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MERRIMACK COUNTY RECORDS *Kathi L. Guay* CPO, Register

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LEASEHOLD MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS,  
FINANCING STATEMENT AND SECURITY AGREEMENT

MADE BY

CLP MOUNT SUNAPEE, LLC,  
a Delaware limited liability company

as Mortgagor

to

EPT SKI PROPERTIES, INC.,  
a Delaware corporation

as Mortgagee

Dated as of: April 10, 2017

LEASEHOLD MORTGAGE  
ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT  
AND SECURITY AGREEMENT

THIS LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND SECURITY AGREEMENT (this "Mortgage") is made as of April 6, 2017 by CLP MOUNT SUNAPEE, LLC, a Delaware limited liability company ("Mortgagor") whose address is c/o Och-Ziff Real Estate, 9 West 57th Street, 39th Floor, City of New York, County of New York, State of New York, 10019, in favor of EPT SKI PROPERTIES, INC., a Delaware corporation, and its successors and assigns ("Mortgagee") whose address is c/o EPR Properties, 909 Walnut Street, City of Kansas City, County of Jackson, State of Missouri, 64106.

WHEREAS, Mortgagor, and those entities listed on Schedule 1 attached hereto (jointly and severally, and collectively with Mortgagor, the "Borrowers") have entered into a certain Credit Agreement of even date hereof (as the same may be amended from time to time, the "Credit Agreement") by and among, inter alia, the Mortgagee, Borrowers and the Mortgagor;

WHEREAS, pursuant to the terms of the Credit Agreement the Mortgagor has provided credit facilities, in the aggregate principal amount of TWO HUNDRED FIFTY-ONE MILLION, THIRTY-SEVEN THOUSAND NINE HUNDRED SEVENTY-SEVEN DOLLARS AND FIFTY-FIVE CENTS (\$251,037,977.55) evidenced by the Amended and Restated Promissory Note dated as of the date hereof (the "Note");

WHEREAS, each Borrower has entered into a mortgage of its assets to secure the Secured Obligations and each of such mortgages is cross defaulted with each other and with this Mortgage; and

WHEREAS, pursuant to the terms of the Credit Agreement and all documents evidencing, securing, related to, or executed with the Credit Agreement, including, without limitation, the Lender Agreements are all part of the lending relationship between Borrowers, Guarantor and Mortgagor.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, its successors and assigns, with MORTGAGE COVENANTS and upon the STATUTORY CONDITIONS, and other conditions as set forth in the Lender Agreements, upon breach of which, the Mortgagee shall have the STATUTORY POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION all estate, right, title and interest which Mortgagor now has or may

later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The leasehold estate of Mortgagor relating to that real property located in the Town of Newbury, Counties of Merrimack and Sullivan, State of New Hampshire, as described in Schedule A, held pursuant to that certain Lease and Operating Agreement entered into by THE STATE OF NEW HAMPSHIRE, acting by and through its Department of Resources and Economic Development ("Lessor"), as lessor, and Okemo Limited Liability Company f/k/a Okemo Mountain, Inc. ("Okemo"), on the 30th day of April, 1998 and recorded on June 11, 1998 at Book 2103, Page 308 in the Merrimack County Registry of Deeds and on June 11, 1998 at Book 1154, Page 458 in the Sullivan County Registry of Deeds, assigned from Okemo to The Sunapee Difference, LLC ("TSD") by Assignment of Lease and Operating Agreement dated December 31, 1998 and recorded on April 13, 1999 at Book 2149, Page 1713 in the Merrimack County Registry of Deeds and on April 13, 1999 at Book 1186, Page 181 in the Sullivan County Registry of Deeds, further assigned to Mortgagor by TSD by Assignment and Assumption of Lease Agreement dated December 5, 2008 and recorded on December 10, 2008 at Book 3099, Page 1054 in the Merrimack County Registry of Deeds and on December 24, 2008 at Book 1713, Page 0467 in the Sullivan County Registry of Deeds, amended by Order of the Merrimack Superior Court dated February 13, 2015, and recorded in the Merrimack County Registry of Deeds in Book 3472, Page 431, and in the Sullivan County Registry of Deeds in Book 1938, Page 322, and further amended by that certain Amendment to Lease and Operating Agreement dated March 11, 2016, and recorded on July 22, 2016 in the Merrimack County Registry of Deeds in Book 3523, Page 1729 and in the Sullivan County Registry of Deeds on July 25, 2016 in Book 1981, Page 349. entered into by Mortgagor and Lessor (collectively, the "Ground Lease") together with all existing and future easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, interests, titles, powers, franchises and tenements of the Premises, including, without limitation, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases"), including, without limitation any and all liquor licenses, the Operating Leases, Ground Leases and Tenant Leases, relating to the use and enjoyment of all or any part of the Premises and Improvements, any and all existing or future guaranties and other agreements relating to or made in connection with any of such

