

# ITEM

# 16-028

To consider and act on authorizing the Town Manager to execute  
a 3-year lease agreement with Rachel's On the Green



**LEASE AGREEMENT**

This Lease, dated on this \_\_\_\_\_ day of \_\_\_\_\_, 2016 for reference purposes, is made between the TOWN OF CUMBERLAND, with offices in Cumberland, County of Cumberland and State of Maine (“Landlord”) and Rachel’s on the Green, a Maine Corporation with a place of business at Cumberland, County of Cumberland and State of Maine (“Tenant”), who agree as follows:

**ARTICLE I  
BASIC LEASE PROVISIONS**

The following basic Lease provisions supplement and summarize provisions elsewhere in this Lease. They are presented to facilitate convenient reference by the parties to this Lease, subject to further definition and discussion in the referenced sections and elsewhere in this Lease. Although the basic Lease provisions are part of this Lease, if there is any conflict between the basic Lease provisions and provisions contained in the balance of this Lease, the provisions contained elsewhere shall control.

Use:	Restaurant & Bar	(Sec. 5.1)
Tenant’s Trade Name:	Rachel’s on the Green	(Sec. 5.1)
Premises Address:	60 Val Halla Road	(Sec. 2.1)
Commencement		
Date:	April 1, 2016	(Sec. 3.1)
Primary Term:	9 months	(Sec. 3.2)
Option Period:	Two automatic renewals	(Sec. 3.3)
Rent:	\$1,125/month April – November	(Sec. 4.2)
	Utilities only December – March	
Due Date:	15 <sup>th</sup> of each month	(Sec. 4.2)
Late Charge:	\$50	(Sec. 13.4)
Damage Deposit:	\$2,000 retained from prior lease	(Sec. 4.3)

Exhibits:

- A. Tenant’s Certificates of Insurance (Liability & Worker’s Compensation)
- B. Landlord’s Equipment and Property Inventory
- C. Tenant’s Equipment and Property Inventory

**ARTICLE 2  
PREMISES**

2.1 **Leased Property:** Landlord leases to Tenant and Tenant leases from Landlord the following property (the Premises):

(a) **Premises:** The snack bar area at Val Halla Golf & Recreation Center, including kitchen, bar and dining area at Viking Grill, common use of adjoining deck and restrooms in restaurant area and dedicated space to be used as an office or for storage. Landlord

does not guarantee Tenant rights to catering of banquet facility events or use of banquet facility kitchen. Tenant may negotiate with Maine State Golf Association as Lessee of said banquet facility to provide catering services or for use of banquet facility kitchen.

(b) **Parking Spaces.** Tenant will not have exclusive use of any parking spaces but the Landlord will permit restaurant guests and employees to park in the Center parking lot at the rear entrance of the building. Tenant or its employees may only use rear entrances for loading/unloading or receiving shipments on a time-restricted basis.

(c) **Contents.** Landlord also leases to Tenant all furniture, fixtures, equipment and furnishings located at the premises. A list of Landlord's personal property included in this Lease is attached hereto as Exhibit B, but Tenant agrees that whatever the contents of said list, all said furniture, fixtures, equipment and furnishings as are in place on March 1, 2016 are included herewith and Tenant shall be responsible for the repair or replacement of any of these items and all additional items required to operate a restaurant.

(d) **Bar.** Tenant shall operate the bar adjoining the restaurant at such times as Tenant reasonably determines to open the same. Hours of operation must be consistent with industry standards and maintained throughout the season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect.

2.2 **Tenant's Acceptance of Premises.** Tenant shall accept the Premises in its "As Is" condition on the Commencement Date, but shall be entitled to early occupancy, without cost, to clean and renovate the same with Landlord's consent.

2.3 **Recreation Center.** The Premises are part of a larger parcel of real property (the "Center") owned by Landlord commonly known as Val Halla Golf & Recreation Center in the Town of Cumberland, County of Cumberland, State of Maine.

2.4 **Landlord's Title and Authority.** Landlord has good, legal, and marketable fee title to the Premises and the full right and lawful authority to make this Lease.

2.5 **Quiet Enjoyment.** So long as no Event of Default (as defined below) has occurred, Tenant shall have full, quiet, and peaceful possession of the Premises without interference or interruption by Landlord. This quiet enjoyment provision will not be effective once Landlord has given notice of termination subject to Article 3, paragraph 3.4.

2.6 **Access.** Golfers shall have the right to use said premises in common with Tenant's customers. Also, Landlord shall have the right through its golf professional to use a portion of said restaurant space for registration during golf outing events and further to enter upon the Premises for the purpose of inspection, serving or posting notices, making any necessary repairs to the Premises, complying with laws, ordinances, or regulations, protecting the Premises, or any other lawful purpose. Tenant shall be open for business, in at least a limited capacity, during all organized golf outing events, including hours of registration. Landlord reserves the right to operate the Premises during such times if Tenant is unable or unwilling to do so. Landlord shall exercise such rights reasonably, upon reasonable advance notice (except in the case of emergencies) and in such manner as not to interfere unreasonably with the business of Tenant.

## ARTICLE 3

### TERM

3.1 **Commencement Date.** This Lease shall be effective and Tenant's obligation to pay rent shall commence on April 1, 2016 (the "Commencement Date").

3.2 **Initial Term.** The initial term (the "Initial Term") shall begin on the Commencement Date and end on December 31, 2016.

3.3 **Automatic Renewal.** The initial term shall be automatically renewed on January 1, 2017 and on January 1, 2018 to expire no later than December 31, 2018. Landlord and Tenant reserve the right to cancel automatic renewal with notice. Notice of intent to cancel automatic renewal shall be provided prior to December 1, 2016 and December 1, 2017, respectively.

3.4 **Extensions.** Provided that Landlord determines at its sole judgment that the operation of said restaurant was beneficial to the Center as a whole, Landlord agrees to negotiate extensions hereof following the automatic renewal terms.

3.5 **Early Termination.** Landlord has the right to terminate the Lease at any time, with cause. Tenant has the right to terminate this Agreement thirty (30) days prior written notice to Landlord.

3.6 **Licenses and Permits.** Tenant shall be responsible for obtaining all necessary licenses and permits to operate said restaurant. Upon termination of the Lease the Tenant will surrender and assign, if requested by Landlord, to Landlord, concurrently with such termination, all of the licenses and permits necessary to operate the restaurant (without compensation to Tenant).

## ARTICLE 4

### RENT

4.1 **Lease Year.** The term Lease Year shall mean twelve (12) consecutive full calendar months commencing in January of each year, except that the Lease Year for the Initial Term shall mean nine (9) consecutive full calendar months commencing April 1, 2016.

4.2 **Rent.** Tenant shall pay to Landlord by the 15<sup>th</sup> of each month:

April – November inclusive: \$1,125 per month

December – March: Cost of Utilities pursuant to Article 8

Totaling: \$9,000 annually

Annual Increases: January 1, 2017/ \$800 per year and January 1, 2018 / \$800 per year.

4.3 **Damage Deposit.** Landlord shall retain Tenant's prior security deposit as security for payment of rent and Tenant's obligation to explain and clear said premises during the Term hereof and permit to the obligation to surrender the same set forth in Section 14.1.

4.4 **Confidentiality of Information.** Landlord shall maintain confidentiality and not disclose to third parties the information furnished or revealed as the result of Section 4.3 except as may be required by the Right to Know Law, or for disclosure to prospective new Tenants after the expiration or termination of this Lease.

4.5 **Marketing.** Tenant shall be responsible for the cost of local advertising.

4.6 **Golf Pro.** Tenant shall be given first option to provide food and beverage service for various Val Halla Golf Association events and leagues and private functions and golf outings. If Tenant elects to provide food and beverage service for any of the aforementioned events, Tenant shall coordinate menu offerings and pricing with the golf pro. If Tenant declines to provide the same, the golf pro shall offer the option to an outside caterer.

## ARTICLE 5

### USE

5.1 **Use.** The premises shall be used for the operation of a restaurant for Center guests and the public generally. Landlord acknowledges that Tenant intends to operate a restaurant with the service of alcoholic beverages and Tenant shall obtain proper liquor liability insurance protecting Landlord in this regard. Tenant shall not use or permit the Premises to be used for any other purpose.

5.2 **Compliance with Laws.** Tenant shall comply with all laws concerning the use, condition, and occupancy of the Premises during the term. Victualers and Liquor Licenses shall be obtained by Tenant, as well as any other State or local permit or license needed to operate said Restaurant.

5.3 **Conduct of Business.** Tenant must provide high quality food and beverage service during the Center's business hours seven days per week during the golfing season, generally defined as April 15 to November 15, and during such hours as the parties may reasonably agree during the off season. Hours of operation must be consistent with industry standards and maintained throughout the golfing season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect. Landlord shall further have the right to consult on Tenant's menu and prices thereof, approval from said consultation shall not be deemed required. Further, any change in restaurant hours, menu or prices shall be established in consultation with Landlord. Tenant shall deliver a proposed menu and a full Operating Procedures manual to Landlord prior to commencement of this Lease and on an annual basis thereafter. Notwithstanding the foregoing, Tenant shall not be required to operate in the Premises (i) on the days the Center is not otherwise open for other than golf, (ii) if it is prevented from doing so because of force majeure considerations, (iii) for a reasonable period of time at the end of the term to facilitate moving out, restoration, and other activities incidental to Tenant winding up business at the Premises. If Tenant is unable or unwilling to operate in the Premises under the aforementioned circumstances, Landlord reserves the right to operate in the Premises. Tenant shall carry on its business at all times in an efficient, quality, and reputable manner for the type of business for which the Premises are leased, including maintenance of an adequate number of employees and sufficient inventory. Landlord agrees that normal odors and exhaust incidental to a restaurant, excluding odors of deteriorating food, shall not be deemed a nuisance or objectionable.

5.4 **Public Restaurant.** The Premises shall be opened to the general public and Tenant and its employees shall operate a public restaurant in a courteous and pleasant manner under the same terms and conditions as set forth herein. Restaurant guests may use the adjoining deck but no reserved seating is intended to be made available thereat by the terms of this Agreement. Smoking on the outside deck is prohibited under 22 MRSA §1550.

5.5 **Employees.** All employees shall be Tenant's, but Landlord reserves the right to approve the same; Tenant agrees that the provision of adequate wait staff, bartenders and cooks are a condition hereof. Tenant shall provide staff to operate a mobile vending cart during such days and tournaments as the parties may reasonably agree.

5.6 **Coke Scramble.** Tenant shall serve exclusively Coca Cola products in accordance with a tournament agreement between the Coca Cola Company and the Val Halla Golf Association.

## ARTICLE 6

### MAINTENANCE OF PREMISES

6.1 **Tenant's Obligations.** Subject to the provisions of this Lease concerning destruction and condemnation, Landlord shall make all necessary repairs and replacements to maintain the clubhouse Premises, except the Pro Shop, in good order, condition, and repair. Tenant shall make all necessary repairs and replacements to kitchen equipment and furniture, except as provided by Landlord in Section 7.4. Tenant shall maintain the refrigeration of the walk-in cooler and the True refrigerators and freezer. At all times Tenant shall maintain the kitchen, related storage areas and Restaurant in a safe and sanitary condition and at a level commensurate with other restaurants in the area. Tenant shall also maintain exterior landscaping and plantings as well as ensure general tidiness immediately around the rear entrances and on the outdoor eating area of the adjoining deck. Tenant shall maintain the restrooms located in the restaurant area including daily inspection, cleaning, trash removal and stocking of supplies in accordance with restaurant industry standards. Failure to comply with maintenance obligations shall be cause for early termination of this Lease.

6.2 **Tenant Improvements.** Tenant may make certain improvements to the premises involving certain remodeling of the Restaurant and kitchen areas, at Tenant's cost and with prior approval of Landlord. All such improvements which are permanent in nature shall become Landlord's at the end of the term without any obligation to reimburse Tenant therefor.

6.3 **Emergency Repairs.** In the event of any life or property-threatening emergency, Landlord shall have the immediate right to enter the Premises to effect emergency repairs without prior notice to Tenant. In the event Landlord is unable to conduct emergency repairs immediately, Landlord will provide Tenant a list of contractors authorized to complete emergency repairs on Landlord's behalf.

## ARTICLE 7

### COMMON AREAS

7.1 **Definition.** The term Common Area means all areas and facilities within the Center that are designated by Landlord from time to time for the common use of Tenant and other guests or Tenants of the Center. Common Areas include hallways, lobby, driveways, parking areas, loading areas, landscaped areas, restrooms and the like.

7.2 **Modifications.** Landlord shall refrain from doing or permitting to be done any act which would in any way materially impair the visibility of or access to the Premises.

7.3 **Tenant's Right to Use.** Landlord gives Tenant and its representatives, customers, and invitees the nonexclusive right to use the Common Areas in common with others to whom Landlord has granted or shall grant a similar right, except as provided herein. Tenant

shall not locate any of its restaurant equipment or furniture in Common Areas, nor displace any Golf Association bulletin boards or computer equipment from Common Areas. Members of the Val Halla Golf Association shall have priority to use lockers and shower facilities within the shared restrooms.

7.4 **Landlord's Maintenance and Management.** At all times Landlord shall adequately insure the Common Areas and maintain the Common Areas in good condition, including keeping the Common Areas properly lighted and repaired, providing professional carpet cleaning annually, and providing any necessary pest control services. Landlord shall be responsible for the maintenance and repair of all plumbing, lighting, electrical, HVAC, and security systems and equipment that are installed and in operation on the premises as of the commencement date of this agreement. Landlord shall also be responsible for the maintenance and repair of the hood exhaust, frialator, Star Max grill and cook top, dishwasher system, ice machine, walk-in cooler, Duke oven, and propane fireplace insert, except that Tenant shall be responsible for regular cleaning of the equipment and all products necessary to operate the equipment. Landlord shall have the exclusive right to:

(a) **Rules and Regulations.** Establish and enforce reasonable rules and regulations applicable to all Tenants and Center guests concerning the maintenance, management, use, and operation of the Common Areas.

(b) **Maintenance Closure.** Close temporarily any of the Common Areas for maintenance. Landlord shall, however, use its best efforts to maintain free access to the Premises during Tenant's normal business hours.

(c) **Costs.** Landlord shall bear all costs associated with maintenance of the Common Areas.

7.5 **Vending Machines.** Landlord shall be responsible for operation and maintenance of all vending machines located on the Premises and has the exclusive right to all profits therefrom.

## ARTICLE 8

### UTILITIES

8.1 **Utilities.** Landlord shall pay the appropriate suppliers for water, sewer, telephone, internet and refuse removal. Tenant shall be responsible for the cost of propane used during the months of the Lease Term in which Tenant's business is in operation and shall provide a full tank of propane upon the expiration of the Lease Term. Landlord shall bill Tenant for the cost of cable and electricity based upon monthly usage.

## ARTICLE 9

### TAXES & ASSESSMENTS

9.1 **Personal Property.** Tenant shall pay all taxes levied and assessed against furnishings, fixtures, equipment, and other personal property of Tenant kept upon the Premises to the extent such taxes become payable during the term of this Lease including, but not limited to, the equipment listed in Exhibit C attached hereto.

9.2 **Real Property.**

(a) Obligation. Since Landlord is a municipal corporation, no real property taxes will be assessed on said premises and nor does Landlord expect any assessment to be made on Tenant's Leasehold.

## **ARTICLE 10 INDEMNITY & INSURANCE**

10.1 **Landlord Exculpation**. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, and Tenant waives all claims against Landlord for damage to person or property arising from any reason, except that Landlord shall be liable to Tenant for damage to Tenant resulting from the negligence or willful misconduct of Landlord or its representatives.

10.2 **Tenant's Indemnity**. Tenant shall defend, indemnify, and hold Landlord and its representatives harmless from and against any and all costs, expenses (including attorneys' fees and court costs), losses, liabilities, damages, claims, and demands of every kind or nature (collectively, "Losses"), arising in any way from (i) construction on or use or occupancy of the Premises by Tenant or any person claiming under Tenant, (ii) the conduct of Tenant's business and any activity, work, or thing done or permitted by Tenant in or about the Premises, (iii) negligence or willful misconduct of Tenant or its representatives, or (iv) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease. Tenant shall defend any such action or proceeding brought against Landlord or its representatives at Tenant's expense with counsel reasonably satisfactory to Landlord. Tenant's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Landlord or its representatives.

10.3 **Landlord's Indemnity**. To the extent of the Maine Tort Claims Act, Landlord shall defend, indemnify, and hold Tenant and its representatives harmless from and against any and all Losses arising in any way from (i) construction on or use of the Common Areas, (ii) the management of the Common Area and any activity, work, or thing done or permitted by Landlord in or about the Common Areas, (iii) negligence or willful misconduct of Landlord or its representatives, or (iv) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease.

Landlord shall defend any such action or proceeding brought against Tenant or its representatives at Landlord's expense with counsel reasonably satisfactory to Tenant. Landlord's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Tenant or its representatives.

10.4 **Tenant's Insurance**. Tenant shall, at all times after the delivery of the Premises to Tenant, carry at its expense:

(a) **Liability Insurance**. Comprehensive general liability insurance providing bodily injury and property damage including dram shop/liquor liability coverage in the amount of at least \$1,000,000 combined single limit insuring against all legal liability (subject to usual policy exclusions, terms, and conditions) of Tenant and its representatives arising out of the use, occupancy, or condition of the Premises. Such insurance shall name Landlord as an additional insured for the specified amount. Tenant shall have the right to effect all or any part of such insurance by endorsement on general liability insurance maintained by or on behalf of Tenant or by a separate policy or policies of insurance.

(b) Worker's Compensation. Worker's compensation insurance as required by law.

10.5 **Certificates**. Tenant shall deliver to Landlord, prior to delivery of possession of the Premises to Tenant, a certificate or certificates of insurance evidencing the types of coverage, carriers, limits, and effective dates of coverage (see attached). Each policy shall provide not less than 10 days' prior notice to Landlord of cancellation of that insurance. Tenant shall provide current certificates or other satisfactory evidence of renewal to Landlord throughout the term of this Lease. Tenant shall name Landlord as co-insured on all policies. Tenant shall hold insurance policies on workers' compensation and employee liability, commercial general public liability, liquor liability, fire and business interruption, and insurance on any personal property owned by Tenant.

10.6 **Waivers of Subrogation**. Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, public liability, worker's compensation and other insurance maintained by either of them at any time during the term hereof insuring or covering the Center, the Premises or any portions thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party, and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

10.7 **Employment Clarification**. It may occur from time to time that an employee of Landlord may work temporarily for Tenant, or an employee of Tenant may work temporarily for Landlord. In every case, full employment records must be kept on these employees by both parties, and the employee must log off one party's payroll and log onto the other party's payroll, prior to commencing work.

## ARTICLE 11

### ASSIGNMENT & SUBLETTING

11.1 **General Prohibition**. Tenant shall not assign or sublet all or any portion of the Premises or Tenant's interest in this Lease without Landlord's prior written consent, and if said consent is granted, Tenant shall remain primarily responsible for all obligations hereunder.

11.2 **No Waiver**. Landlord's consent to any assignment or sublease shall not waive the requirement of Landlord's consent to any subsequent assignment or sublease. Any assignment or sublease requiring but lacking Landlord's prior written consent shall be void at Landlord's option.

11.3 **Collection**. Any rental payments or other sums received by Landlord from Tenant or any other person in connection with Tenant's obligations under this Lease shall be conclusively presumed to have been paid by Tenant or on Tenant's behalf.

## ARTICLE 12

### DAMAGE AND DESTRUCTION

12.1 **Obligation to Repair**. In the event of (i) the partial or total damage or destruction of the Center or (ii) the Center being declared unfit or unsafe for occupancy by any authorized public authority, Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to permit the safe use and occupancy of the Center and to restore the Center to substantially the same condition as it was in immediately prior to such damage or destruction. Landlord may, at its sole discretion

and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to correct any damage or destruction of parking or other Common Areas which render the Center totally or partially inaccessible, unusable, or which materially and adversely affect Tenant's business.

12.2 **Option to Terminate.** If all or substantially all of the Premises are damaged or destroyed and if such damage or destruction is insured by Landlord and can be repaired within 90 days following the date of such damage or destruction, Landlord may repair such damage or destruction. If the damage or destruction cannot be repaired within such 90-day period or Landlord elects not to repair the damage to the Center, either party may terminate this Lease by written notice to the other, given within thirty (30) days following the date such damage or destruction occurred.

12.3 **Insurance Proceeds.** If either party elects to terminate this Lease as allowed under Section 12.2, Tenant shall deliver the Premises to Landlord in their damaged condition and neither party shall have any obligation to repair or rebuild. In such event, insurance proceeds, if any, shall belong to Landlord.

12.4 **Continued Operation.** Unless this Lease is terminated pursuant to Section 12.2, Tenant shall continue the operation of its business during any such period to the extent reasonably practicable from the standpoint of prudent business management.

## **ARTICLE 13 DEFAULT**

13.1 **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" by Tenant:

(a) **Abandonment.** Abandonment of the Premises by Tenant or vacation of the Premises by Tenant for 2 consecutive days, exclusive of time closed for renovation. Abandonment shall include not opening and operating said restaurant as agreed herein. Landlord may operate the Premises to the best of its capability during the abandonment.

(b) **Nonpayment of Rent.** Failure by Tenant to pay rent when due if the failure continues for 10 days after written notice has been given to Tenant that the rent is delinquent.

(c) **Other Obligations.** Failure by Tenant to perform any provision of this Lease required of it other than (a) and (b) above if the failure is not cured within 30 days after written notice has been given to Tenant. If, however, the failure cannot reasonably be cured within 30 days, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within such 30-day period and diligently and in good faith continues to cure the failure.

(d) **General Assignment.** A general assignment for the benefit of creditors by Tenant.

(e) **Bankruptcy.** A petition to have Tenant adjudicated a bankrupt, or a petition for reorganization or arrangement under the federal bankruptcy laws is filed by Tenant or against Tenant and is not dismissed within 60 days from the date of such filing.

(f) **Receivership.** The assumption of the assets of Tenant or of the business conducted by Tenant on the Premises by a trustee, receiver, or other person where possession is not restored to Tenant within 30 days.

(g) Attachment. The attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or Tenant's interest in the Lease, where such seizure is not discharged within 30 days.

(h) Insolvency. The admission by Tenant of its inability to pay its debts as they become due.

Notice given under this Section 13.1 shall (i) specify the alleged breach and the applicable Lease provisions and (ii) demand that Tenant perform the provisions of this Lease or pay the rent that is delinquent, as the case may be, within the applicable period of time or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice. The purpose of the notice requirements in this Section 13.1 is to extend the notice requirements of the unlawful detainer statutes.

