

# Ski Lease/Management Agreement

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This is a Ski Lease/Management Agreement (“Agreement”) between **Masthope Mountain Community Property Owners Council** (“MMCPOC”), a Pennsylvania nonprofit corporation with an address of 196 Karl Hope Boulevard, Lackawaxen, Pennsylvania 18435 and **Recreation Management Corporation** (“RMC”), a Pennsylvania business corporation with an address of P.O. Box E Hawley, Pennsylvania 18428 (collectively the “Parties”; each a “Party”).

## ***Background***

I. The MMCPOC 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 Community). 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 Parties intend that RMC shall (i) manage and operate (the “Services”) and (ii) lease the ski facilities of the Community under the terms of this Agreement with the oversight of the MMCPOC Board of Directors. The attached Schedule A identifies the respective owners of the land, buildings, equipment and other property to be utilized in the operation of the Community’s ski facilities.

## ***Agreement***

The MMCPOC 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 AND TERM**

This Agreement shall be effective in the Initial Term as of the 1st day of May 2020 (the “Effective Date”) and shall terminate as of the 30<sup>th</sup> day of April 2024 (the “Expiration Date”).

### **2. AGREEMENT**

MMCPOC agrees to lease to RMC and RMC agrees to lease from MMCPOC the ski facilities described in this Agreement; and RMC also agrees to provide the Services and make the

lease payments as stated below, under and subject to the terms and conditions of this Agreement.

3. MMCPOC'S AND PROPERTY OWNERS' INTERESTS

The MMCPOC is the governing entity for the Community, a Pennsylvania planned community. MMCPOC owns, operates, maintains and replaces the Community's common facilities for the benefit of the property owners. MMCPOC is also 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 Community. MMCPOC must fund both community operating expenses of and capital reserves required for the Community. As part of its mission, MMCPOC is leasing to and contracting for the management and operation of the ski facilities by RMC.

4. SKI CAPITAL FUNDING

As the responsible party for funding capital reserves for the Community, MMCPOC agrees to work with RMC to create and fund a capital improvement and asset replacement plan for the ski area facilities. The amount to be budgeted for this purpose will be determined annually by an agreed date to allow time for appropriate planning and construction as required for the ski facilities.

5. PROFESSIONAL MANAGEMENT STANDARDS

RMC agrees to furnish all of the necessary management and operating Services required under this Agreement using best efforts in compliance with industry standards for professional skill and competence in its capacity as the operator of the ski facilities. RMC agrees to manage and operate the ski area and the ski assets in compliance with the applicable provisions of local, state and federal requirements.

6. INSURANCE COVERAGES AND INDEMNIFICATION

- a. RMC shall on or before December 5<sup>th</sup> of each 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, comprehensive general 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. RMC may choose to insure all of the ski area buildings and equipment on its company's property and casualty insurance policy and then be reimbursed by MMCPOC for the allocated costs of insuring buildings and equipment owned by the MMCPOC. RMC can also choose to purchase business interruption and other coverages.

- c. RMC agrees that MMCPOC shall be named as an additional insured on all the aforementioned policies of insurance. RMC shall provide appropriate insurance certificates to Community evidencing coverage, limits and naming of MMCPOC as an additional insured.
- d. The original policies may be retained by RMC, but MMCPOC shall have the right to inspect any and all such policies; and RMC, on demand, agrees to furnish the MMCPOC with proof of payment of the premium or premiums on any such policies.
- e. RMC must provide insurance certificates to MMCPOC that each of the insurance 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 RMC.
- f. RMC agrees to indemnify and hold harmless MMCPOC, its officers, agents, employees, and board members with respect to any and all claims arising out of RMC's obligations under this Agreement including, but not limited to, and legal claims or actions for personal injuries and/or property damage.
- g. RMC shall maintain Workers Compensation Insurance for all of its employees.
- h. RMC shall be named as an additional insured in all MMCPOC insurance policies relating to directors' and officers' liability, comprehensive general liability and fidelity liability insurance.
- i. RMC shall indemnify, defend and hold harmless MMCPOC as well as its officers, employees, directors and agents from and against any and all lawsuits, losses, claims, actions, damages, liability and expenses resulting from any acts or omissions of RMC, its agents and employees, as a result of its performance of its services under this Agreement. Further, MMCPOC agrees to indemnify RMC and to defend and hold harmless from and against all losses, claims, actions, damages, liability and expenses resulting from any negligence, acts or omissions of MMCPOC. However, neither Party shall have any duty to indemnify the other Party for any Loss to the extent caused by the other Party's 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 circumstances, 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 the other Party. This provision shall survive the termination of this Agreement, regardless of the cause.

## 7. POINT OF CONTACTS

RMC shall report to and receive direction from one MMCPOC contact person, the President of the MMCPOC or any other designee agreed upon by both Parties.

## 8. FINANCES, PREMISES, EQUIPMENT AND FACILITIES

MMCPOC hereby lease to RMC the Community ski area facilities for which RMC shall pay MMCPOC an annual rental fee of \$50,000 due in four 25% payments on December 15, January 15, February 15, and March 15. After the first year of this Agreement the annual rental fee shall increase annually based on the NY Urban Consumers Consumer Price Index (CPI).

Under RMC's Lease, RMC shall have exclusive possession, 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. RMC shall also have access to and use of all utilities and other services that supply these leased ski facilities. RMC and MMCPOC shall have shared use, however, of the Masthope Mountain Lodge but with RMC having priority usage of the Lodge during the hours when the ski area is operating.

The leased buildings named above will include all equipment included within the buildings and outside these buildings including, pumps, compressors, electrical switches and equipment, exterior lighting and ski facility lighting, electrical services including the services provided to the Lodge.

The lease also includes the underground water and air supply lines and associated hydrants that are part of the snowmaking plant as well as the snowmaking pond located at the pump building.

RMC shall be responsible for all utilities and other services used at and associated with the ski operation including telephone, cable, Internet, electric and other technologies. RMC shall pay in full for the electrical services supplied to the Maintenance Area called Masthope Rapids Prop Owners – Ski Area, the Masthope Rapids Property Owners Council Snow Pump Station and the Masthope Prop Owners Ski Bottom when ski area is in operation or in preparation for the ski season. The MMCPOC will be responsible for the Masthope Mountain Lodge electric services year-round. It is understood by both Parties that some of the equipment and lighting located on the ski mountain is powered by the Lodge electrical service.

The lease fees to be paid by RMC under the Lease are based on the existing members' usage and pass policy as currently stated in the Community's governing documents and rules. The lease fees to be paid under this Agreement may be amended by the MMCPOC Board of Directors and RMC should MMCPOC make any future changes in the MMCPOC members' ski area pass and usage policy.

The lease fees to be paid by RMC under the Lease are based on the present short-term rental policy of MMCPOC. Short term rental is defined as the renting of a residential dwelling structure which is rented for the purpose of overnight lodging for a period of

not less than one (1) day and not more than thirty (30) days. If MMCPOC changes the policy, then the lease fees shall be amended by MMCPOC Board of Directors and RMC to an amount that is acceptable to both parties.

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

RMC shall be solely responsible for maintaining all of the equipment, buildings and grounds leased to it by MMCPOC and utilized in the ski area operation. RMC must keep all of those assets in good operating condition, 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 the equipment, including but not limited to the pumps, compressors, snowmaking equipment, water and air supply lines, electrical switchgear and components, lift motors, drives, safety systems, electrical components, gear boxes, braking systems and all other major components of the lifts. Any major repairs to or replacements of such equipment shall be agreed upon in advance by both Parties. If the failure of this equipment is due to the RMC's negligence or intentional acts, however, RMC will be solely responsible for the replacement or repair of the same. The Association shall maintain boiler and machinery insurance on all major mechanical equipment leased to RMC.

MMCPOC, as equipment owner, shall be responsible for annual and other periodic testing of the leased equipment and all permits/fees required by the state or other agency or organization. RMC will be responsible to schedule and perform the same for MMCPOC. RMC will be responsible for any annual or periodical testing and permits/fees required by its insurance companies.

10. SCOPE OF SERVICE AGREEMENT

Pursuant to this Agreement, RMC 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 accessory shop, and all associated administration and marketing of the ski facility. Hours of operation will be established by RMC and approved by the Board of Directors of MMCPOC as per this Agreement. The Parties agree that the length of the ski season will be dependent on weather conditions. Snowmaking will begin, weather permitting, on or about November 26 of each year. Snowmaking will operate at the discretion of RMC and, with the exception of early season and recovery periods, snowmaking will occur during off-peak hours.

11. OTHER TERMS AND CONDITIONS

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; Hours of operation will be approximately 54 hours for a normal in-season week, with extended hours during holiday weeks and with reduced weekly hours prior to Christmas and in the spring. All hours of operation are weather permitting.

b. For proper operation of the ski mountain, RMC will give snowmaking priority first to the 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 during the term of this Agreement and includes a license from MMCPOC for exclusive use of the name and logo for Ski Big Bear at Masthope Mountain.

d. Only MMCPOC members in good standing will be issued lift tickets or have passes validated for use of the ski facility. Members will receive the ski privileges as stated in the then-current Community handbook and its other governing documents.

e. Property Owner Guests will receive a 25% discount on daily lift tickets. This discount cannot be used in conjunction with any other discount programs. A Community guest pass is required in advance of the lift ticket purchase in order to receive this discount.

f. MMCPOC members in good standing will receive a 50% discount for a tubing session ticket.

g. If MMPOC implements any new technology to track ski facility usage and/or potential abuses, RMC will work with MMPOC to create a plan and/or grant access to the ski operation needed to utilize this technology.

h. Reporting and Audit

1. RMC will provide upon request by the President of the MMCPOC, or another designated person agreed upon by both Parties, written seasonal usage reports on a seasonal basis, including but not limited to:

- number of daily and season public tickets and passes sold
- number of property owner passes validated
- number of group ticket sales
- number of daily and seasonal rental equipment sold
- number of group and private lessons sold
- number of any other group of special programs sold
- number of half day tickets

- number of night tickets

Such reports are generated from the RMC point of sales system and the MMCPOC President or other designated person can participate in viewing the generation of these reports by providing reasonable notice.

2. RMC will also supply to MMCPOC:
  - copies of all liability insurance certificates
  - electric utility company statements for all accounts associated with the ski area operation.
  - a year-end report to include number of hours of snowmaking and number of hours of operation of each ski lift.
  - A summary report of maintenance, repairs, operational logs and pre-operating inspection results on all equipment owned by MMCPOC. A more detailed report and full records can be reviewed by a designated person.

### ***Term, Renewal and Termination***

#### **12. TERM**

The initial term of this Agreement shall be four years beginning on the Effective Date unless sooner terminated as hereinafter provided. The Parties may extend the term in accordance with the provisions of this Agreement.

#### **13. RENEWAL TERM**

The term of this Agreement may be extended at MMCPOC's option, for up to two (2) consecutive periods (each, a "Renewal Term") of four years each on not less than 180 days' notice to RMC prior to the expiration of the effective Agreement. The terms and provisions of this Agreement will remain in effect as stated herein during any Renewal Term unless amended by the Parties.

#### **14. RIGHTS TO TERMINATE**

Each party shall have the right to terminate this Agreement without cause by providing the other Party one hundred eighty (180) days' advance notice in writing. In the event this Agreement is terminated prior to the Expiration Date, either Party shall be entitled to the compensation earned through the date of termination as provided for in this Agreement computed *per diem* up to and including that date. RMC, in good faith, will assist in any transition to a new service provider at a negotiated rate and for a negotiated period of time.

RMC shall have the right to terminate this Agreement with sixty (60) days' notice if MMCPOC changes the present short-term rental policy in the community. The short-term rental policy generates significant income for RMC. The loss of the short-term rentals may have significant impact on RMC financially. Thus, RMC shall have the right to terminate this Agreement by giving sixty (60) days' notice to MMCPOC.

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#### 15. TERMINATION ON BANKRUPTCY

If RMC is adjudicated to be insolvent or bankrupt, or makes any assignment for the benefit of creditors, MMCPOC may terminate this Agreement immediately, effective as of the date of the notice to RMC.

#### 16. OTHER 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 the insurance required by this Agreement;
- d. The bankruptcy or insolvency of RMC.
- e. The failure of MMCPOC to make ski area property and equipment available to RMC in an acceptable condition.

#### 17. TERMINATION BASED ON FRAUD OR MISMANAGEMENT

This Agreement may be terminated by MMCPOC upon a discovery of RMC's criminal acts, fraud, or gross negligence, and shall be effective immediately upon MMCPOC giving written notification of cause to RMC. RMC shall remain liable to MMCPOC for the all fees due under this Agreement.

#### 18. DAMAGE BY FIRE OR OTHER CASUALTY

In the event that any major building, equipment, water or air supply is damaged or destroyed by fire or other casualty and cannot be replaced or repaired in thirty (30) days, this Agreement would terminate, and payments would be adjusted on a *per diem* basis.

#### 19. EFFECT OF TERMINATION

Upon termination of this Agreement, it is agreed by both MMCPOC and RMC that possession of all equipment, property and buildings be returned to the respective owner in accordance with Schedule A attached to this Agreement. All items shall be delivered to the proper owner within 30 days of the termination date. Any equipment owned by MMCPOC will be returned in good working condition with appropriate documentation and maintenance logs. The lease given in this Agreement shall end automatically at 12:01 a.m. on the termination date.

#### 20. 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 (2) sending by other commercial delivery to the Party. A Party giving notice should also request a return receipt. All correspondence should be addressed to the President of each Party at the addresses first given above, unless later changed by written notice to the other Party.

#### 21. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assignable or delegable in its entirety or in part by RMC without the written consent of MMCPOC, which consent may be withheld absolutely. RMC shall perform all duties required by RMC hereunder, and shall not subcontract, sublet, assign or delegate any of those duties to third parties, unless done with written consent of MMCPOC.

#### 22. REQUESTS FOR PROPOSAL; RIGHT OF FIRST REFUSAL

In the event MMCPOC issues any future Request for Proposals (RFP), for services, etc. similar to the terms of this Agreement, RMC shall have a right of first refusal to match the terms of the preferred proposal and to contract with MMCPOC.

#### 23. ARBITRATION

- a. It is agreed that any controversy that may arise between the Parties relating to the interpretation, validity, construction, or performance of this Agreement shall be subject to common law arbitration under *42 Pa. Cons. Stat. Ann §7341*.
- b. Either Party may demand in writing that the dispute be submitted to arbitration within fifteen (15) days after such dispute arises. The demand shall include the name of the arbitrator appointed by the Party demanding arbitration and a statement of the matter in controversy.

- c. Within fifteen (15) days after such demand, the other Party must appoint an arbitrator. If the other Party fails to appoint a second arbitrator, the arbitrator named by the Party demanding arbitration shall select a second arbitrator. A third arbitrator shall be chosen by the first two arbitrators within thirty (30) days after the second arbitrator is selected.
- d. The arbitrators shall have the power to appoint the time and place for the arbitration hearing and the manner in which written notice of the hearing shall be served on all interested parties. The arbitrators shall have the authority to adjourn and reconvene the hearing as they deem necessary. For good cause shown upon request by a Party, the arbitrators shall have the authority to postpone the hearing to a time not later than thirty (30) days subsequent to the first scheduled hearing date. The powers of the arbitrators shall be exercised by a majority of the arbitrators.
- e. Each Party shall bear its own arbitration costs and expenses. These costs and expenses shall include, but not be limited to, the fees and expenses of arbitrators appointed by the Parties in preparing for and conducting the hearing. Each Party shall pay fifty (50%) of the fees and similar costs of the third arbitrator.
- f. The award rendered by the majority of the arbitrators pursuant to this Agreement shall be final and binding on all Parties, subject to the statutory provisions of *42 Pa. Cons. Stat. Ann §7341* regarding the vacation or modification of an arbitration award upon a showing of fraud, misconduct, corruption or other irregularity causing the rendition of an unjust, inequitable or unconscionable award. Notice of the award shall be mailed to each of the Parties by Certified Mail no later than fifteen (15) days after the conclusion of the hearing. A judgment or decree in conformity with the award may be entered by a court of competent jurisdiction on application of either Party.
- g. The Parties agree that the arbitration provisions of this Agreement are a complete defense to any suit in law or equity with respect to any controversy arising during the period of the Agreement. These arbitration provisions shall survive the termination or expiration of this Agreement.

#### 24. OTHER MISCELLANEOUS PROVISIONS.

- a. Each Party agrees that this Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania in effect as of the date of execution thereof.
- b. This Agreement is legally binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

- c. This Agreement constitutes the entire agreement between MMCPOC and RMC with respect to lease and operation and management of the ski facilities of MMCPOC. 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.
- d. 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 duly authorized officers to execute this Agreement on their behalf, intending to be legally bound by this Agreement.

ATTEST: ***Masthope Mountain Community Property Owners Council***

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST: ***Recreation Management Corporation***

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date