leases and any and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Schedule A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all ski lifts, open-air chair lift rides, snowmaking equipment, snowcats, snowgrooming equipment, pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, and any other bank accounts of Mortgagor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection

with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(l) To the extent transferable, all permits necessary and incident to the operation of the Premises; together with

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above; together with

(n) All Mortgagor's personal property located on or used in connection with the Premises.

Notwithstanding any of the foregoing or anything to the contrary contained in this Mortgage or in any other Lender Agreement, the Mortgagor and the Mortgagee agree that all right, title and interest of Mortgagor in, to and under those certain U.S. Department of Agriculture Forest Service Park Use Permits and Ski Area Term Special Use Permits, and any amendments, extensions, renewals or substitutions of such permits do not constitute Property and are not subject to the security interest nor the lien granted herein and Mortgagor is not granting any interest therein to the Mortgagee.

Capitalized terms used above and elsewhere in this Mortgage without definition have the meanings given them in the Credit Agreement. TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

1.2 Secured Obligations.

(a) Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment and performance of the Loan by the Mortgagee to Borrowers in an original aggregate principal amount of TWO HUNDRED FIFTY-ONE MILLION, THIRTY-SEVEN THOUSAND NINE HUNDRED SEVENTY-SEVEN DOLLARS AND FIFTY-FIVE CENTS (\$251,037,977.55) at the times, in the manner and with interest all as more fully provided in the Credit Agreement and the Note of even date hereof issued thereunder, together with any amendments, renewals, extensions, and future advances provided therein;

(ii) Payment of all Lender Obligations at any time owing under any promissory notes issued pursuant to the Credit Agreement;

(iii) Payment and performance of all obligations of Mortgagor under this Mortgage;

(iv) Payment and performance of all obligations of Borrowers (including, but not limited to, the Lender Obligations) under the Credit Agreement;

(v) Payment and performance of any obligations of Borrowers under the Security Agreements and any of the Lender Agreements;

(vi) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage;

(vii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations; and

(ix) Payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee as provided for in Section 7.14 of this Mortgage.

(b) All Persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations..

## 2. Assignment of Rents and Leases.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee (i) all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents") and (ii) all of Mortgagor's rights in and under all Leases. This is an absolute assignment, not an assignment for security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the mere recordation of the assignment granted herein entitles Mortgagee immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.3(c). In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor or lessee under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Leasing. Except to the extent permitted pursuant to the Credit Agreement, Mortgagor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Mortgagee's prior written consent except in connection with or pursuant to an amendment of the Lease that is permitted by the terms of the Credit

Agreement. Mortgagor shall only modify, amend, cancel, terminate or renew any Lease strictly in accordance with the Credit Agreement.

### 3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. Also, included in the definition of Property for purposes of this security agreement are all Mortgagor's personal property located on or used in connection with the leased premises and Mortgagor's interests in the Leases. This security interest includes all personal property and rights of Mortgagor in personal property that is intended to be incorporated into the Property, regardless of where such personal property is located. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the State of New Hampshire, covering all such Property and Rents.

