

# Holly Oaks Park Plan and Standards Manual

## Appendix E: Mt. Holly Lease





Michigan Department of Natural Resources

**LEASE**

**PRD-L-002-2019**

**BETWEEN**

**WISCONSIN RESORTS, INC, AS LESSOR**

**AND**

**THE STATE OF MICHIGAN, AS LESSEE**

This Lease is entered into by the State of Michigan through its **Department of Natural Resources** (DNR), hereinafter called "DNR" and/or "Lessee," and Wisconsin Resorts Inc, hereinafter called "Lessor."

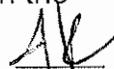
**WHEREAS**, pursuant to Section 503 (1) of Public Act 451 of 1994 (1994 PA 451), as amended, MCL 324.503 (1), the DNR is required to: protect and conserve the natural resources of the State; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforestation of forest lands belonging to the State; prevent and guard against the pollution of lakes and streams within the State and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protection and propagation of game and fish; and create, maintain, operate, preserve, and protect Michigan's significant natural and historic resources.

**WHEREAS**, the Purpose of this Lease is to allow Lessee to lease a portion of the real property, including identified structures located on the property, which is located in Groveland Township, Oakland County, State of Michigan, commonly known as Mt. Holly Ski Area (Premises).

**WHEREAS**, the Director of the DNR, or his or her lawful designated Representative, has determined that the purpose of this Lease is necessary to implement Part 5 of 1994 PA 451, as amended, because of the development of the terrain park in Groveland and Holly Townships respectively of the Premises will protect and conserve the natural resources and provide facilities for outdoor recreation.

**THEREFORE**, Lessor and Lessee, for consideration specified in this Lease, agree to the following terms and conditions:

- 1. DESCRIPTION OF PREMISES** - Lessor hereby leases to Lessee the property depicted and described in **Attachment A** (Parking Areas 1, 2, 3, and 4 and Access Areas 5 and 6) and in **Attachment B** (Building of approximately 3,338 square feet including the restrooms and office facilities), located within the

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Groveland Township, Oakland County, State of Michigan, part of the Mt. Holly Ski Area located at 13536 Dixie Highway, Holly, MI 48442 (hereinafter "Premises"). Attachments A and B are incorporated into this Lease.

This Lease may be subject to the DNR's public notice process.

## 2. USE OF PREMISES

- A. The Parties hereby acknowledges that the use and occupancy of the Premises shall be subject to the provisions of 1994 PA 451, as amended, and confined to the following specific uses:
- 1) To be utilized for ingress and egress to an off-road vehicle park adjacent to the Premises (hereinafter "Park"), parking for the Park, and related parking facilities for the Park, as set forth in Attachment A.
  - 2) Use of the building and lease of the building of approximately 3,338 square feet, including the restrooms and office facilities identified in Attachment B.
  - 3) Any other use which is agreed to in writing by both Parties.
- B. Lessee shall obtain Lessor's prior consent, in writing, signed by Lessor, to use the Premises for any purpose not listed in this Section. Lessor may terminate this Lease, as provided for in this Lease, if at any time, Lessee uses the Premises, without express written permission by Lessor, for purposes other than those enumerated in this Section.
- C. **PROHIBITED ACTIVITIES** - The following activities on the Premises are prohibited:
- 1) Authorizing public use of Premises in violation of any State law, order or regulation.
  - 2) Any planting of plants, removal of plants, landscaping or earthmoving on the Premises without the prior written consent of Lessor.
  - 3) Dumping or disposal of garbage/trash, spare parts, hazardous material, scrap metal and other waste onto the Premises.
  - 4) Disposal of trees, tree tops, branches, roots, stumps, and other vegetative debris onto the Premises.

3. **ASSIGNMENT AND SUBLEASE** – Except as specifically set forth in this Section, Lessee shall not sell, mortgage, rent, assign, or parcel out the Lease hereby granted, or any interest therein, or allow or permit any other person or party to use or occupy any part of the Premises, building, or spaces, covered by this Lease for any purpose whatsoever without first obtaining the prior written consent of Lessor. Such action by Lessee without the prior written approval of Lessor shall be cause for the immediate termination of this Lease. The Parties acknowledge that Lessee shall have a third-party operate, develop, and improve the Park (hereinafter "Operating Entity"). The Operating Entity is authorized to use the Premises as set forth in this Lease. The Parties acknowledge that the Operating Entity is a third-party beneficiary of this Lease. At the time of Lease execution, the Operating Entity is the County of Oakland. The Parties may change the Operating Entity by executing an amendment to this Lease.

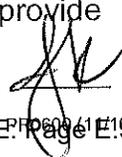
4. **WASTE** - Lessee agrees not to commit, or allow to be committed, any waste or nuisance on the Premises and will not use, or permit to be used, the Premises for any unlawful purpose.
5. **LESSEE'S OPERATIONS** - Lessee shall not prevent Lessor, its agents, or vendors, assigned access, as needed for the maintenance and operation of the Mt. Holly Ski Resort, from performing work or operational tasks at such location.
6. **ADMINISTRATION** - The **Resource Protection and Promotion Section Chief** or his/her designated representative is the Lessee Administrator of this Lease (collectively "DNR Representative"). **Joseph Kosik, 43252 Woodward Avenue, Suite 210, Bloomfield Hills, MI 48302** and **Mark Tibbits, 13536 Dixie Highway, Holly, MI 48442** are the Lessor's Administrators of this Lease ("Lessor Administrators"). Lessor Administrators are authorized to make decisions regarding the maintenance and operation of the Premises.
7. **CONDITION OF PREMISES** - Lessee stipulates, represents, and warrants that it has examined the Premises and that it is taking possession of the Premises in "as is" condition. Each year of this Lease, the condition of the Premises shall be documented, in writing and by video recording, with an on-site inspection on April 1<sup>st</sup> and October 15<sup>th</sup>. Except for normal wear and tear to the Premises, Lessee shall be responsible to pay for correcting/repairing any damages made to the Premises between April 1<sup>st</sup> and October 15<sup>th</sup> resulting from the acts or omissions of Lessee, the Operating Entity, their agents or contractors, or persons on the Premises because of this Lease; such costs shall not exceed ten thousand dollars (\$10,000.00) per occurrence). Lessee acknowledges that it has not made an independent environmental assessment of the Premises and agrees to maintain the Premises in its present condition, as set forth herein.
8. **TERM** - Given the unique use of the Premises and the fact Lessee will only be occupying and using the Premises for a certain period-of-time each year, the term of the Lease shall be as follows: April 1, 2020 to October 15, 2020; April 1, 2021 to October 15, 2021; April 1, 2022 to October 15, 2022; and April 1, 2023 to October 15, 2023. The beginning and ending Lease term dates may be altered by mutual written consent of the Parties.
9. **RENT** - Lessee shall pay rent to Lessor, on April 1 of each year of this Lease as follows:

**2020 through 2023: \$54,415 (hereinafter "Rent")**

Payment shall be sent to the following address:

**Mt. Holly Ski Hill, Inc.**  
**43252 Woodward Avenue**  
**Suite 210**  
**Bloomfield Hills, MI 48302**

Checks should be made payable to the "Mt. Holly Ski Hill, Inc." The Rent includes costs for the following, which shall be provided and paid by Lessor: (1) gas, (2) electric, (3) water and well maintenance and repair, (4) septic, septic maintenance and repair, and sewer, when applicable, (5) parking lot maintenance, repair, and drain cleaning, (6) grounds and turf maintenance and repair, (7) building maintenance and repair, and (8) insurance. Lessor shall obtain and provide

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Telephone and Internet services (including one dedicated land line and dedicated wireless internet) for the Premises for Lessee's exclusive use and the use of persons on the Premises, because of Lessee's use of the Premises. The costs associated with the Telephone and Internet Services are not included in the Rent and shall be paid by Lessee upon written invoice from Lessor. The Rent does not include costs for the services set forth in Section 11, which shall be performed, obtained, and paid by Lessee.

Failure to pay rent on time may be grounds for Lessor to terminate the Lease.

- 10. OPTION TO RENEW** - The initial term of this Lease may be extended for an additional five (5) year term, or such term as shall be agreed to between the parties, if Lessee gives Lessor One Hundred Twenty (120) days written notice before this Lease or any extension expires, and agrees to any additional terms and rent modifications proposed by Lessor. Lessor's written consent is necessary for any Lease term extension. The Rent for the Premises during an extended term will be re-negotiated prior to renewal.
- 11. SERVICES BY LESSEE** - Lessee shall furnish the following services at its own expense:
- A. Lessee shall provide or obtain custodial services for the Premises, building and parking lot. Lessee shall maintain standards of cleanliness that will reflect favorable public opinion on Lessee and Lessor.
  - B. Lessee shall provide or obtain trash services for the Premises, building, and parking lot.
  - C. Lessee is responsible to immediately investigate all instances of suspected trespass.
  - D. Lessee will have the right to install temporary signage during the operation period. The locations and sizes of the signs will be mutually agreed upon by the Parties and meet the requirements of Groveland Township.
  - E. Lessee shall install posts and/or fencing to prevent access from the Premises to the ski hill. The final locations will be mutually agreed upon by the Parties.
- 12. FEES** - Lessee may charge a fee or request donations in connection with Lessee's use of the Premises.
- 13. ALTERATIONS** - No alterations, modifications, or improvements shall be made to the Premises without the prior written consent of Lessor, which Lessee shall request at least thirty (30) days in advance of such alteration, modification, or improvement. The Parties acknowledge that Lessee must build a road from the existing parking lot on the Premises to the Park to allow persons to enter and exit the Park from the Premises. At the time of Lease execution, the design drawings for the road are not complete. Lessee shall present the design drawings to Lessor once they are complete. Lessor shall construct the road pursuant to the design drawings and upon completion of the road, Lessee shall reimburse Lessor for all costs associated with the construction of the road. After construction of the road, Lessee shall be responsible for the maintenance and repair of the road and for the costs associated therewith.

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14. **LAWS, CODES AND PERMITS** - Lessee shall comply with all applicable federal, state or local laws, rules, and regulations, including, but not limited to, all environmental laws and codes and will obtain any necessary permits in connection with its use of the Premises.
15. **DAMAGE and REPAIRS** - Lessor shall make repairs to the Premises. Lessee shall promptly and without delay notify Lessor of any damages to the Premises or any need for repairs to the Premises. Except for normal wear and tear to the Premises, Lessee shall be responsible to pay for correcting/repairing any damages made to the Premises between April 1<sup>st</sup> and October 15<sup>th</sup> resulting from the acts or omissions of Lessee, the Operating Entity, their agents or contractors, or persons on the Premises because of this Lease; such costs shall not exceed ten thousand dollars (\$10,000.00) per occurrence).
16. **INSPECTION of PREMISES** - Lessor and Lessor's agents and employees shall have the right at all reasonable times during the term of this Lease, and any renewal thereof, to enter the Premises for the purposes of making any inspections, repairs, additions, or alterations as may be deemed appropriate by Lessor for the preservation of the Premises.
17. **LIABILITY:** Lessor shall defend, indemnify, and hold harmless Lessee, Lessee's departments, officers, employees, volunteers, and agents, the Operating Entity, and the Operating Entity's departments, officers, employees, volunteers, and agents from any litigation expenses, attorney fees, losses, liabilities, damages, or other costs incurred by or asserted against Lessee or the Operating Entity, by any person, which are alleged to have been caused directly or indirectly from the acts or omissions of Lessor or Lessor's departments, officers, employees, volunteers, or agents.
18. **INSURANCE:**
  - A. Lessor shall obtain and maintain general liability and/or umbrella liability insurance policies, in a form and substance reasonably satisfactory to Lessee, with an insurer licensed to do business in the State of Michigan, and with minimum limits of liability of Five Million Dollars (\$5,000,000), combined single limit. The insurance policies shall be endorsed to name Lessee, Lessee's departments, officers, employees, volunteers, and agents, the Operating Entity, and the Operating Entity's departments, officers, employees, volunteers, and agents as additional insureds protecting them from all claims, demands, suits, actions, judgments, settlements, recoveries, and attorney fees: (1) arising out of a condition of the Premises, (2) that are direct or indirect result of Lessee's or the Operating Entity's use and occupancy of the Premises, or (3) resulting from the exercise of the rights and privileges granted by this Lease. All premiums and deductibles for the insurance policies shall be paid by Lessor. The insurance policies shall be primary coverage without right of contribution from similar insurance or self-insurance maintained by Lessee and/or the Operating Entity. The insurance policies shall provide that they may not be modified, canceled, or allowed to expire without thirty (30) calendar days-notice to Lessee and the Operating Entity. Lessor shall provide certificates of insurance evidencing the insurance policies and the requirements contained herein within thirty (30) calendar days of execution of this Lease. Lessor, Lessee, and the Operator Entity release

each another from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by property insurance or coverable by a customary policy of the insurance required by this Lease, even if such loss or damage shall have been caused by the fault or negligence of the other Party or anyone for whom such Party may be responsible. To that end, Lessor shall not be liable to Lessee and/or Operator Entity for any damage occasioned, among other things, by bursting, stopping, leaking, or running of any systems, facilities, or pipes in or about the Premises.

- B. Lessor, Lessee, and the Operator Entity release each another from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by property insurance or coverable by a customary policy of the insurance required by this Lease, even if such loss or damage shall have been caused by the fault or negligence of the other Party or anyone for whom such Party may be responsible. To that end, Lessor shall not be liable to Lessee and/or Operator Entity for any damage occasioned, among other things, by bursting, stopping, leaking, or running of any systems, facilities, or pipes in or about the Premises.
- C. All personal property, supplies, and equipment kept in or at the Premises shall be kept at the risk of Lessee and/or the Operator Entity; Lessee and/or the Operating Entity may, in its sole discretion, obtain appropriate insurance to cover such risk

19. **DISPUTES** - Except as otherwise provided for in this agreement, any dispute among any multiple Lessees that have executed Leases with Lessor to maintain and operate portions of the contiguous Premises, that concern obligations and benefits arising under this agreement, which is not disposed of by this agreement, shall be decided by the Parks and Recreation Division (PRD) Chief, who shall make a written decision and mail or otherwise furnish a copy of the decision to all of the parties.

- A. The written decision of the PRD Chief provided for above shall be binding upon the parties and shall constitute a final decision of the agency.
- B. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in the dispute subparagraph above. Nothing in this agreement, however, shall be construed as making final the decision of any administrative official, representative or board on the question of law.

20. **CANCELLATION -**

- A. Either Party may cancel this Lease provided the other Party is notified in writing at least sixty (60) days prior to the effective date of cancellation and any one of the following occur:
  - 1) The Premises are no longer being used for the purposes identified in this Lease.
  - 2) Lessee provided Lessor with information, in its application for this Lease or at any time during the Lease term, that was false or fraudulent.

- 3) Lessee fails to perform any of its obligations under this Lease, and such failure is not cured within ninety (90) calendar days after written notice of default to Lessee.
- B. Lessee may also cancel this Lease for non-appropriation of funding. The Michigan Constitution prohibits spending money out of the State Treasury without a valid appropriation.
21. **QUIET ENJOYMENT** - Upon payment of the rent and the performance of the conditions outlined herein, Lessee may peacefully and quietly have, hold, and enjoy the Premises.
22. **RESERVATION** - Lessor reserves the right to grant rights-of-way and easements of any kind and nature over and across said Premises and to grant or exercise all other rights and privileges of every kind and nature not herein specifically granted.
23. **HOLDOVER TENANCY** - If Lessee remains in possession of the Premises after the natural expiration of this Lease, with the consent of Lessor but without a renewal of this Lease, pursuant to Section 9, a new tenancy from year-to-year shall be created between Lessor and Lessee. The new tenancy shall be subject to all of the terms and conditions of this Lease, except that such tenancy shall be terminable upon fifteen (15) days written notice served by either Party.
24. **NOTICES** - Any notice(s) to Lessor or to Lessee required by this Lease shall be complete if submitted in writing and transmitted by personal delivery (with signed delivery receipt), or certified or registered mail, return receipt requested. Unless either party notifies the other in writing of a different mailing address, notices to Lessor and Lessee shall be transmitted to the addresses listed below:

**To LESSOR:**

**Wisconsin Resorts, Inc.  
Joe Kosik  
43252 Woodward Ave Ste 210  
Bloomfield Hills, MI 48302**

**To LESSEE:**

**State of Michigan  
Land Administering Division (LAD)  
Department of Natural Resources  
Parks and Recreation Division  
P.O. Box 30257  
Lansing, MI 48909**

**Attn: Resource Protection and Promotion Section Chief  
(517) 284-7275**

25. **NOTICES – EFFECTIVE TIME/DATE** - Notices shall be deemed effective as of

12:00 noon, Eastern Standard Time (EST) on the third (3<sup>rd</sup>) business day following the date of mailing, if sent by mail. Business day is defined as any day other than a Saturday, Sunday, or legal holiday. A receipt from the U.S. Postal Service, or comparable agency performing such function, shall be conclusive evidence of the date of mailing.

26. **INTERPRETATION** - This Lease shall be interpreted in accordance with the laws of the State of Michigan.
27. **NO UNNAMED ENTITIES/ PARTNERS** – Except as otherwise specifically set forth in this Lease, Lessee covenants that there are no unnamed entities or partners having authority over the operation or management of the Premises and further represents that Lessee is the only entity responsible for carrying out Lessee's responsibilities.
28. **MODIFICATION** – This Lease shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modifications of this Lease are effective unless in writing, signed by the Parties, and executed in the same manner as this Lease was originally executed. A Party may waive or release the other Party's breach or default only in writing.
29. **SEVERABILITY** – Should any provision of this Lease, or any addenda thereto, be found to be illegal or otherwise unenforceable by a court of law, such provision shall be severed from the remainder of the Lease and such action shall not affect the enforceability of the remaining provisions of the Lease.
30. **GOVERNING LAW** – This Lease is governed by and construed in accordance with, the laws of the State of Michigan. Any dispute arising under this Lease must be resolved in the Michigan Court of Claims.
31. **REQUIRED APPROVALS** – This Lease shall not be binding or effective on either Party until executed (and witnessed and notarized as necessary) by Lessor and Lessee.
32. **WAIVER OF DEFAULT** – The failure of a Party to insist upon strict adherence to any term of this Lease does not deprive the Party of the right to insist upon strict adherence to that term, or any other term, of this Lease.
33. **ENTIRE AGREEMENT** – This Lease constitutes the entire agreement between the Parties with regard to this transaction and may be amended only in writing and executed in the same manner as this Lease was originally executed. This Lease supersedes all proposals or other prior agreements and all other communications between the parties relating to this transaction.

**LESSEE**  
**WITNESS(ES) TO LESSEE**

**STATE OF MICHIGAN**  
**BY THE**  
**DEPARTMENT OF NATURAL RESOURCES**

**Witness(es)**

Barb Graves  
Witness Signature

9/4/19 Jacques Blodgett Asst Chief 9/4/19  
Date for Ronald A. Olson, Chief Chief Date  
DNR Parks and Recreation Division

Barb Graves  
(please print name)

**Witness(es)**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(please print name)

STATE OF MICHIGAN, COUNTY OF Ingham

The foregoing instrument was acknowledged before me on this 14th, day of September, 2019 by Ronald A. Olson, Parks and Recreation Division Chief, for the Michigan Department of Natural Resources.

Diane Marie Munson  
Diane Marie Munson, Notary Public  
(please print name)

My Commission Expires: 07/04/2022

Acting in the County of: Ingham

**LESSOR – WISCONSIN RESORTS, INC.**

**IN WITNESS WHEREOF**, the parties to this Lease subscribe their names on the date set forth below:

**WITNESS TO LESSOR**

**Witness**

Jaclyn Fortain  
(please print)

Jaclyn Fortain  
Witness Signature Date

**Lessor**

Joseph F. Kosik  
(please print)

Joseph F. Kosik  
Lessor Signature Date 8/12/19

Title: president  
Federal ID No. 39-1033432

**Witness**

\_\_\_\_\_  
(please print)

\_\_\_\_\_  
Witness Signature Date

**Lessor**

\_\_\_\_\_  
(please print)

\_\_\_\_\_  
Lessee Signature Date

Title: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

State of Michigan, County of Oakland

The foregoing instrument was acknowledged before me on this 12<sup>th</sup> day of August, 2019 by Joseph Kosik, for Lessor.

**SANDRA LYNN DECKER**  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires 04-03-2022  
Acting in the County of Oakland

Sandra Lynn Decker  
\_\_\_\_\_  
Notary Public

State of MI, County of Oakland

My Commission expires: 4/3/2022

Acting in the County of Oakland

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