



A

STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
OFFICE OF THE COMMISSIONER

172 Pembroke Road Concord, New Hampshire 03301  
Phone: 271-2411 Fax: 271-2629

December 3, 2018

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Natural and Cultural Resources (the "State") to amend the terms of the Lease and Operating Agreement (the "Lease") of the ski area at Mount Sunapee State Park by adding Change of Control language effective upon Governor and Executive Council approval through June 30, 2028. The original Lease was approved by Governor and Executive Council on June 10, 1998, Item #50, and an Amendment to Lease and Operating Agreement was approved by Governor and Executive Council on April 6, 2016, Item #40.

**EXPLANATION**

The Governor and Executive Council approved the 20-year agreement for the lease and operation of the ski area at Mount Sunapee State Park with Okemo Mountain, Inc. ("Okemo") of Ludlow, VT, on June 10, 1998, Item #50, which lease has been assigned by Assignment of Lease and Operating Agreement by and between Okemo and The Sunapee Difference, LLC ("TSD") dated December 31, 1998. TSD assigned its rights as Operator under the original Lease to CLP Mount Sunapee, LLC ("CLP"), formerly known as CNL Income Mount Sunapee, LLC, by Assignment and Assumption of Lease Agreement dated December 5, 2008, and CLP entered into a certain Sublease Agreement ("Sublease") with TSD dated as of December 5, 2008, to which TSD agreed to perform the covenants and obligations of CLP as Operator under the Lease.

On September 26, 2018, in accordance with the Lease, the State consented to CLP's assignment as Lessee to TSD. CLP has since assigned its interest as lessee under the Lease to TSD (the "Assignment"), terminated the Sublease, and transferred its interest in the site improvements located on the Leased Premises to TSD. By the termination of the Sublease, a certain Amendment to the Lease dated March 11, 2016 (the "2016 Amendment"), and approved by the Governor and Executive Council on April 6, 2016, (Item #40, tabled on March 23, 2016), was rendered null and void (excepting Section 3 thereof which added one additional ten-year option to extend the Lease term). TSD has acquired approximately 657 acres of unimproved land located westerly of the Lease Premises from Sunapee Land Holdings, LLC ("SLH") (the "SLH Lands"), including a land area of approximately 150 acres known as the "West Bowl Expansion Lands," both the SLH Lands and the West Bowl Expansion Lands being further described in the 2016 Amendment.

TSD is wholly owned by Triple Peaks, LLC. VR NE Holdings, LLC, a Delaware limited liability company ("Vail") has purchased 100% of the issued and outstanding equity interests in Triple Peaks, LLC (the "Equity Acquisition"). Following the Assignment, TSD is indirectly wholly owned by Vail. TSD will continue to be the Operator of the Mount Sunapee ski resort and is the owner of the SLH Lands, including the West Bowl Expansion Lands.

The State and TSD (the "Parties") wish to preserve the material provisions of the 2016 Amendment, notwithstanding the termination of the Sublease, and the Parties have agreed to jointly undertake efforts to pursue three amendments to the Lease.

This Amendment adds the following language to Section 22 of the Lease:

- 1) Change of Control – the Lessee shall not assign or transfer the Agreement by any means without the prior written consent of the State, which shall not be unreasonably withheld. The Agreement tightly defines the term “change of control.”

With Governor and Executive Council approval of this Requested Action, DNCR is authorized to implement provisions of the Amendments under certain terms, circumstance and conditions agreed to between the Parties.

The Office of the Attorney General has reviewed and approved the Amendment to the Lease and Operating Agreement as to form, substance, and execution.

Respectfully submitted,



Sarah L. Stewart  
Commissioner

SLS/DM/II.ttl-120318

**AMENDMENT TO LEASE AND OPERATING AGREEMENT**  
**(Change of Control)**

THIS AMENDMENT to the Lease and Operating Agreement, dated November 30, 2018, is made by and among the State of New Hampshire, acting through its Department of Natural and Cultural Resources (hereinafter referred to as the "State") with a mailing address of 172 Pembroke Road, Concord, New Hampshire, 03301, and The Sunapee Difference, LLC, (hereinafter referred to as "TSD" or "Operator") with a mailing address of 390 Interlocken Crescent, Suite 1000, Broomfield, CO 80021.

WHEREAS, at the time of this Amendment, Vail Holdings, Inc., a Colorado corporation, wholly owns TSD (indirectly through a wholly-owned subsidiary);

WHEREAS, the State and Okemo Mountain, Inc., entered into a Lease and Operating Agreement dated April 30, 1998 and recorded in the Merrimack County Registry of Deeds at Book 1154, Page 458 and in the Sullivan County Registry of Deeds at Book 2103, Page 308, which was subsequently amended and assigned to TSD (as amended from time to time, the "Lease," and the subject property, the "Leased Premises");

The foregoing recitals constitute a part of this Amendment and are incorporated herein.

NOW THEREFORE, for good and valuable consideration, the Parties agree to amend the Lease as follows:

**Amend Section 22 of the Lease and Operating Agreement to add the following:**

Operator shall not assign or transfer this Agreement by any means without the prior written consent of the State, which shall not be unreasonably withheld. For purposes of this

paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) a merger, consolidation, or a transaction or series of related transactions in which a third party, together with its Affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Operator, or (b) the sale of all or substantially all of the assets of the Operator.

Notwithstanding the foregoing, for so long as Vail Holdings, Inc. wholly owns Operator either directly or through a subsidiary, prior written consent of the State shall not be required for assignment of the Lease to, or any transaction involving the transfer of equity interests of the Operator to, any other (direct or indirect) wholly owned subsidiary of Vail Holdings, Inc. Any attempted assignment or transfer in contravention of this paragraph will be null and void.

**Any capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed to such terms in the Lease and the amendments thereto.**

**In all other respects, the Lease remains unmodified and in full force and effect.**

[signatures on pages following]

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Lease and Operating Agreement as of the date and year first written above.

STATE:

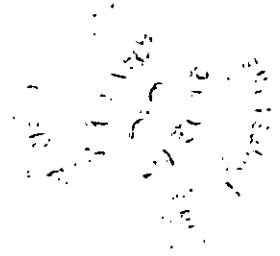
STATE OF NEW HAMPSHIRE  
DEPARTMENT OF NATURAL &  
CULTURAL RESOURCES

By: *Sarah Stewart*  
Sarah Stewart, Commissioner

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

At County of Merrimack, in said County this 3<sup>rd</sup> day of December 2018, personally appeared Sarah Stewart, Commissioner of the Department of Natural & Cultural Resources and such person acknowledged this instrument to be her free act and deed in such capacity, and the free act and deed of State of New Hampshire.

*James M. Huisoo, NP*  
Comm. Exp. 09/17/2019



**OPERATOR:**

THE SUNAPEE DIFFERENCE, LLC  
By its sole member Triple Peaks, LLC  
By its sole member VR NE Holdings, LLC  
By its sole member VR US Holdings, Inc.

By: David T. Shapiro

Name: David T. Shapiro

Title: EVP, GC + Secretary

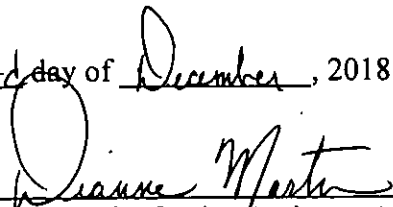
STATE OF Colorado  
COUNTY OF Broomfield S.S.

On this 30 day of November, 2018, personally appeared before me, the above named David T. Shapiro, as EVP, GC - Corp Sec of The Sunapee Difference, LLC and such person acknowledged this instrument to be his free act and deed in such capacity, and the free act and deed of The Sunapee Difference, LLC.

Megan C Chapman  
Notary Public  
My commission expires: 6/15/22  
Notary Seal or Stamp:

MEGAN C CHAPMAN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19884016153  
MY COMMISSION EXPIRES JUNE 15, 2022

Form, substance and execution approved this 3rd day of December, 2018.

  
\_\_\_\_\_  
Dianne Martin, Senior Assistant Attorney General

Approved by the Governor and Executive Council this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Item No. \_\_\_\_\_

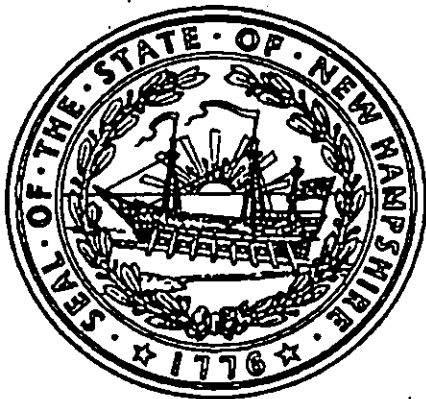
**State of New Hampshire**  
**Department of State**

**CERTIFICATE**

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that THE SUNAPEE DIFFERENCE, LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on December 07, 1998. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 304627

Certificate Number : 0004193357



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 4th day of October A.D. 2018.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State



**THE SUNAPEE DIFFERENCE, LLC  
VR US HOLDINGS, INC.  
OFFICER'S CERTIFICATE**

**November 30, 2018**

I, Michael Z. Barkin, Executive Vice President & Chief Financial Officer of VR US Holdings, Inc. (the "**Parent**"), acting for itself and in its capacity as the sole member of VR NE Holdings, LLC, a Delaware limited liability company, acting for itself and in its capacity as the sole member of Triple Peaks, LLC, a Colorado limited liability company, acting for itself and in its capacity as the sole member of The Sunapee Difference, LLC, a New Hampshire limited liability company (the "**Company**"), do hereby certify that David T. Shapiro, as Executive Vice President, General Counsel & Secretary of VR US Holdings, Inc. is a duly appointed officer of the Parent and an authorized representative and signatory for each of the Parent and the Company in connection with the three (3) Amendments to Lease and Operating Agreement, dated on or around November 30, 2018, by and between The Sunapee Difference, LLC and the State of New Hampshire, acting through its Department of Natural and Cultural Resources.

IN WITNESS WHEREOF, I have executed this Certificate as of the date first set forth above.

By: 

Name: Michael Z. Barkin

Title: Executive Vice President & Chief  
Financial Officer



# EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
09/28/2018

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY MARSH USA INC. 1225 17TH STREET, SUITE 1300 DENVER, CO 80202-5534 Attn: Denver.CertRequest@marsh.com / Fax: 212-948-4381		PHONE (A/G. No. Ext): 303 308 4500	COMPANY Lexington Insurance Company	
FAX (A/G. No.):	E-MAIL ADDRESS:			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #: INSURED The Sunapee Difference, LLC 390 Interlocken Crescent Suite 1000 Broomfield, CO 80021			LOAN NUMBER	POLICY NUMBER SEE ATTACHED
EFFECTIVE DATE		EXPIRATION DATE	CONTINUED UNTIL TERMINATED IF CHECKED	
04/01/2018		04/01/2019	<input type="checkbox"/>	
THIS REPLACES PRIOR EVIDENCE DATED:				

## PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

## COVERAGE INFORMATION

PERILS INSURED	BASIC	BROAD	<input checked="" type="checkbox"/> SPECIAL
----------------	-------	-------	---

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
All Risk of direct physical loss or damage to real and personal property on a replacement cost basis, subject to policy terms, conditions and exclusions. Coverage includes, but is not limited to fire, extended perils such as vandalism, malicious mischief, flood, earthquake and boiler & machinery.  The property policies evidenced above contain various sublimits and are subject to deductibles specific to various perils covered.	25,000,000	500,000

## REMARKS (Including Special Conditions)

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

## ADDITIONAL INTEREST

SEA-003578355-01

NAME AND ADDRESS  State of New Hampshire Department of Natural and Cultural Resources 172 Pembroke Road Concord, NH 03301	<input type="checkbox"/> ADDITIONAL INSURED	<input type="checkbox"/> LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE
	<input type="checkbox"/> MORTGAGEE		
LOAN #			
AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  Jon Lindstrom <i>JLB</i>			



**ADDITIONAL REMARKS SCHEDULE**

AGENCY MARSH USA INC.		NAMED INSURED The Sunapee Difference, LLC 390 Interlocken Crescent Suite 1000 Broomfield, CO 80021
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: 27 FORM TITLE: Evidence of Property Insurance

Policy 1 - #: 025031525  
 Lexington Insurance Company  
 04/01/2018 to 04/01/2019  
 Quota Share: 60%

Policy 2 - #: US00075107PR18A  
 XL Insurance America, Inc.  
 04/01/2018 to 04/01/2019  
 Quota Share: 40%



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/28/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA INC. 1225 17TH STREET, SUITE 1300 DENVER, CO 80202-5534 Attn: Denver.CertRequest@marsh.com / Fax: 212-948-4381	<b>CONTACT NAME:</b> PHONE (A/C, No. Ext): FAX (A/C, No.): E-MAIL: ADDRESS:														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Greenwich Insurance Company</td> <td>22322</td> </tr> <tr> <td>INSURER B: N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER C: N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER D: N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Greenwich Insurance Company	22322	INSURER B: N/A	N/A	INSURER C: N/A	N/A	INSURER D: N/A	N/A	INSURER E:		INSURER F:
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Greenwich Insurance Company	22322														
INSURER B: N/A	N/A														
INSURER C: N/A	N/A														
INSURER D: N/A	N/A														
INSURER E:															
INSURER F:															
<b>INSURED</b> The Sunapee Difference, LLC 390 Interlocken Crescent Suite 1000 Broomfield, CO 80021	CN101927737-FRONT-GAWUP-18														

COVERAGES                      CERTIFICATE NUMBER:                      SEA-003573994-07                      REVISION NUMBER: 20

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER (INSR) / WVO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		RGD3001430	08/01/2018	08/01/2019	EACH OCCURRENCE	\$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
						MED EXP (Any one person)	\$
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COM/PROP AGG	\$ 2,000,000
							\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> Y/M <input checked="" type="checkbox"/> N/A ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below					PER STATUTE	OTH-ER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
State of New Hampshire is included as additional insured where required by written contract. In the event of cancellation or modifications, the State of New Hampshire will receive prior written notice of cancellation or modification not less than ten (10) days (see additional remarks schedule).

<b>CERTIFICATE HOLDER</b> State of New Hampshire Department of Natural and Cultural Resources 172 Pembroke Road Concord, NH 03301	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Jon Lindstrom <i>[Signature]</i>
---	---



**ADDITIONAL REMARKS SCHEDULE**

AGENCY MARSH USA INC.		NAMED INSURED The Sunapee Difference, LLC 390 Interlockan Crescent Suite 1000 Broomfield, CO 80021	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

In the event the insurance carrier cancels or modifies policy # 42-GLO-301695-04 for any reason other than non-payment of premium, and:

1. The cancellation or modification effective date is prior to this policy's expiration date;
2. The first Named Insured is under an existing contractual obligation to notify a certificate holder when this policy is cancelled; and/or modified
3. The First Named Insured has provided to the insurance carrier, either directly or through its broker of record, the email address for the Certificate Holder(s);

The insurance carrier will provide notice of cancellation or modification via e-mail to such Certificate Holder(s) within 10 days after the First Named Insured provides such information to the insurance carrier; provided, however, that if a specific number of days is not stated above, then the notice of cancellation or modification will be provided to such Certificate Holder(s) as soon as reasonably practicable after the First Named Insured provides such information to the insurance carrier, but in no event less than 10 days notice prior to cancellation or modification.

This notice of cancellation or modification does not affect, in any way, coverage provided under this policy, or the cancellation or modification of this policy or the effective date thereof, nor shall this endorsement provide any insurance to any entities that are not otherwise insured under this policy.

General Liability (Occurrence)  
RGD3001430  
Carrier: Greenwich Insurance Company  
08/01/2018 to 08/01/2019  
Each Occurrence: \$2,000,000  
General Aggregate (per location): \$2,000,000  
Products-Comp / Op Aggregate: \$2,000,000  
Personal and Advertising Injury: \$1,000,000  
Damage to Rented Premises: \$300,000

Excess Commercial General Liability (Occur.)  
42-GLO-301695-04  
Carrier: National Fire & Marine Insurance Company  
08/01/2018 to 08/01/2019  
Each Occurrence: \$3,000,000  
General Aggregate (per location): \$6,000,000  
Products-Comp / Op Aggregate: \$3,000,000  
Personal and Advertising Injury: \$3,000,000  
Damage to Rented Premises: \$100,000  
SIR: \$2,000,000 (The SIR is satisfied by policy RGD3001430)



TABLED - Item # 40 3/23/16  
APPROVED - Item # 40 4/6/16

STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
OFFICE OF THE COMMISSIONER

172 Pembroke Road Concord, New Hampshire 03301  
Phone: 271-2411 Fax: 271-2629

March 9, 2016

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 4:40, authorize the Department of Resources and Economic Development (DRED) to grant an additional ten (10) year option to extend the term of the Lease and Operating Agreement (Lease) with CLP Mount Sunapee LLC (CLP) of Orlando, Florida, and to further amend the terms of the Lease and Operating Agreement to accept land and to provide for the expansion of the Mount Sunapee State Park. The Amendment shall be effective upon Governor and Executive Council approval through June 30, 2028. The original Lease was approved by Governor and Executive Council on June 10, 1998, Item #50.

EXPLANATION

The Governor and Executive Council approved the 20-year agreement for the lease and operation of the ski area at Mount Sunapee State Park with Okemo Mountain, Inc. (OKEMO) of Ludlow, VT, on June 10, 1998, Item #50, which lease has been assigned by Assignment of Lease and Operating Agreement by and between OKEMO and The Sunapee Difference, LLC (TSD) dated December 31, 1998. TSD assigned its rights as Operator under the Original Lease to CNL Income Mount Sunapee, LLC (CNL) by Assignment and Assumption of Lease Agreement dated December 5, 2008, and CNL entered into a certain Sublease Agreement with TSD dated as of December 5, 2008, to which TSD agreed to perform the covenants and obligations of CNL as Operator under the Lease. CNL changed its name to CLP Mount Sunapee, LLC (CLP) pursuant to a Certificate of Amendment filed with the Delaware Secretary of State on February 1, 2012, and retains the tradename "Mount Sunapee Resort" for the ski area.

Leading up to Governor and Executive Council approval in 1998, the Capital Budget Oversight Committee approved the lease agreement at its meeting of May 13, 1998, as required in accordance with Chapter 119, Laws of 1997, and contingent upon passage of HB 1291-FN relative to the management of the state ski areas at Mount Sunapee and Cannon Mountain that was signed into law on June 5, 1998 (Chapter 134, Laws of 1998). The Lease with Okemo Mountain, Inc. was at the recommendation of the Joint Legislative Committee that was established in accordance with Chapter 119, Laws of 1997, to advise DRED on the development of a Request for Proposals (RFP) to lease the Mount Sunapee or Cannon Mountain ski area operations or both, and to review the RFP responses. The RFP required interested respondents to provide its proposal for the development and expansion of the Mount Sunapee ski area.

TSD's initial expansion plans for the ski area were in the East Bowl, located within the leasehold area (Lease Premises). However, based on the discovery of Old Growth Forest within the East Bowl, expansion plans shifted to the West Bowl, an area owned by TSD's affiliate Sunapee Land Holdings, LLC (SLH). TSD requested expansion of the ski area into the West Bowl in its Master Development Plan and Environmental Management Plan (MDP/EMP) presented to DRED pursuant to the Lease. DRED held a public hearing and solicited public comment on the MDP/EMP. DRED released a draft decision on the MDP/EMP that outlined the conditions under which approval for the West Bowl expansion may occur. DRED held a second public hearing and solicited public comment on the draft decision.

Following careful consideration of public comment and consultation with department staff and sister agencies, DRED refined the conditions of the MDP/EMP and the possible West Bowl expansion for which an amendment to the Lease and certain other provisions require Governor and Executive Council approval in accordance with RSA 4:40, specifically:

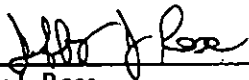
- Acceptance of the West Bowl Expansion Land and the West Bowl expansion improvements into Mount Sunapee State Park in the event TSD chooses to develop the West Bowl expansion;
- Permission to TSD for the construction of a chairlift and/or skiing and/or other recreational trails from Mount Sunapee State Park's existing ski area and/or Mount Sunapee State Park onto the SLH Land;
- Acceptance of conservation lands into Mount Sunapee State Park;
- Acceptance of any additional easements, rights-of-way, or agreements to ensure that the State has all necessary rights of access to and use of the West Bowl Expansion Land and Improvements;
- Granting to TSD certain easements to DRED lands so as to facilitate the proposed West Bowl Expansion Improvements by TSD pursuant to its MDP/EMP and sublease with CLP;
- Extension of certain terms of the Lease to the West Bowl Expansion Land and SLH Lands; and
- Grant of an additional 10 year option to the Lease.

With Governor and Executive Council approval of this Requested Action, DRED is authorized to enter into the Amendment to Lease and Operating Agreement which grants an additional 10 year option to the Lease, and to implement other provisions of the Amendment under certain terms, circumstance and conditions agreed to in the Amendment, including but not limited to, accepting the conveyance of certain lands including easements, rights-of-way, or agreements to ensure the State's rights of access and use of such lands; granting certain easements to DRED lands so as to facilitate the proposed West Bowl Expansion Improvements by TSD pursuant to its MDP/EMP and Lease with DRED; and subjecting the West Bowl Expansion Lands to certain provisions of the Lease.

The West Bowl Expansion Land shall be subject to certain conditions of the Lease, including section 3 (Rent), if and when the West Bowl chairlift and one or more trails accessed by the lift is constructed and operating.

The Office of the Attorney General has reviewed and approved the Amendment to the Lease as to form, substance, and execution.

Respectfully submitted,



Jeffrey J. Rose  
Commissioner

JJR/PAB/ml-022516/BWB/AME/tl-030916

Return to:

Anne M. Edwards, Esq.  
Department of Justice  
33 Capitol Street  
Concord, NH 03301

### AMENDMENT TO LEASE AND OPERATING AGREEMENT

THIS AMENDMENT ("Amendment") to the Lease and Operating Agreement is made by and among the State of New Hampshire ("STATE") acting by and through its Department of Resources and Economic Development, with a mailing address of 172 Pembroke Road, Concord, NH 03301 ("DRED"), and CLP Mount Sunapee LLC, with a mailing address of c/o CNL Lifestyle Properties, Inc., CNL Center at City Commons, 450 South Orange Avenue, Orlando, FL 32801 ("CLP").

WHEREAS, STATE and Okemo Mountain, Inc., as Operator ("OKEMO"), entered into a certain Lease and Operating Agreement dated April 30, 1998, and recorded in the Merrimack County Registry of Deeds at Book 1154, Page 458, and in the Sullivan County Registry of Deeds at Book 2103, Page 308, which Lease has been assigned by Assignment of Lease and Operating Agreement by and between OKEMO and The Sunapee Difference, LLC ("TSD") dated December 31, 1998, and recorded in the Merrimack County Registry at Book 2149, Page 1713, and in the Sullivan County Registry of Deeds in Book 1186, Page 181 (collectively, the "Original Lease");

WHEREAS, TSD assigned its rights as Operator under the Original Lease to CNL Income Mount Sunapee, LLC ("CNL") by Assignment and Assumption of Lease Agreement dated December 5, 2008, and recorded in the Merrimack County Registry of Deeds at Book 3099, Page 1054, and in the Sullivan County Registry in Book 1713, Page 467 (the "Assignment");

WHEREAS, said Original Lease was amended by Order of the Merrimack Superior Court dated February 13, 2015, and recorded in the Merrimack County Registry of Deeds in Book 3472, Page 431, and in the Sullivan County Registry of Deeds in Book 1938, Page 322, (the "Judicial Amendment") amending Appendix I and Appendix II of the Original Lease defining the Sunapee leasehold (the "Leased Premises") (the Original Lease, Assignment and Judicial Amendment collectively referred to as the "Lease");



WHEREAS, CNL entered into a certain Sublease Agreement with TSD dated as of December 5, 2008, a memorandum of which is recorded in the Merrimack County Registry of Deeds at Book 3099, Page 1094, and re-recorded in Book 3110, Page 392, and in the Sullivan County Registry of Deeds in Book 1713, Page 507, and re-recorded in Book 1716, Page 952, as amended by the First Amendment to Sublease Agreement dated March 5, 2009, as further amended by the Second Amendment to Sublease Agreement dated December 31, 2011, and as further amended by the Third Amendment to Sublease dated April 30, 2015, an amendment to memorandum of which is recorded in the Merrimack County Registry of Deeds in Book 3476, Page 2532, and in the Sullivan County Registry of Deeds in Book 1942, Page 257, (collectively, the "Sublease Agreement") pursuant to which TSD agreed to perform the covenants and obligations of CNL as Operator under the Lease;

WHEREAS, CNL changed its name to CLP Mount Sunapee, LLC pursuant to a Certificate of Amendment filed with the Delaware Secretary of State on February 1, 2012;

WHEREAS, TSD is the present operator of the Mount Sunapee Ski Resort pursuant to the Sublease Agreement;

WHEREAS, an affiliate of TSD, Sunapee Land Holdings, LLC ("SLH") owns approximately 657 acres of unimproved land located westerly of the Leased Premises (the "SLH Lands");

WHEREAS, a portion of the SLH Lands includes a land area of approximately 150 acres in size which is more particularly described on the Plan attached hereto as Exhibit A (said 150 acre parcel being hereinafter referred to as the "West Bowl Expansion Land");

WHEREAS, TSD may construct chairlifts, surface lifts, ski trails, a base lodge, parking areas and other building and infrastructure improvements, which may include, but not be limited to, retail shops, food concessions, equipment rentals, daycare facilities, ticket sales, ski and/or other schools, and other recreational operations infrastructure that will serve the day use skiers and/or other day use recreational users, and which shall be located, with the approval of DRED, on a portion of the West Bowl Expansion Land (collectively, the "West Bowl Expansion Improvements");

WHEREAS, the following requests related to the possible West Bowl Expansion must be included in this Amendment and be approved by the Governor and Executive Council in accordance with RSA 4:40:

- Acceptance of the West Bowl Expansion Land and the West Bowl Expansion Improvements into the Sunapee State Park if an operating chairlift and one or more trails that are accessed by that lift are constructed on the West Bowl Expansion Land,
- Permission to build a chairlift and/or skiing and/or other recreational trails from Mount Sunapee State Park's existing ski area and/or Mount Sunapee State Park onto the SLH Lands,

- Acceptance of the Conservation Lands (as hereinafter defined) into Mount Sunapee State Park,
- Acceptance of any additional easements, rights-of-way, or agreements to ensure that the State has any and all necessary rights of access and use to the West Bowl Expansion Land and Improvements for future use as a ski area and recreational day use area, including parking lots, infrastructure, and utilities,
- Extension of certain terms of the Lease to the West Bowl Expansion Land and SLH Lands, and
- Grant of an additional 10 year option to the Lease;

WHEREAS, in addition to the required approvals by DRED through the Master Development Plan and other certain provisions of the Lease, the West Bowl Expansion Improvements will require various land use and environmental approvals from federal, state and local governmental authorities ("West Bowl Expansion Permits");

WHEREAS, if an operating chairlift and one or more trails that are accessed by the chairlift are constructed, the parties agree that in the event that any residential development occurs on the Private Land (hereinafter defined), there shall be no direct access to or use of the West Bowl Expansion Improvements from the Private Land unless public access is provided from any public road or Brook Road, a parking lot is built for the public to use, and the public has access to the West Bowl Expansion Improvements;

WHEREAS, the grant of the West Bowl Expansion Permits will likely require some of the West Bowl Expansion Land to be subject to restrictions requiring preservation of upland areas and other conservation related restrictions (collectively, the "Conservation Restrictions");

WHEREAS, the implementation and construction of projects like the West Bowl Expansion Improvements are a business and financial decision and are dependent on many factors, including, but not limited to, financing, and changes in market trends and guest expectations;

WHEREAS, therefore, no assurances can be made at this time that the West Bowl Expansion Permits will be sought or obtained, or that the West Bowl Expansion Improvements will be constructed;

WHEREAS, TSD intends to pay for the construction of the West Bowl Expansion Improvements by borrowing money from banks, other lending institutions and/or other private sources and to secure those loans with a security interest on the West Bowl Expansion Improvements;

WHEREAS, as acknowledged in this Amendment, access to, and utilities for the West Bowl Expansion Improvements and West Bowl Expansion Land, which may also serve the Private Land, may be located outside of the West Bowl Expansion Land. The parties to this Lease Amendment, including TSD and SLH, agree that all legal rights necessary to operate the ski area and recreational day use area shall be granted to the State and CLP upon the conveyance of the West Bowl Expansion Land and the West Bowl Expansion Improvements;

WHEREAS, TSD shall, under the terms and conditions agreed to in this Amendment cause either itself and/or SLH to convey in fee the West Bowl Expansion Land together with all necessary non-exclusive perpetual easements for road access from any public road or from Brook Road to provide public access to the West Bowl Expansion Land and the West Bowl Expansion Improvements. In addition to access, SLH shall also execute all necessary non-exclusive perpetual easements, rights-of-way, and/or other agreements, which may include, but are not limited to, rights to use, maintain, improve, repair, replace, rebuild, transfer, operate and manage the ski and other recreational area operations' infrastructure, (including, without limitation, snowmaking, water lines, sewerage treatment facilities, power lines, that may be built on the Private Land. In its deed to the State, TSD shall carve out and reserve for TSD, its successors and assigns, perpetual necessary easements for parking areas, roads and other infrastructure built on the West Bowl Expansion Land and for utilities necessary for the development of the Private Land;

WHEREAS, upon the completion of construction of the West Bowl Expansion Improvements, the completion of an as-built survey and site plan, and the commencement of operation thereon, the conveyance of title in fee of the West Bowl Expansion Land and the West Bowl Expansion Improvements shall occur and the West Bowl Expansion Land and the West Bowl Expansion Improvements shall be subject to all the terms and conditions of the Lease and Operating Agreement, as amended, and all Master Development Plans, approved by DRED, in the same manner as all other lands constituting the Leased Premises;

WHEREAS, in the event that all of the West Bowl Expansion Improvements are not completed by June 30, 2028, but TSD has constructed an operating chairlift and one or more trails accessed by the lift, then in this event TSD shall complete an as-built survey and site plan and shall transfer the West Bowl Expansion Land and the West Bowl Expansion Improvements, and all necessary easements, rights-of-way, and/or agreements for ski area and other recreational day use infrastructure on the Private Land, including an easement for vehicular access for maintenance and construction purposes, to DRED by June 30, 2028;

WHEREAS, a portion of the SLH Lands includes the following two (2) parcels of land; the first being approximately 208 acres ("O'Connell Tract") and the second being approximately 52 acres (a portion of the Lewin/Powell parcel, sometimes herein referred to as the "52 Acre Parcel"). These parcels are more particularly described on the Plan attached hereto as Exhibit B (said 260 acres being hereinafter referred to as the "Conservation Lands"). These parcels shall not become part of the Leased Premises but shall become part of Mount Sunapee State Park. At the time of conveyance, the parties agree that the 52 Acre Parcel shall be transferred with deed restrictions preventing future development;

WHEREAS, as noted on Exhibits A and B, the pictorial descriptions of the West Bowl Expansion Land and Conservation Lands shown on Exhibits A and B, respectively, are approximate only but were done using GPS technology; land surveys and the final description will be done when (a) in the case of the West Bowl Expansion Lands, the West Bowl Expansion Land is permitted and constructed and (b) in the case of the Conservation Lands, when the West Bowl Expansion Improvements are permitted and a Notice to Proceed (as such term is defined below) is issued;

WHEREAS, TSD is willing, under certain circumstances and conditions described below, to cause SLH to convey in fee the Conservation Lands to DRED to be added to Mount Sunapee State Park;

WHEREAS, a portion of the SLH Lands includes approximately 248 acres of land adjacent to the West Bowl Expansion Land that it may privately develop in the future (said 248 acres being referred to as the "Private Land");

WHEREAS, the acreage contained within the West Bowl Expansion Land (approximately 150 acres) may exceed the acreage required by the Town of Goshen's lot coverage and density regulations to construct the West Bowl Expansion Improvements (said excess acreage is deemed the "Excess Density Allocation Acreage");

WHEREAS, to the extent allowed by the Town of Goshen, the parties agree that the Excess Density Allocation Acreage may be used to satisfy, in whole or in part, any lot coverage or density regulations of the Town of Goshen applicable to development of the Private Land as if the Private Land contained an amount of land equal to 248 acres plus the Excess Density Allocation Acreage;

WHEREAS, DRED, TSD, and CLP agree that only the projects and improvements that have been approved in prior MDPs and the 2016-2020 Revised MDP for Polygon 23, and any necessary maintenance, repair, renovation, or replacement of those projects or currently existing improvements in Polygon 23, shall be allowed to be implemented. Additionally, DRED, TSD, and CLP agree that there shall be no further development of either ski trails or ski infrastructure in Polygon 20;

WHEREAS, upon conveyance to the State, the West Bowl Expansion Land and Improvements will not be subject to section 6(f)(3) of the Land and Water Conservation Fund Act. However, the State reserves the right to elect to designate the West Bowl Expansion Land under section 6(f)(3) at a later date through mutual agreement with the National Park Service; and

WHEREAS, notwithstanding the foregoing recitals and terms of this Amendment, nothing in this Amendment is meant to add TSD and SLH as parties to the Lease and in any way adversely affect CLP's position under the Lease and the Sublease Agreement.

The foregoing recitals constitute a part of this Amendment and are incorporated herein.

NOW, THEREFORE, for good and valuable consideration received, the undersigned agree to amend the Lease as follows:

1. When all of the West Bowl Expansion Improvements are fully approved and permitted by all authorities having jurisdiction (after expiration of all applicable appeal periods) and when TSD has issued a written notice to DRED stating that it intends to construct the West Bowl Expansion Improvements in accordance with

the West Bowl Expansion Permits (the "Notice to Proceed to Construct") but prior to actual construction commencing construction of such improvements, TSD shall cause SLH to convey in fee the two hundred sixty (260) acres of Conservation Lands to DRED as described on Exhibit B to be added to Mount Sunapee State Park. The Conservation Lands shall not become a part of the Leased Premises but shall become a part of Mount Sunapee State Park. At the time of conveyance, the parties agree that the 52 Acre Parcel shall be transferred subject to deed restrictions preventing future development of such land.

2. Section 1 of the Lease is hereby amended to include the following: When and if the West Bowl Expansion Improvements are completed, or when TSD has constructed an operating chairlift and one or more trails that are accessed by the lift, TSD shall cause SLH to convey in fee the West Bowl Expansion Land and the West Bowl Expansion Improvements by June 30, 2028, to DRED and the description of the Leased Premises shall be amended in fact to include the West Bowl Expansion Land and the West Bowl Expansion Improvements, which shall be free and clear of all real estate mortgages but subject to the Excess Density Allocation Acreage restriction, the Conservation Restrictions and any security interests in the West Bowl Expansion Improvements. If and to the extent that access to and/or utilities for the West Bowl Expansion Improvements or the West Bowl Expansion Land are located outside of the West Bowl Expansion Land, at the time of the conveyance of the West Bowl Expansion Land to DRED, TSD and SLH shall cause all legal rights necessary to operate the ski area and recreational day use area to be granted to DRED. In addition, at the time of the conveyance of the West Bowl Expansion Land to DRED, SLH shall also execute all necessary non-exclusive perpetual easements, rights-of-way, and/or other agreements, which may include, but are not limited to, rights to use, maintain, improve, repair, replace, rebuild, transfer, operate and manage the ski and other recreational area operations' infrastructure, (including, without limitation, snowmaking, water lines, sewerage treatment facilities, power lines, that may be built on the Private Land. In its deed to DRED, TSD shall carve out and reserve for TSD, its successors and assigns, perpetual necessary easements for parking areas, roads and other infrastructure built on the West Bowl Expansion Land and for utilities necessary for the development of the Private Land. At the time of conveyance of the West Bowl Expansion Land to DRED, the description of the Leased Premises shall be amended to add the West Bowl Expansion Land as a part of the Leased Premises. Such description shall be recorded in the Merrimack and Sullivan County Registries of Deeds, along with Mylars of the As-Built Survey of the Leased Premises including the West Bowl Expansion Land. The State shall be authorized, upon approval of this Amendment by Governor and Council, to add such As-Built Survey as a new Appendix I to the Lease and to include a revised legal description of the Leased Premises including the West Bowl Expansion Land as a new Appendix II, which legal description will define the revised Mount Sunapee Resort leasehold.

Attached to this Amendment as Exhibit A is the planned West Bowl Expansion Land boundary as agreed to by the parties and approved by the Governor and Executive Council in accordance with RSA 4:40, subject to the final boundary to be established in the As-Built Survey to be completed at least 3 months prior to the transfer of the West Bowl Expansion Land to the State. The parties agree that the boundary of the West Bowl Expansion Land, as shown in Exhibit A and then as shown in the final As-Built Survey, shall not change at any point by more than 150 feet, except in the proposed areas of the base lodge and parking lot, as shown on Exhibit A where the boundary may change by more than 150 feet between GPS points N:298.598, E:869.954 and N:297.342, E:870.642.

Upon approval of this Amendment by the Governor and Executive Council, the State shall be authorized to execute an easement authorizing TSD to build, repair, maintain, replace and operate a chairlift, and any necessary infrastructure, and a ski trail on the Leased Premises to the West Bowl Expansion Land once it moves forward with construction after the Notice to Proceed is issued.

Upon approval of this Amendment by the Governor and Executive Council, the West Bowl Expansion Land and Improvements shall be subject to Section 5 (Annual Operating Plan), and Section 7 (Site Improvements) of the Lease, as amended, and the applicable provisions of the 2016-2020 Revised Master Development Plan, as approved by DRED, in the same manner as all other lands currently constituting the Leased Premises.

If and when TSD constructs an operating chairlift and one or more trails that are accessed by the lift, the West Bowl Expansion Land also shall be subject to Section 3 (Rent), Section 12 (Taxes) and Section 15 (Environmental Management) of the Lease, as amended.

In the event that any of the West Bowl Expansion Improvements are built on the Private Land by SLH, its affiliates and/or its assigns and those improvements are competitive with services provided by the ski area, then all revenue generated from these Improvements while any of the facilities at Mount Sunapee Ski Area are open to the public during the winter ski season will be subject to the three (3%) percent Lease payments as long as TSD operates the ski area.

3. Section 2 of the Lease is hereby amended as follows: CLP agrees to exercise its first option to extend the Term and therefore the Lease will terminate on June 30, 2028, unless earlier terminated under the terms of the Lease. CLP shall have two (2) additional options to extend the Term for additional periods of ten (10) years each (*i.e.* until June 30, 2038, and June 30, 2048). For clarity, this Amendment adds one (1) additional ten (10) year option term to the two (2) option terms granted in the Original Lease. The provision of the Lease requiring notice to the State regarding CLP's intention to extend the Term for the remaining options to renew the Term remains the same for the 2038 and 2048 extension options, provided that such notice shall be sent to:

Commissioner of DRED  
172 Pembroke Road  
Concord, NH 03301

4. Section 2 of the Lease is hereby amended to add the following: In the event that the West Bowl Expansion Improvements are not completed or TSD has not constructed an operating chairlift and one or more trails accessed by the lift on the West Bowl Expansion Land by June 30, 2028, this Amendment to the Lease shall be null and void in all respects with the exception of paragraph 3 above, which paragraph shall remain in full force and effect. Notwithstanding any provision set forth in the Lease to the contrary, and notwithstanding any and all rights available at law or in equity, the parties hereby acknowledge and agree that TSD is not obligated to seek or obtain the West Bowl Expansion Permits or construct the West Bowl Expansion Improvements. Further, in the event that such West Bowl Expansion Improvements are not completed or TSD has not constructed an operating chairlift and one or more trails accessed by the lift on the West Bowl Expansion Land by June 30, 2028, then neither TSD nor CLP shall be considered in breach of the Lease, but any and all associated approvals granted in the 2016-2020 Revised MDP, and future MDPs, related to the West Bowl Expansion Improvements shall be withdrawn and not be effective as of June 30, 2028.
  
5. Section 25 (Default and Termination) of the Lease is hereby amended to include the following: If TSD constructs an operating chairlift and one or more trails accessed by the lift on the West Bowl Expansion Land but fails to have SLH convey the West Bowl Expansion Land and Improvements to the State on or before June 30, 2028, TSD shall be prohibited from operating the chairlift and accessing the trails. The State reserves all rights to pursue TSD and SLH for any other legal remedies available to it outside of and not affecting the Lease, this Amendment, the Sublease Agreement, or any of the terms thereunder, or any of CLP's interest therein. Notwithstanding any breach by TSD and SLH, CLP shall not be considered to be in breach of the Lease or this Amendment if otherwise performing with respect to the terms of the Lease.

Notwithstanding anything to the contrary, in the event the Sublease Agreement with TSD terminates or expires, at any point, this Amendment shall be null and void in all respects with the exception of Paragraph 3 above, which shall remain in full force and effect.

In all other respects, the Lease remains unmodified and in full force and effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGES FOLLOW.

Executed this 11<sup>th</sup> day of March, 2016.

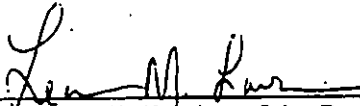
DRED:

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES AND  
ECONOMIC DEVELOPMENT

By:   
Name: Jeffrey J. Rose  
Title: Commissioner - DRED

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me on this 11<sup>th</sup> day of March, 2016 by Jeffrey J. Rose, the Commissioner of the Department of Resources and Economic Development, on behalf of the State of New Hampshire.

  
Notary Public/Justice of the Peace  
Print Name: Leanne M. Lavoie  
My Commission Expires: \_\_\_\_\_

LEANNE M. LAVOIE, Notary Public  
My Commission Expires October 3, 2017



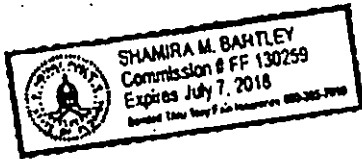
CLP:

CLP MOUNT SUNAPEE, LLC

By: Stephen K. Rice  
Name: Stephen K. Rice  
Title: Sr. Vice President

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me on this 9<sup>th</sup> day of March, 2016 by Stephen K. Rice, the Sr. Vice President of CLP Mount Sunapee, LLC, on behalf of said company.



Shamira M. Bartley  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

For the purpose of acknowledging and agreeing to certain obligations of TSD set forth herein.

TSD:

THE SUNAPEE DIFFERENCE, LLC

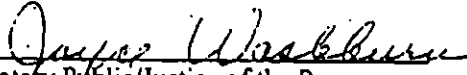
By: 

Name: Timothy T. Mueller

Title: Manager

STATE OF VT  
COUNTY OF Windsor

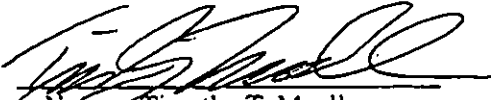
The foregoing instrument was acknowledged before me on this 9 day of March, 2016 by Timothy T. Mueller, Manager of The Sunapee Difference, LLC, on behalf of said company.

  
Notary Public/Justice of the Peace  
Print Name: Joyce Washburn  
My Commission Expires: 2-10-19

For the purpose of acknowledging and agreeing to certain obligations of SLH set forth herein.

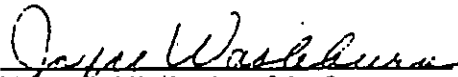
SLH:

SUNAPEE LAND HOLDINGS, LLC

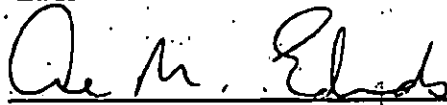
By:   
Name: Timothy T. Mueller  
Title: Manager

STATE OF VT  
COUNTY OF Windsor

The foregoing instrument was acknowledged before me on this 9 day of March, 2016 by Timothy T. Mueller, Manager of Sunapee Land Holdings, LLC, on behalf of said company.

  
Notary Public/Justice of the Peace  
Print Name: Joyce Washburn  
My Commission Expires: 2-10-19

Form, substance and execution approved this 11 day of March, 2016.



\_\_\_\_\_  
Anne M. Edwards, Associate Attorney General  
Brian W. Buonamano, Assistant Attorney General

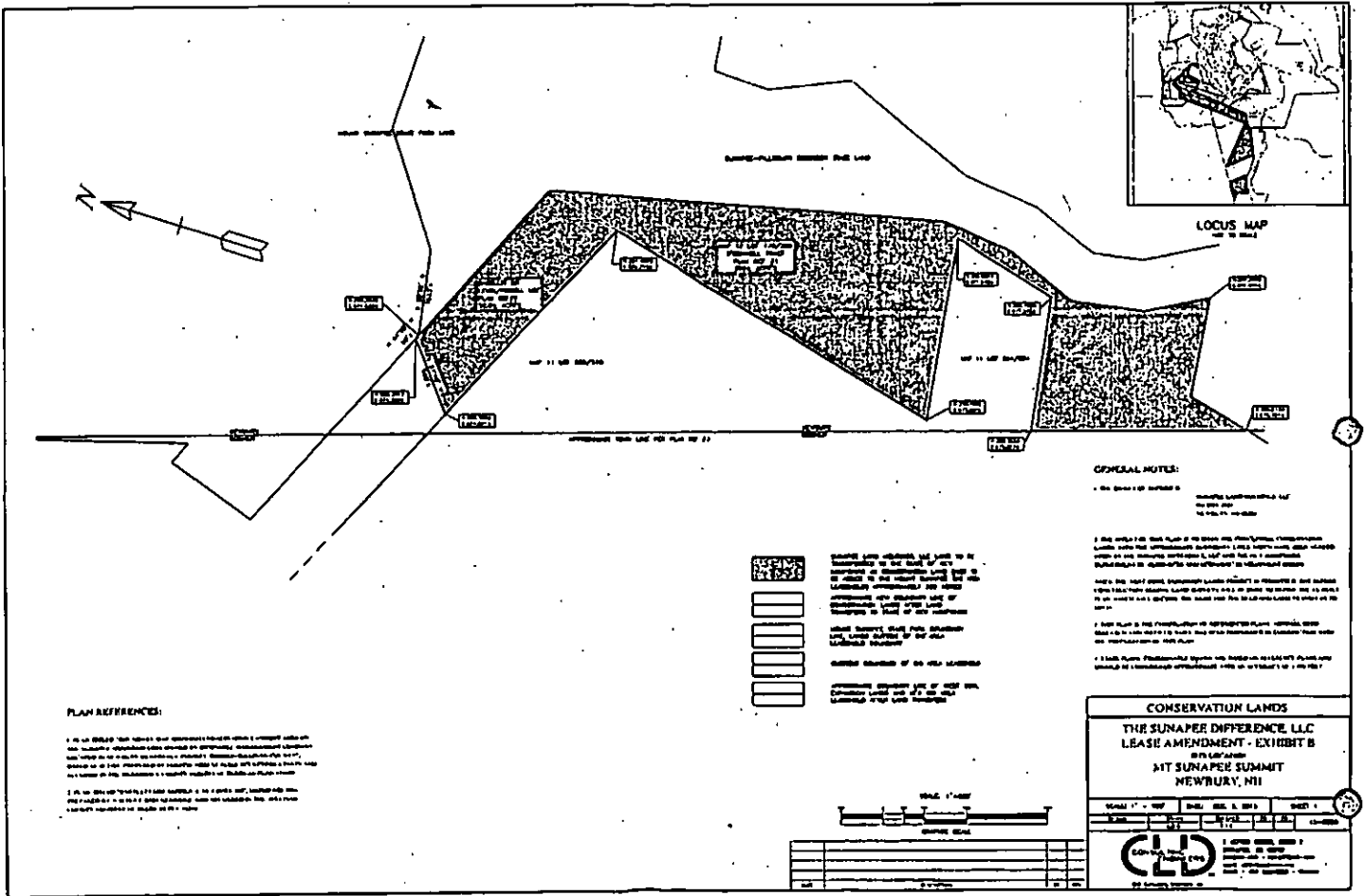
Approved by the Governor and Executive Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Item No. \_\_\_\_\_

26

25

24



**PLAN REFERENCES:**

- 1. An area of land shown on this plan which is not shown on any other plan is shown as a hatched area.
- 2. An area of land shown on this plan which is shown on another plan is shown as a hatched area.
- 3. An area of land shown on this plan which is shown on another plan is shown as a hatched area.

- 1. Areas shown with this pattern are areas of land shown on this plan which are not shown on any other plan.
- 2. Areas shown with this pattern are areas of land shown on this plan which are not shown on any other plan.
- 3. Areas shown with this pattern are areas of land shown on this plan which are not shown on any other plan.
- 4. Areas shown with this pattern are areas of land shown on this plan which are not shown on any other plan.
- 5. Areas shown with this pattern are areas of land shown on this plan which are not shown on any other plan.
- 6. Areas shown with this pattern are areas of land shown on this plan which are not shown on any other plan.

**GENERAL NOTES:**

- 1. The owner of the land shown on this plan is the Sunapee Difference, LLC.
- 2. The owner of the land shown on this plan is the Sunapee Difference, LLC.
- 3. The owner of the land shown on this plan is the Sunapee Difference, LLC.
- 4. The owner of the land shown on this plan is the Sunapee Difference, LLC.
- 5. The owner of the land shown on this plan is the Sunapee Difference, LLC.

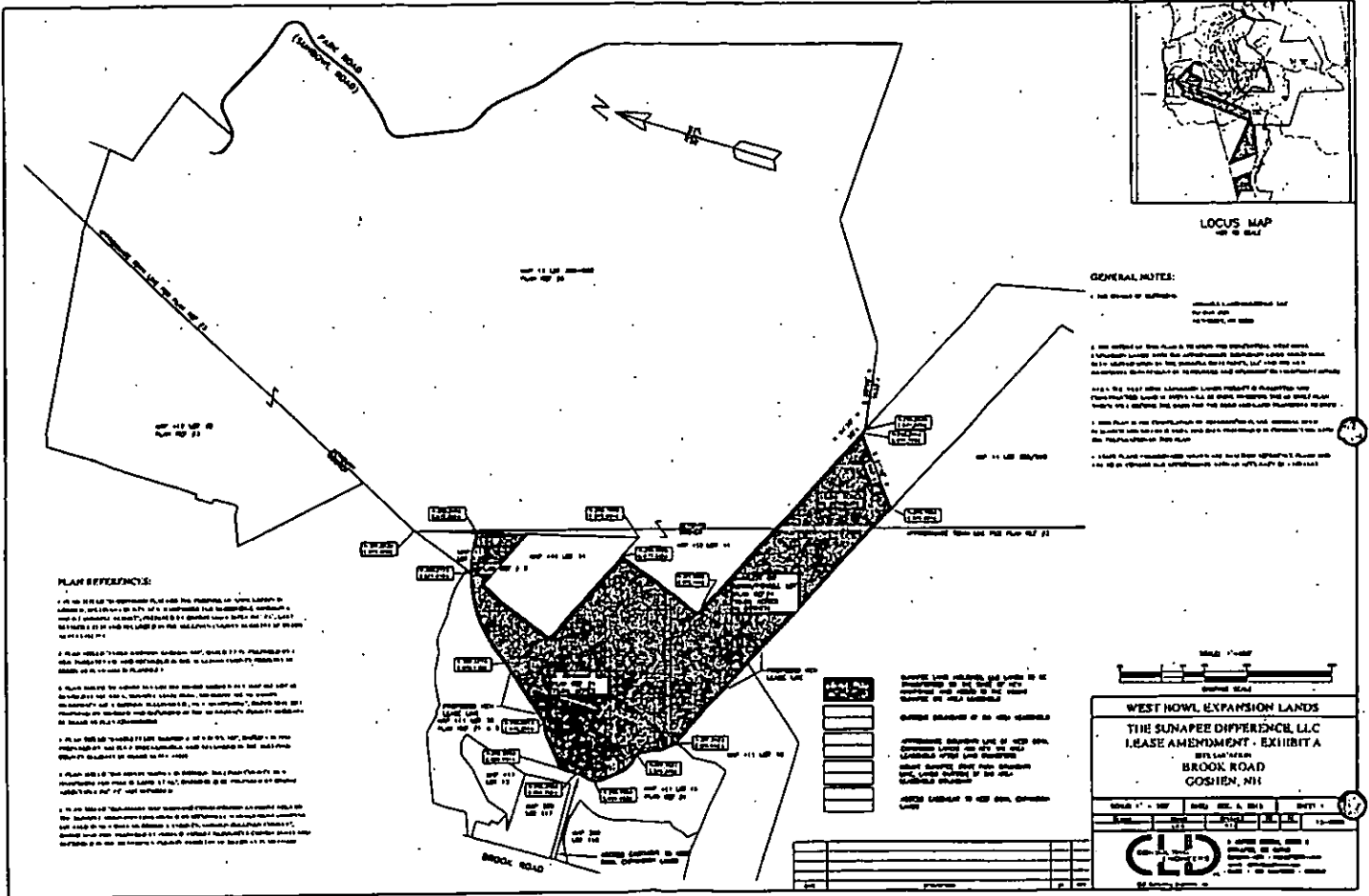
**CONSERVATION LANDS**  
**THE SUNAPEE DIFFERENCE, LLC**  
**LEASE AMENDMENT - EXHIBIT B**  
 517 SUNAPEE SUMMIT  
 NEWBURY, NH

SCALE: 1" = 100'

DATE: 08/12/2019

PROJECT: 19-00000

**CLD**  
 CONSERVATION LANDS DESIGN



**GENERAL NOTES:**

1. THE OWNER OF THIS PROJECT IS THE SUNAPEE DIFFERENCE, LLC.
2. THE OWNER OF THIS PROJECT IS THE SUNAPEE DIFFERENCE, LLC.
3. THE OWNER OF THIS PROJECT IS THE SUNAPEE DIFFERENCE, LLC.
4. THE OWNER OF THIS PROJECT IS THE SUNAPEE DIFFERENCE, LLC.
5. THE OWNER OF THIS PROJECT IS THE SUNAPEE DIFFERENCE, LLC.

**PLAN SPECIFICATIONS:**

1. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
2. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
3. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
4. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
5. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
6. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
7. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
8. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
9. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.
10. ALL LOTS SHALL BE 100 FEET WIDE AND 150 FEET DEEP.

**LEGEND:**

- Water
- Sewer
- Gas
- Electric
- Other

**WEST HOWL EXPANSION LANDS**  
**THE SUNAPEE DIFFERENCE, LLC**  
**LEASE AMENDMENT - EXHIBIT A**  
 2075 LAKE ROAD  
 BROOK ROAD  
 GOSHEN, NH

SCALE: 1" = 50'

**CLD**



STATE OF NEW HAMPSHIRE *Tabled 5/27*  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT

OFFICE of the COMMISSIONER *G2C 6/10/98 approved*  
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

ROBB R. THOMSON  
Commissioner

603-271-2411  
FAX: 603-271-2629

May 14, 1998

Her Excellency, Governor Jeanne Shaheen  
and the Honorable Executive Council  
State House  
Concord, NH 03301

REQUESTED ACTION

The Department of Resources and Economic Development respectfully requests approval of the attached 20-year agreement for the lease and operation of the ski area at Mount Sunapee with Okemo Mountain, Inc. of Ludlow, Vermont. The lease term is from July 1, 1998 to June 30, 2018, with Okemo having the option to extend the term for 2 additional 10 year periods. Okemo will pay an annual base fee of \$150,000 (adjusted annually for inflation), plus 3% of gross annual revenues. Income derived from this lease is proposed to provide funding for capital improvements at Cannon Mountain. Disposition of the lease income currently under consideration by the Legislature in HB 1291-FN.

EXPLANATION

In accordance with Chapter 119 of the Laws of 1997, the Joint Legislative Committee and I developed a "Request for Proposals" for the operation of Mount Sunapee. The Committee's work concluded with its recommendation after hearing oral presentations from Okemo Mountain, Inc., CSK International, and Wachusetts Mountain.

The Joint Legislative Committee recommended leasing Mount Sunapee to Okemo Mountain, Inc. and I concur with the Committee in its recommendation. I have negotiated a lease with Okemo and herewith submit it for your approval. As required, the Capital Budget Oversight Committee approved this lease at their meeting of May 13, 1998, contingent upon passage of HB 1291-FN.

As part of my charge from Chapter 119, I am required to present a plan for the disposition of the full time employees at Mount Sunapee. I met with the employees to inform them of my decision to recommend the leasing of Mount Sunapee and again in a joint presentation with Okemo regarding its benefits package.

Okemo Mountain will offer employment to all full-time year round Mount Sunapee employees at their current salary levels. Employees will receive Okemo's full benefit package including medical, dental and 401K plan, and will receive credit for their years of service with the State.

- continued -

Governor and Council Request  
May 14, 1998  
Page 2



The Lease and Operating Agreement has been reviewed and approved by the Attorney General's office.

I strongly recommend approval of the lease with Okemo Mountain, Inc. and I stand ready to answer any questions you may have.

Sincerely yours,

Robb R. Thomson  
Commissioner

RRT:lm  
attachment







April 24, 1998

Mr. Robb R. Thomson, Commissioner  
State of New Hampshire  
Department of Resources and Economic Development  
172 Pembroke Road  
P. O. Box 1856  
Concord, N. H. 03302-1856

Re: Lease and Operating Agreement - Mount Sunapee State Park  
State of New Hampshire/Okemo Mountain, Inc.

Dear Commissioner Thomson:

As a follow up on our negotiations and discussions and in connection with the above, it is our understanding that in addition to those matters contained in the proposed Lease and Operating Agreement, Okemo and the State of New Hampshire have agreed to the following:

1. That the State of New Hampshire, through its Department of Resources and Economic Development, provides Okemo Mountain, Inc. with a Level 1 Site Assessment of the Leased Premises, and the Site Assessment reveals in the opinion of Okemo Mountain, Inc. no serious environmental site issues. The cost and expense of the Site Assessment and any remediation is to be borne by the State of New Hampshire.
2. That the State of New Hampshire, through its Department of Resources and Economic Development, undertake the completion of a meets and bounds survey of the "Leased Premises".
3. The State of New Hampshire will conclude the RFP process and conclude the final lease negotiations with a signed, fully approved, and awarded Lease no later than September 15, 1998. In the event that the Lease and Operating Agreement has not been awarded to Okemo by September 15, 1998, Okemo reserves the right to withdraw its application and receive a return in full of its deposit.
4. The State of New Hampshire will return to Okemo Mountain Inc. the Proposal Guaranty of \$50,000 to Okemo within 30 days of the date on which the Lease is awarded.

5. The State of New Hampshire has agreed to continue to maintain the Access Road to Mount Sunapee as a state highway, and to keep the same open to the general public for access to the "Leased Premises".

6. Okemo Mountain, Inc. as Operator shall have the right to use the trade name and/or trade mark "Mount Sunapee Ski Area or Mount Sunapee Resort," or any similar name, together with any logos associated therewith.

7. Provided that Okemo receives a signed Lease by no later than July 1, 1998, Okemo Mountain, Inc. as Operator will attempt to complete the following site improvements during the 1998-1999 ski season:

- (a) Replacement of the Summit Triple Chair Lift with a detachable quad chair lift;
- (b) Replacement of the Sun Bowl Double Chair Lift with a fixed grip triple or quad chair lift; and,
- (c) Renovation and/or expansion of North Peak Lodge.

If this accurately sets forth our understanding, please counter-sign a copy of this letter indicating the State's agreement.

Respectfully submitted,

OKEMO MOUNTAIN, INC.



Donald MacAskill  
Vice President and General Manager

Approved and Confirmed:

DEPARTMENT OF RESOURCES AND  
ECONOMIC DEVELOPMENT

  
Robb R. Thomson, Commissioner

## LEASE AND OPERATING AGREEMENT

This Lease and Operating Agreement entered into this 30<sup>th</sup> day of APRIL, 1998, by and between the State of New Hampshire, acting by and through its Department of Resources and Economic Development (hereinafter referred to as the "State" and "DRED," respectively) and Okemo Mountain, Inc., a Vermont corporation with a principal place of business in Ludlow, Vermont, and to be qualified to do business as a foreign corporation in the State of New Hampshire (hereinafter referred to as the "Operator").

WHEREAS, since 1948 the State has operated a ski area at Mount Sunapee State Park to provide public outdoor recreational opportunities for the citizens of New Hampshire and surrounding states and provinces; and

WHEREAS, the State has developed Mount Sunapee State Park using federal outdoor recreation funding from the Land and Water Conservation Fund Program administered by the United States Department of Interior, National Park Service; and

WHEREAS, the State recognizes its continuing obligation under Section 6(f)(3) of the Land and Water Conservation Fund Act and related federal regulations and project agreements to make Mount Sunapee State Park available for public outdoor recreation use; and

WHEREAS, Land and Water Conservation Fund Program regulations allow for leasing the operation of properties acquired or developed with Land and Water Conservation Fund assistance as long as the State retains ownership and control of the property so that it continues to be used for public outdoor recreation uses; and

WHEREAS, in Chapter 119, Laws 1997, the General Court of New Hampshire authorized the Commissioner of the Department of Resources and Economic Development, in consultation with a Joint Legislative Committee, to develop and issue a request for proposal for a lease, concession agreement or management contract for the operation of the Mount Sunapee Ski Area; and

WHEREAS, it is the desire of the State and the Operator that the development of summer and winter recreational activities continue at Mount Sunapee for the mutual benefit of the public and the Operator; and

WHEREAS, following an evaluation and selection process, the Joint Legislative Committee and the Commissioner of the Department of Resources and Economic Development have recommended that the State enter into this Lease and Operating Agreement with the Operator.

1. **LEASE OF PREMISES.**

The State hereby leases to the Operator and the Operator does hereby lease from the State a certain parcel of land and improvements thereon within and forming part of the Mount Sunapee State Park in the Towns of Newbury and Goshen, New Hampshire, comprising 850 acres, more or less (the "Leased Premises"). The Leased Premises are more particularly described in Appendices 1, 2 and 3 attached hereto and made a part hereof of this Lease and Operating Agreement, entitled Map of Leased Premises, Property Description of Leased Premises and Other Assets Included in Lease. The Operator shall have the right of ingress and egress to and from the Leased Premises over and across all public highways, work roads or trails owned, constructed, or to be constructed by the State within the general area of the Leased Premises. The State warrants that it has good and marketable title to the Leased Premises and that the Leased Premises are free and clear of all liens, encumbrances, rights of way, easements or claims of title that may interfere with the Operator's ability to perform its obligations under this Lease and Operating Agreement.

2. **TERM.**

The term of this Lease and Operating Agreement shall be twenty (20) years, beginning on July 1, 1998 and terminating on June 30, 2018, unless earlier terminated as hereinafter provided. The Operator shall have the option of extending the term for two (2) additional ten (10) year periods. The Operator shall give written notice to the

State of its intent to extend the term for an additional ten (10) year period at least one (1) year prior to the expiration of the current term.

3. **RENT.**

The Operator agrees to pay, without demand, to the State as rent for the Leased Premises a base fee of one hundred fifty thousand dollars (\$150,000) per year (adjusted annually for inflation) plus a variable fee of three percent (3%) of the Operator's gross annual revenues from the operation of the ski area, payable on or before December 31, 1998 of each year following the ski season year end.

Gross revenues shall mean the total amount received by or accruing to the Operator by reason of the privileges granted under this Lease and Operating Agreement from sales or rentals by the Operator or its subcontractors to patrons, for cash or credit, sold for consumption or use on the Leased Premises, of food, beverages, recreational equipment, rentals, tickets or other merchandise or services, including vending machines or coin operated devices.

The following shall be excluded or deducted from gross revenues:

a. Sales, excise, or other taxes which are imposed upon the sale of goods or services and which are collected by the Operator for remittance to the appropriate government or taxing authority. This exclusion from gross revenues is not intended to apply to any franchise, capital stock, income or similar taxes which are based upon the profits of the Operator.

b. Refunds, discounts, rebates or allowances paid or given by the Operator to ski area patrons.

c. Tips, gratuities or other charges for merchandise or services which are included in the account or bill of a patron.

d. All revenues from the sale or rental of real estate.

The Operator shall maintain an accounting system, including a ticket identification and control system designed to accurately account for the revenues received by the Operator. The Operator shall provide the State a certified public

accountant's statement verifying the amount due and paid at the time of payment of the rent. The Operator shall preserve all of its accounting books and records pertaining to its revenues at the Premises for a period of five (5) years following the close of each fiscal year.

4. **SKI AREA OPERATIONS.**

The Operator agrees to manage and operate the Leased Premises as a public ski area and summer recreational facility to provide year-round outdoor recreational opportunities for the general public. This Lease and Operating Agreement shall entitle the Operator to the right to operate a commercial recreational facility (including all of its support activities) on Mount Sunapee in the Towns of Newbury and Goshen. The State agrees that no other commercial recreational activity shall be authorized at this location.

5. **ANNUAL OPERATING PLAN.**

On or before the 15th day of May during each year of this Agreement, the Operator shall submit to DRED an annual operating plan, including a schedule of the proposed days and hours of operation for the ski area, and a description of the types of recreational activities available to the public. The proposed schedule of operation shall be reviewed by DRED and either approved as proposed, or revised for resubmission. DRED shall notify the Operator in writing of a final schedule of operations no later than June 30th of each year. No changes in the days of operation or the scheduled hours of operation may be made without the prior approval of DRED. The Leased Premises shall not be closed to the public except for emergency or unsafe weather conditions.

The Annual Operating Plan shall describe in detail the following operations:

- a. Types of recreational activities available to the public
- b. Ski lift operations
- c. Snow making and grooming operations
- d. Ski support services

- i. Ski school
- ii. Rentals and repairs
- iii. First aid/public safety
- iv. Retail ski shop
- v. Food and beverage services
- vi. Entertainment
- e. Maintenance procedures
- f. Security procedures
- g. Emergency operating plan
- h. Status of special use permits and leases
- i. Marketing and advertising
- j. Environmental management program
- k. Signage
- l. Utilities and roads
- m. Implementation of Master Development Plan site improvements

6. **MASTER DEVELOPMENT PLAN.**

The Operator shall prepare a Master Development Plan ("MDP") covering operations, facilities, site improvements and strategic plans for the ski area by June 1, 2000. The Operator's proposed MDP shall be submitted to DRED and shall be either approved as proposed or revised for resubmission. The MDP shall embody both the Operator's and the State's long term goals for the ski area and shall include all major elements of the Operator's "Proposal for the Operation of the Mount Sunapee Ski Area" submitted on April 1, 1998. The MDP shall include, but not be limited to, plans for expanding the ski trail network, construction of new lifts, construction or renovation of lodges or other facilities, additional water withdrawals from Lake Sunapee to expand snow-making capacity, upgrading or modifying infrastructure, including power, water and sewage disposal systems and such other improvements or

modifications that are appropriate for the recreational use of the Leased Premises. The MDP shall be revised and updated every five (5) years.

7. **SITE IMPROVEMENTS.**

The Operator shall complete site improvements in accordance with the MDP. All plans and specifications for site improvements and structures shall be submitted to DRED for approval at least sixty (60) days before the proposed construction date. All development and improvement projects shall be accomplished without interrupting skiing activities or other public outdoor recreational activities at the ski area.

The Operator shall bear the cost of all renovations and improvements and shall ensure that they are done in a good and workmanlike manner and in compliance with all applicable laws.

Site improvements built or installed by the Operator shall remain the real or personal property of the Operator during the term of this Lease. Title to all site improvements shall vest in the State upon the termination of this Lease.

8. **CONSTRUCTION BONDS.**

The Operator shall purchase, or shall require its contractors or subcontractors to purchase construction bonds issued by a surety or sureties satisfactory to DRED to guarantee the completion of any construction project. The Operator shall also purchase, or require its contractors or subcontractors to purchase labor and materials payment bonds to guarantee the payment for goods and services provided on all construction contracts.

9. **OPERATIONS BOND.**

The Operator shall provide to the State a performance bond in the penal amount of one million dollars (\$1,000,000) issued by a surety or sureties satisfactory to the State to guarantee the faithful performance by the Operator of all the terms and conditions of this Lease and Operating Agreement and to indemnify the State and its agents from all loss for failure or inability to perform the obligations undertaken by the



Operator hereunder. An irrevocable letter of credit issued by a financial institution satisfactory to the State in the amount of one million dollars (\$1,000,000) may be substituted for the performance bond.

**10. RIGHT TO ENTER LEASED PREMISES.**

The State and its agents and representatives may enter the Leased Premises at any time for the purposes of inspection.

**11. UTILITIES.**

The Operator shall be responsible for arranging for and making payment directly to the provider of all utility services required to operate the ski area. Failure by the Operator to pay for any utility services purchased, resulting in termination of the services by the provider, may be considered a material breach of this Lease and Operating Agreement. The Operator shall accept an assignment of the State's rights to discounted electric rates under Special Contract No. NHPUC 97-1 entered into with Public Service Company of New Hampshire.

**12. TAXES.**

The Operator shall pay all properly assessed real and personal property taxes no later than the due date. Failure by the Operator to pay any duly assessed personal and real estate taxes when due shall be cause to terminate this Lease and Operating Agreement.

**13. RATE SCHEDULE.**

All rates and prices charged by the Operator for ski lift tickets, admission fees, permit or license fees or other fees to be paid by members of the general public shall be submitted to DRED for its review and approval. All rates and prices charged by the Operator shall be competitive with similar privately operated facilities. DRED's approval shall be automatic unless DRED makes a determination that the rates are not competitive and so notifies the Operator.

**14. PUBLIC USE OF THE LEASED PREMISES.**

The Operator shall allow public access to the Leased Premises for recreational and park activities as permitted in the Annual Operating Plan.

**15. ENVIRONMENTAL PROTECTION.**

The Operator shall develop and submit for approval to DRED an Environmental Management Plan adopting recognized Best Management Practices to preserve and protect the Leased Premises, which shall include but not be limited to:

- a. Water usage and conservation;
- b. Septage disposal/treatment;
- c. Drainage, erosion and water quality issues;
- d. Solid waste disposal;
- e. Air quality and traffic congestion mitigation;
- f. Forestry management;
- g. Wetlands impacts;
- h. Wildlife habitat preservation; and
- i. Scenic and aesthetic qualities.

**16. MAINTENANCE:**

The Operator shall maintain the Leased Premises in first class condition. The Operator, at its expense, shall undertake all maintenance of the facilities, lifts, trails, slopes, ponds, water courses, buildings, structures, roadways and other appurtenances, and housekeeping in all areas of the Leased Premises. The Operator shall be responsible for all litter pickup, trash disposal, cleaning, housekeeping and sanitation within each building and on all grounds within the Premises. At the beginning of the lease term, the State and the Operator shall jointly inspect and document the baseline conditions of all structures, facilities and natural or artificial features of the Leased Premises. The State shall inspect the Leased Premises at least annually and require the Operator to correct any maintenance deficiencies noted.

**17. SECURITY INTERESTS IN LEASED PREMISES.**

A pledge, mortgage or other security interest may be executed by the Operator impairing or encumbering the Operator's interests in this Agreement or any leasehold improvements with the approval of the State. Such approval shall not be unreasonably withheld by the State

**18. COMPLIANCE BY OPERATOR WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY.**

The Operator shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Operator, including, but not limited to the Land and Water Conservation Fund Act and implementing regulations and state and federal civil rights and equal opportunity laws. During the term of this Agreement, the Operator shall not discriminate against members of the public, employees or applicants for employment because of age, sex, race, creed, color, marital status, physical or mental disability, national origin or sexual orientation and will take affirmative action to prevent such discrimination. The Operator shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations.

**19. INSPECTION OF OPERATOR'S RECORDS.**

The Operator agrees to permit the State, or any agency of the United States, access to any of the Operator's books, records and accounts for the purpose of ascertaining compliance with any statutes, regulation and order, and with the terms and conditions of this Agreement. The Operator shall follow Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting acceptable to the State in recording financial transactions. When requested by the State, the Operator at its own expense shall have its annual accounting reports audited or prepared by a licensed independent accountant acceptable to the State.

**20. PERSONNEL.**

The performance of this Agreement shall be carried out by employees of the Operator at its own expense. The Operator warrants that all personnel engaged in the services shall be qualified to perform the services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**21. OPERATOR'S RELATION TO THE STATE.**

In the performance of this Agreement the Operator is in all respects an independent contractor. Neither the Operator nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

**22. ASSIGNMENT, DELEGATION AND SUBCONTRACTS.**

The Operator may assign, or otherwise transfer any interest in this Agreement with the prior written approval of the State. Services required under this Agreement may be delegated or subcontracted by the Operator with the prior written approval of the State. Such approval shall not be unreasonably withheld by the State.

**23. INDEMNIFICATION.**

The Operator shall defend, indemnify and hold harmless the State, and its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Operator or its subcontractors, agents or assignees. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

24. INSURANCE.

During the entire term of this Agreement, the Operator shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

- a. Comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than three hundred thousand dollars (\$500,000) per occurrence and five million dollars (\$5,000,000) annual aggregate; and
- b. Fire and extended coverage insurance covering the Leased Premises, in an amount not less than one hundred percent (100%) of the whole replacement value of the Leased Premises.

The policies described above shall list the State of New Hampshire as an additional insured. They shall be in the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than ten (10) days after written notice thereof has been received by the State. Certificates of insurance demonstrating that the required policies are in effect shall be filed with the State before the Agreement is presented to the Capital Budget Overview Committee and the Governor and Executive Council for approval and shall thereafter be renewed or replaced as necessary.

25. DEFAULT AND TERMINATION.

Any one or more of the following acts or omissions of the Operator shall constitute an event of default hereunder ("Events of Default"):

- a. Failure to operate the ski area in a manner acceptable to the State; or
- b. Failure to perform any task or service required by this Agreement satisfactorily or on schedule; or
- c. Failure to submit any plan or report required hereunder; or

d. Failure to perform any other covenant or condition of this Agreement.

Upon the occurrence of any Event of Default, the State shall give the Operator a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice. If the Event of Default is not timely remedied, the State may treat the Agreement as breached and pursue any of its remedies at law or in equity, effective two (2) days after giving the Operator notice of termination. The State shall also set off against any other obligations the State may owe to the Operator any damages the State suffers by reason of any Event of Default.

**26. WAIVER OF BREACH.**

No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express failure by the State to notify the Operator of any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Operator. Upon the request of the Operator, the State shall issue letters to the Operator's lenders or creditors certifying that there are no outstanding defaults in its performance under this Agreement.

**27. AMENDMENT.**

This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**28. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire.

29. THIRD PARTIES.

The parties do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

30. ENTIRE AGREEMENT.


This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

31. APPROVAL CONTINGENCIES

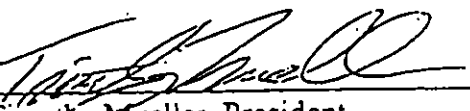
This Lease and Operating Agreement shall not be final and binding upon the State until it is approved by the Capital Budget Overview Committee of the New Hampshire General Court and by the New Hampshire Governor and Executive Council.

IN WITNESS WHEREOF, the parties have executed this Lease and Operating Agreement as of the day and year first above written.

THE STATE OF NEW HAMPSHIRE

By:   
Robb R. Thomson, Commissioner  
Department of Resources and  
Economic Development

OKEMO MOUNTAIN, INC.

By:   
Timothy Mueller, President

Form, substance and execution approved this 14<sup>th</sup> day of May,  
1998.

Michael A. Jones

Senior Assistant Attorney General  
Department of Justice

Approved by Capital Budget Overview Committee this 14<sup>R</sup> day of  
May, 1998. *CONDITIONED UPON ENACTMENT OF HB 1291 AS AMENDED BY SEN. FRED KING  
SEE COMMITTEE MINUTE*

Gene H. Chandler

Approved by the Governor and Executive Council this \_\_\_\_\_ day of  
\_\_\_\_\_, 1998.

\_\_\_\_\_