

## EXHIBIT A

### TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE TOWN OF ADAMS, MASSACHUSETTS and SHARED ESTATES ASSET FUND I, LLC

#### FORM OF GROUND SUBLEASE – GREYLOCK GLEN CAMPGROUND

This agreement (this "Sublease") is entered into as of this \_\_\_ day of \_\_\_\_\_, 2023 by and between the Town of Adams, a Massachusetts municipal corporation, having a principal place of business at 8 Park Street, Adams, Massachusetts, as sublandlord hereunder (hereinafter referred to as the "Town") and Greylock Glen Ecovillage, LLC, a Delaware limited liability company having a place of business at \_\_\_\_\_, Massachusetts, as subtenant hereunder (hereinafter referred to as the "Tenant"). Capitalized terms used in this Sublease shall have the definitions ascribed to them in Article 1- "Definitions" or elsewhere in this Sublease. Capitalized terms used in this Sublease without definition herein, shall have the meanings ascribed to them in the Master Lease or the Development Agreement, as applicable (as those terms are hereinafter defined).

#### RECITALS

WHEREAS the Commonwealth of Massachusetts (the "Commonwealth"), acting by and through its Division of Capital Asset Management and Maintenance, formerly the Division of Capital Planning and Operations ("DCAMM") in consultation with its Department of Conservation and Recreation, successor to the Department of Environmental Management ("DCR"), is the current owner of a 1063 Acre, more or less, tract of land (the "Glen Tract") located off West Mountain and Gould Roads in the Town of Adams, Massachusetts, near the Mount Greylock State Reservation in an area known as the "Greylock Glen"; and,

WHEREAS the Commonwealth, acting by and through DCAMM in consultation with DCR (the "Master Landlord"), acquired the relevant portion of the Glen Tract to which this Sublease pertains by Order of Taking dated September 28, 1989, and recorded in the Northern Berkshire Registry of Deeds in Book 808, Page 587, under the authority of Chapter 676 of the Acts of 1985 (the "Enabling Legislation"); and

WHEREAS the Enabling Legislation authorized the Master Landlord to dispose of portions of the Glen Tract for general recreational purposes and the development of such "residential and commercial facilities and improvements thereon which the [DCR]

commissioner deems appropriate for the successful realization of said recreational purposes”; and

WHEREAS pursuant to the Enabling Legislation, the Master Landlord and the Town entered into a Master Lease, dated October 17, 2014 (hereinafter, the “Master Lease”), whereby the Master Landlord has leased a portion of the Glen Tract (hereinafter, the “Lease Premises”) to the Town for the development and operation of a proposed Outdoor Recreation and Environmental Education Center Facility (hereinafter, the “Greylock Glen Resort”); and

WHEREAS, the Lease Premises consists of 55.924 acres designated as Development Areas 1, 2, 3, 4A, 4B and 5; and an additional 88.558 acres designated as the Low Impact Recreation Conservation Area; and the proposed easement areas, as all are shown on the plan entitled “Concept Lease Plan in Adams, MA, Greylock Glen”, dated October 15, 2014 and prepared by Northeast Survey Consultants, Project Number 13-153, which plan is attached to the Master Lease as “Exhibit B” and is expressly incorporated herein by reference; and

WHEREAS, the Greylock Glen Resort has been preliminarily designed and contemplated to include several components including an Amphitheater, a Conference Center, an Environmental Education Center, and a Campground; and

WHEREAS Section 15.1 of the Master Lease authorizes the Town to sublease one or more portions of the Lease Premises to Authorized Subtenants via Authorized Subleases (as those terms are defined in the Master Lease); and

WHEREAS the Town published a Request For Proposals dated August 24, 2022 seeking a subtenant for a portion of the Lease Premises, depicted as Development Areas 1 and 2 on the aforementioned Concept Lease Plan, and a developer/operator for the Campground component of the Greylock Glen Resort to be constructed and developed thereon; and

WHEREAS Shared Estates Asset Fund I, LLC, a Delaware Limited Liability Company that controls/is under common control with the Tenant (the “Developer”) submitted the most advantageous proposal in response to the Town’s Request For Proposals, and, correspondingly, has been provisionally selected as the designated subtenant, developer, and operator for the Campground component of the Greylock Glen Resort; and

WHEREAS this Sublease is executed and delivered pursuant to the terms of that certain Development Agreement, dated \_\_\_\_\_, 2023 (the “Development Agreement”), which remains in full force and effect, a copy of which is attached hereto as “Exhibit A” and is expressly incorporated herein by reference, by and between the Town and the Developer; and

WHEREAS by Assignment and Assumption Agreement dated \_\_\_\_\_ the Developer has assigned, and the Tenant has assumed, certain rights and obligations of the Developer under the Development Agreement, including the right to enter into this Sublease and the obligation to construct and operate the Campground component of the Greylock Glen Resort, and to otherwise perform all of the Tenant’s obligations as sublessee hereunder; and

WHEREAS the Developer has submitted and the Town has approved the Developer's Development and Operations Plans (as so approved, the "Approved D&O Plans", copies of which are attached hereto as "Exhibit B" and are expressly incorporated herein by reference) pursuant to the procedure outlined in Sections 3.2 and 3.3 of the Development Agreement (the "Plan Submission and Approval Procedure"), which procedure is incorporated herein for purposes of seeking and obtaining Town approval of any future modifications to the Development Plan or the Operations Plan; and

WHEREAS, the parties hereto enter into this Sublease, intending it to be an "Authorized Sublease" pursuant to Section 15.1 of the Master Lease, to memorialize their respective agreements pertaining to the sublease, development, use and operation of the Sublease Premises, as same is defined in Article 3 below, for the Campground component of the Greylock Glen Resort.

NOW, THEREFORE, the Town and Tenant agree as follows:

## **ARTICLE 1 – DEFINITIONS**

1.1 "Alterations" shall mean permanent additions, alterations, or changes, structural or otherwise to the Sublease Premises or any Improvements thereon. Alterations, once completed, become part of the Buildings, Fixed Equipment, Lodging Assets, and Improvements to which they are made.

1.2 "Approved D&O Plans" shall mean the Developer's Development and Operations Plans for the construction, development and operation of the Campground component of the Greylock Glen Resort, as same were approved by the Town pursuant to the Development Agreement, and as same may be restated or modified by reason of approved changes to the Development Plan under Sections 7.3 and 8.3 (for future Substantial Alterations or Improvements), or Section 7.4 (for changes during construction), or Section 7.7(c)(for changes imposed as conditions of permitting), or approved changes to the Operations Plan under Section 6.2 (for changes in use).

1.3 "Approved MEPA Plan" shall mean the Environmental Notification Form dated March 31, 2010 (EEA# 14566) and associated plans and appendices for the Greylock Glen Resort, and the Certificate of the Secretary of Energy and Environmental Affairs issued thereon dated May 7, 2010, as same may be amended from time to time.

1.4 "Award" shall mean all compensation, sums, or anything of value awarded, paid or received in a total or partial Condemnation.

1.5 "Buildings" shall mean buildings or structures of any kind, including any associated Fixed Equipment or other appurtenances thereto, incorporated or to be incorporated into the Project at the Sublease Premises. Buildings are included within the defined term "Improvements".

1.6 "Claims" shall mean any and all claims, demands, damages, losses, causes of action, penalties, costs, expenses and fees (including without limitation reasonable attorney's and professional fees and costs of collection or enforcement) (whether brought by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim, or fourth-party claim).

1.7 Intentionally Omitted.

1.8 Intentionally Omitted.

1.9 Intentionally Omitted.

1.10 "Condemnation" shall mean the taking or condemnation of the title to or the possession or use of all or part of the Sublease Premises or Tenant's interest in this Sublease by virtue of eminent domain or for any public or quasi-public use.

1.11 "Default Rate" shall mean the prime rate of interest reported from time to time in the Wall Street Journal or any successor publication plus two percentage points.

1.12 "Development Plan" shall mean the Development Plan described in Section 3.2(a) of the Development Agreement to include a Capitalization and Financing Plan, a Permitting Schedule, Plans & Specifications, a Construction Schedule (as each of those terms are defined in the Development Agreement) and such other documents as the Town may reasonably request. "Development Plan" shall include any modifications or restatements of the Development Plan approved by the Town pursuant to Sections 7.3 and 8.3 (for future Substantial Alterations or Improvements), or Section 7.4 (for changes during construction), or Section 7.7(c)(for changes imposed as conditions during permitting).

1.13 "Fixed Equipment" shall mean such equipment, machinery or apparatus as are appurtenant to, fixtures of, or otherwise permanently affixed to the Buildings, Improvements or the Sublease Premises, including, without limitation, any or all components of plumbing, drainage, electrical, HVAC, communications, and lighting systems. Fixed Equipment is included within the defined term "Improvements".

1.14 Intentionally Omitted.

1.15 "Governmental Authority" shall mean any political subdivision or governmental entity, agency, department, division, commission, board, bureau, Court or instrumentality having jurisdiction over the Sublease Premises, Tenant Work, the Improvements, the Permitted Uses, the Project or the operation of Tenant's business.

1.16 "Hazardous Materials" shall mean those substances defined or classified as a "hazardous substance, toxic substance," "hazardous material," hazardous waste," "hazardous pollutant," or "toxic pollutant," or otherwise denominated as hazardous, toxic, or a pollutant in: (A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of

1986, as amended ("CERCLA"); (B) the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended ("RCRA"); (C) the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws Chapter 21C, as amended ("Chapter 21C"); (D) the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws Chapter 21 E, as amended ("Chapter 21E"); (E) any other federal, state, or local law or ordinance addressing the protection of human health, safety, welfare, or the environment, as amended ("Other Environmental Laws"); or (F) regulations promulgated pursuant to CERCLA, RCRA, Chapter 21 C, Chapter 21 E, or Other Environmental Laws, as amended.

1.17 "Improvements" shall mean any assets, infrastructure, amenities, construction work or other improvements that exclusively serve the Sublease Premises or are used in connection with the Tenant's operation of the Project, now or hereafter located on, installed in, or attached to the Sublease Premises, including without limitation all Buildings, Fixed Equipment, Lodging Assets, all water, sewer, gas, data, electric, telephone and communication utilities, roads, bridges, parking areas, driveways, walkways, landscaping, hardscapes, signage, fencing and other improvements, provided further that "Improvements" shall include any Lodging Assets that are not Buildings, fixtures or otherwise permanently affixed to real estate, and provided further that "Improvements" shall not include Tenant's personal property business assets, equipment, or furnishings.

1.18 "Institutional Lender" shall mean any savings bank, bank or trust company, savings and loan association, merchant banking company, or national bank provided the same is organized under the laws of the United States of America or of any of the United States, or any other person or entity approved in writing as such by Master Landlord and the Town, which approval may be withheld in their sole discretion.

1.19 "Legal Requirements" shall mean (a) all present and future laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, including, without limitation, those which may be applicable to (i) the acquisition, construction, development, financing or capitalization of the Project and Improvements, (ii) the Sublease Premises, (iii) any Alterations or Tenant Work, (iv) the Tenant, or Tenant's use and occupation of the Sublease Premises, (iv) the operation of Tenant's campground business or any other Permitted Uses, (v) the health and safety of persons or property, and/or(vi) the provision of any services or amenities to any lodgers, guests or invitees; and (b) the Required Permits.

1.20 "Lodging Assets" shall mean any real or personal property assets constructed, installed, or located at the Sublease Premises and hired out or to be hired out, in whole or in part, as lodging accommodations in connection with Tenant's operation of the Project, including, without limitation, tents, platforms, tent sites, cabins, yurts, eco-structures, travel trailers, campers and Buildings, whether they be modular, permanent, or semi-permanent, and irrespective of whether or not permanently or substantially affixed to the real estate. Lodging Assets are included within the defined term "Improvements".

1.21 “Operations Plan” shall mean the Operations Plan described in Section 3.2(b) of the Development Agreement to include protocols for staffing, safety and security, Campground rules and regulations, a marketing plan, a narrative description of all aspects of the proposed use, and such other information as the Town may reasonably request. “Operations Plan” shall include any future modifications or restatements of the Operations Plan approved by the Town pursuant to Section 6.2 for any change in use or operations.

1.22 "Permitted Mortgage" shall mean any leasehold mortgage or security interest given in connection therewith which constitute a lien upon this Sublease, the leasehold estate created by this Sublease, or Tenant’s interest in the Sublease Premises (including any fixtures), and any rights of the Tenant to income or revenue derived from any of the foregoing, which mortgage complies with the requirements of Section 14.3.

1.23 “Permitted Mortgagee” shall mean an Institutional Lender that is or will be the holder of record of a Permitted Mortgage.

1.24 “Permitted Uses” are defined in Section 6.1 hereof.

1.25 “Plans and Specifications” shall mean a set or sets of plans and specifications for the design of the Project consistent with the Proposal and the Concept Plan, or any future Improvements or Alterations after Final Completion of the Project prepared by a registered architect, landscape architect, professional engineer or other duly licensed design professional, which may include Existing Conditions Plans, Master Site Plans, Building Floor and Elevation Plans (for any new Buildings), Landscape and Planting Plans, Lighting Plans, Drainage Plans, Utilities Plans, Cut and Fill Plans, Road Profile Plans, Structural Engineering Plans, Wetland Delineation and Replication Plans, As-Built Plans, and such other plans, specifications and documents as may be required to secure the Required Permits, or as otherwise may be necessary or desirable for the Town to evaluate the Project or any proposed Improvements or Alterations, with each such plan, specification and document to provide or be drawn to such level of detail and design completion as will be required by any Governmental Authority in connection with the Required Permits, or as otherwise may be reasonably requested by the Town.

1.26 “Project” shall mean the Sublease Premises and all Improvements, and the use and occupation of same for the Permitted Uses, including the operation of Tenant’s campground business thereon and the provision of any services under this Sublease, and the construction, performance or provision of Improvements or Alterations incorporated therein or thereon, and further including any rights appurtenant to the Sublease Premises.

1.27 "Rent" shall mean any and all amounts due under Article 5 of this Sublease, including Base Rent, Percentage Rent and Additional Rent, as therein defined, each of which is a component of “Rent”.

1.28 “Required Permits” shall mean any and all permits, approvals, registrations, certificates or licenses from Governmental Authorities required for (a) the financing, capitalization, acquisition, development, construction, location, use, occupancy, maintenance or operation of

the Sublease Premises, the Project, or any Improvements or Alterations pursuant to the terms of this Sublease, (b) Tenant's operation of the Campground business or engagement in any other Permitted Uses, (c) the performance of any Tenant Work, (d) the provision of any services or amenities to lodgers, guests or invitees, and (e) the performance of any or all of Tenant's obligations under this Sublease.

1.29 "Substantial Alteration" shall mean any Alteration or new Improvement made or to be made subsequent to Final Completion of the Approved Improvements and costing more than \$100,000.00.

1.30 "Tenant Work" shall mean all work required, performed or to be performed for the construction, use, operation, maintenance or repair of the Sublease Premises or any Improvements or Alterations, and for any other restorations, repairs, maintenance, alterations, removals, installations, additions, changes, or replacements to same, including any work required to locate any Lodging Assets at the Sublease Premises,

1.31 "Term" shall mean a term of years, beginning on the Term Commencement Date and ending the day preceding the twenty fifth (25th) anniversary thereof.

1.32 "Term Commencement Date" shall be the earlier of (a) the Final Completion Date of the Approved Improvements, or (b) the date upon which the Sublease Premises can be lawfully occupied, and the Approved Improvements lawfully used, for the conduct of Tenant's business under a Temporary Certificate of Occupancy.

1.33 "Trails and Trailheads" shall mean the existing trails, proposed trails, and other proposed trails depicted on the plans attached hereto as Exhibit C, same being expressly incorporated herein by reference.

1.34 "Utilities" shall mean any utility lines, poles, pipes, conduits, wires, cables or other equipment or infrastructure for the provision or transmission of water, sewer, stormwater, electrical, communications or data services, installed or maintained within the Sublease Premises that exclusively serve the Sublease Premises.

## **ARTICLE 2 - MASTER LEASE**

2.1 Subject to Master Lease. Notwithstanding anything in this Sublease to the contrary, the rights of Tenant shall be subject to and limited by the terms and conditions contained in the Master Lease between the Town and the Master Landlord as applicable to tenant thereunder, as they may be amended from time to time. The Town shall have the right to amend the Master Lease from time to time without the consent of Tenant provided that any such amendment shall not adversely affect Tenant's ability to continue its then current operations in the Sublease Premises, increase any of the rental or other payments required to be made by Tenant hereunder or otherwise materially and adversely change Tenant's rights and obligations

hereunder. Any rights granted to Tenant in this Sublease which are limited by the Master Lease shall be deemed to be so limited by this Sublease.

