

Land Use and Operating Agreement

The Town of West Windsor ("Town") is bound by a Grant of Development Rights, Conservation Restrictions and Public Access Easement ("Easement") granted to the Upper Valley Land Trust ("UVLT") and Vermont Housing and Conservation Board ("VHCB") as part of the Town's acquisition of the former ski area property on Mount Ascutney. In this Land Use and Operating Agreement ("Agreement"), the Town makes a broad delegation of authority to Mount Ascutney Outdoors, Inc. ("AO"), a not-for-profit corporation formed under the laws of the State of Vermont, to conduct activities as specified below that fulfill many of the obligations of this Easement. This delegation is, however, subject to certain general provisions which shall guide AO's plans and activities:

- A. AO shall work to build partnerships and linkages with other entities in the area to enhance economic activity in Town through consultation, mutual cooperation and joint enterprise.
- B. Working in concert with the Town Conservation Commission, AO is charged with assisting with the drafting and periodic review of the recreational component of a Community Forest Management Plan, which plan is a requirement of the Easement and subject to approval from the Selectboard. This component of the Plan shall be a comprehensive exploration of recreational and leisure uses to be permitted in the Easement Area.
- C. All projects AO may undertake to enhance recreational and leisure activities in the Easement Area shall be subject to and consistent with the Easement, the Community Forest Management Plan, any State or local permits governing the subject premises, and the most current West Windsor Town Plan.
- D. For each of these activities and for the aggregate of them all, AO shall also maintain a financial plan that is intended to ensure the long-range operating sustainability of the enterprise, and no new project shall be undertaken until it is incorporated into this financial plan.

With these provisions in mind, the Town and AO agree as follows:

The Town of West Windsor designates AO as its principal agent for the management of certain land and property within the Easement Area, identified in Paragraphs IV.3 and IV.4 of the Easement as the Back-Country Ski Slope Area and the Multi-use Recreation Area, both depicted on the attached Exhibit A, entitled "Schedule B Conservation Map" (including 2.34 acres noted on Schedule B as Anticipated Exchange Land).

Additionally, this Agreement allows AO preferential access to the following areas:

- 9.96 acres included in the Easement Area designated on Schedule B as "Recreation Infrastructure Area," and
- 3.38 acres adjacent to but not included in the Easement Area known as the "Ascutney Water Parcel," not identified in Schedule B, but depicted in a survey attached as Exhibit C.
- The remainder of the Easement Area, subject to review and approval from the West Windsor Conservation Commission.

Any AO sponsored or co-sponsored activities to be conducted within all of these areas shall be governed by Paragraphs #7, #8 and #9 below. To the extent that AO becomes involved in activities on property outside of the Easement Area not owned by or licensed to the Town, such arrangements are to be effected exclusively between AO and the property owner and shall not involve the Town.

AO's activities on the all premises subject to this Agreement shall be conducted in conformance with all four of the general provisions enumerated above as well as certain specific provisions enumerated below:

- 1. Mutual Cooperation - The Town and AO agree that they shall work cooperatively to abide by the terms of this Agreement.**
- 2. AO is responsible for promoting recreational and leisure activities in the Easement Area, constructing and maintaining facilities as may be provided for in the permits and plans cited above, and raising the funds needed to sustain these activities and facilities. AO acknowledges that it cannot depend on the Town for assistance in financing its affairs, and the Town makes no explicit or implicit guarantee of financial assistance under any circumstance. AO also acknowledges that in all of its activities it shall comply with the requirements of Paragraphs A through D listed above.**
- 3. The Town and AO shall work cooperatively to remove (for salvage value, if any, to be split between them 50-50) all abandoned structures and equipment (including piping) remaining in the Easement Area from prior ski area operations. If AO anticipates some future use for any of these abandoned structures or equipment, it shall present its plans to the Town and UVLT for review and approval. Upon approval, AO shall assume responsibility for the safety and security of these facilities until such time as they are placed in service and become part of AO's regular facility operations and maintenance program.**
- 4. The Town reserves the right to do whatever is necessary within the area to improve and maintain the infrastructure of the West Windsor Mountain Water System and Sewer System and all other facilities needed in conjunction therewith. The Town shall consult with AO as plans for this work are developed and implemented. AO has granted the Town a permanent right of access across its adjoining property (site of the Ascutney Outdoors Center) to carry out maintenance and repair of these facilities. Finally, when plowing the access road to and parking areas around the Ascutney Outdoors Center, AO shall keep a point open at which Town vehicles can park or pass through in order to service the nearby water system booster pump and reservoir buildings.**
- 5. Consistent with Sec. I. D. of the Easement, the Town reserves the right to harvest forest timber on the property. Proceeds from the harvest belong to the Town, provided however that the Town shall endeavor not to harvest timber in a manner that harms AO's ability to**

conduct its recreational and leisure activities, except for temporary interruptions required for public and operator safety.

6. AO understands that utility easements on the property, including water, sewer, power and telecommunications easements shall not be interfered with. In the event that AO is maintaining recreational trails across any access road to a Town facility in operation on the premises, the trails shall not obstruct access to such facility. The Town shall be consulted before any crossings are developed, and both entities agree to cooperate in accommodating their respective needs at these points of dual use.
7. In accordance with Paragraph #2 of the Town's Facility Use Policy, "The Easement Area is reserved for Town or Ascutney Outdoors ("AO") sponsored or co-sponsored activities and events, plus other uses the Town may occasionally permit in the Recreation Infrastructure Area that do not conflict with these activities and events." AO shall maintain a calendar of all events it will be sponsoring or co-sponsoring in the Area, and, in connection therewith, shall comply with the West Windsor Ordinance Regarding the Conduct of Large Public or Private Events. In accordance with Paragraph #7 of the Facility Use Policy, AO is not required to execute Facility Use Agreements for its sponsored or co-sponsored events in the Easement Area.
8. In the Multi-Use Recreation and Recreation Infrastructure Areas only, in connection with events sponsored or co-sponsored by AO, alcohol may be:
 - served by a duly licensed provider, who shall: carry General and Liquor liability insurance, provide the Town with a Certificate of Insurance, and name the Town of West Windsor as an additional insured for the event, or
 - brought by event attendees ("BYOB"), in which case AO shall assume any and all liability for the consumption of alcohol under the terms of Paragraphs #18 and #19 of this Agreement.

AO shall consult with the Selectboard regularly to clarify the circumstances under which alcohol may be consumed on Town property in connection with its sponsored or co-sponsored events and shall indemnify and hold the Town of West Windsor harmless and free from any liability for damage or injury of any kind arising from this consumption. The minimum insurance AO and any licensed vendors shall carry for such events shall be \$1 million per occurrence and \$2 million in the aggregate, including liquor liability coverage.

9. AO sponsored or co-sponsored activities shall have priority access to the Recreation Infrastructure Area. The Town will maintain, plow and sand at the southwest end of the Area a sufficient space during the winter to accommodate parking for participants in AO's on-going skiing and tubing activities. By filing an application for an event in accordance with the West Windsor Ordinance Regarding the Conduct of Large Public or Private Events, with notice therein of a plan to do so, AO sponsored or co-sponsored events may from time to time use the entire Recreation Infrastructure Area for activities associated with the

proposed event provided AO assumes responsibility for any additional maintenance, plowing or sanding required. Before the Town permits any other use of the Recreation Infrastructure Area, it shall ensure that such use does not conflict with AO's calendar of events.

10. Under the supervision of the West Windsor Highway Foreman, AO may use indoor and outdoor spaces on the so-called Ascutney Water Parcel to house its machinery and equipment and to store materials needed for its projects and operations. The Town and AO will work cooperatively to remove all other abandoned equipment and scrap from the property left over from prior ski area operations.
11. In addition to its commitment to perform certain winter maintenance within the Recreation Infrastructure Area to accommodate AO activities, the Town will maintain the upper end of Coaching Lane Road to the Town Forest Parking Lot in a condition suitable for automobile access. Beyond this the Town assumes no obligation under this Agreement to undertake additional roadwork within the Easement Area.
12. AO shall assume responsibility for developing and maintaining a network of recreational trails on and off the Easement Area as depicted in Exhibit B, the current STAB Trail Map. AO may sub-contract development and maintenance of the trails to another non-profit entity such as STAB with Town approval, provided that the terms of this Agreement extend to any and all such sub-contractors. AO is responsible for ensuring that AO and all sub-contractors comply with this agreement, the Easement, current State or local Permits, the Community Forest Management Plan, and the current West Windsor Town Plan.
13. The Easement specifies that up to three lifts and one new structure may be constructed in the Multi-Use Recreation Area. Such ski lift and structure placements shall be approved by the UVLT and the Town, and shall not be located above the elevation specified in the Easement. AO may maintain existing trails above this elevation for downhill skiing, but all recreational access shall be non-motorized. Motorized equipment operated by authorized personnel is only allowed above the specified elevation for clearing and maintenance of these trails and for search and rescue.
14. AO shall install and maintain signs stating that all trails are for non-motorized use only. In the event that motorized vehicles illegally enter the trails, AO shall notify the Town and shall work cooperatively with the Town to prevent such unauthorized use.
15. Pursuant to the Easement, AO may not advertise or maintain a connection between the top of the ski area and the remainder of the Town Forest. AO shall install and maintain signs along the ski area boundary that reasonably warn skiers of the difficult terrain that exists outside of the ski area property.

