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Masthope POC
HC1 1A353
196 Karl Hope BLVD
Lackawaxen, PA 18435

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Lackawaxen, PA 18435

Agreement

This Agreement, Amended as follows, on this 24th Day of November, 2008 by and between Masthope

Mountain Community Property Owners Council, a Pennsylvania Not-For-Profit Corporation, HC 1, 1A353, Lackawaxen, PA 18435 (hereinafter "MMCPOC"), and Recreation Management Corporation, HC8 Box 8223, Lords Valley, PA 18428 (hereinafter "Operator").

Witnesseth:

1. Engagement of Operator. MMCPOC does hereby engage Recreation Management Corporation as operator of Ski Big Bear at Masthope Mountain situated within the Masthope Mountain Subdivision, Lackawaxen Township, Pike County, Commonwealth of Pennsylvania, for a Renewal Term commencing May 1, 2009 and ending on April 30, 2014, as previously agreed.
 2. Premises and Equipment Subject to this Agreement. The equipment subject to this agreement are set forth in Exhibit "A" outlined as an attachment to the original agreement. The premises subject to this equipment shall be office space/ski rental space in building known as ski building, the old maintenance garage and use of MMCPOC fuel pump with the cost of all fuel used by Operator to be paid by Operator. The interior of the ski lodge itself shall be jointly occupied by the parties hereto for the periods accommodating ski season.
 3. Payment to Operator. Operator shall be compensated in the amount of ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED (\$137,500.00) DOLLARS per annum under this agreement. Payment shall be due and owing by MMCPOC to Operator as follow:
 - a. Twenty Five (25%) Percent or \$34,375.00 June 1st of each operating year;
 - b. Twenty Five (25%) Percent or \$34,374.00 upon the opening of the Magic Carpet, and either the Thundercloud or Grizzly Chairlifts.
 - c. Fifteen (15%) Percent or \$20,625.00 on or before January 1, or when all lifts can be opened, of each operating year;
 - d. Fifteen (15%) Percent or \$20,625.00 on or before February 1, of each operating year;
 - e. Twenty (20%) Percent or \$27,500.00 when profit sharing check is paid to MMCPOC.
 4. Income Sharing based on Number of Skiers. Operator agrees to share income with MMCPOC based upon the total number of public skiers (hereinafter "users") who ski during the term of this agreement. Said payment shall be made by Operator to MMCPOC prior to the expiration of this agreement. In the event that payment has not been made at time of closing, MMCPOC reserves the right to reduce the final payment specified in paragraph 2 above by the appropriate amount. Income sharing shall be based upon the following schedule:
 - a. 8,001/9,000 users -\$5.00 per user/per day
 - b. 9,001/10,000 users \$6.00 per user/per day
 - c. 10,001/11,000 users \$7.00 per user/per day
 - d. 11,001 users and over -\$8.00 per user/per day.
- e. Operator Guarantees a minimum Income Share of \$150,000 in the 1st year of this agreement with an increment of 5% per annum for the term of this agreement.

5. Insurance.

- a. Operator shall on or before December 1st of each operating year, secure from a good and responsible company or companies doing insurance business in the Commonwealth of Pennsylvania and maintain during the entire term of this agreement public liability insurance in a minimum amount of \$5,000,000.00 for loss from an accident resulting in bodily injury to a death of person, and \$5,000,000.00 for loss from an accident resulting in damage to or destruction of property.
- b. Operator agrees that MMCPOC shall be named as an additional insured on the aforementioned policies of insurance.
- c. The original policies may be retained by the Operator, but full and complete copies of the portions thereof that relate to the protection of MMCPOC shall be given to the MMCPOC and Operator agrees to give to MMCPOC proof of the payment of any premiums.
- d. Proof must also be given by Operator to MMCPOC that each of the policies provided for in this article expressly provides that the policy shall not be canceled or altered without fifteen (15) days prior written notice to MMCPOC and Operator.
- e. Operator agrees to indemnify and hold harmless MMCPOC, its officers, agents, employees, and board members with respect to any and all claims arising out of Operator's activities under this agreement including, but not limited to, actions for personal injuries and/or property damage.
- f. Operator shall maintain Workers Compensation Insurance for all of its employees.

6. Utilities.

- a. Electric - Operator shall pay all electric expenses attributable to the ski area operation including exterior lighting and lodge utilities related to the ski area operation.
The electricity serving the interior of the ski lodge shall be paid in accordance with paragraph 6(d) herein.
 - b. Telephone - Operator shall have its own telephone system and lines and be responsible for the payment of the same.
 - c. Cable Expenses - Operator shall be responsible for cable expenses that serve the ski building
 - d. Other Common Expenses - Other common expenses shall be pro-rated between the parties as follows: 40% to be paid by Operator; 40% to be paid by restaurant; and 20% to be paid by MMCPOC. Other common expenses shall be those expenses attributable to the ski lodge including heating, electrical, security, maintenance and housekeeping.
7. Repairs. Operator shall be solely responsible to maintain the equipment relating to the ski area operation in good order and repair less reasonable wear and tear during the term of the agreement. However, Operator shall share the expense (50% Operator & 50% MMCPOC) for major repairs to major physical plant equipment unless the failure is due to operator's negligence and then Operator shall be responsible for total expense. The Operator is not responsible for major physical plant failures that result in equipment replacement unless they are due to

Operator's negligence. "Major Physical Plant" for purposes of this agreement shall constitute the, water pumps, water lines, lifts, major lift components and compressors. At the conclusion of this agreement, Operator shall return to MMCPOC all property and equipment leased hereunder in the same condition, less reasonable wear and tear, as at the outset of this agreement.

a. With regard to any such work that is performed, all such contractors shall execute a stipulation against the filing of mechanics liens which shall be filed of record prior to the commencement of any work.

b. All work as described in item 7 shall be approved by both parties.

8. Assignment of Agreement. This agreement shall not be assignable by Operator unless with the written consent of MMCPOC. Operator agrees that Operator shall perform all the duties assumed by Operator hereunder, and it shall not subcontract, sublet, or assign any of such duties to any third parties, unless with the written consent of MMCPOC.

9. Condition of Premises and Property. The premises and property described herein is made available to Operator in an "AS IS" condition after agreed upon repairs have been effectuated. Operator acknowledges having inspected the premises, property and equipment prior to executing this agreement.

10. Scope of Agreement. Pursuant to this agreement, Operator shall operate and manage the ski facilities at Masthope to include all lift operations, ski rentals, ski school, ski patrol, repair shop and all associated administration and marketing of the ski area. Hours of operation shall be established by Operator and shall be similar to the schedule of operations by the other Pocono ski areas. The parties agree that the length of the season will be dependent on weather conditions. Snowmaking will begin; weather permitting, on or about November 26th of the operating year.

11. Events of Default. The following shall constitute events of default under this agreement:

a. The failure of Operator to make the ski area open for business on a regular and continuing basis under the terms and conditions of this agreement;

b. The failure of Operator to make any payment that is required under this agreement;

c. The failure of Operator to maintain insurance as required by this agreement;

d. The bankruptcy or insolvency of Operator.

12. Remedies in the Event of Default.

a. In the event of default, MMCPOC may, at its option without notice to Operator, terminate this agreement. Notice of termination shall be in writing, upon giving operator seven (7) days written notice of intent to terminate. In the event of a default, MMCPOC shall be under no further obligation to make payments to Operator as set forth in paragraph 3 above. Upon receipt of notice of default, Operator shall immediately vacate the premises and relinquish possession of all equipment to MMCPOC.

b. Regardless of whether MMCPOC declares the agreement to be terminated as a result of any default, MMCPOC reserves the right to offset any

amounts due by MMCPOC to Operator under this agreement for unpaid financial obligations of Operator under this agreement including, but not limited to, unpaid utilities or common expenses.

c. This agreement shall be terminated or canceled by reason of the breach of any provision hereof either during the original term or any renewal, and also as soon as the term hereby created or any renewal thereof shall have expired, it shall be lawful for any attorney for MMCPOC to file an agreement for entering in any court of competent jurisdiction an amicable action for confession of judgment in eviction and ejection against the Operator and all persons claiming under Operator for the recovery by MMCPOC of possession of the premises for which this agreement or a true and correct copy thereof shall be sufficient warrant. Thereafter, if MMCPOC so desires, a writ of possession may issue forthwith without any prior writ or proceeding whatsoever and provided that if, for any reason after such action shall have been commenced, the same shall be terminated and possession shall remain in and be resorted to Operator, MMCPOC shall have the right upon any subsequent default or defaults or upon the termination or cancellation of this agreement as set forth above, to bring one or more amicable action or actions as set forth herein to recover possession of the premises. Upon receipt of notice of default, Operator shall immediately cure the default. In the event that Operator does not cure the default within seven (7) days, Operator shall immediately vacate the premises and relinquish possession of all equipment to MMCPOC.

d. In the event that MMCPOC is in default under the terms and conditions of the Agreement, Operator reserves the right to offset any amounts due by Operator to MMCPOC under this Agreement for unpaid financial obligations of MMCPOC under this Agreement, including, but not limited to, payments due and owing under paragraph 3 herein.

13. Terms of Operation. As an additional consideration for the entering into of this agreement, Operator agrees to certain terms and conditions of operation, as follow:

a. Operator shall make every effort to open as much of the mountain as possible, as early as possible, without risking an early washout due to weak coverage on excessive terrain;

b. Snowmaking priority for operating will be in the following order:

(1) Snowbird, (2) Upper Whispering Run, (3) Jamboree and Grizzly, (4) Tubing, (5) remaining mountain.

c. Snowmaking hours with the exception of December and a mid-season emergency will be operated on an off-peak program.

d. Marketing, advertising and sales of the ski area operation and products shall be the exclusive right and responsibility of the Operator. This includes the name and logo of Ski Big Bear.

e. Operator shall provide monthly reports to MMCPOC concerning detail usage of the facility. Such report shall consist of the daily number of public skiers. In addition, Operator shall permit MMCPOC, by and through

its designated agents, to inspect the books and records of Operator upon reasonable notice to Operator as it relates to skier days.

f. Operator agrees to exclusively report to the president of the MMCPOC Board or a designated liaison person. Operator shall not be required to report to any other Board member or Community Representative.

g. Only MMCPOC members in good standing will be issued lift tickets. MMCPOC will provide Operator with a list of members in good standing simultaneous with the execution of this agreement. For purposes of this agreement, a member in good standing shall be a member who is not in arrears in payment of Association dues owed to MMCPOC. A determination of whether a member is in good standing shall be made solely by MMCPOC at its discretion.

h. Timeshare privileges and privileges for other groups shall be determined as follows: The parties agree to meet and mutually determine the rights of skiers in the following groups: timesharing; second lot owners; Mill Pond Village, and any other groups within the community.

i. Property Owner Guests will receive a 25% discount on daily lift tickets. The discount can not be used in conjunction with any other discount programs.

j. Property owners will receive a 50% discount for tubing session tickets.

14. Damage by Fire or Other Casualty.

a. In the event that the ski lodge, ski lifts, water pipes or equipment would be destroyed or severely damaged by fire and which could not be replaced or repaired within a thirty (30) day period, then this agreement would terminate and payments set forth in paragraph 3 above would be adjusted on a pro-rata basis. In the event of damage to the ski lodge, ski lifts, water pipes or equipment which can be replaced or repaired with thirty (30) days, this agreement shall continue in full force or effect.

15. Miscellaneous. All notices to be given under this agreement shall be given by certified mail or registered mail, addressed to the property party, at the following addresses:

MMCPOC: HC1,1A353

Lackawaxen, PA 18435

Copy to: John H. Kley Meyer, Esquire – 402 Broad Street, Milford, Pa 18337

Operator: Recreation Management Corp.

HC8Box8223

Lords Valley, PA 18428

Copy to: Jay R. Rose, Esq.

402 Bro ad St.

Milford,PA 18337

16. Prohibition against encumbrance. During the term of this agreement and any renewals, Operator shall not cause to be encumbered any of the premises or property subject to this agreement. Operator agrees not to pledge any such premises property equipment as collateral for any financial obligation. Operator agrees not to place any liens on any property subject to the within agreement. Operator agrees that all premises and property subject to the operation as described herein is the exclusive and sole property of MMCPOC.
17. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this agreement.
18. This agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania and all obligations of the parties created hereunder are performable in Pike County, Pennsylvania. The exclusive forum for any litigation concerning this agreement shall be the Pike county Court of Common Pleas.
19. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
20. This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
21. No amendment, modification or alteration of the terms hereto shall be binding unless the same is in writing dated subsequent to the date hereof and duly executed by the parties hereto.
22. The rights and remedies provided by this agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
23. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this agreement shall be deemed to be waiver of any other breach of the same or any other term, condition or covenant contained herein.
24. The Operator also agrees to and shall hold harmless and indemnify MMCPOC for any and all claims and liability for losses or damage to property or injuries to persons caused wholly or in part by any act or omission of the Operator or Operator's agents, employees, guests, licensees, invitees, subtenants, successors or assignees, or for any cause whatsoever arising by reason of the occupancy by the Operator and the conduct of the Operator's business.
25. Neither MMCPOC nor Operator shall be required to perform any term, condition or covenant in this agreement so long as such performance is delayed or prevented by any acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonable within the control of MMCPOC or Operator and which by the exercise of due diligence MMCPOC or Operator are unable, wholly or in part, to prevent or overcome.

26. Each Capital Ski Project and Funds needed, are to be approved by the MMCPOC, before any project is to be activated.

27. In addition, Recreation Management will, in the event *that* the contract for whatever contractual reason be terminated before the agreed upon end date, be reimbursed for the amortized monies for labor tendered for any capital project related to the lodge, ski building, old maintenance building and the ski area. The amortized amount shall be reduced by 20% on an annual basis for a maximum of five (5) years upon completion of a mutually agreed capital project(s). The amount to be amortized shall be the agreed upon figure between Recreation Management and the MMCPOC and be in effect upon completion of each project tendered. For the purposes of normal building projects the amount shall be based on the formula of cost of material minus 20%.

28. Renewal. This agreement shall be subject to an option to renew by Operator. Twelve (12) months prior to the expiration of this agreement, Operator will notify MMCPOC of its intention to renew by providing written notice of such intention in accordance with paragraph 17 of this agreement. Upon receipt of said notice, this agreement shall renew for an additional five (5) years commencing May 1, 2014 and ending April 30, 2019. The agreement shall renew under the same terms and conditions unless specifically amended by the parties to alter such terms and conditions, in writing, signed by all of the parties. IN WITNESS WHEREOF, the undersigned MMCPOC and Operator hereto execute this agreement as of the day and year first above written.

WITNESS: MASTHOPE MOUNTAIN COMMUNITY PROPERTY OWNERS COUNCIL

BY *William H. Galt* President
RECREATION MANAGEMENT CORP.

BY *William A. S. Hill* President

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BY: