

# Appendices

Appendix A. Design Criteria

Appendix B. Lease and Operating Agreements

## APPENDIX A

# Design Criteria

The upgrading and expansion of a ski area is influenced by a variety of ski facility design criteria that help to create a quality ski experience. This section will briefly discuss these factors as they apply to Mount Sunapee.

## A. Trail Design

### 1. Fall Line

The Fall-Line Analysis evaluates the natural fall-lines of mountainous terrain, with the fall-line representing the path an object would take as it descends a slope under the influence of gravity. Fall-line paths indicate the natural flow of potential ski trail routes, from the top of mountain ridges to the valleys and base areas below. Consistency of fall-line provides for the best recreational skiing experience and results in the least amount of environmental disruption due to the minimal amount of terrain modification required for trail construction.

### 2. Slope Gradients and Terrain Breakdown

The following gradients were used to determine the skier ability level of the mountain terrain.

**Table A-1. Terrain Gradients**

Skier Ability	Slope Gradient
Beginner	8 to 12%
Novice	to 25%
Low Intermediate	to 35%
Intermediate	to 45%
Advanced Intermediate	to 55%
Expert	over 55%

Source: SE Group, Mountain Planning Guidelines



The distribution of terrain by skier ability level and slope gradient is then compared with the market demand for each ability level. The available ski terrain should be capable of accommodating the full range of ability levels consistent with market demand. The ideal breakdown of terrain for the Northeastern skier market is shown below, illustrating that intermediate skiers comprise the bulk of market demand.

**Table A-2. Skier Ability Breakdown**

Skier Ability	Percent of Skier Market
Beginner	5%
Novice	15%
Low Intermediate	25%
Intermediate	35%
Advanced Intermediate	15%
Expert	5%

Source: SE Group, Mountain Planning Guidelines

### 3. Trail Density

The calculation of capacity for a ski area is based in part on the acceptable number of skiers that can be accommodated on each acre of ski terrain at any one given time. The specific density criteria used for Mount Sunapee are listed in Table A-3

**Table A-3. Skier Density per Acre**

Skier Ability	Trail Density (skiers/acres)
Beginner	30
Novice	15
Low Intermediate	12
Intermediate	10
Advanced Intermediate	5
Expert	3

Source: SE Group

These density figures account for the skiers that are actually populating the ski trails and do not account for other guests, who are either waiting in lift lines, riding the lifts, or using the milling areas or other support facilities. These criteria assume that on an average day approximately 33% of the total number of skiers in the area will be on the trails at any one time. The densities listed above have been used in the analysis of Mount Sunapee's trail densities.

## **4. Trail System**

Each trail must have generally consistent grades to provide an interesting and challenging experience for skiers with the ability level the trail is designed for. Optimum trail widths should vary depending upon topographic conditions and the caliber of the skier being served. The trail network must minimize cross-traffic and should provide the full range of ability levels consistent with market demand. The trails must be designed and constructed to minimize off fall-line conditions and to avoid bottlenecks and convergence zones that might produce skier congestion.

In summary, a broad range of skiing terrain must be provided in order to satisfy skiers from beginner through expert ability levels within the natural topographic characteristics of the site.

## **B. Lift Design**

Ski lifts should be placed to serve the available ski terrain in the most efficient manner. A myriad of factors should be considered including wind conditions, round-trip skiing and access needs, interconnectability between other lifts and trails, and the need for circulatory space at the lower and upper terminal sites. The vertical rise and length of ski lifts for a mountain are the primary measures of overall attractiveness and marketability of a ski area.

## **C. Capacity Analysis and Design**

Comfortable Carrying Capacity (CCC) is defined as an optimal level of utilization for the ski area (the number of visitors that can be accommodated at any given time) that guarantees a pleasant recreational experience, without overburdening the resort infrastructure.

The accurate estimation of the CCC of a mountain is a complex issue and is the single most important planning criterion for the resort. Related skier service facilities can be planned, including base lodge seating, mountain restaurant requirements, sanitary facilities, parking, and other skier services with proper identification of the mountain's true capacity. The CCC figure is based on a combination of the uphill hourly capacity of the lift system, the downhill capacity of the trail system, and the total amount of time spent in the lift waiting line, on the lift itself, and in the downhill descent.



## **D. Base Area Design**

Consideration should be given to the relationship between the base area and the mountain facilities. Upon arrival at the ski area, skiers should be able to move directly from parking, through ticketing or rentals, to the base of the lifts. Walking distance and vertical differential between the base area facilities and lifts should be minimized to move skiers directly onto the mountain. Vehicle, pedestrian, and skier circulation should be coordinated to create an organized and pleasant base area environment.

## **E. Balance of Facilities**

The mountain master planning process emphasizes the importance of balancing recreational facility development. The size of the skier service functions must be matched to the CCC of the mountain. The future development of a ski area should be designed and coordinated to maintain a balance between skier demand, ski area capacity (lifts and trails), and the supporting equipment and facilities (e.g., grooming machines, day lodge services and facilities, utility infrastructure, access, and parking).

APPENDIX B

# Lease and Operating Agreements

## 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.**

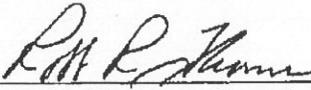
This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

**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. Weiss

Senior Assistant Attorney General  
Department of Justice

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

Gene H. Chandler

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

Robert P. Oshorn

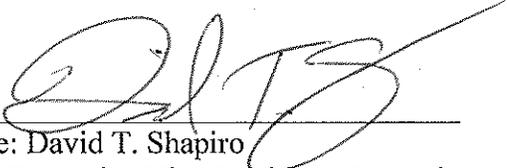
**DEPUTY SECRETARY OF STATE**

**THE SUNAPEE DIFFERENCE, LLC  
VR US HOLDINGS, INC.  
SECRETARY'S CERTIFICATE**

**October 5, 2018**

I, David T. Shapiro, Executive Vice President, General Counsel & Secretary, of VR US Holdings, Inc. (the "*Parent*"), acting for itself and in its capacity as the sole member of VR NE Holdings, LLC, a Delaware limited liability company, acting for itself and in its capacity as the sole member of Triple Peaks, LLC, a Colorado limited liability company, acting for itself and in its capacity as the sole member of The Sunapee Difference, LLC, a New Hampshire limited liability company (the "*Company*"), do hereby certify that I, as Executive Vice President, General Counsel & Secretary of VR US Holdings, Inc. am a duly appointed officer of the Parent and an authorized representative and signatory for each of the Parent and the Company in connection with the Amendment to Lease and Operating Agreement, dated on or around October 5, 2018, by and between The Sunapee Difference, LLC and the State of New Hampshire, acting through its Department of Natural and Cultural Resources.

IN WITNESS WHEREOF, I have executed this Certificate as of the date first set forth above.

By:   
Name: David T. Shapiro  
Title: Executive Vice President, General  
Counsel and Secretary

**AMENDMENT TO LEASE AND OPERATING AGREEMENT**

THIS AMENDMENT to the Lease and Operating Agreement is made by and among the State of New Hampshire, acting through its Department of Natural and Cultural Resources (hereinafter referred to as the "State") with a mailing address of 172 Pembroke Road, Concord, New Hampshire, 03301, and The Sunapee Difference, LLC, (hereinafter referred to as "TSD" or "Operator") with a mailing address of 390 Interlocken Crescent, Suite 1000, Broomfield, CO 80021.

WHEREAS, the State and Okemo Mountain, Inc., entered into a Lease and Operating Agreement dated April 30, 1998 and recorded in the Merrimack County Registry of Deeds at Book 1154, Page 458 and in the Sullivan County Registry of Deeds at Book 2103, Page 308, which was subsequently amended and assigned to TSD (as amended from time to time, the "Lease," and the subject property, the "Leased Premises");

WHEREAS, at the time of this Amendment, Vail Holdings, Inc., a Colorado corporation, wholly owns TSD (indirectly through a wholly-owned subsidiary);

WHEREAS, TSD owns approximately 657 acres of unimproved land located westerly of the Leased Premises (the "TSD Land"); including, a land area of approximately 150 acres in size which is more particularly described on the plan attached hereto as Exhibit A (said 150 acre parcel hereinafter being referred to as the "West Bowl Expansion Land");

WHEREAS, TSD may construct chairlifts, surface lifts, ski trails, a base lodge, parking areas and other building and other infrastructure improvements, which may include, but not be limited to, retail shops, food concessions, equipment rentals, daycare facilities, ticket sales, ski and/or other schools, and other recreational operations infrastructure that will serve the day use skiers and/or other day use recreational users, and which shall be located, with the approval of DNCR, on a portion of the West Bowl Expansion Land (collectively, the “West Bowl Expansion Improvements”);

WHEREAS, the following requests related to the possible West Bowl expansion must be included in this Amendment and be approved by the Governor and Executive Council in accordance with RSA 4:40:

- Acceptance of the West Bowl Expansion Land and the West Bowl Expansion Improvements into the Sunapee State Park if an operating chairlift and one or more trails that are accessed by that lift are constructed on the West Bowl Expansion Land,
- Permission to build a chairlift and/or skiing and/or other recreational trails from Mount Sunapee State Park’s existing ski area and/or Mount Sunapee State Park onto the TSD Lands,
- Acceptance of the Conservation Lands (as hereinafter defined) into Mount Sunapee State Park,
- Acceptance of any additional easements, rights-of-way, or agreements to ensure that the State has any and all necessary rights of access and use to the West Bowl

Expansion Land and Improvements for future use as a ski area and recreational day use area, including parking lots, infrastructure, and utilities; and,

- Extension of certain terms of the Lease to the West Bowl Expansion Land and TSD Land.

WHEREAS, in addition to the required approvals by DNCR through the Master Development Plan and other certain provisions of the Lease, the West Bowl Expansion Improvements will require various land use and environmental approvals from federal, state and local governmental authorities (“West Bowl Expansion Permits”);

WHEREAS, if an operating chairlift and one or more trails that are accessed by the chairlift are constructed, the parties agree that in the event that any residential development occurs on the Private Land (hereinafter defined), there shall be no direct access to or use of the West Bowl Expansion Improvements from the Private Land unless public access is provided from any public road or Brook Road, a parking lot is built for the public to use, and the public has access to the West Bowl Expansion Improvements;

WHEREAS, the grant of the West Bowl Expansion Permits will likely require some of the West Bowl Expansion Land to be subject to restrictions requiring preservation of upland areas and other conservation related restrictions (collectively, the “Conservation Restrictions”);

WHEREAS, the implementation and construction of projects like the West Bowl Expansion Improvements are a business and financial decision and are dependent on many factors, including, but not limited to, financing, and changes in market trends and guest expectations;

WHEREAS, therefore, no assurances can be made at this time that the West Bowl Expansion Permits will be sought or obtained, or that the West Bowl Expansion Improvements will be constructed;

WHEREAS, TSD may pay for the construction of the West Bowl Expansion Improvements by borrowing money from banks, other lending institutions and/or other private sources and to secure those loans with a security interest on the West Bowl Expansion Improvements;

WHEREAS, as acknowledged in this Amendment, access to and utilities for the West Bowl Expansion Improvements and West Bowl Expansion Land, which may also serve the Private Land, may be located outside of the West Bowl Expansion Land. The parties to this Lease Amendment agree that all legal rights necessary to operate the ski area and recreational day use area shall be granted to the State and TSD upon the conveyance of the West Bowl Expansion Land and the West Bowl Expansion Improvements;

WHEREAS, TSD shall, under the terms and conditions agreed to in this Amendment, convey in fee the West Bowl Expansion Land together with all necessary non-exclusive perpetual easements for road access from any public road or from Brook Road to provide public access to the West Bowl Expansion Land and the West Bowl Expansion Improvements. In addition to access, TSD shall also execute all necessary non-exclusive perpetual easements, rights-of-way, and/or other agreements, which may include, but are not limited to, rights to use, maintain, improve, repair, replace, rebuild, transfer, operate and manage the ski and other recreational area operations' infrastructure, (including, without limitation, snowmaking, water lines, sewerage treatment facilities, power lines, that may be built on the Private Land. In its

deed to the State, TSD shall carve out and reserve for TSD, its successors and assigns, perpetual necessary easements for parking areas, roads and other infrastructure built on the West Bowl Expansion Land and for utilities necessary for the development of the Private Land;

WHEREAS, upon the completion of construction of the West Bowl Expansion Improvements, the completion of an as-built survey and site plan, and the commencement of operation thereon, the conveyance of title in fee of the West Bowl Expansion Land and the West Bowl Expansion Improvements shall occur and the West Bowl Expansion Land and the West Bowl Expansion Improvements shall be subject to all the terms and conditions of the Lease and Operating Agreement, as amended, and all Master Development Plans (each a "MDP"), approved by DNCR, in the same manner as all other lands constituting the Leased Premises;

WHEREAS, in the event that all of the West Bowl Expansion Improvements are not completed by June 30, 2028, but TSD has constructed an operating chairlift and one or more trails accessed by the lift, then in this event TSD shall complete an as-built survey and site plan and shall transfer the West Bowl Expansion Land and the West Bowl Expansion Improvements, and all necessary easements, rights-of-way, and/or agreements for ski area and other recreational day use infrastructure on the Private Land, including an easement for vehicular access for maintenance and construction purposes, to DNCR by June 30, 2028;

WHEREAS, a portion of the TSD Lands includes the following two (2) parcels of land; the first being approximately 208 acres ("O'Connell Tract") and the second being approximately 52 acres (a portion of the Lewin/Powell parcel, sometimes herein referred to as the "52 Acre Parcel"). These parcels are more particularly described on the Plan attached hereto as Exhibit B (said 260 acres being hereinafter referred to as the "Conservation Lands"). These parcels shall

not become part of the Leased Premises but shall become part of Mount Sunapee State Park. At the time of conveyance, the parties agree that the 52 Acre Parcel shall be transferred with deed restrictions preventing future development;

WHEREAS, as noted on Exhibits A and B, the pictorial descriptions of the West Bowl Expansion Land and Conservation Lands shown on Exhibits A and B, respectively, are approximate only but were done using GPS technology; land surveys and the final description will be done when (a) in the case of the West Bowl Expansion Lands, the West Bowl Expansion Land is permitted and constructed and (b) in the case of the Conservation Lands, when the West Bowl Expansion Improvements are permitted and a Notice to Proceed (as such term is defined below) is issued;

WHEREAS, TSD is willing, under certain circumstances and conditions described below to convey in fee the Conservation Lands to DNCR to be added to Mount Sunapee State Park;

WHEREAS, a portion of the TSD Lands includes approximately 248 acres of land adjacent to the West Bowl Expansion Land that it may privately develop in the future (said 248 acres being referred to as the "Private Land");

WHEREAS, the acreage contained within the West Bowl Expansion Land (approximately 150 acres) may exceed the acreage required by the Town of Goshen's lot coverage and density regulations to construct the West Bowl Expansion Improvements (said excess acreage is deemed the "Excess Density Allocation Acreage");

WHEREAS, to the extent allowed by the Town of Goshen, the parties agree that the Excess Density Allocation Acreage may be used to satisfy, in whole or in part, any lot coverage or density regulations of the Town of Goshen applicable to development of the Private Land as if

the Private Land contained an amount of land equal to 248 acres plus the Excess Density Allocation Acreage;

WHEREAS, DNCR and TSD agree that only the projects and improvements that have been approved in prior MDPs and the 2016-2020 Revised MDP for Polygon 23, and any necessary maintenance, repair, renovation, or replacement of those projects or currently existing improvements in Polygon 23, shall be allowed to be implemented. Additionally, DNCR and TSD agree that there shall be no further development of either ski trails or ski infrastructure in Polygon 20;

WHEREAS, upon conveyance to the State, the West Bowl Expansion Land and Improvements will not be subject to section 6(f)(3) of the Land and Water Conservation Fund Act. However, the State reserves the right to elect to designate the West Bowl Expansion Land under section 6(f)(3) at a later date through mutual agreement with the National Park Service.

The foregoing recitals constitute a part of this Amendment and are incorporated herein.

NOW THEREFORE, for good and valuable consideration, the Parties agree to amend the Lease as follows:

**1. Amend Section 22 of the Lease and Operating Agreement to add the following:**

Operator shall not assign or transfer this Agreement by any means without the prior written consent of the State, which shall not be unreasonably withheld. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) a merger, consolidation, or a transaction or series of related transactions in which a third

party, together with its Affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Operator, or (b) the sale of all or substantially all of the assets of the Operator.

Notwithstanding the foregoing, for so long as Vail Holdings, Inc. wholly owns Operator either directly or through a subsidiary, prior written consent of the State shall not be required for assignment of the Lease to, or any transaction involving the transfer of equity interests of the Operator to, any other (direct or indirect) wholly owned subsidiary of Vail Holdings, Inc. Any attempted assignment or transfer in contravention of this paragraph will be null and void.

**2. Amend the Lease and Operating Agreement to add the following after Section 31:**

**32. OVERSIGHT AND ADMINISTRATION OF THE LEASE.**

The Mount Sunapee Advisory Commission, established pursuant to the State's Lease Oversight Policy, advises the Commissioner regarding oversight and administration of the Sunapee lease in accordance with RSA 12-A:29-a and meets with the Operator at the call of the Commissioner. The Operator shall meet with the Commission upon request of the Commissioner and shall cooperate with the Commission.

**33. WEST BOWL EXPANSION**

When all of the West Bowl Expansion Improvements are fully approved and permitted by all authorities having jurisdiction (after expiration of all applicable appeal periods) and when Operator has issued a written notice to State stating that it intends to construct the West Bowl Expansion Improvements in accordance with the West Bowl Expansion Permits (the

“Notice to Proceed to Construct”) but prior to actual construction commencing construction of such improvements, Operator shall convey in fee the two hundred sixty (260) acres of Conservation Lands to State as described on Exhibit B to be added to Mount Sunapee State Park. The Conservation Lands shall not become a part of the Leased Premises but shall become a part of Mount Sunapee State Park. At the time of conveyance, the parties agree that the 52 Acre Parcel shall be transferred subject to deed restrictions preventing future development of such land.

When and if the West Bowl Expansion Improvements are completed, or when Operator has constructed an operating chairlift and one or more trails that are accessed by the lift, Operator shall convey in fee the West Bowl Expansion Land and the West Bowl Expansion Improvements by June 30, 2028, to State and the description of the Leased Premises shall be amended in fact to include the West Bowl Expansion Land and the West Bowl Expansion Improvements, which shall be free and clear of all real estate mortgages but subject to the Excess Density Allocation Acreage restriction, the Conservation Restrictions and any security interests in the West Bowl Expansion Improvements. If and to the extent that access to and/or utilities for the West Bowl Expansion Improvements or the West Bowl Expansion Land are located outside of the West Bowl Expansion Land, at the time of the conveyance of the West Bowl Expansion Land to State, Operator shall cause all legal rights necessary to operate the ski area and recreational day use area to be granted to State. In addition, at the time of the conveyance of the West Bowl Expansion Land to State, Operator shall also execute all necessary non-exclusive perpetual easements, rights-of-way, and/or other

agreements, which may include, but are not limited to, rights to use, maintain, improve, repair, replace, rebuild, transfer, operate and manage the ski and other recreational area operations' infrastructure, (including, without limitation, snowmaking, water lines, sewerage treatment facilities, power lines), that may be built on the Private Land. In its deed to State, Operator shall carve out and reserve for Operator, its successors and assigns, perpetual necessary easements for parking areas, roads and other infrastructure built on the West Bowl Expansion Land and for utilities necessary for the development of the Private Land. At the time of conveyance of the West Bowl Expansion Land to State, the description of the Leased Premises shall be amended to add the West Bowl Expansion Land as a part of the Leased Premises. Such description shall be recorded in the Merrimack and Sullivan County Registries of Deeds, along with Mylars of the As-Built Survey of the Leased Premises including the West Bowl Expansion Land. The State shall be authorized, upon approval of this Amendment by Governor and Council, to add such As-Built Survey as a new Appendix I to the Lease and to include a revised legal description of the Leased Premises including the West Bowl Expansion Land as a new Appendix II, which legal description will define the revised Mount Sunapee Resort leasehold.

Attached to this Amendment as Exhibit A is the planned West Bowl Expansion Land boundary as agreed to by the parties and approved by the Governor and Executive Council in accordance with RSA 4:40, subject to the final boundary to be established in the As-Built Survey to be completed at least 3 months prior to the transfer of the West Bowl Expansion Land to the State. The parties agree that the boundary of the West Bowl Expansion Land, as

shown in Exhibit A and then as shown in the final As-Built Survey, shall not change at any point by more than 150 feet, except in the proposed areas of the base lodge and parking lot, as shown on Exhibit A where the boundary may change by more than 150 feet between GPS points N:298.598, E:869.954 and N:297.342, E:870.642.

Upon approval of this Amendment by the Governor and Executive Council, the State shall be authorized to execute an easement authorizing Operator to build, repair, maintain, replace and operate a chairlift, and any necessary infrastructure, and a ski trail on the Leased Premises to the West Bowl Expansion Land once it moves forward with construction after the Notice to Proceed is issued.

Upon approval of this Amendment by the Governor and Executive Council, the West Bowl Expansion Land and Improvements shall be subject to Section 5 (Annual Operating Plan), and Section 7 (Site Improvements) of the Lease, as amended, and the applicable provisions of the 2016-2020 Revised Master Development Plan, as approved by State, in the same manner as all other lands currently constituting the Leased Premises.

If and when Operator constructs an operating chairlift and one or more trails that are accessed by the lift, the West Bowl Expansion Land also shall be subject to Section 3 (Rent), Section 12 (Taxes) and Section 15 (Environmental Management) of the Lease, as amended.

In the event that any of the West Bowl Expansion Improvements are built on the Private

Land by Operator, its affiliates and/or its assigns and those improvements are competitive with services provided by the ski area, then all revenue generated from these Improvements while any of the facilities at Mount Sunapee Ski Area are open to the public during the winter ski season will be subject to the three (3%) percent Lease payments as long as Operator operates the ski area.

In the event that the West Bowl Expansion Improvements are not completed or Operator has not constructed an operating chairlift and one or more trails accessed by the lift on the West Bowl Expansion Land by June 30, 2028, this Amendment to the Lease shall be null and void in all respects. Notwithstanding any provision set forth in the Lease to the contrary, and notwithstanding any and all rights available at law or in equity, the parties hereby acknowledge and agree that Operator is not obligated to seek or obtain the West Bowl Expansion Permits or construct the West Bowl Expansion Improvements. Further, in the event that such West Bowl Expansion Improvements are not completed or Operator has not constructed an operating chairlift and one or more trails accessed by the lift on the West Bowl Expansion Land by June 30, 2028, then Operator shall not be considered in breach of the Lease, but any and all associated approvals granted in the 2016- 2020 Revised MDP, and future MDPs, related to the West Bowl Expansion Improvements shall be withdrawn and not be effective as of June 30, 2028.

**3. Amend Section 25 of the Lease and Operating Agreement (Default and Termination) to add the following:**

If Operator constructs an operating chairlift and one or more trails accessed by the lift on the West Bowl Expansion Land but fails to convey the West Bowl Expansion Land and Improvements to the State on or before June 30, 2028, Operator shall be prohibited from operating the chairlift and accessing the trails. The State reserves all rights to pursue Operator for any other legal remedies available to it outside of and not affecting the Lease, any amendments thereto, or any of the terms thereunder.

**Any capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed to such terms in the Lease and the amendments thereto.**

**In all other respects, the Lease remains unmodified and in full force and effect.**

[signatures on pages following]

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Lease and Operating Agreement as of the date and year first written above.

**STATE:**

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF NATURAL &  
CULTURAL RESOURCES

By: \_\_\_\_\_  
Sarah Stewart, Commissioner

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

At \_\_\_\_\_, in said County this \_\_\_ day of \_\_\_\_\_, 2018, personally appeared Sarah Stewart, Commissioner of the Department of Natural & Cultural Resources and such person acknowledged this instrument to be her free act and deed in such capacity, and the free act and deed of State of New Hampshire.

**OPERATOR:**

THE SUNAPEE DIFFERENCE, LLC

By:   
Name: David T. Shapiro  
Title: VP, GC + Secretary

STATE OF COLORADO  
COUNTY OF BROOMFIELD, S.S.

Then personally appeared before me, the above named DAVID T. SHAPIRO,  
as VP, GC + SECRETARY of The Sunapee Difference, LLC and such person  
acknowledged this instrument to be his free act and deed in such capacity, and the free act and  
deed of The Sunapee Difference, LLC.

  
Notary Public  
My commission expires: 02/05/2021  
Notary Seal or Stamp:

