

## PRELIMINARY AGREEMENT

THIS AGREEMENT is between the **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), a public benefit corporation of the State of New York having an address of 5 Warren Street, Glens Falls, New York 12801 and **TRSB ENTERPRISES, LLC** (the "Company"), a New York limited liability company having a current address of 138 Quaker Road, Queensbury, New York 12804 and **HARD AS A ROCK TRAINING CENTER, INC.** (the "Operator"), a New York business corporation having a current address of 138 Quaker Road, Queensbury, New York 12804.

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of the Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Chapter 862 of the Laws of 1971 of the State, as amended (collectively, the "Act"), to undertake industrial development projects (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The policy and purposes of the Act are (i) to promote the economic welfare, recreation opportunities and prosperity of the inhabitants of the State; (ii) to protect and promote the health of the inhabitants of the State by conservation, protection and improvement of the State's natural, cultural and historical resources, including the environment; and (iii) to protect and promote the health of the inhabitants of the State and to increase trade through promoting the development of facilities to provide recreation for the citizens of the State and to attract tourists from other states. The Act further provides that the purposes of an industrial development agency are to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes.

1.03. The Company and the Operator has requested that the Agency provide financial assistance in the form of a payment of lieu of taxes, mortgage tax exemption and sales tax abatements regarding a tourist destination retail construction project (the "Project") to consist of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located at Carey Road (Lot 2), in the Town of Queensbury, County of Warren, State of New York and referred to as Tax Map Parcel Number 308.20-1-3.5 (the "Land"); (ii) the construction and equipping of a 8,400+/- square foot indoor climbing center and fitness facility (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended.

1.04. The completion of the Project will not result in the removal of a commercial,

industrial or manufacturing plant of the Company or the Operator from one area of the State of New York to another area of the State of New York. Further, the completion of the Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company and/or the Operator or any other proposed occupant of the Facility located within the State of New York.

1.05. The Agency has determined that the acquisition, construction and equipping of the Project Facility and the leasing or sale of the same to the Company will promote and further the purposes of the Act.

1.06. The Town of Queensbury Planning Board (the "Planning Board") acted as "Lead Agency" for purposes of review of the Project pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, the "SEQRA Act"). The Planning Board adopted a Negative Declaration dated March 22, 2016, relating to the Project, in which the Planning Board stated that the Project will not have a significant effect on the environment. Based on this finding and additional information provided by the Company and the Operator, the Agency has determined that (i) the acquisition, construction and equipping of the Facility is an "Action" under the SEQR Act; (ii) the Agency has thoroughly reviewed and analyzed all information presented to the Agency, including the Negative Declaration issued by the Planning Board, to determine if the Project might have any potential significant adverse impacts on the environment; (iii) after conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential consideration and will not result in any adverse environmental impacts or the potential environmental impacts will not be significant; (iv) the Agency has ratified the Negative Declaration issued by the Planning Board; and (v) by making this determination, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations.

1.07. On August 15, 2016, the Agency adopted a resolution (the "Resolution") agreeing to undertake the Project in order to assist the Company and the Operator, as the case may be, and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to undertake the Project.

1.08. In the Resolution, the Agency appointed the Company and the Operator its agents for the purposes of acquiring, constructing and equipping the Project Facility, entering into contracts and doing all things requisite and proper for completing the Project Facility.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Company and/or the Operator, as the case may be, and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency will undertake the Project, pursuant to the terms of the Act, as then in force.

2.02. The Agency will adopt such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the acquisition, by deed or by lease, construction and equipping of the Project Facility, and (ii) the leasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. The Agency will enter into an agreement to lease the Project Facility to the Company (the "Lease Agreement"). The Lease Agreement shall obligate the Company to undertake the Project on behalf of the Agency. The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

2.04. The Company and Operator are hereby appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Project Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the agent of the Agency, (iii) to enter into agreements with third-parties to act as agents and to undertake the Project on the Company's and/or Operator's and the Agency's behalf for the purpose of constructing and completing the project, and in general to do all things which may be requisite or proper for completing the Project Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf. This provision is subject to the Company and/or Operator entering into an Agent Agreement with the Agency.

In addition, the Company is hereby authorized to proceed with the acquisition, construction and equipping of the Project Facility subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law.

2.05. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of the Company and/or the Operator. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, the Company and the Operator agrees as follows:

3.01. The Company and the Operator accept the appointment as agent of the Agency, with all of the rights, powers, duties and obligations inherent therein.

3.02. The Company and/or the Operator, as the case may be, will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the acquisition, construction and equipping of the Project Facility.

3.03. The Company will enter into the Lease Agreement with the Agency containing the terms and conditions described in Section 2.03 hereof. The Company, as Agent of the Agency, agrees to pay for all costs associated with undertaking the Project and shall not be entitled to any

reimbursement for any costs from the Agency.

***THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, THAT THE PROJECT FACILITY WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE COMPANY.***

3.04. The Company will enter into a Payment in Lieu of Tax (PILOT) Agreement which is in compliance with the provisions of the Agency's Uniform Tax Abatement Policy, or as may otherwise be agreed to by the Agency and the Company, and Recapture Policy.

3.05. (a) The Company and the Operator shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment ordered or used in connection with the acquisition, construction and equipping of the Project Facility, and including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing, whether such claims or liabilities arise as a result of the Company or the Operator acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company and/or the Operator, as the case may be, shall not permit to stand, and will, at its own expense, take all steps necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction and equipping of the Project Facility.

(c) The Company and the Operator shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

3.06. The Company and the Operator agree that, as agent for the Agency, it will comply with the requirements of Section 13 of the Lien Law, as amended.

3.07. The Company and the Operator will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.08. The Company and/or the Operator will pay all costs incurred by the Agency, including but not limited to attorney's fees, which arise out of Company's and Operator's application for Financial Assistance, whether or not such assistance is ultimately issued. Agency's attorney's fees will be calculated at a time rate of \$275.00 per hour for attorney's time and \$105.00 per hour for senior legal assistant's time, plus disbursements. Upon closing of the Project documents, the Company and/or the Operator will pay to the Agency an administrative fee of \$12,270.00 based upon an estimated Project cost of \$1,636,000.00 pursuant to the schedule set forth below and contained within the Company's and Operator's Application for



Financial Assistance:

First \$10 Million of Project Costs:	¾ of 1%
Next \$10 Million of Project Costs:	½ of 1%
Next \$10 Million of Project Costs:	¼ of 1 %
Above \$30 Million of Project Costs:	1/8 of 1%.

Following the completion of the Project Facility, the Company and/or the Operator shall confirm, in writing, the actual Project cost. In the event that the total Project cost exceeds the estimate provided herein, the Agency may require the payment of the difference that would otherwise be due pursuant to the above-schedule.

3.09. To ensure that the Agency's costs are reimbursed if the project does not proceed, the Company and/or the Operator shall pay to the Agency the sum of \$10,000.00 as a security deposit.

Article 4. General Provisions.

4.01. This Agreement shall take effect as of execution of this Agreement by the Company and Operator and the date of receipt of the security deposit pursuant to Section 3.09 above and shall remain in effect until the Lease Agreement becomes effective. It is the intent of the Agency and the Company and the Operator that this Agreement be superseded in its entirety by the Lease Agreement.

4.02. It is understood and agreed by the Agency and the Company and the Operator that the provision of financial assistance to the Company and the Operator and the execution of the Lease Agreement and related documents are subject to (i) acquisition of the Land; (ii) obtaining all necessary governmental approvals, (iii) approval of the members of the Agency, and (iv) approval of the Chief Executive Officers of the Counties of Warren and Washington.

4.03. The Company and the Operator agrees that it will (i) reimburse the Agency for all necessary expenses, including but not limited to legal fees and administrative costs, and (ii) indemnify and hold the Agency harmless from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. The Company at its option may cause a subsidiary or other designee of the Company acceptable to the Agency to enter into the Lease Agreement and to perform its other duties hereunder.

4.05. (a) The obligations and agreements of the Agency contained in this Preliminary Agreement and in the other documents executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company or

Operator) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company or Operator) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based on or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State or of the Counties of Warren or Washington, New York, and neither the State nor the Counties of Warren or Washington, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, relative to the Project Facility. The Agency does not have the power or authority to levy taxes.

(b) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under any of the documents executed herewith or therewith shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company or the Operator) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company or the Operator) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company or the Operator) and employees against all liability expected to be incurred as a result of compliance with such request.

4.06. (a) The Company and/or the Operator, as the case may be, will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the construction and installation of the Project Facility.

(b) The Company and/or the Operator, as the case may be, shall include the following or substantially similar exculpatory language in each contract entered into in connection with the Project Facility:

“THIS AGREEMENT IS EXECUTED BY \_\_\_\_\_,  
THE DULY APPOINTED AGENT OF THE COUNTIES OF WARREN AND  
WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY (THE

“AGENCY”), A PUBLIC BENEFIT CORPORATION OF THE STATE OF NEW YORK HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 5 WARREN STREET, GLENS FALLS, NEW YORK. IN THE EVENT OF A DEFAULT BY THE COMPANY IN THE PAYMENT OF ANY MONIES DUE FOR WORK, LABOR, GOODS, SERVICES, MATERIALS OR EQUIPMENT FURNISHED IN ACCORDANCE WITH THIS AGREEMENT, SHOULD THE CONTRACTOR (OR VENDOR) SEEK PAYMENT FROM THE AGENCY, IT SHALL BE LIMITED TO A CLAIM AGAINST THOSE FUNDS REMAINING IN PROJECT ACCOUNTS THAT HAVE BEEN ESTABLISHED BY OR ON BEHALF OF THE AGENCY TO FINANCE THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) AGREES THAT IT SHALL HAVE NO RIGHTS IN OR CLAIM TO ANY PROPERTY OR ANY FUNDS IN ANY ACCOUNT OF THE AGENCY OTHER THAN THOSE FUNDS OR ACCOUNTS SPECIFICALLY ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) FURTHER AGREES THAT IT MAY NOT MAKE A CLAIM OR OBTAIN A JUDGMENT AGAINST THE AGENCY, ITS MEMBERS, OFFICERS OR EMPLOYEES FOR ANY MONIES OTHER THAN THOSE MONIES REMAINING IN ACCOUNTS ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY.”

(c) Each contract the Company and/or the Operator shall assign to the Agency in connection with the Project Facility shall contain an exculpatory provision substantially similar to or identical to the model provision set forth in paragraph (b) of this Section 4.06.

(d) The Company and the Operator shall file with the Agency copies of all contracts (and all modifications and amendments thereto) entered into for the construction and installation of the Project Facility.

4.07. All notices, or other communications shall be in writing and shall be sufficiently given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, returned receipt requested, addressed as follows:

To the Agency:

Counties of Warren and Washington  
Industrial Development Agency  
5 Warren Street  
Glens Falls, New York 12801

Attention: Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.  
P.O. Box 2017  
16 Pearl Street  
Glens Falls, NY 12801-2017  
Attention: Robert C. Morris, Esq.  
Kara I. Lais, Esq.

To the Company/Operator:

TRSB Enterprises, LLC  
Hard as a Rock Training Center, Inc.  
120 Northwest Road  
Queensbury, New York 12804  
Attention: Thomas Rosecrans

With Copy to:

King Adang Arpey Strickland & Thompson  
340 Broadway  
Saratoga Springs, New York 12866  
Attention: John Arpey, Esq.

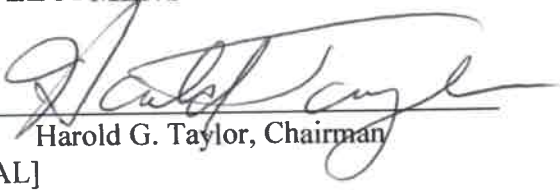
4.08. In the event the Agency is required to take title to the Land, the Agency will re-convey the Land by Bargain and Sale deed only. In no event will the Agency warrant title to the Land, either through deed, mortgage or otherwise.

[SIGNATURE PAGE FOLLOWS]

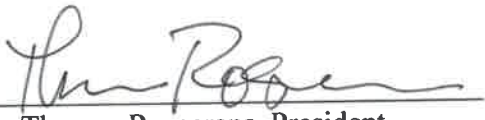


19 IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day of August, 2016.


**COUNTIES OF WARREN AND  
WASHINGTON INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Harold G. Taylor, Chairman  
[SEAL]

**HARD AS A ROCK TRAINING  
CENTER, INC.**

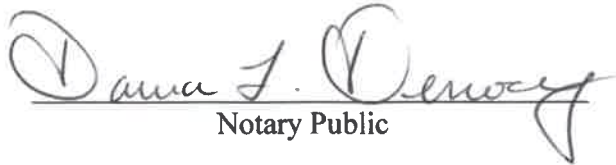
By:   
Thomas Rosecrans, President

**TRSB ENTERPRISES, LLC**

By:   
Thomas Rosecrans, Authorized Member

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WARREN )

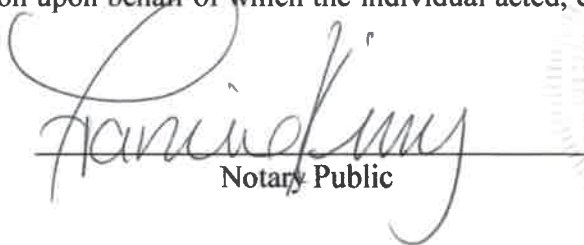
On the 22<sup>nd</sup> day of August in the year 2016, before me, the undersigned, personally appeared **Harold G. Taylor**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

DONNA L. DERWAY  
Notary Public, State of New York  
Warren County #4647371  
Commission Expires Aug. 31, 2017

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF Warren )

On the 19<sup>th</sup> day of Aug. in the year 2016, before me, the undersigned, personally appeared **Thomas Rosecrans**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

FRANCINE KINNEY  
Notary Public, State of New York  
No. 01K16328892  
Qualified in Warren County  
Commission Expires Aug. 10, 2019