

**LEASE AGREEMENT**

**BY THIS** Agreement made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2007, between JLKN ACRES, LLC, a limited liability company established under the laws of the State of New York having its principal place of business located at 15191 Bledsoe Street, Sylmar, CA 91342 (herein referred to as the "Lessor") and THE AUSABLE ACRES PROPERTY OWNERS' ASSOCIATION, INC. having its principal place of business located at P.O. Box 8, AuSable Forks, New York 12912 (herein referred to as the "Lessee").

It is further understood and agreed between the parties as follows:

**ARTICLE 1**

**THE PREMISES:**

1.1 The Lessor hereby leases to the Lessee on a non an exclusive basis (subject to section 4.1 hereof), and the Lessee hereby hires and takes from the Lessor, subject to the terms and conditions hereinafter set forth, the following property located in the Town of Jay, New York (hereinafter collectively referred to as "the Premises")

1.1.1 Access to and use of the Lake a/k/a Lake Eaton and adjacent areas (along the northern shore of the Lake), as more particularly described as Parcel A ttLon Schedule A attached hereto; and

1.1.2 The parking area as more particularly described as Parcel ~~B~~-#2 on Schedule A attached hereto; and

1.1.3 Two (2) tennis courts "AS IS" and the two methods of ingresses and egresses thereto from AuSable Drive and Sawmill Road as more particularly described as Parcel ~~C~~-#3 on Schedule A attached hereto; and

1.1.4 Approximately 8.8 miles of cross country skiing/hiking trails designated

as orange, pink, green, yellow, blue and red on the skiing and hiking trails map attached hereto as Schedule B, attached hereto.

1.1.5 Three river accesses along River Road as ~~referred to in Schedule A attached hereto~~ shown on the original subdivision maps of AuSable Acres which are on file in the Essex County Clerk's Office.

## ARTICLE 2

### TERM AND TERMINATION:

2.1 This Lease shall be for ninety-nine (99) years, commencing on January 1, 2007 and ending on December 31, 2106 (the "Term"),

## ARTICLE 3

### RENT AND OTHER CONSIDERATION:

3.1 The Rent payable by Lessee for the Premises shall be:

(a) All costs to and expenses for maintenance, cleanup and for capital improvements for the portion of the Premises described in 1.1.3 and;

(b) The sum of two thousand five hundred (\$2,500.00) Dollars per year toward the long term maintenance of the Premises described in 1.1.1 and 1.1.2 to be held in escrow and utilized by the Landlord in ~~its sole discretion, subject to adjustment every five (5) years, but never to decrease below two thousand five hundred (\$2,500.00) for each year of the Term~~ consultation with Lessee subject to annual adjustment utilizing the Consumer Price Index for the preceding calendar year.

(c) The release by Lessee of any claims or rights to any of the Premises other than as set forth herein. The Lessee ~~having filed prior to the execution hereof a~~ shall execute and file the Quit Claim Deed(s) terminating any purported claim to any of the Premises simultaneous with the execution of this Agreement.

3.2 Other obligations:

(a) The Lessee shall provide all members with annual cards and guest permits with regard to use of the Premises.

(b) The Lessee agrees to restrict access to the trails to only for the purposes of walking, running, riding bicycles, snow shoeing; and cross country skiing and for no other type of use.

**ARTICLE 4**

**LESSOR REPRESENTATIONS:**

4.1 The LESSOR agrees that any development which it creates on its other properties ~~as described on Schedule C~~ shall be subject to a provision that the new landowners of such properties of Landlord may become members of the Lessee, if the Premises subject to this Agreement are utilized by such new landowners.

4.2 The Lessor shall have the right to modify Schedule B by relocating such trails so long as they are of equivalent length and quality.

4.3 The Lessor shall have the right to take any actions it deems appropriate with respect to the Premises subject to this Agreement including the obligations of the Lessee hereunder.

**ARTICLE 5**

**USE AND OCCUPANCY; COMPLIANCE WITH LAWS:**

5.1 The Premises shall be used for recreational purposes and for no other purposes. The Lessee shall keep the Premises clean in accordance with standards from time to time promulgated by the Essex County Health Department, and shall not cause the release of any odor, vibration, fumes, noise, and/or nuisance within or beyond the confines of the Premises, other than routinely and ordinarily associated with the permitted uses of the Premises.

The Lessee shall use and occupy the Premises at all times in compliance with all applicable Federal, State, and local environmental, land use, zoning, health, safety, and sanitation laws, ordinances, codes, rules, and regulations and interpretations and orders of regulatory and administrative authorities with respect thereto, and shall, at its sole cost and expense, obtain and comply with all such approvals, registrations or permits required thereunder. Further, the Lessee shall defend, indemnify, and hold the Lessor, its employees, agents, and partners harmless from and against any claim, demand, cost, expense, or liability arising out of/ or relating to the failure to maintain the Premises in compliance with all applicable Federal, State, and local environmental, land use, zoning, health, safety, and sanitation laws, ordinances, codes, rules, and regulations and interpretations and orders of regulatory and administrative authorities with respect thereto.

**ARTICLE 6**

**INSURANCE:**

6.1 The parties counsel shall develop a Hold Harmless and Indemnification Agreement that all of the Lessee's members shall execute prior to utilizing any portion of the Premises in the form of Schedule 6.1.

~~6.1 The Lessee shall maintain, during the Term of this Agreement, in addition to any insurance that Lessor maintains for the Premises, a general liability insurance policy to protect Lessor and Lessee from losses or liability arising out of personal injury, death, or damage to the property of others caused by accident or occurrence with limits of \$1,000,000.00 per accident or occurrence and \$2,000,000.00 in the aggregate. Said Dalia shall name Lessor as an additional insured.~~

~~6.2 All insurance required under this Lease shall be effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do~~

~~Business in the State of New York. Upon the execution of this Lease, and thereafter, not less than thirty (30) days prior to the expiration date of any insurance policy required to be maintained under this Lease by Lessee, or any renewal or replacement thereof, the Lessee shall deliver to the Lessor, originals or copies of such policies, renewal or replacements, as the case may be, or certificates thereof. Such policies, renewals or replacements, or the certificates thereof, shall be delivered to the Lessor together with evidence of payment of the premiums in accordance with the terms reached between the Lessee and its insured.~~

- 6.3 ~~This provision shall be reviewed annually and adjusted as to the amount and types of coverage based upon the written recommendations of the Lessor's insurance carrier/broker.~~

**ARTICLE 7**

**SANITATION:**

7.1 The Lessee shall comply with all sanitary laws, ordinances, and rules, and all orders of the board of health or other authorities affecting the cleanliness, and preservation of the Premises during the Term of this Lease.

**ARTICLE 8**

**HAZARDOUS MATERIALS:**

8.1 The Lessee shall not keep or have on the Premises from the date hereof any article or thing of a dangerous, flammable, or explosive character that might increase the chance of eruption of fire on the Premises or that, ordinarily, would be considered "hazardous" or "extra hazardous" under any applicable statute, rule or regulation.

**ARTICLE 9**

**SUBLETTING AND IMPROVEMENTS:**

9.1 The Lessee shall not assign, transfer, or set over this Agreement or sublet the whole or any part of the Premises to any person or persons, without obtaining the prior written consent of the Lessor.

9.2 Further, the Lessee shall not make or allow to be made any alterations, additions, or improvements to the Premises without the prior written consent of the Lessor. Title to any and all such alterations, additions, and improvements made by the Lessee to the Premises during the Term shall vest in the Lessor as of the end of the Term.

**ARTICLE 10**

**ACCESS:**

10.1 Lessor and Lessee agree that the Lessor and its agents, guests, contractors, successors and assigns shall have equal access to the Premises along with the Lessee during the

Term hereof.

## **ARTICLE 11**

### **WAIVER AND INDEMNIFICATION:**

11.1 The Lessor shall not be liable for and the Lessee hereby agrees to indemnify, defend, and forever hold the Lessor, its agents, employees, and partners harmless from and against all claims, damages, costs, expenses (including attorneys fees and disbursements), and liabilities resulting from injury or damage to the Lessee, its agents, employees, and any other person claiming through the Lessee, unless such claims, damages, costs, expenses (including attorneys fees and disbursements), and liabilities shall have resulted either (i) solely from an act or omission of the Lessor, or its agents or servants or partners, in which case there shall be no such indemnification of the Lessor by the Lessee, or (ii) partially from an act or omission of the Lessor, or its agents or servants or partners, in which case there shall be only a partial indemnification by the Lessee to reflect said act or omission by the Lessor, or its agents or partners.

11.2 The Lessor and the Lessee, in order to induce the other to execute and deliver this Agreement and to perform thereunder, each hereby waive as to the other all claims, damages, costs, expenses (including attorneys fees and disbursements), and liabilities that may in the future arise with respect to the Premises, provided, however, that said waiver shall be valid only if the insurance coverage and obligations set forth in Article 6 hereof are in force and discharged by the Lessee, and the provisions of this Article ~~12~~ 11 shall not amend or modify the terms and conditions set forth in Article 6 hereof.

## **ARTICLE 12**

### **SUBORDINATION AND ASSIGNMENT:**

12.1 This Agreement and the leasehold in the Premises created hereunder shall be

subject to and expressly subordinate at all times to the lien of any mortgage filed with respect to the Premises, whether now existing or in the future made; provided, however, that any such mortgage shall expressly provide that in any foreclosure proceeding of the Premises the Lessee will not be made a party thereunder and in any sale of the Premises in foreclosure or by deed in lieu of foreclosure or otherwise this Agreement and the leasehold in the Premises created hereunder shall remain undisturbed and in full force and effect for so long as the Lessee is not in default of the terms and conditions of this Agreement.

12.2 The Lessor may transfer or assign the Premises subject to this Lease.

12.3 The Lessee shall not transfer, sell nor assign all or any portion of its interest in this Lease hereunder without the written consent of the Lessor.

### **ARTICLE 13**

#### **CONDEMNATION:**

13.1 If a part of the Premises shall be taken in any proceeding by any public authority, by condemnation or acquired for any public or quasi-public purpose, and such condemnation or taking shall materially affect the Lessee's ability to conduct its business, then the Lessee may, at its election, terminate this Agreement and the leasehold in the Premises created hereunder, in which case all unearned rent and additional rent shall be refunded to the Lessee. The Lessee's election to terminate this Agreement and the leasehold in the Premises created hereunder shall be exercisable by written notice given by the Lessee to the Lessor not later than thirty (30) days following the date that notice of such condemnation or taking is given to the Lessee by the Lessor. In the event that the Lessee shall not elect to terminate this Agreement and the leasehold in the Premises created hereunder within the aforesaid thirty (30) day period, then the condemnation or taking of part of the Premises shall be considered not to materially affect the Lessee's ability to conduct its business, and the rent and additional rent shall be reduced and



abated in the same proportion as the amount of floor-area in the Premises is reduced by such condemnation or taking. In such case, the Lessor may elect to restore the Premises to the extent practicable to the condition existing before said condemnation or taking, in which event the rent and additional rent shall be increased to in the same proportion as the amount of floor area in the Premises is increased by such restoration.

13.2 The Parties hereby acknowledge and agree that each shall have a claim to any condemnation or taking award or consideration as may be payable in connection with a condemnation or taking of all or any part of the Premises ~~utilizing the same formula as found in 14.1(1) hereof~~. Each party shall receive fifty (50%) of any such award with regard to the leased Premises.

#### **ARTICLE 14**

##### **QUIET ENJOYMENT:**

14.1 The Lessor covenants that, so long as the Lessee shall faithfully perform the agreements, terms, covenants, and conditions set forth in this Agreement, the Lessee shall and may peaceably and quietly have, hold, and enjoy the leasehold interest in the Premises hereby granted without disturbance by or from the Lessor.

#### **ARTICLE 15**

##### **SURRENDER OF POSSESSION AT TERMINATION OF LEASE:**

15.1 At the expiration of the Lease term, Lessee shall leave and surrender the Premises hereby demised in as good a state and condition as they were in at the commencement of the term, reasonable wear and tear of the Premises and damages by the elements excepted.

#### **ARTICLE 16**

##### **LESSEE'S DEFAULT AND LESSOR'S REMEDIES:**

16.1 (a) The Lessor may, upon written notice to the Lessee, as provided for herein,

terminate the leasehold interest in the Premises created hereunder, in the event of the occurrence of any of the following:

(i) The Lessee fails to make any payment provided for herein to the Lessor or any other appropriate party and such default is not cured within fifteen (15) calendar days after written notice thereof is given by the Lessor to the Lessee.

(ii) The Lessee is in default of the performance of any term of this Agreement, other than the obligation to make the payments as provided for above, and such default is not cured within fifteen (15) calendar days after written notice thereof is given by the Lessor to the Lessee.

(iii) A receiver shall be appointed for the Lessee, or the Lessee shall make a general assignment for the benefit of creditors, or the Lessee shall take or suffer any action under any insolvency laws of the United States Bankruptcy Code, provided, however, that in the event of an involuntary proceeding, the Lessee shall have thirty (30) calendar days within which to vacate such involuntary proceeding before the same shall constitute a breach of this Agreement.

(b) In the event of the termination of this Lease Agreement, the Lessor shall have the right to restrict the Lessee from using the Premises in any manner.

## ARTICLE 17

### NOTICES:

17.1 Any notice required or permitted to be given hereunder shall be deemed properly given if sent in a sealed, postage paid wrapper, addressed to the party at the address set forth below, by certified return receipt mail, as follows:

To Lessor: JLKN ACRES, LLC  
Attn: Mr. Eric Johanson

15191 Bledsoe Street  
Sylmar, CA 91342

with copy to: William L. Owens, Esq.  
STAFFORD, OWENS, CURTIN & TROMBLEY, PLLC  
One Cumberland Avenue  
Plattsburgh, New York 12901

To Lessee: THE AUSABLE ACRES PROPERTY OWNERS'  
ASSOCIATION, INC.  
P.O. Box 8  
AuSable Forks, NY 12912

with copy to: Michael D. McCormick, Esq.  
101 Clinton Street Keeseville,  
New York 12944

All notices shall be deemed given on the date sent.

#### **ARTICLE 18**

##### **BINDING EFFECT ON SUCCESSORS AND ASSIGNS:**

18.1 The covenants and conditions contained herein shall apply to and bind the heirs, executors, and legal representatives of the parties to this Lease, and all covenants are to be construed as conditions.

#### **ARTICLE 19**

##### **MODIFICATION; GOVERNING LAW; ENTIRE AGREEMENT:**

19.1 This Agreement shall not be modified or amended except by a written instrument executed by each of the parties hereto. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York. This Agreement represents the final agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes any prior agreements or understandings between the parties hereto with respect to the subject matter hereof.

19.2 Any dispute, controversy or claim between Lessor and Lessee or any member of

Lessee shall be finally resolved according to this paragraph. First, the parties shall attempt - 11 -

informal resolution. If information resolution is not successful within a reasonable time, the dispute shall be the subject of a face-to-face mediation. All matters must first go through mediation before they can be presented in any arbitration. The required mediation must be attended by a senior officer of each party. The mediation shall be informal and require no briefing. The representative of each party must confirm in writing that he or she has the full authority of the party to settle the dispute. If the mediation is unsuccessful, the matter shall be finally settled by binding arbitration in accordance with the rules of the American Arbitration Association. The hearing shall be held in Albany, New York. Full and complete pre-hearing discovery as permitted by New York State CPLR shall be had with any failure to respond to discovery orders resulting in the imposition of a default upon the Party failing to provide such discovery. The arbitration obligation may be enforced under the New York State CPLR. Any provision of any law which would allow the parties to avoid arbitration and be joined in any trial shall not be asserted or raised or relied on by either party.

## **ARTICLE 20**

### **MISCELLANEOUS:**

20.1 If any provision of this Agreement is declared by any court or arbitrator to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision hereof.

20.2 This Agreement cancels and supersedes any previous agreements between the parties relating to the subject matter of this Agreement.

20.3 This Agreement sets forth the entire understanding between the parties, and there are no other agreements, oral or written, between the parties except as specifically provided for or referred to herein.

20.4 This Agreement may be amended by mutual agreement of the parties, but no such

amendment shall be effective unless reduced to writing and signed by both parties.

20.5 No failure by either party to insist upon the strict performance of any covenant, term or condition of this Agreement, or to exercise any right or remedy, shall constitute a waiver.

20.6 Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the parties to this Agreement.

20.7 The captions or headings in this Agreement are for convenience only and are not construed as limiting or defining the scope or effect of any provision of this Agreement.

20.8 The parties shall maintain the confidentiality of all information regarding this transaction except to the extent disclosure is required by federal or state law, rule or regulation, or third party payor requirements.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement the dates first set forth above.

Lessor

JLKN ACRES, LLC

By:

Lessee

THE AUSABLE ACRES PROPERTY OWNERS' ASSOCIATION, INC.

By:

STATE OF NEW YORK )

COUNTY OF CLINTON )

ss:

)

On the \_\_\_ day of \_\_\_\_\_ in the year 2006~~7~~ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, of JLKN ACRES, LLC personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon