

**LAND LEASE
BY AND BETWEEN
THE TOWN OF TOPSFIELD
AND
TOPSFIELD VILLAGE SHOPPING CENTER**

LEASE

THIS LEASE, made as of the ____ day of _____ (the "Commencement Date"), between the **TOWN OF TOPSFIELD**, a body corporate and politic and having a usual place of business in Topsfield, Essex County, Commonwealth of Massachusetts (the "Town") and **Topsfield Village Shopping Centre, Inc.**, having a usual place of business at 30 Main Street, Topsfield, Massachusetts (the "Lessor").

WITNESSETH

WHEREAS, the Select Board of the Town desires to lease a portion of the land located at 30 Main Street, Topsfield, MA, as shown in Exhibit A annexed hereto (the "Property"), a portion of which is currently vacant and owned by the Lessor, for the purposes described herein; and

WHEREAS, a majority of Town Meeting voted to authorize the Town to enter into this Lease at the Annual Town Meeting held on May 2nd, 2023, thus giving them authority to do so; and

WHEREAS, the Lessor is agreeable to leasing a portion of the Property to the Town,

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

1. Leased Premises. The Town hereby leases from the Lessor the portion of the Property shown on the plan attached hereto as Exhibit A and therein labeled "Leased Premises" and herein being referred to as the "Leased Premises," for public use as a public park (the "Pocket Park") and a municipal parking lot. The Pocket Park may be used for all purposes as are commonly used for public park purposes in the Town of Topsfield. The municipal parking lot shall be in the location and contain the area and number of parking spots identified for such use in Exhibit A.
2. Term. This lease shall commence on the Commencement Date and shall expire thirty (30) years from the date of such date. Provided that the Town is not in default under the Lease, by mutual agreement of the parties, the initial term may be extended for two (2) additional terms of ten (10) years each.
3. Termination. The Lessor shall have an option to terminate this Lease after year three (3) of the Term, provided however, that in the event of such termination the Lessor shall repay the Town for all initial improvements made by the Town to the Leased Premises, including all costs associated with the initial creation of the Pocket Park, as described in Section 4 of this Lease Agreement and Exhibit C hereto. In the event of such

termination, the Lessor shall provide annual payments to the Lessee for the remainder of the initial lease term pursuant to the amortization schedule attached hereto as Exhibit B, or may make a lump sum payment at the time of termination for all costs incurred by the Town in making the initial improvements to the Leased Premises.

The Town shall have the right to terminate this Lease if the Lessor has breached the terms of this Lease and has demonstrated its unwillingness or inability to cure the breach within a period of not more than sixty (60) days following written notice from the Town. If the Town terminates this Lease following expiration of the 60-day cure period, the Lessor shall compensate the Town for all costs incurred in the creation of the Pocket Park pursuant to the amortization schedule attached hereto as Exhibit B or may make a lump sum payment at the time of termination for all costs incurred by the Town in making the initial improvements to the Leased Premises.

Terms of the lease to follow any future Sale or Transfer of the Property, however in the event a future owner decides to terminate the Lease or breaches the contract the remaining balance on the amortization schedule will become due from the Lessor to the Lessee in full and as one lump sum payment within ninety (90) days from the date of notification of termination.

Lessee reserves the right to terminate this lease agreement, for any reason and at any time, with written notification, within one year of the commencement date of the lease.

The Lessee reserves the right to perform an environmental test on the Property at any time prior to occupying the Leased Premises or during the term of this Lease. The Lessee will have the right to terminate the Lease based on the results of any such environmental test. The Town will not be liable for any necessary remediation of contaminants, improvements to the Property, or any fines or penalties resulting from such environmental tests.

4. Consideration. Upon execution of this Lease, the Town shall make the following improvements to the Leased Premises: (1) reconfigure the entrance and exit of the Leased Premises; (2) to provide estimate and design for a new sign and provide an allowance of up to Twenty Thousand Dollars \$20,000.00 for a new sign at the entrance to the Lease Premises, which sign shall include, at Town's option, reference to the Pocket Park and municipal parking lot as well as any establishments operating on the Property that the Lessor wishes from time to time to advertise; (3) install benches, greenery, walking paths, and other traditional park features; and (4) maintain the Leased Premises during the term of this Lease. The Lessor shall approve the final design for the Town's reconfiguration of the entrance and exit of the Leased Premises and the Town shall approve the final design of the new signage, such approval not to be unreasonably withheld. The Town will be responsible for improvements. See Exhibit C for a list of the Town's proposed improvements.

Provided the Lease is not terminated prematurely as set forth in Paragraph 3, above, these improvements shall inure to the benefit and become the property of the Lessor upon the natural expiration of this Lease, as extended, if applicable.

5. Covenants of Lessor. The Lessor hereby covenants and agrees with the Town that during the term of this Lease, the Lessor will perform and observe the following covenants:

- a) Construction of Improvements. The Lessor agrees to permit the Town's construction, installation and maintenance of the Pocket Park upon the Leased Premises and not to unreasonably interfere with the same. The Lessor shall indemnify, defend and hold harmless the Town from any and all liens, attachments or encumbrances resulting from the Lessor's ownership, use, and possession of the remainder of the Property.

Upon termination or expiration of this Lease, the Town (acting by and through its Select Board) agrees that it shall not oppose, in any manner whatsoever, and that it shall cooperate with and support Lessor's efforts, if any, to obtain any and all approvals necessary to re-establish any curb cuts on the Leased Premises modified by the Town pursuant to Paragraph 4 of this Lease. Lessor shall have the unassailable right to re-establish any curb cuts existing currently on the site at the Lessor's sole cost and expense.

- b) Indemnification. To the extent permitted by law, the Lessee shall indemnify and save the Lessor and its officers and employees harmless from any and all expenses, attorneys' fees, damages and liabilities for bodily injury or death, or property damage or any other loss whatsoever resulting from the Lessee's operation, maintenance or use of the leased Property, including without limitation, negligence related thereto. The Lessor does not waive any of the rights, remedies, defenses and immunities afforded the Lessor.

The Lessor shall indemnify and save the Town and its officers and employees harmless from any and all expenses, attorneys' fees, damages and liabilities for bodily injury or death, or property damage or any other loss whatsoever resulting from the Lessor's operation, maintenance or use of the Property, including without limitation, negligence related thereto. The Town does not waive any of the rights, remedies, defenses and immunities afforded the Town, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities the Town hereby reserves.

- c) Insurance. The Lessee will maintain, at its sole expense, a general liability insurance policy with an insurer of generally recognized responsibility, insuring the Lessor, and their respective officers and employees, against liability for bodily injury or death or property damage arising out of the ownership, maintenance or use of the Leased Premises, including without limitation, negligence related thereto, such insurance to afford protection in the amount recommended by the Town's insurance advisor and in accordance with generally available coverage by recognized carriers. The Lessor shall be an additional Named Insured under the policy. Such policy shall contain an agreement by the insurer that such policy shall not be cancelled without at least 60

days' prior written notice to the Lessor. A certificate of such policy shall be delivered to the Lessor prior to the execution of this Lease. The Town shall provide the Lessor with Certificates of Insurance demonstrating such coverage and requirements.

6. Condition of Premises. The Town accepts the leased premises "as is" and with any and all defects, and without benefit of any services, facilities, improvements or modifications to be made by the Lessor, and without any representation or warranty of any kind by the Lessor, and without any recourse against the Lessor as to the title to and the nature, condition or usability of the Leased Premises, and as to the use(s) to which the Leased Premises or any part thereof have been put, including, without limitation, any uses described in this lease.
7. Hazardous Substances. The Lessee or Lessor shall not introduce, use or exacerbate, or cause to be introduced, used or exacerbated, any Hazardous Substances on, in or under the Leased Premises. If the Lessee or Lessor becomes aware of any such Hazardous Substances on, in or under the lease premises, it shall promptly notify the Lessor or Lessee of the type and location of such Hazardous Substances in writing. The Lessee and Lessor agrees to indemnify, defend and hold harmless the Lessor or Lessee from and against any and all environmental claims, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorneys' fees that may Lessee or Lessor may suffer or incur to the extent due to the Lessor or Lessee's failure to comply with environmental laws and the first sentence of this section. This indemnification obligation specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority, and is in addition to, and not a limitation of, any other rights and remedies available to the Lessor.
8. No Assignment. This agreement may not be assigned by any party without the prior written consent of the other.

IN WITNESS WHEREOF, the Town, acting by its Select Board, and the Lessor, acting by its _____ thereunder duly authorized, have respectively executed this lease under seal as of the day and year first above-written.

LESSOR:
TOPSFIELD VILLAGE SHOPPING
CENTRE, INC.

LESSEE:
TOWN OF TOPSFIELD,
By its Select Board

BY:



Name: _____

Peter C. Flomp
AS PRESIDENT

BY:

Marshall Hook, Chair

Lynne Bermudez, Vice-Chair & Clerk

Boyd Jackson, Member

Cameron K. Brown, Member

Rafael McDonald, Member

EXHIBIT A

Plan Identifying Leased Premises

EXHIBIT B

Amortization Schedule

EXHIBIT C

Lessee Improvements