2.2 No Violation. Notwithstanding anything in this Sublease to the contrary, Tenant shall not commit or permit to be committed any act or omission which shall violate any term or condition of the Master Lease.

2.3 Termination of Master Lease. If the Master Lease terminates for any reason prior to the expiration or other termination of this Sublease, all rights of the Town under this Sublease shall cease and terminate concurrently therewith, and shall ipso facto vest in and thereafter belong to the Master Landlord, subject to the non-disturbance provisions contained in Section 15.1.1 of the Master Lease.

2.4 Incorporation of Master Lease. Notwithstanding any other provision of this Sublease to the contrary, this Sublease and Tenant's rights under this Sublease shall at all times be subject to all of the terms, covenants, and conditions of the Master Lease (a copy of which agreement, as currently in effect, Tenant hereby represents that it has received), with the same force and effect as if fully set forth herein, and except as otherwise expressly provided for herein, Tenant shall keep, observe and perform or cause to be kept, observed and performed, faithfully all those terms, covenants and conditions of the Town as tenant under the Master Lease with respect to the Sublease Premises. Except as otherwise provided hereby, the terms, conditions, rights and responsibilities of the Master Lease are incorporated herein by reference, and the Town shall have the rights and responsibilities with respect to the Tenant that the Master Landlord has with respect to the Town pursuant to the Master Lease, and Tenant shall have the rights and responsibilities with respect to the Town that the Town has with respect to the Master Landlord pursuant to the Master Lease. However, to the extent that the Master Lease requires or obligates Master Landlord to maintain, repair, restore, or otherwise expend any money or take any action to preserve and maintain all or any portion of the Sublease Premises or to furnish any services to the Sublease Premises, such obligation shall not pass to the Town by reason of this Sublease and shall remain with the Master Landlord. Subject to the first sentence of this Section 2.4, with respect to the relationship between the Town and the Tenant, the terms, covenants and conditions of this Sublease shall control with respect to any conflict or inconsistency between the terms, covenants and conditions contained herein and the terms, covenants and conditions of the Master Lease.

### **ARTICLE 3 – SUBLEASE PREMISES**

3.1 Sublease Premises. The Town, for and in consideration of the rent, terms, covenants, agreements and conditions herein reserved and contained does hereby demise and lease to the Tenant, and the Tenant does hereby take and hire from the Town, upon and subject to the terms, covenants, agreements and conditions herein set forth, the following described premises (hereinafter the "Sublease Premises"):

- (a) Development Area #1 containing 11.276 Acres +/-, as shown on plan entitled "Concept Lease Plan in Adams, MA, Greylock Glen" dated 10/15/2014 and prepared



by Northeast Survey Consultants, 116 Pleasant Street, Suite 302, Easthampton, MA 01027, Project Number 13-153 (Sheet No. 1 of 5), a copy of which is attached to this Sublease as “Exhibit D”; and

(b) Development Area #2 containing 11.673 Acres +/-, as shown on plan entitled “Concept Lease Plan in Adams, MA., Greylock Glen” dated 10/15/2014 and prepared by Northeast Survey Consultants, 116 Pleasant Street, Suite 302, Easthampton, MA 01027, Project Number 13-153 (Sheet No. 2 of 5), a copy of which is attached to this Sublease as “Exhibit E”.

3.2 Appurtenant Rights. The Sublease Premises is demised and leased together with the appurtenant right within the Sublease Premises to construct, install, use, maintain, and operate the Project and Improvements, subject to the terms of this Sublease, the Legal Requirements, and the Approved MEPA Plan, and

3.3 Limitations. The Sublease Premises, and the estate and rights hereby created, are subject, however, to:

- (a) Any limitations depicted upon a survey recorded on or before the Commencement Date.
- (b) Covenants, restrictions, easements, agreements, and reservations of record, as of the Commencement Date.
- (c) Any violation of any law, ordinance, order, or requirement of any Governmental Authority that may exist on the Commencement Date that was caused by operations including, without limitation, of the Tenant, on any portion of the Sublease Premises on the date that immediately precedes the Commencement Date.
- (d) All taxes, duties, assessments, special assessments, water charges and sewer rents, and any other impositions, accrued or unaccrued, fixed or not fixed, from and after the Commencement Date.
- (e) The rights of the public and others to use the Trails and Trailheads and such other portions of the Sublease Premises as may be elsewhere set forth in this Sublease.
- (f) The rights of the Town, DCAMM and DCR and their respective employees, agents, invitees, and contractors, to (i) access on foot and by motor vehicle the accessways, driveways, and walkways of the Sublease Premises in order to access any abutting or adjacent land that is owned by or under the control of the Town or the Master Landlord, and (ii) access and enter upon the Sublease Premises as permitted to Master Landlord under Section 11.1 of the Master Lease for the purposes therein enumerated, and (iii) access to inspect for compliance with the terms of this Sublease or the Master Lease, or to affect compliance with Legal Requirements or address any lack of compliance therewith on Tenant’s part, or to exercise any other rights reserved to the Town in this Sublease or to DCAMM or DCR in the Master Lease.

(g) The provisions of the Enabling Legislation and the Master Plan (the “Master Plan”) referenced therein.

(h) The provisions of the Master Lease.

3.4 Reserved Rights – Access and Inspections. In exercising the rights under Section 3.3(f), the Town shall use commercially reasonable efforts to minimize interference with or disruption to Tenant’s business. Notwithstanding the foregoing, the Town reserves the right to enter the Sublease Premises at any time and without notice in case of emergencies affecting the Sublease Premises or any abutting land, or as required to protect public health and safety. Except in emergencies, the Town will give Tenant forty-eight-hours’ notice of any action that may make the Sublease Premises inaccessible and shall use reasonable efforts to minimize interference with access to the Sublease Premises.

3.5 Condition of the Sublease Premises. Tenant acknowledges that it has subleased the Sublease Premises and agreed to construct, use and operate the Project and Improvements after ample opportunities to conduct full and complete examinations of the Sublease Premises, including, without limitation, any encumbrances, subsurface conditions, existing structures thereon, if any, the presence of any asbestos located on, in or under the Sublease Premises or within such structures, legal title, the present uses and non-uses, and any Legal Requirements affecting the same and the ability of Tenant to use the Sublease Premises for its intended purposes, and accepts the same in the same condition in which they or any part thereof now are, and except as otherwise expressly provided in this Sublease, waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, by the Town or any agent, board, commission, or committee of the Town as to the present or future condition of the Sublease Premises, or the legality of the Tenant’s intended use under any Legal Requirements pertaining to zoning or public health and safety, or the fitness or suitability of the Sublease Premises for any particular or intended use or any other matter, and shall not be liable in any way, or be required to improve or alter the Sublease Premises to make it suitable for the current or future use by Tenant, except as expressly provided in this Sublease.

3.6 Zoning and Public Health Laws. By executing this Sublease, Tenant warrants and represents that it has previously reviewed all Legal Requirements, including those pertaining to zoning, the environment and public health, as same would be applied to Tenant’s intended use of the Sublease Premises. Tenant acknowledges that the Lease Premises is under the supervision and control of the Town’s Board of Selectmen (the “BOS”), and that the BOS, with the assistance of the Town Manager, will be responsible for the administration of this Sublease. Applications, notices, plans or other documents filed with or pending before any Town permit granting authority or Town official, and any action taken thereon, will not constitute the satisfaction or completion of any notice or Town approval requirement under this Sublease, including the requirement for Town approval of Plan Approval Requests for proposed Improvements pursuant to Article 7 hereof. Tenant further acknowledges and agrees that Tenant shall at all times be solely and exclusively responsible to propose, design, build and operate the Project in compliance with all Legal Requirements, and that Town consent to

or approval of any request or matter under this Sublease, including Plan Approval Requests under Article 7, will not imply, promise, predict or constitute the issuance of any Required Permit by any Town office or permit granting authority, nor compliance with any Legal Requirements.

3.7 No Guaranty of Operation, Timing or Completion of Other Components of Greylock Glen Resort. The Town cannot and does not guaranty the opening, operation, or commencement or completion of construction of the Conference Center, the Amphitheater, Education Center, or other components of the Greylock Glen Resort. Failure to let, relet, construct, complete, maintain, operate or continue operation of any of said components shall not excuse performance by Tenant of any of the terms of this Sublease, including the prompt payment of all Rent without deduction or offset, provided however that under no circumstances shall Tenant commence business operations at the Premises prior to installation by the Town of customary utilities in the Gould Road right of way adjacent to the Sublease Premises.

## **ARTICLE 4 - TERM**

4.1 Effective Date. This Sublease shall be effective as of the earliest date that it is, or has been, signed by all parties.

4.2 Term. The initial term of this Sublease is twenty-five (25) years (the "Initial Term").

4.3 Extension of Term. Provided that no Event of Default (as defined in Section 15.1 below) shall then exist either on the date of the applicable Extension Notice (as defined below) or as of the commencement of the applicable Extension Term (as defined below), Tenant shall have the option to extend the Initial Term of this Sublease for two successive terms of ten (10) years each (each, an "Extension Term") by providing the Town with written notice of its intention to extend (each, an "Extension Notice") at least six (6) months prior to the expiration of the then-current Initial Term or Extension Term, as applicable. As used in this Sublease, the "Term" shall mean the Initial Term, as it may be extended by Tenant's exercise of any Extension Notice to include any applicable Extension Term. If Tenant timely makes the foregoing election, the Initial Term or Term, as applicable, shall be extended upon all of the terms and conditions set forth in this Sublease, except that there shall be one (1) less Extension Term for each extension option exercised hereunder and Rent shall be adjusted pursuant to the provisions of Section 5.1(b) hereof. In the event of Tenant's failure to timely send an Extension Notice as provided herein, at the expiration of the then current Term, then this Sublease shall terminate upon the expiration of the current Term, and all obligations of the parties hereunder shall cease except those provisions of this Sublease applicable upon expiration of the Term.

4.4 Term Commencement Date. The Term Commencement Date shall be the earlier of (a) the Final Completion Date of the Approved Improvements, or (b) the date upon which the Sublease Premises can be lawfully occupied, and the Approved Improvements lawfully used, for the conduct of Tenant's business under a Temporary Certificate of Occupancy. Upon the

request of either party made subsequent to the Term Commencement Date, the parties shall promptly execute and deliver to the other a written certification or acknowledgement, in recordable form, of the Term Commencement Date, and the date therein specified shall be incorporated into this Section 4.3 as if originally written herein.

4.5 Termination. The Term shall end on the twenty-fifth (25th) anniversary of the day preceding the Term Commencement Date, unless sooner terminated according to the terms hereof.

4.6 Town's Right to Terminate for Failure To Commence Construction on Approved Improvements. Tenant agrees that if Tenant has not commenced construction on the Approved Improvements on or before the Construction Start Date (as defined in Section 7.1), the Town may elect to terminate this Sublease upon thirty (30) days' written notice to Tenant; provided, however, that if within such 30-day period, construction is commenced and continues to completion as required by this Sublease, such termination notice shall be null and void and this Sublease shall continue in full force and effect.

## **ARTICLE 5 – RENT, TAXES AND UTILITIES**

During the Term, Tenant shall pay to the Town in immediately available funds, as and when due, without deduction or set-off for any reason and without demand, all required Base Rent, Percentage Rent, and Additional Rent, all as provided in this Article 5 (hereinafter, "Rent"). The Rent set forth in this Article 5 is established on the assumption that this Sublease is and shall constitute an absolutely "net, net, net" sublease and that the Town will not have to pay any expense or incur any liabilities of any kind in any way relating to, or in connection with, the Sublease Premises or the Improvements during or attributable to the Term, except as otherwise provided in this Sublease. Accordingly, Tenant will pay in immediately available funds, as and when due, all costs of every kind and description relating to or arising out of the Sublease Premises or the Improvements or the use thereof during the Term, including, without limitation, all utility charges or costs as provided in Section 5.6 below, repair or maintenance costs, improvement costs, annual taxes, fees or assessments allocated to the Sublease Premises or the Improvements, whether levied against the Town or Tenant. Except as expressly provided to the contrary in this Sublease, Tenant shall not be entitled to any abatement, set off or reduction in Rent due under this Sublease. It is the purpose and intention of the parties that the Rent due hereunder be absolutely net to the Town and that this Sublease shall yield, net to the Town, the Rent provided herein, as follows:

### 5.1 Base Rent.

- (a) Base Rent Amount. Commencing on the Term Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Town the annual sum of Seventy Four Thousand Four Hundred (\$74,400.00) Dollars in equal, consecutive monthly installments of Six Thousand Two Hundred (\$6,200.00) Dollars and No Cents, subject to increases from time to time under Sections 5.1(b) and 5.1(c) below, payable in advance, on or before the first day of each calendar month of the

Term (“Base Rent”); provided, however, that the first and last monthly payments of Base Rent shall be pro-rated as to any partial month.

(b) Base Rent Increases - CPI. Commencing on each anniversary date of the Term Commencement Date, or if the Term Commencement Date shall be any day other than the first day of a calendar month, on each anniversary date of the first day of the calendar month next following the Term Commencement Date (each a “Rent Adjustment Date”), during the Term (including any Extension Term) Base Rent shall increase by the lesser of: (i) the percentage increase in the CPI (as defined herein) from the immediately preceding lease year; and (ii) 2.4 %. For purposes of this Sublease, "CPI" shall mean the Consumer Price Index, All Urban Consumers, All Items, U.S. City Average (1982-1984 = 100) published by the Bureau of Labor Statistics, U.S. Department of Labor, or any successor index thereto, provided that if there is no successor index a substitute index shall be reasonably selected by the Town. The new Base Rent payable as of any Rent Adjustment Date shall be computed by determining the product arrived at by multiplying the Base Rent due for the month immediately preceding such Rent Adjustment Date times a fraction (A) the numerator of which is the CPI for the month which is 3 months prior to the Rent Adjustment Date, and (B) the denominator of which is the lesser of (i) CPI for the month which is 3 months prior to the previous Rent Adjustment Date, or (ii) the numerator (i.e. this formula shall not be applied to result in a decrease in the Base Rent as of any Rent Adjustment Date). Notwithstanding the foregoing, if at any Rent Adjustment Date, the product arrived at by application of the foregoing formula exceeds 2.4% of Base Rent for the preceding lease year, then the Base Rent increase for said Rent Adjustment Date shall be limited to 2.4%. The new Base Rent so determined under this Subsection 5.1(b) (and under Subsection 5.1(c), if applicable) shall be the Base Rent for the 12 months commencing on such Rent Adjustment Date.

(c) Base Rent Reset. Upon the ten-year anniversary of the Term Commencement Date, and again on commencement of each of the two Extension Terms of this Sublease, the Base Rent shall be reset to reflect the then current fair market rental value of the Sublease Premises as determined in accordance with Section 5.1(d) hereof (each an “FMV Reset”). The process of determining fair market rent shall commence upon the Town’s delivery to Tenant of written notice requesting such determination, provided that in connection with FMV Resets occurring upon commencement of either Extension Term, said written notice shall be provided at least three (3) months (but in no event earlier than eight (8) months) before the due date of the Tenant’s Extension Notice for the applicable Extension Term. In connection with each FMV Reset, Base Rent shall be adjusted as necessary to reflect Fair Market Rent, except that in no case shall Base Rent be adjusted to an amount that is less than the current Base Rent then in effect for the Sublease Premises. Fair Market Rent shall be established by agreement between the Town and the Tenant in accordance with the definition stated in Section 5.1(d), or, failing such agreement, in accordance with the arbitration procedures set

forth in Section 5.1(e). FMV Resets shall in no way affect the Base Rent adjustments for CPI under Section 5.1(b); except that with respect to FMV Resets occurring simultaneously with Base Rent adjustments under Section 5.1(b), new Base Rent shall be as determined by FMV Reset under this Section 5.1(c), or, as increased pursuant to Section 5.1(b) hereunder, whichever is greater.

(d) “Fair Market Rent” Defined. Fair Market Rent shall mean the base ground rent that the Town would receive as of the commencement date in question if it were to sublease the Sublease Premises for its highest and best use, unimproved, and to a tenant with a credit standing which the Town reasonably determines is comparable to that of Tenant upon similar other terms and conditions. For purposes of the determination of "Fair Market Rent," it shall be assumed that the Town and Tenant are each ready, willing and able to enter into such a Sublease but are under no compulsion to do so.

(e) Arbitration Procedures. The parties to this Sublease will initially attempt to agree upon the Fair Market Rent. If they have been unable to so agree, then either party may request by written notice to the other party ("Arbitration Request") that the matter be determined by binding arbitration by a sole MAI appraiser/arbitrator acceptable to both parties, or, failing that, an arbitration board consisting of three reputable MAI appraisers who are recognized experts regarding land and leasing values in Western Massachusetts. Absent agreement as to a sole appraiser/arbitrator, one arbitrator will be appointed by each party, and each such arbitrator will have no material financial or other business interest in common with the party selecting such arbitrator. If a party fails to appoint an arbitrator and notify the other party of such appointment within thirty (30) days after the Arbitration Request is made, then the arbitrator that was appointed by the other party within such 30-day period will be the sole arbitrator. If two arbitrators are properly appointed and such first two arbitrators are unable to agree on a third arbitrator within thirty (30) days after the appointment of the second arbitrator, then such third arbitrator will be appointed by the presiding judge of the Berkshire County Superior Court, or by any person to whom such presiding judge formally delegates the matter, or, if such methods of appointment fail, by JAMS Endispute of Boston, Massachusetts.

If the arbitration is conducted by a sole arbitrator, such sole arbitrator will render his or her determination of the Fair Market Rate applicable during the period in question to the parties by the thirtieth (30th) day after the Arbitration Request was made. If the arbitration is conducted by three arbitrators, each arbitrator will submit his or her determination(s) of the Fair Market Rate applicable during the period in question in a sealed envelope by the thirtieth (30th) day following appointment of the last arbitrator, and any determinations not submitted by such time shall be disregarded. In such cases, the parties will meet on such thirtieth (30th) day (or if it is not a business day, on the first business day thereafter) at the Adams Town Hall, or such other place as the parties may agree, and simultaneously deliver the determinations. If the determinations of at least two of the arbitrators are identical in amount, such amount will be deemed the decision of the arbitrators. If the determination of the three

arbitrators are different in amount, the decision as to the Fair Market Rent will be independently determined as follows:

(i) If neither the highest nor lowest determination differs from the middle determination by more than fifteen (15%) percent of such middle determination, then the decision will be deemed to be the average of the three determinations; and

(ii) If clause (i) does not apply, then the decision will be deemed to be the average of the middle determination and the determination closest in amount to such middle determination.

The decision of the arbitrators, determined as above set forth, will be final and non-appealable. The fees and expenses of the arbitrator or arbitrators will be shared equally by the parties. During the period of time that any arbitration is pending, the parties will continue to comply with all terms and provisions of this Sublease that are not the subject of the arbitration.

## 5.2 Percentage Rent.

(a) Payment. In addition to Base Rent, Tenant agrees to pay the Town during each lease year during the Term, percentage rent equal to the amount, if any, by which seven (7%) percent of Tenant's Gross Sales exceeds Base Rent payable under this Sublease for such lease year. Percentage rent shall be paid quarterly on or before the 15th day of the month following the end of the third, sixth, ninth, and twelfth months of each Sublease Year and upon the expiration or earlier termination of this Sublease. The amount of percentage rent, if any, due for each quarterly period shall be the amount by which seven (7%) percent of Tenant's cumulative Gross Sales transacted through the end of the most recent quarterly period for the lease year in which said quarterly period falls, exceeds the sum of the total fixed minimum rent paid by Tenant and the percentage rent previously paid by Tenant for the same period. Upon receipt by the Town of each annual statement of Tenant's Gross Sales as provided hereafter, the amount of percentage rent for the preceding lease year shall be determined. If Tenant's quarterly payments for percentage rent are less than Tenant's liability for percentage rent, Tenant shall pay the difference to the Town within 30 days after billing. If Tenant's quarterly payments for percentage rent are in excess of Tenant's liability for rent for the applicable lease year, the Town may apply such excess to future rents or other obligations Tenant may owe to the Town. Gross Sales during the any partial month prior to the commencement of the first lease year shall be included with the Gross Sales of the first full quarter.

(b) Gross Sales. The term "Gross Sales" includes all moneys or things of value received or receivable by Tenant, licensees or concessionaires or others, by reason of or in any way related to the Sublease Premises; including all revenue generated in

connection with the Sublease Premises, or Tenant's use and occupation thereof, or the operation of the Project or the conduct of any business or commercial activity therein or thereon; and specifically including all revenue from bookings and leasing, hiring and renting Lodging Assets, space and other accommodations; and all associated or incidental revenue from unreturned deposits, resort fees; parking, laundry, communications, and transportation charges and fees; sporting, recreational, and other equipment use or rental charges and fees; revenue from fees and charges to use pools, fitness equipment, or similar amenities; and receipts from "pay to play" appliances, plumbing and bathroom fixtures, mechanical equipment and other vending machines; and income or revenue from the provision of food and beverage, resort, hospitality, recreation, camping and campground services, and from the rental, sale, or other disposition of inventory, merchandise, goods and services of any kind to Tenant's clientele, guests and invitees. The term Gross Sales shall not include (and there shall be deducted from Gross Sales only to the extent previously included in Gross Sales)(a) any sums collected and paid out for any rooms, excise or sales tax imposed by any governmental authority where the amount of such tax is separately charged to the guest or customer and paid directly to the taxing authority;(b) third party booking fees paid to VRBO, Airbnb, or any similar unrelated third party booking platform that are added to the booking price of goods or services, collected at the point of sale and paid by Tenant. Under no circumstances shall there be any deduction from Gross Sales by reason of Tenant's being liable to pay any franchise tax, capital stock tax, income tax or similar tax based upon Tenant's income, capital structure, or profits.

(c) Records. Tenant and those claiming under it shall use such sales-recording practices, software and devices that meet with the Town's reasonable approval, and all sales, transactions, or other income events shall be registered or recorded as they are made. For at least six (6) years following the end of each lease year, Tenant and those claiming under it shall keep at the Sublease Premises (or at Tenant's principal place of business after the end of the Term) such records of Gross Sales as would normally be examined in an audit of Gross Sales by an independent accountant conducting an audit of Tenant's Gross Sales in accordance with accepted auditing standards.

(d) Annual Statements. Within thirty (30) days after the end of each lease year, Tenant shall submit to the Town a written statement of Gross Sales, month by month, for that lease year in such form and containing such detail as the Town may reasonably require. Tenant's annual statement shall be signed and certified to be complete and accurate by Tenant's Chief Financial Officer and shall bear an endorsement, executed by a certified public accountant, directed to the Town, as follows:

"We have examined the Gross Sales records of Greylock Glen Ecovillage, LLC (the "Company"). Our examinations were made in accordance with generally accepted auditing standards and included such tests and other auditing procedures as we considered necessary under the circumstances. In our opinion, the Gross Sales figure of \$ \_\_\_\_\_.00 dollars fairly represents the total Gross Sales (as defined in the Greylock Glen Campground Ground Sublease between the Town of Adams and the Company) of the Company for the period beginning with \_\_\_\_\_ and ending with \_\_\_\_\_."



- (e) Quarterly Statements. On or about the tenth day of each calendar quarter in the Term, Tenant shall submit to the Town a statement of Gross Sales, month by month, for the immediately preceding calendar quarter, or partial quarter, as the case may be. Tenant's quarterly statements shall be in substantially the same form and detail as are required for the annual statements and shall be certified by Tenant's CFO to be complete and accurate, but they need not be endorsed by a certified public accountant.
- (f) The Town's Audit Rights. The Town shall have the right to audit Tenant's Gross Sales for each lease year, such audit to be commenced not more than three (3) years following the date provided in Section 5.2(d) for the submission to the Town of the statement of Gross Sales for such lease year, or following the date (if later) when Tenant actually submitted the required statement, whether or not this lease has expired or terminated prior to the date the Town begins its audit. Any such audit shall be performed during usual business hours and without unreasonable interference with the conduct of Tenant's business.
- (g) The Town's Special Remedies. Any default by Tenant in the performance of any of its obligations under this Section 5.2 shall constitute an Event of Default under Section 15.1, and in any event, Tenant shall pay any deficiency in percentage rent, determined after audit, together with interest at the Default Rate, but the Town shall also have the additional remedies provided for below:
- (i) Time Limit Removed. If actual Gross Sales for a lease year as determined after audit exceed the Gross Sales for that lease year as reported by Tenant by five percent (5%) or more, the Town shall have the right to audit Tenant's Gross Sales for any and all prior lease years, as the Town may elect, without regard to the three (3) year limitation stated in Section 5.2(f), and whether or not the Town has already audited Tenant's Gross Sales for any such prior lease year.
- (ii) Cost of Audit. If the Gross Sales for a lease year as determined after the audit exceed the Gross Sales as reported by Tenant for such lease year by one percent (2.5%) or more, Tenant shall pay the Town the cost of the audit.
- (h) Conduct of Business. Unless otherwise approved by the Town in connection with an Approved D&O Plan, at all times from and after the Term Commencement Date, Tenant shall continuously and uninterruptedly occupy and use the demised premises for the full time and continuous conduct of Tenant's business and, subject to applicable law, shall keep the entire Sublease Premises open for business, except to the extent Tenant may be prevented therefrom by causes (other than economic constraints or conditions) beyond Tenant's reasonable control. Tenant shall operate and advertise its business in the Sublease Premises under the trade name "Greylock Glen Ecovillage" unless the Town shall otherwise consent. Tenant agrees to conduct its business and operate the Project at all times in a prudent and reputable manner so as to produce the maximum volume of Gross Sales. Tenant shall refrain from using or employing any reservation or check-in software, or any other practice, process or procedure, the use

or employment of which may lead to the diversion of guests, customers, or Gross Sales from the Tenant or the Sublease Premises to any Prohibited Business (as defined in the following subsection), or to any other property owned or controlled by a Prohibited Business, in order to reduce the amount of Percentage Rent that would otherwise be due hereunder. Tenant further agrees to use all of the Sublease Premises to generate revenue, other than such minor portions as are reasonably required for storage and office purposes, and to use such storage and office space only in connection with the Tenant's operation of the Project; to furnish and equip the Sublease Premises with all trade fixtures which may be suitable and necessary for carrying on Tenant's business in the manner provided herein; to carry a full and complete stock of seasonable merchandise and to offer the same for sale at competitive prices; to maintain an adequate staff of trained personnel to assure efficient and courteous service to customers; to store all trash and refuse in closed containers at locations at the Sublease Premises which are not frequented by or generally visible to members of the public, and to dispose of the trash and refuse daily, all as provided in this Sublease; and to keep the Sublease Premises and all Improvements neat and clean and free of debris, refurbishing (repainting as needed) all or any portion thereof from time to time as may be reasonably necessary to keep the premises attractive to customers.

(i) Competitive Business. Tenant will not engage in any other business or enterprise that is or will be both (a) competitive with the Project or the Tenant's business or any part of either, and (b) located within a five (5) mile radius of any point on the perimeter of the Sublease Premises. For purpose of this paragraph, Tenant will be deemed to be engaged in a business if it or any of its present or future employees, principals, is an owner, shareholder, principal, partner, employee, agent, or independent contractor of any such business or is a lender to any such business, or is a guarantor of the debts of any such business, or is entitled to compensation, dividends, profits, or any other payments or other things of value from any such business (each such business being herein referred to as a "Prohibited Business").

### 5.3 Additional Rent.

In addition to Base Rent and Percentage Rent, commencing on the Commencement Date and throughout the Term, Tenant shall pay any fee, charge or other amount required to be paid by Tenant to or on behalf of the Town under this Sublease, including without limitation amounts required under Section 5.4 hereof, and, to the extent that the Town may become liable therefor, amounts required under Sections 5.5 and 5.6 hereof, as additional rent ("Additional Rent").

### 5.4 Intentionally Omitted.

### 5.5 Taxes

(a) Municipal Taxes, Fees and Assessments. Tenant shall pay and discharge as they become due, promptly and before delinquency, all taxes, including real estate and fire district, assessments, rates, ad valorem charges, license fees, municipal liens, levies, excises, or impositions of any kind, including all governmental charges which may be levied, assessed, or imposed, or which may become a lien or charge on the Sublease Premises or the Improvements, or any part of same, or on Tenant's subleasehold estate which may be a subject of taxation, or on the Town's leasehold estate, during the entire Term of this Sublease. All taxes and charges payable under this section shall be prorated at the commencement and expiration of the Term.

(b) Contest. If Tenant shall in good faith desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed in this Sublease to be paid by Tenant, Tenant shall be permitted to do so, without deferring or defaulting on the payment of the tax or charge, the validity or amount of which Tenant is so contesting.

(c) Rebates. All rebates on account of any such taxes, rates, levies, charges, or assessments, required to be paid and paid by Tenant under the provisions of this Sublease shall belong to Tenant.

(d) Personal Property Taxes. Tenant shall pay promptly as and when due all taxes which may be imposed upon personal property (including fixtures taxed as personal property) in, on or within the Sublease Premises.

5.6 Utility Charges. Tenant shall pay directly to the utility provider, all charges by any authority or utility for electricity, telephone, gas, cable, internet access, communications and other services supplied or rendered to the Sublease Premises, and service inspections made therefor, whether such charges are made directly to Tenant or through or in the name of the Town.

5.7 No Release of Obligations. No happening, event, occurrence or situation during the Term (including, without limitation, the Tenant's failure, refusal or inability for any reason to construct the Approved Improvements) shall permit the Tenant to quit or surrender the Sublease Premises or this Sublease or shall relieve the Tenant from its liability to pay the Rent and other charges under this Sublease, or shall relieve the Tenant from any of its other obligations under this Sublease, except as provided in Section 19.6 hereof relative to unavoidably delays.

5.8 Payment of Installments of Rent. Each installment of Rent shall be paid by check or ACH payable to the "Town of Adams, Massachusetts" and shall be delivered to the Town at its address for notice in Section 19.2, or such electronic payment method as shall be reasonably agreed upon by the Town and Tenant.

5.9 No Set Off / Late Payment. Each Rent payment shall be made promptly when due, without any deduction or setoff whatsoever, and without demand, failing which Tenant shall pay to the Town as Additional Rent for such late payment, after the fifth (5th) day after such Rent payment remains due but unpaid, a late charge equal to five percent (5%) of such

payment which remains due but unpaid which Tenant agrees is a reasonable estimate of the costs which the Town will incur as a result of and in order to process such late payment. Such late charge is due on the day it is incurred and shall bear interest thereafter as hereinbelow provided. In addition, any payment that is not paid by the fifth (5th) day after such payment is due shall bear interest at the Default Rate. Any payment made by Tenant to the Town on account of Rent may be credited by the Town to the payment of any Rent then past due, late charge incurred and unpaid, or accrued and unpaid interest before being credited to Rent currently falling due. Any such payment which is less than the amount of Rent then due shall constitute a payment made on account thereof, the parties hereto hereby agreeing that the Town's acceptance of such payment (whether or not with or accompanied by an endorsement or statement that such lesser amount or the Town's acceptance thereof constitutes payment in full of the amount of Rent then due) shall not alter or impair the Town's rights hereunder to be paid all of such amount then due, or in any other respect.

## **ARTICLE 6 – USE OF SUBLEASE PREMISES**

6.1 Permitted Uses. The Sublease Premises shall at all times be used exclusively by Tenant only for the construction, development, use and operation of the Approved Improvements according to and in full compliance with the terms of this Sublease, all Legal Requirements, and the Development Plan and the Operations Plan previously approved by the Town pursuant to Sections 3.2 and 3.3 of the Development Agreement (the "Approved D&O Plans"), subject only to such changes or modifications as may be approved by the Town under Sections 6.2, 7.4, 7.7(c) or 8.3 hereof. As of the date of execution of this Sublease, "Permitted Uses" that have been approved by the Town via the Approved D&O Plans are the construction, development and operation of a campground with tent sites, rental cabins or other structures with permanent utilities, and permanently located travel trailers with permanent utility connections, with facilities for common showers, common restrooms and a campground office, together with such other accessory uses and structures as are ancillary to and customarily used in connection with the primary campground/rental cabin use, but, as to such ancillary other accessory uses and structures, only to the extent same have been described in an Operations Plan and approved via the Approved D&O Plans. From and after the Commencement Date, Tenant shall construct, use and occupy the Approved Improvements and the Sublease Premises as and for the Permitted Uses, and for no other purpose, unless Tenant is prevented from being open due to Unavoidable Delay or when Tenant is making repairs, improvements or alterations required by this Sublease.

6.2 Changes In Use. Tenant shall not use, occupy, or alter, or permit the Improvements or the Sublease Premises to be used, occupied, or altered, or do or permit anything to be done in or on the Sublease Premises, in whole or in part, in a manner not expressly provided for in the Approved D&O Plans, or which would in any way violate the terms of this Sublease. Prior to making any such changes in the use or operations previously approved by the Town and described in the Approved D&O Plans, or applying for any permits in connection with such change in use or operations from any Governmental Authority, the Tenant shall submit to the Town its proposed restatement of or modifications to the Operations Plan describing such

change in use or operations (and to the extent that any new Improvements or Substantial Alterations are proposed in connection with such change in use or operations, will be accompanied by a proposed new Development Plan for Town approval pursuant to Section 8.3 hereof) and shall secure Town approval thereof as provided in and required by the “Plan Submission and Approval Procedure”, as that term is defined in Section 3.2 of the Development Agreement. Upon written approval by the Town of Tenant’s proposed new Operations Plan, the uses and operations therein described shall thereafter be deemed Permitted Uses, and the defined term “Approved D&O Plans” shall thereafter be deemed to include said new Operations Plan in place of (in the case of a restatement) or in addition to (in the case of modifications) the previously approved Operations Plan.

6.3 Abandonment of Use. Subject to Unavoidable Delays and, except during permitting and timely acquisition or construction of the Improvements, and thereafter during reasonable periods of repair, remodeling and/or restoration, Tenant covenants and agrees to use the Sublease Premises in compliance with an Approved D&O Plan exclusively for the Permitted Uses, failing which, the Town shall have the right, subject to the rights of the Permitted Mortgagees set forth in this Section 6.3, to terminate this Sublease by written notice to Tenant, as provided in Article 15, and recover exclusive possession of the Sublease Premises. In the event the Town exercises its right to terminate the Sublease under this Section 6.3, the Sublease shall terminate sixty (60) days after the date of the Town's notice to Tenant thereof, unless within such sixty (60) day period, the Sublease Premises are used and occupied as required by this Article and any default is cured. Each Permitted Institutional Mortgagee shall have the same rights to cure as set forth in Article 15.2(c) and (d).

6.4 Compliance with Insurance Requirements. Throughout the Term of this Sublease, Tenant, at its expense, shall observe and comply with, and shall cause all Tenant Parties to observe and comply with the requirements of all policies of public liability, casualty and other insurances required to be carried by Tenant at any time in force with respect to the Sublease Premises, and Tenant shall, without limiting any other requirements of this Sublease, in the event of any violation or any attempted violation of the provisions of this section by any Tenant Party, take all reasonable steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

6.5 Nondiscrimination and Policies to Encourage Use by All Races, Nationalities, Ages and Genders. Throughout the Term, Tenant shall use, establish and maintain policies to encourage use of the Sublease Premises by persons of all races, nationalities, ages and genders. Tenant agrees that Tenant shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Tenant, or deny any person access to the Sublease Premises or to any activities or programs carried out upon the Sublease Premises. Tenant shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation. If a complaint or claim alleging violation by Tenant of such statutes, rules, or regulations is presented to any Governmental Authority, Tenant agrees that Tenant and Tenant's employees and agents shall cooperate fully with the Governmental

Authority in the investigation and disposition of such complaint or claim. Tenant agrees to assume all legal fees and costs in connection with the defense of each such claim. In the event of Tenant noncompliance with the provisions of this section 6.4, such noncompliance shall be deemed to be a material breach of this Sublease. In furtherance and not in limitation of the foregoing, Tenant shall comply with Executive Order 526 of the Commonwealth of Massachusetts and all other Legal Requirements.

6.6 Display of Signs, Advertisements, Posters, and Notices. The Tenant shall cooperate with the Town with respect to signage relating to the Sublease Premises or the Lease Premises and any adjacent recreational lands and facilities directly or indirectly under the care and control of the Town or DCR. The Town shall have the right to install one or more signs on the Sublease Premises, provided that such signs shall not unreasonably interfere with Tenant's use of the Sublease Premises.

6.7 Contact Persons. Tenant shall provide the Town with the name and contact information for one or more representatives of the Tenant, including, without limitation, representatives who will be available, at all times, to respond to emergencies when contacted. Tenant shall keep this information current.

6.8 Law Enforcement. State, local, and environmental police officers shall have the authority to enforce the Town's, DCR's and DCAMM's rules and regulations, and to assist in Sublease Premises enforcement activities, when available as part of routine patrols and at no additional or extraordinary expense to the Town. Tenant shall be responsible to ensure adequate law enforcement presence at the Sublease Premises, at Tenant's expense, if or when a breach of the peace can be reasonably anticipated.

6.9 Safety and Security Protocols. Tenant shall be solely responsible at all times for the implementation and maintenance of staffing and safety and security protocols necessary for the maintenance of good public order and for the safety and security of its campers, business invitees and guests. Tenant shall implement, maintain, periodically revise with the Town's written approval as necessary or desirable to address then existing conditions or safety or security issues, and at all times comply with a written staffing and safety and security plan ("Safety and Security Plan") incorporating the staffing and safety and security protocols that have been approved in writing by the Town as part of an Approved D&O Plan, or any approved written modifications to an approved Development and Operations Plan.. Each request seeking the Town's approval of modifications to staffing and safety and security protocols that were previously approved as part of a Development and Operations Plan under this Sublease or the Development Agreement, or pursuant to any previously approved modification to said protocols under this section, shall include the Tenant's then current and previously approved Safety and Security Plan, together with Tenant's proposed new Safety and Security Plan for the Town's approval. If there is a previously approved, existing, and adequate Safety and Security Plan in place that the Tenant does not intend to revise in connection with any modification to a previously approved Development and Operations Plan then Tenant shall include a copy of the then current, existing Safety and Security Plan with such request for modification or request for approval of said Development and Operations

Plan, along with a statement that Tenant considers the existing Safety and Security Plan adequate for the Project, as same is then proposed to be modified, altered or expanded. Approval of Tenant's Safety and Security Plan by the Town shall not in any way alter, minimize, or derogate from the Tenant's sole and exclusive obligation to maintain safety and security and good public order hereunder. The Tenant shall indemnify and defend the Town from any Claims related to the failure to adequately protect and preserve safety, security and good public order at the Sublease Premises or otherwise arising out of the Tenant's use, occupancy or operation of the Project.

6.10 Compliance with all Applicable Laws, etc. Tenant shall at all times during the Term comply in all respects with the terms of this Sublease, the Required Permits and all Legal Requirements.

6.11 Timeshare Not Allowed. No portion of the Sublease Premises or Tenant's interest in this Sublease shall be dedicated or committed to timeshares or timesharing under MGLc. 183B, Section 1, et. seq., or any points based or similar timesharing regime.

## **ARTICLE 7 – CONSTRUCTION AND COMPLETION OF IMPROVEMENTS**

7.1 Tenant's Affirmative Obligation to Commence and Complete Construction of Project. Tenant shall construct, develop, procure and deliver the Approved Improvements at Tenant's sole cost and expense, in full compliance with the Approved D&O Plans, this Sublease and the Legal Requirements. Tenant shall commence construction on the Approved Improvements within sixty (60) days of the date of execution of this Sublease by all parties (the "Construction Start Date"), which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Construction Schedule. For purposes of this Sublease, Tenant Work on constructing or supplying the Approved Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, site work) on the Sublease Premises, and "Final Completion" of the Approved Improvements will be deemed to have occurred upon the issuance of a permanent and final Certificate of Occupancy or Certificate of Final Completion for the Approved Improvements. Tenant shall achieve Final Completion of the Approved Improvements on or before the "Final Completion Date", defined as the (a) the date that is twenty-four (24) months after the Construction Start Date, or (b) such later date as may have been requested by Tenant and agreed to by the Town, in writing, in its approval of the Tenant's Development and Operations Plans. Upon Tenant's written request, the Town may extend the Construction Start Date and/or the Final Completion Date for not more than ninety (90) days in the aggregate if the Town determines that Tenant has proceeded diligently in its performance (with any extensions beyond such ninety (90) day period to be at the Town's sole option), and the Tenant's performance with respect to such dates shall be further subject to the provisions of Section 19.6 hereof pertaining to unavoidable delays. If Tenant, despite its diligent and good faith efforts, fails to commence construction by the

Construction Start Date and/or to complete construction of the Approved Improvements by the Final Completion Date, as may have been extended as provided above, the Town may elect to terminate this Sublease by giving Tenant at least ninety (90) days prior written notice; provided, however, that if the Approved Improvements are commenced or completed, as the case may be, within such ninety (90)-day period, such termination notice shall be null and void and this Sublease shall continue in full force and effect. Upon the termination of this Sublease as provided herein, all obligations of the parties under this Sublease shall terminate, except those that are identified to survive the expiration or termination of this Sublease.

7.2 The Project. According to the Approved D&O Plans attached to this Sublease as “Exhibit A” and expressly incorporated herein by reference, the Approved Improvements to be constructed or supplied by Tenant and to be committed to the Project hereunder include:

- (a) Construction of one “Main Building” to be located at the South campground include the Campground office, restrooms, a lobby, storage and a two (2) bedroom dwelling unit to be used as a caretaker’s or ranger’s residence; and
- (b) Construction of two “Shower/Laundry Buildings”, one to be located at the North campground and the other to be located at the South Campground, with each to include not less than the requisite number of showers as are required by applicable codes, and with each to include not less than two (2) clothes washers and two (2) clothes dryers for guest laundry; and
- (c) Construction of not less than one (1) Small Bathroom Building to be located at each of the North and South campgrounds, with each such building to have not less than one sink and one toilet; and
- (d) Construction of not less than one (1) “Cart Storage Building”; and
- (e) Demolition of the existing bridge to the North Campground and replacement thereof with a new timber bridge supported by concrete abutments; and
- (f) Grading, drainage, sitework, landscaping and the installation of utilities to serve all buildings (excepting the Cart Storage Building), and to create and serve all tent sites, Airstream sites and cabin sites; and
- (g) Construction of all driveways, walkways and parking areas, including necessary grading, drainage components, sitework and the installation of utilities; and
- (h) Construction of fifty-four (54) cabins; and
- (i) Construction or location of such platforms, picnic tables, common decks and other appurtenances necessary or desirable to serve all sites and common gathering areas; and



(j) Grading, site work, landscaping and the installation of utilities, as required to create nine (9) Airstream sites, each to be devoted to the permanent location and hookup of one new Airstream “Bambi” travel trailer to be supplied by Tenant; and

(k) All mitigation or site work required to be completed or performed under any of the Required Permits or the Secured Approvals, including any earth work, buffer zone work, site stabilization work, or stream crossings within the Sublease Premises, and/or any required wetlands replication and mitigation, including offsite replication and mitigation to the extent required to mitigate impacts to the Sublease Premises, onsite or offsite.

(l) Design and construction of a new electrical transformer or other related equipment and conduits, and the connection and improvement of all Project utilities extending from the public right of way to all interior portions.

7.3 Commencement and Completion of Construction of Alterations or Other Improvements. Subsequent to receiving the Town’s approval of any new Development Plan describing any Substantial Alterations or Improvements (other than the Approved Improvements), Tenant shall commence construction thereon no later than one hundred eighty (180) days after Tenant’s receipt of all final Required Permits therefore. In addition, each request for Town approval of any new Development Plan shall include Tenant’s proposed Final Completion Date for the Alteration or Improvements described therein. The Town’s written approval of any such Development Plan shall constitute the Town’s agreement to Tenant’s proposed Final Completion Date, unless otherwise specified therein.

7.4 Changes To Development Plan During Construction. No material changes to the approved Development Plan shall be made during construction of the Approved Improvements without the Town’s written approval, excepting (a) any changes made resulting from implementation of alternatives or qualified substitutions that were described in the previously approved Development Plan, (b) minor changes to reflect field conditions or unforeseen conditions, and (c) minor changes required to comply with Legal Requirements (collectively, the “Permitted Changes”). If prior to Final Completion of the Approved Improvements, Tenant desires to make a material change to the Development Plan that is not a Permitted Change, then Tenant shall submit its request for such change to the Town, and the Town shall either approve or disapprove same, all according to the Plan Submission and Approval Procedure, provided, however, that the Town’s approval may be withheld in the Town’s sole discretion, and the Town shall act on any Tenant request under this Section 6.3 within ten (10) days as opposed to thirty (30) days.

7.5 Intentionally Omitted.

7.6 Construction Schedule. The Project and the Approved Improvements shall be constructed and developed by Tenant in accordance with the construction schedule submitted to and approved by the Town under the Development Agreement, as same is recited in the

approved Development Plan (the “Construction Schedule”). Upon written request, Tenant shall submit to the Town satisfactory evidence that each deadline contained in the Construction Schedule has been met. The procurement, delivery, commencement and completion of the Approved Improvements (including each stage of construction), and the provision or satisfaction of any other matters set forth in the approved Construction Schedule by the deadlines set forth therefore are an essential part of this Sublease.

#### 7.7 Required Permits.

- (a) Tenant’s Obligation To Secure Required Permits. Prior to the commencement of any Tenant Work on the Approved Improvements, any other Improvements, the Project or any Alterations, Tenant shall apply for and use diligent efforts to obtain, and shall continuously pursue, at Tenant’s sole cost and expense, all final Required Permits. For purposes of this subsection, “diligent efforts” shall not be construed to require the filing of an appeal of a negative determination or decision of a Governmental Authority on any application for a Required Permit. For Required Permits to be deemed "final," as required herein, all applicable appeal periods shall have expired without an appeal having been taken, or if appeal has been taken, after successful resolution thereof and all further appeal periods having expired. Notwithstanding the foregoing, if and to the extent that the Approved D&O Plans would, in the professional opinion of Developer’s Design Professionals or legal counsel, represent a material change in the Approved MEPA Plan according to the MEPA Regulations, the Town shall engage a qualified engineering firm of its choice, at the sole cost and expense of Developer, to file and prosecute a Notice of Project Change seeking to amend the Approved MEPA Plan to conform to the Approved D&O Plans.
- (b) Prior Permits or Approvals Secured by the Town. In addition to the obligation to obtain all Required Permits, the Tenant and the Developer, jointly and severally, are and shall be exclusively responsible to determine what permits (or modifications to the Secured Approvals previously obtained by the Town), are or may be required to construct, develop and operate the Approved Improvements and Project. Developer and Tenant have engaged qualified consultants and other professionals in order to obtain or determine the Legal Requirements and applicability of such Required Permits and Secured Approvals to the Project. The Town makes no representations or warranties as to the validity, suitability, or compliance of the Secured Approvals with Developer’s conceptual plan evidenced by the Concept Plan, or any Approved D&O Plans that may be approved by the Town in the future, or to any planned or desired use, operation, construction, development, or Improvements, which may occur or to which the Sublease Premises may be devoted. Tenant and Developer are exclusively responsible to achieve regulatory compliance with all Legal Requirements, and to evaluate the Secured Approvals and any Required Permits as Developer’s Concept Plan evolves into the Approved D&O Plans.

(c) Town Approval of Permitting Changes. If and to the extent that any material changes or modifications to the Approved D&O Plans are made a condition of any Required Permit or are otherwise approved or imposed as part of any Required Permit, the Developer shall not commence any Tenant Work, nor exercise any rights under any Required Permits without requesting and receiving the Town's written approval thereof.

(d) Final Certificates. Upon full or substantial completion of any Improvements, and prior to occupying any part of same for any purpose other than construction and permitting, Tenant shall secure, deliver to the Town, and record (where required) any and all required and final certificates of occupancy, certificates of final completion, certificates of compliance or other similar certifications or instruments certifying that the Improvements were constructed and completed as designed and are in full compliance with the applicable underlying Required Permits. Notwithstanding the foregoing, and subject to all other requirements of this Sublease, Tenant may use or occupy Improvements under validly issued and outstanding temporary or conditional certificates of use or occupancy issued by the appropriate Governmental Authority on any Required Permit, but Developer shall not thereby be relieved from the obligation of obtaining timely permanent and final certificates for same.

(e) Town's Cooperation in Permitting. The Town shall promptly execute and deliver any documents requiring the Town's signature as master tenant of the Sublease Premises, and shall assist the Tenant in securing the execution and delivery by the Master Landlord of any documents requiring the Master Landlord's signature as owner of the Lease Premises, that are required to obtain or maintain any Required Permits; provided, however, that with the exception of its obligation to join in proceedings due to its leasehold interest in the Sublease Premises, the Town will have no obligation to participate in proceedings or join in any document in which it will oppose the Town of Adams or the Commonwealth of Massachusetts, or any board, commission, department, agency, authority, office or subdivision of either, nor shall the Town be required in connection with any such document or proceeding or otherwise to oppose in any way any policy previously established by the Town, nor to take a position inconsistent with a position previously taken and made public by the Town. The Town shall not be required to incur any costs in connection with any documentation or proceedings under this Section.

7.8 Ownership of Improvements. During the Term, title to Improvements shall be vested in Tenant and Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for income tax purposes. Subject to the terms of this Sublease, Tenant may offer as collateral, or otherwise mortgage, pledge or encumber, the Tenant's interest in this Sublease in connection with debt or other financing transaction. Upon the expiration or earlier termination of this Sublease, title to all Improvements that have been used in connection with or incorporated into the Project, or constructed or installed at, on or under the Sublease Premises, shall immediately vest in the Town and shall be surrendered at that time in accordance with Section 11.1 below.

7.9 Manner of Construction and Requirements as to Tenant Work. All Tenant Work executed or performed, or to be executed or performed, at any time during the Term in connection with the Project, the Approved Improvements, any other Improvements, any Alterations and any repairs and maintenance to the Project, shall be executed and performed as follows:

- (a) Tenant Work shall be timely executed, performed and completed in a good and workmanlike manner in compliance with all Legal Requirements, all Required Permits, this Sublease and sound engineering and construction practices in accordance with local commercial construction industry standards and practices; and
- (b) Tenant Work shall be performed in material compliance with the applicable Town approved Development Plan therefore, including Plans and Specifications, Construction Schedule, Permitting Schedule and other matters contained therein; and
- (c) Tenant shall use commercially reasonable efforts consistent with local construction industry standards to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by Tenant Work, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated, developed, or environmentally sensitive area; and
- (d) Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold the Town harmless from and against any and all Claims attributable to the performance or failure to properly perform any Tenant Work.
- (e) Tenant Work shall be performed by duly licensed, reputable, and insured commercial contractors with the requisite skill, experience, personnel, tools and equipment to commence, construct and complete same in compliance with the requirements of this Article 7; and
- (f) During the course of performance of any Tenant Work, Tenant shall carry or cause to be carried adequate workers' compensation insurance and such other insurance as may be required by law to be carried by the Town, Tenant, or either of them in connection with such work. Such insurance shall be in addition to, rather than a duplication of, the insurance coverage required to be carried pursuant to the provisions of Article 10.
- (g) During the course of performance of any Tenant Work, the Tenant shall secure and maintain "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Town may reasonably require.

(h) During the course of performance of any Tenant Work having an estimated cost greater than One Hundred Thousand Dollars (\$100,000.00), Tenant shall provide or cause to be provided a construction performance bond in such amount as shall ensure the completion of such work. Each such construction performance bond shall be issued by a surety licensed to do business in Massachusetts. Each such construction performance bond shall remain in effect until 30 days after the completion of all punch-list items for such Tenant Work. Each such construction performance bond shall be for the benefit of the Town.

(i) During the course of performance of any Tenant Work, Tenant shall keep on the Sublease Premises a complete copy of the Approved D&O Plans, including all Plans and Specifications and the Construction Schedule relating to such Tenant Work that the Town and its contractors, architects and engineers may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the Tenant Work conforms to the requirements of this Sublease.

(j) Tenant shall promptly notify the Town following Final Completion of the Project and Approved Improvements, and upon the completion of any Tenant Work on other Improvements or Substantial Alterations (whether or not the approval of DCAMM and DCR is required) and shall provide a copy of the final certificate of occupancy and such information, in such format or formats as DCAMM may require for listing in any capital asset management information system as now or hereafter administered by DCAMM ("CAMIS"). Tenant shall also provide such information regarding the Sublease Premises and any Improvements now or hereafter constructed or located on the Sublease Premises as the Town may request from time to time for listing in CAMIS including, but not limited to, "as built" drawings certified by an engineer showing all Improvements constructed on the Sublease Premises.

7.10 Liens. Tenant shall not suffer any matter or thing arising out of Tenant's Work or Tenant's use and occupancy of Sublease Premises that might impair the estate, rights, and interests of the Master Landlord or the Town in the Sublease Premises and the Improvements or any part thereof. If any mechanic's, laborer's or materialman's lien shall at any time during the Term be filed against the Sublease Premises, the Town's leasehold, the Master Landlord's underlying fee, or any part thereof or the income therefrom, with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, through or under Tenant, Tenant, within sixty (60) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Town may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by the Town and all costs and expenses incurred by the Town in connection therewith, together with interest at the prime rate of interest reported from time to time in the Wall Street Journal or any successor publication plus two percentage points (the "Default Rate") from the

respective dates of the Town's making of the payment or incurring of the cost and expense until paid in full by Tenant to the Town on demand.

7.11 No Consent. Nothing contained in this Sublease shall be deemed or construed in any way as constituting the consent to payment by the Town, or request of the Town, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Sublease Premises or any part thereof.

7.12 No Agency Relationship. Based on (a) the provisions of the Uniform Procurement Act for the disposition by lease of Town-owned property, (b) the Enabling Legislation, and (c) interpretations of the purpose, intent, and scope of the bidding laws for public construction by Massachusetts courts and by the Attorney General's Business and Labor Protection Bureau, the Town and the Tenant separately expect and intend (without any warranty or representation by the other party with respect thereto) that this Sublease, including without limitation its provisions applicable to the Tenant Work on the Improvements, is not subject to bidding laws for public construction, including without limitation M.G.L. c. 149, Sections 44A-44J, M.G.L. c. 30, Section 39M, et seq., and M.G.L. c. 7C, Section 54.

7.13 Installation of Utilities. Tenant acknowledges that, except as expressly provided elsewhere in this Sublease, the Town shall have no obligation to provide any facilities, utilities, or services of any kind to the Sublease Premises whatsoever during the Term of this Sublease, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power. Notwithstanding the foregoing, the Town shall provide Tenant with such services as the Town, as a municipal corporation, customarily provides to members of the public. The Town makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Sublease Premises. Without limiting the foregoing, Tenant shall be responsible for connecting the Sublease Premises to public water and to the Town sewer. Tenant shall have the right, at its sole expense, to connect to all utilities and to enter into agreements with utility and similar service companies and providers as are required in order to service the Premises and may do so in its name.

7.14 As-Built Drawings. Within ninety (90) days after Final Completion of the Approved Improvements or the completion of any other major Improvements on the Premises, Tenant shall prepare at its expense and deliver to the Town one complete, legible and reproducible full-sized set of as-built plans showing the Approved Improvements or such other Improvements, as the case may be, together with a certified survey plan.

## **ARTICLE 8 – ALTERATIONS, MAINTENANCE AND REPAIRS**

8.1 Sole Responsibility on Tenant. Tenant has subleased the Sublease Premises after a full and complete examination of the Sublease Premises and knowledge of the Sublease Premises' present uses and non-uses. Tenant accepts the Sublease Premises in the condition or state in

which they now are without any representation or warranty, express or implied in fact or by law by the Town and without recourse to the Town, as to the nature, condition, or usability of the Sublease Premises, or the use or uses to which the Sublease Premises or any part of the Sublease Premises may be put. Throughout the Term, except as expressly provided herein, the Town shall not be required to furnish any services or facilities, or to make any repairs or alterations in or to the Sublease Premises, Tenant assuming the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Sublease Premises, including, but not limited to, the performance of all burdens running with the land, subject to the provisions of Article 13 below.

8.2 Maintenance and Repairs. Throughout the Term, but excepting maintenance of the Trails and Trailheads which shall be and remain the Town's responsibility hereunder, the Tenant agrees to be solely responsible for maintaining, repairing and replacing, if necessary, the Sublease Premises and Improvements, and each and every part thereof, and agrees, without limitation, to (i) ensure that the Sublease Premises and Improvements remain in compliance with all Required Permits and Legal Requirements; and (ii) maintain the Sublease Premises and Improvements in first class order and repair, in a good, sightly and safe condition throughout the Term. All repair and maintenance work shall be subject to the requirements for Tenant Work under Article 7 hereof and shall be consistent with the quality of the original construction. The Tenant shall not permit or commit any waste. The Tenant's maintenance, repair and replacement obligations hereunder shall include, but not be limited to, the following, as needed:

- (a) Trash removal, and
- (b) Snow and ice removal, and
- (c) Mowing and Landscaping, and
- (d) Doors, windows, glass and glazing, and
- (e) Gates and fencing, and
- (f) Scraping and repainting peeling paint, and
- (g) Regrading and resurfacing driveways, sidewalks, walkways, bridges, and parking areas, and
- (h) Stormwater drainage systems and components thereof, and
- (i) Utilities and infrastructure, and
- (j) Fire safety and security systems, and
- (k) Exterior security and other lighting fixtures, and

(l) Buildings (interior and exterior) and Fixed Equipment, and

(m) Lodging Assets (interior and exterior), and

(n) All other Improvements, it being the intent of this Sublease that the Project be in first class, good, usable and habitable condition at the end of the Term, subject only to reasonable wear and tear.

8.3 Alterations. Tenant shall have the right, from time to time, at Tenant's sole cost and expense, to make Alterations in or to the Approved Improvements or the Sublease Premises any time after Final Completion of the Approved Improvements, provided Tenant is not then in default, subject, however, in all cases to the following:

(a) Prior to commencing any Tenant Work or applying for any permits in connection with any Substantial Alterations (costing more than \$100,000.00), Tenant shall first obtain the Town's written approval of same by submitting its proposed new Development Plan (and to the extent that any change in use or operations will occur in connection with such Substantial Alterations, will be accompanied by a proposed new Operations Plan for Town Approval pursuant to Section 6.2 hereof) describing such Substantial Alterations or Improvements, according to the Plan Submission and Approval Procedure.

(b) No Alteration that is not a Substantial Alteration shall be made that will result in a change of use of the Sublease Premises or a significant change in the general design, character, size or impacts of the Project (unless said change of use has been approved by the Town in connection with the approval of a new Operations Plan pursuant to Section 6.2 hereof), or a violation of the terms of this Sublease.

(c) No Tenant Work on any Alterations shall be undertaken until Tenant shall have procured and paid for all Required Permits and otherwise complied with all Legal Requirements.

(d) Substantial Alterations shall be designed by and conducted under the supervision of an architect or engineer selected by Tenant. Tenant Work on Substantial Alterations, including any future Improvements costing in excess of \$100,000.00, shall be subject to the requirements of Article 7 hereof.

(e) Upon approval of a new Development Plan under Section 8.3(a), the defined term "Approved D&O Plans" shall be deemed to include said new Development Plan in place of the previously approved Development Plan.

## **ARTICLE 9 – SUBTENANT'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

9.1 As of the date of this Sublease, Tenant represents and warrants to the Town as follows:



- (a) Full Power and Authority. Tenant has full power and authority to enter into and perform this Agreement and all documents, instruments and contracts entered into or to be entered into by it pursuant to this Agreement and to carry out the transactions contemplated hereby.
- (b) Due Execution. This Agreement is, and all documents to be executed by Tenant and delivered to Town will be duly authorized, executed and delivered by Tenant and all consents and approvals of third parties will have been obtained.
- (c) Valid Obligations/Enforceability. This Agreement is, and all documents to be executed by Tenant and delivered to Town will be the legal, valid and binding obligations of Tenant, enforceable in accordance with their respective terms and will not violate any provisions of any contract, judicial order or any other thing to which Tenant is a party or to or by which Tenant is subject or bound. Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement is subject to any requirement that Tenant obtain any consent, license, approval or authorization of, any third party.
- (d) Eligibility to Contract. Tenant is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.
- (e) No Litigation. Tenant knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Tenant or Tenant's properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Sublease, or Tenant's ability to carry out Tenant's obligations under this Sublease.

9.2 Tenant's Covenants. Tenant covenants and agrees with the Town as follows:

- (a) ADA Compliance. All Tenant Work, Improvements, and other modifications to the Sublease Premises shall be constructed in compliance with the Americans with Disabilities Act and regulations of the Architectural Access Board of the Commonwealth of Massachusetts; and
- (b) New Tank Requirements. New tanks with proper spill-control mechanisms shall be installed by Tenant inside the Buildings; and
- (c) Notice to Commission for the Blind. Tenant shall provide notice to the Massachusetts Commission for the Blind if Tenant intends to introduce vending machine services to the Sublease Premises, and
- (d) Release Prevention. Tenant shall take all necessary precautions to prevent the release of any hazardous materials, and

(e) Rules and Regulations. Tenant shall comply with all applicable rules and regulations of DCR and DCAMM, and shall comply with such rules and regulations as the Town may implement or impose for the Greylock Glen Resort, as same may be revised or amended from time to time. Tenant shall promptly pay all fines, penalties, and damages that may arise out of, or be imposed because of, Tenant's failure to comply with the provisions of the first sentence of this subparagraph or Section 9.7 hereof, and

(f) Crowdfunding Investment Disclosures. As part of issuing any securities or accepting any funds in connection with any offering made, the proceeds of which are used or intended to be used to finance or raise capital for the Project, Tenant shall provide notice to the Town of its intention to raise such capital. Tenant shall comply with the applicable federal and state securities laws in issuing securities and raising capital, including but not limited to 17 CFR §230.506(c) and SEC Regulation S, 17 CFR §227.201 and SEC Regulation CF, and section 4(a)(6) of the Securities Act of 1933, as amended. Tenant shall clearly and conspicuously disclose in writing to prospective investors and shall clearly and conspicuously state in any promotional or marketing material for the Project, or any offering related thereto, that the offering, any investment made in connection with the offering, and any securities, debentures, instruments, agreements, promises or obligations issued, made or created in connection therewith: (i) will be strictly private obligations of the issuer and not obligations of the Town or any other Governmental Authority, and (ii) have not been reviewed, approved, guaranteed, endorsed, or sponsored by the Town or any other Governmental Authority, and (iii) will be general unsecured obligations of the issuer, not supported or secured by any pledge, mortgage or other collateral interest in any real estate or Project assets, including without limitation the Sublease Premises, the Improvements and/or this Sublease. The Tenant and any guarantors of this Sublease shall (and shall cause their respective principals, affiliates, employees, contractors, agents and representatives to) refrain from making or publishing, verbally, in writing, or by any electronic means of communication, any statements, promises, representations or warranties that are inconsistent with the foregoing disclosures.

(g) Compliance With Laws, etc. During the Term, Tenant shall comply with and execute, at Tenant's sole cost and expense, all federal, state and local laws, rules and regulations, including all Legal Requirements, and all requirements of any insurance company having policies outstanding with respect to the Sublease Premises, the intent of the parties being that Tenant shall discharge and perform all obligations of the Town and Tenant that arise as aforesaid, and shall save the Town blameless and harmless therefrom so that at all times the rental of the Sublease Premises shall be net to the Town without deduction or expenses on account of any Legal Requirements.

(h) Nuisance, etc. Lessee will not suffer any act to be done or condition to exist on the Property, or any part thereof, or any article to be brought thereon which may be dangerous unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private. Lessee shall not suffer or permit the Property or any

portion thereof to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair the interest of Lessor or Lessor's designees in the Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Property or any portion thereof. Lessee shall take reasonable actions to minimize any interference with the business of any other tenants or subtenants of the Greylock Glen Resort, or with the rights and privileges of any customer or other person(s) lawfully in and upon Greylock Glen Resort. Lessee agrees not to permit the accumulation (unless in concealed containers) or burning of any rubbish or garbage in, on or about any part of the Sublease Premises and to keep it free from insects, rodents and other pests and vermin. All garbage shall be maintained in a manner so that canisters are not visible from adjacent parcels or roads. Lessee shall cause and pay for all garbage or rubbish to be collected or disposed of from the Sublease Premises. Lessee agrees that it will comply with and observe all restrictive covenants of record or of which Lessee has been given actual notice which affect or are applicable to the Property, provided same do not prohibit Lessee's use of the Premises in accordance with the provisions of this Sublease. Lessee shall not use sidewalks, parking lots, or any other space outside the Approved Improvements for display, sale, storage or any other similar undertaking. Lessee shall not use for any purpose (other than for roof air conditioners, cooling/refrigerating and solar energy generation equipment) all or any portion of the roof or exterior walls of the Approved Improvements unless specifically authorized via Approved D&O Plans, and in any event, no such equipment shall be visible from street level.

- (i) Unregistered Motor Vehicles and Location of Lodging Assets. Tenant agrees that with the exception of travel trailers, campers or other transportable or towable Lodging Assets that have been duly approved by the Town as part of Tenant's Approved D&O Plans, and with the further exception of temporary construction trailers during periods of actual construction activity, no unregistered commercial or passenger motor vehicles, trailers, travel trailers, roll off containers or shipping containers shall be stored at the Sublease Premises. Tenant also agrees that the Lodging Assets and other Approved Improvements, shall be permanently affixed once delivered and installed at designated campsites, and shall not be relocated within or without the Sublease Premises without the Town's written consent.
- (j) Town's Use of Plans and Specifications in the Event of Default. Prior to the Construction Commencement Date, Tenant shall deliver to the Town an agreement or agreements in form and substance reasonably satisfactory to the Town, executed by the architect/engineer(s) who prepared any portion of the Plans and Specifications, permitting the Town or any party designated by the Town, without additional payment (beyond that specified to be paid by Tenant in the applicable contract between Tenant and each such architect/engineer), to use the Plans and Specifications and any other plans and specifications delivered to Tenant to complete the Improvements if Tenant should fail to do so. If, at any other time during the Term, Tenant engages any additional or replacement architect/engineer in connection with the Improvements,

Tenant shall notify the Town and, if the Town so requests, Tenant shall furnish a similar agreement to the Town prior to commencement of work by such architect/engineer. The Town hereby agrees, for the benefit of such architect/engineer, by accepting such plans, that the Town will use them only for completion of the Improvements.

(k) Character of Principals of Tenant. The Tenant hereby acknowledges that due to the public nature of the Project and the Town's involvement as sublandlord, the character of those comprising the corporate managers, officers, directors and any shareholder or member holding in excess of ten percent (10.0%) of the equity of Tenant (hereinafter called "Principals") of Tenant affect public perception and the reputation of the Town. Accordingly, by signing this agreement on behalf of the Tenant, Tenant's executive officer and authorized signatory personally represents to his or her best knowledge and belief that (i) no Principals are, or have been, in any way related to, or affiliated with, organized crime, (ii) no Principals have been convicted of a crime except for minor traffic violations and misdemeanors and (iii) they are all considered of good standing and good moral character within the community. Tenant covenants that it (i) will require each prospective Principal to certify in writing that he or she is not now, nor at any time has been, affiliated with organized crime, and that he or she has not been convicted of a crime except for minor traffic violations and misdemeanors (if applicable), and (ii) will not admit any such person as a Principal knowing that such certification is false.

(l) Public Relations. The parties shall endeavor to coordinate marketing campaign messaging to ensure consistency with the Greylock Glen Master Plan.

(m) Guaranty of Tenant's Obligations. Simultaneously with the execution of this Sublease, Tenant has delivered to the Town the written guaranty of Tenant's obligations hereunder, including Tenant's obligations to complete the Approved Improvements in accordance with this Sublease, duly executed by the Developer in the form attached hereto as Exhibit G. The Developer's guaranty shall terminate upon Final Completion of the Approved Improvements.

## **ARTICLE 10 - INSURANCE AND INDEMNITY**

The Tenant shall cause insurance to be maintained at Tenant's sole cost as follows:

10.1 Builder's Risk. During the period of any Tenant Work on the Sublease Premises, or any Improvements or Substantial Alterations, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards.

10.2 Public Liability and Property Damage Insurance.

Comprehensive general liability insurance on an occurrence basis insuring against all claims and demands against, and liabilities of, Tenant, the Town and/or Master Landlord and naming

the Town and Master Landlord as a co-insureds for personal injury and property damage arising out of and in connection with the Sublease Premises or Tenant's use or occupancy of the Sublease Premises, the Trails and Trailheads, and any Common Areas or Facilities, in standard form to afford protection in an amount not less than \$2,000,000 combined single limit for personal and bodily injury and death, and for property damage, with a so-called "broad-form" endorsement, and a per-occurrence limit of not less than \$1,000,000.00 for bodily injury, property damage, medical payments, and automobile liability insurance in "any auto" code 1 combined single limit of not less than \$1,000,000, and excess liability insurance in an amount not less than \$5,000,000, which may be based upon a combination of primary coverage (plus umbrella coverage), which policy or policies shall include operations and blanket contractual liability coverage which insures performance by Tenant of the indemnity provisions contained in this Sublease.

10.3 Increase in Amount of Insurance. If, in the reasonable judgment of the Town, the amount of public liability insurance coverage at the time is not adequate, Tenant shall cause the insurance coverage to be increased as required by the Town, provided, however, that such request for an increase shall not be made more frequently than once in each five-year period and shall not require that more insurance be carried on the Sublease Premises than is customarily carried on comparable facilities in the municipality wherein the Sublease Premises are located.

10.4 Property Insurance — Personal Property. Tenant shall cause to be maintained a policy of "all-risks" personal property insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of the full replacement value.

10.5 Intentionally Omitted.

10.6 Property Insurance — Building and Improvements. Tenant shall cause to be maintained on the Buildings and other improvements that are located in part or in full on the Sublease Premises a policy of "all-risks" property insurance in an amount not less than 100% of the full replacement value of the Buildings and Improvements, and with the deductible not to exceed the lesser of \$10,000 or 1% of the policy face value, and containing a replacement cost coverage endorsement, an agreed amount endorsement waiving all co-insurance provisions, and a "building ordinance coverage" endorsement. Such insurance shall also include, if applicable, flood and earthquake perils in such amounts and with such deductibles as are approved by the Town, which approval shall not be unreasonably withheld.

10.7 Workers Compensation Insurance. If applicable, Tenant shall cause to be maintained Worker's Compensation Insurance, subject to the statutory limits of the Commonwealth of Massachusetts, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1 per disease policy limit in respect of Tenant's employees.

10.8 Professional Liability Insurance. If any Immediate Response Action or Remediation (as defined in Article 13 herein) is required, professional liability insurance with a pollution

endorsement, insuring, on an occurrence basis, bodily injury, property damage, and environmental contamination arising out of the acts, errors, and omissions of the environmental consultant or such other third-party professionals shall be maintained. Such insurance shall be in the amount of \$1,000,000 for each claim and \$3,000,000 in the aggregate and shall cover all occurrences during the execution of the Immediate Response Action or Remediation. Coverage shall include claims based upon or arising out of any negligent acts committed by such environmental consultant or other third-party professionals in connection with underground storage tanks.

10.9 Liquor Liability Insurance. If any alcoholic beverages are served on the Sublease Premises, a policy of insurance against the legal liability of the Tenant as a licensee pursuant to Massachusetts General Laws Chapter 138 and against loss, damage or expense incident to a claim arising out of the death or injury of any person as a result of negligence in the distribution, sale or serving of alcohol with coverage in an amount of not less than \$500,000 per occurrence shall be maintained.

10.10 Replacement Value. The "full replacement value" to be insured under the policies required by this Article shall be determined by the company issuing the insurance policy at the time the policy is initially obtained and shall be evidenced by an agreed amount endorsement. Not more frequently than once every two years, either party shall have the right to notify the other party that it elects to have the replacement value redetermined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination.

10.11 Waiver of Subrogation. The Town and Tenant release each other and their respective authorized representatives from any claims for damage to any person, to the Sublease Premises or any Improvements or to the fixtures, personal property, or alterations in, or on, the Sublease Premises that are caused by, or result from, risks insured against under fire insurance with the broadest form of property insurance generally available on properties similar to the Sublease Premises, whether or not actually carried by the other party. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

10.12 Insurance Companies. All insurance required under this Sublease shall be issued by insurance companies authorized to do business in the Commonwealth of Massachusetts, with a claims paying ability rating of A- or better and a financial class of V or better, as rated in the most recent edition of Best's Insurance Reports.

10.13 Payment of Proceeds. Any policies of insurance of the character described in Sections 10.5 and 10.6 shall expressly provide that any losses under such policies maintained by Tenant shall be adjusted with and approved by the Town and Tenant, as their interests may appear. All such insurance maintained by the Tenant shall be carried in the name of the Town and Tenant,

as their interests may appear, and any loss payments under such policies, if in an amount less than or equal to twenty-five percent (25%) of the face value of the property insurance carried under Section 10.6, shall be paid to Tenant for application by Tenant to restoration and repair of the Buildings or, if in an amount in excess of twenty-five percent (25%) of the face value of the property insurance carried under Section 10.6 shall be paid to the Town and Tenant, as their respective interests may appear. If paid to Tenant, such insurance proceeds shall be held by Tenant in trust for the purpose of paying the cost of such restoration and repair. If paid to the Town, the Town shall hold, apply, and make available to Tenant the amount of such insurance proceeds so paid in the manner set forth in Section 17.3 Payment of Insurance Proceeds, and the Town may deduct from such insurance proceeds any reasonable out-of-pocket expenses incurred by the Town.

10.14 Default or Termination. In the event of a default by Tenant under any of the provisions of Article 15 beyond the applicable notice and cure periods, or of the termination of this Sublease for any reason whatsoever, the Town shall:

- (a) Refrain from paying to or for the benefit of Tenant any insurance proceeds then or thereafter in the hands of the Town until the Town shall have received such proof as the Town may reasonably require that the specified default has been cured; and
- (b) If this Sublease shall have terminated, the Town shall retain the insurance proceeds then in the hands of the Town to the extent permitted under Section 17.4.

The Town shall be protected in acting upon any notice, certificate, document, or other proof believed by the Town to be genuine and to have been signed by the proper party or parties, or by a person authorized to act on such proper party's or parties' behalf. The Town may consult with counsel and shall not be liable for any action taken or suffered by the Town in good faith in accordance with the written advice of such counsel.

10.15 Certificates of Insurance, Payment Evidence. Concurrently with the execution and delivery of this Sublease and not less than thirty days prior to the expiration dates of the expiring policies furnished pursuant to this Article 10, the Tenant shall deliver certificates of insurance bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to the Town of such payment shall be delivered by Tenant to the Town at the addresses set forth in Section 19.2.

10.16 Separate Insurance. Tenant shall not take out separate insurance concurrent in form, or contributing in the event of loss, with that required in this Article 10 to be furnished by, or which may reasonably be required to be furnished by, Tenant, unless the Town is included therein as the insured, with loss payable as in this Sublease provided. Tenant shall immediately notify the Town of the taking out of any such separate insurance and shall deliver the certificate or certificates of insurance as provided in Section 10.15.

10.17 Blanket Insurance. Nothing in this Article 10 shall prevent Tenant from taking out insurance of the kind and in the amount provided for under this Article 10 under a blanket

insurance policy or policies that covers or cover other properties owned or operated by Tenant as well as the Sublease Premises; provided, however, that any such policy of blanket insurance of the kind provided for by section 10.17 shall specify, or Tenant shall furnish the Town with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Buildings, which amount shall not be less than the amount required to be carried by section 10.6, and shall not contain any clause that would result in the insured under such policies being required or permitted to carry insurance with respect to the property that is covered by such policy in an amount less than any specific percentage of the full insurable value of such property that is required in order to prevent the named insured from becoming a co-insurer of any loss with the insurer under such policy. Tenant covenants to furnish to the Town copies of the schedule or make-up of all property affected by any such policy of blanket insurance within thirty days after the filing of such schedule or make-up with any insurance-rate-making body.

10.18 Notice of Cancellation. Each certificate of insurance delivered under this Sublease, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty days prior written notice to the Town and to any mortgagee named in such policy.

10.19 Indemnification.

(a) Tenant shall defend (with counsel reasonably acceptable to the indemnified party), indemnify and save the Master Landlord and the Town, and all board members, commissioners, employees, contractors, agents, servants, and licensees of either of them (collectively, the "Town Parties") harmless against and from any and all Claims which may be imposed upon or incurred by or asserted against the Town Parties by reason of any of the following occurrences:

(i) any work or thing done during the Term of this Sublease in, on or about the Sublease Premises or any part thereof, including during construction of any Improvements or any other work by Tenant or any party other than the Town Parties; or

(ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Sublease Premises or any part thereof by Tenant or any party other than the Town Parties; or

(iii) any negligence or willful misconduct on the part of Tenant or any of its agents, contractors, servants, employees, occupants, guests, licensees, operators, or invitees (the "Tenant Parties"); or

(iv) any accident, injury or damage to any person or property occurring in, on or about the Sublease Premises, the Project or any Improvement or any part thereof, except to the extent caused by the gross negligence or wrongful act of any of the Town Parties; or



(v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Sublease on its part to be performed or complied with; or

(vi) the occurrence of an Event of Default.

(b) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Town Parties which would exist at common law or under any other provision of this Sublease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Article 10. This Sublease is made on the express condition that the Town Parties shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Sublease Premises, specifically including any damage or injury to the person or property of any of the Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Sublease Premises, the Project or the Improvements, except to the extent caused by the negligence or wrongful act of the Town Parties.

(c) The provisions of this Section 10.19 shall survive termination or expiration of this Sublease.

(d) In case any action or proceeding is brought against Master Landlord by reason of any Claim, Tenant, upon written notice from Master Landlord or the Town, shall, at Tenant's expense, defend such action or proceeding under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L.c. 12, Section 3.

(e) If there is any conflict between this Section 10.19 and Article 13 (Environmental) of this Sublease, then Article 13 shall govern.

## **ARTICLE 11 – SURRENDER ON TERMINATION**

11.1 Surrender; Removable Property. Subject to the rights of Permitted Mortgagees, on the Termination Date, Tenant shall peaceably and quietly leave, surrender, and yield up unto the Town, all and singular, the Sublease Premises and all Improvements, free of occupants, in the condition to which Tenant is required to develop, redevelop, remediate, upgrade, replace, and refurbish the Sublease Premises, and in the condition in which Tenant is required to maintain and repair the Sublease Premises, all as set forth in this Sublease, and each free and clear of any and all liens, charges, levies and encumbrances of every kind and description. Tenant shall hold the Town blameless and harmless, and shall fully defend and indemnify the Town, with respect to any such lien, charge, levy, or other encumbrance of any kind or description. Tenant, at no cost or expense to the Town, shall promptly provide Tenant with all necessary and appropriate documentation, manuals, and title transfer documents within thirty days after the Termination Date.

11.2 Title to Improvements. Subject to the rights of Permitted Mortgagees, upon the expiration or earlier termination of this Sublease, title to any Improvements located in part or in full on the Sublease Premises shall be in the Town.

## **ARTICLE 12 – INTENTIONALLY OMITTED**

### **ARTICLE 13 - ENVIRONMENTAL**

13.1 Release of Hazardous Materials. Tenant covenants and agrees not to release, dispose of, manufacture, store, or transport any Hazardous Materials at, on, under, or from the Sublease Premises except in compliance with applicable Legal Requirements.

13.2 Notification. Tenant shall promptly notify the Town and the Master Landlord in writing of: (a) all spills or releases of Hazardous Materials caused by Tenant and for which Tenant has an obligation to report under Chapter 21E and the Massachusetts Contingency Plan ("MCP"), (b) any evidence of a pre-existing spill or release of Hazardous Materials known to Tenant, whether or not caused by the Tenant, and (c) all notices, orders, fines, or communications of any kind received by Tenant from the Governmental Authority or third party concerning the presence or suspected presence of Hazardous Materials on the Sublease Premises, the migration or suspected migration of Hazardous Materials from the Sublease Premises to other property, or the migration or suspected migration of Hazardous Materials from other property to the Sublease Premises. The Town shall provide Tenant with the same notice for any such reports it makes or communications it receives.

13.3 Tenant 's Obligation to undertake Remediation. In the event a "release," as that term is defined in Chapter 21 E ("Release"), of Hazardous Materials occurs during the Term of this Sublease, or if it is determined that a Release of Hazardous Materials has previously occurred, Tenant shall, at its expense, be obligated to undertake an immediate response action if required pursuant to 310 CMR 40.0321 as now or hereafter amended (an "Immediate Response Action" or "IRA"), and shall perform any remediation or other actions (collectively, "Remediation") with respect to any Hazardous Materials on, at, or under the Sublease Premises as required pursuant to CERCLA, RCRA, Chapter 21 C, Chapter 21 E, or any Other Environmental Laws.

13.4 Release of Claims by Tenant. Tenant releases the Town Parties and the Master Landlord from, and covenants and agrees that Tenant shall not assert or bring, or cause any third-party to assert or bring, any Claims against the Town, including, without limitation, claims for Response Actions, response costs, assessment, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages directly resulting from any Release of Hazardous

Materials at, on, or under the Sublease Premises, (i) except to the extent that such Release was caused by the act(s) or omission(s) of the Town Parties or the Master Landlord, or unless (ii) the Town Parties or Master Landlord are otherwise liable under applicable law for such Release.

Tenant agrees to defend, under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L.c. 12, Section 3, and indemnify Master Landlord and the Town from and against any Claims asserted against either of them for a Release which occurs during the Term ,except to the extent that such Release was caused by the act(s) or omission(s) of the Town Parties or the Master Landlord, or which occurred prior to the Term Commencement Date (each, a "Tenant Indemnified Claim"). Tenant shall be notified promptly, in writing, by the Town or the Master Landlord, as applicable, of the assertion of any Tenant Indemnified Claim. Subject to the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L.c.12, Section 3, Tenant shall have control of the defense of any Tenant Indemnified Claim and all negotiations for the settlement or compromise of any Tenant Indemnified Claim, provided that the Town is fully indemnified by Tenant, and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea) or wrongdoing or negligence, or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by Tenant on behalf of the Town, or any other action that would materially prejudice the rights of the Town without the Town's express written approval. The Town shall cooperate fully with Tenant in the defense of any Tenant Indemnified Claim.

13.5 Equipment, Materials and Systems. All equipment and/or materials used in the construction, operation, and maintenance of any remediation system installed to perform any Immediate Response Action or Remediation shall become the property of the Town upon the expiration or earlier termination of this Sublease.

13.6 General Provisions.

(a) The Town Parties shall have the right, but not the duty, to inspect areas of the Sublease Premises to determine whether Tenant or occupants of adjacent properties are complying with CERCLA, RCRA, Chapter 21C, Chapter 21E, other environmental laws, or regulations promulgated pursuant to any of the foregoing, as amended. The Town shall use its best efforts to minimize interference with Tenant's use of the Sublease Premises but shall not be liable for any interference caused by such inspectional activities, provided the Town shall have used such best efforts.

(b) Tenant, at no cost to the Town (other than reasonable reproduction costs), shall provide the Town with copies of all environmental reports, correspondence, studies, or other documents, except those protected by attorney-client privilege, prepared by Tenant's environmental consultant and/or other third-party professionals employed by or at the direction of Tenant and relating to any Release of Hazardous Materials at, on, under, or from the Sublease Premises except in compliance with applicable Legal Requirements (the "Environmental Materials"). At the Town's request, Tenant shall

take such actions as are reasonably required to procure for the Town a letter from Tenant 's environmental consultant and/or such third-party professionals to the effect that the Town may rely upon and use the Environmental Materials as if they were originally issued to the Town under the terms of the contract for producing such Environmental Materials.

(c) The Town and Tenant agree to cooperate in consideration and pursuit of potential insurance coverage related to costs and other matters under this Article 13.

(d) If there is any conflict between this Article 13 and Section 10.19 of this Sublease, then this Article 13 shall govern.

13.7 Survival. The provisions of this Article 13 shall survive expiration or earlier termination of this Sublease.

## **ARTICLE 14 - TRANSFER OF SUBTENANT'S INTEREST**

### 14.1 Prohibition on Transfers.

The Tenant shall not transfer its interest under this Sublease, or its right to possession of the whole or any part of the Sublease Premises to any other person or entity, except as provided in Sections 14.2 and 14.3 below. As used in this Article 14, "transfer" shall apply to absolute transfers as well as collateral transfers and shall include, but not be limited to, subleases, assignments, leasehold mortgages, licenses, concessions, and any other agreement for the use, benefit or enjoyment of or in the Sublease Premises or any portion or proceeds thereof. The term "transfer" shall also include a reorganization, dissolution or merger or change in control of Tenant, or any manager or owner of Tenant, or any manager or owner of any manager or owner of Tenant, or of any general partner of any of the foregoing, whether by operation of law or otherwise. The term "change in control" shall mean a transfer of fifty percent (50%) or more of the voting ownership interests (or such lesser interests, if when combined with other interests of the transferee, the transferred interest creates a majority interest in said transferee where one did not previously exist) in any entity, partnership, or trust. The use of the Sublease Premises or any portion thereof by Tenant's employees, campers and lodgers, or other business or social invitees in the regular course of Tenant's business, other than such use pursuant to a "management contract" or other arrangement which in effect is a rental agreement between the Tenant and a named manager, shall not be deemed to be a violation hereof.

### 14.2 Assignment in Connection with Asset Sale.

Notwithstanding the prohibition on transfers contained in Section 14.1, the Tenant may make a Qualified Assignment to a Qualified Assignee, subject to the following provisions:

(a) As used herein, a "Qualified Assignment" means an assignment:

(i) That is made in connection with a merger or consolidation of Tenant, or a sale of all or substantially all of the business assets of Tenant to a Qualified Assignee; and

(ii) That the Town has consented to in writing after the Tenant has provided and the Town has received, reviewed and approved the full legal name and contact information of the proposed assignee and any and all owners, principals or managers thereof, if an entity, and a detailed description of the proposed underlying transaction with the proposed assignee, and such balance sheets, profit and loss statements and personal financial statements of said assignee, certified by a certified public accountant, and such other documents or information as the Town may reasonably request for the purpose of evaluating the business credentials, creditworthiness, and character of the proposed assignee and its ability to perform Tenant's obligations and otherwise comply with the terms of this Sublease; and

(iii) That is made and completed to the identified proposed assignee in conjunction with a closing of the underlying transaction within one hundred twenty (120) days of the date of the Town's written consent under subsection (ii) above; and

(iv) That will not result in a violation of any ethics, procurement, or conflict of interest laws, and otherwise comports with all Legal Requirements; and

(v) Will not violate or invalidate any Required Permits; and

(vi) Has been consented to in writing by the Master Landlord, if required;  
and

(vii) Is in full compliance with the terms of the Master Lease and this Sublease.

(b) As used herein, a "Qualified Assignee" is a person or entity with a net worth immediately prior to and following such assignment of not less than that of Tenant and any guarantors of this Sublease, in the aggregate, immediately preceding the assignment.

14.3 Permitted Mortgages. Tenant may grant a Permitted Mortgage during the Term to a Permitted Mortgagee to finance and refinance the acquisition, development and construction of the Improvements or other Substantial Alterations, subject to the following:

(a) Mortgaged Premises. Each Permitted Mortgage shall cover no interests in any real property other than Tenant's interest in the Sublease Premises, the Improvements and any other Substantial Alterations.

(b) Notice of Mortgage. Tenant or the Permitted Mortgagee shall promptly deliver to the Town, in the manner herein provided for the giving of notices, a true copy of the

Permitted Mortgage and of any assignments of a Permitted Mortgage and shall notify the Town of the address of the Mortgagee to which notices may be sent.

(c) Awards and Insurance Proceeds. Each Permitted Mortgage shall contain provisions requiring the disposition and application of the Insurance Proceeds and Awards in the manner provided in this Sublease.

(d) Permitted Mortgages Not Assignment; Purchaser at Sale Deemed Assignee or Transferee. The making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Sublease, and no Permitted Mortgagee, as such, shall be deemed an assignee or transferee of this Sublease or of the leasehold estate created by this Sublease so as to require such Permitted Mortgagee, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed under this Sublease. Furthermore, any assignment or transfer of the Tenant's interest hereunder by a Permitted Mortgagee in the exercise of its rights under a Permitted Mortgage, whether by foreclosure, assignment in lieu thereof or otherwise, shall not be deemed to constitute a transfer or assignment of this Sublease so as to require the consent of the Town hereunder. However, the purchaser at any sale of this Sublease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Sublease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Article 13 and shall be deemed to have assumed the performance of all of the terms, covenants, and conditions on the part of Tenant to be performed under this Sublease from and after the date of such purchase and assignment.

(e) Notices Under Sublease to Mortgagees. So long as any Permitted Mortgage shall remain a lien on Tenant's leasehold estate under this Sublease, the Town agrees, simultaneously with the giving of any written notice to Tenant (i) of default, or (ii) of a termination of this Sublease, or (iii) of a matter on which a default may be predicated or claimed, or (iv) of a condition which if continued may lead to a termination of this Sublease, to give duplicate copies of such written notice, or of any process in any action or proceeding brought to terminate this Sublease, to the holder of such Permitted Mortgage, provided the provisions of Section 14.3(b) have been complied with, and no such notice to Tenant or process shall be effective unless a copy of such notice is given to each Permitted Mortgagee in the manner herein provided.

(f) No Cure by Mortgagee Required. A Permitted Mortgagee shall not be required to cure any default, to take possession of the Sublease Premises, to perform any covenants or agreements herein, or to undertake any other obligations of the Sublease upon default by Tenant or prior to or following any attempts by Tenant or Permitted Mortgagee to cure, eliminate, or remedy such default.

(g) Mortgagee Cures. A Permitted Mortgagee shall have the same period, after receipt of notice under Section 14.3(e), for remedying the default or causing the same to be

remedied as is given Tenant under Article 14 after notice to Tenant, plus thirty days, and the Town agrees to accept such performance or cure on the part of a Permitted Mortgagee as though the same had been done or performed by Tenant. At the expiration of the period provided under the preceding sentence, the Town shall take no action to effect a termination of this Sublease by reason of any default (except a default in the payment of Rent, or a default under any other provision of this Sublease which requires Tenant to pay money) without first giving to the Permitted Mortgagee an additional ninety days (or such longer period as may be reasonably required to accomplish the task in question provided Permitted Mortgagee is diligently pursuing an acquisition or foreclosure, and provided further that such additional period shall not extend beyond one-hundred-eighty days unless Tenant is under the protection of federal Bankruptcy law, in which case the above deadline shall be extended one day for each day that Permitted Mortgagee is unable to exercise Permitted Mortgagee's remedies due to the automatic stay or other order of the United States Bankruptcy Court) within which either (i) to obtain possession of the Sublease Premises (including possession by a receiver) and thereafter to commence to cure such default and to pursue such cure diligently, or (ii) to institute and complete foreclosure proceedings, and thereafter to commence to cure such default and to pursue such cure diligently, or (iii) otherwise to acquire Tenant's interest under this Sublease with diligence and without unreasonable delay. The Permitted Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant; provided, further, that nothing herein shall preclude the Town from exercising any rights or remedies under this Sublease with respect to any other default by Tenant during any period of such forbearance. The Town and Tenant hereby authorize each Permitted Mortgagee to enter upon and take possession of the Sublease Premises for the purpose of remedying any default by Tenant hereunder. Any Permitted Mortgagee acquiring the Tenant's interest hereunder shall have the right, at its option, subject to the Enabling Legislation and other applicable laws, to a) develop or operate the Sublease Premises in accordance herewith, or b) assign or transfer such interest to an affiliate of the Permitted Mortgagee. The provisions of this Article 13 are conditioned on the following provisions:

(i) Acquisition of Possession. The Permitted Mortgagee shall, within forty-five (45) days after receiving notice of such default, notify the Town of the Permitted Mortgagee's election to proceed with due diligence promptly to acquire possession of the Sublease Premises, to commence to cure such default or to foreclose the Permitted Mortgagee or otherwise to extinguish Tenant's interest in this Sublease.

(ii) Agreement of Permitted Mortgagee. Such notice from the Permitted Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Mortgagee agrees that:

A. During the period that such Permitted Mortgagee shall be in actual possession of the Sublease Premises and so long as the Permitted Mortgagee remains in actual possession and/or during the pendency of any such

foreclosure or other proceedings, and until the interest of Tenant in this Sublease shall terminate, or such proceeding shall be discontinued, such Permitted Mortgagee shall pay or cause to be paid to the Town all sums becoming due from time to time under this Sublease for all Rent; and

B. Permitted Mortgagee shall have no liability for the payment of Rent if Permitted Mortgagee shall not be in actual possession of the Sublease Premises; and

C. If delivery of actual possession of the Sublease Premises shall be made to such Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Mortgagee, promptly following such delivery of possession, shall perform all the covenants and agreements herein contained on Tenant's part to be performed (including, but not limited to, payment of Rent) to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements that cannot, with the exercise of due diligence, be performed by such Permitted Mortgagee. Nothing in this clause shall be construed to require such Permitted Mortgagee to perform any of Tenant's obligations under this Sublease that accrue after such Permitted Mortgagee ceases to be in possession.

14.4 No Release of Tenant. The making of any transfer or assignment by Tenant, in whole or in part, with or without the Town's consent, shall not operate to relieve Tenant from Tenant's obligations under this Sublease and, notwithstanding any such transfer or assignment, Tenant shall remain liable for the payment of all Rent, and for the due performance of all the covenants and agreements of Tenant in this Sublease to the full end of the Term, whether or not there shall have been any prior termination of this Sublease by summary proceedings or otherwise.

14.5 Assignee Bound. Except as expressly provided herein, every assignee and successor-in interest of every assignee, shall immediately be and become and remain liable for the payment of Rent, and for the full and prompt performance of all the covenants and agreements of this Sublease on Tenant's part to be performed to the end of the Term. No transfer to such assignee shall be binding upon the Town unless such assignee or purchaser shall deliver to the Town a recordable instrument which contains a covenant of assumption by said assignee to such effect. Nothing in this Section 14.5 contained, however, shall be deemed to constitute, or act as, a waiver on the part of the Town of any and all of the Town's rights, including, but not limited to, the right to terminate this Sublease in the event of a default on the part of Tenant beyond applicable notice and cure periods, as is provided for under Article 15.

14.6 Consent and Waiver Limited. Any consent by the Town to any transfer or assignment shall be held to apply only to the specific transaction approved by such consent. No waiver of any restrictions by the Town to any transfer or assignment shall constitute a waiver or consent in any other instance and each subsequent holder of Tenant's rights under this Sublease or the



estate created hereby shall be bound by the restrictions on transfer contained herein, notwithstanding such prior consent or waiver and notwithstanding the fact that such holder may have acquired such rights or estate from or through a prior holder by voluntary transfer, by operation of law or otherwise.

14.7 Cancellation by Tenant. This Sublease shall not be modified or surrendered to the Town or cancelled by Tenant. No merger shall result from the acquisition by any one entity of the fee and leasehold estates in the Sublease Premises.

## **ARTICLE 15 - TERMINATION AND DEFAULT**

15.1 Events of Default and Right to Terminate. Each of the following events shall be deemed an "Event of Default" hereunder:

- (a) Failure to pay, as and when due and for any reason, any payment of Rent or other sums payable under this Sublease that continues for fourteen (14) days after its due date; or
- (b) any breach or failure to perform or comply with any of the other terms, covenants, obligations, or agreements contained in this Sublease, including without limitation, failure to commence, prosecute or complete construction of the Approved Improvements as required, and such default continues for a period of sixty days after written notice of such default from the Town to Tenant (provided, that if Tenant, using reasonable efforts, proceeds with due diligence during such sixty-day period to cure such default and is unable, by reason of the nature of the work involved, to cure the same within the said sixty days, Tenant's time to do so shall be extended by the time reasonably necessary to cure the same); or
- (c) Tenant or any guarantor seeks or consents to or acquiesces in the appointment of any trustee, receiver, or liquidator of Tenant or of all or any substantial part of Tenant's properties, or makes any general assignment for the benefit of creditors; or
- (d) if a petition is filed against Tenant or any such guarantor seeking any reorganization, arrangement, liquidation, dissolution, or similar relief under the United States Bankruptcy Code, as then in effect, or under any other present or future federal, state, or other statute, law, or regulation, and remains undismissed for ninety days, or if any trustee, receiver, or liquidator of Tenant or such guarantor, or of all or any substantial part of Tenant's or such guarantor's properties, is appointed without consent or acquiescence and such appointment remains unvacated or unstayed for ninety days;

then and in any such event and at any time thereafter, the Town may give written notice to Tenant specifying such Event of Default and stating that this Sublease and the Term shall expire and terminate on the date specified in such notice, which shall be at least five days after the giving of such notice, and upon the date specified in such notice, subject to the provisions

of Section 14.3, this Sublease shall terminate as though such date were the date originally set forth herein for the last day of the Term, but Tenant shall continue to be liable to the Town as hereinafter provided.

15.2 Surrender and Re-entry. Upon a termination of this Sublease resulting from an Event of Default, Tenant shall quit and peacefully surrender the Sublease Premises to the Town in compliance with Article 16 hereof. At any time upon or after any such termination, the Town, without notice, may enter upon, re-enter, possess, and repossess the Sublease Premises and Improvements by summary proceedings, ejectment, or otherwise, may dispossess and remove Tenant, and may have, hold, and enjoy the Sublease Premises and the Improvements and the right to receive all income of and from the same.

15.3 Right to Relet. Subject to applicable law, the Town may without obligation relet all or any part of the Sublease Premises and Improvements, in the name of the Town, for such term or terms (which may be greater or less than the period that would otherwise have constituted the balance of the Term) and on such conditions as the Town, in its reasonable discretion, may determine, and the Town may collect and receive the rents therefor. In no way shall the Town be responsible or liable for any failure to relet the Sublease Premises or Improvements, or any part thereof, or for any failure to collect any rent due upon any such reletting.

15.4 Town's Right To Perform Tenant's Covenants. Upon an Event of Default, the Town may, but shall be under no obligation to, cure such default which cure shall be at Tenant's sole cost and expense. The Town may enter upon the Sublease Premises (after five (5) days' written notice to Tenant except in the event of emergency or if necessary to protect public health or safety) for any such purpose, and take all such action thereon, as may be necessary.

(a) The Town shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant or any operator or occupant thereof by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Sublease Premises during the course thereof, and the obligations of Tenant under this Sublease shall not be affected thereby.

(b) All reasonable sums so paid by the Town and all reasonable costs and expenses incurred by the Town, including reasonable attorneys' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the Town of such cost and expense until the date paid in full, shall be paid by Tenant to the Town on demand. If the Town shall exercise its rights under Section 15.4 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the Town shall be entitled to exercise any remedy contained in this Sublease if Tenant shall fail to pay such obligation to the Town upon demand. All costs incurred by the Town hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

15.5 Tenant Liability Continues. No termination of this Sublease resulting from an Event of Default shall relieve Tenant of Tenant's liability and obligations under this Sublease, and such liability and obligations shall survive any such termination. In the event of any such termination, whether or not the Sublease Premises or any part of the Sublease Premises shall have been relet, Tenant shall pay to the Town the Rent required to be paid by Tenant up to the Termination Date, and thereafter Tenant, until the end of what would have been the Term in the absence of such termination, shall be liable to the Town for and shall pay, for Tenant's default, the difference between:

- (a) Rent that would be payable under this Sublease if there had been no default and Tenant was performing and in compliance with the terms hereof, provided, however, that for purposes of calculating such Rent, quarterly Percentage Rent shall be assumed to be an amount equal to the average of the three highest quarterly Percentage Rent amounts that were due or payable in any quarter during the two (2) year period prior to termination, less
- (b) the net proceeds of any reletting effected pursuant to the provisions of Section 15.3 after deducting all the Town's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation for such reletting.

Tenant shall pay such current damages (herein called "Deficiency") to the Town on the days on which the Rent would have been payable under this Sublease if this Sublease were still in effect, and the Town shall be entitled to recover from Tenant each Deficiency as the same shall arise.

15.6 Damages. If this Sublease terminates as provided in Section 15.1, then, in addition to any other rights under this Article 15, the Town shall be entitled to recover, as damages, the cost of placing the Sublease Premises and Improvements in the same condition as Tenant is required to surrender the Sublease Premises and Improvements under this Sublease.

15.7 No Waiver. No failure by either the Town or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent or any other charges due during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the Town or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the Town or Tenant of any breach shall affect or alter this Sublease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

15.8 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Sublease, the Town shall be

entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Sublease.

15.9 Remedies Cumulative. Each right and remedy provided for in this Sublease shall be cumulative and shall be in addition to every other right or remedy provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Town or Tenant of any one or more of the rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise.

## **ARTICLE 16 SURRENDER; HOLD-OVER**

16.1 Surrender. Subject to the rights of Permitted Mortgagees, on the Termination Date, Tenant shall peaceably and quietly leave, surrender, and yield up unto the Town all and singular the Sublease Premises and the Improvements, free of occupants and in the condition to which Tenant is required to develop, maintain and repair the Sublease Premises, all as set forth in this Sublease, and each free and clear of any and all liens, charges, levies and encumbrances of every kind and description. Tenant shall hold the Town blameless and harmless, and shall fully defend and indemnify the Town, with respect to any such lien, charge, levy, or other encumbrance of any kind or description. Tenant, at no cost or expense to the Town, shall promptly provide the Town with all necessary and appropriate documentation, manuals, and title transfer documents within thirty days after the Termination Date.

16.2 Removal of Personal Property. Subject to the rights of Permitted Mortgagees, Tenant shall remove from the Sublease Premises all personal property within thirty (30) days after the termination of this Sublease and shall repair at Tenant's sole cost any damage to the Sublease Premises caused by such removal, unless the Town permits such property to remain.

16.3 Holdover. If Tenant or any party claiming by, through or under Tenant, retains possession of the Sublease Premises or any part thereof after the expiration or earlier termination of this Sublease, then the Town may, at its option, serve written notice upon Tenant that such holding over constitutes (i) an Event of Default under the Sublease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Sublease (except as to Rent), or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Sublease (except as to Rent). Tenant shall also pay to the Town all damages sustained by the Town resulting from retention of possession by Tenant. The Town shall have the right to charge and the Tenant shall pay Rent at the higher of the amount of Rent due and payable immediately prior to said expiration or earlier termination, or the then current market rate for the Sublease Premises. The provisions of this Section 16.3 shall not constitute a waiver by the Town of any right of re-entry as set forth in this Sublease; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of the

Town's right to terminate this Sublease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

## **ARTICLE 17 -DAMAGE OR DESTRUCTION**

17.1 Restoration. If, at any time during the term, the Sublease Premises or any part thereof shall be damaged or destroyed by fire or other occurrence (including any occurrence for which insurance coverage was not obtained or obtainable) of any kind or nature, Tenant shall, whether or not the Insurance Proceeds, if any, shall be sufficient for the purpose, proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and for Force Majeure events) to repair, replace, or restore the Sublease Premises as nearly as possible to the Sublease Premises' value, condition, and character immediately before such damage or destruction (including temporary repairs and work necessary to protect the Sublease Premises from further damage), subject to such changes or alterations as the Tenant may elect to make in conformity with the provisions of Article 7. Such repair or replacement, including such changes and alterations as aforementioned and including temporary repairs, are referred to in this Article 17 as the "Restoration Work".

17.2 Conditions of Restoration Work. Except as otherwise provided in this Article 17, the conditions under which any Restoration Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of Article 7 of this Sublease.

17.3 Payment of Insurance Proceeds.

(a) Cost of Restoration Work. Except for any insurance proceeds owed to Tenant as coverage for business interruption, which shall be paid directly to Tenant in the event of any damage or destruction, all other insurance money paid to the Town on account of such damage or destruction to the Sublease Premises under the policies of insurance provided for in Article 10, less the cost, if any, incurred in connection with the adjustment of the loss and the collection of such insurance money (the "Insurance Proceeds"), shall be applied by the Town to the payment of the cost of the Restoration Work to the extent such Insurance Proceeds shall be sufficient for the purpose. Such insurance money shall be paid out to or for the account of Tenant from time to time as such Restoration Work progresses. The Town shall make such payments or disbursement upon the written request by Tenant when accompanied by a certificate dated not more than fifteen days prior to such request, signed by an authorized signatory of Tenant and by an architect in charge of the Restoration Work who shall be selected by Tenant setting forth that: (i) the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Restoration Work, giving a brief description of the services and materials, and of the several amounts so paid or due, and stating that no part of such sum has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of

the services and materials described in the certificate, (ii) except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialman's, or similar lien upon such Restoration Work, the Sublease Premises, Tenant's leasehold interest, or any part of any of them, and (iii) the cost, as estimated by the persons signing such certificate, of the Restoration Work required to be done after the date of such certificate in order to complete the same, does not exceed the amount of insurance proceeds remaining in the hands of the Town together with other sources of available funds, after the payment of the sum so requested.

(b) Payments to Tenant. Upon compliance with the foregoing provisions of Section 17.3(a), the Town, out of the Insurance Proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. All sums so paid to Tenant and any other Insurance Proceeds received or collected by or for the account of Tenant (other than by way of reimbursement to Tenant for sums previously paid by Tenant or sums paid directly to by an insurer to Tenant as coverage for business interruption) shall be held by Tenant in trust for the purpose of paying the cost of such work. Upon receipt by the Town of evidence satisfactory to it of the character required by Section 17.3(a) that the Restoration Work has been completed and paid for in full and that there are no liens of the character referred to therein, and if no Event of Default exists, the Town shall pay to Tenant any remaining balance of the Insurance Proceeds.

17.4 Failure to Commence Repairs. If the Restoration Work shall not have been commenced within one year, or such longer period as may be reasonably required to adjust the insurance, achieve final plans and obtain all necessary permits, after the damage or destruction, or if such Restoration Work after commencement shall not proceed with due diligence (any Force Majeure event excepted), the Town may terminate this Sublease pursuant to Article 15. On such termination, the Insurance Proceeds received by the Town shall be retained by the Town, to the extent necessary to demolish any existing structures on the Sublease Premises, with any remainder to be forwarded to Tenant.

17.5 Sublease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Sublease Premises shall be untenable owing to the partial or total destruction of the Sublease Premises; nor shall such damage or destruction release Tenant from any other obligations imposed upon Tenant under this Sublease.

## **ARTICLE 18 - ESTOPPEL CERTIFICATES**

18.1. Estoppel Certificate. The Town and the Tenant shall, at any time and from time to time, upon not less than fifteen (15) business days prior written notice by the other, execute, acknowledge and deliver to such other party or to any entity designated by such

party a statement in writing certifying that this Sublease is unmodified and is in full force and effect (or, if there shall have been modifications, that this Sublease is in full force and effect as modified and stating the modifications), and the dates to which the Rent and other payments due hereunder have been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing, fulfilling or observing any of the provisions of this Sublease, and, if in default, specifying each such default of which the signer may have knowledge, it being intended that any such statement may be relied upon by the party requesting it or by any prospective mortgagee, encumbrancer, or assignee and the contents of such statement shall be binding upon the party executing the same.

18.2. Cooperation. The Town shall cooperate reasonably with any Permitted Mortgagee and with Tenant in Tenant's negotiations with prospective Permitted Mortgagees, and will accommodate the reasonable requests of such lenders, including, without limitation, making reasonable modifications and amendments to the terms of this Sublease.

## **ARTICLE 19 MISCELLANEOUS**

19.1 Enforcement of the Town's Liability. Anything contained in this Sublease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the Town's liability under this Sublease shall be enforceable only out of the Town's interest in the Sublease Premises; and there shall be no other recourse against, or right to seek a judgment against, the Town, nor shall there be any personal liability on the part of the Town or any Town Parties, with respect to any obligations to be performed hereunder. Without limitation of the foregoing, the Town shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil or any other utilities to the Sublease Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Sublease Premises, or (iii) other leakage from pipes, appliances, water, sewer or plumbing works therein or from any other place. In no event shall the Town be liable to Tenant for any indirect, special, or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Sublease. All Claims against the Town shall be governed by the provisions of this Sublease and M.G.L. c. 258.

19.2 Notices. All notices, approvals, consents, requests, and elections required or permitted under this Sublease shall be in writing and shall be deemed duly given when delivered by a reputable overnight delivery service, or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Town:

Town of Adams  
8 Park Street

Adams, Massachusetts 01220  
Attention: Town Administrator

With a copy to:

Jonathan B. Sabin, Esq.  
227 Adams Road  
P.O. Box 548  
Williamstown, Massachusetts 01267

If to the Tenant:

Greylock Glen Ecovillage, LLC  
PO Box 1961  
Lenox, Massachusetts 01240

With a copy to:

Andrea F. Nuciforo, Jr., Esq.  
Nuciforo Law Group, LLC  
75 North Street, Suite 410  
Pittsfield, Massachusetts 01201  
anuciforo@nuciforo.com

or such other address as any party shall have last designated by notice in writing to the other parties. If either party at any time designates some other person to receive payments or notices under this Sublease, all such payments or notices thereafter by the other party shall be paid or given to the agent designated until notice to the contrary is received from the designating party. Any requests for approval made by Tenant to the Town, where such approval must be given or denied within a specified period, shall bear the following legend at the top of the transmittal letter in bold-faced type at least a twelve-point font, with the appropriate deadline for reply filled in: "NOTICE: THIS REQUEST FOR APPROVAL REQUIRES REPLY WITHIN \_\_\_\_DAYS."

19.3 Town Approvals. Any request for approval by the Town under this Sublease shall be delivered by Tenant to the Town in accordance with Section 19.2. Any request for approval required by the Master Landlord shall be delivered by Tenant to the Town in accordance with Section 19.2.

19.4 Quiet Enjoyment. The Town covenants that so long as no Event of Default has occurred and is continuing, Tenant shall quietly have and enjoy the Sublease Premises during the Term. The Town's exercise of self-help pursuant to the terms of this Sublease and any



exception to title that is of record or enumerated herein, shall not be considered a breach of the covenant of quiet enjoyment.

19.5 Provisions Severable. If any term or provision of this Sublease, or the application of such term or provision to any person or circumstance, shall be held to be invalid or unenforceable to any extent, the remainder of this Sublease, or the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected by such holding, and each term and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

19.6 Unavoidable Delay. If Tenant or the Town is delayed or prevented from performing any of their respective non-monetary obligations under this Sublease, and such delay is by reason of strike, lockout, labor troubles, material shortages, adjustment of any insurance claim, failure of power, riots, civil commotion, insurrection, war (whether declared or undeclared), warlike operations, acts of terrorism, cyber-attacks, acts of public enemy, acts of bioterrorism, plagues, epidemics, pandemics, outbreak of a communicable disease leading to extraordinary restrictions including quarantine or movement of people or goods, invasion, rebellion, hostilities, acts of God, power outages, inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, earthquakes, tornadoes, or other natural disasters, accident, emergency, mechanical breakdown, municipal delays (including delays in reviewing materials submitted by a party), the act or failure to act of the other party, the default under this Sublease by the other party, governmental preemption in connection with a national emergency, any rule, order or regulation of any Governmental Authority, or any other cause reasonably beyond such party's control (where lack of funds, inability to obtain financing, and/or changes in economic condition shall not be a basis for delay or prevention of any obligation under this Sublease) (any such event, an "Unavoidable Delay"), then performance of such act shall be excused for the period of the delay or prevention, and the period of such delay or prevention shall be deemed added to the time period herein provided for the performance of any such obligation by the party so delayed or prevented, provided that this subsection will not excuse or delay the payment of money by either party to the other.

19.7 Choice of Law. This Sublease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

19.8 Memorandum. The Town and Tenant agree that at the request of the other, each shall execute a short form memorandum of this Sublease in form satisfactory for recording in the appropriate Registry of Deeds.

19.9 Entire Agreement. This Sublease and the attachments to this Sublease contain the entire agreement between the Town and Tenant, and this Sublease may be amended only by a written instrument signed by the Town and Tenant.

19.10 Captions. The captions in this Sublease and in the table of contents of this Sublease are inserted only as a convenience and for reference, and they in no way define, limit, or describe the scope of this Sublease or the intent of any provision of this Sublease.

19.11 References. References to pages, paragraphs, sections, articles, and exhibits are to those in, of, or to this Sublease, unless otherwise noted.

19.12 No Broker. The Town and Tenant each represents and warrants to the other that it has dealt with no broker in connection with the consummation of this Sublease, and in the event of any brokerage claims predicated upon prior dealings with the other party, said party shall defend the same and indemnify and hold the other party harmless against any such claims.

19.13 Covenants Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the Town and Tenant and their respective heirs, legal representatives, successors, and assigns.

19.14 State Employees Barred from Interest. No official, employee or consultant of the Commonwealth of Massachusetts shall have any personal interest, direct or indirect, in this Sublease or Tenant, nor shall any such official, employee, or consultant participate in any decision relating to this Sublease which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. On or prior to the date of this Sublease, Tenant has delivered to the Town, Tenant's Beneficial Interest Statement that is attached as "Exhibit D".

19.15 WAIVER. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS OR ASSIGNS UNDER OR CONNECTED WITH THIS SUBLEASE OR ANY OF ITS PROVISIONS, ANY NEGOTIATIONS IN CONNECTION THEREWITH, OR SUBTENANT'S USE OR OCCUPATION OF THE PREMISES.

19.16 Integration. All prior understandings and agreements between the parties with respect to this Sublease are merged within this Sublease, which alone fully and completely sets forth the understanding of the parties.

19.17 Time of the Essence. Time shall be of the essence hereof.

19.18 No Partnership or Joint Venture. Nothing contained under this Sublease shall be construed to create a partnership or joint venture between the Town and Tenant, or to effectuate an assignment of the Master Lease, or to make the Town an associate in any way of Tenant in the conduct of Tenant's business, nor shall the Town be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of sublandlord and subtenant under the Master Lease.

19.19 Joint and Several Liability With Developer. Covenants Running with the Land. Tenant intends, declares, and covenants, on behalf of itself and all future holders of Tenant's interest

hereunder, that this Sublease and the covenants and restrictions set forth in this Sublease regulating and restricting the use, occupancy, and transfer of the Sublease Premises (a) shall be and are covenants running with the Sublease Premises, encumbering the Sublease Premises for the term of this Sublease, binding upon Tenant and Tenant's successors-in-interest; (b) are not merely personal covenants of Tenant; and (c) the benefits shall inure to the Town and its successors-in-interest.

19.20 Access to Show Sublease Premises. The Town shall have the right to show the Sublease Premises at any time during the last twelve months of the Term to any prospective lessees of the Sublease Premises. In addition, the Town shall have the right to show the Sublease Premises at any time during the Term to any prospective purchasers or mortgagees of the Sublease Premises. The above-mentioned rights of entry shall be exercisable only at reasonable times, at reasonable hours, and on reasonable advance notice.

19.21 Dispute Resolution. All claims, disputes and other matters in question between the Town and the Tenant arising out of or relating to this Sublease or the breach thereof related to the payment or nonpayment of money shall be submitted for resolution to a court of competent jurisdiction in Berkshire County, Massachusetts, unless otherwise agreed by the parties. Notwithstanding the foregoing, the parties agree to negotiate in good faith any claims, disputes or other matters in question during the term of this Sublease before resorting to such litigation. As to disputes not involving the payment of money, the parties agree to negotiate in good faith, failing which, such claims shall be submitted to arbitration (one arbitrator) to be conducted in accordance with the commercial rules and regulations and procedures of the American Arbitration Association, using expedited procedures. The parties will agree on an arbitrator within one (1) week of a party requesting arbitration hereunder, failing which the parties shall each name an arbitrator and those two (2) arbitrators shall, in turn, select an arbitrator who will rule on such dispute.

EXECUTED as of the date first set forth above.

TOWN OF ADAMS

By its Board of Selectmen

Tenant

LLC,



## SCHEDULE OF EXHIBITS

Exhibit A – Development Agreement

Exhibit B – Approved D&O Plan

Exhibit C – Trails and Trailhead Plans

Exhibit D – Plan of Development Area 1

Exhibit E – Plan of Development Area 2

Exhibit F – Tenant’s Disclosure of Beneficial Interest Form