

Ski Agreement (Lease/Management)

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This is a Management Agreement made the day of , , between **Masthope Mountain Community Property Owners Council**, a Pennsylvania nonprofit corporation with an address of 196 Karl Hope Boulevard, Lackawaxen, Pennsylvania 18435 (the "Association" or "MMCPOC") and **Recreation Management Corporation**, (RMC or "operator") a Pennsylvania business corporation with an address of P.O. Box E Hawley, Pennsylvania 18428.

Background

I. The Association is the entity that owns and is responsible for the common facilities of the Masthope Mountain Community, a large-scale planned community located in Lackawaxen Township, Pike County, Pennsylvania. The facilities include a full service and comprehensive Ski Facility that includes, Ski Lifts, Snowmaking Plant, Ski Rental and Repair Shop, Snow Sports School, Skier Services Building, Ski Patrol, Trails and all infrastructure associated with the operation.

II RMC is a service and management company that manages and owns recreational businesses and other facilities in the same region of Pennsylvania.

III. The Association and RMC have negotiated the terms of an agreement for the management of the Ski Facilities of the Community by RMC under the oversight of the Association under the direction of the Board of Directors. [The attached Schedule A defines the ownership of land, buildings, equipment and other property owned by both parties.](#)

Agreement

The Association and RMC, in consideration of the recitals above and the rights and duties expressed below, and intending to be legally bound by this document, agree as follows.

1. EFFECTIVE DATE
This Agreement shall be effective as of the day of , and shall terminate as of the day of , (the "Expiration Date"), unless renewed or terminated pursuant to the terms of this Agreement.
2. APPOINTMENT AND ACCEPTANCE
Association appoints RMC to provide management services to the Association as described in this Agreement. RMC accepts the appointment under and subject to the terms and conditions of this Agreement.
3. PROPERTY OWNERS' INTERESTS

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The Association is a nonprofit community association. The Association is the owner of the common facilities and governing entity for the Community, which is classified as a planned community. The Association is responsible for all billing, collections and accounting of the Community's common expense assessments and its other charges as well as payment of all of its expenses as part of the overall financial management of the Association's operations, funding of its capital reserves and the operation, maintenance and replacement of all capital improvements. The Association is further responsible for operating or assigning the operation of the ski facilities to a management company.

4. PROFESSIONAL MANAGEMENT STANDARDS

RMC agrees to furnish all necessary management services, using its best efforts and the industry standard of professional skill and competence in the capacity as the operator of the Ski Facilities. RMC shall provide maximum economic benefit to the Association consistent with proper financial management while protecting and enhancing the facilities of the Ski Area on behalf of the Association. RMC agrees to manage and operate the Ski Area and its assets consistent with the applicable provisions of all local, state and federal requirements.

5. INSURANCE COVERAGES AND INDEMNIFICATION

- A. Operator shall on or before December 5th 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 or a death of person, and \$5,000,000.00 for loss from an accident resulting in damage to or destruction of property.
- B. Operator can choose to insure the buildings and equipment on its property coverage and be reimbursed for costs insuring buildings and equipment that is owned by the community. Operator can also choose to purchase business interruption and other coverages.
- C. Operator agrees that MMCPOC shall be named as an additional insured on the aforementioned policies of insurance.
- D. The original policies may be retained by the Operator, but MMCPOC shall have the right to inspect any and all such policies and the Operator, on demand, agrees to furnish the MCPOC with proof of payment of the premium or premiums on any such policies.
- E. 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 {15} days prior written notice to MMCPOC and Operator.
- F. 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.

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Operator shall maintain Workers Compensation Insurance for all of its employees.

- G. RMC shall be named as an additional insured in all Association insurance policies relating to directors' and officers' liability, public general liability and fidelity liability insurance.
- H. A Party to this Agreement (the "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party") and the Other Party's affiliates and each of their trustees, shareholders, owners, managers, directors, officers, partners, members, agents, insurers, attorneys and employees, from and against any and all claims, liability, costs or expenses for loss, damage, or injury, including damage and liability for bodily injury to or death of third Persons or damage to property of third Persons (collectively, the "Loss"), to the extent the Loss arises out of, is caused in connection with or otherwise results from the Indemnifying Party's breach of any of the covenants, agreements, representations or warranties made in this Agreement, or the actions that the Indemnifying Party takes or fails to take related to this Agreement; provided, however, that neither Party shall have any duty to indemnify the other Party for any Loss to the extent caused by the other Party's negligence gross negligence or willful misconduct. Each Party shall furnish the other Party with notice promptly (but in no event later than ten (10) days prior to the time any response is required by law) of any event or circumstance, or the threat thereof, that might reasonably give rise to such indemnification. All notices shall be given as soon as reasonably practicable after the Party obligated to give such notice becomes aware of any such claim or proceeding. Notice shall include a complete copy of all notices, pleadings and other papers related to the claim or proceeding. Failure to give notice shall not excuse the duty to indemnify. This provision shall survive the termination of this Agreement, regardless of the cause

6. POINT OF CONTACTS

RMC shall report to and receive direction from one contact person, the President of the Association or a designee agreed upon by both parties

7. FINANCIAL, PREMISES, EQUIPMENT AND FACILITIES

RMC will pay the association a lease fee of \$70,000 annually (25% payments due December 15, January 15, February 15, and March 15)

Lease shall include exclusive use and access to all ski facility property, buildings and equipment including but not limited to the following: Skier Services Building, Ski Maintenance Building, Pump House Building, All Lift Buildings, Ski Patrol Building, All Chairlifts and Surface lifts, All trails and properties associated with the ski operation, access to use of all utilities and services that supply the ski facilities and shared use of the Masthope Mountain Lodge with priority usage during hours of operation for skiing

Buildings named above will include all equipment included within and the exterior of these buildings including, pumps, compressors, electrical switches and

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equipment, exterior lighting and ski facility lighting, electrical services including the services provided to the lodge.

Also included in this agreement is the underground water and air supply lines and associated hydrants that are part of the snowmaking plant and the snowmaking pond located at the pump building.

RMC shall be responsible for utility and services associated with the ski operation including telephone, cable, internet, electric and other technologies. RMC shall pay in full the electrical services at the Maintenance Area Called POC Ski, The Pump House and the bottom of the mountain when ski area is in operation or in preparation for the ski season. The POC will be responsible for the lodge electric services year round. It is understood by both parties that some of the equipment and lighting on the mountain is powered by the lodge electrical service.

REPAIRS, MAINTINANCE, OPERATIONAL PERMITS, INSPECTIONS, EQUIPMENT REPLACEMENT AND CAPITAL IMPROVEMENTS

RMC shall be solely responsible to maintain the equipment, buildings and grounds related to the ski operation in good and reasonable order less reasonable wear and tear during the term of the agreement.

RMC is not responsible for Major Physical Plant failures due to normal wear and tear or natural acts that are not controllable by RMC that result in the replacement of the equipment or a major component of this equipment. This shall include, pumps, compressors, snowmaking equipment, electrical switchgear and components, lift motors, drives, safety systems, electrical components, gear boxes, breaking systems and all other major components of the lifts. Any major repairs or replacements shall be agreed upon in advance by both parties. If the failure of this equipment is due to the RMC's negligence RMC will be responsible for the replacement or repair of the same.

With regard to any work preformed by preformed by an outside contractor that contractor shall not have the right to file a mechanics lien or take any action against the association or RMC.

Association (equipment owner) shall be responsible for annual and periodical testing and permits required by the state or other agency or organization. RMC will be responsible for any annual or periodical testing required by its insurance agency

8. **Scope of Agreement.** Pursuant to this agreement, Operator shall operate and manage the ski facilities at MMCPOC to include all lift operations, ski rental and repair shop, snow sports school, ski patrol, ski shop and all associated administration and marketing of the ski facility. Hours of operations will be established by Operator and approved by MMCPOC as per this agreement. The parties agree that the length of the season will be dependent on weather conditions. Snowmaking will begin; weather

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permitting, on or about November 26th of the operating year. Snowmaking will operate at the discretion of RMC and with the exception of early season and recovery periods it will be during off-peak hours.

9. Terms of Operation. In consideration for the entering into this agreement, Operator agrees to certain terms and conditions of operation, as follows:
 - a. RMC 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 top of the mountain beginner's terrain followed by top to bottom access followed by tubing and then additional trails.
 - c. Marketing, advertising and sales of the ski area operation and products shall be the exclusive right and responsibility of RMC. This includes the name and logo for Ski Big Bear at Masthope Mountain.
 - d. RMC agrees to exclusively report to the president of the MMCPOC or a designate approved by both parties.
 - e. Only MMCPOC members in good standing will be issued lift tickets or have passes validated for using the ski facility. Members will receive ski privileges as defined in the community handbook and governing documents.
 - f. Property Owner Guests will receive 25% discount on daily lift tickets. This discount can not be used in conjunction with any other discount programs. A guest pass must be obtained and shown prior to purchase of the lift ticket to receive this discount.
 - g. Property Owners in good standing will receive a 50% discount for tubing session ticket

10. OTHER RIGHT TO TERMINATE

Each Party shall have the additional right to terminate this Agreement by notifying the other party in writing at least one hundred and twenty (120) days in advance that the Agreement shall terminate. If this Agreement is terminated prior to the end of the full term specified in this Agreement, both parties shall be entitled to the compensation earned to the date of termination as provided for in this Agreement computed per diem up to and including that date.

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 in confession of judgment and eviction against RMC and all persons claiming under RMC 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 cancelation 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 (14) days, Operator shall immediately vacate the premises and relinquish possession of all equipment to MMCPOC.

In the event that MMCPOC is in default under the terms and conditions of the Agreement, RMC reserves the right to offset any amounts due by Operator to MMCPOC under the Agreement and unpaid financial obligations of MMCPOC under this Agreement including, but not limited to, payments due and owing as defined in this Agreement

11. TERMINATION ON BANKRUPTCY

If RMC is adjudicated to be insolvent or bankrupt, or makes any assignment for the benefit of creditors, Association may terminate this Agreement immediately, effective as of the date of the notice to RMC. Events of Default. The following shall constitute events of default under this agreement:

- a. The failure of RMC 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 RMC to make any payment that is required under this agreement
- c. The failure of RMC to maintain insurance as required by this agreement;
- d. The bankruptcy or insolvency of RMC.
- e. The Failure of MMCPOC to make property and equipment available to RMC in an acceptable condition.

12. TERMINATION BASED ON FRAUD OR MISMANAGEMENT

This Agreement may be terminated by Association upon a discovery of RMC's fraud, mismanagement or gross negligence. Termination is effective immediately upon Association giving written notification of cause to RMC.

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13. Damage by Fire or Other Casualty In the event that the lodge, lifts, snowmaking plant, water pipes , snow pump building or other equipment would be destroyed by fire or other casualty and could not be replaced or repaired in thirty (30) days, this agreement would terminate and payments would be adjusted on a pre-rata basis.

14. EFFECT OF TERMINATION

On termination of this Agreement, it is agreed by both Association and RMC that all records, equipment, property and buildings be returned to the owner. Ownership shall be determined in accordance with the schedule A attachment to this agreement. All items shall be delivered to the ownership party within 30 days of the termination date. The agency relationship created in this Agreement shall end automatically at 12:01 a.m. on the termination date.

15. MAILING AND NOTICE REQUIREMENTS

All notices required under this Agreement shall be in writing. Notwithstanding anything in this Agreement to the contrary, notice of termination shall be deemed delivered upon either (1) mailing or sending by other commercial delivery to the Party. A Party giving notice should also request a return receipt. The addresses first given above shall apply, unless later changed by written notice to the other Party.

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

17. OTHER MISCELLANEOUS PROVISIONS

This Agreement insures to the benefit of and shall constitute a binding obligation on the parties and their respective successors and assigns.

This Agreement constitutes the entire agreement between Association and RMC with respect to management/lease of the Ski Facilities of Association. All changes to this Agreement will be valid only if made in a supplemental written agreement that is authorized and executed in the same manner as this Agreement.

This Agreement may be executed in several counterparts, which taken together shall constitute one complete original agreement, and each of which may be introduced in evidence or used for any other purpose without production of any other counterparts.

The parties to this Agreement have authorized and caused their respective officers to execute this Agreement on their behalf, intending to be legally bound by this Agreement.

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ATTEST:

*Masthope Mountain Community Property Owners
Council*

Secretary

by: _____
President

ATTEST:

Recreation Management Corporation

Secretary

by: _____
President

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Schedule A - Revised November, 2018 (Items Owned and by which Party)

Items owned by Recreation Management Corp.

Vehicles

- 1 - Dodge 40' bucket truck
- 2 - Ford 28' bucket trucks
- 1 - Ford 14 Passenger Van
- 1 - Isuzu flatbed truck

Grooming Tractors/equipment

- 1 - Piston Bully Edge snowcat with grooming attachments
- 1 - Piston Bully Edge Park snowcat with grooming attachments
- 1 - Piston Bully 400 snowcat with grooming attachments
- 1 - Piston Bully 200 snowcat with man-lift
- 3 - Piston Bully tillers
- Misc. groomer parts and hoses

Snowmobiles/ATV

- 2 - Bombardier two stroke snowmobiles (blue)
- 1 - Yamaha two stroke snowmobile (red)
- 1 - Ski Doo Renegade snowmobile (Black)
- 1 - Ski Doo 700cc snowmobile (black)
- 1 - Ski Doo 600cc snowmobile (black)
- 1 - Polaris snowmobile (green)
- 1 - Artic Cat snowmobile (black)
- 2 - Polaris 500cc Sportsman Atv
- 1 - Polaris 500 cc ATP Atv
- 2 - Polaris 400 cc Sportsman Atv
- 2 - Kawasaki Terex Utv

Mountain maintenance/assorted equipment

- 1 - John Deere tractor
- 1 - Mower Deck
- 1 - Plow assembly for John Deere
- 1 - Gas Driven Welder
- 1 - Kubota 121 Excavator
- 1 - John Deere tractor with bucket
- 2 - Equipment trailers
- 1 - Hydraulic electrical knock out set
- 1 - Porta power hydraulic set
- Assorted lifting and block and tackle equipment.
- 1 - Snap on Mig Welder
- 1 - Miller Tig welder
- 1 - Blue point Plasma cutter
- 1 - Cutting torches and tanks
- Assorted hand tools and machinery

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Snow Making

- 60 – 1.5” Hoses
- Assorted 1.5” fittings, strainers and valves
- Various portable or mobile snowmaking equipment

Operational equipment

All equipment related to rental shop including but not limited to:

- Approximately 1500 skis with bindings
- Approximately 500 Snowboards
- Approximately 400 Flow Bindings
- Approximately 500 Ski Helmets
- Approximately 1800 Ski Boots
- Approximately 500 Snowboard Boots
- Approx. 800 pairs of poles
- MicroJet 70 Wintersteiger Tuner
- GrindRite Side Edger
- Grind Rite Base and Side Edger
- Torque Wrench and miscellaneous tools
- 2 Vermont binding calibrator
- Misc. Ski tuning equipment
- 50 Snow tubes

All office furniture and equipment including but not limited to:

- Office equipment – desks, chairs, display cases, etc.
- Phone System
- Security video system.
- Computer system including operational software and printing equipment
- 1 Full Color Brother Laser Printer
- 2 Black and White Brother Laser Printers
- 11 Polycom IP Phones
- 3 wood desks
- 4 Lateral Filing Cabinets
- 2 Vertical Filing Cabinets
- Security System with monitoring on four entry doorways
- Safes
- Web and Security Cameras with computers

All network hardware and software licenses including but not limited to:

- SQL Server
- DLL Server
- Web Salespoint
- Fortinet Firewall
- Router
- 2 - Managed Switches

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- 4 – Simple Switches
- Security and Anti-Virus Software licenses for all computers
- Windows Server Software

All software licenses and peripheral hardware including but not limited to:

- Siriusware Sales, SysManager and Report Manager
- Siriusware Booking Module for private lessons
- Siriusware SeeBooks for private lesson instructors
- Siriusware E-Commerce Module
- Siriusware Debitware/Gift Card Module – including pre-encoded gift cards
- 7 PC Salespoints with thermal ticket printers, receipt printers, card scanners, cameras, creditcard processing terminals, monitors, keyboards and mouse
- Fargo DTC 4000 Season Pass printer
- www.ski-bigbear.com - Domain Name Registration

All equipment and supplies for Ski Patrol including but not limited to:

- 10 assorted patrol toboggans
- All Ski Patrol furniture and fixtures
- All Ski Patrol equipment and supplies
- 6 sets of evacuation equipment
- Exam benches and stretchers
- Oxygen tanks
- AED, batteries and replacement pads
- Medical first aid supplies

All radio equipment including but not limited to:

- Repeater
- Antenna
- 40 hand held radios
- 40 Midland radios

Items and buildings Owned by Masthope Mountain Community

Buildings

Patrol Building
Thundercloud lift
Grizzly Building
Majic Carpet building
Little Bear Building

Lifts

Thunder Cloud Green
Thunder Cloud Silver
Grizzly

Little Bear
Majic Carpet 1
Majic Carpet 2
Sun Kid Carpet

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Pumps/Drives Lake

Lake Pump 1
Lake Pump 2
Lake Pump 3
Lake Drive 1
Lake Drive 2
Lake Drive 3

Pumps/Drives Booster

Booster 1
Booster 2
Booster 3
Drive 1
Drive 2
Drive 3

Compressors

Compressor 1
Compressor 2

Snow Making Equipment

Fixed Air Water Guns	45
Portable Air Water	25
Fixed tower (Electric)	34
Areco (Electric)	8
SMI Portable (Electric)	8
Misc. Air Water	15

Infrastructure

Supply line from lake	
Mtn Distribution Line	
Hydrants water/air	150/150
Mtn Electrical system	
Electrical switch-gear	
Lights	150

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INCOME		2018-19	NOTES
1	POC Ski this year, 175	\$ 300,000	Approx. \$299,000 has been collected to date 11/14/18
2	Lease Payment	\$ 70,000	
3		\$ -	
TOTAL INCOME		\$ 370,000	
EXPENSE AREAS		2018-19	
1	Ski Loan (annual premium: \$24,000)	\$ 281,940	12 payments at \$23,495
2	RMC Annual Operating Fee	\$ -	\$137,500 fee eliminated
3	Miscellaneous Expenses-estimated	\$ 30,000	Normal item included every year and approved by BOD
4	Lodge Expenses	\$ 45,000	Lodge expenses in the past paid by RMC (estimated)
5	Permits and Inspections	\$ 10,500	Normal yearly costs
6	Liability Insurance Shared		
TOTAL EXPENSE		\$ 367,440	
INFLOW / OUTFLOW BALANCE		\$ 2,560	
CUMULATIVE RESERVE FUND SECTION			
SKI RESERVE FUND		2018-19	
1	Projected Start of Year Amount	\$ 149,000	Ski account at start of year
2	Inflow/Outflow (from above)	\$ 2,560	
3	BOARD APPROVED PROJECTS	\$ (65,000)	
	Balance of Lift and Snowmaking Previously Approved		
4	Projected Year-end Amount	\$ 86,560	