



STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
**DIVISION of PARKS and RECREATION**  
172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-3556 Fax: (603) 271-3553  
Web: [www.nhstateparks.org](http://www.nhstateparks.org)

August 2, 2021

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, Division of Parks and Recreation, Cannon Mountain Aerial Tramway and Ski Area to enter into a Memorandum of Agreement (MOA) with Franconia Ski Club (FSC) (VC #269330), Franconia, NH on a joint \$50,000 Slope Improvement and Snowmaking Efficiency Project at the Mittersill Terrain Area, with the FSC funding the project in an amount of \$25,000 (50%) and Cannon Mountain funding the project in an amount of \$25,000 (50%) effective upon Governor and Executive Council approval with a completion date of December 31, 2021. 100% Agency Income.

Funding is available in account, Cannon Mountain, as follows:

	<u>FY 2022</u>
03-035-035-351510-37030000-103-502664 – Contracts for Op Services	\$25,000

**EXPLANATION**

The Department of Natural and Cultural Resources (DNCR), *formerly the Department of Resources and Economic Development (DRED)*, and the FSC entered into an Agreement dated January 23, 2013, which was approved by the Governor and Executive Council on February 6, 2013, Item #47. This Agreement granted DNCR the authority to accept the gift of an estimated \$3.5 million enhancement project to include snowmaking equipment, new and existing terrain enhancement, a new surface lift, and multiple ski/race/training venues at the Mittersill Terrain Area. The Agreement also authorized the funding, design, planning, permitting, construction, completion, and all related infrastructure of said project to be completed by FSC and surrendered wholly to the State upon completion of the project in exchange for agreed upon use provisions for FSC and its approved subcontractors and the ongoing operation by DNCR and Cannon Mountain of the trails as outlined in the Agreement.

The FSC will be conducting construction and slope area maintenance operations onsite while completing the construction of the Mittersill Performance Center this fall, ownership of which will be transferred by FSC to the State upon its completion, which was also approved by the Governor and Executive Council on November 6, 2019, Item #35. In order to provide for the low-cost and low environmental impact trail work necessary for more efficient slope side snowmaking and more efficient grooming at Mittersill, DNCR seeks authorization to enter into this MOA with the FSC in order to utilize their existing onsite excavation, site work, and trail work contractor. Said work shall be performed as a joint project between FSC and Cannon, with the FSC portion funded at 50% (\$25,000) via a grant provided by the Killington World Cup Foundation and 50% (\$25,000) funded by Cannon Mountain.

Slope alteration will include cut and fill work, minor drilling and blasting, and erosion control to moderate the surface, which will add efficiency in snowmaking and grooming and save the ski area labor, energy, and fuel, creating a financial savings. Project scope to be reviewed by Cannon's Equipment Operator

Foreman and Snowmaking and Construction Foreman, shall include all design work and site work, and all post-work erosion control measures. DNCR shall provide funding reimbursement to FSC for actual expenses incurred for labor, equipment and materials. The total reimbursed cost for the work under this MOA shall not exceed \$25,000.

The Attorney General's Office has reviewed and approved this contact as to form, substance and execution.

Respectfully submitted,



Philip A. Bryce  
Director

Concurred,

(SM)



Sarah L. Stewart  
Commissioner

**MEMORANDUM OF AGREEMENT // 2021 - '22**  
**NH DEPARTMENT of NATURAL AND CULTURAL RESOURCES and FRANCONIA SKI CLUB**

This Memorandum of Agreement (MOA) is entered into on this 2nd day of August, 2021, by and between the State of New Hampshire, Department of Natural and Cultural Resources (DNCR) and Franconia Ski Club (FSC), Franconia, New Hampshire, for the trail improvements necessary for added efficiency in snowmaking and slope grooming on the Taft Training Slope at Cannon Mountain.

Whereas, the State of New Hampshire owns the Mittersill terrain area, managed by DNCR through the Division of Parks and Recreation, Cannon Mountain Aerial Tramway and Ski Area (Cannon), located at Franconia Notch State Park in Franconia, New Hampshire, and;

Whereas, DNCR (*formerly the Department of Resources and Economic Development, aka "DRED"*) and FSC entered into an agreement dated January 23, 2013 ("Agreement"), which was approved by the Governor and Executive Council on February 6, 2013, Item #47, pursuant to which DNCR was granted authority to accept the gift of an estimated (or in excess of) \$3.5 million in snowmaking, new and existing terrain enhancement, new surface lift, and race/training venue project at Mittersill, including the funding, design, planning, permitting, construction, completion, and all related infrastructure of said project, to be completed by FSC, and surrendered wholly to the State upon completion of the project in exchange for agreed upon use provisions for FSC and its approved subcontractors and the ongoing operation by DNCR and Cannon Mountain of the trails as outlined in the Agreement;

Now, therefore, in order to provide for the low-cost and low environmental impact trail work necessary for slope side snowmaking and grooming improvements at Mittersill, FSC shall be authorized to assist DNCR by providing the necessary services through an agreement with its existing on-site excavation, site work, and trail work contractor. Said work shall be performed as a joint project between FSC and Cannon, with 50% (\$25,000) provided by FSC through a grant from the Killington World Cup Foundation. FSC will be conducting construction and slope area maintenance operations on-site while completing the construction of the Mittersill Performance Center, the ownership of which will be assumed by The State upon its completion (approved by the Governor and Executive Council on November 6, 2019, Item #35). Through this MOU the parties seek to take full advantage of FSC's presence to have FSC complete this upslope work with joint funding as described (50% funded by Cannon Mountain, in an amount not to exceed \$25,000).

**SCOPE OF SERVICES**

Slope alteration to include cut and fill, minor drilling and blasting, and erosion control to moderate the surface, which will add efficiency in snowmaking and grooming and save the ski area labor, energy, and fuel, and create a financial savings. Project scope to be reviewed by Cannon's Equipment Operator Foreman and Snowmaking and Construction Foreman. Said scope shall include all design work and site work, and all post-work erosion control measures. Project completion shall be agreed to and approved by Cannon's Equipment Operator Foreman and Snowmaking and Construction Foreman.

**FUNDING**

DNCR shall provide funding reimbursement to FSC for actual expenses incurred for labor, equipment and materials. The total reimbursed cost for the work under this MOA shall not exceed \$25,000.

**INVOICING**

FSC shall provide DNCR with a detailed invoice listing the work performed and materials used. All reimbursements made pursuant to this MOA are contingent upon the availability and continued appropriation of funding for the services to be provided.

**LIABILITY**

Except as otherwise expressly set forth herein, the obligation of FSC under section 15 of the Agreement "Defense and Indemnification" shall apply to FSC's obligations hereunder.

**TERMINATION**

Either party may terminate this MOA upon providing written notice to the other, thirty (30) days prior to termination. Upon termination, FSC shall be paid for all work completed prior to the termination.

**DURATION**

This MOA shall continue in effect until May 31, 2022, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by the Governor and Executive Council.

**AMENDMENTS**

Any amendments to this MOA must be in writing and shall not be effective until approved by the Governor and Executive Council.

**ASSIGNMENT**

FSC will not assign or transfer any interest in this MOA without the prior written consent of the State.

**RELATION TO THE STATE**

FSC acknowledges that, in performing the work prescribed by this MOA, it is neither an agent nor an employee of the State.

**CHOICE OF LAW AND FORUM**

This MOA shall be construed according to the laws of the state of New Hampshire, and any action arising out of this contract must be brought in New Hampshire Superior Court.

**AGREEMENT**

IN WITNESS THEREOF, the parties hereto have executed this MOA, which shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this MOA.

State of New Hampshire  
Department of Natural and Cultural Resources

Sarah Stewart

Sarah Stewart, Commissioner

August 10, 2021

Date

Franconia Ski Club

Tim Tapply  
Tim Tapply, President

8/2/2021  
Date

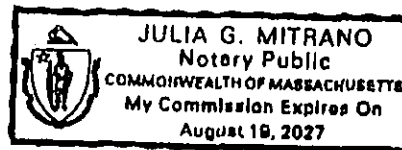
State: \_\_\_\_\_

County: \_\_\_\_\_

On this 2 day of August, 2021 before me, the undersigned notary public, personally appeared Tim Tapply, President of Franconia Ski Club, provide to me through satisfactory evidence of identification, which was personal knowledge (state form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Julia G. Mitrano  
(Official Signature and Seal of Notary Public)

8/2/21  
Date



APPROVED AS TO FORM, SUBSTANCE AND EXECUTION

Michael Haley  
NH Attorney General's Office  
Michael Haley, Attorney

8/10/2021  
Date

Governor and Executive Council Approval:

Date: \_\_\_\_\_ Item # \_\_\_\_\_

# State of New Hampshire

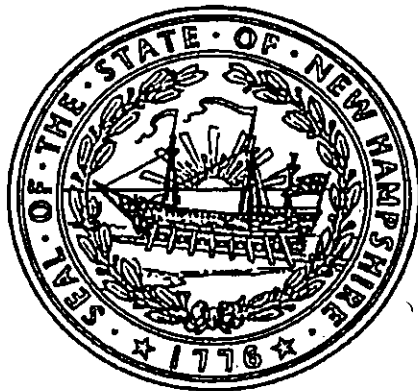
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that FRANCONIA SKI CLUB is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on April 21, 1933. 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: 60600

Certificate Number: 0005417536



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 August A.D. 2021.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

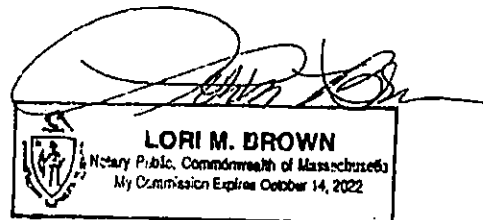
## RESOLUTION

VOTED: That the execution, delivery and performance by the Franconia Ski Club of a *Memorandum of Agreement* with the State of New Hampshire with respect to the use of the Killington World Cup Foundation Grant monies for trail improvements on Taft Training Slope located at Cannon Mountain, and that such monies shall be matched by the State of New Hampshire, as described to the directors at the meeting, is hereby ratified, confirmed and approved; and further

VOTED: That the President of the Franconia Ski Club, Timothy W. Tapply, is hereby authorized in the name and on behalf of the Franconia Ski Club, to execute, deliver and effect all agreements, documents, instruments, orders, directions, certificates, receipts, forms and other papers or instruments and to perform or cause to be performed all such other and further acts, as the officer so acting may in his discretion approve in connection with the execution of the *Memorandum of Agreement* which contemplates the agreement between the Franconia Ski Club and the State of New Hampshire relative to trail improvements on Taft Training Slope at Cannon Mountain.

RECORDED THIS 3<sup>RD</sup> DAY OF AUGUST 2021  
BY CHRISTINE SCHMITT, SECRETARY  
FRANCONIA SKI CLUB

*Christine Schmitt*  
8/3/2021



08.03.2021

On this 3<sup>rd</sup> day of August, 20 21,  
before me, the undersigned Notary Public, personally appeared  
Christine Schmitt (name of doc signat) proved to me through satisfactory  
evidence of identification, which was ORLYN's license, to be  
the person whose name is signed on the preceding or  
attached document, and acknowledged to me that he/she/they  
signed it voluntarily for its stated purpose.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/02/2020

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 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).

PRODUCER Frazier Insurance Agency Inc.  
Box 1250, Midlothian VA 23113  
Processing Office: Lawson Insurance LLC  
1643 24th St West #110, Billings, MT 59102

CONTACT NAME: Jack Lawson / Sarah Sheridan  
PHONE (A/C No. Ext): (406) 652-4440 FAX (A/C No.):  
E-MAIL ADDRESS: jack@lawsonins.net

INSURED Sports and Special Event Risk Purchasing Group, Inc. & It's Participating Members-  
Member- National Ski School Program, Inc-ALPINE & It's Participating Members  
1302 24th Street West #169, Billings MT 59102  
MEMBER-Franconia Ski Club

INSURER(S) AFFORDING COVERAGE  
INSURER A: Agie Security Insurance Company  
INSURER B: Agie Security Insurance Company  
INSURER C: Agie Security Insurance Company  
INSURER D:  
INSURER E:  
NAIC # 610

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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.

INSURER	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY					
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		FGLSP-100-20	10/01/20	10/01/21	EACH OCCURRENCE \$1,000,000.
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR		Cert# FMT-S-0013			DAMAGE TO RENTED PREMISES (Each occurrence) \$300,000.
	<input checked="" type="checkbox"/> INCLUDES ATHLETIC PARTICIPANTS					MED EXP (Any one person) \$5,000.
	<input checked="" type="checkbox"/> INCLUDES SEXUAL ABUSE & MOLESTATION (\$100,000./\$100,000.)					PERSONAL & ADV INJURY \$1,000,000.
	GEM. AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$5,000,000.
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					PRODUCTS - COMP/OP AGG \$5,000,000.
	AUTOMOBILE LIABILITY					
	<input type="checkbox"/> ANY AUTO					COMBINED SINGLE LIMIT (Each accident) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				PROPERTY DAMAGE (If an accident) \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				EACH OCCURRENCE \$
	DED <input type="checkbox"/> RETENTION \$					AGGREGATE \$
B	Excess Accident Medical Protection	FRO768		10/01/20	10/01/21	Maximum Medical Benefit per claim - \$25,000.
	Deductible - \$250.					AD&D Benefit per claim - \$2,500.
	52 week Benefit Period from date of incident					
	Claim Reporting deadline - 90 days from date of incident					
	NSSP ALPINE MEMBER- Franconia Ski Club, P.O. Box 462, Franconia, NH 03580 ADDED AS INSURED					
	NSSP-ALPINE PARTICIPATING MEMBER for OCT. 01, 2020-21 including coverage for Ski Racing					
	Instruction, Sexual Abuse & Molestation.					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Commercial General Liability (CGL) deductible - \$0.00 each Bodily Injury or Property Damage Claim.  
'Participant Legal Liability Coverage' for participants in SKI RACES/INSTRUCTION/COMPETITIONS requires that each participant (or Parent/Guardian) sign release/waiver form PRIOR to Competing, Practicing or Instruction.

## CERTIFICATE HOLDER

## CANCELLATION

Cannon Mountain Ski Area  
260 Tramway Drive  
Franconia, NH 03580

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

*John W. Frazier*

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1-47 # 47 3/6/13



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION of PARKS and RECREATION

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856  
PHONE: (603) 271-3556 FAX: (603) 271-3553 E-MAIL: nhparks@dred.state.nh.us  
WEB: www.nhstateparks.org

January 23, 2013

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

**REQUESTED ACTION**

1. Authorize the Department of Resources and Economic Development, Division of Parks and Recreation, Cannon Mountain Aerial Tramway and Ski Area to enter into an amended and restated agreement with Franconia Ski Club (Club) of Franconia, New Hampshire to continue its competitive ski racing and snowsports / skier education programs at Cannon Mountain for a period of twenty (20) years from February 6, 2013 through February 5, 2033, with the option to renew for three additional five-year periods subject to Governor and Executive Council approval. The current agreement was approved by Governor and Executive Council on December 8, 2010, Item #86C.
2. Further authorize the receipt of a gift of an (estimated) \$3.5 million snowmaking, new and existing terrain enhancement, and race/training venue project at Mittersill, including the funding, design, planning, permitting, construction, completion, and all related infrastructure of said project, to be completed by the Club in accordance with all applicable State and Federal guidelines, and surrendered wholly to the State upon completion of the project.
3. Further authorize the limited privileges afforded the Club and its athletes regarding said terrain and race/training venue at Mittersill, consistent with the club's existing and historical use of Cannon Mountain, in accordance with the terms of the Agreement and subject to approval of the State. Also authorize the continued use by, and payment for non-exclusive use of, "Ernie's Haus" at Cannon Mountain as the Club's headquarters of operation over the term of the Agreement, in accordance with the terms of the Agreement.

**EXPLANATION**

Franconia Ski Club is the longest-standing partner of Cannon Mountain, having cut the original Taft Slalom Trail at Cannon in 1933, and having been based at "Ernie's Haus" for well over three decades, with Ernie's Haus having been built with funds donated to the State by a former FSC member for non-exclusive use by the Club. This amended and restated agreement accommodates the Club's desire to fund and complete the aforementioned (estimated) \$3.5 million snowmaking, terrain enhancement, and race/training venue project at Mittersill, and then gift the completed project and infrastructure to the State, enjoying limited use of the facility in accordance with the terms of the Agreement, and subject to approval of the State. The approval of this amended and restated Agreement will ensure the continued strength of this exemplary partnership between Cannon Mountain and Franconia Ski Club, and will significantly enhance Cannon's overall guest safety, along with its ski training and racing experiences.



The attached Agreement has been reviewed and approved by the Attorney General's Office as to form, substance and execution.

DM

Respectfully submitted,

  
Philip A. Bryce  
Acting Commissioner

## AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2013, by and between the State of New Hampshire, Department of Resources and Economic Development, duly authorized through the Commissioner ("Commissioner") of the Department of Resources and Economic Development ("DRED") and the Division of Parks and Recreation, duly authorized through the Director of the Division of Parks and Recreation ("Director"), and further acknowledged and agreed to by the Manager ("Manager") of Cannon Mountain ("Cannon") together, hereinafter collectively referred to as "the State," and Franconia Ski Club, Franconia, New Hampshire, by its President, hereinafter referred to as the "Club."

### RECITALS

A. Whereas, the State owns and operates Cannon Mountain ski area, located in Franconia, New Hampshire, for the general purpose of providing winter recreation for residents and out-of-state visitors;

B. Whereas, the Club was established in 1933 and has been developing and operating a successful competitive ski racing and competitive snow sports and skier education program at Cannon for decades, which program has instilled in generations of skiers and sportsmen and their families a passion for alpine skiing and snow sports, generally, and has created strong loyalty to Cannon, Franconia and the State of New Hampshire, in particular;

C. Whereas, an example of the loyalty of the Club and its members to Cannon is the fact that a former member of the Club donated the funds to construct the Club's headquarters, "Ernie's Haus," at Cannon and many of the members of the Club are Cannon season ticket holders year after year;

D. Whereas, the State acknowledges that operating a competitive ski racing and snow sports program requires specific knowledge, training, experience and passion, all of which are possessed by the Club and its members;

E. Whereas, the State desires continued assistance from the Club to stimulate skiing and snow sports at Cannon and to encourage and attract visitors and tourist dollars to Cannon and the State of New Hampshire; and

F. Whereas, the Club desires to continue to assist and cooperate with the State to stimulate skiing and snow sports at Cannon by continuing to operate, grow and invest in its competitive ski racing and snow sports program at Cannon;

G. Whereas, the Club and the State entered into an Agreement dated November 29, 2010 and effective December 8, 2010 (the "Original Agreement") pursuant to which the State granted to the Club certain privileges to (i) use certain property and facilities, and (ii) hold certain functions and events, at Cannon in connection with the Club's operation of a competitive ski racing and snow sports program for children and adults;

H. Whereas, the Club desires to improve the quality and safety of alpine training and racing facilities at Cannon and to provide the highest level coaching and training opportunities, including the development of local youth, to compete in alpine racing and snowsports in New England;

I. Whereas, the State has redeveloped and reopened the ski area adjacent to Cannon known as Mittersill ("Mittersill") in order to expand and improve the skiing and snow sport experience at Cannon;

J. Whereas, during the past ten months, with the consent and cooperation of the State and other concerned governmental and environmental bodies, the Club, at its expense, has engaged various consultants and experts to study the feasibility and evaluate the cost and permitting and approval process to reclaim and improve Mittersill, and in particular, certain ski trails at Mittersill known as Baron's Run ("Baron's Run") and Taft slope (the "Taft Slope") (together, "Baron's Run/Taft Slope"), including (i) designing and building, including without limitation, site work, trail clearing and grading, a training venue and race trails for Slalom, Giant Slalom and Super G ski racing on Baron's Run/Taft Slope and a connecting trail from the Skyline trail to Baron's Run and/or the Taft Slope, (ii) purchasing and installing snowmaking apparatus (including without limitation, air and water pipe(s), air and water hydrants, hoses and nozzles, land guns, tower guns and fan guns, and snowmaking plant equipment, including without limitation, compressor(s), electric drive(s), cooling water pump(s) and related equipment, for Baron's Run/Taft Slope the Skyline trail and a connecting trail from the Skyline trail to Baron's Run and/or the Taft Slope, and (iii) purchasing and installing a T-Bar surface lift to access Baron's Run/Taft Slope (collectively, the "Mittersill Project");

K. Whereas, based on such evaluation and discussions with various consultants and experts, the State (including the Director and the Manager) and other concerned governmental and environmental bodies, the Club will prepare a Mittersill Redevelopment Plan setting forth the detailed design and engineering drawings and specifications of the nature, type, location and timing of improvements and procurements comprising and necessary to complete the Mittersill Project (the "Mittersill Plan") which shall be provided to the Commissioner for approval by the DRED all as described in Section 1(d) below;

L. Whereas, the Club, together with one or more other entities, including Holderness School; desires to undertake a capital campaign to raise sufficient funds to complete the Mittersill Project;

M. Whereas, the State and the Club desire to amend the Original Agreement to: (i) increase the term of the Agreement to twenty (20) years, except if the (a) Capital Campaign (as hereinafter defined) is not successfully completed prior to the third anniversary of the date hereof, or (b) Mittersill Project is not completed and accepted by the State prior to the sixth anniversary of the date hereof, in which case the term of this Agreement shall end on December 31, 2020, all as described in Section 2; (ii) provide for the implementation of the Mittersill Plan and grant to the Club certain privileges relating to the improvements comprising the Mittersill Project; and (iii) provide for certain other rights and obligations of the parties.

Now therefore, the parties hereby agree that all functions, events, and use of Cannon and its property and facilities involving the Club shall be governed by and subject to the following terms and conditions:

**I. MITTERSILL PROJECT**

(a) **Fund Raising.** The Club agrees to use good faith efforts, (either alone or together with other entities, which other entities shall be subject to prior approval of the State, (which approval shall not be unreasonably withheld or delayed) to undertake a capital campaign to raise such funds in the form of charitable contributions as are necessary in its reasonable judgment, to complete the Mittersill Project in accordance with the Mittersill Plan, as approved and accepted by the State (the "Capital Campaign"). The State agrees to reasonably cooperate with the Club in such fund raising efforts, but the State shall have no obligation to contribute or raise funds itself nor shall the State be obligated to complete any aspect of the Mittersill Project that remains unfunded. The State agrees that the Club may inform potential sources of contributions in connection with its fund raising efforts that, following approval, the DRED and the Division of Parks and Recreation, have approved the Mittersill Plan and, following execution by the parties and approval by the State of this Agreement, that the State has granted the Club the privileges set forth herein, subject to the terms and conditions set forth herein. Subject to Section 1(f) below, the Club will notify the State in writing of the successful completion of the Capital Campaign.

(b) **Cooperation; Club's Responsibility.** The Club and the State agree to cooperate in good faith to complete the Mittersill Project. Notwithstanding the foregoing, the parties agree that it is the Club's responsibility to (i) raise funds in accordance with Section 1(a) above, (ii) subject to review, approval and final acceptance in writing by the State, complete the Mittersill Project, including, developing all necessary plans and engineering documents, pursuing all necessary approvals and permits, and contracting for and overseeing all trail clearing, grading and construction of Baron's Run/Taft Slope and a connecting trail from the Skyline trail to Baron's Run and/or the Taft Slope, and procuring and overseeing installation of a T-Bar lift and snow making and ancillary equipment. The Club will perform its obligations under this Section 1(b)(ii) in a workmanlike manner in accordance with the terms of the Mittersill Plan. The Club will regularly update the Manager (and the State, on request) on progress. Any material change to the Mittersill Plan shall require the approval of the DRED.

(c) **State's Responsibility.** The State shall be responsible for Cannon's ongoing operation, including Baron's Run/Taft Slope and other capital improvements resulting from the Mittersill Project, in accordance with this Agreement, including snowmaking, grooming, ski lift operations, providing ski patrol and all other services required in the ordinary course and otherwise, in the operation of Cannon and Baron's Run/Taft Slope. As part of the general operation of Cannon and in concert with that operation, the State agrees to cause snowmaking to commence as soon as possible each year, subject to consistent and appropriate combinations of temperature, humidity and other factors that impact the ability to make and retain snow, in order to provide a surface suitable for ski racing and training on Baron's Run/Taft Slope at the earliest reasonably practicable date, in conjunction with overall snow making at Cannon, subject to any warm weather or other adverse conditions outside of the control of the State. The State agrees that the snow surface on Baron's Run/Taft Slope will be prepared in

accordance with standards appropriate and applicable for NHARA and USSA ski racing, as mutually agreed by the Club and the State, from time to time.

(d) **The Mittersill Plan.** The State, specifically the DRED and the Division of Parks and Recreation, shall approve and have final authority over all aspects of the Mittersill Plan as described on Exhibit A and any amendments thereto, including but not limited to:

- (i) the type, manufacturer, and model of equipment utilized, locations of installation, timing, delivery, location, and methodology of installation, and connectivity of the improvements to the existing infrastructure;
- (ii) the site work including the specific locations of the clearing of vegetation, the locations of access and staging of materials and equipment, and pre-and-post clearing site stabilization plans;
- (iii) the adherence to all applicable laws, rules, and regulations, and a list of required permits, specific equipment lists, and site-specific plans and maps.

(e) **Title to Property.** Subject to Section 1(f) and Section 3 below, the parties agree that (i) all rights to the Mittersill Plan, and plans and designs relating thereto, shall be owned by the Club, and (ii) all personal property and other capital improvements purchased or procured by the Club and installed or constructed at Cannon in connection with the Mittersill Plan shall be owned by the State. As such, the Club agrees to provide to the State, on request, any and all documentation transferring title or confirming the State holds title to all personal property and capital improvements.

(f) **Abandonment of Mittersill Project.** The Club and the State agree that the Club, after consultation with the State, may abandon the Mittersill Project if the Club believes, in good faith, that it will be unable to successfully complete the Capital Campaign. In the event of any such abandonment, ownership of the Mittersill Plan and any existing permits and all personal property and capital improvements purchased, procured or constructed by the Club and related to the Mittersill Plan shall transfer to the State.

(g) **Approval of Signage.** The State shall have the right to approve the placement and content of any corporate logo or physical recognition, including signage, relative to the Mittersill Project resulting from any contribution by any corporate entity or natural person to the fund raising efforts in connection with the Mittersill Project.

## 2. TERM

(a) **Term.** Unless earlier terminated pursuant to Section 3, the term of this Agreement shall end on the date which is twenty (20) years following the date hereof (hereinafter "the 20-year term"). The 20-year term shall be the term of this Agreement unless the Club has failed to either:

- (i) successfully complete the Capital Campaign and notify the State thereof in accordance with Section 1(a) above on or before the date which is three years following the date hereof; or

(ii) complete the Mittersill Project and obtain the final acceptance in writing by the State of the Mittersill Project in accordance with Section 1(b) above, on or before the date which is six years following the date hereof.

Upon the occurrence of either (i) or (ii), the term of this Agreement shall revert back to the term as set forth in the Original Agreement (hereinafter "the original term"), which shall end on December 7, 2020.

(b) **Renewal options.** Whether this Agreement shall be governed by the 20-year term or the original term, there shall be three (3) five-year renewal options to the term of this Agreement. Each renewal option may be exercised by the Club by written notice to the State at least six months prior to the termination or expiration date of the then-current term. In order to be effective, each renewal option so exercised must be accepted and approved by the Governor and Executive Council. The State undertakes to seek such acceptance and approval reasonably promptly following its receipt of the Club's written renewal notice.

(b) **Change in Management.** The Club's rights under this Agreement shall remain in full force and effect notwithstanding any change in operations or management of Cannon, including without limitation, (i) the grant by the State to a third party of any management or operational rights with respect to Cannon, or (ii) the execution by the State of any lease or other contract with a third party relating to the use or management of Cannon.

### 3. TERMINATION

(a) **By the Club.** The Club may terminate this Agreement at any time, for any or no reason, upon sixty (60) days written notice to the State. Upon termination of this Agreement, the Mittersill Plan, and all plans and designs related thereto, shall become the property of the State.

(b) **By the State.** The State may terminate this Agreement upon sixty (60) days written notice to the Club if the Club breaches this Agreement in any material respect, and fails to cure such breach within thirty (30) days following written notice of such breach by the State. The determination of the occurrence of a breach by the Club pursuant to this Section 3(b) shall be made in good faith by the State, acting reasonably, after an investigation of the circumstances of the breach.

### 4. ASSIGNMENT AND SUBCONTRACTING

(a) **Assignment.** Except as permitted under this Agreement, the Club shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of the State. Except as permitted under this Agreement, the Club shall not subcontract any of its rights, or the performance of any of its obligations under this Agreement, without the prior written consent of the State.

(b) **Subcontracting.** The Club may, with the prior written consent of the State, from time-to-time affiliate with, and/or offer access to Club facilities and services at Cannon (including for a fee), to other snow sports groups to further the mission and purpose of the Club and the purposes of this Agreement. The Club shall require that all such other snow sports

groups abide by all provisions of this Agreement and that all the activities of such other snow sports groups at Cannon shall be subject to the direction of the Club. The Club shall request consent by the State to all such proposed affiliation parties, subcontractors or assignees, in writing prior to October 1 of each ski season or no later than thirty (30) days prior to any newly proposed affiliation(s). In considering whether to approve such affiliations, the State shall consider whether such an affiliation furthers Cannon's mission and whether it may conflict or interfere with any of Cannon's then existing relationships. Subject to Section 22, the State hereby acknowledges that Holderness School is an approved subcontractor of the Club hereunder. Any agreement between the Club and its affiliation parties, subcontractors and/or assignees will not impose any additional obligation on the State under this Agreement or convey any rights to third parties other than in accordance with and pursuant to this Agreement.

#### **5. COMPLIANCE WITH LAW**

The Club shall comply with the statutes and regulations of the federal and state governments and with the ordinances, by-laws and regulations of the county and municipal governments applicable to the Club. The Club shall also comply with all applicable regulations of the DRED. The Club shall procure all necessary licenses and permits required in connection with its operations under this Agreement.

#### **6. THE CLUB'S RELATIONSHIP TO THE STATE**

In the performance of this Agreement the Club is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Club nor any of its officers, employees, agents, or members shall have the authority to bind the State nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State to its employees, including, but not limited to, the protections of RSA 99-D. To enhance communication between the State and the Club, the State may invite, from time to time, the Club to attend, and upon invitation, the Club shall make all reasonable efforts to participate in, Cannon's daily/weekly meetings, as appropriate.

#### **7. CONFLICT OF INTEREST**

No officer, member, employee or representative of the Club, and no representative, officer or employee of the State, including the Manager, who exercises any functions or responsibilities in connection with any approval, consent or determination under or pursuant to this Agreement, shall so participate if such approval, consent or determination would personally benefit such officer, member, employee or representative or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested.

#### **8. SKI RACES**

(a) Approval; Cooperation. The Club shall obtain the approval of the State of all race and/or special activity dates on which the Club shall be permitted to hold events during the ski season. Additional race dates shall be determined by mutual agreement of the State and the Club. The Club will communicate with the State and seek approval of the anticipated event dates in advance of the Club's bid to host the events, provided however, the State acknowledges that the Club competes for events in an open forum and cannot commit to predetermined dates



prior to the successful bid for events. In the context of the historic use of Cannon by the Club, the State and the Club will cooperate in good faith such that the Club is able to achieve its race scheduling needs and the State is able to accommodate the scheduling of other events at Cannon. The State shall have final approval of all race dates and shall communicate that approval in a timely manner to the Club's President or designee.

(b) **State's Obligations.** The State shall provide, at its sole cost, the necessary manpower and equipment for the grooming of the race courses and may provide transportation of equipment, competitors and officials, in such manner so as to have as limited impact as possible on the use of Cannon by the general skiing public. Nothing herein shall be construed to require the State to hire, purchase or otherwise obtain manpower or equipment. To enhance communication between the State and the Club regarding the Club's racing needs, the Club may be invited to attend, and shall make all reasonable efforts to participate in Cannon's daily snow surface and operations meetings.

(c) **Club's Obligations.** The Club shall be responsible, at its sole cost, for refined course preparation, furnishing and setting control gates on the race courses, necessary trail police (including the control of public crossing of slopes during events), installing netting and other safety needs for racing, as well as gates, timing equipment, providing officials to run the races and communications equipment, or other appurtenances used to conduct such races; and reconditioning the race courses for public skiing promptly upon the termination of each race.

(d) **Race Day Lift Tickets.** The State shall provide a reasonable number of daily lift ticket vouchers, at no cost to the Club, for race workers' use for each of the races sponsored by the Club at Cannon. Race workers shall be required to pay a fee to Cannon when redeeming the vouchers. The State shall also provide daily lift tickets for racers at a fee to be set annually by the State. In setting the racer daily lift ticket fee, the State shall take into consideration the significant time and volunteer efforts expended by the Club and its members necessary to host a successful race and the fact that proceeds raised from hosting races constitutes a substantial portion of the Club's annual revenue.

## **9. TRAINING AND COMPETITION AREAS**

### **(a) General.**

(i) The State and the Club recognize that in order for the Club to operate, its members and guests require use of certain Cannon ski trails for training and competition. In the context of the historic use of Cannon by the Club, the State and the Club shall work cooperatively to designate certain trail(s) and lift(s) at Cannon for Club training and competition.

(ii) The training and/or competition venues are understood by both parties to be flexible in location, need, and scope. The training and competition venues for both the Club's and Cannon's home programs may regularly include terrain accessible via all available lifts. The need for specific Club training and competition venues shall be determined as part of the Annual Plan, and may be approved and/or implemented only by authority of the State. The Club may on occasion contract for extended hours for Baron's

Run/Taft Slope as part of the Annual Plan and contract with Cannon for extended lift hours subject to mutually agreeable terms.

(iii) Open and/or closed access to training and competition venues (during training and/or competition activities) shall be proposed at regularly scheduled meetings by the Club and pursuant to the Annual Plan, and/or weekly Operating Committee meeting discussions, and/or daily snow-plan discussions, may be approved and/or implemented only by authority of the State. In connection with approved trail closure, the Club shall post closing notices using its own signs and equipment (in good repair and brand-appropriate) with appropriate warning to promote guest, skier and staff safety in compliance with ski industry safety standards.

(iv) The State shall give priority to certain snowmaking and grooming operations in areas approved and designated for Club training and/or competition. In giving priority to certain snowmaking and grooming operations in areas designated for Club training and/or competition, the State shall not unreasonably impact or interfere with the general public's use of Cannon.

(b) Banshee Area. In consideration of the Club's having provided a portion of the funding used by the State to install snow making equipment on the Banshee slope, unless otherwise agreed to by the Club, the State agrees that it will give priority to certain snowmaking activities in the Banshee area. In giving priority to certain snowmaking and grooming operations in the Banshee area, the State shall not unreasonably impact or interfere with the general public's use of Cannon. Unless otherwise agreed to by the Club, the State shall make a reasonable effort to ensure that sufficient snow is made on Banshee and on access trails to Banshee from the Zoomer lift so that the Banshee area can be used for race training by December 25 of each year, weather and business operations concerns permitting. Unless otherwise agreed to by the Club, the Club may be permitted to close off the Banshee area to the general skiing public when it is conducting its normal race training activities. The Club shall not close off the area for more than four (4) hours on any single day. The Club shall install its own signs and equipment to post closing notices, with appropriate warning signs to promote skier safety. Notwithstanding the foregoing, upon completion of the Mittersill Project in accordance with Section 1(b)(ii), all rights and obligations of the State and the Club under this Section 9(b) shall automatically terminate.

(c) Baron's Run/Taft Slope. In consideration for the Club's undertakings to (i) raise capital for, (ii) contribute such capital to, and (iii) coordinate and oversee implementation of the Mittersill Plan and completion of the Mittersill Project, the State grants the Club the non-exclusive right to use Baron's Run/Taft Slope for morning and/or afternoon training blocks for gate training and races. The use of Baron's Run/Taft Slope will be determined annually in the Annual Plan, but the parties acknowledge and agree that the use of the Taft Slope by the Club will be concentrated on Friday, Saturday and Sunday and the use by Holderness School and other approved affiliation parties, subcontractors or assignees of the Club and the Club will be concentrated on Monday through Thursday. It is also expected that Baron's Run may be used periodically for mid-week training for Giant Slalom and weekend Super G and Giant Slalom races on a limited basis, using the Annual Plan and Cannon's daily and weekly operations plan meetings as the basis for scheduling such usage. On occasions when Baron's

Run or other areas at Cannon are being used by the Club or its approved affiliates, it is expected that the Taft Slope will be open to the public

(d) General Operations of Cannon. The State shall be responsible for Cannon's ongoing operation. This shall include coordinating snowmaking, grooming, operating all lifts, ski patrol and all other services required.

(e) The Club's staff, employees, members, as well as its approved affiliation parties, subcontractors and/or assignees, shall be subject to the policies and procedures in effect at Cannon from time to time. All of the employees of the Club shall attend "Cannon University" and agree to abide by the policies and procedures set forth in the Cannon Mountain Team Member Guide, as applicable to a non State employee, which applicability shall be reasonably determined in good faith by the State.

#### 10. ANNUAL PLAN.

Annually on or before October 1 of each year during the term of this Agreement, the Club shall prepare and deliver to the State a draft of an Annual Plan for the use of Baron's Run/Taft Slope and/or other areas at Cannon, for training and competitions by the Club and its approved affiliation parties, subcontractors and assignees, during the upcoming ski season. The Annual Plan shall be consistent with, and subject to, the provisions of this Agreement. Subject to this Agreement, including without limitation Section 9, the Annual Plan shall include mutually acceptable provisions related to timing of operations and appropriate delivery of services, including without limitation, snowmaking, grooming, use of chair lifts and the T-Bar lift accessing Baron's Run/Taft Slope and other areas at Cannon used for training and competition by the Club and its approved affiliation parties, subcontractors and assignees. The State and the Club shall diligently cooperate in good faith to (i) agree on and timely adopt a final Training and Race Annual Plan ("Annual Plan") which shall respond to the needs of the Club and its approved affiliation parties, subcontractors and assignees and the needs of the public with respect to the Baron's Run/Taft Slope and/or other areas at Cannon and projected hours of operation for the next ski season, and (ii) modify the Annual Plan, as reasonably required, during the ski season. The Annual Plan shall be subject to modification due to weather and other unforeseen circumstances. The State and the Club will each use reasonable efforts to implement the Annual Plan, including to make snow and groom Baron's Run/Taft Slope and/or other areas at Cannon as early as weather permits during each winter season.

#### 11. RACE TRAINING

(a) Exclusive Racing Program. Subject to Section 11(b), the State grants to the Club the exclusive right to conduct a race-training program at Cannon. The permissible age of entry level Club race training will be no younger than six (U8) years of age and extend up to a "Masters" or adult level of race training. The State and the Club's President or designee will consider requests for exceptions to this policy on a case-by-case basis. The Club will obtain approval of the State for any other training programs prior to instituting or accepting them.

(b) Exception. The Club and the State understand and agree that the State may offer a less intensive race training program for skiers who want to race recreationally or for

charitable events, and/or those skiers who do not wish to make time commitments required by a Club's program. The Club programs shall generally be for a full day and the State programs shall generally be for one half of a day or less.

## 12. USE OF BUILDING

(a) Use. The State grants to the Club the right to use, and the Club agrees to use, on a non-exclusive basis, "Ernie's Haus" as its headquarters for its race-training programs and for races. The Club shall arrange and pay for all cleaning and trash removal services/costs at Ernie's Haus on a regular and necessary basis throughout the term of this Agreement.

(b) Fees. The Club shall pay the State \$2,500 per year for building maintenance for each full year during the term of this Agreement. Said amount shall be paid in an annual lump sum to the State on or before each December 31 during the term of this Agreement (including all extensions). Should the Club exercise its renewal option in accordance with Section 2 and such renewal is approved by the State, the yearly building maintenance fee shall increase by 5% for each five year period in any renewal term. By way of illustration, and not limitation, the Club shall pay the State \$2,500/year for years 1-10 (with year one deemed to have commenced in December 2010), \$2,625/year for years 11-15, \$2,756/year for years 16-20, and \$2,894/year for years 21-25, and so on. The State will pay all other costs and expenses relating to Ernie's Haus, including utilities.

(c) Expansion. Due to its growing membership, the Club may desire to expand the facilities at Ernie's Haus or elsewhere at Cannon, from time-to-time to accommodate the increased membership and races. The State will cooperate with the Club to find economical solutions to space needs and help facilitate building expansion, either partially or fully funded by the Club if in the State's best interest. Nothing herein shall require the State to expend State funds to expand facilities at Cannon. At the time of any such expansion, the fees set forth in Section 12(b) above may be changed upon mutual agreement of the parties, subject to the approval of the Governor and Executive Council.

(d) Signage. The Club shall not post signage on the exterior of Ernie's Haus, or on the premises of Cannon, without the express written consent of the State.

(e) No Alcohol. The Club acknowledges that the use or service of alcoholic beverages (unless expressly approved by the State) or tobacco products at Cannon and/or in Ernie's Haus is prohibited.

(f) Building at Mittersill. The Club and the State acknowledge that a new building to serve as headquarters for the Club and its operations at Mittersill may become necessary in the future and that the State will work to, however, will not be obligated to, identify a land site to accommodate this, subject to all zoning, right of way, easements, traffic considerations, land availability and other relevant considerations, if requested. Details on funding, construction and use of such a building will be on such terms and conditions as may be negotiated and mutually agreed to by the parties in a separate definitive agreement.

## 13. PARKING

The State shall provide designated parking adequate for the Club's members and racers. The Club shall have primary responsibility to maintain an orderly parking area at and around Ernie's Haus during training and racing days. The State will make periodic inspections and provide direction to the Club's President or designee as to areas and methods of parking. Nothing herein shall require the State to expend State funds to expand parking facilities at Cannon.

#### 14. SPECIAL FUNCTIONS AND OTHER OBLIGATIONS

(a) Special Functions. The State may, at its discretion, allow the Club to conduct special functions at Cannon after written request has been received and approved by the State. The Club shall obtain written approval from the State for these special functions prior to making any commitment.

(b) Food. The Club shall be responsible for the engagement of caterers, obtaining necessary licenses/permits, arranging the parking, tickets, or any other incidentals necessary to any special function. The State shall provide copies to the Club of all then current State food and beverage, catering, and/or function vendor contracts in effect at Cannon, and the Club shall comply with such contracts and engage the services of the Cannon contracted vendor, or pay the vendor's buyout clause, if applicable. Notwithstanding the foregoing, the Club shall be permitted to engage in the sale of food and non-alcoholic beverages at Ernie's Haus on days on which competitions sponsored or organized by the Club take place. The Club assumes any and all liability relating to and/or resulting from such sales.

(c) Public Relations. The Club agrees to assist the State in the area of public relations and liaison with third parties from time to time upon request, including organizing and assisting with the running of interscholastic events and improving ski safety on the slopes and orderliness in the lift lines.

(d) Scholarships. The Club and the State recognize that the sport of downhill racing is an expensive activity. In an effort to promote the sport, the Club will make every effort to provide scholarship assistance to promote skiing among school children.

(e) Promotion. The Club shall incorporate the Cannon name and logo into its printed promotional materials and communications, and shall recognize and promote Cannon Mountain as its home ski area. Cannon shall recognize the Club as its sole competitive ski racing affiliate.

#### 15. DEFENSE AND INDEMNIFICATION

The Club shall defend and indemnify and save the State of New Hampshire harmless for any liability, damage, loss, cost or expense caused by the Club for injury to persons or property arising out of or incidental to the use of the areas as herein permitted. The Club further agrees to carry insurance coverage in the amount of at least Two Million Dollars (\$2,000,000) throughout the term of this Agreement. Said insurance shall include personal liability in the amount of at least One Million Dollars (\$1,000,000) for injuries to any one person and at least Two Million Dollars (\$2,000,000) for injury to two or more persons and at least Five Hundred Thousand Dollars (\$500,000) for damage to property. The Club shall deliver a certified copy of the policy

of insurance then in effect to the Division of Parks and Recreation throughout the term of this Agreement. The Club's insurance shall include coverage for liability resulting from the sale of food and non-alcoholic beverages by the Club as described in Section 14 above. Notwithstanding the foregoing or anything to the contrary contained herein, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, or the charitable immunity of the Club as a non-profit charity, which immunity is hereby reserved to the State and the Club, respectively. The limits set forth above may be subject to change as required by applicable New Hampshire law or regulations. The State shall deliver written notice to the Club of any change to any of the foregoing limits and the Club shall have 90 days following receipt of written notice thereof, to comply with any such change. This provision shall survive any termination of the Agreement.

#### 16. AMENDMENTS

Subject to approval of the Governor and Executive Council and without the need for additional consideration, the State and the Club may amend this Agreement upon mutual written agreement. The amended provision shall be incorporated in writing into this Agreement.

#### 17. SEASON TICKETS; PUBLICATION OF RATES

The State shall provide, at no cost to the Club, for promotional consideration, five season passes per season to the Club. These passes shall be used in support of skiing improvement programs. The Club shall submit to the State the names of the individuals and their functions with the Club whom the Club wishes to receive the five season passes. These season passes shall not be used in trade for goods and services by the Club, but may be used for charitable purposes of the Club (which may include using them as raffle prizes, donating them as auction items, or permitting Club members to bid for and purchase them, for Club fundraising purposes). Paid employees of the Club shall be granted the same ski privileges as their full time or part time equivalent counterparts who are employees of Cannon. By November 1 of each year during the term of this Agreement, the Club shall provide the State with a list of its paid employees and shall update such list immediately upon the hiring, termination, or departure of any Club employee. The Club shall not publish or distribute literature with rates pertaining to prices charged at Cannon without prior written approval of the State.

#### 18. PRESS RELEASES

The Club shall coordinate and consult with the State with respect to the text of all press releases to be issued by the Club which relate to Cannon, the use of Cannon for skiing, training, racing or any other event to take place at Cannon.

#### 19. FINANCIAL STATEMENTS

The Club shall deliver a report of its membership and activities following the end of each ski season to the State. The report shall be delivered to the State no later than July 1 of each year of the special use term for the preceding ski season. The Club shall deliver a copy of its audited financial statements, as provided to the Club's Board of Directors, following the end of each fiscal year to the Director.

**20. 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, including the Original Agreement.

**21. CHOICE OF LAW**

This Agreement shall be deemed to have been entered into in New Hampshire and shall be interpreted under New Hampshire law.

**22. THIRD PARTIES**

Notwithstanding anything to the contrary contained herein, the parties hereto do not intend this Agreement to benefit any third parties and this Agreement shall not, and shall not be construed to, confer any such benefit on any third party.

**23. SUBSEQUENT MATERIAL CHANGE OF FINANCIAL CIRCUMSTANCES**

If during the term of this Agreement there is a substantial, material and continued economic enhancement in the financial affairs and operating budget of the Club due to a material change in the manner of business operations of the Club, and the parties in good faith agree that the economic terms of this Agreement have become unreasonable or unfair to the State, and that the Club is being unjustly enriched by such economic terms, then the Club and the State shall negotiate in good faith to modify such economic terms in a manner which is more economically beneficial to the State.

**24. NOTICE**

Any notice, consent or approval required under this Agreement shall be provided by first class mail, personal delivery, by nationally recognized overnight courier or email to:

**The State:**

**Commissioner**

**DRED**

**172 Pembroke Road**

**Concord, NH 03301**

**Email: \_\_\_\_\_**

**Manager**

**Cannon Mountain Aerial Tramway and Ski Area**

**9 Franconia Notch Parkway**

**Franconia, NH 03580**

**Email: \_\_\_\_\_**

**The Club:**

**President**

**Franconia Ski Club**

**P.O. Box 462**

**Franconia, NH 03580**

**Email: \_\_\_\_\_**

or such other address as any party hereto shall provide to the other parties, in accordance with this Section 24.

**25. REPRESENTATIVES; APPROVALS**

Unless otherwise specified herein, day-to-day dealings and interactions between the State and the Club shall be handled by the Manager and the Club President or his designee. Unless otherwise expressly provided for herein, all consents and approvals required under this Agreement shall be approved in writing (which shall include email confirmation) (i) on behalf of the State by the Commissioner or the Manager, and (ii) on behalf of the Club, by any officer of the Club.

**26. CONSIDERATION OF PUBLIC PURPOSES**

The Club hereby acknowledges that Cannon is managed by the State for a broad range of public purposes and hereby agrees to support the State's management decisions in good faith and also agrees that the rights and privileges granted herein shall not be used as a basis to oppose that management and corresponding actions taken by the State to the extent such management and corresponding actions are not inconsistent with this Agreement and the rights and privileges granted to the Club hereunder.



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of  
1/24, 2013.


STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES & ECONOMIC DEVELOPMENT  
DIVISION OF PARKS AND RECREATION


  
Philip A. Bryce, Acting Commissioner

  
Witness

1/24/13  
Date

FRANCONIA SKI CLUB

  
Brian Koeller, President  
Duly Authorized

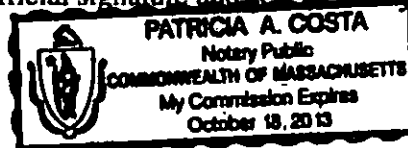
  
David Fitzgerald, Vice President  
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS  
County of Suffolk

On this 23<sup>rd</sup> day of January, 2013 before me, the undersigned notary public, personally appeared Brian Koeller, President of Franconia Ski Club, proved to me through satisfactory evidence of identification, which was License (state form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

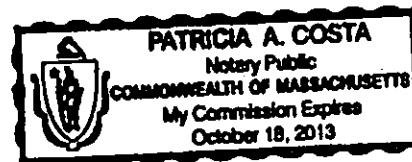
  
(affix official signature and seal of notary)

COMMONWEALTH OF MASSACHUSETTS  
County of Suffolk



On this 23<sup>rd</sup> day of January, 2013 before me, the undersigned notary public, personally appeared David Fitzgerald, Vice President of Franconia Ski Club, proved to me through satisfactory evidence of identification, which was License (state form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
(affix official signature and seal of notary)



Approval as to form, substance and execution by the Attorney General's Office

  
  
Civil Bureau Attorney - NH Attorney General's Office

1/25/13  
Date

Governor and Executive Council Approval: Date \_\_\_\_\_

Item # \_\_\_\_\_

## **Exhibit A**

### **Mittersill Plan Content**

#### **The Mittersill Plan shall consist of:**

- Engineering, permitting, pre-planning, contracting, liability coverage, and site details pertinent to the project and the necessary snowmaking and electrical connectivity between the Cannon Mountain and Mittersill terrain areas;
- Engineering, permitting, contracting, site work, and final grade work on the Baron's Run, Skyline, Ridge Run and Taft Slalom / competition slope trails at Mittersill, in addition to the connector trail from Ridge Run to Baron's Run;
- Engineering, permitting, contracting, site work, and procurement and installation of appropriate snowmaking equipment (air/water pipe, air/water hydrants, hoses/nozzles, and appropriate land guns, tower guns, fan guns, etc. as specified by Sno-Matic Engineering plan) on said trails;
- Engineering, permitting, site work, and procurement and installation of appropriate snowmaking plant equipment (compressor, electric drive, cooling water pump, piping, and associated componentry, and power / pedestals for fan gun technology as spec'd with the project and any/all other power plant requirements as specified by Sno-Matic Engineering);
- Engineering, permitting, site work, final grade work, and procurement and installation of appropriate lift equipment for the area in question: Taft Slalom / competition slope and lower areas at Mittersill (T-Bar lift meeting minimum hp and gearing requirements as specified via design/build contract with New Hampshire Tramway Safety Board approved PE);
- Oversight and management of said project prior to completion and subsequent surrender to the State of New Hampshire of the completed project and equipment implementation

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 FRANCONIA SKI CLUB is a New Hampshire nonprofit corporation formed April 21, 1933. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 24<sup>th</sup> day of January A.D. 2013

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

FRANCONIA SKI CLUB

Secretary's Certificate

I, Annie Lennon, do hereby certify that I am the duly elected, qualified and acting Secretary of Franconia Ski Club, a New Hampshire corporation (the "Company"), and that:

1. The following-named individuals are officers of the Company, holding the offices set forth opposite their respective names:

<u>Name</u>	<u>Title</u>
Brian Koeller	President
David Fitzgerald	Vice President

2. Attached hereto as Exhibit A is a true, correct and complete copy of the resolution adopted by unanimous consent of the Board of Directors of the Company on January 23, 2013, which resolution has not been amended or repealed and is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 23<sup>rd</sup> day of January, 2013.

Annie Lennon  
Annie Lennon  
Secretary

EXHIBIT A

**RESOLVED:** That the Amended and Restated Agreement between Franconia Ski Club (the "Company") and the State of New Hampshire relating to the use by the Club of certain facilities at Cannon Mountain as distributed to the members of the Board of Directors on January 23, 2013, is hereby approved, ratified and confirmed and that the execution and delivery of such agreement by the President and Vice President on behalf of the Company are hereby approved, ratified and confirmed, and the performance by the Company of its obligations under such agreement and all other acts and things, deemed necessary, convenient or desirable in his or her discretion to carry out the transactions, agreements and documents contemplated thereby, are hereby authorized, approved, ratified and confirmed.

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE OF BIRTH 11/09/2012

ADJUDICATOR: Frazier Insurance Inc.  
Box 1250, Midlothian VA 23113

For Service contact:  
Lawson Insurance LLC (800)823-6477  
1643 24th St West #110, Billings MT 59102

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED: Sports & Recreation Providers Risk Purchasing Group  
and its Participating Member-  
National Ski School Program, Inc.-ALPINE  
Model of Individual Members -  
1302 24th St West #169, Billings MT 59102  
NSSP Member: Franconia Ski Club

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: United States Fire Ins Co	
INSURER B: Berkley Life & Accident Ins Co	
INSURER C:	
INSURER D:	
INSURER E:	516

## COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Includes Athletic Participants <input type="checkbox"/> DENY AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER <input checked="" type="checkbox"/> LOC	SRPGAPM-101 Cert#USP105414	11/01/12	11/01/13	EACH OCCURRENCE: \$1,000,000. DAMAGE TO RENTED PREMISES (Per occurrence): \$300,000. MED EXP (Any one person): \$5,000. PERSONAL & ADV INJURY: \$1,000,000. GENERAL AGGREGATE: \$5,000,000. PRODUCTS - COMPOUND AGG: \$5,000,000.
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	SRPGAPM-101 Cert#USP105414	11/01/12	11/01/13	COMBINED SINGLE LIMIT (Per accident): \$1,000,000. BODILY INJURY (Per person): \$ BODILY INJURY (Per accident): \$ PROPERTY DAMAGE (Per accident): \$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT: \$ OTHER THAN AUTO ONLY: EA ACC: \$ AGG: \$
	<input type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION				EACH OCCURRENCE: \$ AGGREGATE: \$ \$ \$
B	Excess Accident Medical Protection - Deductible-\$500.- Reporting Deadline-	PAILO0245590-001 52 week Benefit Period 90 days from date of incident (accident)	11/01/12	11/01/13	Maximum Medical Benefit per claim- \$25,000. AD&D Benefit per claim- \$2,500.

OTHER NSSP Member- Franconia Ski Club, Box 462, Franconia NH 03580  
ADDED AS INSURED ALPINE NSSP MEMBER FROM NOV 1, 2012-2013 Including coverage for NOHA Instruction of Ski Backing Skills, Dryland Fitness Instruction, Summer/Fall Ski Camps

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

\*CGL policy deductible: \$0.00 each Bodily Injury or Property Damage claim.  
\*Participant Legal Liability coverage for participants in SKI RACES/ COMPETITIONS REQUIRES that each participant (or their parent/guardian) must sign a release/waiver form PRIOR to competing or practicing.

CERTIFICATE HOLDER IS AN ADDITIONAL INSURED buy only as respects the operations of the Named Insured NSSP Member - Franconia Ski Club.

## CERTIFICATE HOLDER

Cannon Mountain Ski Area  
Park Headquarters  
Franconia Notch State Park  
260 Tromway Drive  
Franconia NH 03580

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREON, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*James T. Lawson*





GEORGE M. BALD  
Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
**OFFICE of the COMMISSIONER**  
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411  
FAX: 603-271-2629  
george.bald@dred.state.nh.us

November 24, 2010

His Excellency Governor John H. Lynch  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

REQUESTED ACTION

- 1) Authorize the Department of Resources and Economic Development, Division of Parks and Recreation, Cannon Mountain to enter into an Agreement with the Franconia Ski Club of Franconia, NH to continue a competitive ski racing and snow sports and skier education program at Cannon Mountain Ski Area for a period of ten (10) years from December 8, 2010 through December 7, 2020, with the option to renew for three additional five-year periods subject to Governor and Executive Council approval.
- 2) Further authorize the Department to grant to the Franconia Ski Club the right to use on a non-exclusive basis "Ernie's Haus" as its headquarters, over the ten (10) year period, in accordance with the terms of this Agreement.
- 3) Further authorize the Department to accept a yearly payment of \$2,500 for building maintenance, for a total amount of \$25,000 over the ten (10) year period, to be made by the Franconia Ski Club in accordance with the terms of the Agreement.

EXPLANATION

The Franconia Ski Club ("Club") has assisted and cooperated with the State in developing and operating a successful competitive ski racing and snow sports and skier education program at Cannon Mountain for decades. The Club has also utilized "Ernie's Haus" as its headquarters, which was built by funds donated by a former member, and has allowed the Club to work closely with Cannon staff. Therefore, your approval of this Agreement will ensure the continuation of this relationship.

The Attorney General's Office has approved this Agreement as to form, substance and execution.

Respectfully submitted,

George M. Bald  
Commissioner

JD:GMB:lm1

## AGREEMENT

The State of New Hampshire, Department of Resources and Economic Development

And

Franconia Ski Club

This Agreement, effective December 8, 2010 ("Effective Date"), by and between the State of New Hampshire, Department of Resources and Economic Development, George Bald, Commissioner, hereunto duly authorized through the Division of Parks and Recreation, Gail Wolek, Interim Director ("Director"), and further acknowledged and agreed to by the Manager ("Manager") of Cannon Mountain ("Cannon") together, hereinafter referred to as "the State," and Franconia Ski Club, Franconia, New Hampshire, by William Husson, President, hereinafter referred to as the "Club."

### RECITALS

Whereas, the State owns and operates Cannon Mountain ski area, located in Franconia, New Hampshire, for the general purpose of providing winter recreation for residents and out-of-state visitors; and


Whereas, the Club was established in 1933 and has been developing and operating a successful competitive ski racing and competitive snow sports and skier education program at Cannon for decades, which program has instilled in generations of skiers and sportsmen and their families a passion for alpine skiing and snow sports, generally, and has created strong loyalty to Cannon, Franconia and the State of New Hampshire, in particular; and

Whereas, an example of the loyalty of the Club and its members to Cannon is the fact that a former member of the Club donated the funds to construct the Club's headquarters, "Ernie's Haus", at Cannon and many of the members of the Club are Cannon season ticket holders year after year; and

Whereas, the State acknowledges that operating a competitive ski racing and snow sports program requires specific knowledge, training, experience and passion, all of which are possessed by the Club and its members; and

Whereas, the State desires continued assistance from the Club to stimulate skiing and snow sports at Cannon and to encourage and attract visitors and tourist dollars to Cannon and the State of New Hampshire; and


Whereas, the Club desires to continue to assist and cooperate with the State to stimulate skiing and snow sports at Cannon by continuing to operate, grow and invest in its competitive ski racing and snow sports program at Cannon; and



Whereas, the Club and the State desire to increase the skier and snow sportsmen visits at Cannon through the Club's programs and events, and believe that a long term agreement toward that mutual objective is in the best interests of both the State and the Club.

Now therefore, the parties hereby agree that all functions, events, and use of Cannon and its property and facilities involving the Club shall be governed by and subject to the following terms and conditions:

#### **1. TERM**



Unless earlier terminated pursuant to Sections 2 and 3 below, the term of this Agreement shall be ten years, commencing on December 8, 2010 and ending on December 7, 2020, with three five-year renewal options. Each five-year renewal option may be exercised by the Club by written notice to the State at least six months prior to the termination or expiration date of the then-current term. In order to be effective, each renewal option so exercised must be accepted and approved by the Governor and Executive Council. The State undertakes to seek such acceptance and approval reasonably promptly following its receipt of the Club's written renewal notice. The Club's rights under this Agreement shall remain in full force and effect notwithstanding any change in operations or management of Cannon, including without limitation, (i) the grant by the State to a third party of any management or operational rights with respect to Cannon, or (ii) the execution by the State of any lease or other contract with a third party relating to the use or management of Cannon.

#### **2. TERMINATION BY THE CLUB**

The Club may terminate this Agreement at any time, for any or no reason, upon sixty days written notice to the State.

#### **3. TERMINATION BY THE STATE**

Subject to Section 4, the State may terminate this Agreement upon sixty days written notice to the Club if the Club breaches this Agreement in any material respect, and fails to cure such breach within thirty days following written notice of such breach by the State.

#### **4. DETERMINATION OF BREACH**

The determination of the occurrence of a breach by the Club pursuant to Section 3 above shall be made in good faith by the State, acting reasonably, after an investigation of the circumstances of the breach.

#### **5. ASSIGNMENT AND SUBCONTRACTING**

Except as permitted under this Agreement, the Club shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of the State. Except as permitted under this Agreement, the Club shall not subcontract any of its rights or the performance of any of its obligations under this Agreement, without the prior written consent of the State.

The Club may, with the prior written consent of the State acting through the Manager, from time-to-time affiliate with, and/or offer access to Club facilities and services at Cannon (including for a fee), to other snow sports groups to further the mission and purpose of the Club and the purposes of this Agreement. The Club shall require that all such other snow sports groups abide by all provisions of this Agreement and that all the activities of such other snow sports groups at Cannon shall be subject to the direction of the Club. The Club shall notify the Manager of all such proposed affiliations in writing prior to October 1 of each ski season or no later than 30 days prior to any newly proposed affiliation(s). In considering whether to approve such affiliations, the State, acting through the Manager, shall consider whether such an affiliation furthers Cannon's mission and whether it may conflict or interfere with any of Cannon's then existing relationships.

#### **6. COMPLIANCE WITH LAW**

The Club shall comply with the statutes and regulations of the Federal and State governments and with the ordinances, by-laws and regulations of the county and municipal governments applicable to the Club. The Club shall also comply with all applicable regulations of the New Hampshire Department of Resources and Economic Development. The Club shall procure all necessary licenses and permits required in connection with its operations under this Agreement.

#### **7. THE CLUB'S RELATIONSHIP TO THE STATE**

In the performance of this Agreement the Club is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Club nor any of its officers, employees, agents, or members shall have the authority to bind the State nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State to its employees. To enhance communication between the State and the Club the Club shall be invited to attend, and shall make all reasonable efforts to participate in, Cannon's daily/weekly meetings.

#### **8. CONFLICT OF INTEREST**


No officer, member, employee or representative of the Club, and no representative, officer or employee of the State, including the Manager, who exercises any functions or responsibilities in connection with any approval, consent or determination under or pursuant to this Agreement, shall so participate if such approval, consent or determination would personally benefit such officer, member, employee or



representative or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested.

## **9. SKI RACES**

The Club shall obtain the approval of the State, acting through the Manager, of all race and/or special activity dates on which the Club shall be permitted to hold events during the ski season. Additional race dates shall be determined by mutual agreement of the Manager and the Club. The Club will communicate with the Manager and seek approval of the anticipated event dates in advance of the Club's bid to host the events, provided however, the State acknowledges that the Club competes for events in an open forum and cannot commit to predetermined dates prior to the successful bid for events. The State and the Club will cooperate in good faith such that the Club is able to achieve its race scheduling needs and the State is able to accommodate the scheduling of other events at Cannon. The State, acting through the Manager, shall have final approval of all race dates and shall communicate that approval in a timely manner to the Club's President or designee.




The State shall provide, at its sole cost, the necessary manpower and equipment for the grooming of the race courses and the transportation of equipment, competitors and officials, in such manner so as to have as limited impact as possible on the use of Cannon by the skiing public. Nothing herein shall be construed to require the State to hire, purchase or otherwise obtain manpower or equipment. To enhance communication between the State and the Club regarding the Club's racing needs, the Club shall be invited to attend, and shall make all reasonable efforts to participate in Cannon's daily snow surface and operations meetings.

The Club shall be responsible, at its sole cost, for refined course preparation, furnishing and setting control gates on the race courses, necessary trail police, officials to run the races and communications equipment, or other appurtenances used to conduct such races; and reconditioning the race courses for public skiing promptly upon the termination of each race.

The State shall provide a reasonable number of daily lift ticket vouchers, at no cost to the Club, for race workers' use for each of the races sponsored by the Club at Cannon. Race workers shall be required to pay a fee when redeeming the vouchers. The State shall also provide daily lift tickets for racers at a fee to be set annually by the State. In setting the racer daily lift ticket fee, the State shall take into consideration the significant time and volunteer efforts expended by the Club and its members necessary to host a successful race and the fact that proceeds raised from hosting races constitutes a substantial portion of the Club's annual revenue.

## **10. TRAINING AND COMPETITION AREAS**



The State and the Club recognize that in order for the Club to operate, its members and guests require use of certain Cannon ski trails for training and competition.

The State and the Club shall work cooperatively to designate certain trail(s) and lift(s) at Cannon for Club training and competition.

The training and/or competition venues are understood by both parties to be flexible in location, need, and scope. The training and competition venues for both the Club's and Cannon's home programs may regularly include terrain accessible via all available lifts. The need for specific Club training and competition venues shall be proposed at regularly scheduled meetings by the Club's President or designee, and may be approved and/or implemented only by authority of the State, acting through the Manager, or his designee.

Open and/or closed access to training and competition venues (during training and/or competition activities) shall be proposed at regularly scheduled meetings by the Club, and may be approved and/or implemented only by authority of the State, acting through the Manager, or his designee. If trail closure or partial closure is approved, then the Club shall not close off a specific area for more than (i) four (4) hours on any given day for training purposes, or (ii) the duration of a scheduled competition. In connection with approved trail closure, the Club shall post closing notices using its own signs and equipment (in good repair and brand-appropriate) with appropriate warning to promote guest, skier and staff safety.

The State shall give priority to certain snowmaking and grooming operations in areas approved and designated for Club training and/or competition. In giving priority to certain snowmaking and grooming operations in areas designated for Club training and/or competition, the Manager shall not unreasonably impact or interfere with the general public's use of Cannon.

In recognition and consideration of the Club having provided a portion of the funding used by the State to install snow-making equipment on the Banshee slope, the State agrees that it will give priority to certain snowmaking activities in the Banshee area. In giving priority to certain snowmaking and grooming operations in the Banshee area, the Manager shall not unreasonably impact or interfere with the general public's use of Cannon.

The State, acting through the Manager shall make a reasonable effort to ensure that sufficient snow is made on Banshee and on access trails to Banshee from the Zoomer lift so that the Banshee area can be used for race training by December 25 of each year, weather and business operations concerns permitting. The Club shall be permitted to close off the Banshee area to the general skiing public when it is conducting its normal race training activities. The Club shall not close off the area for more than four (4) hours in any given day. The Club shall use its own signs and equipment to post closing notices, with appropriate warning signs to promote skier safety.

## 11. RACE TRAINING

Subject to the next paragraph, the State hereby grants to the Club the exclusive right to conduct a race-training program at Cannon. The permissible age of entry level Club race training will be no younger than six (JVI Level) years of age and extend up to a "Masters" or adult level of race training. The Manager and the Club's President or designee will consider requests for exceptions to this policy on a case-by-case basis. The Club will obtain approval of the Manager for any other training programs prior to instituting or accepting them.

The Club and the State understand and agree that the State may offer a less intensive race training programs for skiers who want to race recreationally and/or do not wish to make time commitments required by a Club's program. The Club programs shall generally be for a full day and the State programs shall generally be for one half of a day or less.

## 12. USE OF BUILDING

The State grants to the Club the right to use, and the Club agrees to use, on a non-exclusive basis, "Ernie's Haus" as its headquarters for its race-training programs and for races. The Club shall arrange and pay for all cleaning and trash removal services/costs at Ernie's Haus on a regular and necessary basis throughout the term of this Agreement.

The Club shall pay the State \$2,500 per year for building maintenance for each full year during the term of this Agreement. Said amount shall be paid in an annual lump sum to the State on or before each December 31 during the term of this Agreement. Should the Club exercise its renewal option in accordance with Section 1 and such renewal is approved by the State, the yearly building maintenance fee shall increase by 5% for each 5-year renewal term. By way of illustration, and not limitation, the Club shall pay the State \$2,500/year for years 1-10, \$2,625/year for years 11-15, \$2,756/year for years 16-20, and \$2,894/year for years 21-25. The State will pay all other costs and expenses relating to Ernie's Haus, including utilities.

Due to its growing membership, the Club may desire to expand the facilities at Ernie's Haus or elsewhere at Cannon, from time-to-time to accommodate the increased membership and races. The State will cooperate with the Club to find economical solutions to space needs and help facilitate building expansion, either partially or fully funded by the Club. Nothing herein shall require the State to expend State funds to expand facilities at Cannon.

The Club shall not post signage on the exterior of Ernie's Haus, or on the premises of Cannon, without the express written consent of the State, acting through the Manager.

The Club acknowledges that the use or service of alcoholic beverages (unless expressly approved by the State, acting through the Manager) or tobacco products in or around Ernie's Haus is prohibited.

### 13. PARKING

The State shall provide designated parking adequate for the Club's members and racers. The Club shall have primary responsibility to maintain an orderly parking area at and around Ernie's Haus during training and racing days. The Manager will make periodic inspections and provide direction to the Club's President or designee as to areas and methods of parking. Nothing herein shall require the State to expend State funds to expand parking facilities at Cannon.

### 14. SPECIAL FUNCTIONS AND OTHER OBLIGATIONS

The State may, at its discretion, allow the Club to conduct special functions at Cannon after written request has been received and approved by the Manager. The Club shall obtain written approval from the Manager for these special functions prior to making any commitment.

The Club shall be responsible for the engagement of caterers, obtaining necessary licenses/permits, arranging the parking, tickets, or any other incidentals necessary to any special function. The State shall provide copies to the Club of all then current State food and beverage, catering, and/or function vendor contracts in effect at Cannon, and the Club shall comply with such contracts and engage the services of the Cannon contracted vendor, or pay the vendor's buyout clause, if applicable. Notwithstanding the foregoing, the Club shall be permitted to engage in the sale of food and non-alcoholic beverages at Ernie's Haus on days on which competitions sponsored or organized by the Club take place. The Club assumes any and all liability relating to and/or resulting from such sales.

The Club agrees to assist the State in the area of public relations and liaison with third parties from time to time upon request, including organizing and assisting with the running of interscholastic events and improving ski safety on the slopes and orderliness in the lift lines.


The Club and the State recognize that the sport of downhill racing is an expensive activity. In an effort to promote the sport, the Club will make every effort to provide scholarship assistance to promote skiing among school children.

The Club shall make every effort to incorporate the Cannon name and logo into its printed promotional materials and communications, and shall recognize and promote Cannon Mountain as its home ski area. Cannon shall recognize the Club as its sole competitive ski racing affiliate.

### 15. DEFENSE AND INDEMNIFICATION

The Club shall defend and indemnify and save the State of New Hampshire harmless for any liability, damage, loss, cost or expense caused by the Club for injury to persons or property arising out of or incidental to the use of the areas as herein permitted. The Club further agrees to carry insurance coverage in the amount of at least Two






Million Dollars (\$2,000,000) throughout the term of this Agreement. Said insurance shall include personal liability in the amount of at least One Million Dollars (\$1,000,000) for injuries to any one person and at least Two Million Dollars (\$2,000,000) for injury to two or more persons and at least Five Hundred Thousand Dollars (\$500,000) for damage to property. The Club shall deliver a certified copy of the policy of insurance then in effect to the Division of Parks and Recreation throughout the term of this Agreement. The Club's insurance shall include coverage for liability resulting from the sale of food and non-alcoholic beverages by the Club as described in Section 14 above. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, or the charitable immunity of the Club as a non-profit charity, which immunity is hereby reserved to the State and the Club, respectively. This provision shall survive any termination of the Agreement.

#### 16. AMENDMENTS

Subject to approval of the Governor and Executive Council and without the need for additional consideration, the State and the Club may amend this Agreement upon mutual written agreement. The amended provision shall be incorporated in writing into this contract.

#### 17. SEASON TICKETS; PUBLICATION OF RATES



The State shall provide, at no cost to the Club, for promotional consideration, five season passes per season to the Club. These passes shall be used in support of skiing improvement programs. The Club shall submit to the Manager the names of the individuals and their functions with the Club whom the Club wishes to receive the five season passes. These season passes shall not be used in trade for goods and services by the Club. Paid employees of the Club shall be granted the same ski privileges as their full time or part time equivalent counterparts who are employees of Cannon. By December 1 of each year during the term of this Agreement, the Club shall provide the State with a list of its paid employees and shall update such list immediately upon the hiring, termination, or departure of any Club employee.

The Club shall not publish or distribute literature with rates pertaining to prices charged at Cannon without prior written approval of the Manager.

#### 18. FINANCIAL STATEMENTS

The Club shall deliver a report of its membership and activities following the end of each ski season to the Manager. The report shall be delivered to the Manager no later than July 1<sup>st</sup> of each year of the lease term for the preceding ski season. The Club shall deliver a copy of its financial statements following the end of each fiscal year to the Director upon request.



#### 19. ENTIRE AGREEMENT

## 21. THIRD PARTIES





## 22. NOTICE

Any notice required under this Agreement shall be provided to:

**The State:**


George M. Bald  
(or his successor)  
Commissioner  
DRED  
172 Pembroke Road  
Concord, N.H. 03301

John M. DeVivo  
(or his successor)  
Manager  
Cannon Mountain Aerial Tramway and Ski Area  
9 Franconia Notch Parkway  
Franconia, N.H. 03580

**The Club:**

President  
Franconia Ski Club  
P.O. Box 462  
Franconia, NH 03580

## 23. REPRESENTATIVES



Unless otherwise specified herein, day-to-day dealings and interactions between the State and the Club shall be handled by the Manager and the Club President or his designee.

*Signature pages to follow.*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of  
~~December 29~~ November 29, 2010.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES & ECONOMIC DEVELOPMENT  
DIVISION OF PARKS AND RECREATION

George M. Bald  
George M. Bald, Commissioner

Gail Wolek  
Gail Wolek, Interim Director

John DeVivo  
John DeVivo, Manager, Cannon Mountain

Linda Linn  
Witness

11/29/10  
Date

Margie Cate  
Witness

Dean M. Linn  
Witness

11/29/10  
Date

FRANCONIA SKI CLUB

William Husson  
William Husson, President  
Duly Authorized

William Scatchrd  
William Scatchrd, Vice President  
Duly Authorized

William Husson  
Witness

11/27/10  
Date

William Scatchrd  
Witness

11/27/10  
Date

State of New Hampshire  
County of Grafton

On this the 21<sup>st</sup> day of November, 2010, before me Bettina I. Virgin, the undersigned officer, personally appeared William Husson, President known me (or satisfactorily proven) to be the subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

Bettina I. Virgin  
Notary Public/Justice of the Peace

My Commission Expires:

BETTINA I. VIRGIN  
NOTARY PUBLIC  
STATE OF MAINE  
My Commission Expires Mar. 17, 2011

State of New Hampshire  
County of Grafton

On this the 27<sup>th</sup> day of November, 2010, before me Bettina I. Virgin, the undersigned officer, personally appeared William Scatchard, Vice President, known me (or satisfactorily proven) to be the subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

Bettina I. Virgin  
Notary Public/Justice of the Peace

My Commission Expires:

BETTINA I. VIRGIN  
NOTARY PUBLIC  
STATE OF MAINE  
My Commission Expires Mar. 17, 2011

Approval as to form, substance and execution by the Attorney General's Office

ACB  
Senior Assistant Attorney General

11/29/2010  
Date

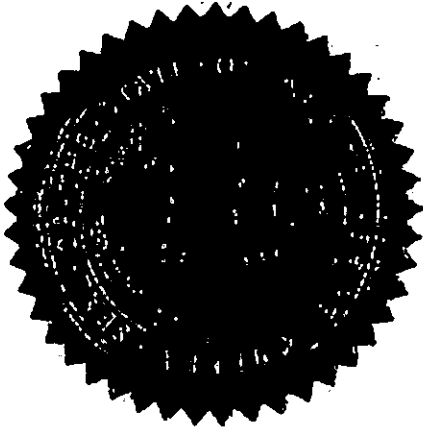
Governor and Executive Council Approval: Date \_\_\_\_\_

Item # \_\_\_\_\_

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 FRANCONIA SKI CLUB is a New Hampshire nonprofit corporation formed  
April 21, 1933. I further certify that it is in good standing as far as this office is  
concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 29<sup>th</sup> day of November A.D. 2010

A handwritten signature in cursive script, appearing to read "Wm M Gardner".


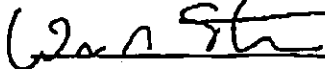
William M. Gardner  
Secretary of State

**FRANCONIA SKI CLUB  
SECRETARY'S CERTIFICATE**

Dated as of November 29, 2010

The undersigned, Annie Lennon, does hereby certify in her official capacity that she is the duly elected Secretary of Franconia Ski Club, a New Hampshire non profit corporation (the "Club"), and that, as such, she is duly authorized to execute and deliver this Certificate on behalf of the Club, and she does further certify in her official capacity on behalf of the Club as follows:

1. Attached hereto as Exhibit A is a true, complete and correct copy of certain resolutions duly adopted by the Board of Directors of the Club, which resolutions have not been supplemented, amended, modified or rescinded since the date they were adopted and such resolutions remain in full force and effect on the date hereof.
2. Each of the persons named below (i) is a duly elected officer of the Club and (ii) holds the respective offices set forth after his name below. The signature appearing opposite the person's name below is his genuine signature.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
William Husson	President,	
William Scatchard	Vice President	

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written  
above.

By: Anne B. Lennon  
Name: Anne B. Lennon  
Title: Secretary



**EXHIBIT A**

**RESOLUTIONS**

**VOTED:** That the execution, delivery and performance by the Club of that certain agreement with the State of New Hampshire with respect to the use by the Club of certain facilities and premises located at Cannon Mountain, as described to the directors at the meeting, is hereby ratified, confirmed and approved; and further

**VOTED:** That the President and the Vice President of the Club, acting together, are hereby authorized in the name and on behalf of the Club, to execute, deliver and effect all agreements, documents, instruments, orders, directions, certificates, receipts, forms and other papers or instruments, to incur such expenses and to perform or cause to be performed all such other and further acts, as the officers so acting may in their absolute discretion approve in connection with the execution, delivery or performance by the Club of, or the consummation of the transactions contemplated by, the foregoing resolution, or for the purpose of carrying out the intent and purpose thereof or hereof, the execution, acknowledgment or delivery thereof, the incurrence of any such expense or the taking of any such action to be conclusive evidence that the same has been authorized, ratified, confirmed and approved by the Board; and further

**VOTED:** That any and all actions taken and any and all documents, agreements and instruments executed and delivered prior to the date hereof on behalf of the Club by any officer in connection with the foregoing, are hereby ratified, confirmed and approved.

## COVERAGES

POLICY NUMBER		POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
<p><b>TYPE OF INSURANCE</b></p> <p><b>GENERAL LIABILITY</b></p> <p><b>COMMERCIAL GENERAL LIABILITY</b></p> <p><b>CLAIMS MADE</b> <input checked="" type="checkbox"/> <b>OCCUR</b></p> <p><b>Includes Athletic Participants</b></p> <p><b>GEN'L AGGREGATE LIMIT APPLIES PER:</b></p> <p><input type="checkbox"/> <b>POLICY</b> <input type="checkbox"/> <b>PROD-ACCY</b> <input checked="" type="checkbox"/> <b>LDC</b></p>					
GL WRD 180035		12:01A 11/01/10	12:01A 11/01/11	<p><b>EACH OCCURRENCE</b> \$ 1,000,000.</p> <p><b>DAMAGE TO RENTED PREMISES (EA occurrence)</b> \$ 300,000.</p> <p><b>MED EXP (Any one person)</b> \$ 5,000.</p> <p><b>PERSONAL &amp; ADV INJURY</b> \$ 1,000,000.</p> <p><b>GENERAL AGGREGATE</b> \$ 5,000,000.</p> <p><b>PRODUCTS - COMPROP AGG</b> \$ 5,000,000.</p>	
<p><b>AUTOMOBILE LIABILITY</b></p> <p><input type="checkbox"/> <b>ANY AUTO</b></p> <p><input type="checkbox"/> <b>ALL OWNED AUTOS</b></p> <p><input type="checkbox"/> <b>SCHEDULED AUTOS</b></p> <p><input checked="" type="checkbox"/> <b>HIREN AUTOS</b></p> <p><input checked="" type="checkbox"/> <b>NON-OWNED AUTOS</b></p>					
GL WRD 180035		11/01/10	11/01/11	<p><b>COMBINED SINGLE LIMIT (EA accident)</b> \$ 1,000,000.</p> <p><b>BODILY INJURY (Per person)</b> \$</p> <p><b>BODILY INJURY (Per accident)</b> \$</p> <p><b>PROPERTY DAMAGE (Per accident)</b> \$</p>	
<p><b>GARAGE LIABILITY</b></p> <p><input type="checkbox"/> <b>ANY AUTO</b></p>					
				<p><b>AUTO ONLY - EA ACCIDENT</b> \$</p> <p><b>OTHER THAN AUTO ONLY:</b> <b>EA AGG</b> \$</p> <p><b>AGG</b> \$</p>	
<p><b>EXCESS MEDICAL LIABILITY</b></p> <p><input checked="" type="checkbox"/> <b>OCCUR</b> <input type="checkbox"/> <b>CLAIMS MADE</b></p> <p><b>DEDUCTIBLE</b></p> <p><b>RETENTION</b> \$</p>					
XSD0100038		11/01/10	11/01/11	<p><b>EACH OCCURRENCE</b> \$ 1,000,000.</p> <p><b>AGGREGATE</b> \$ 1,000,000.</p> <p>\$</p> <p>\$</p> <p>\$</p>	
<p><b>Excess Accident Medical Protection</b></p>		PAY-L00203042-001	11/01/10	11/01/11	<p><b>Maximum Medical Benefit per claim - \$25,000.</b></p> <p><b>AD&amp;D Benefit per claim - \$ 2,500.</b></p>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

- Certificate Holder is an ADDITIONAL INSURED but only as respects the operations of the  
Named Insured NISSP Member - Franconia Ski Club

**ACORD 25 (2001/08)**



JBR  
35

STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
DIVISION of PARKS and RECREATION  
172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-3556 Fax: (603) 271-3553  
Web: www.nhstateparks.org

October 25, 2019

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

**REQUESTED ACTION**

1. Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Cannon Mountain Aerial Tramway and Ski Area to enter into an amendment to the amended and restated agreement dated January 23, 2013 with Franconia Ski Club of Franconia, NH ("the Club") to continue its competitive ski racing and snow sports and skier education programs at Cannon Mountain for a period of 35 years upon Governor and Council approval with renegotiation of specific terms at year 20 and upon the option to renew for one additional 10 year period subject to Governor and Executive Council approval. The current agreement was approved by the Governor and Executive Council on February 6, 2013, Item #47.
2. Further authorize the receipt of a gift of an (estimated) \$2.5 Million public access training center and lodge at the base of the Mittersill Terrain Area at Cannon Mountain, including all funding, design, planning, permitting, construction, completion, and all related infrastructure, exterior related and associated structures and respective infrastructure, and exterior finish and landscaping associated with said project, to be completed by the Club in accordance with all State and Federal guidelines, and surrendered wholly to the State upon completion of the project.
3. Further authorize limited privileges afforded the Club and its athletes regarding the use of said public access training center and lodge, consistent with the Club's current and historical use of (and therefore eliminate their need to utilize) the State-owned facility known as "Ernie's Haus," in accordance with the terms of the Agreement and subject to the approval of the State.

**EXPLANATION**

Franconia Ski Club is the longest-standing and most highly trusted partner of Cannon Mountain, having cut the original Taft Slalom Trail at Cannon in 1933, and having been based at Ernie's Haus for more than 40 years, with that structure having been built with funds donated to the State by a former Club family member for non-exclusive use by the Club. In 2013, the amended and restated Agreement authorized the Club to fund, build, and gift to the State an estimated \$3.5 Million snowmaking, terrain, and lift enhancement project at Mittersill (the Mittersill Project), which was fully completed by December, 2016 at a final cost of \$4 Million. The 2013 agreement affords the Club limited training and competition opportunities utilizing the improvements and terrain, subject to approval of the State following the same opportunities provided in earlier agreements.

The approval of this (2019) amendment accommodates the Club's desire to fund and build the aforementioned (estimated) \$2.5 Million facility, and then gift the completed project and infrastructure to the State, enjoying non-exclusive use of the property in accordance with the terms of the Agreement, and

October 25, 2019

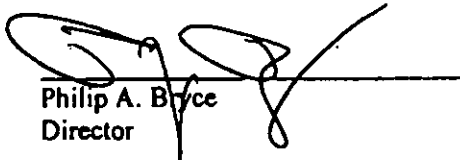
His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council

Page 2

subject to approval of the State. The approval of this amended and restated Agreement will ensure and enhance the continued strength of this exemplary partnership between Cannon Mountain and the Club, and will enhance Cannon's overall guest safety, training, competition, and skier education experiences.

The Attorney General's Office has reviewed and approved this Agreement as to form, substance, and execution,

Respectfully submitted,

  
Philip A. Bryce  
Director

Concurred,

  
Sarah L. Stewart  
Commissioner

**AMENDMENT TO  
2013 AMENDED AND RESTATED AGREEMENT**

THIS AMENDMENT is made to the 2013 Amended and Restated Agreement ("2013 Restated Agreement") pursuant to the terms of the Agreement between the State of New Hampshire, by and through its Department of Natural and Cultural Resources ("State"), and the Franconia Ski Club, Franconia, New Hampshire ("Club"). "Parties" herein shall refer to the State and the Club collectively.

**WITNESSETH:**

WHEREAS, the parties have entered into an Agreement with the Club, approved by the Governor and Executive Council on November 24, 2010 (Item #86-C) ("2010 Agreement"), in which the State granted the Club certain privileges to (i) use certain property and facilities, and (ii) hold certain functions and events, at Cannon Mountain ski area in connection with the Club's operation of a competitive ski racing and snow sports program for children and adults; and

WHEREAS, the Parties agreed to amend the 2010 Agreement and entered into the 2013 Agreement, approved by the Governor and Executive Council on January 23 2013 (Item #47) ("2013 Restated Agreement"), in which the Club agreed to fund and complete the snowmaking, terrain enhancement and race/training venue at Mittersill and gift the completed project and infrastructure to the State; and

WHEREAS, the Club and its members donated funds to construct the Club's existing headquarters, "Ernie's Haus," at Cannon. Thereafter, the Club undertook a \$4.5 million fundraising campaign for the recent Mittersill Project. Now, the Club has undertaken a further \$2 million fundraising campaign in order to design and build the lodge identified in section 12(f) of the Amended and Restated Agreement, known as the Mittersill Slopes Performance Center ("MPC"). The development, construction, and use of the MPC shall further strengthen the bond between the Club and Cannon and continue to foster development and interest in the sport of skiing and ski racing as well as substantially contribute to the vitality and development of Franconia, New Hampshire and the surrounding areas; and

WHEREAS, in furtherance of the 2010 Agreement and 2013 Restated Agreement, during the past six years, with the consent and cooperation of the State, the Club, at its expense, has reclaimed and improved the Mittersill Slopes, and in particular, Baron's Run and Taft slope (together, "Baron's Run/Taft Slope"), including (i) designing and building a training venue and race trails and a connecting trail from the Skyline trail to Baron's Run/Taft Slope, (ii) purchasing and installing snowmaking apparatus and related equipment, (iii) purchasing a new compressor for all of Cannon, (iv) building the first warming hut at Mittersill in 40 years, and (v) purchasing and installing a T-Bar surface lift to access Baron's Run/Taft Slope (collectively, the "Mittersill Project"). The Mittersill Project has allowed the Club and Cannon to host numerous races providing extensive funding and exposure to the New Hampshire North Country including the NCAA Championships, UNH Carnivals, the Eastern U.S. High School Championships and high profile youth races. The Mittersill venue is one of a select few venues designated as an "Official Training Site of the U.S. Ski Team." Yet, the only complaint has been the absence of a lodge for use by the Club, the general skiing public, and the thousands of visitors for these many races; and

WHEREAS, the 2013 Restated Agreement between the Club and the State confirmed in section 12(f) that a lodge would be built at Mittersill. In furtherance thereof, the Club has prepared a detailed design and engineering and architectural drawings and specifications of the nature, type, location and timing of the MPC to be constructed below the Mittersill Double Chairlift adjacent to the parking lots located at the Mittersill Slopes (as approved by the State). Furthermore, to move forward, the Club, together with other entities, including Holderness School, has undertaken an additional \$2 million capital campaign to raise sufficient funds to complete the MPC and the Mittersill Project, including future projects necessary to the Club including, but not limited to, snowmaking enhancements, Taft Trail repairs and maintenance, snowmaking equipment padding, creation of the MPC and other such projects deemed necessary. In order to ensure the success of the Club's Capital fundraising, the Mittersill Project and the MPC, the Club and the State must modify the 2013 Restated Agreement regarding the use by the Club of certain areas and buildings at Cannon and the creation of the MPC; and

WHEREAS the State and the Club desire to amend the 2013 Restated Agreement to: (i) revise the term from the current 20 years plus three five year renewals to thirty-five (35) years with a ten year renewal option and with the agreement to renegotiate certain terms at twenty and thirty-five years; as set forth herein; and

WHEREAS, upon the completion of the construction of the MPC the Club will turn the occupancy of Ernie's Haus over to the State of New Hampshire; and

WHEREAS, allowing the Club to move its operations to the MPC will increase the skier experience and skier safety by eliminating the need for Club members to move across the Peabody area during the multiple daily transitions between Ernie's Haus and the Mittersill training area. However, the MPC, being more remotely located, will require additional consideration be given to ensure that snowmaking and the slope conditions are adequate for training and events because access to slopes from the MPC is much more limited than the access from Ernie's Haus; and

WHEREAS, pursuant to Paragraph 16, the Parties may agree to amend the 2013 Restated Agreement by written instrument signed by the Parties, subject to the approval of the Governor and Council; and

WHEREAS, the Parties agree that all other terms and conditions of the 2013 Restated Agreement not otherwise amended herein shall remain in full force and effect.

NOW THEREFORE in consideration of the foregoing, the Parties do hereby agree as follows:

1. Amend Section 1. MITTERSILL PROJECT to add the following introductory paragraph:

The Mittersill Project consists of the effort set forth in the 2013 Restated Agreement to reclaim and improve Mittersill, and in particular, Baron's Run and Taft slope (together, "Baron's Run/Taft Slope"), including (i) designing and building a training venue and race trails and a connecting trail from the Skyline trail to Baron's Run/Taft Slope, (ii) purchasing and installing snowmaking apparatus and related equipment, (iii) purchasing a new compressor for all of Cannon, (iv) building the first warming hut at Mittersill in 40 years, and (v) purchasing and installing a T-Bar surface lift to access Baron's Run/Taft Slope. In addition, the Mittersill Project includes the construction of the Mittersill Slopes Performance Center, a facility to replace

Ernie's Haus, including site excavation, the installation of supporting utilities, and access and the associated State approval of the materials and design. All references to the Mittersill Project and Mittersill Plan include the Mittersill Slopes Performance Center.

2. Amend the introductory sentence in Section 1(d) by replacing it with the following:

(d) The Mittersill Plan. The State shall approve and have final authority over all aspects of the Mittersill Plan as described in Exhibit A as amended to include the MPC and any amendments thereto, including but not limited to:

3. Amend Section 1(e) by adding the following paragraph:

Subject to Section 1(f) and Section 3 below, the parties agree that (i) all rights to the plans and designs relating to the MPC, shall be owned by the Club, (ii) all personal property and other items installed and/or constructed and put into use at the MPC shall be owned by the Club. Upon completion of the building and acceptance by the State, title to the MPC structure shall be gifted to the State.

4. Amend Section 1(g) to include the following:

Notwithstanding the foregoing, the State agrees that the Club shall retain the right to name various areas and rooms within the interior of the MPC as well as to create and display such signage as it wishes in recognition of the Club's history. The name of the MPC shall be agreed to by the parties and shall be in compliance with the Settlement and Trademark Coexistence Agreement between the State and Mittersill Alpine Resort dated July 8, 2016.

5. Amend Section 2. Term by replacing the entire section with the following:

(a) Term. Unless earlier terminated pursuant to Section 3, the term of this Amendment shall commence upon execution of this agreement by all parties. The term shall then run for thirty-five (35) years with a ten (10) year renewal option at the conclusion of said thirty-five year term. The renewal shall be at the option of the Club and the State shall not unreasonably object thereto. Said term shall be the term of this Agreement unless the Club has failed to either:

- i. successfully complete the Capital Campaign and notify the State thereof in accordance with Section 1(a) above on or before the date which is three years following the date hereof; or
- ii. complete the Mittersill Project or the MPC and obtain the final acceptance in writing by the State of the Mittersill Project and MPC in accordance with Section 1(b) above, on or before the date which is six years following the date hereof.

Upon the occurrence of either (i) or (ii), the term of this Agreement shall revert back to the term as set forth in the 2013 Restated Agreement (hereinafter "the original term"), which shall end on December 7, 2033, with three (3) five-year renewal options, except however, the Club shall be afforded sufficient time to complete those matters set forth in (i.) and (ii.).

(b) **Renewal Options.** Upon conclusion of the Term as defined herein, the Club and the State, as well as every successor and/or new/different owner/operator of Cannon Mountain agree to extend the term of this agreement by an additional ten (10) years on substantially similar terms, subject to the written consent of the parties, such consent not to be unreasonably withheld. Any such extension shall be subject to the approval of the Governor and Executive Council. The parties shall also undertake efforts to continue the existence of the Club and the continued relationship between the Club and Cannon Mountain.

(c) **Renegotiation of terms.** Upon the twenty year anniversary of the execution of this agreement by all parties and again upon the thirty-fifth anniversary of the execution of this agreement by all parties, either party may request renegotiation of solely the following terms and no others. All parties shall negotiate in good faith. Failure to reach an agreement on any terms shall result in the parties retaining an independent mediator to achieve a solution. The costs associated therewith shall be evenly split among the parties. Any changes to the terms by the parties must be incorporated into an amended agreement subject to the approval of the Governor and Council.

The terms subject to renegotiation shall be the following sections of the 2013 Amended and Resettlement Agreement only:

1. Snowmaking agreements set forth in sections 1(c) and 9(iv)
2. Signage as set forth in section 1(g)
3. Training and Competition Areas as set forth in Section 9.
4. Use of the Building - Fees as set forth in section 12(b); and
5. Special Functions (Food) as set forth in section 14(b).

(d) **Change in Management.** The Club's rights under this Agreement shall remain in full force and effect notwithstanding any change in operations or management of Cannon; including without limitation, (i) the grant by the State to a third party of any management or operational rights with respect to Cannon, or (ii) the execution by the State of any lease or other contract with a third party relating to the use or management of Cannon.

(e) **Condition Nature of Agreement.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to



withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account in the event funds are reduced or unavailable.

6. Amend Section 5. COMPLIANCE WITH LAW to add the following:

The Club shall comply with Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas; statements in public information brochures, etc.

7. Amend Section 6. THE CLUB'S RELATIONSHIP TO THE STATE to include the following:

Land and Water Conservation Funds. The State has developed Franconia Notch 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. The premises covered under this agreement must be operated for public outdoor recreation purposes in compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59). The Premises shall be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising to eliminate the perception the area is private. All fees charged must be competitive with similar private facilities.

8. Amend Section 9(a)(iv) by replacing the existing paragraph with the following:

The State shall give priority to certain snowmaking and grooming operations in the Mittersill Slopes area as well as those areas approved and designated for Club training and/or competition. In giving priority to certain snowmaking and grooming operations in areas designated for Club training and/or competition, the State shall not unreasonably impact or interfere with the general public's use of Cannon. The State agrees that wherein historically after getting Cannon Ski Area open it would focus on the "Front Five" area consisting of Gary's trail and those adjacent thereto for use by the Club, the State shall now direct those efforts to the Mittersill area immediately upon completing sufficient snowmaking operations to have Cannon Mountain open to the public. The State and the Club agree that Cannon's snowmaking priority shall be the Peabody/Notchview area and then the Mittersill/Tuckerbrook area in order to avoid leaving the Club members stranded without skiing at the Mittersill Slopes. The goal of the State and the Club shall be to establish a training area at the Mittersill Slopes, accessible by the MPC, by the third weekend of operations subject to weather conditions and unforeseen operational issues.

9. Amend Section 9 by adding the following paragraph:

(f) The Club shall make the MPC and Mittersill Project slopes available to

Cannon's "home schools," most notably Profile HS, Woodsville HS, and Littleton HS (at no additional charge) for a minimum of two (2) training sessions / slots on midweek days, and shall make said arrangements available to other New Hampshire ski area based clubs (visiting clubs) at an additional charge, for a minimum of two (2) training sessions / slots on weekend days and holidays. All training, racing, and Club activities at Mittersill shall be coordinated by the FSC Program Director (or his/her designee).

10. Amend Sections 12, 13, and 14 by replacing references to "Ernie's Haus" with "Mittersill Slopes Performance Center ("MPC").

11. Amend Section 12(a) by adding the following to the existing paragraph:

The parties will agree to designate space within the MPC for the Club to use for the following purposes: coaches' room, offices, equipment storage, locker space, timing equipment room, tuning, and other additional spaces as the parties both agree are necessary.

12. Amend Section 12 (b) by replacing I with the following:

(b) Fees. During the dates Cannon Mountain is open for skiing operations, the Club shall pay to the state twenty percent (20%) of the costs paid by the State for utilities including heat, electricity, hot water and septic pumping and shall be responsible for one hundred percent (100%) of the cost of bathroom supplies including toilet paper and paper towels. The State shall not be responsible for providing internet service. All other utility and supply costs not identified herein shall be paid by the State. The State shall provide the Club with an accounting of costs for each State fiscal year by August 30<sup>th</sup> of each year and payment shall be made by the Club by September 30<sup>th</sup> each year. However, in recognition of the donation of the MPC by the Club and to allow the Club to properly plan for the utility and supply costs, the State shall pay all utility and supply costs without seeking reimbursement of 20% from the Club for the first year in which the MPC is occupied by the Club. The State shall be responsible for all maintenance at the MPC and all costs associated with any necessary repairs of the building at the MPC.

13. Amend Section 12(f) by replacing it with the following:

(f) Public Access. The MPC shall be available to the public at all times the facility is open or being used by the Club except as provided for in Section 14. (a) Special Functions.

14. Amend Section 15. DEFENSE AND INDEMNIFICATION by replacing the paragraph with the following:

With the exception of claims alleging damages and/or injuries allegedly due to actions or inactions of the state including all claims relative to the MPC building arising after such time as ownership has passed to the State, the Club shall defend and indemnify and save the State of New Hampshire harmless for any liability, damage, loss, cost or

expense caused by the Club for injury to persons or property arising out of those activities exclusive to the operation of the Club's racing and training activities and not part of the general use of Cannon Mountain or its facilities, including the MPC. The Club further agrees to carry insurance coverage in the amount of at least Two Million Dollars (\$2,000,000) throughout the term of this Agreement. Said insurance shall include personal liability insurance in the amount of at least One Million Dollars (\$1,000,000) for injuries to any one person and at least Two Million Dollars (\$2,000,000) for injury to two or more persons and at least Five Hundred Thousand Dollars (\$500,000) for damage to property. The Club shall deliver a certified copy of the policy of insurance then in effect to the Division of Parks and Recreation throughout the term of this Agreement. The Club's insurance shall include coverage for liability resulting from the sale of food and non-alcoholic beverages by the Club as described in Section 14, above

Notwithstanding the foregoing or anything to the contrary contained herein, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, or the charitable immunity of the Club as a non-profit charity, which immunity is hereby reserved to the State and the Club, respectively. The limits set forth above may be subject to change as required by applicable New Hampshire law or regulations. The State shall deliver written notice to the Club of any change to any of the foregoing limits and the Club shall have 90 days following receipt of written notice thereof, to comply with any such change. This provision shall survive any termination of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on this 24<sup>th</sup> day of October, 2019.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES  
DIVISION OF PARKS AND RECREATION

Concur:

  
Philip A. Bryce, Director

  
Sarah L. Stewart, Commissioner

FRANCONIA SKI CLUB

  
David G. Lavallee, President

Duly Authorized.

STATE OF Massachusetts  
County of Suffolk

On this 24 day of October, 2019, before me, the undersigned notary public, personally appeared DAVID LAVALLEE, President of Franconia Ski Club, proved to me through satisfactory evidence of identification, which was Massachusetts DL (state form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



[Signature]  
(affix official signature and seal of notary)

Approval as to form, substance and execution by the Attorney General's Office

[Signature]  
Civil Bureau Attorney, NH Attorney General's Office:

10/25/19  
Date

Governor and Executive Council approval: Date \_\_\_\_\_ Item # \_\_\_\_\_

PAD-JD/IP/mj-100919

**AMENDMENT TO  
2013 AMENDED AND RESTATED AGREEMENT**

**Exhibit A**

**Mittersill Plan Content is amended to add the following:**

- A full set of construction plans and specifications and including:
  - Engineering, permitting, pre-planning, contracting, liability coverage, site work, construction of the finished building, including any and all pertinent adjacent structures and septic system, and final grade work details pertinent to the project area;
  - Building Plans and Specifications including:
    - Exterior materials and materials;
    - Floor plan;
    - Interior materials and appearance; and
    - Type of materials and equipment, manufacturer and capacity for mechanical systems including plumbing, electrical, ventilation, and heating.
  - Proper tie-in with any and all existing Cannon Mountain services and/or utilities, as agreed to by the State and the Club;
- Oversight and management of said project (with project manager meeting with Cannon Mountain management team weekly) prior to completion and subsequent surrender to the State of New Hampshire of the completed project and equipment implementation.
- Construction Schedule

10.9.19

DGL

# 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 FRANCONIA SKI CLUB is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on April 21, 1933. 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: 60600

Certificate Number : 0004601997



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 7th day of October A.D. 2019.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

## **EXHIBIT A**

### **RESOLUTIONS**

**October 23, 2019**

- VOTED:** That the execution, delivery and performance by the Club of that certain agreement with the State of New Hampshire with respect to the use by the Club of certain facilities and premises located at Cannon Mountain, as described to the directors at the meeting, is hereby ratified, confirmed and approved; and further
- VOTED:** That the President of the Club is hereby authorized in the name and on behalf of the Club, to execute, deliver and effect all agreements, documents, instruments, orders, directions, certificates, receipts, forms and other papers or instruments and to perform or cause to be performed all such other and further acts, as the officer so acting may in his discretion approve in connection with the execution of the Amendment (the "Amendment") to the 2013 Amended and Restated Agreement with the State of New Hampshire which Amendment contemplates the agreement between the Club and the State of New Hampshire relative to the funding, building, and occupying the Mittersill Performance Center.
- VOTED:** That any and all actions taken and any and all documents, agreements and instruments executed and delivered prior to the date hereof on behalf of the Club by the President relative to the Amendment, are hereby ratified, confirmed and approved.



**FRANCONIA SKI CLUB  
SECRETARY'S CERTIFICATE**

Dated as of October 23, 2019

The undersigned, Christine Schmitt, does hereby certify in her official capacity that she is the duly elected Secretary of Franconia Ski Club, a New Hampshire non profit corporation (the "Club"), and that, as such, she is duly authorized to execute and deliver this Certificate on behalf of the Club, and she does further certify in her official capacity on behalf of the Club as follows:

1. Attached hereto is Exhibit A is a true, complete and correct copy of certain resolutions duly adopted by the Board of Directors of the Club, which resolutions have not been supplemented, amended, modified or rescinded since the date they were adopted and such resolutions remain in full force effect on the date hereof.
2. Each of the persons named below (i) is a duly elected officer of the Club and (ii) holds the respective offices set forth after his name below. The signature appearing opposite the person's name below is his genuine signature.

**NAME:**

David G. Lavallee

**OFFICE:**

President

**SIGNATURE:**

D. Lavallee

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written above.

By:

Christine Schmitt

Name: Christine Schmitt

Title: Secretary





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/04/19

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 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> Frazier Insurance Agency Inc Box 1250, Midlothian VA 23113  Processing Office: Lawson Insurance LLC 1643 24th St West #110, Billings MT 59102	<b>CONTACT PERSON</b> Jack Lawson <b>PHONE</b> (406) 652-4440 <b>EMAIL</b> jack@lawsonins.net <b>REFERENCE/ENDORSEMENT COVERAGE</b> -N/A- <b>INSURER A</b> Aegia Security Insurance Company <b>INSURER B</b> Aegia Security Insurance Company <b>INSURER C</b> Aegia Security Insurance Company <b>INSURER D</b>  <b>INSURER E</b>  <b>INSURER F</b>  <b>REVISION NUMBER:</b> 118
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**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**  
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.

TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD (MM/DD/YYYY)	COVERAGE LIMITS
<b>A</b> <input checked="" type="checkbox"/> <b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> <b>CLAIMS-MADE</b> <input checked="" type="checkbox"/> <b>OCOLUR</b> <input checked="" type="checkbox"/> <b>INCLUDES ATHLETIC PARTICIPANTS</b> <input checked="" type="checkbox"/> <b>Includes Sexual Abuse &amp; Molestation</b> <b>GEN. AGGREGATE LIMIT APPLIES PER:</b> <input checked="" type="checkbox"/> <b>POLICY</b> <input type="checkbox"/> <b>PER</b> <input type="checkbox"/> <b>LOC</b> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> <b>ANY AUTO</b> <input type="checkbox"/> <b>SCHEDULED AUTOS</b> <input checked="" type="checkbox"/> <b>ALL OWNED AUTOS</b> <input checked="" type="checkbox"/> <b>NON-OWNED AUTOS</b> <input type="checkbox"/> <b>HIRER AUTOS</b> <b>UMBRELLA LIAB</b> <input type="checkbox"/> <b>OCOLUR</b> <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> <b>CLAIMS-MADE</b> <input type="checkbox"/> <b>OCOLUR</b> <input type="checkbox"/> <b>RETENTIONS</b>	FGLSP-100-18 Cert# FNT-S-0004	11/01/18 11/01/19	<b>EACH OCCURRENCE</b> \$ 1,000,000 <b>DAMAGE TO RENTED</b> \$ 300,000 <b>PERSONAL &amp; ADV INJURY</b> \$ 5,000 <b>PERSONAL &amp; ADV INJURY</b> \$ 1,000,000 <b>GENERAL AGGREGATE</b> \$ 2,000,000 <b>PRODUCTS - COMPROP AGG</b> \$ 2,000,000 <b>REMARKS SINGLE LIMIT</b> \$ 1,000,000 <b>BODILY INJURY (Per person)</b> \$ <b>BODILY INJURY (Per accident)</b> \$ <b>PROPERTY DAMAGE (Per accident)</b> \$ <b>EACH OCCURRENCE</b> \$ <b>AGGREGATE</b> \$
<b>B</b> <b>Excess Accident Medical Protection</b> Deductible - \$200 52 week Benefit Period from date of incident Claim Reporting deadline - 90 days from date of incident	FRO317	11/01/18 11/01/19	<b>Maximum Medical Benefit per claim</b> - \$ 25,000 <b>AD&amp;D Benefit per claim</b> - \$ 2,500
<b>NSSP ALPINE MEMBER - Franconia Ski Club, Box 462, Franconia NH 03580 ADDED AS INSURED NSSP-ALPINE PARTICIPATING MEMBER for Nov. 1, 2018-19 including coverage for Ski Racing Instruction, "Dryland" Fitness Instruction, Sexual Abuse &amp; Molestation, Hired &amp; Non-Owned Auto</b>			

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 104, Additional Remarks Schedule, if more space is required)  
Commercial General Liability (CGL) deductible - \$ 0.00 each Bodily Injury or Property Damage Claim.  
Participant Legal Liability Coverage for participants in SKI RACES/ INSTRUCTION/ COMPETITIONS requires that each participant (or Parent/Guardian) sign release/waiver form PRIOR to Competing, Practicing or Instruction.

<b>CERTIFICATE HOLDER</b> Franconia Ski Club Box 462 Franconia NH 03580	<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.  <b>AUTHORIZED REPRESENTATIVE</b> John W. Frazier
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