3.2 Financing Statements. Mortgagor shall authorize the filing or recording of one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.9 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to authorize any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to authorize any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

### 4. Fixture Filing.

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State of New Hampshire, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. Also included as fixtures, to the extent same are deemed fixtures, for the purpose of this fixture filing are any leasehold improvements that constitute Property and located on the Premises. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage.

### 5. Rights and Duties of the Parties.

5.1 Representations and Warranties. "known to Mortgagor," "to Mortgagor's knowledge," and words or phrases of similar import shall not include knowledge of the Persons constituting Mortgagor, direct or indirect owners of Mortgagor, or officers of Mortgagor prior to



the date hereof and the knowledge of such Persons shall not be imputed to Mortgagor. Mortgagor represents and warrants that, to Mortgagor's knowledge:

(a) Mortgagor lawfully possesses and holds a valid leasehold interest in and to all of the Premises and Improvements, which are, to Mortgagor's knowledge, not subject to any encumbrances or exceptions other than as set forth in the Title Policy issued by First American Title Insurance Company, policy number 770954NH2 to Mortgagee in connection with the Credit Agreement or as otherwise disclosed to Mortgagee.

(b) Mortgagor warrants that it has good title or valid leasehold interest in and to the Premises and Improvements, (or will upon delivery as to Property not yet delivered to Mortgagor);

(c) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Leases and Rents;

(d) None of the Rents have been assigned or otherwise pledged or hypothecated (except such pledge or hypothecation that will be fully terminated and released in connection with the filing and recordation of this Mortgage);

(e) This Mortgage creates a first and prior lien on the Property subject to Permitted Liens;

(f) Other than Permitted Liens, Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office, except as otherwise noted in the Credit Agreement; and

(g) Intentionally omitted.

(h) Mortgagor is an entity as described above, organized and in good standing in the jurisdiction first set forth above, and Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address first set forth above.

**5.2 Encumbrances of Leases and Rents.** Except as permitted in Section 9.8 and Section 9.15 of the Credit Agreement, Mortgagor will not, without the prior written consent of Mortgagee (i) assign, pledge, hypothecate or otherwise encumber any of the Leases or the Rents, (ii) enter into any Leases which are not by their terms expressly subordinate to this Mortgage, or (iii) amend, modify, cancel or terminate any Leases or accept a voluntary surrender thereof.

**5.3 Taxes, and Assessments.** Mortgagor shall pay, prior to delinquency, all taxes, levies, charges, impositions and assessments on the Property.

**5.4 Use of Premises.** The Property shall not be used except (i) primarily as a destination ski resort area, and (ii) as such other incidental lawful, retail, service, entertainment,

lodging uses that are complementary to a destination ski resort area and which are not specifically prohibited under this Mortgage or under any of the Lender Agreements.

5.5 Continuing Use Restrictions. Notwithstanding anything in this Mortgage to the contrary, Mortgagor shall not have the right to use the Premises, or any part thereof, for any use or purpose which is not permitted by, or which results in violation of any agreement, covenant or restriction to which the Premises is subject as of the date of this Mortgage. Subject to the terms of any applicable Lease, the Premises shall not be used for any use inconsistent with the customary character of a destination ski resort. Subject to the terms of any applicable Lease, Mortgagor agrees not to permit any unlawful or immoral practice to be carried on at or committed in the Premises, or a use which would injure the reputation of the Premises, or the local community.

5.6 Prohibition of Use. If at any time, (i) any Law prohibits the use of the Premises for the purposes permitted in Section 5.4 of this Mortgage (the "Prohibition"), then immediately upon the earlier to occur of (a) Mortgagor becoming aware of any proposed Prohibition, or (b) Mortgagor's receipt of any notice from any governmental authority of any Prohibition, Mortgagor shall promptly notify Mortgagee of such fact, and Mortgagor may proceed in its or Mortgagee's name, and at Mortgagor's sole cost and expense, to take such action as Mortgagee determines is necessary or desirable to contest or challenge the Prohibition. If a Prohibition should occur or be imposed, nothing in this Mortgage shall be deemed to impair Mortgagor's obligations to comply with all Laws and this Mortgage at any time during which Mortgagor is prohibited from using the Premises for the purposes permitted in this Mortgage.

5.7 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.8 Liens, Charges and Encumbrances. Subject to Permitted Liens and Section 9.2 of the Credit Agreement, if any claim of lien is filed or recorded, or any stop notice or other notice of lien is served upon Mortgagee, in connection with any lot or other portion of the Property, or if a judgment or other encumbrance is placed against any such property, it shall constitute an Event of Default unless within sixty (60) days of written notice by Mortgagee to Mortgagor of the existence of such claim, lien, or encumbrance: (i) pays the related judgment or claim and obtains the release and satisfaction of such lien, claim of lien, judgment, or encumbrance, (ii) obtains the release of such lien, judgment, or other encumbrance by recording and/or serving a surety bond in accordance with applicable law, (iii) provides Mortgagee with a bond or such other security or assurance as Mortgagee, in its reasonable discretion, may require, in an amount equal to at least 150% of the amount of the lien, claim of lien, judgment or other encumbrance, to ensure payment of the lien, claim of lien, judgment or encumbrance or otherwise protect Mortgagee and the Property or (iv) provides Mortgagee with a title insurance endorsement acceptable to Mortgagee that provides coverage for such lien.

5.9 Damages and Insurance and Condemnation Proceeds.

(a) Casualty. Subject to the terms of any applicable Lease, in the event of any casualty, Mortgagor shall promptly notify Mortgagee of any loss to the Premises, Improvements or the Property in excess of ONE HUNDRED THOUSAND DOLLARS

(\$100,000), whether covered by insurance or not. Subject to the terms of any applicable Lease, in case of loss or damage by fire or other casualty to the Premises, Improvements, or Property, Mortgagee agrees, if no Event of Default exists, that such insurance proceeds may be applied to the costs of reconstruction or repair of the Premises, Improvements, or Property to the extent required under the terms of any Operating Lease. Any such reconstruction or repair must be of least equal value and of substantially the same character as prior to such damage or destruction. Upon completion of such reconstruction or repair permitted under this Section 5.5, Mortgagee shall apply any excess proceeds in its possession to the payment of the Secured Obligations to the extent permitted by the Operating Lease. If an Event of Default exists, Mortgagee shall have the right to apply the balance of such proceeds to the payment of the Secured Obligations in such order as permitted pursuant to the terms of the Credit Agreement.

(b) Condemnation. Subject to the terms of any applicable Lease, in the event of condemnation, Mortgagor hereby assigns, transfers and sets over to Mortgagee all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Improvements, the Premises, or the Property taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. After deducting therefrom all reasonable expenses, including attorney's fees Mortgagee may, at its option, elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or hold said proceeds in any account and make said proceeds available for restoration or rebuilding of the Improvements or Premises, or the repair and replacement of Property, all at Mortgagee's discretion, and such proceeds shall be made available in such manner and under such conditions as Mortgagee may require.

#### 5.10 Maintenance and Preservation of Property.

(a) Mortgagor shall keep the Property insured against loss by fire and such other casualties and contingencies as required by the Credit Agreement.

(b) Mortgagor shall keep the Premises maintained in accordance with the provisions of the Credit Agreement.

(c) If all or part of the Property becomes damaged or destroyed Mortgagor shall, unless prohibited or restricted from doing so by any applicable Lease, promptly and completely to repair and/or restore the Property in a good and workmanlike manner in accordance with all applicable Legal Requirements and sound building practices regardless of whether or not Mortgagee agrees to disburse Proceeds or other sums to pay costs of work of repair or reconstruction unless Mortgagor determines in its reasonable business discretion that it is not prudent to continue with such work of repair.

(d) Mortgagor shall not commit or, subject to the terms of any applicable Lease, allow any act upon or use of the Property which would violate: (i) any Legal Requirement, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall endeavor to not bring or keep any

article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Credit Agreement.

(e) Mortgagor shall not commit or, subject to any applicable Lease, allow waste of the Property, including those acts or omissions characterized under the Credit Agreement as waste which arises out of Hazardous Material.

(f) Subject to the terms of any applicable Lease, Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property (or any portion thereof) without the express prior written consent of Mortgagee.

(g) Mortgagor shall pay, prior to delinquency, all payments and amounts due and owing under any Lease, including without limitation any Ground Lease.

5.11 Releases, Extensions, Modifications and Additional Security. Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any Person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property; or

(g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) Release the Property or any part of it.

5.12 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under Section 5.9 of this Mortgage, and under the Credit Agreement, the Security Agreements, and the other Lender Agreements have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of preparation and recordation of such release.

5.13 Compensation, Exculpation, Indemnification.

(a) Mortgagor agrees to pay reasonable fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8 above. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(h) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made Mortgagee in each of such Foreclosure Sales.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) The exercise of or failure by Mortgagee to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from any failure by Mortgagee to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold Mortgagee harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur (other than special, consequential, or punitive damages unless Lender actually incurs liability as a result of paying the same to a third party):

(i) In performing any act required or permitted by this Mortgage, the Credit Agreement, the Security Agreements or any of the other Lender Agreements or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Lender Agreements.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of a note secured by this instrument, and shall bear interest from the date the obligation arises at the default rate referenced in Section 1.1 of the Credit Agreement.

5.14 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.15 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.16 Site Visits, Observation and Testing. Subject to the terms of any applicable Lease, Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Unless an Event of Default exists that has not been waived in writing by Mortgagee, Mortgagee shall not have the right without the consent of Mortgagor to visit the Property for such purposes more than twice in any calendar year. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall

make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section 5.12.

5.17 Notice of Change. Mortgagor shall give Mortgagee written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; (c) Mortgagor's name or business structure; or (d) change of state of incorporation of the Mortgagor. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

6. Default and Remedies.

6.1 Intentionally Omitted.

6.2 Events of Default. This Mortgage is upon the STATUTORY CONDITIONS, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE pursuant to NH RSA Chapter 479 and pursuant to the procedures prescribed by law as a result thereof. Mortgagor will be in default under this Mortgage if an Event of Default occurs under the Credit Agreement or any other Lender Agreement, including without limitation, in the event that any Borrower shall fail to perform any of its Lender Obligations under any Lender Agreement (subject to any express notice and cure provisions contained in any Lender Agreement).

6.3 Remedies. At any time after an Event of Default (unless waived in writing by Mortgagee) and subject to any applicable Lease, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately, unless an Event of Default shall have occurred under Section 10.1(f) of the Credit Agreement, in which case the unpaid balance of the Secured Obligations shall become immediately due and payable without notice or demand.

(b) Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee

would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry. Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property (which may be subject to the provisions of applicable Leases), and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that is still owned by Mortgagor and has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien, claim of lien or imposition which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Credit Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts reasonably expended by Mortgagee under this Subsection 6.3(d) shall be secured by this Mortgage.

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

(f) Foreclosure; Lawsuits. Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and



the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

(g) Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination in accordance with Article 9 of the Uniform Commercial Code in the state in which the Property is situated or in any other manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the State in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees compliance with the Uniform Commercial Code, as the same may be amended from time to time, shall constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagor will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its reasonable judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(iii) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(iv) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(v) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.9 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.9 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it or to pay such funds into a court having jurisdiction over such funds.

6.6 Application of Rents and Other Sums. Upon the occurrence of and during the continuance of an Event of Default, Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it or to pay such funds into a court having jurisdiction over such funds.

Mortgagee shall have no liability for any funds which it does not actually receive.

## 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Credit Agreement, Security Agreements and the other Lender Agreements fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Credit Agreement, Security Agreements and the other Lender Agreements also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

### 7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Credit Agreement, Security Agreements and Lender Agreements have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under Section 5.5 above.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

### 7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.7 or Subsection 6.3(d) of this Mortgage, that act alone shall not release or change the personal liability of any Person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Joint and Several Liability. If Mortgagor consists of more than one Person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

7.6 Applicable Law. The creation, perfection and enforcement of the lien of this Mortgage shall be governed by the law of the State of location of Property without reference to the principles of conflicts of laws. Subject to the foregoing, in all other respects, this Mortgage shall be governed by the substantive laws of the State of New York without reference to the principles of conflicts of laws that would require the application of the laws of another jurisdiction. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provisions of this Mortgage shall conflict with, be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage. In the event that any provision or clause of this Mortgage or the other Lender Agreements conflicts with applicable law, such conflict shall not affect other provisions which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage are declared to be severable..

7.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.7 does not waive the provisions of Section 6.1 above.

7.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.9 Intentionally Omitted.

7.10 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but

hereby waives the benefit of such laws, to the extent waivable. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to, and to the extent permitted, the provisions of applicable law.

7.11 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.12 Notices. Any notice or demand which is made hereunder shall be delivered by (a) certified mail, return receipt requested, (b) hand delivered, (c) delivered by overnight courier, or (d) by email, provided that a confirmation copy is delivered within one (1) business day by a method set forth in clause (a), (b) or (c). Such delivery shall be deemed complete upon the second Business Day after mailing, if mailed, on the Business Day after deposit with overnight courier, if sent by overnight courier, and upon delivery, if hand-delivered or delivered by email:

Mortgagor: CLP Mount Sunapee, LLC  
c/o Och-Ziff Real Estate  
9 West 57<sup>th</sup> Street, 40<sup>th</sup> Floor  
New York, NY 10019  
Attention: Steven E. Orbuch  
Email: sorbuch@ozcap.com

With a copy to: Bryan Cave LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Attention: Ronald B. Emanuel, Esq.  
E-mail RBEmmanuel@bryancave.com

Mortgagee: c/o EPR Properties  
909 Walnut Street  
Kansas City, Missouri 64106  
Attention: General Counsel  
Telephone No.: (816) 472-1700  
E-Mail: craige@eprkc.com

With a copy to: Stinson Leonard Street LLP  
1201 Walnut Street, Suite 2900

Kansas City, MO 64106-2150  
Attn: James W. Allen

Any notice or demand delivered to the person or entity named above to accept notices and demands for Mortgagor shall constitute notice or demand duly delivered to Mortgagor, even if delivery is refused.

7.13 Maximum Amount. The total unpaid principal balance of indebtedness secured hereby (including disbursements that the Mortgagee may, but shall not be obligated to, make under this Mortgage, the Credit Agreement, the Security Agreements, the Lender Agreements, or any other document with respect thereto) shall not exceed \$TWO HUNDRED FIFTY-ONE MILLION, THIRTY-SEVEN THOUSAND NINE HUNDRED SEVENTY-SEVEN DOLLARS AND FIFTY-FIVE CENTS (\$251,037,977.55), plus interest thereon, and any late charges, foreclosure costs and collection costs made for the enforcement of this Mortgage and any remedies hereunder, taxes, special assessments, maintenance costs of any kind, recording fees, utilities or insurance on the Property and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, except as otherwise provided by law.

7.14 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee.

7.15 WAIVER OF TRIAL BY JURY. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, THE CREDIT AGREEMENT, THE LENDER AGREEMENTS, THE SECURITY AGREEMENTS, OR ANY OF THE OTHER DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE, THE CREDIT AGREEMENT, THE SECURITY AGREEMENTS AND EACH OF THE OTHER LENDER AGREEMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO THE CREDIT AGREEMENT, THE SECURITY AGREEMENTS AND EACH OF THE OTHER LENDER AGREEMENTS AS IF FULLY INCORPORATED THEREIN.

7.16 Defined Terms; Inconsistencies. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement. In the event of any

inconsistency between this Mortgage and the Credit Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Credit Agreement shall be controlling.

7.17 Exhibits, Schedules and Addendum; No Homestead. Schedules 1, A, and B are attached hereto. The Property subject to this Mortgage does not constitute homestead premises.

*[Remainder of Page Intentionally Left Blank]*

MCRD



IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

CLP MOUNT SUNAPEE, LLC.  
a Delaware limited liability company

By: [Signature]  
Name: Cory Perstein  
Title: Authorized Person

STATE OF New York )  
COUNTY OF New York ) SS.

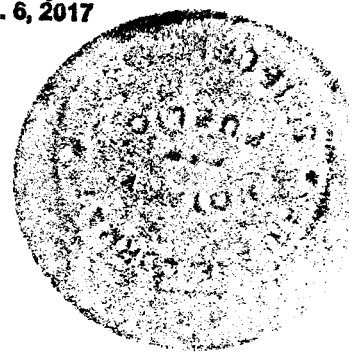
The foregoing instrument was acknowledged before me this April 6, 2017, at New York by Cory Perstein, as Authorized Person of CLP Mount Sunapee, LLC a Delaware limited liability company

Sign Name: [Signature]  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**ARLENE GORDON**  
Notary Public, State of New York  
No. 01GO502096  
Qualified in Nassau County  
Commission Expires Dec. 6, 2017



## Legal Description

A certain tract or parcel of land located in the Town of Newbury, County of Merrimack, and the Town of Goshen, County of Sullivan, both in the State of New Hampshire, bounded and described as follows:

Beginning in the Town of Newbury at a steel rebar in a stone wall located at the northeast corner of the premises herein described and at the Southeast corner of land now or formerly owned by the Allison E. Heath Revocable Trust;

Thence S 07°30' W a distance of 300'± along land of the State of New Hampshire, Sunapee State Park that is not subject to a lease, to a steel rebar in a stone pile;

Thence S 70°45' E a distance of 1024'± along non-leased State Park land and across Mt. Sunapee Access Road to a steel rebar;

Thence S 26°15' W a distance of 797'± across Park Road to a granite bound on the southerly sideline of said roadway;

Thence northeasterly, easterly, southwesterly, and southeasterly a distance of 6451'± along the southerly and westerly sidelines of Park Road to a granite bound, said granite bound is located S 31°15' E a distance of 4540'± on a tie line from the previously referenced granite bound;

Thence S 16°30' E a distance of 3513'± along non-leased State Park land to a steel rebar in a boulder;

Thence N 88°00' W a distance of 2257'± along non-leased State Park land to a steel rebar in a boulder;

Thence S 56°30' W a distance of 1542'± along non-leased State Park land to a steel rebar in a boulder;

Thence S 81°30' W a distance of 1023'± continuing along non-leased State Park land to a stone pile on the southerly boundary of land of the State of New Hampshire and on the line of land now or formerly owned by The Sunapee Difference, LLC;

Thence N 64°15' W a distance of 1587'± along land of The Sunapee Difference to a tipped stone in a stone pile on or near the line between the Towns of Newbury and Goshen;

Thence N 64°30' W a distance of 1352'± continuing along land of The Sunapee Difference to an iron rod in a stone pile at the southwesterly corner of the Lease Area herein described and at other land now or formerly owned by The Sunapee Difference, LLC;

Thence N 19°15' E a distance of 1153'± along land of The Sunapee Difference to a tipped stone in a stone wall at land now or formerly owned by Jolyon Johnson;

Thence S 64°30' E a distance of 300'± along land of Johnson and partially along a stone wall to a steel rebar at the southeast corner of land of Johnson;

Thence N 15°00' W a distance of 2657'± along land of Johnson and along land of Sunapee Land Holdings, LLC to a stone bound at a corner on the line between the Towns of Goshen and Newbury;

Thence N 26°45' E a distance of 832'± along land of Sunapee Land Holdings and partially along a stone wall to a corner of stone walls;

Thence N 43°30' W a distance of 1651'± along land of Sunapee Land Holdings and along a stone wall to a rock cairn located on top of a boulder on the southerly sideline of Old Province Road;

Thence N 69°15' E a distance of 372'± along a stone wall and the sideline of Old Province Road to a point;

Thence N 88°45' E a distance of 103'± along a stone wall and the sideline of Old Province Road to the end of the stone wall;

Thence N 10°15' E a distance of 47'± crossing Old Province Road to a wood post in a corner of stone walls on the northerly sideline of Old Province Road and at the southeasterly corner of land now or formerly owned by Mountain Reach Development, LLC;

Thence N 01°15' W a distance of 250'± along land of Mountain Reach and a stone wall to a steel rebar with a disk marked "Eckmann Eng;";

Thence N 89°45' W a distance of 50'± along land of Mountain Reach to a point;

Thence N 00°15' E a distance of 200'± continuing along land of Mountain Reach to a point;

Thence S 89°45' E a distance of 50'± continuing along land of Mountain Reach to a point on a stone wall;

Thence N 02°15' E a distance of 219'± along land of Mountain Reach and along a stone wall to a point;

Thence N 00°00' E a distance of 496'± continuing along land of Mountain Reach and along a stone wall to an intersection of stone walls to a steel rebar with a disk marked "Eckmann Eng;";

Thence N 01°00' E a distance of 319'± along land of Mountain Reach and along a stone wall to a steel rebar at a second intersection of stone walls;

Thence N 05°15' E a distance of 242'± along land of Mountain Reach and along a stone wall to a point;

Thence N 00°00' W a distance of 585'± along land of Mountain Reach and along a stone wall to a steel rebar at an intersection of stone walls at land now or formerly owned by Braton V. Robillard;

Thence N 70°45' E a distance of 173'± along a stone wall and land of Robillard to a point;

Thence N 84°00' E a distance of 205'± continuing along a stone wall and land of Robillard to a steel rebar on the east face of an intersecting stone wall at land now or formerly owned by the Herbert N. Smith Trust;

Thence N 83°30' E a distance of 2214'± along land of the Smith Trust to a steel rebar in a stone pile;

Thence S 88°15' E a distance of 1012'± along land of the Smith Trust and land of the Heath Revocable Trust, crossing the line between the Towns of Goshen and Newbury to the point of beginning.

Said premises having an area of approximately 1,134.8 acres.

Meaning and intending to describe the parcel shown as the "Lease Area" on a plan entitled "Revised Lease Area Sunapee State Park" dated December 11, 2014 and recorded March 20, 2015 in Merrimack County Registry of Deeds as Plan #201500003883 and recorded in Sullivan County Registry of Deeds as Plan #DR04-129.

Being the lands and premises described in that certain Order issued in the matter of The Sunapee Difference, LLC v. State of New Hampshire, dated February 13, 2015 and recorded March 20, 2015 in Book 3472 at Page 431 of the Merrimack County Registry of Deeds and in Book 1938 at Page 322 of the Sullivan County Registry of Deeds.

**SCHEDULE A**

Description of Premises

See attached

MCRD

**SCHEDULE 1:**

**BORROWERS**

<b><u>Borrower</u></b>	<b><u>Property Location</u></b>
Ski Resort Holdings LLC	N/A
Ski Resort Sub A LLC	N/A
Ski Resort Sub B LLC	N/A
MHSP Holder LLC	N/A
Ski Canada Owner LP	Cypress Provincial Park, British Columbia
CLP Snoqualmie, LLC	Snoqualmie Pass, Washington
CLP Brighton, LLC	Brighton, Utah
CLP Gatlinburg Partnership, LP	Gatlinburg, Tennessee
CLP Loon Mountain, LLC	Lincoln, New Hampshire
CLP Sunday River, LLC	Newry, Maine
CLP Sugarloaf, LLC	Carrabassett Valley, Maine
CLP Crested Butte, LLC	Crested Butte, Colorado
CLP Okemo Mountain, LLC	Ludlow, Vermont
CLP Mount Sunapee, LLC	Newbury, New Hampshire
CLP Jiminy Peak, LLC	Hancock, Massachusetts
CLP Mountain High, LLC	Wrightwood, California
CLP Stevens Pass, LLC	Skykomish, Washington
CLP Sierra, LLC	Twin Bridges, California