this Agency Lease or any of the other Leasing Documents or the enforcement of or defense of validity of any provision of any Leasing Documents, and all liabilities or claims arising out of environmental matters with respect to the Project Facility, and (3) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Lessor are not incurred or do not result from the intentional wrongdoing of the Lessor or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Lessor or any of its officers, members, agents or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Lessor or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Agency Lease, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Lessor, or its officers, members, agents (other than the Company) or employees, relating thereto.

SECTION 8.3 RIGHT OF ACCESS TO PROJECT FACILITY. The Company agrees that the Lessor and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon the Land and to examine and inspect the Project Facility for the sole purpose of ensuring compliance with the provisions of the Act.

SECTION 8.4 THE COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, so long as this Agency Lease is in effect, it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

SECTION 8.5 AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever requested by the Lessor, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Lessor from time to time reasonably consider necessary or appropriate, including, but not limited to, (i) such information as to enable the Lessor to make any reports required by law or governmental regulation, and (ii) within thirty (30) days of receipt by the Company of written request therefor, a complete and accurate listing of all items of personalty which were acquired or leased by the Company based upon an exemption from sales or use tax provided by the Lessor.

SECTION 8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS; COMPLIANCE CERTIFICATES. The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

SECTION 8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC. (A) The Company agrees that it will, during any period in which this Agency Lease is in effect, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Project Facility or any part thereof, or to any use, manner of use or condition of the Project Facility or any part thereof (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Project Facility).

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any requirement of

the nature referred to in such subsection (A), provided that the Company (1) first shall have notified the Lessor in writing of such contest, (2) is not in default under any of the Leasing Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Lessor that noncompliance with such requirement will not materially endanger the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Lessor.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Lessor or any of its members, officers, agents, servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Lessor.

SECTION 8.8 DISCHARGE OF LIENS AND ENCUMBRANCES. (A) The Company agrees not to create or suffer to be created any other Lien or security interest, except for Permitted Encumbrances, on the Project Facility or any part thereof.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.8, and except as provided for taxes, assessments and utility charges under Section 6.2, the Company may in good faith actively contest any such Lien or security interest, provided that the Company (1) first shall have notified the Lessor in writing of such contest, (2) is not in default hereunder, (3) shall have set aside adequate reserves for the discharge of any such Lien or security interest, and (4) demonstrates to the reasonable satisfaction of the Lessor that the failure to discharge any such Lien or security interest will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise such Lien or security interest shall be removed promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Lessor.

SECTION 8.9 PERFORMANCE BY LESSOR OF COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Lessor may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Lessor, and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Lessor under the authority hereof, together with interest thereon at the rate of two percent (2%) per month or the maximum permitted by law, whichever is less.

SECTION 8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Internal Revenue Code of 1986, as amended (the "Code"), and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

ARTICLE 9

ASSIGNMENTS; MERGER OF LESSOR

SECTION 9.1 RESTRICTION ON TRANSFER OF LESSOR'S INTEREST HEREUNDER. Except as otherwise specifically provided in this Article IX hereof, neither the Lessor nor the Company shall sell, assign or otherwise dispose of any of their rights under this Agency Lease, without the prior written consent of the Company or the Lessor, as the case may be.

SECTION 9.2 ASSIGNMENT OF THIS AGENCY LEASE. Except for any assignment under any of the Leasing Documents, this Agency Lease may not be assigned by the Company, in whole or in part, absent the prior written consent of the Lessor (which consent shall not be unreasonably withheld, delayed or conditioned), and provided that in any event:

- (a) the assignee shall be qualified to transact business in the State of New York and shall assume the obligations of the Company hereunder to the extent of the interest assigned;
- (b) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Lessor a true and complete copy of such assignment and the instrument of assumption; and
- (c) the Project Facility shall continue to constitute a "project" as such quoted term is defined in the Act.

In accordance with its policies and procedures, the Lessor reserves the right to receive and review financial information concerning any prospective assignee.

SECTION 9.3 MERGER OF THE LESSOR. Nothing contained in this Agency Lease shall prevent the consolidation of the Lessor with, or merger of the Lessor into, or assignment by the Lessor of its rights and interests hereunder (provided that the Agency's rights and interests under the Leasing Documents are simultaneously transferred to such Person) to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Lessor hereunder and the other Leasing Documents, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Agency Lease and the other Leasing Documents to be kept and performed by the Lessor shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Lessor's rights and interests hereunder or under this Agency Lease and the other Leasing Documents shall be assigned.

SECTION 9.4 SALE OR LEASE OF PROJECT FACILITY. Except for the sale or disposition of worn or obsolete items comprising a portion of the Equipment or the sale of other items in the ordinary course of the Company's business, the Company may not otherwise sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the

prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 10

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 EVENTS OF DEFAULT DEFINED. The following shall be “Events of Default” under this Agency Lease, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.4 (B) hereof, and the continuance thereof for a period of thirty (30) days after written notice thereof.

(b) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Lessor to the Company; provided, however, that if such default cannot reasonably be cured within said thirty (30) day period and the Lessor or the Company shall have commenced action to cure the breach of covenant within said thirty (30) day period, and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Lessor or the Company shall require, in the exercise of due diligence, to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days provided that the Lessor agrees to consider a request from the Company for an additional extension if such cure cannot be accomplished within said ninety (90) period. If any conflict shall exist between the provisions of this Subsection (b) and the immediately following Subsection (c) as to when an Event of Default has occurred, the provisions of such Subsection (c) shall govern.

(c) Any representation or warranty made by the Company herein proves to have been false in any material manner at the time it was made.

(d) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(e) (a) 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, (b) the failure by the Company within one hundred twenty (120) days to lift

any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) 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 one hundred twenty (120) days, (d) 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 (e) 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 one hundred twenty (120) days of such appointment.

(f) If by order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Company or the Project Facility or any part thereof, shall be appointed and such order shall not be discharged or dismissed within one hundred twenty (120) days after such appointment.

(g) The dissolution of the Company.

(h) The failure by the Company to maintain the insurance required by Section 6.3 (C) hereof.

SECTION 10.2 REMEDIES ON DEFAULT. (A) Whenever any Event of Default shall have occurred, the Lessor may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, (a) all unpaid payments payable pursuant to Section 5.4(B) hereof, and (b) all other payments due under this Agency Lease.

(2) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Agency Lease.

(3) In the event of (i) a default beyond all applicable cure periods by the Company in the payment of any amounts due and owing hereunder and upon forty-five (45) days' prior written notice to the Company or (ii) the occurrence of an Event of Default described in Section 10.1(e), Section 10.1(f), Section 10.1 (g), or Section 10.1(i) hereof, terminate the Agency Lease and reconvey the Project Facility to the Company. The Company hereby consents to said reconveyance and appoints the Lessor its attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to execute any and all instruments and documents in its name as may be necessary, in the sole discretion of the Lessor, to effectuate such transfer.

SECTION 10.3 REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Agency Lease and the Lessor should reasonably attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Lessor the reasonable and actual fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE 11

EARLY TERMINATION OF AGENCY LEASE

SECTION 11.1 OPTION TO TERMINATE AGENCY LEASE. The Company shall have, if there exists no Event of Default hereunder with respect to any amounts due and owing to the Lessor hereunder or under the other Leasing Documents, the option to cancel or terminate this Agency Lease, subject to the survival of those obligations of the Company which are intended to survive the term of this Agency Lease, upon payment of all payments currently due and owing pursuant to Section 5.4 hereof for which a written payment request with respect to has been provided to the Company by the Lessor, and by giving the Lessor notice in writing of such termination and thereupon such termination shall forthwith become effective.

SECTION 11.2 CONVEYANCE OF UPON LEASE TERMINATION. (A) At the termination of this Agency Lease pursuant to Section 11.1 hereof, the Project Facility shall be conveyed from the Lessor to the Company subject to Permitted Encumbrances. The Company agrees to prepare a termination of this Agency Lease together with all gains tax affidavits, equalization and assessment forms and other necessary documentation and to forward same to the Lessor at least fifteen (15) days prior to the date that the Project Facility is to be conveyed to the Company. The Company will pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(A) The conveyance of the Lessor's right, title and interest, if any, in and to the Land and the Facility shall be effected by the execution, delivery and recording by the Lessor of a

termination of this Agency Lease and a Bill of Sale to the Company (in substantially the form attached hereto as Exhibit "C" and by this reference made a part hereof).

(B) The Company hereby agrees to pay all expenses, filing and recording fees and taxes, if any, and the reasonable and actual attorneys' fees of the Lessor applicable to or arising from the transfers contemplated by this Section 11.3.

ARTICLE 12

MISCELLANEOUS

SECTION 12.1 SUBORDINATION TO MORTGAGE . This Agency Lease and all rights of the Company and the Lessor hereunder are and shall be subordinate to the Liens of the Bank Mortgage on the Project Facility. The subordination of this Agency Lease to the Bank Mortgage shall be automatic, without the execution of any further subordination agreement by the Company or the Lessor. Nonetheless, if the Bank requires a further written subordination agreement, the Company and the Lessor agree to execute, acknowledge and deliver the same.

SECTION 12.2 NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means (including overnight delivery) as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Dual Development LLC
15 Shelbourne Drive
Clifton Park, New York 12065
Attention: Bhavik Jariwala

WITH A COPY TO:

Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
Attention: Charles Dumas, Esq.

IF TO THE LESSOR

Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Jody Olcott

WITH A COPY TO:

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

The Lessor, the Company, the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.3 BINDING EFFECT. This Agency Lease shall inure to the benefit of the Lessor and the Company, and shall be binding upon the Lessor, the Company and, their respective successors and assigns permitted hereunder, provided, however that except as provided elsewhere herein or in the other Leasing Documents, the interest of the Lessor in this Agency Lease may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 12.4 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Lessor or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

SECTION 12.5 AMENDMENTS, CHANGES AND MODIFICATIONS. This Agency Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.6 EXECUTION OF COUNTERPARTS. This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.7 APPLICABLE LAW. This Agency Lease shall be governed exclusively by the applicable laws of the State.

SECTION 12.8 SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Section 5.4(B) hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Agency Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of this Agency Lease until the expiration of the period stated in the

applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Lessor, or its officers, members, agents or employees, relating thereto.

SECTION 12.9 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The table of contents and the headings of the several sections in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agency Lease.

SECTION 12.10 NO RECOURSE; SPECIAL OBLIGATION. The obligations and agreements of the Lessor contained herein and in the other Leasing Documents and any other instruments or documents executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Lessor, and not of any member, officer, agent (other than the Company) or employee of the Lessor in his or her individual capacity, and the members, officers, agents (other than the Company) and employees of the Lessor shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Lessor contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Essex, New York, and neither the State of New York nor the County of Essex, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Lessor, but rather shall constitute limited, special obligations of the Lessor payable solely from the revenues of the Lessor derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Lessor with respect to the Unassigned Rights). No order or decree of specific performance with respect to any of the obligations of the Lessor hereunder shall be sought or enforced against the Lessor unless (A) the party seeking such order or decree shall first have requested the Lessor in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Lessor shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten 10 days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Lessor an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify, hold harmless and defend the Lessor and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Lessor, furnish to the Lessor satisfactory security to protect the Lessor and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity required in this Section 12.10 shall not affect the full force and effect of an Event of Default under any of the Leasing Documents.

SECTION 12.11 SUBMISSION TO JURISDICTION. The Company hereby irrevocably and unconditionally agrees that any suit, action or proceeding arising out of or relating to this Agency Lease shall be brought in the state courts of the State of New York or federal district court for the Northern District of New York and waives any right to object to jurisdiction within either of the foregoing forums by the Lessor. Nothing contained herein shall prevent the Lessor from bringing any suit, action or proceeding or exercising any rights against any security and against the Company personally, and against any property of the Company, within any other jurisdiction and the initiation of such suit, action or proceeding or taking of such action in any such other jurisdiction shall in no event constitute a waiver of the agreements contained herein with respect to the laws of the State of New York governing the rights and obligations of the parties hereto or the agreement of the Company to submit to personal jurisdiction within the State of New York.

SECTION 12.12 RECORDING. The Lessor and the Company agree that this Agency Lease shall be recorded in the office of the Clerk of Essex County, New York by the Lessor at the expense of the Company.

SECTION 12.13 JOINT AND SEVERAL LIABILITY. In the event that this Agency Lease is executed by more than one lessee, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each lessee, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.

IN WITNESS WHEREOF, the Lessor and the Company have caused this Agency Lease to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: Darren Darrah
Title: Chairman

DUAL DEVELOPMENT LLC

By: _____
Name: Bhavik Jariwala
Title: Managing Member

[Signature Page to Agency Lease]

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

On this 21 day of December 2021, 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 signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On this 21 day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BHAVIK JARIWALA**, 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 on behalf of which the individual acted, executed the instrument.

Notary Public

[Notary Page to Agency Lease]

EXHIBIT ±A≤

DESCRIPTION OF THE LAND

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a $\frac{3}{4}$ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North $35^{\circ} 50' 20''$ East, 170.94 feet to a point marked by a $\frac{5}{8}$ inch iron rod, and said course passing through a $\frac{3}{4}$ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North $44^{\circ} 43' 35''$ West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of $36^{\circ} 02' 24''$ and a chord course of North $26^{\circ} 42' 23''$ West, 110.64 feet, to a non-tangent point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $26^{\circ} 38' 08''$ East, 344.49 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod, said course passing thru a $\frac{5}{8}$ inch iron rod at a distance of 102.75 feet;

Thence, North $43^{\circ} 41' 01''$ East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South $60^{\circ} 53' 55''$ East, 143.17 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $29^{\circ} 06' 05''$ West, 273.71 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $09^{\circ} 13' 57''$ East, 53.82 feet to an angle point marked by a $\frac{1}{2}$ inch drill hole in ledge rock;

Thence, South $56^{\circ} 06' 56''$ East, 298.00 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $78^{\circ} 51' 15''$ East, 107.56 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod;

Thence, South $11^{\circ} 08' 45''$ East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South $43^{\circ} 59' 13''$ West, 157.32 feet from the aforementioned point;

Thence, South $82^{\circ} 00' 10''$ West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a $\frac{3}{4}$ inch iron pipe, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North $50^{\circ} 26' 02''$ West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a $1\frac{1}{4}$ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

EXHIBIT B

DESCRIPTION OF EQUIPMENT

All articles of personal property currently owned by the Company and purchased by the Company in its capacity as agent of the Lessor, or through any sub-agent of the Agency appointed by the Company, and its subcontractors and vendors, incorporated into the warehousing and manufacturing facility located in the Town of North Elba, New York or used in connection with the constructing or equipping of said facility, all of which articles of personal property are exempt from sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York by virtue of the Agency's status as a public benefit corporation.

EXHIBIT C

FORM OF BILL OF SALE TO THE COMPANY

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (the "State") having its office at 7566 Court Street, PO Box 217, Elizabethtown New York, 12932 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from Dual Development LLC, a limited liability company organized and existing under the laws of the State of New York and having an address of 15 Shelbourne Drive Clifton Park, NY 12065 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Schedule "A" attached hereto and by this reference made a part hereof, now owned or hereafter acquired by the Grantor, and such additions thereto and substitutions therefor as may be made from time to time.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF ANY OF THE EQUIPMENT DESCRIBED ABOVE. THE GRANTEE ACCEPTS TITLE TO SUCH EQUIPMENT "AS IS", WITHOUT RECOURSE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF A DEFICIENCY OR DEFAULT OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer on the date indicated beneath the signature of such officer and dated as of the 21 day of December, 2021.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Darren Darrah, Chairman

SCHEDULE \pm A \leq

DESCRIPTION OF EQUIPMENT

All articles of personal property owned by the Grantor and previously conveyed to the Grantor by the Grantee pursuant to the terms of that certain bill of sale dated December 29, 2021 from the Grantee in favor of the Grantor.

DUAL DEVELOPMENT LLC
AS LANDLORD

AND

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
AS TENANT

COMPANY LEASE AGREEMENT

DATED AS OF DECEMBER 29, 2021

RELATING TO A CERTAIN PARCEL OF LAND
LOCATED IN THE TOWN OF NORTH ELBA, NEW YORK

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COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT dated as of December 29, 2021 (the "Company Lease Agreement") by and between Dual Development LLC, a limited liability company organized and existing under the laws of the State of New York and having an address at 15 Shelbourne Drive Clifton Park, NY 12065 (the "Company"), as landlord, and ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 7566 Court Street, PO Box 217, Elizabethtown New York, 12932 (the "Agency"), as tenant;

W I T N E S S E T H:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities and to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 563 of the Laws of 1973 of the State, as amended (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Agency, by resolution adopted on June 23, 2021 (the "Resolution"), resolved to undertake a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 6.25 acre parcel or parcels of land constituting tax map parcel 42.33-1-2.200 and located in the Town of North Elba, New York (the "Land"), (2) the acquisition, construction, reconstruction and equipping of a building (the "Facility") to be located on the Land to be operated by the Company as an approximately 185-unit dual-branded-hotel, including the removal of the

existing Quality Inn Hotel and (3) the acquisition and installation in the Facility of certain machinery, equipment and furnishings (the "Equipment" and together with the Land and the Facility, collectively, the "Project Facility"), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain "financial assistance" (as defined in the Act) in the form of an exemption from state and local sales tax;

WHEREAS, in connection therewith, the Company desires to lease the Land and the Facility to the Agency on the terms and conditions set forth in this Company Lease Agreement Lease, and it is the intention of the parties hereto that the Company's leasehold interest in the Land and the Facility under the Agency Lease (as hereinafter defined) and the Company's fee interest in the Land shall not merge; and

WHEREAS, all things necessary to constitute this Company Lease Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Company Lease Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

ARTICLE 1

DEFINITIONS

SECTION 1.1 DEFINITIONS. Capitalized terms in this Company Lease Agreement but not defined herein shall have the meaning set forth in the Agency Lease of even date herewith by and between the Agency, as landlord, and the Company, as tenant (the "Agency Lease"), or the Project Agreement, dated as of December 29, 2021, by and between the Agency and the Company (the "Project Agreement").

SECTION 1.2 INTERPRETATION. In this Company Lease Agreement, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Company Lease Agreement, refer to this Company Lease Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Company Lease Agreement.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Company Lease Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Company Lease Agreement nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Company Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease Agreement.

(F) Any provision of this Company Lease Agreement or the Agency Lease notwithstanding, in the event a right or obligation of the Agency or the Company is described or otherwise treated inconsistently with a right or obligation of the Agency or the Company described in the Project Agreement, the provisions of the Project Agreement control.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Company Lease Agreement and to carry out its obligations hereunder.

(B) Neither the execution and delivery of this Company Lease Agreement nor the consummation of the transactions contemplated hereby will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized validly existing and in good standing under the laws of the State of New York, and has the power to enter into this Company Lease Agreement and carry out its obligations hereunder and have executed this Company Lease Agreement. This Company Lease Agreement and the transactions contemplated hereby have been duly authorized by all necessary action on behalf of the Company.

(B) Neither the execution and delivery of this Company Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Company Lease Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of any (i) the articles of organization or operating agreement of the Company or (ii) any order, judgment, agreement or instrument to which the Company is a party or by which the Company is bound, or constitute a default under any of the foregoing, or (2)

result in the creation or imposition of any Lien of any nature upon any Property of the Company other than pursuant to the Leasing Documents, or (3) require consent (which has not been heretofore received) under any agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

ARTICLE 3

LEASE PROVISIONS

SECTION 3.1 LEASE. The Company hereby demises and leases to the Agency, and the Agency hereby hires and leases from the Company, the Land, as said Land is more particularly described on Schedule A attached hereto, for the term set forth in Section 3.2 hereof together with the Facility. The foregoing conveyance is intended to include (1) any strips or gores of land adjoining the Land, (2) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (3) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's ownership of the Land.

SECTION 3.2 TERM. (A) The Lease Term shall commence as of the dated date hereof and shall expire on the earliest to occur of (1) the date requested by the Company, or (2) December 14, 2031, or (3) so long as neither the Agency Lease nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the Agency Lease.

(B) So long as neither the Agency Lease nor the Company's right of possession thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon any termination of this Company Lease Agreement, the Company shall prepare and the Agency will execute and deliver to the Company such instruments as the Company shall deem appropriate to evidence the release and discharge of this Company Lease Agreement.

SECTION 3.3 RENT. The rent payable by the Agency under this Company Lease Agreement shall be one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

SECTION 3.4 USE; LEASE AGREEMENT; NON MERGER. (A) So long as neither the Agency Lease nor the Company's right of possession as lessee thereunder have been terminated by the Agency pursuant to Article X thereof, the Agency shall (1) hold and use the Project only for lease to the Company under the Agency Lease and (2) shall not mortgage, encumber, sell, assign, transfer, convey, pledge, or subject voluntarily or involuntarily, directly or indirectly, to any lien or other similar claim, or permit to be further mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien without the prior written consent of the Company, its rights hereunder nor the leasehold estate hereby created, except as provided in the Agency Lease.

(B) Contemporaneously with the execution and delivery of this Company Lease Agreement, the Agency is entering into the Agency Lease, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project and the Agency agrees, upon completion of the Project, to lease and transfer the Project to the Company. Pursuant to the Agency Lease, the Company, as tenant of the Project, is required to perform all of the Agency's obligations under this Company Lease Agreement. Accordingly, and notwithstanding anything to the contrary contained in this Company Lease Agreement, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Project Facility under the Agency Lease, to perform its corresponding obligations under the Agency Lease.

(C) During the term of this Company Lease Agreement, there shall be no merger of this Company Lease Agreement nor of the leasehold estate created by this Company Lease Agreement with the fee estate in the Project or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Company Lease Agreement or the leasehold estate created by this Company Lease Agreement or any interest in this Company Lease Agreement or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including the Company and any mortgagee having any interest in (a) this Company Lease Agreement or the leasehold estate created by this Company Lease Agreement and (b) the fee estate in the Project or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5 ADDITIONS, ALTERATIONS AND IMPROVEMENTS. Subject to the provisions of the Agency Lease, the Company, as agent of the Agency pursuant to the Agency Lease, shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Project as the Company shall deem necessary or desirable. Title to improvements now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements thereof, shall be in the Agency during the term of this Company Lease Agreement, except as otherwise provided in the Agency Lease.

SECTION 3.6 ASSIGNMENT. Except as otherwise provided in the Leasing Documents, neither the Agency nor the Company shall assign or transfer this Company Lease Agreement, nor sublease the whole or any part of the Project leased hereby.

SECTION 3.7 POSSESSION; QUIET ENJOYMENT. (A) Pursuant to the terms of the Agency Lease, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Company has the exclusive right to possess and make improvements to the Project leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Company Lease Agreement on the Agency's part to be kept, shall quietly have, hold and enjoy the Project during the Lease Term.

SECTION 3.8 LIENS. Except as otherwise provided in the Leasing Documents and the Project Agreement, the Agency shall not, directly, or indirectly, create or authorize to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Project or the Agency's interest therein (except for Permitted Encumbrances), without the Company's prior written consent.

SECTION 3.9 TAXES. (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision.

(B) In the event that (1) title to the Agency's interest in the Premises shall be conveyed to the Company, (2) on the date on which the Company obtains title to the Agency's interest in the Project, the Project shall be assessed as exempt upon the assessment roll of any one or more of any taxing entities, and (3) the fact of obtaining title to the Agency's interest in the Project shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), the Company shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Company as real property taxes with respect to the Premises if the Project were owned by the Company and until the first tax year in which the Company shall appear on the tax rolls of the various taxing entities having jurisdiction over the Project as the legal owner of record of the Agency's interest in the Projects.

SECTION 3.10 MAINTENANCE. Pursuant to the Agency Lease, during the term of this Company Lease Agreement, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Project Facility in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

SECTION 3.11 CONDEMNATION. Subject to the provisions of the Agency Lease and the other Leasing Documents, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi-public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Project (including any unpaid amounts due pursuant to the Leasing Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

ARTICLE 4

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.1 DEFAULT. (A) Any one or more of the following events shall constitute an "Event of Default" under this Company Lease Agreement:

(1) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Company Lease Agreement within fifteen (15) days after written notice to the Agency specifying the nature of such default; or

(2) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency) to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Company Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Company Lease Agreement of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section 4.1. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public, enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, a national health pandemic. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 4.2 REMEDIES ON DEFAULT. Whenever any Event of Default hereunder by one party hereto shall have occurred and be continuing for more than fifteen (15) days after written notice of default by the other party, the other party may enforce the provisions of this Company Lease Agreement and may enforce and protect its right by a suit or suits in equity or at law for (1) the specific performance of any covenant or agreement contained herein or (2) any other appropriate legal or equitable remedy.

SECTION 4.3 REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Company Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise

any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 4.4 RESERVED.

SECTION 4.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE 5

MISCELLANEOUS

SECTION 5.1 SURRENDER. (A) The Agency shall, on the last day of the Lease Term or on the last day of any earlier termination of the Lease Term, surrender and deliver the Project and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Company without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Lease Term or on the last day of any earlier termination of the Lease Term, title to all buildings, Improvements, alterations, equipment located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Company. Notwithstanding the foregoing, upon the reasonable request of the Company, the Agency shall execute and deliver to the Company a termination of this Company Lease Agreement to be recorded to confirm this vesting of title.

SECTION 5.2 NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Dual Development LLC
15 Shelbourne Drive Clifton Park
New York, 12065
Attention: Bhavik Jariwala

WITH A COPY TO:

Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
Attention: Charles Dumas, Esq.

IF TO THE LESSOR

Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Jody Olcott

WITH A COPY TO:

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

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communications shall be sent.

SECTION 5.3 APPLICABLE LAW. This Company Lease Agreement shall be governed exclusively by the applicable laws of the State.

SECTION 5.4 BINDING EFFECT. This Company Lease Agreement shall inure to the benefit of, and shall be binding upon the Agency and the Company and their respective successors and assigns permitted hereunder; provided, that, except as provided elsewhere herein or in the other Leasing Documents, the interest of the Agency in this Company Lease Agreement may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 5.5 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Company Lease Agreement.

SECTION 5.6 AMENDMENTS, CHANGES AND MODIFICATIONS. This Company Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 5.7 EXECUTION OF COUNTERPARTS. This Company Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Company Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Company Lease Agreement.

SECTION 5.9 NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Leasing Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or Essex County, New York, and neither the State of New York nor Essex County, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Leasing Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

SECTION 5.10 RECORDING. The Agency and the Company agree that this Company Lease Agreement (or a memorandum thereof) shall be recorded by the Agency at the expense of the Company in the appropriate office of the County Clerk of Essex County, New York.

SECTION 5.11 SUBORDINATION TO MORTGAGE. This Company Lease Agreement and any and all modifications, amendments, renewals and extensions hereof shall be subject and subordinate to any mortgage, security agreement or collateral in favor of the Bank, as its interests may appear, with respect to the Project, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

IN WITNESS WHEREOF, the Agency and the Company have caused this Company Lease Agreement to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Name: Darren Darrah

Title: Chairman

DUAL DEVELOPMENT LLC

By: _____

Name: Bhavik Jariwala

Title: Managing Member

[Signature Page to Company Lease]

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

On this 21 day of December 2021, 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 signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On this 21 day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BHAVIK JARIWALA**, 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 on behalf of which the individual acted, executed the instrument.

Notary Public

[Notary Page to Company Lease]

SCHEDULE A

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a $\frac{3}{4}$ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North $35^{\circ} 50' 20''$ East, 170.94 feet to a point marked by a $\frac{5}{8}$ inch iron rod, and said course passing through a $\frac{3}{4}$ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North $44^{\circ} 43' 35''$ West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of $36^{\circ} 02' 24''$ and a chord course of North $26^{\circ} 42' 23''$ West, 110.64 feet, to a non-tangent point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $26^{\circ} 38' 08''$ East, 344.49 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod, said course passing thru a $\frac{5}{8}$ inch iron rod at a distance of 102.75 feet;

Thence, North $43^{\circ} 41' 01''$ East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South $60^{\circ} 53' 55''$ East, 143.17 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $29^{\circ} 06' 05''$ West, 273.71 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $09^{\circ} 13' 57''$ East, 53.82 feet to an angle point marked by a $\frac{1}{2}$ inch drill hole in ledge rock;

Thence, South $56^{\circ} 06' 56''$ East, 298.00 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $78^{\circ} 51' 15''$ East, 107.56 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod;

Thence, South $11^{\circ} 08' 45''$ East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South $43^{\circ} 59' 13''$ West, 157.32 feet from the aforementioned point;

Thence, South $82^{\circ} 00' 10''$ West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a $\frac{3}{4}$ inch iron pipe, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North $50^{\circ} 26' 02''$ West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a $1\frac{1}{4}$ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

DUAL DEVELOPMENT LLC

AGENCY LEASE

DATED AS OF DECEMBER 29, 2021

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AGENCY LEASE

THIS AGENCY LEASE dated as of December 29, 2021 (“Agency Lease”) by and between the ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 7566 Court Street, PO Box 217, Elizabethtown, New York 12932 (the “Agency” or “Lessor”), as landlord, and DUAL DEVELOPMENT LLC, a limited liability company organized and existing under the laws of the State of New York and having an address at 15 Shelbourne Drive Clifton Park, NY 12065 (the “Company”), as tenant;

W I T N E S S E T H:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Lessor was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 563 of the Laws of 1973 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Lessor, by resolution adopted on June 23, 2021 (the “Resolution”), resolved to undertake a project (the “Project”) consisting of (A) (1) the acquisition of an interest in an approximately 6.25 acre parcel or parcels of land constituting tax map parcel 42.33-1-2.200 and located in the Town of North Elba, New York (the “Land”), (2) the acquisition, construction, reconstruction and equipping of a building (the “Facility”) to be located on the Land to be operated by the Company as an approximately 185-unit hotel, including the removal of the existing Quality Inn Hotel and (3) the acquisition and installation in the Facility of certain machinery, equipment and furnishings (the “Equipment” and together with the Land and the Facility, collectively, the “Project Facility”), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain “financial assistance” (as defined in the Act) in the form of an exemption from state and local sales tax; and;

WHEREAS, the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Agency Lease is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York, pursuant to the provisions of the Act (as hereinafter defined); and

WHEREAS, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Agency Lease have in all respects been duly authorized;

NOW, THEREFORE, THE LESSOR AND THE COMPANY HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

SECTION 1.1 DEFINITIONS. The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agency Lease and of any agreement supplemental hereto shall have the respective meanings specified in this Section 1.1.

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 855 of the Laws of 1971 of the State.

“Agency Lease” means this lease agreement, as said lease agreement may be amended or supplemented from time to time in accordance with the terms hereof.

“Authorized Representative” means the person or persons at the time designated to act in behalf of the Lessor or the Company, as the case may be, by written certificate furnished to the Company and the Lessor and signed on behalf of (A) the Lessor by an officer thereof and (B) on behalf of the Company by an officer, member or manager thereof.

“Bank” means Pioneer Bank located in Albany, New York.

“Bank Loan” means the loan or loans from the Bank to the Company in the principal amount of \$26,200,000.00 evidenced by the Bank Note.

“Bank Mortgage” means the mortgage or mortgages dated the date hereof in the aggregate principal amount of \$26,200,000.00 from the Company in favor of the Bank, as said mortgage, security agreement and assignment of rents and leases may be modified, supplemented, consolidated or amended from time to time.

“Bank Note” means the promissory note or notes, dated the date hereof, in the aggregate principal amount of \$26,200,000.00 executed and delivered by the Company to the Bank, as said promissory note may be amended, modified, supplemented, consolidated or extended.

“Bill of Sale to the Company” means the bill of sale from the Lessor to the Company (substantially in the form shown in Exhibit “C” to the Agency Lease) to be delivered to the Company upon satisfaction of the conditions set forth in the Agency Lease.

“Bill of Sale to the Lessor” means the bill of sale from the Company to the Lessor conveying the Company’s interest in the Equipment.

“Bond Counsel” means Squire Patton Boggs (US) LLP or such other attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and reasonably acceptable to the Lessor.

“Business Day” means a day on which banks located in New York City are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing Date” means the date of the execution and delivery of this Agency Lease by the Company and the Lessor.

“Code” means the Internal Revenue Code of 1986, as amended and regulations of the Department of Treasury promulgated thereunder and under the Internal Revenue Code of 1954, as amended.

“Company” means Dual Development LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and permitted assigns.

“Company Lease Agreement” means that certain company lease of even date herewith by and between the Company, as landlord, and the Lessor, as tenant, as said company lease may be amended or supplemented from time to time in accordance with the terms thereof.

“Completion Date” means the date which is certified by an Authorized Representative of the Company as the date of completion of the construction of the Facility and the installation of the Equipment pursuant to this Agency Lease and the Project Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Construction Period” means the period (A) beginning on the date of commencement of construction of the Facility and installation of the Equipment, and (B) ending on the Completion Date.

“Equipment” means the materials, machinery, equipment, fixtures or furnishings acquired described in Exhibit “B” attached to this Agency Lease.

“Event of Default” means any of those events defined as Events of Default by the terms of this Agency Lease, the Company Lease Agreement and the Project Agreement, and/or any other document now or hereafter executed by the Agency and the Company in connection with the Project Facility.

“Facility” means the building constructed or to be constructed on the Land and to be operated as a hotel.

“Governmental Authority” means the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

“Land” means a leasehold interest in the property located in the Town of North Elba, County of Essex, State of New York as more particularly described on Exhibit A to this Agency Lease.

“Lease” or “Leases” means any agreements of lease or sublease with respect to all or portions of the Project Facility, as said agreements of lease or sublease may have been or may from time to time be hereinafter modified, extended and revised, and any future lease or sublease affecting any portion of the Project Facility.

“Lease Term” shall have the meaning assigned to such term in Section 5.2 hereof.

“Leasing Documents” means the Company Lease Agreement, the Bill of Sale to the Lessor, this Agency Lease, the Project Agreement and any other document now or hereafter executed by the Lessor and the Company in connection with the Project Facility, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“Lessor” means (A) the Essex County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which the Essex County Industrial Development Agency or its successors or assigns may be a party.

“Lien” means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s warehousemen’s and carriers’ liens and other similar encumbrances, affecting real property. For the purposes hereof, a Person shall be deemed to be the owner of Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Lien Law” means the Lien Law of the State.

“Local Authority” means any Governmental Authority, which exercises jurisdiction over the Project Facility.

“Local Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority or a Local Authority, respectively.

“Permitted Encumbrances” means and includes: (i) in the case of real properties, easements, restrictions, exceptions, reservations or defects which, in the aggregate, do not interfere with the continued use of such properties for the purposes for which they are used and do not affect the value thereof; (ii) liens, if contested in good faith by appropriate proceedings as allowed pursuant to Section 8.8 of this Agency Lease; (iii) existing leases by the Company of real and personal property; (iv) mortgage liens and/or security interests granted by the Company from time to time, (v) liens arising out of or created by the Leasing Documents; and (vi) such other encumbrances as may be consented to, from time to time, by the Lessor and the Company.

“Person” shall mean any legal entity, including without limitation an individual, a corporation, a company, a voluntary association, a partnership, a trust, an unincorporated organization or a government, or any agency, instrumentality or political subdivision thereof.

“Project” means that project undertaken by the Lessor consisting of (A) the acquisition of the Land, (B) the construction of the Facility and (C) the acquisition and installation in the Facility of the Equipment.

“Project Agreement” means that certain uniform agency project agreement of even date herewith by and between the Company and the Lessor as said uniform agency project agreement may be amended or supplemented from time to time in accordance with the terms thereof.

“Project Facility” means the Land, the Facility and the Equipment.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority or a Local Authority, respectively.

“Resolution” means the resolution duly adopted by the Lessor on June 23, 2021 authorizing the execution and delivery of the Leasing Documents to which the Lessor is a party.

“SEQRA” means the New York State Environmental Quality Review Act constituting Article 8 of the New York state Environmental Conservation Law and the regulations promulgated thereunder.

“State” means the State of New York.

“Unassigned Rights” means (A) the rights of the Lessor granted pursuant to Sections 2.2(D), 3.1, 4.1(C), 5.4, 6.3, 6.4, 8.1, 8.2, 8.3, 8.5, 8.7, 8.8, 8.9, 9.1, 9.2, 9.4, 11.3, 12.1(B) and 12.10 of this Agency Lease, (B) the moneys due and to become due to the Lessor for its own account or the members, officers, agents and employees of the Lessor for their own account pursuant to Sections 2.2(D), 4.1, 5.4, 6.3, 6.4, 8.2, 10.2, 10.4 and 12.10 of this Agency Lease, and (C) the right to enforce the foregoing pursuant to Article X of this Agency Lease.

SECTION 1.2 INTERPRETATION. In this Agency Lease, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Agency Lease refer to this Agency Lease, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Agency Lease;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa; and

(C) any certificates, letters or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

(D) any provision of this Agency Lease or the Company Lease Agreement notwithstanding, in the event a right or obligation of the Agency or the Company is described or otherwise treated inconsistently with a right or obligation of the Agency or the Company described in the Project Agreement, the provisions of the Project Agreement control.

ARTICLE 2

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LESSOR. The Lessor makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Lessor is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company, the Project constitutes and will constitute a “project” as such quoted term is defined in the Act. By proper official action the Lessor has been duly authorized to execute, deliver and perform this Agency Lease and the Leasing Documents to which it is a party.

(B) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of the other Leasing Documents by the Lessor will conflict with or result in a breach by the Lessor of any of the terms, conditions or provisions of the Act, the by-laws of the Lessor or any order, judgment, restriction, agreement or instrument to which the Lessor is a party or by which it is bound, or will constitute a default by the Lessor under any of the foregoing.

(C) The Lessor has undertaken the Project and will lease the Project Facility to the Company pursuant to this Agency Lease, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided herein and in Article IX and Section 10.2(A)(3) hereof, the Lessor, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge

as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Agency Lease.

SECTION 2.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing and in good standing under the laws of the State of New York, has power to enter into this Agency Lease and to carry out its obligations hereunder, has been duly authorized to execute this Agency Lease and is qualified to do business in all jurisdictions in which its operations or ownership of Property so require.

(B) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agency Lease will (1) result in a breach of or conflict with any of the terms, conditions or provisions of the articles of organization or operating agreement or any agreement, instrument, order or judgment to which the Company is a party or by which the Company is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which it or any of its Property may be bound or affected, or (3) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign), having jurisdiction over the Company or any of the Property of the Company.

(C) The Project will not result in the removal of a facility or plant of the Company or any contemplated occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any contemplated occupant of the Project Facility located within the State except to the extent the foregoing is reasonably necessary to discourage said occupant or occupants from removing such other plant or facility to a location outside the State or to preserve the competitive position of said occupant or occupants in its/their respective industry/industries.

(D) The Company shall cause all notices required by law to be given, and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of all Governmental Authorities applying to or affecting the operation of the Facility (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Facility), and the Company will defend and save the Lessor and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(E) The acquisition, construction and installation of the Project Facility will not have a significant impact on the environment within the terms of SEQRA and the statewide and

local regulations thereunder. The Company hereby covenants to comply with all mitigation measures, requirements and conditions, if any, enumerated in the negative declaration issued by the Town of North Elba Planning Board under SEQRA with respect to the Project and in any other approvals issued by any other Governmental Authority.

(F) So long as this Agency Lease shall be in effect, the Project Facility is and will continue to be a “project” as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Leasing Documents or which the Lessor, advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a “project” as such quoted term is defined in the Act.

(G) The Company is in possession of all local land use and zoning approvals relating to the construction and operation of the Facility for its intended purpose and the Facility and the operation thereof complies and will comply with all applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authority having jurisdiction over the Facility.

(H) The Company as agent of the Lessor will apply the proceeds of the Bank Loan received under the Bank Note towards costs associated with the acquisition, construction and equipping of the Project Facility, and incidental costs associated therewith.

(I) Except as provided in Section 9.4 hereof, all items comprising the Equipment shall remain in the Facility at all times during the Lease Term.

ARTICLE 3

CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE LESSOR. The Company has conveyed or will convey, or will cause to be conveyed, a leasehold interest in the Land and the Facility and a fee interest in the Equipment to the Lessor pursuant to the Company Lease Agreement and the Bill of Sale to the Lessor. The Company hereby represents and warrants that it has good and marketable title to the Project Facility, free and clear of all Liens except for Permitted Encumbrances and the Company Lease Agreement and agrees that it will defend, indemnify and hold the Lessor harmless from any expense or liability due to any defect in title thereto. The Company shall pay all (i) costs, expenses, taxes and charges incurred in connection with such conveyance and transfer, and (ii) taxes, assessments and other charges and impositions of the Project Facility attributable to periods prior to the date of this Agency Lease.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Leasing Documents, provided that such use (1) causes the Project Facility to qualify or continue to qualify as a “project” under the Act and (2) does not tend, in the reasonable judgment of the Lessor, to bring the Project Facility into disrepute as a public project.

ARTICLE 4

ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROJECT FACILITY

SECTION 4.1 SALES TAX PROVISIONS. (A) The Company shall, on behalf of the Lessor, promptly acquire, construct and install the Project Facility.

(B) The Lessor hereby appoints the Company its true and lawful agent during the Construction Period to perform under the following authority in compliance with the terms, purposes and intent of the Leasing Documents, and the Company hereby accepts such agency: (1) to acquire, construct and install the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition, construction and installation of the Project Facility, with the same powers and with the same validity as the Lessor could do if acting in its own behalf including, but not limited to, the appointment of subagents for such purposes, and (3) to pay all fees, costs and expenses incurred in the acquisition, construction and installation of the Project Facility.

(C) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Project Facility), and the Company will defend, indemnify and save the Lessor and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(D) To the extent required by applicable law, the Company, as agent for the Lessor, will cause (1) compliance with the requirements of Article 8 of the Labor Law of the State, and (2) any contractor, subcontractors and other Persons involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the Labor Law of the State. The covenant in this subsection is not intended as a representation that Article 8 of the Labor Law of the State applies.

(E) The Company agrees to file with the Department of Taxation and Finance of the State in a manner and at the time prescribed thereby, information relating to the extent of exemption from sales and use tax claimed with respect to the acquisition, construction and installation of the Project Facility all in compliance with Section 874 of the General Municipal Law of the State. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO COMPLY WITH THE PROVISIONS OF SAID SECTION 874 SHALL RESULT IN A REVOCATION OF ANY SALES TAX ABATEMENT EXTENDED BY THE LESSOR.

(F) The Company acknowledges and agrees that to the extent it (i) utilizes the exemption from New York State and local sales and use tax in a manner inconsistent with the intent of this Agreement and/or (ii) attempts to obtain an exemption from New York State and/or local sales and/or use tax which exceeds the scope of the exemption conferred by the provisions

of this Agreement, it will be subject to a recapture of such inconsistent or excessive exemption benefits by the Lessor in accordance with the provisions of Section 875 of the General Municipal Law of the State, the provisions of which are hereby incorporated herein by reference. The Company agrees to cooperate with the efforts of the Lessor to recapture such inconsistent or excessive exemption benefits and any failure to do so shall constitute an Event of Default hereunder.

ARTICLE 5

LEASE OF PROJECT FACILITY; RENT; CONVEYANCE OF PROJECT FACILITY

SECTION 5.1 LEASE OF PROJECT FACILITY. The Lessor hereby leases the Project Facility to the Company, and the Company hereby leases the Project Facility from the Lessor, for and during the term hereinafter provided and upon and subject to the terms and conditions hereinafter set forth. The Company assumes and agrees to perform and discharge all of the Lessor's obligations under the Lease Documents during the Lease Term, and shall enforce all claims arising under any representation, warranty, covenant, indemnity, guarantee or agreement in the Lease Documents.

SECTION 5.2 DURATION OF TERM. The term of this Agency Lease shall become effective upon its delivery and shall expire on December 14, 2031 or such earlier date as this Agency Lease may be terminated as hereinafter provided (the "Lease Term"). The Lessor shall deliver to the Company and the Company shall accept sole and exclusive possession of the Project Facility simultaneously with the execution of this Agency Lease.

SECTION 5.3 QUIET ENJOYMENT. So long as no Event of Default shall have occurred and be continuing, and except as otherwise expressly provided herein or in the Leasing Documents, the Lessor will not disturb the Company in its peaceful and quiet enjoyment of the Project Facility, which shall be free from any interference, repossession or disturbance by the Lessor.

SECTION 5.4 RENT AND OTHER AMOUNTS PAYABLE. The Company shall pay rent for the Project Facility as follows:

(A) The Company has remitted to the Lessor its administrative fee in the amount of \$157,529.

(B) Within seven (7) days after receipt of a demand therefor from the Lessor accompanied by any supporting evidence or documentation therefor reasonably requested by the Company, the Company shall pay to the Lessor the sum of the reasonable and actual expenses of the Lessor and the officers, members, agents and employees thereof incurred by reason of the Lessor's lease of the Project Facility or in connection with the carrying out of the Lessor's duties and obligations under this Agency Lease or any of the other Leasing Documents and any other reasonable and actual fee or expense of the Lessor, including reasonable and actual attorneys' fees, with respect to the Project Facility, the sale of the Project Facility to the Company, any of the other Leasing Documents, the payment of which is not otherwise provided for under this Agency Lease.

(C) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.4 for a period of more than thirty (30) days from the date such payment is due, the Company shall pay the same together with interest thereon at a rate equal to two percent (2%) per month or the maximum permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

SECTION 5.5 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any rights of set-off, recoupment or counterclaim the Company may otherwise have against the Lessor. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease, or terminate this Agency Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition of the Land, the construction of the Facility or the installation of the Equipment, any material defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Lessor to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease.

(A) Nothing contained in this Section 5.5 shall be construed to release the Lessor from the performance of any of the agreements on its part contained in this Agency Lease, and, in the event the Lessor should fail to perform any such agreement, the Company may institute such action against the Lessor as the Company may deem necessary to compel performance or recover damages for non-performance; provided, however, that the Company shall look solely to the Lessor's estate and interest in the Project Facility (other than the Unassigned Rights), for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Lessor in the event of any liability on the part of the Lessor, and no other Property or assets of the Lessor or members, officers, agents (other than the Company) or employees of the Lessor shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Agency Lease, the relationship of the Lessor and the Company hereunder or the Company's purchase of and title to the Project Facility, or any other liability of the Lessor to the Company.

ARTICLE 6

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY. The Company agrees that during the period that the Agency Lease is outstanding it will (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage

and depreciation, ordinary wear and tear excepted, (2) make all repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) deemed necessary by the Company, in the Company's reasonable discretion, and (3) operate the Project Facility in a sound and economic manner.

SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, before the imposition of any penalties, fees or interest for late payment of the same, respectively become, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements, provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during all periods that sums payable by the Company hereunder or under any of the other Leasing Documents are due and owing.

(A) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company shall pay such taxes, assessments and other charges in accordance with the provisions of such subsection (A) and shall not defer, or be deemed entitled to defer such payment by reason of any such contest.

SECTION 6.3 INSURANCE REQUIRED. At all times during the Lease Term and/or that the Lessor is the owner of the Project Facility, the Company shall maintain or, with respect to the insurance required by subsection (E) of this Section 6.3, cause the general contractor to maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) (1) During any time when reconstruction or construction of the Project Facility shall take place, builder's "all-risk" (or equivalent coverage) insurance upon any work done or material furnished in connection with the reconstruction and construction of the Project Facility, with extended coverage for floods, vandalism, malicious mischief, debris removal and collapse insurance endorsements, issued to the Company and the Lessor as insureds, as their interests may appear, and written in completed value non-reporting form for the full completed insurable value of the Project Facility, and (2) at such time that builder's risk (or equivalent coverage) insurance is no longer available by virtue of completion of the acquisition, construction and installation of the Project Facility, insurance protecting the interests of the Company and the Lessor as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief, floods and other perils and casualties normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount not less than the full insurable value of the Facility; provided, however, that the Company may insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other Property.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance, which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility, including, but not limited to, all contractors and subcontractors.

(C) Insurance protecting the Company and the Lessor against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Agency Lease) and arising from personal injury or death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate commercial umbrella liability policy in excess of the basic coverage stated above protecting the Company and the Lessor with a limit of not less than \$5,000,000.

(D) During any period of construction or reconstruction, the general contractor and any subcontractor constructing, installing and equipping the Project Facility shall be required to carry workers' compensation and general comprehensive liability insurance containing coverages for premises operations, products and completed operations, explosion, collapse and underground damage hazard, contractor's protective, owner's protective and coverage for all owned, non-owned and hired vehicles with non-ownership protection from the general contractor or subcontractor's employees providing the following minimum limits:

(a) Workers' compensation and employer's liability - in accordance with applicable law, covering loss resulting from injury, sickness, disability and death of employees located at or assigned to the Facility or who are responsible for the construction of the Facility.

(b) Comprehensive general liability:

- (i) Bodily injury liability in an amount not less than \$1,000,000 for each accident and not less than \$2,000,000 for injuries sustained by two or more persons in any one accident.
- (ii) Property damage liability in an amount not less than \$1,000,000 for each accident and not less than \$2,000,000 in the aggregate for each year of the policy period.

(c) Comprehensive automobile liability:

- (i) Bodily injury liability in an amount not less than \$1,000,000 for each accident and not less than \$3,000,000 for injuries sustained by two or more persons in any one accident.

(E) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

(F) THE LESSOR DOES NOT IN ANY WAY REPRESENT OR WARRANT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR IN LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTERESTS.

SECTION 6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE. All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and reasonably satisfactory to the Lessor. The company or companies issuing the policies required by Sections 6.3(A) shall be rated "A" or better by A.M. Best Co., Inc. in the most recent edition of Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Lessor as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Lessor prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Lessor. Certificates satisfactory in form and substance to the Lessor to evidence all insurance required hereby shall be delivered to the Lessor on or before the Closing Date. The Company shall deliver to the Lessor on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding December 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Lessor evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease.

(A) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that if the premiums are not timely paid, the Lessor may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Lessor, together with interest, to the extent permitted by law, at a rate equal to two percent (2%) per month from the date on which such payment was due until the date on which the payment is made.

(B) (1) The Company shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under Section 6.3 unless the Lessor is included therein as a named insured.

(2) Each of the policies required pursuant to Section 6.3 hereof shall, to the extent commercially available, waive (a) any right of subrogation against any Person insured under such policy, and (b) any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy.

SECTION 6.5 APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) hereof shall be applied

as provided in Section 7.1 hereof and (B) the Net Proceeds of the insurance required by Section 6.3(B), 6.3(C), 6.3(D) and 6.3(E) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

ARTICLE 7

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 DAMAGE OR DESTRUCTION. If the Project Facility shall be damaged or destroyed, in whole or in part, the Company shall give the Lessor prompt written notice thereof. As between the Lessor and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied to replace, repair, rebuild or restore the Project Facility if the Company shall notify the Lessor that, in the Company's sole judgment, the Company does not deem it practical or desirable to so replace, repair, rebuild or restore the Project Facility. The Lessor shall have no obligation to rebuild or restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the term of this Agency Lease shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Agency Lease) shall terminate as of the date of such payment and the Lessor shall transfer to the Company, without recourse or warranty, all right, title and interest of the Lessor in and to the Project Facility.

SECTION 7.2 CONDEMNATION. If title to, or the use of, the Project Facility shall be taken by Condemnation, the Company shall give the Lessor prompt written notice thereof. As between the Lessor and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Net Proceeds of any Condemnation award shall not be applied to restore the Project Facility if the Company shall notify the Lessor that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. The Lessor shall have no obligation to restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the term of this Agency Lease shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Agency Lease) shall terminate as of the date of such payment and the Lessor shall transfer to the Company, without recourse or warranty, all right, title and interest of the Lessor in and to the Project Facility.

SECTION 7.3 ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys shall automatically become part of the Project Facility and subject to the Leasing Documents as if the same were specifically described herein.

ARTICLE 8

SPECIAL COVENANTS

SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY LESSOR; ACCEPTANCE "AS IS". THE LESSOR MAKES NO WARRANTY, EITHER EXPRESS OR

IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT POSSESSION OF THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE LESSOR FOR ANY CONDITION NOW, HERETOFORE OR HEREAFTER EXISTING. NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2 HOLD HARMLESS PROVISIONS. (A) The Company hereby (i) releases the Lessor and its members, officers, agents (other than the Company) and employees from, (ii) agrees that the Lessor and its members, officers, agents (other than the Company) and employees shall not be liable for, and (iii) agrees to indemnify, defend and hold the Lessor and its members, officers, agents (other than the Company) and employees harmless from and against: any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Lessor's undertaking the acquisition, construction and installation of the Project Facility, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Lessor's financing, acquiring, constructing, installing, owning or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility and any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Project Facility, all liabilities or claims arising as a result of the Lessor's obligations under this Agency Lease or any of the other Leasing Documents or the enforcement of or defense of validity of any provision of any Leasing Documents, and all liabilities or claims arising out of environmental matters with respect to the Project Facility, and (3) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Lessor are not incurred or do not result from the intentional wrongdoing of the Lessor or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Lessor or any of its officers, members, agents or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Lessor or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Agency Lease, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Lessor, or its officers, members, agents (other than the Company) or employees, relating thereto.

SECTION 8.3 RIGHT OF ACCESS TO PROJECT FACILITY. The Company agrees that the Lessor and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon the Land and to examine and inspect the Project Facility for the sole purpose of ensuring compliance with the provisions of the Act.

SECTION 8.4 THE COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, so long as this Agency Lease is in effect, it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

SECTION 8.5 AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever requested by the Lessor, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Lessor from time to time reasonably consider necessary or appropriate, including, but not limited to, (i) such information as to enable the Lessor to make any reports required by law or governmental regulation, and (ii) within thirty (30) days of receipt by the Company of written request therefor, a complete and accurate listing of all items of personalty which were acquired or leased by the Company based upon an exemption from sales or use tax provided by the Lessor.

SECTION 8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS; COMPLIANCE CERTIFICATES. The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

SECTION 8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC. (A) The Company agrees that it will, during any period in which this Agency Lease is in effect, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Project Facility or any part thereof, or to any use, manner of use or condition of the Project Facility or any part thereof (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Project Facility).

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any requirement of

the nature referred to in such subsection (A), provided that the Company (1) first shall have notified the Lessor in writing of such contest, (2) is not in default under any of the Leasing Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Lessor that noncompliance with such requirement will not materially endanger the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Lessor.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Lessor or any of its members, officers, agents, servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Lessor.

SECTION 8.8 DISCHARGE OF LIENS AND ENCUMBRANCES. (A) The Company agrees not to create or suffer to be created any other Lien or security interest, except for Permitted Encumbrances, on the Project Facility or any part thereof.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.8, and except as provided for taxes, assessments and utility charges under Section 6.2, the Company may in good faith actively contest any such Lien or security interest, provided that the Company (1) first shall have notified the Lessor in writing of such contest, (2) is not in default hereunder, (3) shall have set aside adequate reserves for the discharge of any such Lien or security interest, and (4) demonstrates to the reasonable satisfaction of the Lessor that the failure to discharge any such Lien or security interest will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise such Lien or security interest shall be removed promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Lessor.

SECTION 8.9 PERFORMANCE BY LESSOR OF COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Lessor may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Lessor, and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Lessor under the authority hereof, together with interest thereon at the rate of two percent (2%) per month or the maximum permitted by law, whichever is less.

SECTION 8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Internal Revenue Code of 1986, as amended (the "Code"), and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

ARTICLE 9

ASSIGNMENTS; MERGER OF LESSOR

SECTION 9.1 RESTRICTION ON TRANSFER OF LESSOR'S INTEREST HEREUNDER. Except as otherwise specifically provided in this Article IX hereof, neither the Lessor nor the Company shall sell, assign or otherwise dispose of any of their rights under this Agency Lease, without the prior written consent of the Company or the Lessor, as the case may be.

SECTION 9.2 ASSIGNMENT OF THIS AGENCY LEASE. Except for any assignment under any of the Leasing Documents, this Agency Lease may not be assigned by the Company, in whole or in part, absent the prior written consent of the Lessor (which consent shall not be unreasonably withheld, delayed or conditioned), and provided that in any event:

- (a) the assignee shall be qualified to transact business in the State of New York and shall assume the obligations of the Company hereunder to the extent of the interest assigned;
- (b) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Lessor a true and complete copy of such assignment and the instrument of assumption; and
- (c) the Project Facility shall continue to constitute a "project" as such quoted term is defined in the Act.

In accordance with its policies and procedures, the Lessor reserves the right to receive and review financial information concerning any prospective assignee.

SECTION 9.3 MERGER OF THE LESSOR. Nothing contained in this Agency Lease shall prevent the consolidation of the Lessor with, or merger of the Lessor into, or assignment by the Lessor of its rights and interests hereunder (provided that the Agency's rights and interests under the Leasing Documents are simultaneously transferred to such Person) to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Lessor hereunder and the other Leasing Documents, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Agency Lease and the other Leasing Documents to be kept and performed by the Lessor shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Lessor's rights and interests hereunder or under this Agency Lease and the other Leasing Documents shall be assigned.

SECTION 9.4 SALE OR LEASE OF PROJECT FACILITY. Except for the sale or disposition of worn or obsolete items comprising a portion of the Equipment or the sale of other items in the ordinary course of the Company's business, the Company may not otherwise sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the

prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 10

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 **EVENTS OF DEFAULT DEFINED.** The following shall be “Events of Default” under this Agency Lease, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.4 (B) hereof, and the continuance thereof for a period of thirty (30) days after written notice thereof.

(b) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Lessor to the Company; provided, however, that if such default cannot reasonably be cured within said thirty (30) day period and the Lessor or the Company shall have commenced action to cure the breach of covenant within said thirty (30) day period, and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Lessor or the Company shall require, in the exercise of due diligence, to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days provided that the Lessor agrees to consider a request from the Company for an additional extension if such cure cannot be accomplished within said ninety (90) period. If any conflict shall exist between the provisions of this Subsection (b) and the immediately following Subsection (c) as to when an Event of Default has occurred, the provisions of such Subsection (c) shall govern.

(c) Any representation or warranty made by the Company herein proves to have been false in any material manner at the time it was made.

(d) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(e) (a) 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, (b) the failure by the Company within one hundred twenty (120) days to lift

any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) 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 one hundred twenty (120) days, (d) 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 (e) 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 one hundred twenty (120) days of such appointment.

(f) If by order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Company or the Project Facility or any part thereof, shall be appointed and such order shall not be discharged or dismissed within one hundred twenty (120) days after such appointment.

(g) The dissolution of the Company.

(h) The failure by the Company to maintain the insurance required by Section 6.3 (C) hereof.

SECTION 10.2 REMEDIES ON DEFAULT. (A) Whenever any Event of Default shall have occurred, the Lessor may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, (a) all unpaid payments payable pursuant to Section 5.4(B) hereof, and (b) all other payments due under this Agency Lease.

(2) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Agency Lease.

(3) In the event of (i) a default beyond all applicable cure periods by the Company in the payment of any amounts due and owing hereunder and upon forty-five (45) days' prior written notice to the Company or (ii) the occurrence of an Event of Default described in Section 10.1(e), Section 10.1(f), Section 10.1 (g), or Section 10.1(i) hereof, terminate the Agency Lease and reconvey the Project Facility to the Company. The Company hereby consents to said reconveyance and appoints the Lessor its attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to execute any and all instruments and documents in its name as may be necessary, in the sole discretion of the Lessor, to effectuate such transfer.

SECTION 10.3 REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Agency Lease and the Lessor should reasonably attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Lessor the reasonable and actual fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE 11

EARLY TERMINATION OF AGENCY LEASE

SECTION 11.1 OPTION TO TERMINATE AGENCY LEASE. The Company shall have, if there exists no Event of Default hereunder with respect to any amounts due and owing to the Lessor hereunder or under the other Leasing Documents, the option to cancel or terminate this Agency Lease, subject to the survival of those obligations of the Company which are intended to survive the term of this Agency Lease, upon payment of all payments currently due and owing pursuant to Section 5.4 hereof for which a written payment request with respect to has been provided to the Company by the Lessor, and by giving the Lessor notice in writing of such termination and thereupon such termination shall forthwith become effective.

SECTION 11.2 CONVEYANCE OF UPON LEASE TERMINATION. (A) At the termination of this Agency Lease pursuant to Section 11.1 hereof, the Project Facility shall be conveyed from the Lessor to the Company subject to Permitted Encumbrances. The Company agrees to prepare a termination of this Agency Lease together with all gains tax affidavits, equalization and assessment forms and other necessary documentation and to forward same to the Lessor at least fifteen (15) days prior to the date that the Project Facility is to be conveyed to the Company. The Company will pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(A) The conveyance of the Lessor's right, title and interest, if any, in and to the Land and the Facility shall be effected by the execution, delivery and recording by the Lessor of a

termination of this Agency Lease and a Bill of Sale to the Company (in substantially the form attached hereto as Exhibit "C" and by this reference made a part hereof).

(B) The Company hereby agrees to pay all expenses, filing and recording fees and taxes, if any, and the reasonable and actual attorneys' fees of the Lessor applicable to or arising from the transfers contemplated by this Section 11.3.

ARTICLE 12

MISCELLANEOUS

SECTION 12.1 SUBORDINATION TO MORTGAGE. This Agency Lease and all rights of the Company and the Lessor hereunder are and shall be subordinate to the Liens of the Bank Mortgage on the Project Facility. The subordination of this Agency Lease to the Bank Mortgage shall be automatic, without the execution of any further subordination agreement by the Company or the Lessor. Nonetheless, if the Bank requires a further written subordination agreement, the Company and the Lessor agree to execute, acknowledge and deliver the same.

SECTION 12.2 NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means (including overnight delivery) as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Dual Development LLC
15 Shelbourne Drive
Clifton Park, New York 12065
Attention: Bhavik Jariwala

WITH A COPY TO:

Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
Attention: Charles Dumas, Esq.

IF TO THE LESSOR

Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Jody Olcott

WITH A COPY TO:

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

The Lessor, the Company, the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.3 BINDING EFFECT. This Agency Lease shall inure to the benefit of the Lessor and the Company, and shall be binding upon the Lessor, the Company and, their respective successors and assigns permitted hereunder, provided, however that except as provided elsewhere herein or in the other Leasing Documents, the interest of the Lessor in this Agency Lease may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 12.4 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Lessor or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

SECTION 12.5 AMENDMENTS, CHANGES AND MODIFICATIONS. This Agency Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.6 EXECUTION OF COUNTERPARTS. This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.7 APPLICABLE LAW. This Agency Lease shall be governed exclusively by the applicable laws of the State.

SECTION 12.8 SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Section 5.4(B) hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Agency Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of this Agency Lease until the expiration of the period stated in the

applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Lessor, or its officers, members, agents or employees, relating thereto.

SECTION 12.9 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The table of contents and the headings of the several sections in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agency Lease.

SECTION 12.10 NO RECOURSE; SPECIAL OBLIGATION. The obligations and agreements of the Lessor contained herein and in the other Leasing Documents and any other instruments or documents executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Lessor, and not of any member, officer, agent (other than the Company) or employee of the Lessor in his or her individual capacity, and the members, officers, agents (other than the Company) and employees of the Lessor shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Lessor contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Essex, New York, and neither the State of New York nor the County of Essex, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Lessor, but rather shall constitute limited, special obligations of the Lessor payable solely from the revenues of the Lessor derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Lessor with respect to the Unassigned Rights). No order or decree of specific performance with respect to any of the obligations of the Lessor hereunder shall be sought or enforced against the Lessor unless (A) the party seeking such order or decree shall first have requested the Lessor in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Lessor shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten 10 days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Lessor an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify, hold harmless and defend the Lessor and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Lessor, furnish to the Lessor satisfactory security to protect the Lessor and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity required in this Section 12.10 shall not affect the full force and effect of an Event of Default under any of the Leasing Documents.


SECTION 12.11 SUBMISSION TO JURISDICTION. The Company hereby irrevocably and unconditionally agrees that any suit, action or proceeding arising out of or relating to this Agency Lease shall be brought in the state courts of the State of New York or federal district court for the Northern District of New York and waives any right to object to jurisdiction within either of the foregoing forums by the Lessor. Nothing contained herein shall prevent the Lessor from bringing any suit, action or proceeding or exercising any rights against any security and against the Company personally, and against any property of the Company, within any other jurisdiction and the initiation of such suit, action or proceeding or taking of such action in any such other jurisdiction shall in no event constitute a waiver of the agreements contained herein with respect to the laws of the State of New York governing the rights and obligations of the parties hereto or the agreement of the Company to submit to personal jurisdiction within the State of New York.

SECTION 12.12 RECORDING. The Lessor and the Company agree that this Agency Lease shall be recorded in the office of the Clerk of Essex County, New York by the Lessor at the expense of the Company.

SECTION 12.13 JOINT AND SEVERAL LIABILITY. In the event that this Agency Lease is executed by more than one lessee, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each lessee, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.

IN WITNESS WHEREOF, the Lessor and the Company have caused this Agency Lease to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Darren Darrah
Title: Chairman

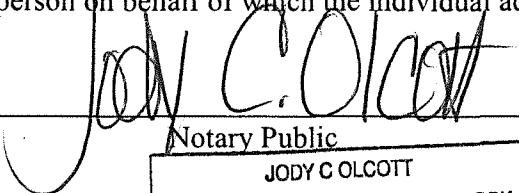
DUAL DEVELOPMENT LLC

By: _____
Name: Bhavik Jariwala
Title: Managing Member

[Signature Page to Agency Lease]

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

On this 8 day of December 2021, 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 signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



Notary Public
JODY C OLCOTT
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ESSEX COUNTY
NO - 010L6049649
MY COMM. EXPIRES OCTOBER 23, 2022

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

On this _____ day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BHAVIK JARIWALA**, 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 on behalf of which the individual acted, executed the instrument.

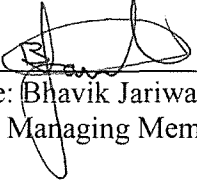
Notary Public

IN WITNESS WHEREOF, the Lessor and the Company have caused this Agency Lease to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: Darren Darrah
Title: Chairman

DUAL DEVELOPMENT LLC

By:  _____
Name: Bhavik Jariwala
Title: Managing Member

[Signature Page to Agency Lease]

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

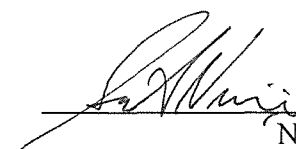
On this _____ day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **DARREN DARRAH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On this 27th day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BHAVIK JARIWALA**, 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 on behalf of which the individual acted, executed the instrument.

SUSAN A. NIXON
NOTARY PUBLIC-STATE OF NEW YORK
No. 02N16094947
Qualified in Rensselaer County
My Commission Expires 06/30/21 23



Notary Public

[Notary Page to Agency Lease]

EXHIBIT ±A≤
DESCRIPTION OF THE LAND

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a $\frac{3}{4}$ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North $35^{\circ} 50' 20''$ East, 170.94 feet to a point marked by a $\frac{5}{8}$ inch iron rod, and said course passing through a $\frac{3}{4}$ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North $44^{\circ} 43' 35''$ West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of $36^{\circ} 02' 24''$ and a chord course of North $26^{\circ} 42' 23''$ West, 110.64 feet, to a non-tangent point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $26^{\circ} 38' 08''$ East, 344.49 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod, said course passing thru a $\frac{5}{8}$ inch iron rod at a distance of 102.75 feet;

Thence, North $43^{\circ} 41' 01''$ East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South $60^{\circ} 53' 55''$ East, 143.17 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $29^{\circ} 06' 05''$ West, 273.71 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $09^{\circ} 13' 57''$ East, 53.82 feet to an angle point marked by a $\frac{1}{2}$ inch drill hole in ledge rock;

Thence, South $56^{\circ} 06' 56''$ East, 298.00 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $78^{\circ} 51' 15''$ East, 107.56 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod;

Thence, South $11^{\circ} 08' 45''$ East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South $43^{\circ} 59' 13''$ West, 157.32 feet from the aforementioned point;

Thence, South $82^{\circ} 00' 10''$ West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a $\frac{3}{4}$ inch iron pipe, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North $50^{\circ} 26' 02''$ West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a $1\frac{1}{4}$ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

EXHIBIT B

DESCRIPTION OF EQUIPMENT

All articles of personal property currently owned by the Company and purchased by the Company in its capacity as agent of the Lessor, or through any sub-agent of the Agency appointed by the Company, and its subcontractors and vendors, incorporated into the warehousing and manufacturing facility located in the Town of North Elba, New York or used in connection with the constructing or equipping of said facility, all of which articles of personal property are exempt from sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York by virtue of the Agency's status as a public benefit corporation.

SCHEDULE ~~A~~

DESCRIPTION OF EQUIPMENT

All articles of personal property owned by the Grantor and previously conveyed to the Grantor by the Grantee pursuant to the terms of that certain bill of sale dated December 29, 2021 from the Grantee in favor of the Grantor.

BILL OF SALE TO THE COMPANY

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (the "State") having its office at 7566 Court Street, PO Box 217, Elizabethtown New York, 12932 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from Dual Development LLC, a limited liability company organized and existing under the laws of the State of New York and having an address of 15 Shelbourne Drive Clifton Park, NY 12065 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Schedule "A" attached hereto and by this reference made a part hereof, now owned or hereafter acquired by the Grantor, and such additions thereto and substitutions therefor as may be made from time to time.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF ANY OF THE EQUIPMENT DESCRIBED ABOVE. THE GRANTEE ACCEPTS TITLE TO SUCH EQUIPMENT "AS IS", WITHOUT RECOURSE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF A DEFICIENCY OR DEFAULT OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer on the date indicated beneath the signature of such officer and dated as of the 29 day of December, 2021.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Darren Darrah, Chairman

MEMORANDUM OF AGENCY LEASE

This Memorandum of Agency Lease is made as of this December 29, 2021, by and between the **ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the “State”), duly organized and existing under the laws of the State, with principal offices located at 7566 Court Street, Elizabethtown, New York 12996, and **DUAL DEVELOPMENT LLC**, a New York State limited liability company (the “Company”), with an address at 15 Shelbourne Drive, Clifton Park, New York 12065.

WITNESSETH

1. The Agency, as landlord the Company, as tenant, have entered into a Lease Agreement (the “Agency Lease”) dated as of December 29, 2021, covering property located in the Town of North Elba in the County of Essex, in the State of New York, as described in Appendix A attached hereto and made a part hereof.

2. The term of the Agency Lease shall commence upon its delivery and shall expire on December 29, 2031 or such earlier date as the Agency Lease may be terminated as provided therein.

3. The Agency Lease constitutes a “straight lease” as defined in section 854(15) of the General Municipal Law and not contain any renewal provisions for the extension of its term.

4. The mailing addresses of the parties hereto are as follows:

The Agency: Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Director


The Company: Dual Development LLC
15 Shelbourne Drive
Clifton Park, New York 12065
Attention: Bhavik Jariwala

With a copy to: Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
Attention: Charles Dumas, Esq.

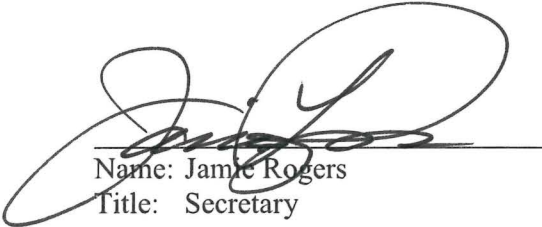
IN WITNESS WHEREOF, the Agency and the Company have caused this Memorandum of Agency Lease to be executed in their corporate names and the seal of the Agency to be hereunto affixed and attested by its duly authorized officers all as of December 29th, 2021.

**ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**


(SEAL)

By: 
Name: Darren Darrah
Title: Chairman

ATTEST:


Name: Jamie Rogers
Title: Secretary

DUAL DEVELOPMENT LLC

By: 
Name: Bhavik Jariwala
Title: Managing Member

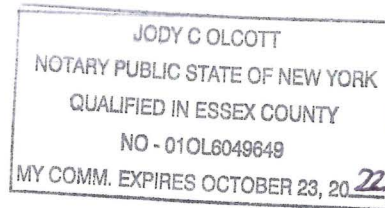
STATE OF NEW YORK)

ss:

COUNTY OF ESSEX)

On this 8 day of December, 2021 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.


Notary Public



STATE OF NEW YORK)

ss:

COUNTY OF ALBANY)

On this 29th day of December, 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Bhavik Jariwala** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

SUSAN A. NIXON
Notary Public, State of New York
No. 0210609494
Qualified in Rensselaer County
Commission Expires June 30, 2019
23

APPENDIX A-1

**to Memorandum of Agency Lease dated as of December 29,
2021 between the Essex County Industrial Development Agency
and Dual Development LLC**

ESSEX COUNTY, NEW YORK
SECTION: 42.33
BLOCK: 1
PART OF LOT: 2.200

EXHIBIT A-2
DESCRIPTION OF THE LAND

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a ¾ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North 35° 50' 20" East, 170.94 feet to a point marked by a ⅝ inch iron rod, and said course passing through a ¾ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North 44° 43' 35" West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of 36° 02' 24" and a chord course of North 26° 42' 23" West, 110.64 feet, to a non-tangent point marked by a ⅝ inch iron rod;

Thence, North 26° 38' 08" East, 344.49 feet to an angle point marked by a ½ inch iron rod, said course passing thru a ⅝ inch iron rod at a distance of 102.75 feet;

Thence, North 43° 41' 01" East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South 60° 53' 55" East, 143.17 feet to an angle point marked by a ⅝ inch iron rod;

Thence, South 29° 06' 05" West, 273.71 feet to an angle point marked by a ⅝ inch iron rod;

Thence, South 09° 13' 57" East, 53.82 feet to an angle point marked by a ½ inch drill hole in ledge rock;

Thence, South 56° 06' 56" East, 298.00 feet to an angle point marked by a ⅝ inch iron rod;

Thence, North 78° 51' 15" East, 107.56 feet to an angle point marked by a ½ inch iron rod;

Thence, South 11° 08' 45" East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a ¾ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South 43° 59' 13" West, 157.32 feet from the aforementioned point;

Thence, South 82° 00' 10" West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a ¾ inch iron pipe, and said course passing through a ¾ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North 50° 26' 02" West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a 1¼ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

DUAL DEVELOPMENT LLC
AS LANDLORD

AND

ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
AS TENANT

COMPANY LEASE AGREEMENT

DATED AS OF DECEMBER 29, 2021

RELATING TO A CERTAIN PARCEL OF LAND
LOCATED IN THE TOWN OF NORTH ELBA, NEW YORK

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COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT dated as of December 29, 2021 (the "Company Lease Agreement") by and between Dual Development LLC, a limited liability company organized and existing under the laws of the State of New York and having an address at 15 Shelbourne Drive Clifton Park, NY 12065 (the "Company"), as landlord, and ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 7566 Court Street, PO Box 217, Elizabethtown New York, 12932 (the "Agency"), as tenant;

W I T N E S S E T H:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities and to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 563 of the Laws of 1973 of the State, as amended (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Agency, by resolution adopted on June 23, 2021 (the "Resolution"), resolved to undertake a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 6.25 acre parcel or parcels of land constituting tax map parcel 42.33-1-2.200 and located in the Town of North Elba, New York (the "Land"), (2) the acquisition, construction, reconstruction and equipping of a building (the "Facility") to be located on the Land to be operated by the Company as an approximately 185-unit dual-branded-hotel, including the removal of the

existing Quality Inn Hotel and (3) the acquisition and installation in the Facility of certain machinery, equipment and furnishings (the "Equipment" and together with the Land and the Facility, collectively, the "Project Facility"), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain "financial assistance" (as defined in the Act) in the form of an exemption from state and local sales tax;

WHEREAS, in connection therewith, the Company desires to lease the Land and the Facility to the Agency on the terms and conditions set forth in this Company Lease Agreement Lease, and it is the intention of the parties hereto that the Company's leasehold interest in the Land and the Facility under the Agency Lease (as hereinafter defined) and the Company's fee interest in the Land shall not merge; and

WHEREAS, all things necessary to constitute this Company Lease Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Company Lease Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

ARTICLE 1

DEFINITIONS

SECTION 1.1 DEFINITIONS. Capitalized terms in this Company Lease Agreement but not defined herein shall have the meaning set forth in the Agency Lease of even date herewith by and between the Agency, as landlord, and the Company, as tenant (the "Agency Lease"), or the Project Agreement, dated as of December 29, 2021, by and between the Agency and the Company (the "Project Agreement").

SECTION 1.2 INTERPRETATION. In this Company Lease Agreement, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Company Lease Agreement, refer to this Company Lease Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Company Lease Agreement.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Company Lease Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Company Lease Agreement nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Company Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease Agreement.

(F) Any provision of this Company Lease Agreement or the Agency Lease notwithstanding, in the event a right or obligation of the Agency or the Company is described or otherwise treated inconsistently with a right or obligation of the Agency or the Company described in the Project Agreement, the provisions of the Project Agreement control.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Company Lease Agreement and to carry out its obligations hereunder.

(B) Neither the execution and delivery of this Company Lease Agreement nor the consummation of the transactions contemplated hereby will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized validly existing and in good standing under the laws of the State of New York, and has the power to enter into this Company Lease Agreement and carry out its obligations hereunder and have executed this Company Lease Agreement. This Company Lease Agreement and the transactions contemplated hereby have been duly authorized by all necessary action on behalf of the Company.

(B) Neither the execution and delivery of this Company Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Company Lease Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of any (i) the articles of organization or operating agreement of the Company or (ii) any order, judgment, agreement or instrument to which the Company is a party or by which the Company is bound, or constitute a default under any of the foregoing, or (2)

result in the creation or imposition of any Lien of any nature upon any Property of the Company other than pursuant to the Leasing Documents, or (3) require consent (which has not been heretofore received) under any agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

ARTICLE 3

LEASE PROVISIONS

SECTION 3.1 LEASE. The Company hereby demises and leases to the Agency, and the Agency hereby hires and leases from the Company, the Land, as said Land is more particularly described on Schedule A attached hereto, for the term set forth in Section 3.2 hereof together with the Facility. The foregoing conveyance is intended to include (1) any strips or gores of land adjoining the Land, (2) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (3) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's ownership of the Land.

