



**VILLAGE OF ESSEX JUNCTION
TRUSTEES
SPECIAL MEETING AGENDA**

2nd Floor Conference Room
81 Main Street
Essex Junction, VT 05452
**Monday, May 6, 2019
7:00 PM**

E-mail: manager@essexjunction.org

www.essexjunction.org

Phone: (802) 878-6944

1. **CALL TO ORDER** [7:00 PM]
2. **AGENDA ADDITIONS/CHANGES**
3. **APPROVE AGENDA**
4. **PUBLIC TO BE HEARD**
 - a. Comments from Public on Items Not on Agenda
5. **BUSINESS ITEMS**
 - a. Authorize by Resolution to approve conveyance of an easement to Jackson Street, LLC
 - b. Authorize by Resolution to consent to the assignment of the Ground Lease to Cresta Nedde LLC
 - c. Authorize by Resolution for Unified Manager to execute real estate documents on behalf of the Village
6. **ADJOURN**

This agenda is available in alternative formats upon request. Meetings of the Trustees, like all programs and activities of the Village of Essex Junction, are accessible to people with disabilities. For information on accessibility or this agenda, call the Unified Manager's office at 878-6944.

Certification: 05/03/2019
Date Posted


Initials

**AUTHORIZING RESOLUTION AND CONSENT
OF THE BOARD OF TRUSTEES OF THE VILLAGE OF ESSEX JUNCTION, VERMONT**

The undersigned, being the members of the Board of Trustees of the Village of Essex Junction, Vermont, a municipal corporation duly created and validly existing under and pursuant to the laws of the State of Vermont (the "Village"), hereby resolve as follows:

WHEREAS, the Village is the owner of property extending off of Jackson Street, Essex Junction, Vermont and extending to the southeasterly boundary of the Benefitted Parcel as defined below. Said land is a portion of property acquired by the Town of Essex by Quitclaim Deed of Vermont Maple Syrup Company, Inc. dated May 4, 1917 and recorded in Volume 32 at Page 347 of the Town of Essex Land Records and is depicted on a plan entitled "Vermont Highway Dept. Dist. 8 Garage" and recorded in Volume 70 at Page 47 of the Town of Essex Land Records. The Village of Essex Junction acquired the property in connection with a certain Order in the matter of Town Essex and Village of Essex Junction v. Louis J. Bessette, Juliette S. Bessette, Donald F. Tuure and Mary B. Tuure, Chittenden County Court, Docket No. 2340 dated July 29, 1971 and recorded in Volume 99 at Page 488 of the Town of Essex Land Records;

WHEREAS, the Village seeks to convey to Jackson Street, LLC, a Vermont Limited Liability Company with a place of business in Essex Junction, Vermont, an easement in common with others for vehicular and pedestrian ingress and egress over a road extending from Jackson Street to and along the entire southeasterly boundary of the Benefitted Parcel ("Benefitted Parcel" being defined as all lands and premises conveyed by Quitclaim Deed from Henry M. Slauson, III to Jackson Street, LLC dated October 31, 2012 and recorded in Volume 883 at Page 611 of the Town of Essex Land Record), which road is depicted as "25.0 R.O.W. Village of Essex" on a plan entitled "Vermont Highway Dept. Dist. 8 Garage" and recorded in Volume 70 at Page 47 of the Town of Essex Land Records (the "Easement Area");

WHEREAS, the Village also seeks to amend a Ground Lease for Parking Lot and Open Space dated as of August 1, 2011 (the "Ground Lease") in which the Village is currently leasing land to Flex-A-Seal, Inc. ("Flex-A-Seal"), which is a tenant occupying property located at 1 Jackson Street, Essex Junction, Vermont owned by Jackson Street, LLC, for the purposes of parking and open space. Jackson Street, LLC is selling its interest in the 1 Jackson Street property to Cresta Nedde LLC ("Cresta Nedde") and Flex-A-Seal seeks to assign its rights under the Ground Lease to Cresta Nedde and Cresta Nedde has requested that the Village amend certain portions of the Ground Lease pursuant to a proposed First Amendment to Ground Lease for Parking Lot and Open Space as presented to the Board of Trustees (the "First Amendment");

WHEREAS, the proposed conveyance is in the best interest of the Village and its taxpayers;

WHEREAS, the Village has complied with the notice provisions contained in 24 V.S.A. § 1061(a);

NOW THEREFORE, BE IT RESOLVED that the Village approves the conveyance of the easement to Jackson Street, LLC; and

RESOLVED, that the Village consents to the assignment of the Ground Lease to Cresta Nedde LLC and approves the amendments to the Ground Lease as set forth in the First Amendment; and

RESOLVED, that the Village hereby authorizes Evan Teich, Unified Manager of the Village

Essex Junction, Vermont to execute on behalf of the Village the First Amendment and any and all necessary and incidental documents, papers and materials, including but not limited to deeds, transfer tax returns, agreements, contracts, assignments, and any and all other documents, written materials or other papers required to effectuate the above-described conveyance of the easement.

IN WITNESS WHEREOF, the undersigned have executed this Authorizing Resolution and Consent on the dates set forth below.

Dated

By: _____
Andrew Brown, President of the Village Board of Trustees

Dated

By: _____
George Tyler, Vice-President of the Village Board of Trustees

Dated

By: _____
Daniel S. Kerin, Trustee

Dated

By: _____
Rajan Chawla, Trustee

Dated

By: _____
Amber Thibeault, Trustee

LANDLORD ESTOPPEL CERTIFICATE

The undersigned is the landlord under a Lease dated August 1, 2011 (the "Lease") made by and between the Village of Essex Junction, as landlord (the "Landlord") and Flex-A-Seal, Inc., a Vermont corporation, as tenant (the "Tenant") for two parcels of land, one to use as a parking lot and another to be used as open space, which are more particularly described and depicted on Exhibit A attached to the Lease and made a part thereof (the "Premises") for the benefit of the real property numbered 1 Jackson St., Essex Junction, Vermont (the "Benefited Property").

For valuable consideration paid, the receipt and adequacy of which are hereby acknowledged, the undersigned Landlord represents and warrants to Cresta Nedde LLC (the "Buyer"), the purchaser under a Purchase and Sale Agreement for the Benefited Property, and to its successors, assigns, lenders and mortgagees, that the following statements are true as of the date hereof.

1. A true and complete copy of the Lease including all amendments is attached hereto as Exhibit A (the "Lease").
2. The Lease is a complete statement of the agreement between the parties with respect to the letting of the demised premises referred to therein (the "Demised Premises").
3. The Lease is presently in full force and effect according to its terms and is the valid and binding obligation of the Landlord as of the date hereof.
4. The term of the Lease has commenced and the present monthly rent is \$400.00. Rent is paid through April 30, 2019.
5. No rent under the Lease has been paid more than 30 days in advance of its due date. No periods of free rent or rental concessions have been granted under the Lease.
6. The address for notices to be sent to the Landlord is as set forth in the Lease.
7. The Landlord, as of this date, is not in default under the terms of the Lease. The Tenant has performed and completed the performance of all affirmative Tenant obligations under the Lease to the Landlord's satisfaction, and the Tenant is not in default in the performance of its obligations to the Landlord under the Lease, nor does the Landlord have any knowledge of any condition or event that, if not remedied, will constitute a default by Tenant under the Lease.
8. Tenant is current with respect to, and is paying, all other charges required to be paid by Tenant under the Lease.
9. All of the obligations of the Tenant under the Lease have been duly performed and completed including, without limitation, any obligations of the Tenant to make or to pay the Landlord for any improvements, alterations or work done on or about the Demised Premises, and the improvements described in the Lease have been constructed in accordance with the plans and specifications therefor and have been accepted by Landlord.
10. No security deposit has been given by Tenant under the terms of, or with respect to, the Lease.

11. The Landlord understands that the Buyer and its mortgage lender are relying on these representations and warranties as a basis for purchasing the Premises and extending a purchase money loan to enable Buyer to acquire the Benefited Property, as applicable.

12. This Certificate shall be governed by the laws of the State of Vermont and shall be effective as of the date set forth below. The undersigned representative of Landlord is duly authorized and fully qualified to execute this instrument on behalf of Landlord and to bind Landlord thereby.

Dated: _____, 2019.

Village of Essex Junction

By: _____
Name:
Title:

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

On this ___ day of _____, 2019, personally appeared _____, _____ and authorized agent of the Village of Essex Junction, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument by him signed and sealed, to be his free act and deed individually and on behalf of the Village of Essex Junction.

Before me, _____
Notary Public State of Vermont
My commission expires: _____
My commission number: _____

FIRST AMENDMENT TO GROUND LEASE FOR PARKING LOT AND OPEN SPACE

This First Amendment to Ground Lease For Parking Lot and Open Space (“Amendment”) is made this ____ day of _____, 2019 by and between the **Village of Essex Junction** (“Landlord”) and **Cresta Nedde LLC**, a Vermont limited liability with its principal place of business in Burlington, Vermont (“Tenant”).

A. Tenant is the contract purchaser with respect to the real property known and numbered 1 Jackson St., Essex Junction, Vermont (the “Property”), which is currently owned by Jackson Street, LLC, a Vermont limited liability company (“Jackson”) and is occupied by Flex-A-Seal, Inc., a Vermont corporation (“Flex-A-Seal”) under a lease made with Jackson as landlord.

B. Flex-A-Seal, as tenant, and Landlord, as landlord, are parties to a Ground Lease For Parking Lot and Open Space dated August 1, 2011 (the “Lease”) made for the benefit of the Property with respect to two parcels of land, one to use as a parking lot (referred to as “Lot 1”) and another to be used as open space (referred to variously as “Lot 2” and as “Lot B”), which are more particularly described and depicted on Exhibit A attached to the Lease and made a part thereof, and which are collectively referred to as the “Demised Premises.” The term of the Lease runs from August 1, 2011 through July 31, 2021, and the tenant has the option to extend the term for ten years, which if exercised will cause the term of the Lease to expire on July 31, 2031.

C. Tenant and Landlord both desire (i) to grant the tenant under the Lease the option to extend the term for a second period of ten years, such that if both extension options are exercised the Lease will expire on July 31, 2041, (ii) to remove from the Lease the Landlord’s termination rights under Section 11, (iii) to remove the open space parcel (“Lot 2” or “Lot B”) from the operation of the Lease, and (iv) to otherwise amend the Lease in the manner set forth herein, but only in the event that Tenant acquires the Property and assumes the Lease from Flex-A-Seal.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Landlord and Tenant agree that if Tenant acquires the Property and assumes the Lease from Flex-A-Seal, thereupon the Lease will be amended as follows:

1. Landlord hereby consents to the assignment of the Lease by Jackson and Flex-A-Seal to Tenant.
2. Tenant hereby relinquishes the open space parcel (“Lot 2” or “Lot B”) from the Demised Premises, such that from and after Tenant’s acquisition of the Property and assumption of the Lease from Flex-A-Seal, the Lease shall only pertain to the parking lot (“Lot 1”).
3. Section 1 of the Lease is deleted and replaced with the following provision:

LEASE TERM. This Lease Agreement shall be for a term commencing on August 1, 2011 and terminating on July 31, 2021. TENANT shall have the option to extend the term of this Lease Agreement for two (2) additional ten (10) year terms. TENANT’S

ability to exercise these two options to extend the term shall only be in effect if TENANT is not in violation of this Lease Agreement beyond applicable notice and cure periods.

4. Section 2 of the Lease is hereby deleted and replaced with the following:

GROUND RENTAL. The rental amount for the Demised Premises (Lot 1) shall be \$200.00 per month, payable in monthly installments on the first day of each month.

5. Section 4 of the Lease is modified to delete the first sentence and replace it with the following: "TENANT shall only use Lot 1 for parking for itself and its tenants, and its and their employees, customers and invitees."

6. Section 11 of the Lease is hereby deleted and replaced with the following:

TERMINATION. Tenant shall have the right to terminate this lease agreement for any reason upon sixty days (60) advanced written notice to the Landlord.

7. Paragraph 12 of the Lease shall be amended such that if the Landlord's indemnity obligations are determined to exceed the bounds of its insurance coverage, they shall only exceed the bounds of its insurance coverage to the extent permissible by law.

8. Section 32 of the Lease is modified to establish the following address for notice to Tenant:

Tenant: Cresta Nedde LLC
Attention: Doug Nedde
747 Pine Street, Suite 501
Burlington, VT 05401

with a copy to: MSK Attorneys
Attention: Jeremy Farkas, Esq.
275 College Street
P.O. Box 4485
Burlington, VT 05406-4485
Telephone No.: (802) 861-7000
Fax No.: (802) 861-7007
jfarkas@mskvt.com

Landlord: Village of Essex Junction
Evan Teich, Unified Manager
2 Lincoln Street
Essex Junction, VT 05452

With a copy to: Claudine C. Safar, Esq.
Monaghan Safar Ducham PLLC
156 Battery Street

Burlington, VT 05401
(802) 660-4735
csafar@msdvt.com

9. This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; all such counterparts may be evidenced by a copy sent by facsimile, .pdf or other secure electronic format and each such copy shall be deemed an original, shall be binding upon the parties for all purposes herein, and, together with any other counterparts, shall constitute one and the same instrument.

10. Except as set forth herein, all terms, conditions and provisions of the Lease remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals as of the day and year first above written.

Signature Page to Follow

In Presence of:

LANDLORD:

Village of Essex Junction

By: _____
Name: _____
Title: _____

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

On this ___ day of _____, 2019, personally appeared _____, _____ and authorized agent of the Village of Essex Junction, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument by him signed and sealed, to be his free act and deed individually and on behalf of the Village of Essex Junction.

Before me, _____
Notary Public State of Vermont
My commission expires: _____
My commission number: _____

TENANT

Cresta Nedde LLC

By: _____
Name: Douglas C. Nedde
Title: Member and Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

On this ___ day of _____, 2019, personally appeared Douglas C. Nedde, Member and authorized agent of Cresta Nedde LLC, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument by him signed and sealed, to be his free act and deed individually and on behalf of Cresta Nedde LLC.

Before me, _____
Notary Public State of Vermont
My commission expires: _____
My commission number: _____

EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS that the **VILLAGE OF ESSEX JUNCTION**, an incorporated village (the “Grantor”), in consideration of Ten and More Dollars paid to its full satisfaction by **JACKSON STREET, LLC**, a Vermont limited liability company with a place of business in Essex Junction, Vermont (the “Grantee”) by these presents has **REMISED, RELEASED AND FOREVER QUIT CLAIMED** unto the said Grantee, **JACKSON STREET, LLC**, and its successors and assigns, an easement in perpetuity (hereinafter the “Easement”) in lands and premises located in the Town of Essex, County of Chittenden, State of Vermont, described as follows, viz:

An easement in common with others for vehicular and pedestrian ingress and egress over a road extending from Jackson Street to and along the entire southeasterly boundary of the Benefitted Parcel (as defined below), which road is depicted as “25.0 R.O.W. Village of Essex” on a plan entitled “Vermont Highway Dept. Dist. 8 Garage” and recorded in Volume 70 at Page 47 of the Town of Essex Land Records (the “Easement Area”).

The Easement Area is a portion of all and the same lands and premises conveyed to the Town of Essex by Quitclaim Deed of Vermont Maple Syrup Company, Inc. dated May 4, 1917 and recorded in Volume 32 at Page 347 of the Town of Essex Land Records.

Reference is hereby made to that certain Order in the matter of Town Essex and Village of Essex Junction v. Louis J. Bessette, Juliette S. Bessette, Donald F. Tuure and Mary B. Tuure, Chittenden County Court, Docket No. 2340 dated July 29, 1971 and recorded in Volume 99 at Page 488 of the Town of Essex Land Records with regard to the boundaries of a portion of the road included within the Easement Area.

The Easement is appurtenant to and benefits all and the same lands and premises conveyed by Quitclaim Deed from Henry M. Slauson, III to Jackson Street, LLC dated October 31, 2012 and recorded in Volume 883 at Page 611 of the Town of Essex Land Records (the “Benefitted Parcel”).

Reference is hereby made to the above-referenced instruments, the records thereof, the references therein made, and their respective records and references, in further aid of this description.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantee, Jackson Street, LLC, and its successors and assigns, to their own use and behoof forever; and furthermore, the said Grantor, Village of Essex Junction, for itself and its successors and assigns, does covenant with the said Grantee, Jackson Street, LLC, its successors or assigns, that from and after the ensembling of these presents, the said Grantor will have and claim no right, in, or to the said quit claimed premises.

IN WITNESS WHEREOF, the undersigned duly authorized agent for the Village of Essex Junction has set his/her hand this ___ day of _____, 2019.

Village of Essex Junction

By: _____
Name: _____
Title: _____

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At _____, in said County and State, this ___ day of _____, 2019, _____, Duly Authorized Agent of the Village of Essex Junction, to me known, personally appeared before me, and acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of the Village of Essex Junction.

Before me, _____
Notary Public State of Vermont
My Commission Expires: 1.31.21

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