

Operating Agreement

with

Eastern Plumas Recreation District

for

the Plumas-Eureka Ski Bowl
at Plumas-Eureka State Park

STATE OF CALIFORNIA – RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
CONCESSIONS DIVISION
1416 NINTH STREET, 14TH FLOOR
SACRAMENTO, CA 95814



OPERATING AGREEMENT
for
Plumas-Eureka Ski Bowl/Plumas-Eureka SP

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OPERATING AGREEMENT
with
Eastern Plumas Recreation District
for
the Plumas-Eureka Ski Bowl
within Plumas-Eureka State Park

THIS OPERATING AGREEMENT (Agreement), by and between STATE OF CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter referred to as "**State**", and Eastern Plumas Recreation District, hereinafter referred to as "**EPRD**".

WITNESSETH:

Whereas, pursuant to the provisions of Section 5080.30, et seq., of the California Public Resources Code, State may enter into an operating agreement with any city, county, district, public agency, or combination thereof of the State of California for the care, maintenance, administration, and control of lands under the jurisdiction of State for the purpose of the state park system; and

Whereas, State has acquired for park and recreational purposes certain real properties known as Plumas-Eureka State Park located within Plumas County; and

Whereas, State and EPRD desire to enter into an Agreement to provide for the development, operation, control, and maintenance of the Plumas-Eureka Ski Bowl by EPRD; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. PREMISES

State authorizes EPRD to develop, operate, control, and maintain the Plumas-Eureka Ski Bowl within Plumas-Eureka State Park as shown in "**Exhibit A**", attached and hereby made a part hereof, hereafter "Premises". EPRD agrees

to accept Premises, including facilities covered by this Agreement, and take the same in their present condition "AS IS" with all faults, and agrees to maintain the same in a safe and tenable condition, and, at any termination of this Agreement, to promptly turn back the same to State in the same or better condition, reasonable wear and tear excepted. State shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Agreement. This Agreement is not intended to and does not create any third party rights and in no event shall be relied on by any party other than EPRD and State.

2. TERM

The term of this Agreement shall be for a period of ten (10) years and shall commence on August 1, 2011 and end on July 31, 2021. However, this Agreement shall not be effective until the first of the month following approval by the State of California, Department of General Services. Should EPRD hold-over after the expiration of the term of this Agreement with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated subject otherwise to all the terms and conditions of this Agreement.

3. USE OF PREMISES

EPRD agrees to develop, operate, control, and maintain the Premises as a winter recreational facility with related concessions and/or other facilities accessible and subject to the use and enjoyment of the general public. Development and operation of the Premises shall be conducted in accordance with all applicable State general planning principles, State Parks Commission policies and all federal, state, and local government statutes, laws, and regulations.

Upon written permission of State, EPRD may improve the Premises by constructing and operating ski area facilities as defined under the Mitigated

Negative Declaration done for the Plumas-Eureka Ski Bowl (State Clearinghouse #2006052066). These facilities shall not adversely affect the use and enjoyment of the Premises by the public. EPRD agrees to provide State a cohesive operations and management plan consistent with the criteria set forth in **Exhibit C, Operations and Facility Management Plan**, attached to and made part of this Operating Agreement.

EPRD may adopt rules and regulations for the use and enjoyment of the Premises by the public. Any such rules and regulations adopted by EPRD shall conform to and be consistent with the rules and regulations adopted by State and generally applicable to the California State Park System. The Premises shall not be used for any purpose other than those permitted by this Agreement.

EPRD shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose other than as herein set forth without the prior written consent of the State.

4. CONSIDERATION

In consideration of the services to be performed by EPRD pursuant to this Agreement, State hereby authorizes the use of the Premises by EPRD rent-free on the condition that EPRD exert a good faith effort in performing the terms and conditions of this Agreement. In the event that EPRD fails to perform in good faith, the Premises shall revert back to the State, at State's option, and State shall have the right to pursue any other remedies available under this Agreement and/or otherwise available by law.

Any income to EPRD derived from its control and operation of Premises for services, benefits, or accommodation to the general public, or otherwise, shall be used only for the maintenance, operation, administration, improvement, or development of lands and/or facilities located within the Plumas-Eureka Ski Bowl at Plumas-Eureka State Park. Any such portion of income as may exceed costs and expenses described in this paragraph shall be remitted to State in accordance with Section 5080.32 (b)(2) of the California Public Resources Code.

5. CONSTRUCTION AND COMPLETION OF IMPROVEMENTS

A. At no cost or expense to State, EPRD may undertake new construction, reconstruction, alteration, and maintenance to enhance public recreation facilities subject to prior written approval by State. In the event that EPRD desires to make modifications, improvements, or additions to the Premises or any part of the Premises, including changes to structural design, landscape design, or interior or exterior fixtures, design, and/or furnishings, (collectively "Alteration(s)"), written approval by State shall be obtained prior to the commencement of any Alterations. State shall dictate the plan approval process. All modifications and additions shall be made in accordance with State's standards for construction and completion of improvements. Further, all Alterations shall be made in accordance with State's general planning principles and with all applicable state and federal laws, rules and regulations.

B. Once prior approvals, including permits, have been received as required herein above, and the work on any Alteration has begun, EPRD shall prosecute to completion with reasonable diligence all approved Alterations. All work shall be performed in a professional manner, and will comply substantially with plans and specifications submitted to State as required herein and with all applicable governmental permits, laws, ordinances, and regulations. It shall be the responsibility of EPRD, at its own cost and expense, to obtain all licenses, permits, security, and other approvals necessary for the construction of approved Alterations. EPRD shall comply with public bidding requirements as set forth in the California Public Contract Code.

C. For all Alterations erected on the Premises by EPRD, upon completion of construction, EPRD shall (1) record a Notice of Completion, with a copy provided to the State; (2) provide State with a complete set of "as-built" plans for all improvements in a format reasonably acceptable to State; (3) submit evidence that all improvements are clear of any mechanic's liens or stop notices; (4) submit a verified accounting of the cost for Alterations, excluding equipment and trade fixtures that are the personal property of EPRD; and (5) submit a

verified report demonstrating full compliance with the pertinent state and federal accessibility laws, including but not limited to, the Americans with Disabilities Act of 1990, Titles I, II and III.

D. Title to all Alterations existing or hereafter erected on Premises, regardless of who constructs such improvements, shall immediately become State's property, and, upon termination of this Agreement, all improvements shall become part of the realty and title to the Premises and shall vest in State, without compensation to EPRD. EPRD agrees never to assail, contest, or resist said title. The foregoing notwithstanding, State may elect, by notice to EPRD, that EPRD must remove any Alterations that are peculiar to EPRD's use of the Premises and are not normally required or used by State and/or future occupants of the Premises. In this event, EPRD shall bear the cost of restoring the Premises to their condition prior to the installment of the Alterations.

6. MAINTENANCE OBLIGATIONS OF EPRD

A. During the term of this Agreement and at EPRD's own cost and expense, EPRD shall maintain and operate the Premises including equipment, personal property, and Alterations or improvements of any kind that may be erected, installed, or placed thereon in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. During the term of this Agreement it shall be the EPRD's responsibility to insure that the Premises are maintained to the satisfaction of STATE. All construction, operation, and maintenance shall be in accordance with all laws, codes, regulations, ordinances, and generally accepted industry standards pertaining to such work.

B. Should EPRD fail, neglect, or refuse to undertake and complete any required maintenance, State shall have the right to perform such maintenance or repairs for the EPRD. In this event, EPRD shall promptly reimburse State for the cost thereof, provided, however, that State shall first give EPRD ten (10) days written notice of its intention to perform such maintenance or repairs. State shall not be obligated to make any repairs to or maintain any improvement on the Premises. EPRD hereby expressly waives the right to make

repairs at the expense of the State and the benefit of Sections 1941 and 1942 of the California Civil Code relating thereto, if there be any. State has made no representations respecting the condition of the Premises, except as specifically set forth in this Agreement.

C. State reserves the right to enter the Premises for inspection and work related to its care and maintenance during the term hereof, provided that State shall give EPRD reasonable written notice of its intention to do any of the work herein mentioned before such work is undertaken.

7. CONCESSIONS

Subject to prior written approval by State, EPRD may grant concessions in or upon the Premises consistent with the requirements of State under Sections 5080.33 and 5080.34 of the California Public Resources Code. All concession contracts shall be subject to the requirements of the California Public Resources Code Section 5080.20 and shall be assumable and/or subject to termination by State, at State's sole discretion, in the event this Agreement is terminated by its terms. No concessions that exploit public lands for commercial purpose shall be granted by EPRD. Further, all concession agreements shall be made subject to audit by State. State shall have the right, through its representative and at all reasonable times, to examine and copy all working papers supporting Concessionaire's annual financial statement. In addition, the State, acting through its representative, may conduct additional independent reviews of the concession operations upon written notification of such intent to EPRD.

8. TAXES

EPRD, by signing this Agreement, acknowledges that occupancy interest and rights to do business on State property may create a possessory interest as that term is defined in Revenue and Taxation Code Section 107.6, which possessory interest may subject a concessionaire to liability for the payment of property taxes levied on such possessory interest. EPRD and/or any concessionaire engaged by EPRD shall pay all lawful taxes, assessments, or

charges that may be levied by the State, County, City, or any tax or assessment levying body at any time upon any interest in or created by this Agreement, or any possessory right that EPRD and/or any concessionaire may have in or to the Premises covered hereby or the improvements thereon, by reason of EPRD and/or any concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by EPRD and/or any concessionaire in or about the Premises.

9. RECORDS AND ACCOUNTS

A. At all times during the term of this Agreement, EPRD shall keep separate, true, and complete books, records, and accounts of all income and fees received and all expenditures made by EPRD in relation to concessions, events, special services, and all other matters incident to the development, control, and operation of the Premises. EPRD shall report said income and expenditures to State in accordance with "**Exhibit B**" Annual Revenue and Expenditure Report, or in a similar format acceptable to State on an annual basis, which annual report shall be submitted for the period commencing July 1st and ending June 30th of each reporting year, and shall be filed with State no later than the following September 30th. Concession gross sales and revenue to the Agency shall be included within this report. In addition, within forty-five (45) days of the expiration or termination of this Agreement, EPRD shall submit to State a statement of income and expenditures for the period of operation not previously reported, prepared as set forth above.

B. EPRD shall provide State with an annual attendance report to include a reasonable monthly estimate of the number of visitors and vehicles to the Plumas-Eureka Ski Bowl. Such annual reports shall be submitted to State with the Annual Revenue and Expenditure Report.

C. The books, records, and accounts applying to the operation of the Premises and kept by EPRD shall be open for audit or inspection by State at all reasonable times. All records shall be kept by EPRD for a period of at least four

(4) years. EPRD shall be subject to State's audit requirements and remedies as set forth herein.

10. UTILITIES AND SERVICES

EPRD shall be responsible for all expenses resulting from utilities supplied to the Premises. EPRD shall be responsible for distribution systems and all related expenses within the Premises.

11. INSURANCE

A. Liability Insurance: At its sole expense, EPRD agrees to maintain in force during the term of this Agreement comprehensive general liability insurance, insuring against claims for injuries to persons or property occurring in, upon, or about Premises. The insurance shall have limits of not less ONE MILLION DOLLARS (\$1,000,000) for injuries to person or persons; not less than ONE MILLION DOLLARS (\$1,000,000) for property damage; and said limits shall be per occurrence and shall be adjusted annually to reflect changes in the prior year's Consumer Price Index (CPI).

B. Fire Insurance: Fire insurance with extended coverage endorsements thereon on all improvements located on the Premises, whether furnished by State or constructed upon the Premises by EPRD and/or any concessionaire, in an amount equal to the full replacement cost and/or value thereof. This policy shall contain a replacement cost endorsement naming the EPRD and/or any concessionaire as the insured provided that if there is a lender on the security of the improvements so insured, the proceeds of any such policy or policies may be made payable to such lender.

C. State agrees that EPRD, at EPRD's option, may self-insure the coverages required by this Section.

D. Each policy of liability insurance shall contain additional named insured endorsements in the name of the State of California, through its Department of Parks and Recreation, as to all insurable interests of the State including, but not limited to, the Premises and all contents as follows:

1) State of California, its officers, employees, and servants are included as additional insured but only insofar as operations and facilities under this Agreement are concerned;

2) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to State.

E. No cancellation provision in any insurance policy shall diminish the responsibility of the EPRD to furnish continuous insurance throughout the term of the Agreement. Each policy shall be underwritten to the satisfaction of the State. A signed Certificate of Insurance, with each endorsement required, including but not limited to State's additional insured endorsement, shall be submitted to State at the time this Agreement is executed, showing that the required insurance has been obtained. Further, at least thirty (30) days prior to the expiration of any such policy, EPRD shall submit to State a signed and completed Certificate of Insurance, with all endorsements required by this Section, showing, to the satisfaction of State, that such insurance coverage has been renewed or extended. Within fifteen (15) days of State's request, EPRD shall furnish State with a signed and complete copy of the required policy and/or evidence of self-insurance.

F. EPRD agrees to impose the foregoing insurance requirements on any and all concessionaires and shall require that State be named as an additional insured on all policies. Failure to provide any of the required insurance and/or endorsements shall constitute a material breach of this Agreement.

12. HOLD HARMLESS AGREEMENT

EPRD shall indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs, (including but not limited to attorney fees, experts fees, and costs of suit), arising indirectly or directly out of the development, operation, or maintenance of the Premises by EPRD, or in any way related to the performance of this Agreement by EPRD, by reason of its acts or omissions relating to the Premises and/or its obligation pursuant to this Agreement and/or

by reason of injury, death, property damage, or any claim arising from the alleged violations of any state or federal law, statute, or regulations, including but not limited to the Americans with Disabilities Act of 1990 Titles I, II and III ["ADA"], however caused or alleged to have been caused, provided, however, in no event shall EPRD be obligated to defend or indemnify State with respect to the sole negligence or willful misconduct of State, its employees, or agents (excluding EPRD herein, or any of its concessionaires).

In the event State is named as co-defendant in a legal action under the provisions of the Government Code Section 810 et seq., and served with process of such legal action, State shall immediately notify EPRD of such fact and EPRD shall represent State in such legal action as provided herein unless State undertakes to represent itself as co-defendant in such legal action, in which event State shall bear its own litigation costs, expenses, and attorney's fees.

In the event judgment is entered against State and EPRD because of the concurrent negligence of State and EPRD, their officers, agents, or employees, an apportionment of the liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

13. EMINENT DOMAIN PROCEEDINGS

If the Premises or any portion thereof is taken by proceedings in eminent domain, State shall receive the entire award for such taking.

14. PROHIBITIONS AGAINST ASSIGNING, SUBLETTING

This Agreement and/or any interest therein or thereunder shall not be assigned, delegated, mortgaged, hypothecated, or transferred by EPRD without obtaining the prior written consent of State.

15. NOTICES

Any notice and/or report required to be given or that may be given by either party to the other shall be deemed to have been fully given when made in

writing and deposited in the United States Postal Service, postage prepaid, and addressed as follows:

State: Department of Parks and Recreation
Sierra District Office
PO Box 266
Tahoma, CA 96142
(530) 525-7232

EPRD: Eastern Plumas Recreation District
PO Box 391
Graeagle, CA 96013
(530) 260-1706

Copy to: Department of Parks and Recreation
Concession and Reservations Division
P.O. Box 942896
Sacramento, California 94296-0001

16. DEFAULTS AND REMEDIES

Any failure by a party to this Agreement to observe or perform a provision of this Agreement, where such failure continues for thirty (30) days after written notice of such failure, shall constitute a default and breach of this Agreement. However, if the nature of the default is such that it cannot be reasonably cured within the thirty (30) day period, the offending party shall not be deemed to be in default if an effective cure is commenced within the thirty (30) day period and thereafter diligently prosecuted to completion. Upon an event of default by State, EPRD shall have the right to terminate this Agreement by providing written notice to State.

Upon an event of default by EPRD, State shall have the right to terminate this Agreement and obtain immediate possession of the Premises at any time by written notice to EPRD. In such event, State shall be entitled to all rights and remedies at law and/or in equity, including but not limited to, costs and expenses incurred by State in recovering possession of and/or restoring the Premises, and

compensation for all detriment proximately caused by EPRD's failure to perform its obligations under this Agreement.

Notwithstanding all other provisions of the Agreement, the State shall not be considered in default if State-mandated park closures impact the Use of Premises herein described and require termination of the Agreement.

17. SURRENDER OF THE PREMISES; HOLDING OVER

A. Surrender: On expiration or within thirty (30) days after earlier termination of this Agreement, EPRD shall surrender the Premises to State with all fixtures, improvements, and Alterations in good condition, except for fixtures, improvements, and Alterations that EPRD is obligated to remove. EPRD shall remove all of its personal property and shall perform all restoration required by the terms of this Agreement within the above stated time unless otherwise agreed to in writing.

If EPRD fails to surrender the Premises to State on the expiration, assignment, or within thirty (30) days after earlier termination of the term as required by this Section, EPRD shall hold State harmless for all damages resulting from EPRD's failure to surrender the Premises.

B. Holding Over: After the expiration or earlier termination of the term and if EPRD remains in possession of the Premises with State's express consent, such possession by EPRD shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. All provisions of this agreement except those pertaining to the term shall apply to the temporary tenancy.

18. REAL PROPERTY ACQUISITION

It is understood and agreed to by the parties that all applications for real property rights, appurtenant to the Premises, shall be made in the name of and on behalf of State, and shall be subject to the prior written approval of State.

19. COMPLIANCE WITH LAWS, RULES, REGULATIONS, AND POLICIES

EPRD shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Agreement, including obtaining and maintaining all necessary permits and licenses. EPRD acknowledges and warrants that it is, or will make itself, through its responsible managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the Premises, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historical preservation, environmental impacts, and building standards.

20. NONDISCRIMINATION

Pursuant to Public Resources Code Section 5080.34, this Agreement and every contract on lands that are subject to this Agreement shall expressly prohibit discrimination against any person because of sex, sexual orientation, race, color, religious creed, marital status, ancestry, national origin, medical condition, age (40 and above), and disability (mental and physical) including HIV and AIDS.

EPRD shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)-(f), are incorporated into this agreement by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). EPRD shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. EPRD shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this agreement.

In the event of violation of this Section, State will have the right to terminate this agreement, and any loss of revenue sustained by the State by reason thereof shall be borne and paid for by EPRD.

21. DISABILITY ACCESS LAWS

With regard to all operations and activities that are the responsibility of EPRD under this Agreement, and without limiting EPRD's responsibility under this Agreement for compliance with all laws, EPRD shall be solely responsible for complying with the requirements of the Americans with Disabilities Act of 1990 (ADA) (Public Law 101-336, commencing at Section 12101 of Title 42, United States Code, including Titles I, II, and III of that law), the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

With regard to facilities for which EPRD is responsible for operation, maintenance, construction, restoration, or renovation under this Agreement, EPRD also shall be responsible for compliance with Government Code Section 4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code Section 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws, regulations, guidelines and successor statutes. Such compliance shall be at EPRD's sole cost and expense. Written approval from State is required prior to implementation of any plans to comply with accessibility requirements.

22. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

By signing this Agreement, EPRD does hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against EPRD within the two-year period immediately preceding the date of this Agreement because of EPRD's failure to comply with a federal court order that EPRD shall comply with an order of the National Labor Relations Board.

23. ENVIRONMENTAL AWARENESS AND RESOURCE PROTECTION

EPRD shall comply with State's resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include the California Public Resources Code Sections 5024 and 5097 et seq., State's Resource Management Directives, and the United States Secretary of the Interior's Guidelines for Historic Preservation.

24. HAZARDOUS SUBSTANCES

A. On the Premises EPRD shall not:

- 1) keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
- 2) carry on any offensive or dangerous trade, business, or occupation;
- 3) use or operate any machinery or apparatus that shall injure the Premises or adjacent buildings in any way; or
- 4) do anything other than is provided for in this Agreement.

B. Nothing in this Section shall preclude EPRD from bringing, keeping, or using on or about said Premises such materials, supplies, equipment, and machinery as is appropriate or customary in the care, maintenance, administration, and control of parklands. Gasoline, oils, and all other materials considered under law or otherwise to be hazardous to health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.

C. EPRD shall comply with all laws, federal, state, or local, existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance, as that term is defined in such applicable law. In the event the State or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the EPRD's illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, EPRD shall protect, indemnify, defend, and hold harmless any of these individuals against such liability. Where EPRD is found to be in breach of this provision due to the issuance of a government order directing EPRD to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by EPRD or any person acting under EPRD's direct control or authority, EPRD shall be responsible for all costs and expenses of complying with such order including

any and all expenses imposed on or incurred by the State in connection with or in response to such government order.

D. Notwithstanding the foregoing, in the event a government order is issued naming EPRD, or EPRD incurs any liability during or after the term of the Agreement in connection with contamination that preexisted the EPRD's obligations and occupancy under this Agreement, or prior agreements or that were not directly caused by EPRD, the State shall be solely responsible as between EPRD and State for all expenses and efforts in connection therewith, and State shall reimburse EPRD for all reasonable expenses actually incurred by EPRD therewith.

E. All pest control activities, chemical and non-chemical, shall be approved by State prior to action by the EPRD. EPRD or the pest control business acting on behalf of EPRD shall submit a DPR 191, Pest Control Recommendation, or equivalent to State for approval. State has fourteen (14) days to approve or deny the request. State review and approval shall be solely for compliance with State's policies and in no way shall relieve EPRD or its contractors, employees, agents, or representatives from compliance with all laws and regulations concerning such activities, nor from carrying out the work in a workmanlike manner.

EPRD or the pest control business acting on behalf of EPRD shall submit a report of completed work for each pest management action to the State no later than seven (7) days after performance of the work. The report may be submitted on a DPR 191, Pest Control Recommendation, or equivalent.

25. SIGNS AND ADVERTISING

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon Premises, or circulated or published without prior written approval of the State. Approval will be granted only when said signs or advertising is consistent with the purposes of this Agreement.

26. INTELLECTUAL PROPERTY RIGHTS

Any names, logos, trademarks, and/or copyrights developed during and/or pursuant to this Agreement that in any way associate, identify, or implicate an affiliation with California State Parks shall be approved by State for use, shall belong to State upon creation, and shall continue in State's exclusive ownership upon termination of this Agreement.

27. PARTICIPATION IN STATE PARK MARKETING PROGRAMS

EPRD acknowledges that State has an established advertising and marketing program designed to promote additional revenue for the State and to deliver a consistent and positive image to the public. EPRD agrees to cooperate in this program in the manner described below without compensation from the State for such cooperation.

A. EPRD agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department of Parks and Recreation.

B. EPRD agrees to place on the Premises any advertising that the State approves under this program. Any advertising approved by the State under this program will be placed at State's expense.

28. CHILD SUPPORT COMPLIANCE ACT

A. EPRD recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall fully comply with all applicable state and federal laws provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.

B. To the best of its knowledge EPRD is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

29. DISPUTES

EPRD shall continue with any and all responsibilities under this Agreement during any dispute.

30. LIMITATION

This Agreement is subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title that may affect Premises.

31. SECTION TITLES

The Section titles in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

32. AGREEMENT IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original.

33. INSPECTION

State or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine compliance with the provisions of this Agreement.

34. SUCCESSORS IN INTEREST

Unless otherwise provided in this Agreement, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of who shall be jointly and severally liable hereunder.

35. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

36. TIME OF ESSENCE

Time shall be of the essence in the performance of this Agreement.

37. DURATION OF PUBLIC FACILITIES

By entering into this Agreement, State makes no stipulation as to the type, size, location, or duration of public facilities to be maintained at this unit, or the continuation of State ownership thereof, nor does the State guarantee the accuracy of any financial or other factual representation that may be made regarding the Premises.

38. WAIVER OF RIGHTS, CLAIMS, AND AGREEMENT TERMS

Unless otherwise provided by this Agreement, no waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the Premises or to exercise any right, power, or privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or relinquishment of any right or acquiescence therein. No notice to the EPRD shall be required to restore or revive time as of the essence after the waiver by the State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the State by this Agreement shall be deemed cumulative.

39. INTERPRETATION OF AGREEMENT

This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

40. INDEPENDENT CONTRACTOR

In the performance of this Agreement, EPRD and the agents and employees of EPRD shall act in an independent capacity and not as officers or employees or agents of the State.

41. MODIFICATIONS AND APPROVAL OF AGREEMENT

This Agreement contains and embraces the entire Agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally or by any Agreement between the parties unless such Agreement be expressed in writing, signed, and acknowledged by the State and EPRD or their successors in interest.

Notwithstanding any of the provisions of this Agreement, the parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or terminations thereof, which are not forbidden by law. This Agreement, amendments, modifications, or termination thereof shall not be effective until approved by State's relevant control agencies.

State Park

RECEIVED
OFFICE OF GRANTS
& LOCAL SERVICES

Operating Agreement

NOV 17 2014

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

EPRD

STATE OF CALIFORNIA
CALIFORNIA PARKS AND RECREATION

By _____

By Ruth Coloma

Title: _____

Title: DIRECTOR

Date: _____

Date: 9-26-11

APPROVED:
DEPARTMENT OF GENERAL SERVICES:

EXHIBIT A PREMISES

Exhibit A: Plotted ski area boundary. OA includes tenancy of Ski facilities herein (lodge, restroom, lift towers, lift shacks, metal storage units). Tenancy does not include Eureka Lake Road; access to this road will continue to be controlled and maintained by California State Parks.

EXHIBIT B ANNUAL REVENUE AND EXPENDITURE REPORT

Annual Revenue and Expenditure Report
Operating Agreements

Park Unit _____

Operating Agency _____

State's Fiscal Year _____ to _____

Estimated Total Visitors _____

	Revenue	Expenditures	Balance
Visitor Entrance Fees			
Separate Parking Fees			
Concession A			
Concession B			
Concession C			
Special Events			
Miscellaneous Revenue			
Total Annual Revenue			
Salaries & Wages			
Maintenance & Housekeeping			
Utilities			
Capital Improvement Projects			
Miscellaneous Expenses			
Total Annual Expenditures			
Grand Totals			

Preparer Name _____ Date _____

Phone Number _____

EXHIBIT C OPERATIONS AND FACILITY MANAGEMENT PLAN

Vision/Mission Statement

The Vision/Mission Statement should capture both the State's and EPRD's goals and objectives for the recreational facility and provide a clear philosophy.

Organizational Structure

Provide an organizational chart and staffing plan that can guide the operation and ongoing management of the recreational facility.

Transition/Business Start-Up

Describe a plan and timeline for starting the recreational facility operation and providing a seamless transition in customer service.

Maintenance and Housekeeping

Provide a comprehensive plan to maintain the recreational facility in a first-class condition throughout the term of the agreement.

Safety and Security

Describe a plan to ensure a safe and secure environment for park visitors, recreational facility workers and the public.

Products, Merchandise, and Services

Provide a description of the proposed menu and other products, merchandise, and services to be provided by the recreational facility operation.

Prices and Pricing Policies

Provide a price schedule for a representative sample of the products and services.

Conservation and Recycling

Outline the EPRD's approach to solid waste management, including reduction, re-use, and recycling, use of post-consumer recycled products, water and energy conservation, pest management, hazardous materials handling, air quality, and other applicable facets of resource conservation and environmental protection that are applicable to the recreational facility operation.

Accessibility

Describe commitment to ensure that visitors with disabilities will have access to all of the services provided through the recreational facility operation in accordance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code Sections 4450 et. seq. and 7250. Additional accessibility resources are available at www.ada.gov;

http://www.parks.ca.gov/?page_id=21944 (State Parks Accessibility Program; and http://www.parks.ca.gov/?page_id=22651 (All Visitors Welcome handbook).

Furnishings

Describe the intended physical facilities of the recreational facility including furnishings, equipment, décor, and layout

Facility Development

Describe facility improvements. Include the resumes of the proposed architects and contractors to be used and descriptions and/or schematic drawings of the work to be accomplished and items to be installed. EPRD may submit lists, drawings, pictures, and diagrams to illustrate and clarify the plans.

Implementation

Describe EPRD's plan, method, and commitment to the development of the recreational facilities.

Cost Estimates

Provide a cost breakdown for the Furnishings Plan and Facility Development Plan.