- 16. The Easement specifies that the public has the right to use the property for dispersed pedestrian recreation except when erosion, ecological sensitivity, timber harvesting, public safety or a large event requires public use to be conditioned, limited or closed. AO may charge a non-preferential fee to users of the ski area and recreational trails which is based on the cost to develop, operate, maintain and manage the area and trail infrastructure.**
- 17. AO shall provide the Town with annual financial statements audited or reviewed by a registered professional or certified public accountant within 90 days of the end of its fiscal year.**
- 18. AO and all of its sub-contractors shall maintain insurance in amounts reviewed annually and deemed satisfactory to the Town's insurer, as currently specified in Exhibit D, with the Town named as "additional insured." A Certificate of Insurance showing proof of the coverages and limits shall be provided annually. The certificate of insurance shall contain a provision stating that the coverages and limits agreed upon for the ensuing year shall not be cancelled, materially changed, or not renewed without thirty (30) days written prior notice to the Town, except ten (10) days for nonpayment of premium.**
- 19. AO and its subcontractors agree to hold harmless, indemnify and defend the Town of West Windsor, and its officials, agents, employees and volunteers from all liability, costs of suit, attorneys' fees and all other costs associated with or otherwise arising out of any and all of the activities of AO, except those activities or actions that result from the sole negligence of the Town of West Windsor.**
- 20. The bylaws of AO's governing board, and any amendments thereto, shall be submitted for review and comment by the Town. These bylaws shall provide for an ex-officio, non-voting position on the board to be filled by appointment of the Town Selectboard, the incumbent of which shall serve with all other rights and privileges of the remaining AO board members.**
- 21. AO acknowledges that the Easement and the Community Forest Management Plan require that all trail maintenance shall be conducted so as to minimize the spread of invasive species. AO further acknowledges that, due to overuse or other factors, restrictions may be imposed to protect the trails from erosion or to ensure protection of ecological values of the land.**
- 22. The Town's Selectboard and AO's governing board agree to maintain regular communication to evaluate the impacts of AO's activities and the effectiveness of this Agreement.**
- 23. The Town reserves the right to terminate this agreement in the event that AO violates any of its terms (including the terms of all easements, plans and permits incorporated herein by reference), provided that the Town gives AO written notice of the perceived violation and allows it 30 days to resolve the matter. In the event of termination, the parties agree to**

determine ownership of, and fairly apportion the value of, any AO financed property on the premises which the Town wishes to retain.

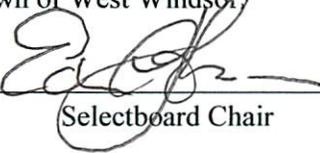
24. This Agreement may be amended by written agreement of the parties. It is understood that this agreement shall evolve as responsibilities are clarified and new opportunities arise.
25. This amended and restated agreement shall expire five years from its date of execution, but may be extended for subsequent 5-year periods by the parties upon written agreement to this or an amended set of terms.

The Town of West Windsor and Mount Ascutney Outdoors, Inc. hereby execute and agree to the terms and conditions of this Agreement. This Agreement contains the entire agreement between the parties, and there are no other promises, conditions, understandings or other agreements (including any prior such agreements between the parties), whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified or amended only in writing, signed by both parties.

Dated at West Windsor, in the County of Windsor and State of Vermont, this 11th day of March, 2019.

For the Town of West Windsor

Signature



Selectboard Chair

Mount Ascutney Outdoors, Inc.:

Signature



Mount Ascutney Outdoors, Inc. Insurance Coverage

This insurance has been obtained from an insurer having an A.M. Best Insurance Rating of at least A- in a financial size category of VII or greater.

- Commercial General Liability Insurance including, as applicable, Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate annually.
- As applicable, Commercial Auto Liability Insurance covering all Owned & Hired and Non-Owned vehicles, with limits of at least \$1,000,000 Combined Single Limit per occurrence.
- As applicable, Statutory Workers' Compensation Insurance and Employers Liability Insurance with limits of at least \$500,000 per occurrence.