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

Return to:

Law Office of Thomas F Quinn
62 Elm Street
Milford, NH 03055

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SUBORDINATION, NON-DISTRUBANCE
AND ATTORNMENT AGREEMENT

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Leasehold Record Owner: CLP Mount Sunapee LLC

Sublessee/Tenant: The Sunapee Difference, LLC

Lender: EPT Ski Properties, Inc.

**SUBORDINATION, NONDISTURBANCE
AND
ATTORNMENMENT AGREEMENT**

THIS AGREEMENT, made this 6th day of April, 2017, by and between EPT Ski Properties, Inc., a Delaware corporation (hereinafter referred to as the "Lender"), and The Sunapee Difference, LLC, a New Hampshire limited liability company (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Tenant is now the lessee under that certain Sublease Agreement dated December 5, 2008 and evidenced by that certain Memorandum of Sublease (Mount Sunapee Resort) recorded December 24, 2008 in Book 1713, Page 507 and re-recorded on February 5, 2009 in Book 1716, Page 952 of the Sullivan County Registry of Deeds and recorded on December 10, 2008 in Book 3099, Page 1094 and re-recorded February 18, 2009 in Book 3110, Page 392 of the Merrimack County Register of Deeds; as amended by that certain First Amendment to Real Property Lease Agreement dated March 5, 2009; as amended by that certain Second Amendment to Lease Agreement dated December 31, 2011; as amended by that certain Third Amendment to Lease Agreement dated April 30, 2015 and evidenced by that certain Amendment to Memorandum of Sublease dated April 30, 2015, recorded in Book 1942, Page 257 of the Sullivan County Registry of Deeds and recorded in Book 3476, Page 2532 of the Merrimack County Register of Deeds; and as further amended by that certain Fourth Amendment to Lease Agreement dated March 11, 2016 (and together with those certain documents described on Exhibit B, the "Lease") covering all or a portion of certain real property located in Merrimack County and Sullivan County, New Hampshire, as said premises are described in Exhibit A attached hereto ("Premises"), which Premises are owned by CLP Mount Sunapee, LLC ("Landlord"), under the terms of the Lease; and

WHEREAS, Lender granted a mortgage (the "Mortgage") covering the Premises in order to secure certain sums to be loaned ("Loan") by the Lender which Mortgage is dated April 6, 2017, and filed for record on April 25, 2017, in Book 3553 at page 305 of the _____ Public Registry; and

WHEREAS, it is a condition precedent to obtaining advances under the Loan that the Mortgage shall be, and remain, a lien or charge upon the Premises hereinbefore described, prior and superior to the Lease, and the leasehold estate created thereby; and

WHEREAS, Tenant desires to facilitate the making of the Loan by the Lender.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lender and Tenant agree as follows:

1. Subordination. The Mortgage and any renewals or extensions thereof, shall be and remain at all times a lien or charge on the Premises prior and superior to the Lease, the leasehold estate created thereby and to any options to lease or to purchase the Premises contained therein, and to all rights, privileges, and conditions therein contained. Tenant declares and

acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority of the leasehold estate created by the Lease to the Mortgage. All amendments, modifications, substitutions, renewals, extensions and replacements of the Lease shall be and remain so subordinated as provided in this paragraph without the necessity of any further act of the parties. Tenant also declares and acknowledges that it understands that in reliance upon and in consideration of this waiver, relinquishment, and subordination, specific loans and advances secured by the Mortgage will be made, and monetary and other obligations will be entered into by third parties which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination. Lender declares and acknowledges that it understands that Tenant enters into this Agreement in reliance upon and in consideration of the Agreements of Lender in Section 2 and Section 3 below and that but for Section 2 and Section 3 below Tenant would not enter into this Agreement. This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than the Mortgage and any renewals or extensions thereof.

2. Non-Disturbance. Lender shall not, in the exercise of any right, remedy or privilege granted by the Mortgage, or otherwise available to Lender at law or in equity, disturb Tenant's possession or interfere with any of the rights of Tenant under the Lease (and renewals, amendments and extensions thereto) and agrees that the Lease shall remain in full force and effect without restriction or amendment so long no Event of Default (as defined in the Lease) by Tenant then exists under the Lease.

Nothing contained in this Paragraph 2, however, shall be construed to limit or prevent Lender in or from exercising any of its rights hereunder, at law, or in equity in connection with any breach by Tenant of its or his obligations under the provisions of this Agreement; provided that, except for as explicitly stated in this Agreement (including without limitation pursuant to Paragraph 9), this Agreement does not create in favor of Lender or any successor to Lender any rights under or related to the Lease greater than the rights of the Landlord under the Lease.

Lender will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Mortgage. Lender agrees that no foreclosure, action in lieu of foreclosure, action to appoint a receiver, or other exercise of Lender's rights under the Mortgage will terminate or otherwise modify the Lease and Tenant's possession of its premises will not be affected by a foreclosure action, action in lieu of foreclosure, action to appoint a receiver, or other exercise of the lender's rights under the Mortgage. Further, no foreclosure, action in lieu of foreclosure, action to appoint a receiver, or other exercise of Lender's rights under the Mortgage shall reduce, eliminate or modify any right Tenant has under the Lease, including but not limited to the right to renew or extend the Lease or any option Tenant has under the Lease all of which shall survive any foreclosure or action in lieu of foreclosure, action to appoint a receiver, or other exercise of Lender's rights under the Mortgage.

3. Attornment.

(a) Tenant shall, upon written notice from Lender or Landlord, attorn (i) to Lender, (ii) to any receiver or similar official for the Premises appointed at the instance, upon the request or with the consent of Lender, (iii) to Lender upon any acquisition by

Lender of the Premises and Landlord's interest in the Lease and (iv) to any person or entity who acquires the Premises and the Landlord's interest in the Lease pursuant to Lender's exercise of any right, remedy, or privilege granted by the Mortgage, or otherwise available at law or in equity. Without limiting the generality of the foregoing, Tenant shall attorn to any person or entity that acquires the Premises pursuant to foreclosure under the Mortgage, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Lender, whether by sale, exchange, or otherwise.

(b) Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, in accordance with the foregoing subparagraph and any such person or entity to whom Tenant attorns shall not be: (i) liable for any breach, act or omission of any prior landlord including, without limitation, Landlord; (ii) subject to any claims or to any defenses which Tenant might have against any prior landlord including, without limitation, Landlord; (iii) bound by any rent, additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than one (1) month in advance of its due date under the Lease; (iv) bound by any amendment or modification of the Lease, made after the date hereof without Lender's prior written consent; (v) bound by any election or exercise of any option to purchase by Tenant unless Tenant delivers to the Lender written notice thereof; (vi) bound by any notice of default given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Lender; or (vii) be liable for the return of any security deposit or other sums held by any prior landlord including, without limitation, Landlord, unless actually received. The person or entity to whom Tenant attorns from and after the date of such party's acquisition of the Landlord's rights under the Lease shall comply with all duties and provide all services of Landlord under the Lease, except as otherwise set forth in this Agreement, accruing from and after the date of such acquisition.

(c) Lender and any other person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only to the extent provided therein and only for liabilities which occur during such person's or entity's period of ownership of the Premises.

4. **Rents.** The Mortgage provides Landlord a license to collect all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Premises, including all prepaid rents and security deposits now due and to become due to Landlord under the Lease (collectively, "**Rents**"). Upon the occurrence of certain conditions as set forth in the Mortgage, Lender can terminate Landlord's license to collect such Rents and has the right, power and authority to collect any and all Rents directly from Tenant. Upon an event of default under the Mortgage, Lender may automatically collect and receive rents from Tenant without first taking any acts of enforcement under applicable law or taking possession of the Premises. Upon receipt from Lender of written notice to pay Rents to or at the direction of Lender, Tenant shall make all such payments to or at the direction of Lender. Upon receipt of such notice, Tenant thereafter shall pay all Rents then due and becoming due from Tenant under the Lease, to or at the direction of Lender. Tenant agrees that Lender's demanding and/or receiving any such payments shall not operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease. Such payment of Rents to Lender shall continue until Lender directs

Tenant otherwise in writing, or until Tenant receives (i) a court order directing Tenant to pay Rents to another person or entity, or (ii) notice that the Premises have been sold to a person or entity other than Lender. The provisions of this Paragraph 4 will terminate upon the earliest to occur of (a) termination of the Lease, (b) the recording of a release of the Mortgage, duly executed by Lender, or (c) Tenant's receipt of written notice to such effect from Lender.

5. Waste; Damage to Premises. Tenant agrees that anything to the contrary appearing in said Lease notwithstanding, the Lender shall in no event be liable for any waste permitted on the Premises by the Landlord or any tenant or be liable by reason of any damage to or defective condition of the Premises resulting in loss or injury to Tenant nor be liable for any other default, act or omission of the Landlord arising or accruing prior to the date when the Lender acquires title to the Premises, nor shall the Lender be subjected to any claim, or cause of action, or to any set off or credit or defense against rentals accruing after the Lender acquires such title, for any default, act or omission by the Landlord which arose or accrued prior to the date when the Lender acquired title.

6. Insurance Proceeds. Tenant agrees that, notwithstanding any provision of the Lease to the contrary, the terms of the Mortgage shall govern with respect to the disposition of any insurance proceeds or eminent domain awards. This section shall be effective so long as Lender or any future holder of the Mortgage shall have an interest in the Premises, whether as lender or owner.

7. Integrated Agreement. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties or their successors and permitted assigns.

8. Notices. Any and all notices required or permitted to be given or served by the terms and provisions of this Agreement shall be in writing and signed by the duly authorized representative of the party giving the notice and shall be deemed duly given when (1) sent certified or registered mail, postage prepaid, return receipt requested, (2) delivered in person, (3) delivered by express overnight delivery or (4) delivered by email, provided that a confirmation copy is delivered within one (1) business day by a method set forth in clause (1), (2) or (3). If to the Lender, notice shall be addressed as follows: c/o EPR Properties, 909 Walnut Street, Kansas City, Missouri 64106, Attention: General Counsel, Telephone No.: (816) 472-1700, E-Mail: craige@eprkc.com and to Stinson Leonard Street LLP, 1201 Walnut Street, Suite 2900, Kansas City, MO 64106-2150, Attention: James W. Allen, E-Mail: jim.allen@stinson.com or at such other address(es) or to the attention of such other Person(s) as the Lender shall from time to time designate in writing to the Borrowers; if to Tenant, notice shall be addressed as follows: The Sunapee Difference, LLC, c/o Triple Peaks LLC, 77 Okemo Ridge Road, Ludlow, Vermont 05149, Attention: Tim Mueller, Fax No.: (970) 349-2250, Telephone No.: (970) 349-2203 and Diamond McCarthy LLP, 909 Fannin, Suite 3700, Houston Texas 77010, Attention: Paul A. Berry, Esq., Fax No.: (713) 333-5199, Telephone No.: (713) 333-5100. All notices shall be deemed received upon receipt, if delivered by email, personal or courier delivery, or if delivered by certified mail, then upon the earlier of (i) actual receipt, or (ii) the date of the first attempted delivery thereof. Either party hereto may change its address and designate such other parties to receive additional copies of any notice for the above purposes by giving notice as aforesaid stating the change and setting forth the new address.

9. Notice of Default. Notwithstanding anything to the contrary in the Lease or this Agreement, contemporaneously with providing notice to Landlord, Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below. After Lender receives a Default Notice, Lender shall have the same rights to cure any and all defaults by Landlord under the Lease within the same grace, notice and cure periods provided to Landlord in relation thereto; provided however Lender shall have a period of seven (7) business days beyond any cure period specifically made available to Landlord under the Lease (or if no cure period is provided, seven (7) business days after Lender receives the Default Notice) in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

10. Assignability. The Lender shall have the right to assign this Agreement to the purchaser upon any foreclosure sale of the Premises or to any purchaser of its rights under the Loan and the Mortgage securing the same.

11. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

13. Severability. A determination that any provision of this Agreement is unenforceable or invalid shall not affect this enforceability or validity of any other provision, except to the extent such provisions are expressly inter-dependent. The parties agree that Paragraphs 1 and 2 above are interdependent. Any determination that the application of any provision of this Agreement to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown hereinbelow.

“LENDER”

Witnessed as to the Lender:

EPT SKI PROPERTIES, INC., a Delaware corporation

Linda J. Kara
Linda J. Kara

By: *Craig L. Evans*
Name: Craig L. Evans
Title: Vice President and Secretary

STATE OF MISSOURI)
COUNTY OF JACKSON) SS.

The foregoing instrument was acknowledged before me this March 31, 2017, at 1:30PM by Craig L. Evans, as VP / Secretary of EPT Ski Properties, Inc., a Delaware corporation.

KELLY KILDUFF
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
Commission # 15636490
My Commission Expires: 6/30/2019

Sign Name: *K. Kilduff*
Notary Public

Print Name: Kelly Kilduff

My Commission Expires: 6/30/2019

“TENANT”

Witnessed as to the Tenant:

THE SUNAPEE DIFFERENCE, LLC,
a New Hampshire limited liability company

Earl R. Perkins
EARL R. PERKINS

By: Ethan Mueller
Name: Ethan Mueller
Title: President
SENIOR VICE

STATE OF VT)
COUNTY OF Windsor) SS.

The foregoing instrument was acknowledged before me this 3-31-17, at
Ludlow by ETHAN MUELLER, as SR VICE PRESIDENT of
THE SUNAPEE DIFFERENCE LLC, a NEW HAMPSHIRE LLC.

Sign Name: Joyce Washburn
Notary Public

Print Name: Joyce Washburn

My Commission Expires: 2-10-2019

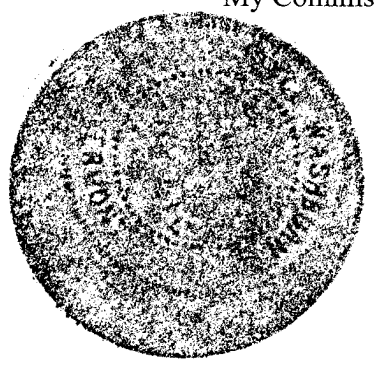


EXHIBIT A

(See Attached)

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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;

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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.

EXHIBIT B

Mount Sunapee Personal Property Lease Documents

Personal Property Lease Agreement dated December 5, 2008 between CLP Mount Sunapee TRS Corp. (f/k/a CNL Income Mount Sunapee TRS Corp.) and The Sunapee Difference, LLC.

First Amendment to Personal Property Lease Agreement dated March 5, 2009 between CLP Mount Sunapee TRS Corp. (f/k/a CNL Income Mount Sunapee TRS Corp.) and The Sunapee Difference, LLC.

Second Amendment to Personal Property Lease Agreement dated December 31, 2011 between CLP Mount Sunapee TRS Corp. (f/k/a CNL Income Mount Sunapee TRS Corp.) and The Sunapee Difference, LLC.

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