13.2 **Landlord's Remedies**. Landlord shall have the following remedies if Tenant commits an Event of Default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

(a) Recover Possession. Landlord may terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall be required to terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant any amount, including court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

(b) Other Relief. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity by statute or otherwise.

(c) Right to Remedy. Landlord may, after expiration of the applicable cure period hereunder, correct or remedy any failure of Tenant not timely cured. The reasonable cost paid by Landlord to correct or remedy any such default shall immediately become due and payable to Landlord as additional rent.

13.3 **Mitigation**. Landlord and Tenant shall each exercise best efforts to mitigate the damages caused by the other party's breach of this Lease. Efforts to mitigate damages shall not be construed as a waiver of the nonbreaching party's right to recover damages.

13.4 **Late Charges**. If Tenant fails to pay any amount due after expiration of any applicable cure period, Tenant shall pay to Landlord, as a late charge and in consideration of the additional costs and record keeping incurred or required by Landlord, \$50.

## ARTICLE 14

### SURRENDER OF PREMISES, HOLDING OVER

14.1 **Surrender of Premises**. Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in good and clean condition, ordinary wear and tear and damage not required to be repaired excepted. Tenant shall remove all of its furnishings, fixtures, and other personal property. Tenant shall correct any damage arising from its removal activity.

14.2 **Holding Over**. Any holding over after the termination of this Lease shall be construed as a tenancy from month-to-month at the rents specified in this Lease and otherwise upon the terms and conditions specified in the Lease, so far as applicable. The foregoing sentence shall not be construed as Landlord's consent for Tenant to hold over.

14.3 **Personal Property.** An inventory of personal property owned by Landlord and Tenant is attached hereto as Exhibit B and Exhibit C, respectively. At the surrender of the Property, it will be the responsibility of Tenant to turn over the personal property identified as Landlord's on Exhibit B in good condition.

## ARTICLE 15

### INTEGRATION OF AGREEMENT

15.1 **Entire Agreement.** This Lease constitutes the entire agreement between the parties on the subject matter of this Lease and supersedes any prior negotiation, understanding, representation, or agreement.

15.2 **Amendment.** This Lease may not be amended orally, but may be amended only by a written instrument signed by both parties.

## ARTICLE 16

### MISCELLANEOUS

16.1 **Notices.** Any notice, request, or other communication required or permitted by this Lease shall be in writing and shall be deemed given if personally delivered, mailed or registered or certified mail (return receipt requested), delivered by express delivery service, or sent by facsimile or similar transmission which is confirmed by mail or the recipient, addressed as follows:

To Landlord:

William R. Shane, Town Manager  
Town of Cumberland  
290 Tuttle Road  
Cumberland, ME 04021

To Tenant:

Lloyd M. Smith  
335 West Pownal Road  
North Yarmouth, ME 04097

Lowell M. Smith  
3 Brookview Lane  
North Yarmouth, ME 04097

Service by registered or certified mail shall be deemed given three business days after mailing absent proof of sooner delivery. Either party, by written notice, may change the place or places for future notice. Each recipient must have a street address for notice purposes.

16.2 **Construction and Interpretation.**

(a) **Governing Law.** This Lease is to be construed in accordance with the laws of the State of Maine.

(b) **Caption, Exhibits.** The titles and subtitles of the various articles and sections of this Lease are inserted for convenience and shall not be deemed to affect the meaning or

construction of this Lease in any way. The Exhibits are made part of this Lease by the respective references to them.

(c) Plain Meaning. Unless defined otherwise, the words used in this Lease shall be construed according to their plain meaning in the English language. The language used in this Lease shall not be interpreted strictly for or against either party. The word **shall** is used as a command. The word **law** includes federal, state, and local constitutions, statutes, orders, writs, injunction, decrees, ordinances, requirements, laws, rules and regulations. The word **termination** is used in an all inclusive sense, that is, it includes the concepts of the expiration of this Lease by lapse of time, rescission, and ending by reason of default. The word **transfer** is used in an all inclusive sense, that is, it includes each and every manner of disposing of any interest in or rights, privileges, or obligations under any part of this Lease, including any sale, gift, or assignment. The word **notice** means notices, requests, demands, and other communications and includes all payments to be made and all materials to be submitted for review or approval and all approvals or disapprovals. The term **rent** means Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. The term **representative** means officers, directors, partners, employees, agents, and authorized contractors of a party when acting in such capacity.

(d) Conflicting Construction. If any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

(e) Singular and Plural, Gender. The singular includes the plural and vice versa, and the masculine includes the feminine and neuter, whenever the context so requires.

16.3 Time of Essence. Time is of the essence of each provision of this Lease.

16.4 Severability. Nothing in this Lease shall be construed as requiring the commission of any act contrary to law. If there is any conflict between any provision of this Lease and any present or future law, such provision shall be limited only to the extent necessary to bring it within the requirement of the law. If any part of this Lease is held to be indefinite, invalid, or otherwise unenforceable, the balance of this Lease shall continue in full force and effect. If any arbitrator or court of competent jurisdiction finds any provision of this Lease unreasonable, the arbitrator or court may declare a reasonable modification of this provision. This Lease shall be valid and enforceable and the parties agree to be bound by and perform it.

16.5 Effect of Waiver. The failure of either party to exercise any power reserved to it by this Lease or to insist on strict compliance by the other party with any obligation or condition under this Lease, and no custom or practice of the parties at variance with terms of this Lease, shall constitute a waiver of the party's right to demand exact compliance thereafter with each term of this Lease. Waiver by either party of any default by the other shall not affect or impair the waiving party's rights with respect to any other default of a like, similar, or different nature. Any delay, forbearance, or omission of a party to exercise any power or right arising out of any default by the other of any provision of this Lease shall not affect or impair the party's rights to declare any subsequent default and to terminate this Lease.

16.6 Brokers. Each party represents and warrants that it has not dealt with or taken any other action with any party in a manner so as to give rise to any valid claim against either party for a broker's commission or finder's fee in connection with the execution of this Lease. Each of the parties shall defend, indemnify, and hold the other harmless from and against all

liabilities from any claims for broker's commissions or finder's fees arising out of its breach of the foregoing representation and warranty.

16.7 **Attorneys' Fees.** If any action or proceeding is necessary to enforce the provisions of this Lease, including any claims or demand or declaratory relief action to interpret this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, as may be fixed by the court having jurisdiction over the matter, in addition to any other relief to which it may otherwise be entitled.

16.8 **Force Majeure.** Except for payment obligations imposed pursuant to this Lease, if there is any prevention, delay, or stoppage of an act required of a party pursuant to this Lease because of strikes, lockouts, other labor disputes, material shortages, embargoes, civil unrest, governmental regulations, governmental controls, enemy or hostile governmental action, judicial order, public emergency, fire, earthquake, other Acts of God, and other causes beyond the reasonable control of the party obligated to perform, performance of the act shall be excused for the period of the delay.

16.9 **Relationship of Parties.** This Lease is not intended to create any relationship of partnership, joint venture, principal-and-agent, employer-employee or otherwise than the relationship of Landlord and Tenant.

16.10 **Successors.** This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, subject to the restrictions as to assignment pursuant to this Lease.

The undersigned parties have caused this Agreement to be signed on the date first written above.

**LANDLORD:**

**TENANT:**

TOWN OF CUMBERLAND

RACHEL'S ON THE GREEN

By: \_\_\_\_\_

By: \_\_\_\_\_

William R. Shane  
Town Manager

\_\_\_\_\_  
Its: \_\_\_\_\_