



CITY OF BETHLEHEM  
OFFICE OF THE CITY SOLICITOR

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INTEROFFICE MEMORANDUM

To: Louise M. Kelchner, City Clerk

From: William P. Leeson, Esq., City Solicitor

Re: Sublease Agreement  
Sublessee Name: The Appalachian Mountain Club  
Location: Illick's Mill at Monocacy Park

Date: August 27, 2015

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Attached is a proposed Resolution and associated Sublease Agreement for Council's consideration.

Please place this matter on City Council's agenda for review and appropriate action.



William P. Leeson, Esq., Solicitor

Cc: Robert J. Donchez, Mayor  
Ralph E. Carp, Parks & Public Property  
Mark Zakutansky, The Appalachian Mountain Club

RESOLUTION NO. 2015-\_\_\_\_\_

Authorization For Sublease Agreement

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Sublease Agreement for Illick's Mill at Monocacy Park between the City of Bethlehem and The Appalachian Mountain Club, a non-profit corporation, and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, according to the terms and conditions indicated therein and made a part hereof.

Sponsored by \_\_\_\_\_

\_\_\_\_\_

ADOPTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

President of Council

ATTEST:

\_\_\_\_\_

City Clerk

**SUBLEASE AGREEMENT**  
**Illick's Mill at Monocacy Park**

THIS AGREEMENT of Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, to be effective beginning on the first of the month after execution, between the CITY OF BETHLEHEM, a City of the Third Class of the Commonwealth of Pennsylvania, of the County of Northampton, with its offices and principal place of business at 10 East Church Street, Bethlehem, Pennsylvania, 18018, hereinafter referred to as "CITY" or "LESSOR", and THE APPALACHIAN MOUNTAIN CLUB, A NON-PROFIT CORPORATION, with its offices and principal place of business at 5 Joy Street, Boston, Massachusetts, 02108-1490, hereinafter referred to as "AMC" or "LESSEE".

WHEREAS, City leases the Illick's Mill building from the Bethlehem Water Authority;

WHEREAS, Lessee is a non-profit corporation dedicated to promoting the protection, enjoyment, and understanding of the waters, forests, trails and outdoor resources of America's Northeast and Mid-Atlantic regions;

WHEREAS, City is interested in fostering an appreciation of our City's outdoor resources and parks, and Lessee's mission is compatible with City's interest;

WHEREAS, Lessee would like to move its local branch office to the first floor of Illick's Mill at Monocacy Park in the City of Bethlehem;

WHEREAS, Lessee, as tenant of the Mill, will engage in activities to promote environmental education and stewardship which is considered to be to the mutual benefit of the parties;

NOW, THEREFORE, this agreement witnesseth:

1. PARTIES

The parties to this Lease are:

- A. Lessor, The City of Bethlehem;
- B. Lessee, Appalachian Mountain Club, a Non-Profit Corporation, and
- C. Owner and Lessor to the City, the Bethlehem Water Authority, whose separate written consent to this Lease is required and may be satisfied by correspondence from the Solicitor of the Bethlehem Water Authority.

2. DESCRIPTION OF LEASED PREMISES

- A. Lessee is leasing only a portion of the premises known as Illick's Mill. This building is that certain thirty-four (34) by sixty (60) foot rectangular shaped two and one-half (2 ½) story masonry building in Monocacy Park and being located along the north side of Illick's Mill Road between the Railroad right-of-way and the Monocacy Creek; and also the foundation planting beds around the structure, and being further known as address number 100 Illick's Mill Road according to the City house numbering system. Lessee will lease only a portion of the first floor of the building, measuring 30 x 33 feet (990 square feet). The portion to be leased is identified on Exhibit A of this Agreement (Leased Premises). Prior to the effective date of this Lease, the leased premises shall be partitioned in a manner that provides security for the assets of the Lessee.
- B. The premises are leased to Lessee in their as-is condition, Lessor making no

warranties whatsoever regarding the condition or suitability of the premises, with the exception of section 15.A of this agreement.

### 3. TERM

- A. The term of this Lease shall run the date of completed execution by the Mayor through December 31, 2016.
- B. Upon Lessee's request, the Lease term may be extended one calendar year at a time for up to three additional years. If Lessee seeks renewal for the next year, it shall notify Lessor in writing (written statement) by October 1<sup>st</sup> of the current lease year. Renewal may include new terms and an increase in rent above the 2016 base rent at a rate increase equal to the increase in the Consumer Price Index (CPI) over the base index, not to exceed 3% annually, as calculated by multiplying the base rent by the percentage of increase of the CPI over the previous calendar year from January to December, with the percentage rate increase of the CPI determined by subtracting the CPI in December from the CPI in January of the calendar year and dividing by the base index equal to CPI in January of the calendar year. The CPI shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, CPI-U. Any terms to be modified from this lease must be in an amendment to be signed by the parties.
- C. All such extensions or holdover by Lessee after expiration of a specified term will be governed under the terms set forth in this Lease, except where as amended by written statements as discussed in 3.B.

- D. Any holdover after expiration of a specified term, absent a signed amendment extending a new term, shall be deemed a month to month lease otherwise subject to this Lease and the latest scheduled rent and amendments. Holdover shall not be deemed renewal for a full year term.
- E. At the natural expiration of the lease agreement, absent an extension or new agreement, written notice of this agreement's termination may be served by either the Lessor or Lessee no less than 30 days before the effective date of the termination.

#### 4. RENT AND SECURITY DEPOSIT

- A. Lessee's rent shall be comprised of monthly rent plus all charges and expenses payable under this Lease.
- B. Monthly rent shall be \$1,050.00 payable on the first of each month in 2015 and prorated for any partial month's tenancy.
- C. Monthly rent shall increase annually in 2016 by \$100 per month, such that monthly rent for 2016 will be \$1,150 (totaling \$13,800 per year). In subsequent years, rent may increase as provided for in 3.B. of this agreement.
- D. All other charges, expenses and reimbursements payable hereunder are rent obligations payable on demand if owed to the City unless otherwise extended on terms stated herein or specified in an invoice from the City or a third party supplier or vendor.
- E. Lessee shall provide the City a security deposit of \$2,100, which will be paid in full prior to Lessee taking possession of the leased premises, to be returned

upon termination or surrender to the Lessee as provided for in the Pennsylvania Landlord Tenant Act of 1951, in 68 P.S. §§ 250.512.

F. In addition to the rent payment described above, during the term of the Lease and during any extensions, Lessee shall provide the following in-kind services for the benefit of the City and its residents:

- i. Establish and maintain an educational and informational website for Illick's Mill and the adjoining trail and park. Examples of the type of information the web page may include are contact information, the printable trail map described in F.iii, and general natural and cultural history of the park;
- ii. Establish a kiosk/interpretive site signage;
- iii. Develop a trail map and print copies of the map on an ongoing basis;
- iv. Direct service volunteer-led programming, with an emphasis on programming for families, which shall be comprised of those activities led by volunteer leaders in the Lessee's Delaware Valley Chapter that are proximate to the premises and such other additional activities as may be organized with the Lessee's volunteer leadership and/or partner organizations to originate at the general area of Monocacy Park;
- v. Assist in the maintenance of the Monocacy Way Trail and/or park through Lessee volunteers, whose efforts will be supervised and coordinated by Lessee, subject to consent of the City of Bethlehem

Director of Parks & Public Property (Parks Director) to such activity.

vi. The above items, in 4.F. shall all be done in consultation with the Parks Director. All Trail and Park work will require prior written approval of the Parks Director.

vii. Failure to fulfill or maintain any of these obligations is a breach of this lease.

#### 5. PERMITTED USES

A. The premises shall be used consistent with the purposes of the Lessee, namely, as office space for the non-profit during normal business hours, and for programs and activities described in 4.F, which may include evening and weekend occupancy.

B. The Lessee may use non-leased portions of Illick's Mill without charge upon authorization of the Park Director and pursuant to all other terms of this agreement.

C. Notwithstanding the preceding limitation on the use of the premises, the Parks Director, may, at the City's sole discretion, authorize the Lessee to sell Appalachian Mountain Club related items and environmental education and conservation based items, provided that all funds generated by the Lessee from such activities shall be allocated exclusively to uses consistent with Internal Revenue Service regulations and in a manner that will not jeopardize or cause termination of Lessee's tax exempt status or that of the Bethlehem Authority under the Internal Revenue Code and such exemption pertaining to

real estate taxation. All such authorizations must be in writing from the Parks Director. Such authorization is contingent on Lessee obtaining all licenses, clearances and permissions required by statute, regulations or ordinance.

C. Smoking is banned on the premises. It is a smoke free environment. Lessee shall maintain and enforce "no smoking" in the interior of buildings; and post "No Smoking" signs in conspicuous locations and as ordered by the Fire Commissioner under International Fire Code Section 310.3. The City may choose to designate an area outside of the Mill for smoking and provide at said location devices for safe disposal of smoking material away from the building. The City shall ensure that devices for safe disposal of smoking materials are properly maintained.

D. Lessee shall not use or permit a third party's use of the premises for a purpose or benefit that jeopardizes or causes termination of Lessee's tax exempt status or that of the Bethlehem Authority by violation of Pennsylvania, Federal and IRS statutes and regulations governing tax exempt organizations. Lessee shall comply with requests by the City or the Authority for financial records, income statements, balance sheets, auditor's reports and tax returns allowing for review and assurance of compliance with said statutes and regulations. If all or any portion of the Illick's Mill property loses its real estate tax exemption as a result of Lessee's operations and use of the property, Lessee shall pay, hold harmless and indemnify the Bethlehem Authority and City for all such taxes that are payable.

- E. At hosted or licensed events, and at any informal or casual gathering or meeting at the Mill, whenever alcohol is made available, alcohol service and consumption shall be confined to the interior of the Mill; no exceptions, no alcohol permitted outside. Lessee also shall comply with City ordinance Article 941 with respect to hosting events, permit requirements and limitations on alcohol content of alcoholic beverages served and consumed on the premises. Sale of alcohol at the leased premises by Lessee, a licensee of Lessee or any third party is prohibited except when in full compliance with all requirements of Article 941.
- F. Lessee may display signs on the premises, including, but not limited to: a sign on the interior of the building identifying office space for the Lessee, as well as an exterior sign, affixed or not affixed to Illick's Mill, identifying the lessee and providing public information consistent with the lessee's use of the property, with the written approval of the Parks Director.

## 6. MAINTENANCE AND REPAIRS

- A. Lessee shall, during the term of this Lease and any extension thereof, at Lessee's sole expense, keep the Leased Premises clean and free of accumulated trash and in as good order and repair as it is at the time of the commencement of this Lease, reasonable wear and tear excepted. This obligation covers everything except the obligations assumed by the City under paragraph B.
- B. The City agrees to perform and pay for the maintenance of the Mill building,

both inside and outside, including keeping non-leased premises clean and free of accumulated trash and in as good order and repair as it is at the time of commencement of this lease. This maintenance obligation includes repair, replacement and preventive maintenance of structural and non-structural components; of mechanical, electrical, heating, central cooling, hot water and plumbing equipment and systems; of elevator; fire detection and suppression systems; of fixtures, historical and decorative features and finishes; of roof, floors, walls, ceilings, and other parts of the leased premises damaged or worn through normal occupancy; and of structures attached to the Mill such as staircases, railings and sidewalks. Lessee shall repair damage or reimburse City's costs to repair damage caused by Lessee's or its employees', visitors', or contractors' abuse, negligence, neglect or excessive wear and tear.

- C. City shall perform at its expense snow and ice removal for exterior walkways and stairs; grass cutting and turf maintenance.
- D. Lessee acknowledges the serious risk to the historic Mill and occupants from fire. Therefore, Lessee agrees that fire safety and prevention shall always be a paramount concern in Lessee's maintenance, repairs, occupancy and use of the premises. Lessee shall comply with City ordinance and adopted Building and International Fire Code requirements, and directives by the Fire Commissioner, on fire safety and prevention measures, and maximum occupancy limits. City will maintain the required number and placement of emergency lighting devices, the number, location and timely replacement of fire extinguishers within the full Illick's Mill building. Lessee will notify the

City of any lighting devices that are in need of repair with the leased space.

The Bethlehem Fire Inspection Department will perform yearly inspections to assure compliance. Non-compliance with City ordinance and Code requirements and directives by the Fire Commissioner on fire safety and prevention measures shall be an event of default under this Lease, if deemed that the Lessee has violated its obligations herein.

- E. Portable generators, kerosene heaters, heating devices and fuel are prohibited for inside use and storage.
- F. Lessee shall keep the leased premises clean and free of accumulated trash. Lessee shall make every effort to reduce its solid waste stream through recycling practices.
- G. Lessee shall not make changes or improvements to grounds in Monocracy Park without prior written authorization by the Director of Parks and Public Property.
- H. At the expiration of the term of this Lease and any extension thereof, Lessee shall surrender the Leased Premises in as good condition as it was at the commencement hereof, reasonable use and wear and damages by the elements excepted.
- I. Lessee's obligations under this Article constitute part of its rent obligations under this Lease.

## 7. UTILITIES

Lessee shall pay for any and all telephone, television, internet and satellite signals

and service it uses. Lessee will contract with these providers directly. City shall pay utility service and commodity expense for water, sewer, electricity, gas, heating oil. Lessee will conduct internal energy-use audits, and employ green practices, to reduce its energy consumption.

#### 8. LESSOR'S RIGHT OF ENTRY

- A. City retains the right to inspect the lease premises upon 24 hour notice to Lessee's local manager; and in the event of emergency without advance notice to Lessee.
- B. City retains the right to enter the leased premises upon 24 hour notice to Lessee's branch office manager and, in the event of emergency without advance notice to Lessee or the Lessee's branch office manager, to repair exterior water, sewer and utility lines and appurtenances and to restore disturbed grounds.

#### 9. DEFAULT

- A. It shall be an event of default allowing City to terminate the Lease:
  - (1) if Lessee does not pay in full when any rent is due; or
  - (2) if Lessee fails to observe a prohibition and fails to perform or otherwise breaches any other obligation of performance or payment under this lease; or
  - (3) if Lessee abandons the leased premises, which shall be conclusively presumed if the premises remains unoccupied for more than 60

consecutive days; or

- (4) if Lessee becomes insolvent or bankrupt in any sense or makes a general assignment or sale for the benefit of creditors or offers a settlement to creditors, or if a petition in bankruptcy or for reorganization or for an arrangement with creditors under any federal or state law is filed by or against Lessee or a bill in equity or other proceeding for the appointment of a receiver for any of Lessee's assets is commenced, or if the property of Lessee shall be levied upon at the leased premises; or
- (5) if Lessee, as a privately owned business entity, or its owners transfer either a controlling or a majority ownership interest in the organization; or
- (6) if Lessee suffers revocation of its tax exempt status if it is a non-profit or charitable tax exempt entity; or
- (7) if in kind services required in this Lease subject to the limitations to Lessee's obligations as provided in 4f are not fulfilled or maintained; or
- (7) if Lessee's operations cause revocation of the tax exempt status of the property or the Bethlehem Authority; or
- (8) if Lessee is not in compliance with the insurance obligations under this Lease required to protect the City and the Bethlehem Authority.

B. City shall have the right to notify Lessee in writing of default and an intention to terminate the Lease. Upon notification of default and intent, the Lease shall be terminable by City within thirty days thereof. Late penalties for any unpaid

rent shall continue through the date of Lessee's vacancy of the premises.

Upon notification of default and intent, City may accelerate the whole or any part of the rent for the balance of the term, and declare the same to be immediately due and payable. After termination, unpaid penalty and rent shall accrue fifteen (15%) per cent annual interest on the balance chargeable to Lessee. The exercise or non-exercise of remedies hereunder, in whole or in part (as an example, delayed enforcement in an attempt to resolve a dispute amicably), shall not be construed as a waiver and shall not impose an estoppel upon City's discretion to act as it deems appropriate within the terms of this Article.

- C. Limited Grace Period. If the default consists of something other than the failure to pay money which cannot reasonably be cured within 10 days, City will not exercise any right if the Lessee begins to cure the default within the 10 days and continues actively and diligently in good faith to completely cure said default as determined by City in its judgment. The allowance of an opportunity to cure a default, in whole or in part (as an example, delayed enforcement in an attempt to resolve a dispute amicably), shall not be construed as a waiver and shall not impose an estoppel upon City's discretion to act as it deems appropriate, including termination of the Lease under paragraph B. preceding.

## 10. COMPLIANCE WITH LAWS

- A. General compliance obligations. Lessee is obligated to comply with State,

Federal and City of Bethlehem laws, ordinances and City Park Rules and Regulations in its use of the premises and conduct of public and private operations and events in furtherance of its mission statement and charitable purpose.

B. Specific compliance obligations.

(1) Lessee shall comply with all Pennsylvania laws, regulations and procedures and City ordinances, including Article 941, controlling and limiting the offering, supplying, use and sale of alcoholic beverages at and upon the leased premises whenever hosting or allowing licensee use of the premises for a private event when alcohol is served.

(2) Lessee shall comply with all Pennsylvania laws, regulations and procedures and City codes, adopted building codes and ordinances when making structural changes, repairs and improvements.

## 11. INSURANCE

A. To protect their respective insured interests, the City and the Authority shall keep the building containing the Leased Premises insured against liability, loss or damage by fire or other casualty for limits no less than those required of Lessee in this Lease.

B. Lessee shall bear the risk of loss by fire, theft, or other casualty of any personal property, money, inventory, furniture, equipment or other contents brought upon the leased premises.

C. Lessee shall procure and maintain a policy of tenant's liability insurance

against public liability arising from the operation of the business, products liability, liquor liability, and the condition of the leased premises and the pavements and grounds surrounding the same, with limits of not less than One Million Dollars (\$1,000,000.00) per person, and Two Million Dollars (\$2,000,000.00) per occurrence; and liability coverage for property rented by tenant of no less than One Million Dollars (\$1,000,000.00), to be annually adjusted at the City's demand to match the City's or Authority's insured value on the property. The City, the Bethlehem Authority, their officers, elected officials, directors and employees, shall be named as additional insureds on such policy and Lessee shall provide the City and the Authority with a certificate evidencing such insurance being in force for a yearly term. The insurance shall be renewed for every term year of the Lease and the certificate provided in the same form when renewed. Lapse or cancellation of the insurance is an event of default.

D. Lessee's obligations under this Article constitute part of its rent obligations under this Lease.

## 12. INDEMNIFICATION

Each party agrees that it is legally liable to, and shall, release, indemnify, defend and hold harmless the other party, their agents, employees, directors, officers, elected officials, appointed officials and board members, and insurers, from economic and financial harm, said harm including all claims, demands, civil actions, awards and judgments for damages and compensation for property

damage, repairs, replacement, personal injury, death, medical expenses, lost income and wages, consequential damages, attorney fees and litigation costs, contribution and indemnification, asserted by either party, or either's employees, officers, volunteers, contractors, invitees, permittees, licensees, trespassers and any third party, contractor, insurer, public agency or municipality, business organization or a member of the general public caused partly or entirely by or arising from: a) breach of this Lease by either party; b) negligent, reckless or intentional conduct by either party or its officers, directors, officers, employees, volunteers, guests, invitees, contractors, permittees or licensees; c) either party's possession, occupancy, licensing, permitting, use, events and operations at Illick's Mill without regard for or limitation by whether the harm is caused by negligent, reckless or intentional conduct.

### 13. LESSEE IMPROVEMENTS

A. Permanent building improvements and attached mechanical, plumbing, restroom fixtures, electrical, heating, lighting and air conditioning equipment and window treatments may be installed by Lessee with express permission of the City. The City in its exclusive discretion may deny permission where it deems such improvements as unnecessary or harmful to the historical structure, appearance or character of the Mill. Such improvements installed or paid for by Lessee before or during this Lease shall be deemed Bethlehem Authority owned property and may never be removed by Lessee without both the City's and the Authority's express consent. Lessee shall have no recourse

for recoupment, compensation or payment by City or the Bethlehem Authority for Lessee improvements.

- B. Any fixtures, furnishings or equipment purchased by Lessee not permanently affixed to the leased premises and utilized in connection with Lessee's business or owned by others may be removed by Lessee upon the termination of this Lease. The removal of same shall be at Lessee's sole cost and expense and Lessee shall be responsible for restoring any damage to the leased premises caused by the removal of same.

#### 14. MECHANICS LIENS

Lessee shall pay promptly any contractors and materialmen who supply labor, work or materials to Lessee at the leased premises and shall take all steps permitted by law in order to avoid the imposition of any mechanic's lien upon all or any portion of the premises. Should any such lien or notice of lien be filed for work performed for Lessee other than by City, Lessee shall bond against or discharge the same within 5 days after Lessee has notice that the lien or claim is filed regardless of the validity of such lien or claim. Nothing in this Lease is intended to authorize Lessee to do or cause any work to be done or materials to be supplied for the account of City, all of the same to be solely for Lessee's account and at Lessee's risk and expense. Throughout this Lease the term "mechanic's lien" is used to include any lien, encumbrance or charge levied or imposed upon all or any portion of, interest in or income from the leased premises on account of any mechanic's, laborer's, materialman's or construction lien or arising out of any

debt or liability to or any claim of any contractor, mechanic, supplier, materialman or laborer and shall include any mechanic's notice of intention to file a lien given to City or Lessee, any stop order given to City or Lessee, any notice of refusal to pay naming City or Lessee and any injunctive or equitable action brought by any person claiming to be entitled to any mechanic's lien.

