

COPY

REQUEST FOR PROPOSALS

OPERATION OF STATE-OWNED SKI AREA
AT MOUNT SUNAPEE STATE PARK



ISSUE DATE:

January 15, 1998

STATE OF NEW HAMPSHIRE

JOINT LEGISLATIVE COMMITTEE
TO DEVELOP REQUESTS FOR PROPOSALS FOR OPERATION OF
MOUNT SUNAPEE AND CANNON MOUNTAIN SKI AREAS

DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

REQUEST FOR PROPOSALS

OPERATION OF STATE-OWNED SKI AREA
AT MOUNT SUNAPEE STATE PARK

ISSUE DATE: January 15, 1998

DUE DATE: April 1, 1998

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I. INTRODUCTION

1.1 General Description of Project

The State of New Hampshire (the "State"), acting through the Joint Legislative Committee (the "Joint Legislative Committee") established to develop and review a request for proposal for leasing the state-owned ski areas at Mount Sunapee State Park and Cannon Mountain at Franconia Notch State Park and the Commissioner of the Department of Resources and Economic Development ("Commissioner" and "Department"), has developed this Request for Proposals ("RFP") to invite the submission of proposals by experienced ski area operators ("operators") for a lease, concession agreement or management contract to operate the state-owned ski area at Mount Sunapee State Park in Newbury, New Hampshire.

The Mount Sunapee State Park and ski area has been developed using outdoor recreation funding from the federal Land and Water Conservation Fund administered by the U.S. Department of the Interior, National Park Service (the "National Park Service"). The State recognizes its obligation under Section 6(f)(3) of the Land and Water Conservation Fund Act and related regulations and project agreements to make Mount Sunapee State Park available for public outdoor recreation uses. The National Park Service has advised the State that none of the land, buildings, equipment and other improvements at Mount Sunapee State Park can be sold or converted from public recreational use without federal approval. Federal regulations do allow 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 to ensure that it continues to be used for public outdoor recreation uses.

Sealed offers will be received by the State at the offices of the Department of Resources and Economic Development, 172 Pembroke Road, P. O. Box 1856, Concord, New Hampshire 03302-1856, until 3:00 p.m. on April 1, 1998, for the year-round operation of the ski area at Mount Sunapee for a twenty (20) year

term beginning on July 1, 1998 and ending on June 30, 2018, with the opportunity for two ten-year extensions. This RFP seeks detailed responses describing each operator's experience, capabilities and commitment to successfully operating the Mount Sunapee Ski Area for year-round public outdoor recreation purposes. Offers submitted in response to this RFP will be reviewed and ranked using the criteria and point score system described in the RFP. All offers received in response to the RFP will be reviewed by a subcommittee of the Joint Legislative Committee in cooperation with the Commissioner. Any lease, concession agreement or management contract recommended by the Commissioner will be submitted to the New Hampshire Legislature's Capital Budget Overview Committee and the Governor and Executive Council for review and approval.

1.2 Statement of Legal Authorities

There are state and federal statutes that govern this project, either specifically or by general application. Operators who submit offers in response to this RFP will be required to certify that they have read and understand the following laws:

- a. Laws of New Hampshire 1997, Chapter 119 - An Act Relative to an Agreement or Contract for the Mount Sunapee or Cannon Mountain Ski Area Operations, or both, Establishing a Committee to Develop a Proposal and Review Responses, and Requiring Review of any Agreement or Contract by the Capital Budget Overview Committee.
- b. RSA 12-A:29-a - Lease Agreement; Terms.
- c. RSA 218:5-c - Admission Without Charge [Senior Citizens].
- d. RSA 219:21 - Purchases and Certain Expenses [Concessions at Cannon and Mt. Sunapee].
- e. RSA Ch. 225-A - Skiers, Ski Area and Passenger Tramway Safety.
- f. RSA Ch. 227 - Aerial Tramways.

g. RSA 72:23 - Real Estate and Personal Property Tax Exemption.

h. Section 6(f) of the Land and Water Conservation Fund Act (16 U.S.C. Section 460 I-8) and related federal regulations and guidelines.

II. INSTRUCTIONS FOR SUBMITTING PROPOSALS

2.1 RFP Schedule

Event Description	Date
Public Notice of Project	October 14, 1997
Release of Draft RFP for Public Comment	October 17, 1997
Public Hearing on Draft RFP	November 12, 1997
Mandatory Meeting for Interested Operators	November 19, 1997
Deadline for Written Public Comment and Inquiries About Draft RFP	December 10, 1997
Combined Public Hearing	January 6, 1998
Release of Final RFP	January 15, 1998
Proposal Due Date	April 1, 1998
Interested Operator Presentations	To be announced

2.2 Draft RFP and Public Hearings and Comment

This RFP is being released in draft form so that interested persons, members of the general public and prospective operators have an opportunity to comment on its organization, clarity and content. Comments or inquiries about the RFP must be submitted in writing by the stated deadlines. Copies of all comments, inquiries and the State's responses will be made available to other interested parties. A public hearing was held at 6:00 p.m. on November 12, 1997 at the Ski Area. A second combined public hearing on the RFPs for both Mt. Sunapee and Cannon Mountain Ski Areas was held on January 6, 1998, at 6:00 p.m. in Room 305 of the Legislative Office Building in Concord. The RFP incorporates language changes deemed necessary by the State as a result of this dialogue.

2.3 Questions and Comments About RFP

Questions and comments about this RFP must be submitted in writing to:

Robb R. Thomson, Commissioner
State of New Hampshire
Department of Resources and Economic Development
172 Pembroke Road
P. O. Box 1856
Concord, New Hampshire 03302-1856
(603) 271-2629 (fax number)

2.4 Mandatory Pre-Submittal Meeting

A pre-submittal informational meeting for prospective operators was held to discuss this draft RFP at 10:00 a.m. on November 19, 1997 at the Ski Area. Attendance was mandatory for operators interested in submitting a proposal. Proposals will not be accepted from operators who did not send a representative to the informational meeting.

2.5 RFP Clarifications and Revisions

Oral statements, representations, clarifications or modifications concerning this RFP are not binding upon the State. The Department and the Joint Legislative Committee will, to the extent deemed to be in the public interest, incorporate the results of any public comment or inquiries from interested operators into the final RFP. The final RFP will be issued to interested operators or members of the public upon payment of a fifty dollar (\$50.00) administrative fee. If it becomes necessary to revise any part of the final RFP prior to the deadline for submitting proposals, a written addendum to the RFP will be issued to all eligible proposers.

2.6 Proposal Submissions

Proposals must be received prior to 3:00 p.m. on April 1, 1998. Proposals submitted after this deadline will be rejected as untimely. Proposals must be delivered to:

Robb R. Thomson, Commissioner
State of New Hampshire
Department of Resources and Economic Development
172 Pembroke Road
P. O. Box 1856
Concord, New Hampshire 03302-1856

2.7 Proposal Format

Proposals must be submitted in the format required by this RFP. Multiple or alternate proposals from a single operator will not be accepted.

2.8 Proposal Quantities and Labeling

Each proposal must contain one original and twenty (20) copies in a sealed envelope or package. Each proposal envelope or package shall be clearly labeled as follows:

Proposal for Operation of Mount Sunapee Ski Area
Submitted by: [insert operator's name]
Date: [insert date of submission]

2.9 Proposal Disposition

All proposals become the property of the State of New Hampshire and may not be returned to the operator.

2.10 Proposal Guaranty

By submitting a proposal, each interested operator pledges to enter into a lease and operating contract with the State on the terms stated in the RFP. Each interested operator's proposal must be accompanied by a guaranty in the amount of \$50,000, which may be in the form of a bid bond or certified check made payable to the "Treasurer, State of New Hampshire." If the selected operator fails to enter into any required contract, the amount of the bid proposal guaranty shall be forfeited to the State as liquidated damages and not as a penalty. The State reserves the right to retain the proposal guaranty of interested operators to whom an award is being considered until a contract has been executed and approved by the Capital Budget Overview Committee and the Governor and Executive Council.

2.11 Public Disclosure of Proposals

RSA 21-I:13-a provides, in part, that no information shall be available to the public concerning proposals for public bids from the time the proposal is made public and until it is actually awarded, in order to protect the integrity of the public bidding process. Accordingly, proposals submitted in response to the RFP will not be

released to the public until the Commissioner submits, or decides not to submit, a recommendation to the Capital Budget Overview Committee and the Governor and Executive Council for review and approval. At that time, all proposals will be disclosable to the public to the extent required by the statutes governing access to public records and meetings (the "Right to Know" law), RSA 91-A. If an operator submits information in a proposal it believes is exempt from disclosure under state law, the operator must clearly mark as "confidential" each page of its proposal containing such information.

2.12 Proposal Preparation Costs

No payment shall be made by the State or its representatives to cover costs incurred by any operator in preparation of or the submission of responses to the RFP or any other associated costs.

2.13 Right to Accept or Reject Proposals

The State reserves the right to accept or reject any part of any proposal, and to accept or reject any or all proposals.

2.14 Right to Waive Minor Deficiencies

The State reserves the right to waive minor deficiencies and informalities in a proposal if, in its sole judgment, the best interests of the State will be served.

2.15 Right to Cancel

The State reserves the right to cancel all or any part of this RFP at any time prior to final approval of a contract or lease with the selected operator.

2.16 Additional Information

The State reserves the right to make written requests for additional information from operators to assist in understanding or clarifying any proposal.

2.17 Proposal Evaluation and Contract Award

All proposals received by the State in response to this RFP will be subject to the evaluation process described in Section III. If the Commissioner recommends the award of a lease, concession agreement or management contract resulting from this RFP,

it shall not be final or binding upon the State unless and until it is approved by the Capital Budget Overview Committee and the Governor and Executive Council.

III. PROPOSAL EVALUATION PROCESS

3.1 Evaluation Process

The State will conduct a comprehensive, fair and impartial evaluation and comparison of proposals received in response of the RFP. The Joint Legislative Committee shall designate an Evaluation Subcommittee composed of five members of the House and two members of the Senate to review and rank the proposals based on the following criteria:

<u>Criteria</u>	<u>Maximum Score</u>
Financial Standing and Resources	20
Ski Area Operation Experience	20
Operations and Development Proposals	20
Public Recreational Benefit	20
Economic Return to the State	20
	<hr/> 100
Oral Presentation (Top Three Only)	20
	<hr/> 120

All proposals will be ranked by the Evaluation Subcommittee to develop a short list of the top three proposals.

3.2 Operator Presentations and Final Ranking

The top three proposals may be invited to make oral presentations to the Joint Legislative Committee. If one or more of the top three proposers decline to make an oral presentation, the State reserves the right to request a formal presentation from the operator with the next highest ranking. Following the oral presentations, the three proposals will be re-ranked in accordance with the total scores received. The Joint Legislative Committee shall advise the Commissioner whether a lease, concession agreement or management contract should be entered into with the operator with the highest ranking proposal. If the Commissioner concurs, he shall negotiate and execute leases, contracts or agreements consistent with this RFP and the successful operator's

proposal. Such fully executed leases, concession agreements, and management contracts shall be submitted to the Capital Budget Overview Committee and the Governor and Executive Council for review and approval.

IV. PROPOSAL CONTENTS

4.1 Introduction

Each proposal must respond to the requirements of the RFP by offering to provide ski area management and operation services at the ski area by stating information about the operator's financial standing, staff and resources, ski area operation experience, its proposal for the development and expansion of the Mount Sunapee Ski Area, and its payment proposal. Each proposal must be presented in narrative form, and must be organized and indexed by reference to the corresponding section of the RFP. Each proposal must include a proposed lease, concession agreement or management contract acceptable to the operator which incorporates substantially all of the provisions of the Draft Lease/Operation Agreement provided in Appendix B.

4.2 Financial Standing and Resources

Each proposal shall describe the financial standing of the operator, including current certified financial statement, latest company annual report, and current Dun & Bradstreet financial report and rating. Each proposal shall also describe the availability and qualifications of the key staff and other resources the operator will commit to the project.

4.3 Ski Area Operator's Experience

Each proposal shall describe the operator's level of experience in the management and operation of public or privately owned ski areas.

4.4 Operations and Development Proposals

Each proposal shall describe in detail the operator's proposal for year-round ski area operations, including the following:

- 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. Ability to honor special use permits and leases
- i. Marketing and advertising
- j. Environmental management program
- k. Signage
- l. Utilities and roads
- m. Employment opportunities for state employees presently working at ski areas.
- n. Each proposal shall describe the operator's proposal for capital improvements relating to the ski lifts, snow making capabilities, ski lodges or other buildings, and utility and service road infrastructure.

4.5 Public Recreational Benefit

Each proposal shall describe the operator's proposal for continuing or improving public outdoor recreational opportunities at the Ski Area.

4.6 Payments to State

Each proposal shall offer to pay the State of New Hampshire an annual rental amount, consisting of a base fee (adjusted annually for inflation) and a specified percentage of the gross annual revenues from the operation of the ski area.

APPENDICES

- A. Draft Lease and Operating Agreement
- B. Property Descriptions and Asset Inventories

APPENDIX A

LEASE AND OPERATING AGREEMENT

This Lease and Operating Agreement entered into this ____ day of _____, 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 _____

(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, 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 Town of Newbury, New Hampshire, comprising _____ acres, more or less (the "Leased Premises"). The Leased Premises are more particularly described in Appendices 1, 2 and 3 of this Lease and Operating Agreement, entitled Map of Leased Premises, Property Description of Leased Premises and Other Assets Included in Lease.

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 two (2) years 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 _____ dollars (\$_____) per year (adjusted annually for inflation) plus a variable fee of _____ percent (____%) of the Operator's gross annual revenues from the operation of the ski area, payable as follows:

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, whether sold for consumption or use on or off the Leased Premises, of food, beverages, rentals, tickets or other merchandise or services. With respect to vending machines or coin operated devices, the total receipts from these machines shall be included in gross revenues, whether operated by the Operator or its subcontractors.

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.

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 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 to provide year-round outdoor recreational opportunities for the general public.

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. 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 six (6) months 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. All renovations and improvements shall become the property of the State at 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 for review by DRED.

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.

No mortgage or other security interest shall be executed by the Operator upon the assets of the Operator in any leasehold improvements, including this Agreement without 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 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 shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the services

required under this Agreement shall be delegated or subcontracted by the Operator without the prior written consent of 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 (\$³500,000) 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; and 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.

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

Form, substance and execution approved this _____ day of _____,
199____.

Senior Assistant Attorney General
Department of Justice

Approved by Capital Budget Overview Committee this _____ day of
_____, 199____.

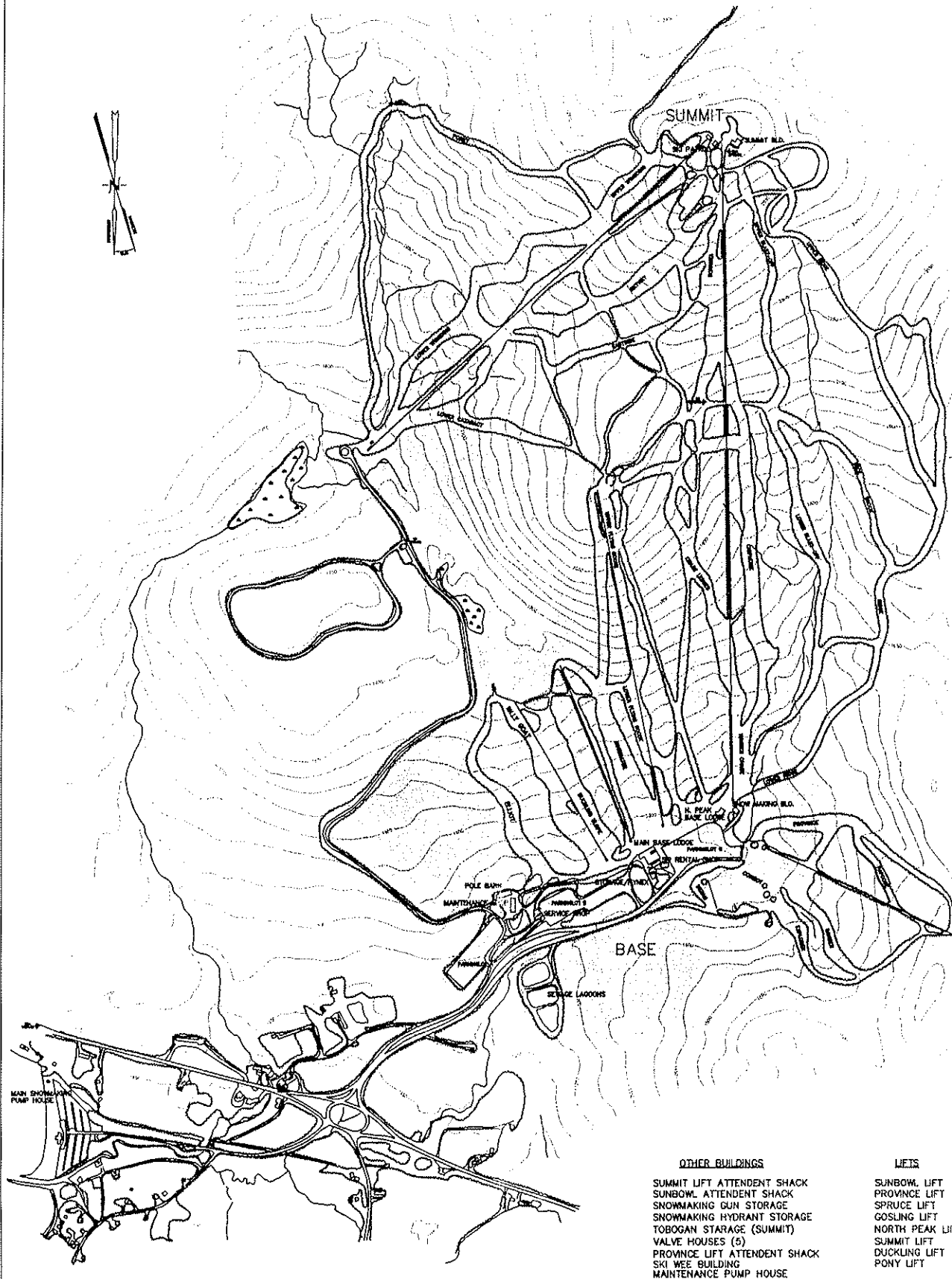
Approved by the Governor and Executive Council this _____ day of
_____, 199____.

APPENDICES B

1. Map of lease premises and property description of leased premises.
2. Leases, contracts and agreements.
 - a. New England Handicapped Sports Association (NEHSA)
 - b. Public Service of New Hampshire
 - c. New Hampshire Gem and Mineral Festival
 - d. New England Triathlon Festival
 - e. League of New Hampshire Craftsmen
 - f. New London Outing Club
 - g. Theater Confections, Inc.
 - h. Mount Sunapee Ski Club
 - i. Country Squires
 - j. Communication Towers
 - k. Ski Area Special Use
 - l. Miscellaneous weddings and groups
 - m. New Hampshire Audubon Society
 - n. Granite State Independent Living
 - o. Lake Sunapee Business Association
 - p. Lake Sunapee Running Club
 - q. Tower Optical
3. Assets
 - a. Office and speciality equipment
 - b. Vehicles and other equipment
4. Financial Information
5. Correspondence

Appendix 1

Map of lease premises and property description of leased premises



MT. SUNAPEE SKI AREA MT SUNAPEE, NEW HAMPSHIRE STATE OF NEW HAMPSHIRE DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT DESIGN, DEVELOPMENT, AND MAINTENANCE SECTION	APPROVED BY
	DESIGNED BY
	DRAWN BY WIRE COEN
	DATE
	SHEET
	OCT/97
	1.1