SECTION 3.2 TERM. (A) The Lease Term shall commence as of the dated date hereof and shall expire on the earliest to occur of (1) the date requested by the Company, or (2) December 14, 2031, or (3) so long as neither the Agency Lease nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the Agency Lease.

(B) So long as neither the Agency Lease nor the Company's right of possession thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon any termination of this Company Lease Agreement, the Company shall prepare and the Agency will execute and deliver to the Company such instruments as the Company shall deem appropriate to evidence the release and discharge of this Company Lease Agreement.

SECTION 3.3 RENT. The rent payable by the Agency under this Company Lease Agreement shall be one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

SECTION 3.4 USE; LEASE AGREEMENT; NON MERGER. (A) So long as neither the Agency Lease nor the Company's right of possession as lessee thereunder have been terminated by the Agency pursuant to Article X thereof, the Agency shall (1) hold and use the Project only for lease to the Company under the Agency Lease and (2) shall not mortgage, encumber, sell, assign, transfer, convey, pledge, or subject voluntarily or involuntarily, directly or indirectly, to any lien or other similar claim, or permit to be further mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien without the prior written consent of the Company, its rights hereunder nor the leasehold estate hereby created, except as provided in the Agency Lease.

(B) Contemporaneously with the execution and delivery of this Company Lease Agreement, the Agency is entering into the Agency Lease, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project and the Agency agrees, upon completion of the Project, to lease and transfer the Project to the Company. Pursuant to the Agency Lease, the Company, as tenant of the Project, is required to perform all of the Agency's obligations under this Company Lease Agreement. Accordingly, and notwithstanding anything to the contrary contained in this Company Lease Agreement, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Project Facility under the Agency Lease, to perform its corresponding obligations under the Agency Lease.

(C) During the term of this Company Lease Agreement, there shall be no merger of this Company Lease Agreement nor of the leasehold estate created by this Company Lease Agreement with the fee estate in the Project or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Company Lease Agreement or the leasehold estate created by this Company Lease Agreement or any interest in this Company Lease Agreement or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including the Company and any mortgagee having any interest in (a) this Company Lease Agreement or the leasehold estate created by this Company Lease Agreement and (b) the fee estate in the Project or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5 ADDITIONS, ALTERATIONS AND IMPROVEMENTS. Subject to the provisions of the Agency Lease, the Company, as agent of the Agency pursuant to the Agency Lease, shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Project as the Company shall deem necessary or desirable. Title to improvements now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements thereof, shall be in the Agency during the term of this Company Lease Agreement, except as otherwise provided in the Agency Lease.

SECTION 3.6 ASSIGNMENT. Except as otherwise provided in the Leasing Documents, neither the Agency nor the Company shall assign or transfer this Company Lease Agreement, nor sublease the whole or any part of the Project leased hereby.

SECTION 3.7 POSSESSION; QUIET ENJOYMENT. (A) Pursuant to the terms of the Agency Lease, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Company has the exclusive right to possess and make improvements to the Project leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Company Lease Agreement on the Agency's part to be kept, shall quietly have, hold and enjoy the Project during the Lease Term.

SECTION 3.8 LIENS. Except as otherwise provided in the Leasing Documents and the Project Agreement, the Agency shall not, directly, or indirectly, create or authorize to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Project or the Agency's interest therein (except for Permitted Encumbrances), without the Company's prior written consent.

SECTION 3.9 TAXES. (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision.

(B) In the event that (1) title to the Agency's interest in the Premises shall be conveyed to the Company, (2) on the date on which the Company obtains title to the Agency's interest in the Project, the Project shall be assessed as exempt upon the assessment roll of any one or more of any taxing entities, and (3) the fact of obtaining title to the Agency's interest in the Project shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), the Company shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Company as real property taxes with respect to the Premises if the Project were owned by the Company and until the first tax year in which the Company shall appear on the tax rolls of the various taxing entities having jurisdiction over the Project as the legal owner of record of the Agency's interest in the Projects.

SECTION 3.10 MAINTENANCE. Pursuant to the Agency Lease, during the term of this Company Lease Agreement, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Project Facility in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

SECTION 3.11 CONDEMNATION. Subject to the provisions of the Agency Lease and the other Leasing Documents, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi-public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Project (including any unpaid amounts due pursuant to the Leasing Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

ARTICLE 4

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.1 DEFAULT. (A) Any one or more of the following events shall constitute an "Event of Default" under this Company Lease Agreement:

(1) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Company Lease Agreement within fifteen (15) days after written notice to the Agency specifying the nature of such default; or

(2) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency) to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Company Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Company Lease Agreement of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section 4.1. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public, enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, a national health pandemic. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 4.2 REMEDIES ON DEFAULT. Whenever any Event of Default hereunder by one party hereto shall have occurred and be continuing for more than fifteen (15) days after written notice of default by the other party, the other party may enforce the provisions of this Company Lease Agreement and may enforce and protect its right by a suit or suits in equity or at law for (1) the specific performance of any covenant or agreement contained herein or (2) any other appropriate legal or equitable remedy.

SECTION 4.3 REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Company Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise

any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 4.4 RESERVED.

SECTION 4.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE 5

MISCELLANEOUS

SECTION 5.1 SURRENDER. (A) The Agency shall, on the last day of the Lease Term or on the last day of any earlier termination of the Lease Term, surrender and deliver the Project and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Company without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Lease Term or on the last day of any earlier termination of the Lease Term, title to all buildings, Improvements, alterations, equipment located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Company. Notwithstanding the foregoing, upon the reasonable request of the Company, the Agency shall execute and deliver to the Company a termination of this Company Lease Agreement to be recorded to confirm this vesting of title.

SECTION 5.2 NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Dual Development LLC
15 Shelbourne Drive Clifton Park
New York, 12065
Attention: Bhavik Jariwala

WITH A COPY TO:

Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
Attention: Charles Dumas, Esq.

IF TO THE LESSOR

Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Jody Olcott

WITH A COPY TO:

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

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communications shall be sent.

SECTION 5.3 APPLICABLE LAW. This Company Lease Agreement shall be governed exclusively by the applicable laws of the State.

SECTION 5.4 BINDING EFFECT. This Company Lease Agreement shall inure to the benefit of, and shall be binding upon the Agency and the Company and their respective successors and assigns permitted hereunder; provided, that, except as provided elsewhere herein or in the other Leasing Documents, the interest of the Agency in this Company Lease Agreement may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 5.5 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Company Lease Agreement.

SECTION 5.6 AMENDMENTS, CHANGES AND MODIFICATIONS. This Company Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 5.7 EXECUTION OF COUNTERPARTS. This Company Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Company Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Company Lease Agreement.

SECTION 5.9 NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Leasing Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or Essex County, New York, and neither the State of New York nor Essex County, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Leasing Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

SECTION 5.10 RECORDING. The Agency and the Company agree that this Company Lease Agreement (or a memorandum thereof) shall be recorded by the Agency at the expense of the Company in the appropriate office of the County Clerk of Essex County, New York.

SECTION 5.11 SUBORDINATION TO MORTGAGE. This Company Lease Agreement and any and all modifications, amendments, renewals and extensions hereof shall be subject and subordinate to any mortgage, security agreement or collateral in favor of the Bank, as its interests may appear, with respect to the Project, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

IN WITNESS WHEREOF, the Agency and the Company have caused this Company Lease Agreement to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Name: Darren Darrah

Title: Chairman

DUAL DEVELOPMENT LLC

By: _____

Name: Bhavik Jariwala

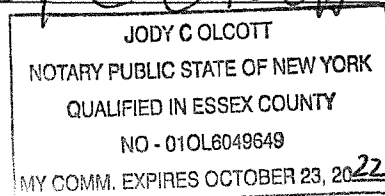
Title: Managing Member

[Signature Page to Company Lease]

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

On this 8 day of December 2021, 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 signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public



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

On this _____ day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

[Notary Page to Company Lease]

IN WITNESS WHEREOF, the Agency and the Company have caused this Company Lease Agreement to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.


ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Name: Darren Darrah

Title: Chairman

DUAL DEVELOPMENT LLC

By:  _____

Name: Bhavik Jariwala

Title: Managing Member

[Signature Page to Company Lease]

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

On this _____ day of December 2021, 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 signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On this 27th day of December 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Bhavik Jariwala, 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 on behalf of which the individual acted, executed the instrument.

SUSAN A. NIXON
NOTARY PUBLIC-STATE OF NEW YORK
No. 02N16094947
Qualified in Rensselaer County
My Commission Expires 06/30/2023



Notary Public

[Notary Page to Company Lease]

SCHEDULE A

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a $\frac{3}{4}$ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North $35^{\circ} 50' 20''$ East, 170.94 feet to a point marked by a $\frac{5}{8}$ inch iron rod, and said course passing through a $\frac{3}{4}$ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North $44^{\circ} 43' 35''$ West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of $36^{\circ} 02' 24''$ and a chord course of North $26^{\circ} 42' 23''$ West, 110.64 feet, to a non-tangent point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $26^{\circ} 38' 08''$ East, 344.49 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod, said course passing thru a $\frac{5}{8}$ inch iron rod at a distance of 102.75 feet;

Thence, North $43^{\circ} 41' 01''$ East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South $60^{\circ} 53' 55''$ East, 143.17 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $29^{\circ} 06' 05''$ West, 273.71 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $09^{\circ} 13' 57''$ East, 53.82 feet to an angle point marked by a $\frac{1}{2}$ inch drill hole in ledge rock;

Thence, South $56^{\circ} 06' 56''$ East, 298.00 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $78^{\circ} 51' 15''$ East, 107.56 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod;

Thence, South $11^{\circ} 08' 45''$ East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South $43^{\circ} 59' 13''$ West, 157.32 feet from the aforementioned point;

Thence, South $82^{\circ} 00' 10''$ West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a $\frac{3}{4}$ inch iron pipe, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North $50^{\circ} 26' 02''$ West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a $1\frac{1}{4}$ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

MEMORANDUM OF COMPANY LEASE

This Memorandum of Company Lease is made as of this December 29, 2021, by and between **DUAL DEVELOPMENT LLC**, a New York State limited liability company (the “Company”), with an address at 15 Shelbourne Drive, Clifton Park, New York 12065 and the **ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the “State”), duly organized and existing under the laws of the State, with principal offices located at 7566 Court Street, Elizabethtown, New York 12996.

WITNESSETH

1. The Company, as landlord and the Agency as tenant, have entered into a Lease Agreement (the “Company Lease”) dated as of December 29, 2021, covering property located in the Town of North Elba in the County of Essex, in the State of New York, as described in Appendix A attached hereto and made a part hereof.

2. The Lease Term shall commence as of December 29, 2021 and shall expire on the earliest to occur of (1) the date requested by the Company, or (2) December 29, 2031, or (3) so long as neither the Agency Lease dated as of December 29, 2021 by and between the Agency and the Company (the “Agency Lease”), nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the Agency Lease.

3. The Company Lease constitutes a “straight lease” as defined in section 854(15) of the General Municipal Law and not contain any renewal provisions for the extension of its term.

4. The mailing addresses of the parties hereto are as follows:

The Agency: Essex County Industrial Development Agency
7566 Court Street, PO Box 217
Elizabethtown, New York 12932
Attention: Director

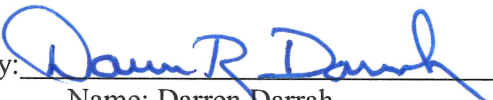
The Company: Dual Development LLC
15 Shelbourne Drive
Clifton Park, New York 12065
Attention: Bhavik Jariwala

With a copy to: Lemery Greisler LLC
677 Broadway, 8th Floor
Albany, New York 12207
Attention: Charles Dumas, Esq.

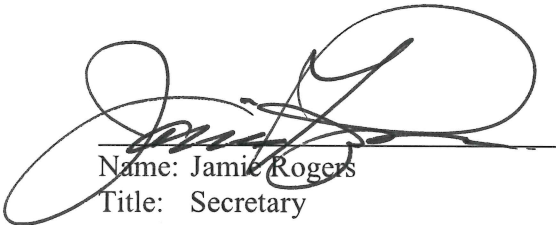
IN WITNESS WHEREOF, the Agency and the Company have caused this Memorandum of Company Lease to be executed in their corporate names and the seal of the Agency to be hereunto affixed and attested by its duly authorized officers all as of December 29th, 2021.

**ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**


(SEAL)

By: 
Name: Darren Darrah
Title: Chairman

ATTEST:


Name: Jamie Rogers
Title: Secretary

DUAL DEVELOPMENT LLC

By: 
Name: Bhavik Jariwala
Title: Managing Member

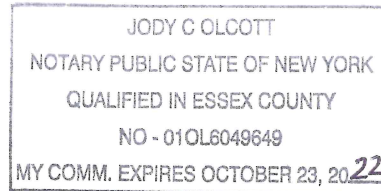
STATE OF NEW YORK)

ss:

COUNTY OF ESSEX)

On this 0 day of December, 2021 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.

Notary Public



STATE OF NEW YORK)

ss:

COUNTY OF ALBANY)

On this 29th day of December 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Bhavik Jariwala** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SUSAN A. NYON
Notary Public, State of New York
No. 0216694947
Qualified in Rensselaer County
Commission Expires June 30, 2019

23

APPENDIX A-1

**to Memorandum of Company Lease dated as of December 29, 2021
between Dual Development LLC and the Essex County Industrial Development Agency**

ESSEX COUNTY, NEW YORK
SECTION: 42.33
BLOCK: 1
PART OF LOT: 2.200

EXHIBIT A-2
DESCRIPTION OF THE LAND

SCHEDULE A

All that certain piece or 6.25 acre parcel of land situate in the Town of North Elba, County of Essex, State of New York being part of Lot 237, Township 11, Old Military Tract, Richards' Survey lying north of New York State Route 86 aka Saranac Avenue, and being more particularly bounded and described as follows:

Beginning at a point marked by a $\frac{3}{4}$ inch iron pipe in concrete at the southeast corner of certain lands of The Butler Real Estate Co., Deed Book 1007 at Page 307, and southwest corner of lands of Brewster Mill Park Realty, Inc., Deed Book 583 at Page 177, and in the north bounds of New York State Route 86, SH. No. 1177;

Thence, North $35^{\circ} 50' 20''$ East, 170.94 feet to a point marked by a $\frac{5}{8}$ inch iron rod, and said course passing through a $\frac{3}{4}$ inch iron pipe in concrete line marker at a distance of 155.91 feet;

Thence, North $44^{\circ} 43' 35''$ West, 63.84 feet to a point-of-curvature marked by a mag nail in a paved drive;

Thence, Northwest, 112.48 feet along a curve to the right having a radius of 178.82 feet, a central angle of $36^{\circ} 02' 24''$ and a chord course of North $26^{\circ} 42' 23''$ West, 110.64 feet, to a non-tangent point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $26^{\circ} 38' 08''$ East, 344.49 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod, said course passing thru a $\frac{5}{8}$ inch iron rod at a distance of 102.75 feet;

Thence, North $43^{\circ} 41' 01''$ East, 207.12 feet to an angle point marked by an iron spike in a root of a yellow birch tree;

Thence, South $60^{\circ} 53' 55''$ East, 143.17 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $29^{\circ} 06' 05''$ West, 273.71 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, South $09^{\circ} 13' 57''$ East, 53.82 feet to an angle point marked by a $\frac{1}{2}$ inch drill hole in ledge rock;

Thence, South $56^{\circ} 06' 56''$ East, 298.00 feet to an angle point marked by a $\frac{5}{8}$ inch iron rod;

Thence, North $78^{\circ} 51' 15''$ East, 107.56 feet to an angle point marked by a $\frac{1}{2}$ inch iron rod;

Thence, South $11^{\circ} 08' 45''$ East, 119.56 feet to a point at the northwest shore of Lake Placid lake in Paradox Bay, so-called, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 80.23 feet;

Thence, Southwest, 214 feet, more or less, along the shore of Lake Placid lake to a point at the northerly corner of certain lands of Wildwood On The Lake, LLC, Deed Book 1854 at Page 145, said point lying South $43^{\circ} 59' 13''$ West, 157.32 feet from the aforementioned point;

Thence, South $82^{\circ} 00' 10''$ West, 37.19 feet along the lands of Wildwood On The Lake to an angle point marked by a $\frac{3}{4}$ inch iron pipe, and said course passing through a $\frac{3}{4}$ inch iron pipe line marker at a distance of 10.79 feet;

Thence, North $50^{\circ} 26' 02''$ West, 125.59 feet along the lands of Wildwood On The Lake to an angle point marked by a $1\frac{1}{4}$ inch iron pipe;

Thence, South 55° 57' 37" West, 78.29 feet along the lands of Wildwood On The Lake to an angle point marked by a 1 inch iron pipe;

Thence, South 34° 54' 08" West, 136.03 feet along the lands of Wildwood On The Lake to an angle point in a paved drive under a set of wooden steps said course passing through a 1¼ inch iron pipe at a distance of 114.60 feet;

Thence, North 44° 44' 27" West, 85.78 feet along the lands of Wildwood On The Lake and along the center of an old thirty-three foot (33') wide right-of-way to an angle point marked by a mag nail on the edge of a paved drive;

Thence, South 33° 15' 22" West, 105.79 feet along the lands of Wildwood On The Lake to a point in the north bounds of New York State Route 86 and at the southeast corner of the premises, and said point lying 6.06 feet southwest of a ¾ inch iron pipe line marker in concrete;

Thence, North 63° 39' 03" West, 119.98 feet along the highway bounds to an angle point;

Thence, North 24° 03' 35" East, 1.00 foot to an angle point in the highway bounds;

Thence, North 53° 12' 21" West, 85.50 feet along the bounds of New York State Route 86 to the Point-of-Beginning and encompassing therein 6.25 acres, more or less, as more particularly shown on that boundary map entitled, "Map of Survey showing a Boundary Line Adjustment between Brewster Mill Park Realty, Inc. & The Butler Real Estate Co. and Lands to be conveyed to Lake Placid Hospitality LLC," prepared by Robert M. Marvin, Jr., L.S., dated August 22, 2017 and filed in the Essex County Clerk's Office on August 29, 2017, as Map No. 7410.

**CERTIFICATE AS TO CHAPTER 563 OF THE LAWS OF 1973 OF THE STATE OF
NEW YORK SECTION 914-A OF THE GENERAL MUNICIPAL LAW, AS AMENDED**

I, Jamie Rogers, Secretary of the Essex County Industrial Development Agency (the "Agency"), a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the "State"), duly organized and existing under the laws of the State **HEREBY CERTIFY** that a true and correct copy of the Chapter 563 of the Laws of 1973 of the State of New York (Section 914-a of the General Municipal Law), as amended, establishing the Agency is attached hereto.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this
December 21, 2021.

(SEAL)



Jamie Rogers
Secretary

*[Signature Page to Certificate as to Chapter 563 of the Laws of 1973 of the State of New York Section
914-A of the General Municipal Law, as Amended]*

CERTIFICATE AS TO ESTABLISHMENT OF THE AGENCY

I, Jamie Rogers, Secretary of the Essex County Industrial Development Agency (the "Agency"), **HEREBY CERTIFY** that pursuant to Sections 856 and 914-a of Title I of Article 18-A of the General Municipal Law, the Agency is and has been established and is in existence from June 5, 1973, continuously to and including the date hereof. Certificates required to be filed with the office of the Secretary of State of New York pursuant to Section 856 of said Law stating the names of the members of the Agency and their offices and other matters have been duly filed and such filings remain in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this
December 29, 2021.

(SEAL)



Jamie Rogers
Secretary

[Signature Page to Certificate as to Establishment of the Agency]

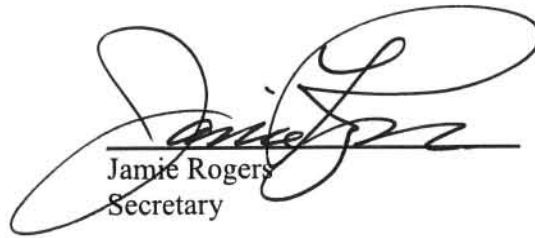
**CERTIFICATE AS TO BY-LAWS OF THE ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

I, Jamie Rogers, Secretary of the Essex County Industrial Development Agency (the “Agency”), a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the “State”), duly organized and existing under the laws of the State **HEREBY CERTIFY** that I am the Secretary of the Agency and custodian of the records of the Agency.

I **FURTHER CERTIFY** that a true and correct copy of the By-Laws of the Agency which have been in effect from February, 2000, including any amendments, through the date of this certificate, is attached hereto.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this
December 29, 2021.

(SEAL)



Jamie Rogers
Secretary

[Signature Page to Certificate as to By-Laws of the Agency]

CERTIFICATE AS TO FINAL APPROVING RESOLUTION OF THE AGENCY

I, Jamie Rogers, Secretary of the Essex County Industrial Development Agency (the “Agency”), a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the “State”), duly organized and existing under the laws of the State **HEREBY CERTIFY** as follows:


1. Attached hereto is a true and correct copy of the Resolution of the Agency (the “Resolution”), which was duly adopted by the Board of Directors of the Agency (the “Board”) on June 23, 2021. Minutes of such meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of the meetings of the Board. Notice of such meeting was given as prescribed by law and such meeting was open to all persons who were entitled by law to attend such meeting. All capitalized terms used in this Certificate and not otherwise defined herein shall have the same meanings assigned to them as in the Project Agreement, (the “Project Agreement”), dated December 29, 2021, between the Agency and Dual Development, LLC (the “Company”)

2. The Resolution authorizes, a lease arrangement as defined in Section 854(15) of the General Municipal Law of the State of New York, as amended, between the Agency and the Company in order to provide the Company financial assistance for the purpose of financing (i) the acquisition, construction, equipping and furnishing of an approximately 185-unit dual-branded-hotel, including the removal of the existing Quality Inn Hotel, acquisition and installation of various machinery, equipment and furnishings, and substantial rehabilitation, to be constructed in North Elba, New York, including all improvements thereto (the “Facility”) and (ii) certain necessary preliminary and incidental expenses related thereto (hereinafter collectively

referred to as the “Project”) and authorizes the execution and delivery of (i) the Project Agreement, (ii) the Agency Lease, dated December 29, 2021, between the Agency as Landlord/Lessor and the Company as Tenant/Lessee (the “Agency Lease”), (iii) the Lease, dated December 29, 2021, between the Company as Landlord/Lessor and the Agency as Tenant/Lessee (the “Company Lease Agreement”) and (iv) the Bank Mortgage (collectively, the “Agency Documents”) and (v) any financing statements, assignments and other instruments and documents which are necessary or appropriate to perfect the security interests contemplated in the Project Agreement and to consummate the transactions contemplated in the Agency Documents.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this
December 29, 2021,.

(SEAL)



Jamie Rogers
Secretary

[Signature Page to Certificate as to Final Approving Resolution of Agency]

**CERTIFICATE AS TO (1) INDUCEMENT RESOLUTION OF THE AGENCY AND
(2) PUBLIC HEARING PROCEEDINGS AND (3) FINAL APPROVING RESOLUTION
OF THE AGENCY**

I, JAMIE ROGERS, Secretary of the Essex County Industrial Development Agency (the “Agency”), a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the “State”), duly organized and existing under the laws of the State **HEREBY CERTIFY** as follows:

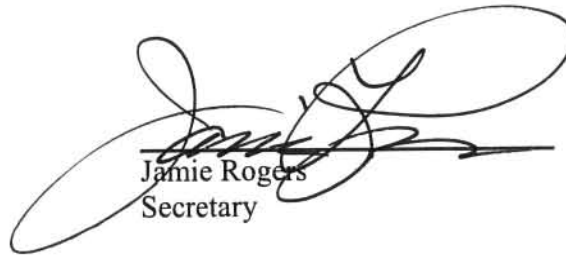
1. Attached hereto as Exhibit A is a true and correct copy of the Inducement Resolution of the Agency, which was duly adopted by the Board of Directors of the Agency (the “Board”) on April 22, 2021. Minutes of such meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of the meetings of the Board. Notice of such meeting was given as prescribed by law and such meeting was open to all persons who were entitled by law to attend such meeting.

2. Attached hereto as Exhibit B is a true and correct copy of the Notice of Public Hearing together with the affidavit of publication of the Agency. Minutes of such meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of the meetings of the Board. Notice of such meeting was given as prescribed by law and such meeting was open to all persons who were entitled by law to attend such meeting.

4. Attached hereto as Exhibit C is a true and correct copy of the Resolution of the Agency, which was duly adopted by the Board on June 23, 2021. Minutes of such meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of the meetings of the Board.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the
Agency this December 24, 2021.

(SEAL)



Jamie Rogers
Secretary

*[Signature Page to Certificate as to Inducement Resolution, TEFRA Proceedings and Final Approving
Resolution of Agency]*

**CERTIFICATE OF THE AGENCY AS TO INCUMBENCY, SIGNATURES,
NO LITIGATION AND OTHER MATTERS**

WE, THE UNDERSIGNED, Chairman and Secretary of the Essex County Industrial Development Agency (the “Agency”), **HEREBY CERTIFY** as follows:

1. The Agency is a public body corporate and politic and a public benefit corporation of the State of New York (the “State”), duly created by Chapter 563 of the Laws of 1973 of the State, and is authorized and empowered by Chapter 1030 of the Laws of 1969 of the State (Article 18-A of the General Municipal Law), as amended and supplemented to the date hereof (the “Act”) to enter into a straight lease transaction for the purposes enumerated in the Act.

2. The duly appointed, qualified and acting members of the Agency from April 22, 2021 to and including the date hereof are as follows:

Darren Darrah
James Bowen
Jamie Rogers
Roy Holzer
John Boyea
Matthew Courtright
James Monty

3. The duly elected or appointed and acting officers of the Agency from April 22, 2021 to and including the date hereof are as follows:

Office

Chairman
Vice Chairman
Secretary/Treasurer

Name of Officer

Darren Darrah
James Bowen
Jamie Rogers

4. We have officially caused the following documents (hereinafter referred to collectively as the "Agency Documents") to be executed in the name of the Agency by signing each of the Agency Documents with the signature of the Chairman and, where required, with the signature of the Secretary attesting thereto and the corporate seal of the Agency impressed thereon: (a) the Project Agreement (the "Project Agreement"), dated the date hereof, between the Agency and Dual Development, LLC, (b) a resolution adopted by the Agency on June 23, 2021 (the "Resolution"), and (c) the Agency Lease, the Company Lease Agreement and the Bank Mortgage. All capitalized terms used in this Certificate and not otherwise defined herein shall have the same meanings assigned to them as in the Project Agreement.

5. On the date of delivery of the Agency Documents, which is also the date of this certificate, we are the duly elected and acting officers indicated on the Agency Documents and on this certificate and are duly authorized to cause the Agency Documents to be executed as recited above and to be delivered and to effect other transactions contemplated by the Agency Documents.

6. The seal of the Agency, an impression of which appears below, is the corporate seal of the Agency and has been such since 1973.

7. The Agency has (i) authorized and provided for the execution and delivery of the Agency Documents in the Resolution, (ii) duly performed all of its obligations to be performed at or prior to the date hereof and each of the representations and warranties of the Agency contained in the Agency Documents are true and correct as of the date hereof, and (iii) duly authorized by all necessary action, the execution, delivery, receipt and due performance of the Agency Documents and any and all other agreements and documents as may be required to be executed and delivered by the Agency in order to carry out, give effect to and consummate the transactions described and contemplated in the Agency Documents. No further act, resolution or

consent by the Agency is required to give effect to and consummate the transactions described and contemplated in the Agency Documents. The Resolution has not been amended or rescinded and is in full force and effect on the date hereof.

8. All determinations necessary to be made by the Agency under the applicable provisions of Article 8 of the State Environmental Quality Review Act, as amended, and the Regulations promulgated thereunder by the New York Department of Environmental Conservation have been made.

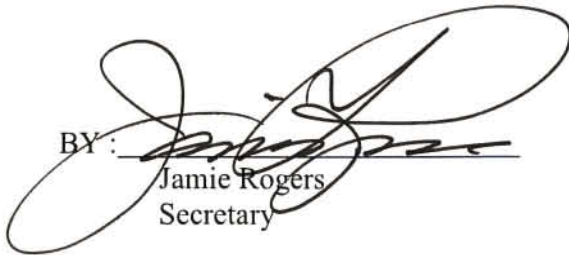
9. To the best of our knowledge, on the date hereof there has been no substantial adverse change of any kind in the condition of the Agency. All certifications, warranties and representations made by the Agency in connection with the Agency Documents are hereby ratified, confirmed and approved as if made on the date hereof.

10. No litigation is pending, or, to the best of our knowledge, threatened, to restrain or enjoin the delivery and execution of the Agency Documents or in any way to affect the existence or power of the Agency or the right of the Agency to enter into the straight lease transaction.

IN WITNESS WHEREOF we have set forth our official signatures and the seal of the
Agency on this 29 day of December, 2021.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

(SEAL)

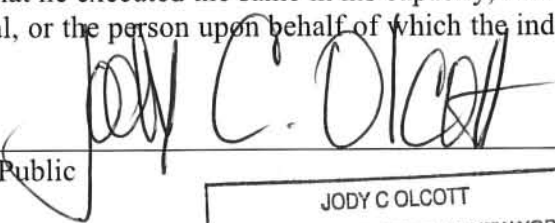
BY: 
Jamie Rogers
Secretary

BY: 
Darren Darrah
Chairman

[Signature Page to Certificate of Incumbency, Signatures, No Litigation and Other Matters]

STATE OF NEW YORK)
 ss:
COUNTY OF ESSEX)

On this 8 day of December, 2021 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

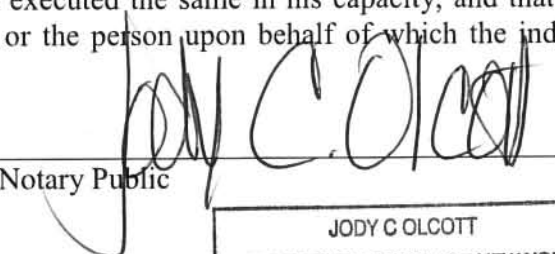


Notary Public

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

STATE OF NEW YORK)
 ss:
COUNTY OF ESSEX)

On this 8 day of December, 2021 before me, the undersigned, a notary public in and for said state, personally appeared JAMIE ROGERS, 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

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

CERTIFICATE AS TO REPRESENTATIONS AND WARRANTIES OF AGENCY

I, DARREN DARRAH, Chairman of the Essex County Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY as follows:


1. Each of the representations and warranties of the Agency contained in Section 2.1 of the Project Agreement (the “Project Agreement”), dated December 29, 2021, between the Agency and Dual Development, LLC (the “Company”), are true and correct in all material respects as of the date hereof. All capitalized terms used in this Certificate and not otherwise defined herein shall have the same meanings assigned to them as in the Project Agreement.

2. No event has occurred and is continuing or would result from the authorization, execution and delivery of the Project Agreement, the Agency Lease, the Company Lease Agreement and each of the Agency Documents to which the Agency is a party, which would constitute an “Event of Default” under Section 8.1 of the Project Agreement but for the requirement that notice be given or time elapse or both.

3. The Agency has full power and authority to enter into the Project Agreement, the Agency Lease, the Company Lease Agreement and the other Agency Documents and to perform its obligations under the Project Agreement.

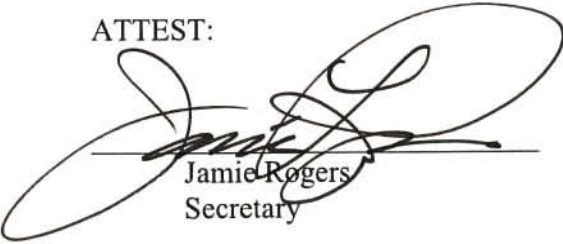
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency
this 29 day of December, 2021.

ESSEX COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: 
Darren Darrah
Chairman

(SEAL)

ATTEST:


Jamie Rogers
Secretary

[Signature Page to Certificate of Representations and Warranties of the Agency]

**DUAL DEVELOPMENT LLC
GENERAL CERTIFICATE**

I, THE UNDERSIGNED, Managing Member of Dual Development LLC, a limited liability company organized under the laws of the State of New York (the “Company”), DO HEREBY CERTIFY, that the Managing Member of the Company is authorized to execute this certificate on behalf of the Company.

I HEREBY FURTHER CERTIFY as follows:


(a) Attached hereto as Exhibit A is a true, correct and complete copy of the Articles of Organization of the Company and all amendments thereto, as in full force and effect on the date hereof, certified by the Secretary of State of the State of New York. There have been no amendments to the Company’s Articles of Organization since the date of the Secretary of State’s certified copy of the Company’s Articles of Organization.

(b) Attached hereto as Exhibit B is a true, correct and complete copy of the Operating Agreement of the Company as it is in effect on this date, including all amendments thereto.

(c) Attached hereto as Exhibit C is a true, correct and complete copy of the Certificate of Good Standing of the Company. There has been no change to the Company’s good standing since the date of the Secretary of State’s certified copy of the Company’s Certificate of Good Standing to the date hereof.

IN WITNESS WHEREOF, I have set my hand this 29th day of December, 2021.

Dual Development LLC

By: 
Name: Bhavik Jariwala
Title: Managing Member

[Signature Page to General Certificate of the Company]

ONLINE FILING RECEIPT

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ENTITY NAME: DUAL DEVELOPMENT LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: ESSE

=====

FILED:05/14/2018 DURATION:***** CASH#:180514010056 FILE#:180514010056
DOS ID:5340452

FILER:

BHAVIK JARIWALA
PO BOX 4393
QUEENSBURY, NY 12804

EXIST DATE

05/14/2018

ADDRESS FOR PROCESS:

BHAVIK JARIWALA
PO BOX 4393
QUEENSBURY, NY 12804

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the Biennial Statement is due will only be made via email. Please go to www.email.ebiennial.dos.ny.gov to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: ** NO SERVICE COMPANY **
SERVICE CODE: 00

FEE:	225.00	PAYMENTS	225.00
	-----		-----
FILING:	200.00	CHARGE	225.00
TAX:	0.00	DRAWDOWN	0.00
PLAIN COPY:	0.00		
CERT COPY:	0.00		
CERT OF EXIST:	25.00		

=====

DOS-1025 (04/2007)

Authentication Number: 1805140059 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

State of New York } ss:
Department of State

I hereby certify, that DUAL DEVELOPMENT LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 05/14/2018, and that the Limited Liability Company is existing so far as shown by the records of the Department.



*WITNESS my hand and the official seal
of the Department of State, at the City of
Albany, this 14th day of May two
thousand and eighteen, at 8:41 AM.*

*Brendan W. Fitzgerald
Executive Deputy Secretary of State*

ACKNOWLEDGEMENT COPY

ARTICLES OF ORGANIZATION OF

Dual Development LLC

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is:

Dual Development LLC

SECOND: To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

THIRD: The county, within this state, in which the office of the limited liability company is to be located is ESSEX.

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

Bhavik Jariwala
PO BOX 4393
Queensbury, NY 12804

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Bhavik Jariwala, Managing Member (signature)

Bhavik Jariwala , ORGANIZER

Filed by:

Bhavik Jariwala
PO BOX 4393
Queensbury, NY 12804

OPERATING AGREEMENT

OF

DUAL DEVELOPMENT LLC

THE INTERESTS REFERENCED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION AND QUALIFICATION WITHOUT AN OPINION OF COUNSEL FOR THE HOLDER, WHICH OPINION AND COUNSEL SHALL BE REASONABLY SATISFACTORY TO THE MANAGING MEMBER, THAT SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED.

CERTAIN ADDITIONAL RESTRICTIONS ON TRANSFERS OF INTERESTS ARE SET FORTH HEREIN.

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**OPERATING AGREEMENT
OF
DUAL DEVELOPMENT LLC**

THIS OPERATING AGREEMENT of DUAL DEVELOPMENT LLC, a New York limited liability company, (the “Company”) is made and entered into effective as of December 29, 2021 (the “Effective Date”), by and among the Persons who are identified as Members on ***Exhibit A*** hereto (each a “Member” and collectively, the “Members”) in accordance with the provisions hereof.

PRELIMINARY STATEMENT

WHEREAS, the Company was formed as a limited liability company under the laws of the State of New York by the filing on May 14, 2018 of its Articles of Organization with the Department of State of the State of New York (the “Articles of Organization”), which Certificate is attached hereto as ***Exhibit B***; and

WHEREAS, pursuant to the terms of that certain Contribution Agreement dated as of December 29, 2021, by and between all the members of the Company at that time (the “Former Members”) and Lake Placid Hospitality LLC, the Former Members contributed their entire membership interests in the Company to Lake Placid Hospitality LLC (the “Contribution Transaction”); and

WHEREAS, as a result of the Contribution Transaction, the Company is now a single-member limited liability company, with Lake Placid Hospitality LLC as its sole member; and

WHEREAS, the undersigned sole Member of the Company desires to enter into this Operating Agreement to govern the operation of the Company and set forth the Member’s rights and obligations with respect to the Company.

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties, intending legally to be bound, hereby agree as follows:

**Article 1
DEFINITIONS AND INTERPRETATION**

In this Agreement, unless otherwise specifically stated, the capitalized terms used herein have the respective meanings specified or referred to in **Annex I**, attached hereto and incorporated herein by reference. Other terms are defined in the text of this Agreement, and throughout this Agreement those terms have the meanings respectively ascribed to them. When a reference is made in this Agreement to Sections, subsections, Appendix or Exhibits, such reference is to a Section, subsection, Appendix or Exhibit to this Agreement unless otherwise indicated. The words “include”, “includes” and “including” when used herein are deemed in each case to be followed by the words “without limitation.” The word “herein” and similar references mean, except where a specific Section or Article reference is expressly indicated, the entire Agreement rather than any specific Section or Article.

Article 2 ORGANIZATION AND PURPOSE

2.1 *Formation.* The Members have organized a limited liability company pursuant to the Act and have caused the Articles of Organization to be executed and filed for record with the Department of State of the State of New York. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that there is any conflict or inconsistency between any provision of this Agreement and any non-mandatory provision of the Act, the provisions of this Agreement shall control and take precedence.

2.2 *Name of the Company.* The name of the Company shall be “Dual Development LLC.” The Company may do business under that name and under any other name or names which the Managing Member selects. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file an assumed business name as required by law.

2.3 *Purpose.*

(a) Principal Purpose and Business. The principal purposes and business of the Company are to own, operate, construct, improve, rehabilitate, renovate, manage, maintain, market, lease, hold for investment, finance, refinance, sell, exchange, dispose of and otherwise realize the economic benefit from the real property located at 2125 Saranac Avenue, Lake Placid, New York, 12946, together with all improvements located thereon and any on-site and off-site improvements appurtenant thereto, and such other incidental personal property necessary for the ownership, management, leasing, financing and operation thereof (such real property and personal property collectively, the “Property”), and to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the Act that are related or incidental to and necessary, convenient or advisable for the accomplishment of the aforementioned purposes.

(b) Special Purpose Entity Provisions. The Company, since the date of its formation, has complied with and shall at all times comply with the following requirements. The Company:

(i) has not, is not, and will not be engaged in any business unrelated to (A) owning and operating the Property, or (B) acting as the borrower under the Permitted Senior Debt or any permitted indebtedness pursuant to the terms of the Permitted Senior Debt Documents or otherwise consented to by the Permitted Senior Lender in writing;

(ii) has not had, does not have, and will not have any assets other than those related to the ownership of the Property.

(iii) has not engaged in, sought or consented to, and will, to the fullest extent permitted by law, not engage in, seek or consent to, (A) any dissolution, winding up, liquidation, consolidation, merger, division or sale of all or substantially all of its

assets, (B) except as permitted under the terms of the Permitted Senior Debt Documents, any transfer of membership interests other than pursuant to the Contribution Transaction or the Pledge Agreement, or (C) any amendment of its certificate of formation or operating agreement with respect to the matters set forth in this Section 2.3(b) without the prior written consent of the Permitted Senior Lender;

(iv) has been, is, and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same have or shall become due, and has maintained, is currently maintaining and will endeavor to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, the foregoing shall not require any owner of the Company to make any additional capital contribution;

(v) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of such entity;

(vi) has maintained and will maintain its accounts, financial statements, books, and records separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as otherwise required by any applicable Legal Requirements, as defined in the Permitted Senior Debt Documents (provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliates provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company and such Affiliates and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (B) such assets shall be listed on the Company's own separate balance sheet);

(vii) has filed and will file its own tax returns, except to the extent that it (A) has been or is required to file consolidated tax returns by law or (B) is treated as a disregarded entity for federal or state tax purposes;

(viii) other than as provided in the Permitted Senior Debt Documents (A) has not commingled, and will not commingle, its funds or assets with those of any other Person, and (B) has not participated and will not participate in any cash management system with any other Person;

(ix) has held and will hold its assets in its own name, noting, however, that the Property was owned by Lake Placid Hospitality LLC prior to being transferred from Lake Placid Hospitality LLC to the Company;

(x) has maintained and will maintain an arm's length relationship with its Affiliates;

(xi) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided, however, the foregoing shall not require any owner of the Company to make any additional capital contributions;

(xii) has observed and will observe in all material respects all limited liability company formalities;

(xiii) has not had, and will not have, any Indebtedness (as defined in the Permitted Senior Debt Documents) other than the Development Fee or any permitted indebtedness pursuant to the terms of the Permitted Senior Debt Documents, if any;

(xiv) except as permitted under the Permitted Senior Debt Documents, has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to the Permitted Senior Debt Documents;

(xv) has not acquired and will not acquire obligations or securities of its members or any other Affiliate, except for the Former Members' rights and obligations under the Franchise Agreement;

(xvi) has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including paying for shared office space and services performed by any employee of an Affiliate;

(xvii) has maintained and used, now maintains and uses, and will maintain and use, separate stationery, invoices and checks bearing its name or a name franchised or licensed to it by an entity other than an Affiliate of the Company (if any), and all stationery, invoices, and checks utilized by such Person or utilized to collect its funds or pay its expenses have borne and shall bear its own name, or a name franchised or licensed to it by an entity other than an Affiliate of the Company, and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being such Person's agent;

(xviii) has not pledged and will not pledge its assets for the benefit of any other Person other than the Permitted Senior Lender in connection with the Permitted Senior Debt;

(xix) has conducted and will conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of the Company, and has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of the Company and not as a division or part of any other Person, except in each case for services rendered under a business

management services agreement with an Affiliate that complies with the terms contained in clause (xxiii) below, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of the Company;

(xx) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxi) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) except that the Company, from time to time in the ordinary course of business, may agree with tenants under leases of all or any portion of the Property to make certain tenant improvement allowances available to such tenants;

(xxii) has not identified and will not identify its constituent partners, members or shareholders (as applicable), or any Affiliate of any of them, as a division or part of it, and has not identified itself, and shall not identify itself, as a division of any other Person;

(xxiii) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members, managers or Affiliates, except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, (B) the Contribution Transaction, (C) the transfer of title to the Property from Lake Placid Hospitality LLC to the Company, (D) assignment of the Franchise Agreement, or (E) in connection with, or as permitted by, the Permitted Senior Debt Documents;

(xxiv) except as provided in the Permitted Senior Debt Documents and the Franchise Agreement, does not and will not have any of its obligations guaranteed by any Affiliate;

(xxv) has been, now is, and will be a limited liability company formed under the laws of the State of New York;

(xxvi) has complied and will comply with all of the terms and provisions contained in its organizational documents;

(xxvii) the statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(xxviii) has not and will not consent to any other Person (i) operating its business in the name of the Company, (ii) acting in the name of the Company, (iii) using the

Company's stationery or business forms, (iv) holding out its credit as being available to satisfy the obligations of the Company, (v) having contractual liability for the payment of any of the liabilities of the Company (except pursuant to the limited extent provided under the Permitted Senior Debt Documents or the Franchise Agreement), or (vi) failing to at all times specify to all relevant third parties that it is acting in a capacity other than as the Company.

2.4 *Term.* The term of the Company, which commenced on the date of filing of the Articles of Organization, shall continue until dissolved and terminated pursuant to Article 9 of this Agreement.

2.5 *Principal Office.* The principal office of the Company shall be at any such place within or outside of the State of New York that the Managing Member so selects.

2.6 *Registered Agent.* The name and address of the Company's registered agent and registered office shall be determined by the Managing Member from time to time.

2.7 *Members.* The name, present mailing address, Initial Capital Contributions, number of Common Units, and Percentage Interest of each non-Managing Member, and the name and mailing address of the Managing Member, are set forth on ***Exhibit A***, as amended from time to time. As a condition to becoming a Member, each Member has executed and delivered to the Company and the Managing Member an Investor Representation Letter in the form attached hereto as **Annex II**.

2.8 *Intent of this Agreement.* This Agreement shall constitute the "operating agreement" (as that term is used in the Act) of the Company. The rights, powers, duties, obligations, and liability of the Members shall be determined pursuant to the Act and this Agreement.

2.9 *Fiscal Year.* The fiscal year of the Company shall end on December 31 of each calendar year unless, for United States federal income tax purposes, another fiscal year is required as determined by the Managing Member (the "Fiscal Year"). The Company shall have the same Fiscal Year for United States federal income tax purposes and for accounting purposes.

Article 3

CAPITAL CONTRIBUTIONS AND INTERESTS

3.1 *Membership Interests.*

(a) Generally. Each of the parties to this Agreement shall be a Member of the Company until such Person ceases to be a Member in accordance with the provisions of this Agreement. Each Member shall have the rights, powers, duties, obligations, preferences and privileges of a Member as set forth in this Agreement.

(b) Classes, Series and Subseries of Interests. Economic ownership rights in the Company shall be reflected in one or more classes or series of Units. As of the date of this

Agreement, the sole class of authorized Units shall be denominated as “Common Units” (the “Common Units”).

(c) Schedule of Members. Set forth on **Exhibit A** hereto is the following information as of the Effective Date: (i) the name and address of each Member and (ii) the number of Units and Percentage Interest owned by each Non-Managing Member. **Exhibit A** shall be revised from time to time by the Managing Member to reflect the withdrawal or admission of Members, the Transfer of Units by Members pursuant to the provisions of this Agreement, the issuance of additional Units in respect of additional Capital Contributions made to the Company by the Members in accordance with this Article Three, and to reflect any other change in the information set forth therein.

(d) Addresses; Changes to Exhibit A. Members who change their addresses shall advise the Company of any such change of address. Any reference to **Exhibit A** in this Agreement means **Exhibit A** as amended to reflect any changes in the information specified herein.

(e) Transfers of Units. Units are Transferable only as permitted in this Agreement (including without limitation as set forth in Article 8 hereof).

(f) Issuance of Additional Units. Subject to the approval of a Unit Majority, the Company may issue additional Membership Interests for any Company purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the Managing Member shall determine.

(g) Designation of Additional Units. Each Common Unit issued and outstanding as of the date hereof is identical in all respects. Each additional Unit authorized to be issued by the Company pursuant to Section 3.1(f) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Units), as shall be fixed by the Managing Member and approved by a Unit Majority, including (i) the right to share in Company Profits and Losses or items thereof; (ii) the right to share in Company distributions; (iii) the rights upon dissolution and liquidation of the Company; (iv) whether, and the terms and conditions upon which, the Company may or shall be required to redeem the Units (including sinking fund provisions); (v) whether such Unit is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Unit will be issued, evidenced by Certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Unit; and (viii) the right, if any, of each such Unit to vote on Company matters, including matters relating to the relative rights, preferences and privileges of such Unit.

(h) No fractional Units shall be issued by the Company.

3.2 *Common Units.*

(a) Generally. The Common Units shall have the rights and obligations set forth in this Agreement.

(b) Voting. With respect to all matters requiring the approval of the Members, each holder of Common Units shall be entitled to cast that number of votes or consents equal to the number of Common Units held by such Member.

3.3 *Capital Contributions and Issuance of Units*. The Capital Contributions that each Member has made as of the date of this Agreement are set forth on ***Exhibit A***. Unless otherwise approved by the Members, the Managing Member will determine when and for what consideration the Company will issue additional Units. Except as otherwise expressly provided in Section 3.4(b) and Section 3.5 below, no Member has the right to make any additional Capital Contribution or obtain additional Units, and each Member specifically waives any preemptive rights; provided, that the foregoing waiver shall not apply to preemptive rights expressly granted in any other agreement between the Company and such Member or as granted in Section 3.4(b) and Section 3.5 below.

3.4 *Additional Contributions; Capital Funding Requirements*.

(a) No Member is or may be required to make any additional Capital Contribution to the Company. In the event that the Managing Member determines that the Company requires additional funds to carry out its purposes, to conduct its business, or to meet its obligations, the Company may (i) solicit Capital Contributions from the Non-Managing Members as provided in Section 3.4(b) below or (ii) borrow funds from such lender(s) on such reasonable terms as the Managing Member may determine, provided that the terms and conditions are disclosed to all Members in advance. No loan or advance made to the Company by any Member shall constitute a Capital Contribution to the Company for any purpose. Each Member acknowledges and agrees that any such loan or advance from a Member shall be repaid prior to making any distributions to the Non-Managing Members pursuant to Section 4.2.

(b) Should the Managing Member determine to solicit Capital Contributions from the Non-Managing Members under this Section 3.4, the Company shall provide written notice to each Non-Managing Member (the “Capital Notice”) specifying the purpose or need for the additional capital, the amount of the capital needed by the Company, the number of Units proposed to be sold to raise such capital, and the terms and price to be paid for such Units being issued. The price to be paid for such Units shall be the fair market value of such Units at the time of such issuance, as determined in good faith by the Managing Member in its sole discretion. Each Non-Managing Member shall have the right to make a proportionate additional Capital Contribution to the Company to maintain its then current Percentage Interest by purchasing a number of Units equal to the total number of Units to be issued by the Company, multiplied by the Percentage Interest of such Member prior to such issuance of Units. Each Non-Managing Member may exercise such right by notifying the Company within 10 days following receipt of the Capital Notice of its desire to purchase additional Units. To the extent that any Non-Managing Member does not exercise its right hereunder, the Managing Member shall provide the Non-Managing Members who have elected to exercise their rights hereunder with the opportunity to purchase a pro rata portion of the remaining unsold Units that are subject to

the Capital Notice (the “Remaining Units”). In such event, such contributing Non-Managing Members may elect to purchase any or all of the Remaining Units within 10 days following notice thereof. To the extent the contributing Members in the aggregate elect to purchase more than the Remaining Units, such Remaining Units will be sold to such Members on a pro rata basis based on the Percentage Interests of such contributing members electing to purchase Remaining Units.

3.5 *No Interest on Capital Contributions.* Members shall not be paid interest on their Capital Contributions.

3.6 *Return of Capital Contributions.* Except as otherwise provided in this Agreement, no Member shall have the right to receive any return of any Capital Contribution.

3.7 *Form of Return of Capital.* If a Member is entitled to receive a return of a Capital Contribution, the Member shall not have the right to receive anything but cash in return of the Member’s Capital Contribution.

3.8 *Capital Accounts.* A separate Capital Account will be maintained for each Member.

Article 4 **ALLOCATIONS AND DISTRIBUTIONS**

4.1 *Allocation of Profit or Loss.* After giving effect to any Regulatory Allocations, if applicable, and subject to any limitations contained therein, Profits, Losses and, to the extent necessary, individual items of income, gain, loss or deduction, of the Company shall be allocated among the Members in proportion to their Percentage Interests.

4.2 *Distributions.*

(a) Distributions of Available Cash. Any distributions of Available Cash shall be made biannually (between May 1st and May 15th and November 1st and November 15th) in such amounts as the Managing Member may determine. Any such distributions of Available Cash shall be made to the Non-Managing Members in proportion to their Percentage Interests.

(b) Distributions for Taxes. If agreed to by the Managing Member, the Company may, to the extent it has Available Cash, make distributions to the Members in proportion to their Percentage Interests to permit the Non-Managing Members to pay Federal income taxes with respect to their allocable shares of income, gain, loss, deduction and credit from the Company for such taxable year. Such distributions shall be made within ninety (90) days of the close of the Company’s taxable year in question; provided, however, that the Managing Member may effect distributions for taxes pursuant to this Section 4.2(b) to take into account estimated tax payments. For purposes of this Section 4.2(b), the Managing Member shall assume that the Non-Managing Members’ income from the Company is subject to the highest marginal federal income tax rate applicable to individuals. The amount otherwise distributable for taxes pursuant to this Section 4.2(b) with respect to a taxable year shall be reduced by any distributions to the Members during such taxable year other than distributions pursuant to this Section 4.2(b).

(c) Distributions in Deemed Liquidation Event. Upon a Deemed Liquidation Event, the assets of the Company shall be paid or distributed as follows:

(i) First, to the payment and discharge of all Company debts and liabilities (other than debts and liabilities assumed by the purchaser of the Company or another entity in connection with the Deemed Liquidation Event), including the expenses and costs associated with the Deemed Liquidation Event, or to the establishment of any reasonable reserves as determined by the Managing Member for contingent or unliquidated debts and liabilities (which reserves shall be the lowest reasonable amount in light of such contingent or unliquidated debts and liabilities), in the order of priority as provided by law;

(ii) Second, to the repayment of any debts or liabilities of the Company to any of the Members or their Affiliates ("Member Debts"), but if the amount available for such repayment shall be insufficient, then pro rata in accordance with the ratio of the amount of Member Debts held by each such Member or Affiliates of such Member to the total amount of all Member Debts;

(iii) Third, to the Non-Managing Members having positive Capital Account balances, in proportion to their respective Capital Account balances, until each of their Capital Account balances is reduced to zero;

(iv) Thereafter, one hundred percent (100%) to the Non-Managing Members in proportion to their Percentage Interests.

(d) Withholding. If required by the appropriate federal, state, or local governmental authority, the Managing Member shall be authorized to withhold from distributions, payments or allocations to Non-Managing Members any amounts required to be withheld and paid over to such governmental authority or authorities pursuant to the Code or provisions of applicable state or local law. All amounts withheld pursuant to the preceding sentence in connection with any payment, distribution or allocation to any Member shall be treated as amounts distributed to such Non-Managing Member pursuant to this Section 4.2.

(e) Limitation on Distributions. Notwithstanding any other provision of this Agreement, distributions shall be permitted under this Section 4.2 only to the extent of the Company's legally available funds for distribution as described in the Act, §18-607.

4.3 *Tax Allocations.*

(a) Tax Allocations Follow Book Allocations. Except as otherwise provided herein, and to the extent permitted by Regulation Section 1.704-1(b)(4)(i) for federal and state income tax purposes each item of income, gain, loss and deduction of the Company shall be allocated to the Non-Managing Members in a manner that equitably reflects the manner its corresponding item of "book" income, gain, loss or deduction has been allocated under Section 4.1.

(b) Contributed Property and Book-ups. To the extent permitted or required by Section 704(c) of the Code and the Regulations thereunder, Regulation Section 1.704-1(b)(2)(iv)(d)(3) and Regulation Section 1.704-1(b)(2)(iv)(f), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Non-Managing Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its Gross Asset Value. If the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its Gross Asset Value in the manner required under Section 704(c) of the Code and the Regulations thereunder. For the avoidance of doubt, this Section 4.3(b) shall only apply to the extent property is contributed to, or deemed contributed to, the Company.

(c) Election under Section 754 of the Code. To the extent an adjustment to the tax basis of any Company asset pursuant to Section 734(b) or Section 743(b) of the Code is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Non-Managing Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

Article 5 MANAGEMENT

5.1 *Management of the Company.*

(a) The Managing Member shall conduct, direct and manage all activities of the Company. Except as otherwise expressly provided in this Agreement, but without limitation on the ability of the Managing Member to delegate its rights and power to other Persons, all management powers over the business and affairs of the Company shall be exclusively vested in the Managing Member, and no Non-Managing Member in its capacity as such shall have any management power over the business and affairs of the Company. In addition to the powers now or hereafter granted to a managing member of a limited liability company under applicable law or that are granted to the Managing Member under any other provision of this Agreement, the Managing Member, subject to Section 5.3, shall have full power and authority to do all things and on such terms as it determines to be necessary or appropriate to conduct the business of the Company and to effectuate the purposes of the Company set forth in Section 2.3, including the following:

- (i) the making of any expenditures, the borrowing of money for ordinary course operations of the business; notwithstanding the foregoing, any financing or refinancing for the development of lodging facility(ies) will require the approval of a Unit Majority;

- (ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Company;
- (iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Company or the merger or other combination of the Company with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 5.3);
- (iv) the use of the assets of the Company (including cash on hand) for any purpose consistent with the terms of this Agreement;
- (v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Company under contractual arrangements to all or particular assets of the Company, with the other party to the contract to have no recourse against the Managing Member or its assets other than its interest in the Company, even if the same results in the terms of the transaction being less favorable to the Company than would otherwise be the case);
- (vi) the distribution of cash held by the Company to the Members in accordance with Section 4.2;
- (vii) the selection and dismissal of employees (including employees having titles such as “president,” “vice president,” “secretary” and “treasurer”) and agents, internal and outside attorneys, accountants, consultants and contractors (including the third-party service provider pursuant to the Management Services Agreement) and the determination of their compensation and other terms of employment or hiring;
- (viii) the maintenance of insurance for the benefit of the Company and the Members;
- (ix) the control of any matters affecting the rights and obligations of the Company, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;
- (x) the indemnification of any Person against liabilities and contingencies to the extent permitted by law.

The foregoing list of matters for which the Managing Member has full authority shall not be construed as to limit the general express or implied powers granted to the Managing Member in this Agreement, or any additional powers provided by applicable law.

(b) Notwithstanding any other provision of this Agreement to the contrary, the Members expressly acknowledge and agree that it is in the best interests of the Company to lease a portion of the Property to the Company's Member Lake Placid Hospitality LLC pursuant to a written lease agreement to be executed between the Company and Lake Placid Hospitality LLC and subject to the Senior Permitted Lender's consent.

(c) Notwithstanding anything to the contrary in this Agreement, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Covered Person (including the Managing Member). No Covered Person (including the Managing Member) who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Company, shall have any duty to communicate or offer such opportunity to the Company, and such Covered Person (including the Managing Member) shall not be liable to the Company, to any Member or any other Person bound by this Agreement for breach of any duty otherwise existing at law, in equity or otherwise, by reason of the fact that such Covered Person (including the Managing Member) pursues or acquires for itself, directs such opportunity to another Person or does not communicate such opportunity or information to the Company, provided such Unrestricted Person does not engage in such business or activity using confidential or proprietary information provided by or on behalf of the Company to such Covered Person.

5.2 Replacement of Fiduciary Duties. Notwithstanding any other provision of this Agreement, to the extent that, at law or in equity, the Managing Member or any other Covered Person would have duties (including fiduciary duties) to the Company, to another Member, to any Person who acquires an interest in a Membership Interest or to any other Person bound by this Agreement, all such duties (including fiduciary duties) are hereby eliminated, to the fullest extent permitted by law, and replaced with the duties expressly set forth herein. The elimination of duties (including fiduciary duties) and replacement thereof with the duties expressly set forth herein are approved by the Company, each of the Members, each other Person who acquires an interest in a Membership Interest and each other Person bound by this Agreement.

5.3 Restrictions on the Managing Member's Authority. The Managing Member may not sell, exchange or otherwise dispose of all or substantially all of the assets of the Company in a single transaction or a series of related transactions (including by way of merger, consolidation, other combination) without the approval of a Unit Majority.

5.4 Reimbursement of Managing Member.

(a) Except as provided in Section 5.4(b) and Section 5.4(c), the Managing Member shall not be compensated for its services as a managing member of the Company.

(b) The Managing Member shall be reimbursed on a monthly basis, or such other basis as the Managing Member may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Company (including salary, bonus, incentive compensation and other amounts paid to any Person to perform services for the Company or for the Managing Member in the discharge of its duties to the Company), and (ii) all other expenses allocable to the Company or otherwise incurred by the Managing Member or its Affiliates in connection with managing and operating the Company's business and affairs (including

expenses allocated to Managing Member by its Affiliates). The Managing Member shall determine the expenses that are allocable to the Company. Reimbursements pursuant to this Section 5.4 shall be in addition to any reimbursement to the Managing Member as a result of indemnification pursuant to Section 7.5. This provision does not affect the ability of the Managing Member and its Affiliates to enter into an agreement to provide services to the Company for a fee or otherwise than for cost.

(c) The Managing Member will be entitled to an annual fee of one percent (1%) of the gross revenues of the Company to compensate the Managing Member for the management of the Company's assets, including the preparation of tax returns and biennial reports, accounting services and other management activities (the "Asset Management Fee"). The Asset Management Fee shall be payable to the Managing Member or its assignee within thirty (30) days following the finalization of the accounting books in respect of each fiscal year of the Company. To the extent that the Managing Member contracts, or causes the Company to contract, with a third-party to perform asset management services such as those listed immediately above, the Company shall deduct an amount from the Asset Management Fee payable to the Managing Member equal to the amounts paid to such third-party for its asset management services during the fiscal year.

5.5 *Action by Written Consent.* Any action taken by the Managing Member on behalf of the Company may be taken by a consent in writing, setting forth the action to be taken, signed and dated by the Managing Member.

Article 6

MEETINGS OF MEMBERS

6.1 *Place of Meetings.* Meetings of Non-Managing Members shall be held at such place within or without the State of New York as determined by the Managing Member, pursuant to proper notice.

6.2 *Meetings.* All acts of Non-Managing Members to be taken pursuant to this Agreement shall be taken in the manner provided in this Article 6. Special meetings of the Non-Managing Members may be called by the Managing Member upon request of Non-Managing Members owning 50% or more of the Units of the class or classes for which a meeting is proposed. Within a reasonable amount of time after receipt of such a call from Non-Managing Members, the Managing Member shall send a notice of the meeting to the Non-Managing Members either directly or indirectly. A meeting shall be held at a time and place determined by the Managing Member on a date not less than 10 days nor more than 60 days after the time notice of the meeting is given as provided in Section 6.3.

6.3 *Notice of Meetings.* A notice of all meetings, stating the place, day and hour of the meeting shall be given to each Non-Managing Member at his or her address shown on the records of the Company at least ten (10) days prior thereto by the mailing of written notice, or at least two (2) days prior thereto by personal delivery of written notice or by telephonic or telegraphic notice, or other electronic means of notice (and the method of notice need not be the same to each Member). If notice is mailed, the notice shall be deemed effective when deposited

in the United States mail properly addressed with postage thereon prepaid. If sent by facsimile or other electronic means, such notice shall be deemed effective when the facsimile machine or other electronic means prints or acknowledges that the transmission was successfully executed. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Members need be specified in the notice.

For purposes of determining the Non-Managing Members who are Record Holders of the class or classes of Units entitled to notice of or to vote at a meeting of the Non-Managing Members or to give approvals without a meeting as provided in Section 6.7, the Managing Member shall set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting or (b) in the event that approvals are sought without a meeting, the date by which such Non-Managing Members are requested in writing by the Managing Member to give such approvals.

6.4 *Waiver of Notice.* Attendance of a Non-Managing Member at a meeting shall constitute a waiver of notice of the meeting, except where such Non-Managing Member attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Notification of a meeting may also be waived in writing. Attendance at a meeting is not a waiver of any right to object to the consideration of the matters required to be included in the notice of the meeting, but not so included, if the objection is expressly made at the meeting.

6.5 *Quorum and Voting.* The presence, in person or by proxy, of holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called (including Outstanding Units deemed owned by the Managing Member and its Affiliates) shall constitute a quorum at a meeting of Non-Managing Members of such class or classes unless any such action by the Non-Managing Members requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage. At any meeting of the Non-Managing Members duly called and held in accordance with this Agreement at which a quorum is present, the act of Non-Managing Members holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote at such meeting shall be deemed to constitute the act of all Non-Managing Members, unless a different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the Non-Managing Members holding Outstanding Units that in the aggregate represent at least such different percentage shall be required; provided, however, that if, as a matter of law or provision of this Agreement, approval by plurality vote of Members (or any class thereof) is required to approve any action, no minimum quorum shall be required. The Non-Managing Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the exit of enough Non-Managing Members to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement.

6.6 *Action by Written Consent.* Any action that may be taken at a meeting of the Non-Managing Members may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed and dated by Non-Managing Members holding the

requisite Percentage Interest and such consent shall have the same force and effect as a vote of the signing Members at a meeting duly called and held pursuant to this Article 6.

6.7 *Proxies.* Non-Managing Members may vote at any meeting either in person or by proxy executed in writing and delivered to another Non-Managing Member. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

6.8 *Conference Telephone Meetings.* Meetings of the Non-Managing Members may be held by means of conference telephone or similar communications equipment so long as all Persons participating in the meeting can speak to and hear each other. Participation in a meeting by means of conference telephone shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business thereat on the ground that the meeting is not lawfully called or convened.

Article 7

LIMITATION OF LIABILITY; INDEPENDENT ACTIVITIES; INDEMNIFICATION

7.1 *Limitation of Liability.* To the fullest extent permitted by law, no Covered Person or any of its employees or Persons acting on its behalf shall be liable for monetary damages to the Company, the Members, or any other Persons who have acquired interests in Membership Interests or are bound by this Agreement, for losses sustained or liabilities incurred, of any kind or character, as a result of any act or omission of an Covered Person or any of its employees or Persons acting on its behalf unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Covered Person or any of its employees or Persons acting on its behalf acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Covered Person's conduct was unlawful..

7.2 *Limitations to Third Parties.* The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member of the Company shall be obligated personally for any such debt, obligation or liability by reason of being a Member of the Company.

7.3 *Failure to Observe Formalities.* A failure to observe any formalities or requirements of this Agreement, the Articles of Organization or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

7.4 *Independent Activities.* Except as otherwise provided in a signed non-competition agreement, any Member may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, without limitation, the ownership, financing, management, employment by, lending or otherwise participating in businesses that are similar to the business of the Company, and neither the Company nor the other Members shall have any right by virtue of this Agreement in and to such independent

ventures as to the income or profits therefrom and shall not be liable for a breach of duty of loyalty or any other duty.

7.5 *Indemnification.*

(a) Indemnification. To the fullest extent permitted by applicable law, each Member and its directors, officers, employees and agents (each, a “Covered Person”) shall be entitled to indemnification from the Company from and against any all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, in which any Covered Person may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as a Covered Person and acting (or omitting or refraining to act) in such capacity on behalf of or for the benefit of the Company; *provided, that* the Covered Person shall not be indemnified and held harmless pursuant to this Agreement if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Covered Person is seeking indemnification pursuant to this Agreement, the Covered Person acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Covered Person’s conduct was unlawful; and *further provided, that* the Company shall have no obligation to indemnify a Covered Person unless (i) such indemnification obligation is fully subordinated to the Permitted Senior Debt, and (ii) the Company has cash flow in excess of the amount required to pay the Permitted Senior Debt sufficient to pay such indemnification obligation. Any indemnity under this Section 7.5(a) shall be provided out of and to the extent of Company assets only, and no other Covered Person shall have any personal liability on account thereof.

(b) Notice. In the event that any claim, demand, action, suit or proceeding shall be instituted or asserted or any loss, damage or claim shall arise in respect of which indemnity may be sought by a Covered Person pursuant to Section 7.5(a), such Covered Person shall promptly notify the Company thereof in writing. Failure to provide notice shall not affect the Company’s obligations hereunder except to the extent the Company is actually prejudiced thereby.

(c) Contest. The Company shall have the right, exercisable subject to the approval of the disinterested Covered Persons, to participate in and control the defense of any such claim, demand, action, suit or proceeding, and in connection therewith, to retain counsel reasonably satisfactory to each Covered Person, at the Company’s expense, to represent each Covered Person and any others the Company may designate in such claim, demand, action, suit or proceeding. The Company shall keep the Covered Person advised of the status of such claim, demand, action, suit or proceeding and the defense thereof and shall consider in good faith recommendations made by the Covered Person with respect thereto.

Article 8

ADMISSIONS AND TRANSFERS

8.1 *Transfers Generally.* Subject to Section 8.4, Section 8.5, Section 8.6, Section 8.7, and Section 8.9, no Person may Transfer all or any portion of or any interest or rights in the Person's Interest without the prior written consent of the Members holding a Unit Majority, which consent may or may not be provided at the sole discretion of the Members. To be valid, any Transfer of an Interest must satisfy the following conditions:

(a) The Transfer must be in compliance with the terms of this Agreement and shall be subject to any lender approvals required under the instruments governing the Company's debt, as applicable;

(b) The transferor must deliver to the Company written evidence of a valid Transfer under the terms of this Agreement and a written agreement of the transferee (other than an existing Member) to be bound by the terms of this Agreement; and to the appointment of the Managing Member as the transferee's attorney-in-fact as set forth in Section 11.2 hereof;

(c) The Transfer must comply with applicable federal and state securities laws.

8.2 *Reasonableness of Restrictions.* Each Member hereby acknowledges the reasonableness of the prohibition in this Article 8 in view of the purposes of the Company and the relationship of the Members. The Transfer of any Interest or portion thereof in violation of the prohibition contained in this Article 8 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom an Interest or portion thereof is attempted to be Transferred in violation of this Article 8 shall not be entitled to become a Member, to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Units.

8.3 *Admission of New Members.* Subject any applicable approvals required by lenders pursuant to the instruments governing the Company's debt or approvals required by Non-Managing Members pursuant to Section 3.1(f), the Company may admit new Members. A Person shall be deemed admitted as a Member at the time such Person (i) has executed this Agreement, or a counterpart thereof, respectively; (ii) has delivered its Capital Contribution to the satisfaction of the Managing Member; and (iii) has met the eligibility requirements established by the Managing Member for membership.

8.4 *Tag Along.* If (i) the holder or holders of a Unit Majority wish to Transfer any of the Units owned by them to a non-Affiliate third party (an "Exit Seller"), such Exit Seller shall provide all the other Members the option (the "Tag Along Option"), exercisable by the other Members in their discretion, to join in such sale and sell all its Units in the Company to such Third Party on the same terms and conditions as the Exit Seller. The Exit Seller shall send written notice of a proposed sale of all of its Units to the other Members not less than twenty (20) days prior to the proposed closing (to the extent practicable) which notice shall provide a

description of such proposed sale in reasonable detail. The other Members must send written notice of any election to the Exit Seller and all other Members within 10 Business Days of their receipt of the Exit Seller's notice. TIME IS OF THE ESSENCE with respect to said response notice and the failure to send such response on a timely basis shall be deemed a decision not to exercise any option available. If any Member has exercised its option with respect to the Tag Along Option and the proposed third-party buyer does not wish to buy all of the Units being offered, then the maximum Units that the buyer is willing to buy shall be allocated pro-rata among the selling Members based upon each selling Member's Units when compared to the aggregate of all Units being sold. Notwithstanding the foregoing, the provisions of this Section 8.4 shall not apply to any pledge or hypothecation of Units made pursuant to a bona fide loan transaction that creates a security interest.

8.5 *Drag Along.* In the event that holders of a Unit Majority shall desire to Transfer Units, representing a majority of the Units, owned by them at any point in time in a single transaction or series of related transactions to a non-Affiliate third party, such holders may, at their option, demand that all other Members sell all (and only all) of the Units owned by such other Members at such time at the same price and subject to the same terms and conditions so that the purchaser or purchasers may acquire one hundred percent (100%) of the outstanding equity interests in the Company. In the event that holders of a majority of the Units then outstanding elect to make such demand, they shall so advise each of the other Members by written notice specifying the price and terms for such purchase. Each of the other Members does hereby agree that it shall sell all of the Units it owns at the price and subject to the other terms and conditions arranged by such holders of a majority of the Units then outstanding and shall deliver duly endorsed certificates representing the Units it owns at a closing scheduled not sooner than twenty (20) calendar days after the date of such notice and shall also execute such other agreements, documents and instruments as are to be executed by such holders of a Unit Majority in connection with any such sale. Any fees and expenses incurred in connection with a sale under this Section 8.5 and for the benefit of all participating Members (it being understood that costs incurred by or on behalf of a Member for such Member's sole benefit will not be considered for the benefit of all participating Members), to the extent not paid or reimbursed by the Company or the transferee, shall be shared by all participating Members on a pro rata basis, based on the consideration received by each participating Member.

8.6 *Right of First Offer.*

(a) If a Member desires to Transfer any of the Units ("ROFO Units") owned thereby to a third party or another Member (a "Third Party Transfer"), then such member (a "Transferring Member") shall, prior to engaging in any discussions with regard to, or effecting, a Third Party Transfer, first deliver to the Company a notice of proposed Transfer (the "ROFO Notice"), which ROFO Notice shall (i) specify the number of Units proposed to be transferred by the Transferring Member and the aggregate amount and type of consideration (which must be cash consideration) that the Transferring Member would accept in connection therewith, and (ii) provide an offer by the Transferring Member to sell to other Members (the "Non-Transferring Members") all (but not less than all) of the ROFO Units, as of the date of such ROFO Notice, in each case on the terms and conditions proposed in such ROFO Notice.

(b) Immediately upon receipt of the ROFO Notice, the Company shall send a copy thereof to the Non-Transferring Member that has the largest Percentage Interest as of the date of the ROFO Notice. The Non-Transferring Member having the largest Percentage Interest shall have the exclusive right for two full Business Days to purchase all (but not less than all) of the ROFO Units. Such Non-Transferring Member may exercise its right of first offer by delivering written notice (a “ROFO Exercise Notice”) to the Company at any time prior to the close of business on the second full Business Day following receipt of the ROFO Notice, which ROFO Exercise Notice shall specify the proposed closing date for the purchase of such ROFO Units (which shall not be earlier than 10 Business Days and not later than 30 Business Days following the delivery of the ROFO Exercise Notice.

(c) Upon the earlier of (i) receipt by the Company of a written notice from the Non-Transferring Member and (y) the close of business on the second day following receipt of the ROFO Notice, the Company shall send a copy of the ROFO Notice to the Non-Transferring Member having the second largest Percentage Interest, who shall then have the exclusive right for two full Business Days to purchase all but not less than all of the ROFO Units. This process shall be repeated for each of the Members owning successively smaller Percentage Interests for a period of time (the “Offer Period”) until the earlier of (i) the delivery of a ROFO Exercise to the Company, and (ii) all of the Members have had the opportunity to purchase the ROFO Units pursuant to the foregoing process. The Transferring Member shall refrain from engaging in any discussions with any third party regarding a transfer of the ROFO Units during the Offer Period.

(d) If Offer Period expires and a ROFO Exercise Notice is not delivered to the Company, the Transferring Member may, subject to compliance with the terms set forth in this Agreement, the ROFO Units at a purchase price per Unit not less than one hundred percent (100%) of the price set forth in the ROFO Notice and otherwise on terms no more beneficial in any material respect to such transferee than set forth in the ROFO Notice; provided, however, that the admission of any such Member shall be subject to the approval of the Company’s lenders if required under the instruments governing the Company’s debt; provided, further, that if the Transferring Member shall fail to consummate such sale(s) within one hundred eighty (180) days following the delivery of the ROFO Exercise Notice, the ROFO Units shall again become subject to all of the restrictions on Transfer set forth in this Agreement.

8.7 *Withdrawal of Managing Member.*

(a) The Managing Member shall be deemed to have withdrawn as the managing member of the Company upon the occurrence of any one of the following events (each such event herein referred to as an “Event of Withdrawal”):

(i) The Managing Member voluntarily withdraws as the managing member of the Company by giving written notice to the other Members pursuant to Section 8.7(b);

(ii) If the Managing Member is a Person, such Managing Member becomes unable to fulfill his or her obligations hereunder by reason of death or disability of the Managing Member;

(iii) The Managing Member (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Managing Member in a proceeding of the type described in clauses (A) through (C) of this Section 8.6(a)(iii); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the Managing Member or of all or any substantial part of its properties;

(iv) A final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the Managing Member;

(v) (A) if the Managing Member is a corporation, a certificate of dissolution or its equivalent is filed for the Managing Member, or 90 days expire after the date of notice to the Managing Member of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) if the Managing Member is a partnership or a limited liability company, the dissolution and commencement of winding up of the Managing Member; (C) if the Managing Member is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; and (D) if the Managing Member is a natural person, his death or adjudication of incompetency; and (E) otherwise upon the termination of the Managing Member; or

(vi) The buyer of the Pledged Interest at a public or private sale of the Pledged Interest, conducted pursuant to the Pledge Agreement and in accordance with the requirements of the New York Uniform Commercial Code, elects to replace the Managing Member.

(b) If an Event of Withdrawal specified in Section 8.7(a)(iii), (iv) or (v)(A), (B), (C), or (E) occurs, the withdrawing Managing Member shall give notice to the Non-Managing Members within 30 days after such occurrence.

(c) If the Managing Member gives a notice of withdrawal pursuant to Section 8.7(a)(i) or if there is an Event of Withdrawal specified in Section 8.7(a)(vi), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor Managing Member.

(d) The Members hereby agree that only the Events of Withdrawal described in this Section 8.7 shall result in the withdrawal of the Managing Member from the Company.

8.8 *Withdrawal of Non-Managing Members.* No Non-Managing Member shall have any right to withdraw from the Company; provided, however, a Non-Managing Member that transfers its Units in accordance with this Agreement shall cease to be a Non-Managing Member with respect to the Units so transferred.

8.9 *Transfers of the Pledged Interest.* The following Transfers are each exempt from the provisions of Section 8.4, Section 8.5, Section 8.6, and Section 8.8, and shall not require the prior written consent of the Members holding a Unit Majority under Section 8.1: (a) the pledge of the Pledged Interest to CHI under the Pledge Agreement, (b) any transfer of ownership of the Pledged Interest to CHI, or its designee or nominee, pursuant to CHI's exercise of its remedies under the Pledge Agreement following an Event of Default, and (c) any transfer of ownership of the Pledged Interest to a buyer of the Pledged Interest at a public or private sale of the Pledged Interest conducted pursuant to the Pledge Agreement and in accordance with the requirements of the New York Uniform Commercial Code.

Article 9

DISSOLUTION AND LIQUIDATION

9.1 *Events of Dissolution.* The Company shall be dissolved upon the happening of any of the following events:

- (a) an election to dissolve the Company by the Managing Member that is approved by the holders of a Unit Majority;
- (b) the Managing Member withdraws and a successor Managing Member is not elected pursuant to Section 8.7(c);
- (c) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Act; or
- (d) at any time there are no Members, unless the Company is continued without dissolution in accordance with the Act.

9.2 *Right to Continue.* The death, retirement, resignation, expulsion, adjudication of incapacity, bankruptcy of a Non-Managing Member or the occurrence of any other event which otherwise terminates the continued membership of a Non-Managing Member in the Company shall not result in the dissolution of the Company.

9.3 *Procedure for Winding Up and Dissolution.* If the Company is dissolved, the Managing Member shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed pursuant to Section 4.2(c) hereof. This Agreement shall remain in full force and effect during the period of winding up.

9.4 *Allocation of Profit and Loss in Liquidation.* The allocation of Profit, Loss and other tax items or attributes following an dissolution event, including gain or loss from capital events occurring during the course of winding up, shall be determined in accordance with the provisions of Article 4 and shall be credited or charged to the Capital Accounts of the Members in the same manner as such Article 4 would require in the absence of dissolution and winding up.

9.5 *No Obligation to Restore Negative Capital Account Balance on Liquidation.* Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the

meaning of Regulation Section 1.704-1(b)(2)(ii)(g), if any Member has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to the Company, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

9.6 *Return of Contribution Nonrecourse to Other Members.* Except as provided by law or as expressly provided in this Agreement, upon dissolution each Member shall look solely to the Company properties for the return of its Capital Contribution. If the property remaining after the payment or discharge of liabilities of the Company is insufficient to return the Capital Contributions of the Members, no Member shall have recourse against any other Member.

9.7 *Termination.* The Managing Member shall comply with any requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets. Upon completion of the winding up, liquidation and distribution of the assets upon filing a Certificate of Cancellation pursuant to the Act, the Company shall be deemed terminated.

Article 10

BOOKS, RECORDS, AND ACCOUNTING

10.1 *Bank and Brokerage Accounts.* All funds of the Company shall be deposited in a bank account or brokerage accounts opened in the Company's name. The Managing Member shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

10.2 Books and Records.

(a) Generally. The Managing Member shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the Articles of Organization and this Agreement, all amendments thereto and any prior agreements no longer in effect, executed copies of any written powers of attorney pursuant to which this Agreement and the Articles of Organization and all amendments thereto have been executed, copies of the Company's federal and local tax returns for each year, and a current and a past list of the names and last known mailing addresses of all Non-Managing Members and the Managing Member. In addition, unless contained in the Articles of Organization, the records shall include a written statement of: (i) the amount of cash and a description of the agreed value of the other property or services contributed by each Non-Managing Member; (ii) times at which or events on the happening of which any additional contributions agreed to be made by each Non-Managing Member are to be made; and (iii) any

right of a Non-Managing Member to receive distributions which include a return of all or any part of the Non-Managing Member's contribution.

(b) Maintenance. The books and records shall be maintained in accordance with sound accounting practices consistently applied and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

(c) Reimbursement for Associated Costs. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

10.3 *Reports.*

(a) Annual Report. The Managing Member shall file or cause to be filed an biennial report as required by the State of New York.

(b) Reports to Members. On or before April 1 of each taxable year, the Managing Member shall deliver to the Members (and any unadmitted assignee), that tax information concerning the Company necessary for preparing the Member's income tax returns for the prior year.

10.4 *Tax Matters Representative.*

(a) Appointment; Resignation. The Members hereby appoint Lake Placid Hospitality LLC as the "partnership representative" (as defined in Section 6223(a) of the Internal Revenue Code of 1986 (the "Code") (the "Tax Matters Representative"). The Members hereby appoint Bhavik Jariwala as the sole person authorized to act on behalf of the Tax Matters Representative in any US federal tax audits or proceedings (the "Designated Individual"). Any person that the Members appoint as the Designated Individual shall be treated as, and subject to the requirements and obligations of, the Tax Matters Representative for purposes of this Section 10.4. The Tax Matters Representative or Designated Individual can be removed at any time by a vote of a majority of the Members. The Tax Matters Representative shall resign if it is no longer a Member, and the Designated Individual shall resign if it is no longer a member of Lake Placid Hospitality LLC. In the event of the resignation or removal of the Tax Matters Representative or Designated Individual, a majority of the other Members or a majority of the Members in the case of the resignation or removal of the Designated Individual shall select a replacement Tax Matters Representative or Designated Individual.

(b) Tax Examinations and Audits. The Tax Matters Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by taxing authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Tax Matters Representative shall each have sole authority to act on behalf of the Company in any such examinations and any resulting administrative or judicial proceedings, and shall have sole discretion to determine whether the Company (either on

its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority.

(c) BBA Elections. The Tax Matters Representative, in its sole discretion, shall have the right to take any actions (including making any elections) that are available to be made or taken by the Tax Matters Representative or the Company under the BBA Procedures (including an election under Code Section 6226), and the Members shall take such actions requested by the Tax Matters Representative. To the extent that the Tax Matters Representative does not cause the Company to make an election under Code Section 6221(b) or Code Section 6226, (i) the Company shall use commercially reasonable efforts to make any modifications available under Code Section 6225(c)(3), (4), and (5) and (ii) the Members shall take such actions as requested by the Tax Matters Representative, including filing amended tax returns and paying any tax due under Code Section 6225(c)(2)(A) or paying any tax due and providing applicable information to the Internal Revenue Service under Code Section 6225(c)(2)(B).

(d) Tax Returns and Tax Deficiencies. Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member or former Member (including penalties, additions to tax or interest imposed with respect to such taxes, and any taxes imposed pursuant to Code Section 6226) shall be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

(e) Tax Returns. The Tax Matters Representative shall cause to be prepared and timely filed all tax returns required to be filed by or for the Company.

(f) Indemnification. The Company shall defend, indemnify, and hold harmless the Tax Matters Representative against any and all liabilities sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as Tax Matters Representative, so long as such act or decision was done or made in good faith and does not constitute gross negligence or willful misconduct.

(g) Survival. The obligations of each Member or former Member under this Section 10.4 shall survive the transfer or redemption by such Member of its membership interest, the termination of this Agreement, or the dissolution of the Company.

10.5 *Title to Company Property*. All property acquired by the Company shall be acquired and held by the Company in its name.

Article 11

AMENDMENTS; GENERAL PROVISIONS

11.1 *Assurances*. Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Managing Member deems appropriate to comply with the requirements of law for the formation and operation of the

Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

11.2 *Limited Power of Attorney.* Subject to the provisions of this Agreement, each of the Members signatory hereto irrevocably constitutes and appoints the Managing Member as his or her true and lawful attorney-in-fact in his or her name, place and stead to make, execute, acknowledge and file (a) any instrument that may be required by the Company under the laws of the State of New York or that the Managing Member may deem advisable to file; (b) any and all immaterial or ministerial amendments or modifications of the instruments described in the preceding subdivision (a), subject to applicable law; and (c) all documents which may be required to effectuate the dissolution and termination of the Company following the occurrence of an event of dissolution as set forth in Section 9.1, it being expressly understood and intended by each of the Members that the foregoing power of attorney is coupled with an interest.

11.3 *Notifications.* Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a “Notice”) required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. Any Notice to be given hereunder by the Company shall be given by the Managing Member. A Notice must be addressed to any Member at the Member’s last known address on the records of the Company. A Notice to the Company must be addressed to the Company’s principal office. A Notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A Notice that is sent by mail will be deemed given three (3) Business Days after it is mailed. Any party may designate, by Notice to all of the others, substitute addresses or addressees for Notices; thereafter, Notices are to be directed to those substitute addresses or addressees.

11.4 *Specific Performance.* The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to remedy the injury fully. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies that may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act that would constitute a breach; or (ii) compelling the performance of any obligation that, if not performed, would constitute a breach.

11.5 *Amendment.*

(a) Each Member agrees that the Managing Member, without the approval of any Member, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(i) a change in the name of the Company, the location of the principal office of the Company, the registered agent of the Company or the registered office of the Company;

(ii) admission, substitution, withdrawal or removal of Members in accordance with this Agreement;

(iii) a change that the Managing Member determines to be necessary or appropriate to qualify or continue the qualification of the Company as a limited liability company;

(iv) a change that the Managing Member determines (i) does not adversely affect the Non-Managing Members considered as a whole or any particular class of Membership Interests as compared to other classes of Membership Interests in any material respect or (ii) to be necessary or appropriate to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Act);

(v) a change in the fiscal year or taxable year of the Company and any other changes that the Managing Member determines to be necessary or appropriate as a result of a change in the fiscal year or taxable year of the Company;

(vi) an amendment that is necessary, in the Opinion of Counsel, to prevent the Company, or the Managing Member or its directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or “plan asset” regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(vii) an amendment that the Managing Member determines to be necessary or appropriate in connection with the authorization or issuance of any class or series of Membership Interests in accordance with this Agreement;

(viii) any amendment expressly permitted in this Agreement to be made by the Managing Member acting alone; or

(ix) any other amendments substantially similar to the foregoing.

(b) The Managing Member shall provide each Non-Managing Member with not fewer than thirty (30) days’ notice prior to effecting any amendment of this Agreement pursuant to Section 11.5(a) unless the Managing Member determines such amendment is required as a result of exigent circumstances, in which case the Managing Member shall provide as much notice to the Non-Managing Members as is possible under such circumstances.

11.6 Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty.

11.7 Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of New York.

11.8 *Section Titles.* The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

11.9 *Successors and Assigns.* This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

11.10 *Resolution of Disputes.*

(a) Mediation/Arbitration. In the event of any dispute arising under or relating to this Agreement, the parties hereby agree to mediate any such dispute before a mediator from Judicial Dispute Resolution, LLC or Judicial Arbitration and Mediation Services in New York, New York. If the dispute is not resolved within sixty (60) days from the request for mediation, such dispute shall be submitted to arbitration under the Commercial Arbitration Rules before an arbitrator appointed by the American Arbitration Association in New York, New York.

(b) Jurisdiction and Venue. Any mediation, arbitration or lawsuit involving any dispute or matter arising under this Agreement may only be brought before the appropriate tribunal or court in New York County, New York. All Members hereby consent to the exercise of personal jurisdiction by any such tribunal or court with respect to any such proceeding.

11.11 *Terms.* Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

11.12 *Separability of Provisions.* Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

11.13 *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

11.14 *Consents.* Unless otherwise explicitly provided for herein, any and all consents, agreements, or approvals provided for or permitted by this Agreement shall be in writing, and a signed copy thereof shall be filed and kept with the books of the Company.

11.15 *Legends.* If certificates for any Unit or Units are issued, each such certificate shall bear such legends as may be required by applicable federal and state laws, or as may be deemed necessary or appropriate by the Managing Member to reflect restrictions upon Transfer contemplated herein.

11.16 *Third-Party Beneficiaries.* The Permitted Senior Lender and CHI are each an intended third-party beneficiary of Section 2.3 of this Agreement, and CHI is the intended third-party beneficiary of Section 8.9 of this Agreement. Each Member agrees that any Covered Person shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Covered Person.

[Remainder of page intentionally left blank]

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

MANAGING MEMBER:

LAKE PLACID HOSPITALITY LLC

By: 
Bhavik Jariwala, Managing Member

SOLE MEMBER:

LAKE PLACID HOSPITALITY LLC

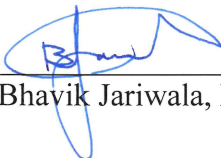
By: 
Bhavik Jariwala, Managing Member

EXHIBIT A

MEMBERS

Managing Member

<u>Name</u>	<u>Address</u>
Lake Placid Hospitality LLC	PO Box 2648 Malta, NY 12020

All Members

<u>Name</u>	<u>Address</u>	<u>Initial Capital Contribution</u>		<u>Common Units Held</u>	<u>Percentage Interest</u>
		<u>Asset</u>	<u>Value</u>		
Lake Placid Hospitality LLC	PO Box 2648 Malta, NY 12020	Real Property	\$5,250,000.00 ¹	10,000	100%
		Choice Hotels key money	\$4,000,000.00 ²		
		ESD grant	\$3,000,000.00		
		Soft costs	\$889,186.65 ³		
Total			\$13,139,186.65	10,000	100%

¹ Value based on current Cushman Wakefield valuation as of April 6, 2021.

² \$2,000,000 mezzanine loan and \$2,000,000 forgivable loan pursuant to the terms of the incentive promissory note.

³ I.e., architecture, engineering, and attorneys' fees paid by Lake Placid Hospitality LLC or its members.

EXHIBIT B

Articles of Organization of Dual Development LLC

(Attached)

ANNEX I

DEFINITIONS

“Act” means the New York Limited Liability Company Law, as amended from time to time.

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in the Member’s Capital Account as of the end of the relevant Allocation Period, after giving effect to the following adjustments:

(i) The Capital Account shall be credited with the amounts which the Member is deemed obligated to restore pursuant to Regulation Sections 1.704-2(g)(1) and (i)(5) (i.e., the Member’s share of Minimum Gain and Member Minimum Gain); and

(ii) The Capital Account shall be debited with the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specified Person.

“Agreement” means this Agreement, as amended from time to time.

“Allocation Period” means (i) the period beginning on the date hereof and ending December 31, 2016; (ii) any subsequent Fiscal Year; or (iii) any portion of a period described in clause (i) or (ii) for which the Company is required to allocate Profit, Loss and other items of Company income, gain, loss or deduction pursuant to Article 4 of this Agreement.

“Available Cash” means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses (including FF&E and other reserves), debt payments, capital improvements, and replacements for the prudent conduct of the Company’s business as determined by the Managing Member.

“Business Day” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of New York shall not be regarded as a Business Day.

“Capital Account” means the account to be maintained by the Company for each Member in accordance with the following provisions:

(i) A Member's Capital Account shall be credited with the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member (other than liabilities secured by Company property distributed to the Member), the Member's allocable share of Profit, and any item in the nature of income or gain specially allocated to the Member pursuant to the provisions of Article 4 (other than Section 4.4(b)); and

(ii) A Member's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Member (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), the amount of the Member's individual liabilities that are assumed by the Company (other than liabilities that reduce the amount of any Capital Contribution made by such Member), the Member's allocable share of Loss, and any item in the nature of expenses or losses specially allocated to the Member pursuant to the provisions of Article 4 (other than Section 4.4(b)).

If any Interest is Transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the Transferred Interest. If the Gross Asset Value of Company property is adjusted as provided herein, the Capital Account of each Member shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" means the total amount of cash and the Gross Asset Value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed by the Company or to which the assets are subject.

"Change in Control" means any (i) merger, sale of equity interests, or similar transaction or series of related transactions pursuant to which an unaffiliated third party acquires majority voting power of the Company's Membership Interests, or (ii) a sale or transfer of all or substantially all of the Company's assets to an unaffiliated third party; *provided, however*, that the term "Change in Control" excludes any reorganization of the Company approved in accordance with Section 5.3 and any Transfer specified in Section 8.9.

"CHI" means Choice Hotels International, Inc., its successors, and assigns.

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"Company" means Dual Development LLC, a New York limited liability company.

"Contribution Agreement" means that certain Contribution Agreement, made as of December 29, 2021, by and among Lake Placid Hospitality and the Former Members.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies, or activities of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Covered Person” has the meaning set forth in Section 7.5(a).

“Deemed Liquidation Event” means any of (i) a liquidation, dissolution, or involuntary winding up of the Company, (ii) a consolidation or merger involving the Company except any such merger or consolidation involving the Company in which the Units of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (1) the surviving or resulting party or (2) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent of such surviving or resulting party, or (iii) any transaction that results in a Change in Control of the Company.

“Designated Individual” has the meaning as set forth in Section 10.4.

“Development Fee” means the fee of \$1,000,000 payable to Bhavik Jariwala for his services related to the development of the Property at the completion of the development of the Property into a hotel or, if the Company’s budget does not permit payment in full at that time, then the balance shall be evidenced by a promissory note by the Company and paid as an operations cost in the amount of \$200,000 per year until paid in full.

“Fair Market Value” means the amount a willing buyer would pay a willing seller, neither under any compulsion to buy or sell and both reasonably informed of all material facts concerning the property that is being valued.

“Franchise Agreement” means that Franchise Agreement entered into by Choice Hotels International, Inc., as franchisor, and the Former Members, as franchisees, and assigned by the Former Members to the Company, as the same may be amended from time to time.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, with the following adjustments:

- (i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the fair market value of the asset, as determined by the contributing Member and the Company; and
- (ii) The Gross Asset Value of all Company assets shall be adjusted to equal their respective fair market values, as determined by the Members, immediately prior to the following

times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution, except as otherwise provided in this Agreement; (b) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company; (c) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g); and (d) the date the Company grants an Interest in the Company, other than a *de minimis* interest, as consideration for the provision of services to or for the benefit of the Company by an existing Member or a new Member.

All such adjustments shall be made in accordance with the rules set forth in Regulation Section 1.704-1(b)(2)(iv)(f). Notwithstanding the foregoing, adjustments pursuant to clauses (a), (b), (c) and (d) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members. The Gross Asset Value of any Company asset distributed to any Member shall be adjusted immediately prior to such distribution to equal its fair market value (if not adjusted pursuant to clause (b) above). Depreciation shall be calculated by reference to Gross Asset Value, instead of tax basis, if Gross Asset Value differs from tax basis.

“Interest” means the ownership interest of a Member in the Company (which shall be considered personal property for all purposes), consisting of (i) such Member’s Common Units; (ii) such Member’s Percentage Interest in Profit, Loss, allocations, and distributions; (iii) such Member’s right to vote or grant or withhold consents with respect to Company matters as provided herein or under the Act; and (iv) such Member’s other rights and privileges as herein provided.

“Majority Vote” means with respect to actions taken by Members, the affirmative vote in consent of Members holding more than 50% of the Percentage Interests.

“Managing Member” means the Person listed as the “Managing Member” on ***Exhibit A*** to this Agreement and his successors and permitted assigns that are admitted to the Company as the managing member of the Company, in its capacity as the managing member of the Company. The Managing Member is the sole managing member of the Company.

“Member” means each Person signing this Agreement, including any Person who subsequently is admitted as a member of the Company and includes the holders of Common Units.

“Member Minimum Gain” has the meaning and shall be determined as set forth in Regulation Section 1.704-2(i) for “partner nonrecourse debt minimum gain.”

“Member Nonrecourse Deductions” has the meaning and shall be determined as set forth in Regulation Section 1.704-2(i) for “partner nonrecourse deductions.”

“Membership Interest” means any class or series of equity interests in the Company, which shall include any Units.

“*Minimum Gain*” has the meaning and shall be determined as set forth in Regulation Sections 1.704-2(b)(2) and 1.704-2(d) for “partnership minimum gain.”

“*Negative Capital Account*” means a Capital Account with a balance of less than zero.

“*Non-Managing Member*” means the Persons listed as the “Non-Managing Members” on ***Exhibit A*** to this Agreement and each additional Person that becomes a Non-Managing Member pursuant to the terms of this Agreement, in each case, in such Person’s capacity as a Non-Managing Member. Non-Managing Members may include custodians, nominees or any other individual or entity in its own or any representative capacity. For the avoidance of doubt, the Managing Member shall be a Non-Managing Member for all purposes of this Agreement with respect to any Units that the Managing Member holds.

“*Nonrecourse Deductions*” has the meaning set forth in Regulation Section 1.704-2(b)(1).

“*Notice*” has the meaning set forth in Section 11.3.

“*Outstanding*” means, with respect to Membership Interests, all Membership Interests that are issued by the Company and reflected as outstanding in the register of the Company as of the date of determination;

“*Percentage Interest*” means as of any date of determination (a) as to any Unitholder with respect to Units, as the case may be, the quotient obtained by dividing (A) the number of Units held by such Unitholder by (B) the total number of Outstanding Units.

“*Permitted Senior Debt*” means secured financing obtained by the Company for the acquisition and development of the Property in an amount not to exceed \$26,200,000.00, on commercially reasonable terms (as such may be modified, amended, extended, supplemented, restated, refinanced or replaced from time to time in accordance with the terms hereof).

“*Permitted Senior Debt Documents*” means all loan agreements, promissory notes, guaranties, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, contracts, and other instruments and documents now or hereafter existing that are executed or delivered in conjunction with the Permitted Senior Debt.

“*Permitted Senior Lender*” means Pioneer Bank, its successors, and assigns.

“*Person*” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity, unincorporated association, any federal, state, county or municipal government or any bureau, department, or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“*Pledge Agreement*” means that certain Pledge and Security Agreement, dated as of even date hereof, by and between Lake Placid Hospitality LLC and CHI.

“Pledged Interest” means Lake Placid Hospitality LLC’s Membership Interest, together with all of Lake Placid Hospitality LLC’s right to participate in the management of the business and affairs of the Company and all of Lake Placid Hospitality LLC’s rights as a Member and all similar rights.

“Profit” and *“Loss”* means, for each Allocation Period of the Company, the Company’s taxable income or loss determined in accordance with Section 703(a) of the Code, with the following adjustments:

(i) All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Section 703(a)(1) of the Code shall be taken into account; and

(ii) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included; and

(iii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted; and

(iv) Gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding the fact that the Gross Asset Value differs from the adjusted basis of the property for federal income tax purposes; and

(v) In lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation or amortization computed for book purposes; and

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 hereof shall not be taken into account.

“Property” has the meaning set forth in Section 2.3(a).

“Record Date” means the date established by the Managing Member or otherwise in accordance with this Agreement for determining (a) the identity of the Record Holders entitled to receive notice of, or to vote at, any meeting of Non-Managing Members or entitled to vote by ballot or give approval of Company action in writing without a meeting or entitled to exercise rights in respect of, any lawful action of Non-Managing Members (including voting) or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

“Record Holder” means the Person in whose name any Membership Interest is registered in the Register as of the Company’s close of business on a particular Business Day.

“*Regulations*” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

“*Regulatory Allocations*” shall mean any allocations that are required in order to comply with the rules of Regulation §1.704-2 concerning allocations attributable to nonrecourse liabilities, and the “qualified income offset” rules of Regulation §1.704-1(b)(2)(ii)(d). No Losses or items of loss or deduction shall be allocated to a Non-Managing Member to the extent such allocation would cause such Non-Managing Member to have a negative Capital Account balance that exceeds the amount such Non-Managing Member is obligated to restore or treated as obligated to restore to the Company pursuant to Regulation §1.704-1(b)(2)(ii)(c), Regulation §1.704-2(g), and Regulation §1.704-2(i)(5). The Managing Member shall be authorized to make curative allocations to offset regulatory allocations made pursuant to the previous sentences of this definition in their reasonable discretion as necessary in order to realize the intended economic arrangement among the Non-Managing Members, including the equitable allocation of tax liabilities. The allocations described in the following paragraphs of this definition shall be made for each Allocation Period in the order of the paragraphs:

(a) Minimum Gain Chargeback. Except as set forth in Regulation Section 1.704-2(f), if, during any Allocation Period, there is a net decrease in Minimum Gain, each Non-Managing Member shall be specially allocated items of gross income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to that Non-Managing Member’s share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of items of gross income and gain pursuant to this Section 4.3(a) shall be made as described in Regulation Sections 1.704-2(f) and (j). This Section 4.3(a) is intended to comply with, and shall be interpreted consistently with, the “minimum gain chargeback” provisions of Regulation Section 1.704-2(f) and all other Regulation Sections relating thereto.

(b) Member Minimum Gain Chargeback. Except as set forth in Regulation Section 1.704-2(i)(4), if, during any Allocation Period, there is a net decrease in Member Minimum Gain, each Non-Managing Member with a share of that Member Minimum Gain as of the beginning of such year shall be specially allocated items of gross income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to that Non-Managing Member’s share of the net decrease of Member Minimum Gain, computed in accordance with Regulation Section 1.704-2(i)(4). Allocations of items of gross income and gain pursuant to this Section 4.3(b) shall be made as described in Regulation Sections 1.704-2(i)(4) and (j). This Section 4.3(b) is intended to comply with, and shall be interpreted consistently with, the “minimum gain chargeback” provisions of Regulation Section 1.704-2(i)(4) and all other Regulation Sections relating thereto.

(c) Qualified Income Offset. If a Non-Managing Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which results in or increases an Adjusted Capital Account Deficit at the end of any Allocation Period, then all items of income and gain of the Company for that Allocation Period shall be allocated to that Non-Managing Member in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible; provided that

an allocation pursuant to this Section 4.3(c) will be made if and only to the extent that such Non-Managing Member would have an Adjusted Capital account Deficit after all other allocations provided for in this Article 4 have been tentatively made as if this Section 4.3(c) were not in this Agreement. This Section 4.3(c) is intended to comply with, and shall be interpreted consistently with, the “qualified income offset” provisions of the Regulation Section 1.704-1(b)(2)(ii)(d) and all other Regulation Sections relating thereto.

(d) Nonrecourse Deductions. Nonrecourse Deductions for an Allocation Period or other period shall be specially allocated among the Non-Managing Members in proportion to their Percentage Interests.

(e) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Period or other period shall be specially allocated to the Non-Managing Member who bears the economic risk of loss with respect to the liability to which the Member Nonrecourse Deduction is attributable in accordance with Regulation Section 1.704-2(i).

Notwithstanding any other provision of Article 4, the Company shall take the Regulatory Allocations into account in allocating other Profits, Losses, and items of income, gain, loss and deduction to the Non-Managing Members so that, to the extent possible, the net amount of such allocations of Profits and Losses and other items shall be equal to the amount that would have been allocated to each Non-Managing Member if the Regulatory Allocations had not occurred.

“*Supermajority Vote*” means with respect to actions taken by Members, the affirmative vote in consent of Members holding 60% of the Percentage Interests.

“*Tax Matters Representative*” has the meaning as set forth in Section 10.4.

“*Transfer*” means any change in legal or beneficial ownership, whether voluntary or involuntary, including without limitation, sale, hypothecation, pledge, assignment, attachment, gift, bequest, devise, or agreement as to status of property (e.g., community property agreement).

“*Unit*” means a unit of Interest in the Profit and Loss, and the distributions, of the Company as provided in this Agreement and shall include the Common Units.

“*Unit Majority*” means a majority of the Outstanding Common Units.

ANNEX II

INVESTOR REPRESENTATION LETTER

Dual Development LLC

c/o Bhavik Jariwala on behalf of Lake Placid Hospitality LLC, Managing Member

Dear Mr. Jariwala:

In connection with my purchase of Units (the “Securities”) in Dual Development LLC, a New York limited liability company (the “Company”), the undersigned (“Purchaser”) makes the following representations to, and agreements with, the Company and you in your capacity as the Managing Member (the “Managing Member”) of the Company.

a. Purchaser is an “accredited investor” as defined in Rule 501(a) under the Securities Act of 1933, as amended. Purchaser, either alone or together with its representatives, has such knowledge, sophistication, and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and Purchaser has evaluated the merits and risks of such investment. Purchaser is able to bear the economic risk of such an investment and, at the present time, is able to afford a complete loss of such investment.

b. Purchaser acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the risks of investing in the Securities; (ii) access to information about the Company and its respective financial condition, results of operations, business, properties, management, and prospects sufficient to enable Purchaser to evaluate the investment contemplated hereby; and (iii) the opportunity to obtain such additional information that the Company possesses or can reasonably acquire that is necessary to make an informed investment decision with respect to the investment. Except as contemplated above, no other person or entity has provided Purchaser with any information about the Company.

c. Purchaser has independently evaluated the merits of its decision to purchase Securities, and Purchaser confirms that it has not relied on the advice of any person in making such decision. Purchaser understands that nothing in the Company’s Operating Agreement (the “LLC Agreement”) or any other materials presented to the Purchaser by the Managing Member in connection with the purchase of the Securities constitutes legal, tax, or investment advice. Purchaser has consulted such legal, tax, and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

d. Purchaser understands that the Managing Member has acted solely as the agent of the Company in this placement of the Securities and has not endorsed the merits of an investment in the Company. Purchaser has not relied on the business or legal advice of any Managing Member or any of its agents or counsel in making its investment decision hereunder, and confirms that other than as set forth in the Purchase Agreement, none of such persons has made any representations or warranties to Purchaser in connection with the transactions contemplated by the LLC Agreement.

e. Purchaser understands that the Securities being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying, in part, upon the truth and accuracy of, and Purchaser's compliance with, the representations, warranties, agreements, acknowledgements, and understandings of Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of Purchaser to acquire the Securities. Purchaser has his or her primary residence in the jurisdiction set forth immediately below Purchaser's name on the signature pages hereto.

f. Purchaser understands that there may never be any public market for the Securities and the only likely sources of liquidity from an investment in the Securities will be if the Company undergoes some form of liquidity event such as a merger or other sale transaction or an initial public offering. There can be no assurance that any of such sources of liquidity will be available. Therefore, an investment in the Securities must be considered highly speculative.

g. Purchaser hereby represents and warrants that it is purchasing the Securities for its own account for investment and not with a view to the sale or distribution of all or any part of the Securities. Except as provided herein, no one other than the undersigned Purchaser has any beneficial interest in the Securities to be purchased by Purchaser.

h. Purchaser agrees that it will in no event sell all or any part of the Securities unless (i) in the opinion of counsel satisfactory to the Company, the Securities may be legally sold without registration under the Securities Act and applicable state statutes; or (ii) unless the Securities have been registered and qualified under then applicable federal and state statutes, and if necessary, an appropriate prospectus shall then be in effect. Purchaser also understands that the Securities are also subject to restrictions on transfer contained in the LLC Agreement.

i. Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

j. Purchaser agrees that it will fully and completely indemnify and hold harmless the Company, the Managing Member, and any other agent or advisor of the Company or the Managing Member for any costs, liabilities, or losses (including, without limitation, legal fees incurred by any such party as a result thereof) caused by any misstatement of material fact by the undersigned with respect to the representations and warranties contained in this Investment Letter or any other written information furnished by Purchaser to the Company in connection with this investment.

STATE OF NEW YORK

DEPARTMENT OF STATE

Certificate of Status

I, BRENDAN C. HUGHES, Acting Secretary of State of the State of New York and custodian of the records required by law to be filed in my office, do hereby certify that upon a diligent examination of the records of the Department of State, as of the date and time of this certificate, the following entity information is reflected:

Entity Name:	DUAL DEVELOPMENT LLC
DOS ID Number:	5340452
Entity Type:	DOMESTIC LIMITED LIABILITY COMPANY
Entity Status:	EXISTING
Date of Initial Filing with DOS:	05/14/2018
Statement Status:	CURRENT
Statement Due Date:	05/31/2022

I certify that the following is a list of documents on file in the Department of State for said entity:

Document Type:	ARTICLES OF ORGANIZATION
Date of Filing:	05/14/2018
Entity Name:	DUAL DEVELOPMENT LLC

Document Type:	BIENNIAL STATEMENT
Date of Filing:	10/06/2021

Above space is left blank intentionally.

No information is available from this office regarding the financial condition, business activity or practices of this entity.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 06, 2021 at 03:46 P.M.

BRENDAN C. HUGHES, Acting Secretary of State

Brandon C. Hughes

Authentication Number: 100000729908 To Verify the authenticity of this document you may access the
Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

**CERTIFICATE AS TO REPRESENTATIONS AND WARRANTIES
OF THE COMPANY**

I, Bhavik Jariwala, Managing Member of Dual Development LLC, a limited liability company duly organized and existing under the laws of the State of New York (the “Company”) DO HEREBY CERTIFY as follows:

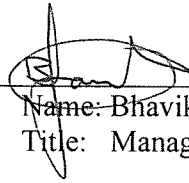
1. Each of the representations and warranties of the Company contained in Section 2.2 of the Project Agreement (the “Project Agreement”), dated December 29, 2021, between the Company and the Essex County Industrial Development Agency (the “Agency”) and the Agency Lease, the Company Lease Agreement and the Bank Mortgage (the “Company Documents”) are true and correct in all material respects as of the date hereof as though made on and as of the date hereof. All capitalized terms used in this Certificate and not otherwise defined herein shall have the same meanings assigned to them as in the Project Agreement.

2. No event has occurred and is continuing or would result from the authorization, execution and delivery of the Project Agreement, and any of the Company Documents, which constitutes, or after notice or lapse of time or both would constitute, an “Event of Default” under the Project Agreement or any of the above-mentioned documents, but for the requirement that notice be given or time elapse or both.

IN WITNESS WHEREOF, I have set my hand this 29th day of December, 2021.

DUAL DEVELOPMENT LLC

By: _____

A handwritten signature in black ink, appearing to read 'Bhavik Jariwala', is written over a horizontal line. The signature is stylized with a large initial 'B' and a long horizontal stroke.

Name: Bhavik Jariwala

Title: Managing Member

[Signature Page to Certificate as to Representations and Warranties of the Company]

**CERTIFICATE OF DUAL DEVELOPMENT LLC AS TO SIGNATURES,
INCUMBENCY, NO LITIGATION, AND OTHER MATTERS**

I, the undersigned, am the duly designated officer of Dual Development LLC (the Company”), a limited liability company duly organized and existing under the laws of the State of New York (the “State”), and HEREBY CERTIFY as follows:

1. I am the Managing Member of the Company indicated by the official title set forth opposite my signature to this certificate and am the duly authorized signatory of the Company referred to in the Documents as that term is described below.

2. The following person(s) have/has been since April 22, 2021 and presently are/is on the date hereof, the member(s) of the Company.

Name

Bhavik Jariwala

Title

Managing Member

3. I have officially caused the following documents (hereinafter referred to collectively as the “Company Documents”) to be executed in the name of the Company by signing each of the Company Documents with the signature of an officer of the Company impressed thereon (all capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Project Agreement (hereinafter defined): (a) the Project Agreement (the “Project Agreement”), dated the date hereof, between the Company and the Essex County Industrial Development Agency (the “Agency”); (b) the Agency Lease; (c) the Company Lease Agreement; and (d) the Bank Mortgage.

4. As of April 22, 2021 the Managing Member authorized the Company to execute the Company Documents (the “Resolution”).

5. From April 22, 2021, and continually thereafter and including the date of delivery of the Company Documents, which is also the date of this certificate, I am the duly elected and acting Managing Member of the Company indicated in the Company Documents and on this certificate and am duly authorized to cause the Company Documents to be executed as recited above and to be delivered and to effect other transactions contemplated by the Company Documents.

6. The Company has (i) duly performed all of its obligations to be performed at or prior to the date hereof and each of the representations and warranties of the Company contained in the Project Agreement are true and correct as of the date hereof, and (ii) duly authorized by all necessary action the execution, delivery, receipt and due performance of each of the Company Documents and any and all other agreements and documents as may be required to be executed and delivered by the Company in order to carry out, give effect to and consummate the transactions described and contemplated in the Company Documents. The Company Documents are each in full force and effect on and as of the date hereof and no authority for the execution, delivery or

performance of any Company Documents has been revoked, repealed or rescinded. No further act, resolution or consent by the Company is required to give effect to and consummate the transactions described and contemplated in the Company Documents.

7. There is no action, suit, proceedings, inquiry or investigation at law or in equity by or before any court or public board or body pending, or, to the best of my knowledge, threatened, against or affecting the Company, nor is there any basis there for, which in any way questions the power of the Company, the laws pursuant to which the Company was incorporated or the validity of the proceedings taken by the Company in connection with the transaction contemplated by the Company Documents or which would result in a material change in the condition (financial or otherwise), business or affairs of the Company, or wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the Company Documents or any agreement or instrument to which the Company is a party.

8. As of the date hereof, the Company is in good standing as a New York limited liability company.

9. To the best of my knowledge, from the date of the Resolution to the date hereof there has been no substantial adverse change of any kind in the condition of the Company. All certificates, warranties and representations made by the Company in connection with the execution and delivery of the Company Documents are hereby ratified, confirmed and approved as if made on the date hereof.

10. No event of default specified in any of the Company Documents, and no event which with notice or lapse of time or both, would become such an event of default, has occurred or is continuing.


I HEREBY FURTHER CERTIFY as follows:

11. Attached hereto as Exhibit A and Exhibit B, respectively, are true and correct copies of the Articles of Organization and Operating Agreement of the Company, together with all amendments thereto, as in full force and effect on the date hereof, and the Certificate of Good Standing, certified by the Secretary of State of the State of New York, and the same are in full force and effect as of the date hereof and have not been otherwise amended, repealed or modified.

12. The person named below is duly designated to act, pursuant to and in accordance with the provisions of the Company Documents, and the specimen of his signature is set forth beside his name below:

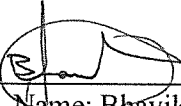
Name
Bhavik Jariwala

Official Title
Managing Member

Signature


WITNESS the official signature of the Company on this December 29, 2021.

DUAL DEVELOPMENT LLC

By:  _____
Name: Bhavik Jariwala
Title: Managing Member

[Signature Page to Incumbency Certificate of Company]

CERTIFICATE REGARDING ENVIRONMENTAL COMPLIANCE


I, Bhavik Jariwala, Managing Member of Dual Development LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Company") DO HEREBY CERTIFY as follows:

1. Attached hereto as Exhibit A is a true and correct copy of that certain Phase I Environmental Assessment (the "Assessment") in connection with the Project (as that term is defined in the Project Agreement, dated as of December 29, 2021, between the Essex County Industrial Development Agency and the Company (the "Project Agreement")).

2. To the best of my knowledge, from the date of the Assessment to the date hereof, there has occurred no event nor has there been any material change made to the Project (as that term is referred to in the Project Agreement) pursuant to the terms of the Project Agreement which would require the undertaking of additional conditions imposed by the environmental compliance proceedings pursuant to Article 8 of the NYS Environmental Conservation Law and the state regulations promulgated thereunder by the NYS Department of Environmental Conservation.

IN WITNESS WHEREOF, I have set my hand this December 29, 2021.

DUAL DEVELOPMENT LLC

By:  _____
Name: Bhavik Jariwala
Title: Managing Member

BRIGGS LAW FIRM LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

RONALD J. BRIGGS*
JENIFER R. BRIGGS
ANN E. CANTWELL
*ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559†
WWW.BLFLLP.COM
†FACSIMILE SERVICE NOT ACCEPTED

MARGARET M. CHESNEY**
OF COUNSEL
**ALSO ADMITTED IN TENNESSEE

December 29, 2021

TO: Essex County Industrial Development Agency
Elizabethtown, New York

Dual Development LLC
Clifton Park, New York

Pioneer Bank
Albany, New York

Re: Essex County Industrial Development Agency, New York
(Dual Development LLC Project)

Ladies and Gentlemen:

We have acted as counsel to Essex County Industrial Development Agency a New York public benefit corporation (the "Agency"), in connection with the execution of a Project Agreement, between the Agency and Dual Development LLC, a New York limited liability company (the "Company"), dated December 29, 2021 (the "Project Agreement"). The Agency has entered into the Project Agreement to provide financial assistance to the Company as authorized in Title I of Article 15, §§854 et seq. of the General Municipal Law (the "Act"), in connection with an economic development project (hereinafter defined) to be leased to the Agency by the Company pursuant to the Project Agreement and a Company Lease Agreement, dated December 29, 2021, between the Company as landlord/lessor and the Agency as tenant/lessee (the "Company Lease Agreement") and a certain Agency Lease, dated December 29, 2021, between the Agency as landlord/lessor and the Company as tenant/lessee (the "Agency Lease") in connection with a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 6.25 acre parcel or parcels of land constituting tax map parcel 42.33-1-2.200 and located in the Town of North Elba, New York (the "Land"), (2) the acquisition, construction, reconstruction and equipping of a building (the "Facility") to be located on the Land to be operated by the Company as an approximately 185-unit hotel, including the removal of the existing Quality Inn Hotel and (3) the acquisition and installation in the Facility of certain machinery, equipment and furnishings (the "Equipment" and together with the Land and the Facility, collectively, the "Project Facility"), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain "financial

assistance" (as defined in the Act) in the form of an exemption from state and local sales tax. The Company has made an application to Pioneer Bank (the "Bank") for a loan (the "Bank Loan") to be used by the Company to undertake the financing of the Project. As security for the Bank Loan, the Agency and the Company shall grant the Bank a Mortgage in the Project (the "Bank Mortgage").

The Project Agreement, the Agency Lease and the Company Lease Agreement constitute the "Agency Documents".

In our capacity as counsel to the Agency, We have reviewed and considered:

- a. The execution and delivery of the Agency Documents;
- b. The adoption of an inducement resolution by the Agency on April 22, 2021 (the "Inducement Resolution") and the adoption of a final approving resolution by the Agency on June 23, 2021, among other things, authorizing the execution of the Agency Documents (the "Approving Resolution" and together with the Inducement Resolution, the "Resolution"); and
- c. The New York State Industrial Development Agency Act, as amended (the "Act"), and the New York State Environmental Quality Review Act (the "SEQR Act").

Prior to rendering this opinion, we have examined the Agency Documents and the Resolution, and such further documents delivered as of the date hereof, and have made such further investigations of law, as we have deemed necessary to tender the opinions set forth below:

Based upon the foregoing, it is our opinion that:

1. The Agency has been duly incorporated and is validly existing as a public body corporate and politic created and validly existing pursuant to the provisions of the Act, and as such, is authorized to carry out the obligations of the Agency Documents.
2. The Agency Documents have been duly authorized, executed and delivered by the Agency and constitute the valid and legally binding obligations of the Agency enforceable in accordance with their terms, and the Resolution of the Agency has been duly adopted by the Agency.
3. The Agency Lease and the Company Lease Agreement (or memoranda thereof) have been recorded in proper form in the office of the Clerk of Essex County, New York, which recording is the only recording necessary to give notice of the lease of the property therein described as against all creditors of the Agency and subsequent purchasers. No rerecording is required in order to maintain notice of the agreement.

4. To the best of our knowledge there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or threatened against the Agency (or to the best of our knowledge is there any basis therefor), wherein an unfavorable decision, result or finding would, in any way, adversely affect the validity or enforceability of the Resolutions, the Agency Documents or any other documents contemplated for use in connection with the transactions contemplated by the foregoing documents.

5. The adoption of the Resolutions and the authorization, execution, delivery and performance by the Agency of the Agency Documents, and compliance with the provisions of each such instrument do not and will not conflict with, or constitute or result in a breach of or a default under, any existing law, court or administrative regulation, rule, decree or order or any provision of the Constitution or laws of the State of New York, including the Act and the SEQR Act, or any rule, regulation or by-law of the Agency or any agreement, indenture, mortgage, lease, note or other instrument to which the Agency may be bound or affected; nor will any such authorization, execution, delivery, performance and approval result in the creation or imposition of any lien, charge, encumbrance or security interest of any nature whatsoever upon any of the revenues, property or assets of the Agency except as expressly provided by the Agency Documents.

We have assumed the genuineness of all signatures, the validity of all acts taken by the Company and the Bank, and the truth of all facts presented in all documents referred to herein.

Very truly yours,

Briggs Law Firm LLP

By:


Jenifer R. Briggs

December 29, 2021

TO: Essex County Industrial Development Agency
Elizabethtown, New York

Dual Development LLC
Clifton Park, New York

Pioneer Bank
Albany, New York

Re: Essex County Industrial Development Agency, New York
(Dual Development LLC Project)

We have acted as special transaction counsel in connection with the execution and delivery on this date by the Essex County Industrial Development Agency (the "Agency"), a governmental body and instrumentality constituting a body corporate and politic and a public benefit corporation of the State of New York (the "State"), of a Project Agreement, between the Agency and Dual Development LLC, a New York limited liability company (the "Company"), dated December 29, 2021 (the "Project Agreement"). By resolutions of the Agency authorized on April 22, 2021 and June 23, 2021 (collectively, the "Resolution"), the Agency has entered into the Project Agreement to provide financial assistance to the Company as authorized in Title I of Article 15, §854 et seq. of the General Municipal Law (the "Act"), in connection with an economic development project (hereinafter defined) to be leased to the Agency by the Company pursuant to the Project Agreement and a Company Lease Agreement, dated December 29, 2021, between the Company as landlord/lessor and the Agency as tenant/lessee (the "Company Lease Agreement") and a certain Agency Lease, dated December 29, 2021, between the Agency as landlord/lessor and the Company as tenant/lessee (the "Agency Lease") in connection with a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 6.25 acre parcel or parcels of land constituting tax map parcel 42.33-1-2.200 and located in the Town of North Elba, New York (the "Land"), (2) the acquisition, construction, reconstruction and equipping of a building (the "Facility") to be located on the Land to be operated by the Company as an approximately 185-unit hotel, including the removal of the existing Quality Inn Hotel and (3) the acquisition and installation in the Facility of certain machinery, equipment and furnishings (the "Equipment" and together with the Land and the Facility, collectively, the "Project Facility"), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other

person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain “financial assistance” (as defined in the Act) in the form of an exemption from state and local sales tax. The Project Agreement, the Agency Lease, and the Company Lease Agreement will constitute the (“Agency Documents”).

The Company has made an application to Pioneer Bank (the “Bank”) for a loan (the “Bank Loan”) to be used by the Company to undertake the financing of the Project. As security for the Bank Loan, the Agency and the Company shall grant the Bank a Mortgage in the Project (the “Bank Mortgage”).

Throughout the term of the Project Agreement (i) the Company shall operate or cause the Project to be operated as a qualified “project” in accordance with and as defined in the Act, and (ii) the Project shall be under the jurisdiction, ownership and control of the Agency and the Agency shall supervise the activities of the Company in furtherance of public purposes of the Agency as set forth in the Act.

We have examined such portions of the Constitution and statutes of the United States, the Constitution and statutes of the State and such applicable court decisions, regulations and published rulings as we have deemed necessary or relevant for the purposes of the opinions set forth below. Where such reliance is required or appropriate, we have relied upon the opinions of Briggs Law Firm LLP, counsel to the Agency and Lemery Greisler LLC, counsel to the Company. As to questions of fact material to our opinion, we have relied upon representations of the Agency, the Company and the Bank and others furnished to us, without undertaking to verify such representations by independent investigation.

Based upon, assuming the factual accuracy of, and subject to the foregoing, we are of the opinion under existing law that:

(1) The Agency is a governmental body and instrumentality constituting a body corporate and politic and a public benefit corporation of the State duly created and existing under the Act. The Agency has all requisite power and authority under the Act to adopt the Resolution and the Agency Documents, and to carry on all activities contemplated thereby.

(2) The Project constitutes a “project” as that term is defined in the Act and is entitled to the exemptions from taxation set forth in the Act.

We have not examined the title of any party to the real estate on which the Project is located and therefore we express no opinion thereon. We express no opinion as to the sufficiency of the description of the Project contained in the Agency Documents.

The scope of our engagement as special transaction counsel has extended solely to rendering the opinions expressed herein. We are rendering no opinions other than the opinions expressly stated herein.

Essex County Industrial Development Agency
Dual Development LLC
Pioneer Bank
December 29, 2021
Page 3

This opinion is expressed only to the Company, Agency, and the Bank and may not be relied on by any other person without our express written consent.

Respectfully submitted,

Ann Patricia Boyce (US) YJP

December 29, 2021

Essex County Industrial Development Agency
7566 Court Street
Elizabethtown, New York 12932

Squire Patton Boggs (US) LLP
36 Rockefeller Plaza, 22nd Floor
New York, New York 10112

Re: Lease/Leaseback with the Essex County Industrial
Development Agency

Ladies and Gentlemen:

We have acted as special counsel to Dual Development LLC, a New York limited liability company (the “Company”) and the owner of certain real property located at 2125 Saranac Avenue, Lake Placid, Essex County, New York (the “Premises”) in connection with the lease of the Premises by the Company to the Essex County Industrial Development Agency (the “IDA”) and lease back of the Premises by the IDA to the Company (collectively, “Lease/Leaseback Transaction”). In connection with the Lease/Leaseback Transaction, we have reviewed the following documents each dated the date hereof:

1. Company Lease Agreement by and between the Company and the IDA (the “Company Lease”);
2. Agency Lease by and between the Agency and the Company (the “Agency Lease”); and
3. Project Agreement by and between the Agency and the Company (the “Project Agreement” and collectively with the Company Lease and the Agency Lease, the “IDA Documents”).

Capitalized terms not otherwise defined herein have the meanings given such terms in the Project Agreement.

In connection with such representation, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such corporate records, agreements, documents or instruments and other instruments, as applicable, and of certificates or comparable documents or instruments of public officials and other instruments and documents and have made such inquiries of such officers and representatives and such examination of law as we have deemed relevant and necessary to form the basis for the opinions hereinafter set forth. As to all questions of fact material to the opinions specified herein that have not been independently established, we have relied upon

36 Rockefeller Plaza, 22nd Floor
Albany, New York 12207
518.433.8800

certificates or comparable documents of officers and representatives of the Company and upon the representations and warranties of the Company contained in the IDA Documents.

In rendering the opinions expressed below, we have assumed, without any independent investigation or verification of any kind, that each party to the IDA Documents (other than the Company) has been duly organized and is validly existing and in good standing under its jurisdiction of incorporation and has good standing under its jurisdiction of incorporation and has full power and authority to execute and deliver the IDA Documents and perform the obligations set forth therein, and that the execution, delivery and performance of the IDA Documents by such other party has been duly authorized by all requisite corporate and other action on the part of such other party and the IDA Documents have been duly executed and delivered by such other party.

In our examination and in connection with the issuance of this opinion, we have relied upon the following assumptions:

- (i) all authorizations, approvals and consents necessary for the valid execution, delivery and performance of the IDA Documents (other than by the Company) have been received;
- (ii) all signatures (other than the Company's) to the IDA Documents are genuine;
- (iii) all documents submitted to us as originals are complete and authentic;
- (iv) all documents submitted to us as certified, conformed or photostatic copies conform to authentic originals;
- (v) all documents submitted to us which are dated other than the date of this opinion remain accurate through and including the date hereof;
- (vi) the legal capacity and competency of individuals to enter into and perform any contract; and
- (vii) whenever our opinion with respect to the existence or absence of facts is indicated to be based on our knowledge, we are referring solely to the knowledge of the particular Lemery Greisler LLC attorneys who have devoted substantive attention to the matters contemplated by such opinion. No inference as to our actual or imputed knowledge concerning such facts should be drawn from the fact of our past or current representation of the Company.

Based solely upon the foregoing and subject to the qualifications as set forth in this letter, we are of the opinion that:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York.
2. The Company has full power and authority to own or lease its properties and to conduct its business as presently conducted.

3. The Company has full power to execute, deliver and carry out the IDA Documents to which it is a party, and has taken or caused to be taken all necessary company action (including, without limitation, the obtaining of any consent of manager(s) or member(s) required by law or by the Articles of Organization or Second Amended and Restated Operating Agreement thereof) to authorize the execution, delivery and performance of its obligations under the IDA Documents.


4. To the best of our knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity pending or overtly threatened against or affecting the Company and there is no basis for any action, suit, proceeding, inquiry or investigation at law or in equity in which an unfavorable decision, ruling or finding would adversely affect the financial conditions or operations of the Company, or the transactions described in the IDA Documents or which would adversely affect the validity or enforceability of the IDA Documents.

Members of our firm are admitted to the bar in the State of New York and we express no opinion as to the laws of any other jurisdiction except the laws of the United States of America.

We express no opinion with respect to (A) title to all or any portion of the property in which a lien in your favor is created by the terms of any of the Loan Documents, (B) any right, title or interest you may have in and to or lien or purported lien upon any real property or fixtures, (C) the extent to which the Company qualifies as an “eligible contract participant”, as that term is defined in Section 1a(18) of the Commodity Exchange Act (7 US Code Chapter 1) and applicable regulations thereunder. The opinions set forth herein are based upon and rely upon the current status of law, and in all respects are subject to, and may be limited by, future legislation, as well as developing case law. Attention is called to the fact that we have not been requested to examine and have not examined any documents or information other than those documents heretofore referred to and no opinion is expressed as to any financial or other information, or the adequacy thereof, which has or may be supplied to you. This opinion is rendered solely for your benefit in connection with the transaction described above. This opinion may not be used or relied upon by any other person except any participant or assignee of yours, and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Very truly yours,

LEMERY GREISLER LLC

By: 

Charles B. Dumas, Esq.
Member