#### 15. ENVIRONMENTAL HAZARDS AND CONTAMINATION

- A. City represents and warrants that there are no existing environmental hazards, waste, sewage or chemical leaks, spills, pollution or contamination or other similar conditions at the leased premises.
- B. Lessee hereby warrants that it is solely responsible for environmental hazards, waste, sewage, fuel or chemical leaks, spills, pollution or contamination or other similar conditions arising from Lessee's use and occupancy of the premises or its operations, events, maintenance, use of chemical and fueling tanks, and vehicle fueling operations. Lessee shall comply, at its sole expense, with all laws and requirements as set forth above, all manufacturers' instructions and all requirements of insurers relating to the treatment production, storage, handling, transfer, processing, transporting, use, disposal and release of hazardous substances, hazardous mixtures, chemicals, pollutants, petroleum products, toxic or radioactive matter. Lessee expressly agrees to indemnify and hold harmless the City and the Authority for any such occurrence or damage resulting in cleanup cost; repair and restoration cost; municipal, federal or judicially imposed fine, penalty or judgment; claim, suit, civil action, or legal

liability of any nature whatsoever for environmental hazard, personal injury, waste, sewage or chemical leaks, spills, pollution, contamination or other similar conditions, whether or not caused by Lessee's negligence. Lessee warrants that it will not create or maintain pollution or contamination or other similar conditions upon the leased premises and agrees to indemnify and hold harmless the City and the Authority if they are held accountable for or otherwise incurs the cost to remedy any such condition caused by the action of Lessee, its owners, officers, employees, agents or contractors. This legal obligation of Lessee includes, but is not limited to, notification and violation under Federal Environmental Protection Agency Law and Regulations, and under Pennsylvania Department of Environmental Resources Law and Regulations, and under any other Federal, State or local law, regulation or ordinance. The foregoing constitutes material terms and conditions of this lease. In the event of City's determination of Lessee's breach of these terms and conditions, the City and the Authority may invoke remedies allowable at law and throughout this lease, including declaring default.

#### 16. ASSIGNMENT

This Lease shall not be assignable by Lessee to a third party or an acquiring or merging entity without written consent by City and the Bethlehem Authority. City shall not assign this Lease except, at its discretion, to the Bethlehem Authority, which shall be permitted.

## 17. TRANSFER AND ASSIGNMENT FOR BENEFIT OF CREDITORS

- A. If Lessee shall transfer its business to a new owner or owners cumulatively acquiring a controlling interest, be sold out at a Sheriff's or Constable's Sale, or make either a transfer of assets to or assignment for the benefit of creditors, or commit any act of bankruptcy whatsoever, it shall be an event of default and the rent for the balance of the current term and unpaid charges and expenses shall at once become due and payable, as if by the terms of this Lease it were all payable in advance and may be collected by distress or otherwise, and shall be paid in full from the proceedings of any such assignment, sale or bankruptcy proceedings, any law, usage or custom to the contrary notwithstanding. A change of Lessee's name is permitted if the legal entity is otherwise identical.
- B. Lessee shall not pledge, transfer, assign, encumber or grant lien rights, primary or subordinated, through any contract, lease, security agreement, promissory note, financing statement or other writing, either upon, to or against any City or Authority property whether it be real property, personal and business property, fixtures, equipment, liquor licenses, vehicles, intangibles and chattel paper. In the event Lessee commits a breach of the foregoing, it shall be an event of default and, upon the City's or the Authority's demand, Lessee immediately shall take all steps necessary and incur all expense needed to reverse the illegal transaction and restore the City's and Authority's unrestricted unencumbered rights to their property.

#### 18. NON-WAIVER OF ENFORCEMENT

No statement, action or forbearance by the City (as an example, non or delayed enforcement in an attempt to amicably resolve a dispute or default) shall be considered a waiver, express or implied, of any of the rights, terms and conditions of this Lease and City's right to enforce any and all provisions.

#### 19. SUBORDINATION TO CITY'S LEASE WITH BETHLEHEM AUTHORITY

This Lease is a sublease agreement. Lessee's rights to possession and use of the premises are subordinate to the City's rights under its lease of the premises with the Bethlehem Authority dated January 1, 1992 and First Supplemental Contract and Lease dated December 1, 1992. In the event City's lease with the Authority is terminated, this Lease shall be deemed concurrently terminated without recourse to Lessee, unless it is assumed or extended by written consent of the Authority. In the event the Authority deems the City in default because of any matter involving Illick's Mill, upon City's demand, Lessee shall do all that is necessary, if it is within the scope of its duties under this Lease, to cure such default.

#### 20. WAIVER OF NOTICE TO QUIT

Lessee hereby waives any and all notices required by any act of assembly concerning notices to quit.

## 21. CONFESSION OF JUDGMENT

In the event of any default by Lessee hereunder, City may cause judgment to be entered against Lessee, and for that purpose, Lessee hereby authorizes and empowers City, or any Prothonotary, Clerk of Court, or attorney of any Court of record, to appear for Lessee and to confess judgment against Lessee for the amount of all rent and other sums due from Lessee hereunder as well as for interest on all overdue sums at the rate of ten percent (10%) per annum, costs of suit, and an attorney's commission of fifteen percent (15%) of the full amount of City's claim against Lessee. The authority to confess judgment granted herein shall not be exhausted by any one or more exercises thereof. Lessee agrees that this Lease or a true and correct copy thereof shall be sufficient authorization and warrant to confess judgment hereunder.

## 22. EJECTMENT

In the event of any default by Lessee hereunder, and termination of this Lease by City, or upon the expiration of this Lease, Lessor may cause judgment in ejectment to be entered against Lessee for possession of the leased premises, and for that purpose, Lessee does hereby authorize and empower City, or any Prothonotary, Clerk of Court or attorney of any Court of record to appear for Lessee and confess judgment against Lessee in ejectment for possession of the leased premises, and Lessee agrees that a Writ of Possession pursuant thereto may issue forthwith. Lessee further agrees that, if for any reason whatsoever after the commencement of said action, the same shall be terminated and possession of the

leased premises shall remain in or be restored to Lessee, City shall have the right, at any subsequent time when occasion shall arise, to cause the entry of successive judgments by confession in ejectment for possession of the leased premises.

Lessee agrees that this Lease or a true and correct copy thereof shall be sufficient authorization and warrant to confess judgment and for the issuance of a Writ of Possession pursuant thereto. Lessee hereby waives any and all notices required by any act of assembly concerning notices to quit.

### 23. INTERPRETATION

If Lessee for any reason, purpose or reply to the City, or upon any occasion, also including court proceedings, asserts that the Lease is vague or ambiguous in order to establish grounds to disagree with and avoid City's interpretation of Lessee's obligations, the parties agree that any asserted vagueness or ambiguity of terms or disagreement shall be resolved by interpretation in favor of the City. The provisions outlined herein shall not apply to section 4.F of this agreement.

### 24. NOTICES AND PLACE OF PAYMENT

- A. Any notice under this Lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by such party in writing.
- B. The City hereby designates the City's place of payment and notice address as 10 East Church Street, Bethlehem, Pennsylvania, 18018.
- C. Lessee hereby designates Lessee's notice address as 100 Illick's Mill Road,

Bethlehem, Pennsylvania, 18017.

25. BINDING EFFECT

- A. This agreement shall not be authorized for signature by Mayor and Controller absent prior review and resolution by Bethlehem City Council.
- B. This Agreement shall be binding upon and afford its benefits to the parties hereto, their respective owners, partners, legal representatives, heirs, successors, executors and assigns.

26. ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof, to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

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IN WITNESS WHEREOF, the parties by their legally authorized representatives have hereunto set their hands and seals on the day and year first above written.

ATTEST:

\_\_\_\_\_

LESSEE:  
THE APPALACHIAN MOUNTAIN CLUB, A  
NON-PROFIT CORPORATION

BY: \_\_\_\_\_ (Seal)  
Authorized Representative

ATTEST:

\_\_\_\_\_

City Controller

LESSOR:  
CITY OF BETHLEHEM

BY: \_\_\_\_\_ (Seal)  
Robert J. Donchez  
Mayor

I certify that the within Sublease Agreement is needed, necessary and appropriate.

By: \_\_\_\_\_  
City of Bethlehem Department Head  
Print Name: Ralph E. Carp

Exhibit A - Leased Premises

