

## LEASE AND OPERATING AGREEMENT

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

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

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

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

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

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

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

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

**1. LEASE OF PREMISES.**

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

**2. TERM.**

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

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

3. RENT.

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

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

The following shall be excluded or deducted from gross revenues:

- a. Sales, excise, or other taxes which are imposed upon the sale of goods or services and which are collected by the Operator for remittance to the appropriate government or taxing authority. This exclusion from gross revenues is not intended to apply to any franchise, capital stock, income or similar taxes which are based upon the profits of the Operator.
- b. Refunds, discounts, rebates or allowances paid or given by the Operator to ski area patrons.
- c. Tips, gratuities or other charges for merchandise or services which are included in the account or bill of a patron.
- d. All revenues from the sale or rental of real estate.

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

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

4. SKI AREA OPERATIONS.

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

5. ANNUAL OPERATING PLAN.

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

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

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

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

6. MASTER DEVELOPMENT PLAN.

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

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

7. SITE IMPROVEMENTS.

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

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

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

8. CONSTRUCTION BONDS.

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

9. OPERATIONS BOND.

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

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

10. RIGHT TO ENTER LEASED PREMISES.

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

11. UTILITIES.

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

12. TAXES.

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

13. RATE SCHEDULE.

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

14. PUBLIC USE OF THE LEASED PREMISES.

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

15. ENVIRONMENTAL PROTECTION.

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

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

16. MAINTENANCE.

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



17. SECURITY INTERESTS IN LEASED PREMISES.

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

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

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

19. INSPECTION OF OPERATOR'S RECORDS.

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

20. PERSONNEL.

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

21. OPERATOR'S RELATION TO THE STATE.

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

22. ASSIGNMENT, DELEGATION AND SUBCONTRACTS.

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

23. INDEMNIFICATION.

The Operator shall defend, indemnify and hold harmless the State, and its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Operator or its subcontractors, agents or assignees.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

24. INSURANCE.

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

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

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

25. DEFAULT AND TERMINATION.

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

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

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

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

**26. WAIVER OF BREACH.**

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

**27. AMENDMENT.**

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

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

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

29. THIRD PARTIES.

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

30. ENTIRE AGREEMENT.

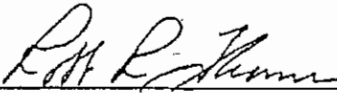
This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

31. APPROVAL CONTINGENCIES

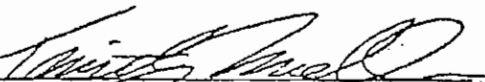
This Lease and Operating Agreement shall not be final and binding upon the State until it is approved by the Capital Budget Overview Committee of the New Hampshire General Court and by the New Hampshire Governor and Executive Council.

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

THE STATE OF NEW HAMPSHIRE

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

OKEMO MOUNTAIN, INC.

By:   
Timothy Mueller, President

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

Michael A. Scaer

Senior Assistant Attorney General  
Department of Justice

Approved by Capital Budget Overview Committee this 14<sup>th</sup> day of May, 1998. *CONDITIONED UPON ENACTMENT OF HB 1291 AS AMENDED BY SEN. FRED KWO. SEE COMMITTEE MINUTES.* 66

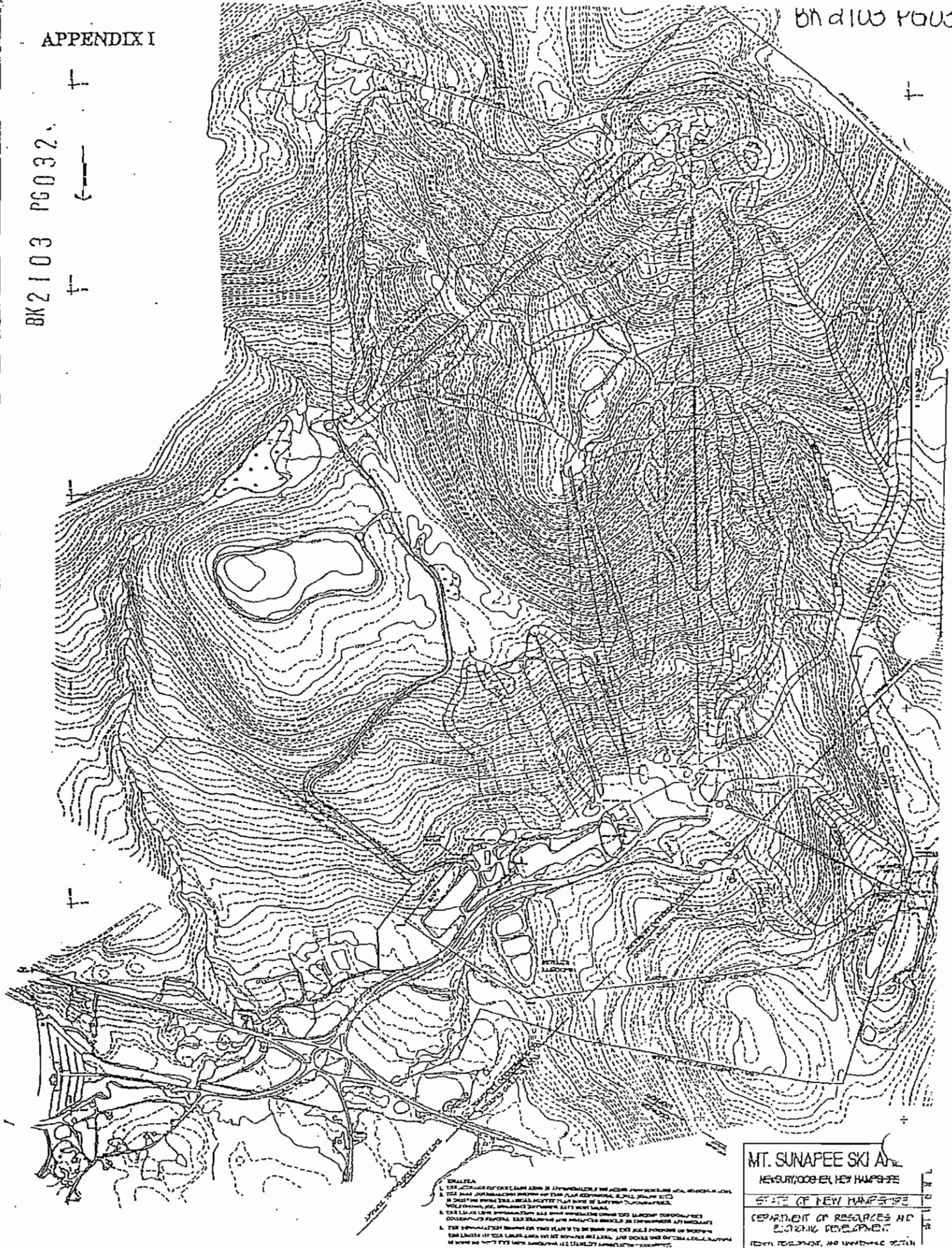
Gene H. Chandler

Approved by the Governor and Executive Council this 10<sup>th</sup> day of June, 1998.

Robert P. Anders  
**DEPUTY SECRETARY OF STATE**

Appendix 1  
Map of Lease Premises

BK 2103 PG 032



EXPLANATION

1. THE BOUNDARIES OF THE STATE OF NEW HAMPSHIRE AND THE COUNTY OF CARROLL AS SHOWN ON THIS MAP ARE BASED ON THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777.
2. THE BOUNDARIES OF THE COUNTY OF CARROLL AS SHOWN ON THIS MAP ARE BASED ON THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777.
3. THE BOUNDARIES OF THE TOWN OF SUNAPEE AS SHOWN ON THIS MAP ARE BASED ON THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777.
4. THE BOUNDARIES OF THE VILLAGE OF SUNAPEE AS SHOWN ON THIS MAP ARE BASED ON THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF NEW HAMPSHIRE, PASSED IN 1776 AND 1777.

MT. SUNAPEE SKI AREA  
 NEWBURY/DOVER, NEW HAMPSHIRE  
 STATE OF NEW HAMPSHIRE  
 DEPARTMENT OF RESOURCES AND  
 ECONOMIC DEVELOPMENT  
 1978



Appendix 2

Property Description of Leased Premises

Sunapee Lease Area Description

Beginning at a granite bound set flush where the southerly side of the park maintenance road, herein referred to as the Bowl Road, intersects with the southerly sideline of a grass utility road; said bound being S 67°-00' E, 65'± from the gate post on the southwest side of the Bowl road and N 62°-30' E±, 164.5'± from the northeast corner of a pole barn; thence turning and running from said point of beginning 6375'± along the westerly sideline of the Bowl road in a generally northeasterly, southeasterly, southwesterly and southeasterly direction to a granite bound set flush near the extreme southwest end of the cul de sac of the Bowl road, said bound being S 81°-30' E±, 197'± from the center of the existing bullwheel on the Sun Bowl chair lift; thence turning and running from said granite bound S 1°-30' E±, 3560'± to a point; thence N 72°-15' W±, 2270'± to a point, thence S 71°-30' W±, 1575'± to a point, thence N 65°-45' W±, 900'± to a point, thence N 48°-30' W±, 550'± to a point, thence N 27°-45' W±, 1675'± to a point, thence Due North±, 1860'± to a point, thence N 20°-30' E±, 1650'± to a point, thence N 17°-30' W±, 2065'± to a stake in the intersection of stonewalls, said stake being a State Park corner, thence running along the State Park boundary the following courses: N 16°-00' E±, 257'± to an iron pipe, thence N 74°-00' W±, 50'± to an iron pipe, thence N 16°-00' E±, 200'± to an iron pipe, thence S 74°-00' E±, 50'± to an iron pipe in aforementioned stonewall, thence running along the stonewall N 16°-00' E±, 115'± to a point, thence leaving the State Park boundary and running N 62°-45' E±, 1110'± to a point, thence N 81°-45' E±, 2625'± to a point, said point being northerly of the lagoons, thence turning and crossing the main park entrance road S 57°-30' E±, 1375'± to a point which is easterly of the easterly corner of a gravel parking lot, thence turning and running S 40°-00' W±, 800'± to the point of beginning. Said parcel contains approximately 968 acres more or less. The described bearings are turned relative to magnetic north orientation. The bearings and distances are derived from a plan done by an aerial survey on file with the State of New Hampshire and should be considered as approximate in defining the area as delineated on the plan.

Appendix 3

Assets