

Adaptive Sports Program at Mountain Creek in Partnership with Helen Hayes Hospital



THE ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK ADAPTIVE SPORTS PROGRAM HOST SITE AGREEMENT

This Adaptive Sports Program at Mountain Creek Ski Resort Host Site Agreement (the "Agreement") is entered into this ___ day of _____ 2014 by and between the Adaptive Sports Program at Mountain Creek ("ASPMC") and Adaptive Sports Program at Mountain Creek Resort, Inc., a New Jersey corporation ("Resort").

WHEREAS, Adaptive Sports Program at Mountain Creek desires to promote, organize and conduct the 2015 Adaptive Sports Program at Mountain Creek Adaptive Sports Program during the winter season of 2014-2015 ("Adaptive Sports Program at Mountain Creek ") at Resort's resort located at 200 Route 94, Vernon, NJ 07462 from January 13, 2015 to April 10, 2015

WHEREAS, Resort desires to be the host site for the Adaptive Sports Program at Mountain Creek Adaptive Sports Program; and

WHEREAS, Resort acknowledges that Adaptive Sports Program at Mountain Creek is the owner of the creative license over the Adaptive Sports Program at Mountain Creek; and

WHEREAS, Resort acknowledges that Adaptive Sports Program at Mountain Creek has the exclusive right to select and procure additional sponsors for the Adaptive Sports Program at Mountain Creek.

NOW THEREFORE, in consideration of the terms and conditions set forth below, the parties hereby agree as follows:

SECTION 1: Term

1. This Agreement shall be effective on the latest date that it is executed by both parties. Thereafter, except as specifically provided for herein, it shall remain in effect through the end of the last day that the Adaptive Sports Program at Mountain Creek.

SECTION 2: Adaptive Sports Program at Mountain Creek's Obligations

1. In performance of this Agreement, Adaptive Sports Program at Mountain Creek agrees that:
 - (a) Resort will be acknowledged as a host resort for the Adaptive Sports Program at Mountain Creek. As such, Resort will be referred to in event information and promotional materials, where applicable. Resort's billing and logo will be utilized in a variety of positions dependent upon the media and publicity vehicle utilized;
 - (b) Adaptive Sports Program at Mountain Creek will seek additional sponsors for the Adaptive Sports Program at Mountain Creek; and
 - (c) Adaptive Sports Program at Mountain Creek will require every participant in the Adaptive Sports Program at Mountain Creek to execute a Adaptive Sports Program at Mountain Creek Ski Resort Release of Liability, Voluntary Assumption

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of Risk and Waiver of Claims Agreement (“Release”) reasonably satisfactory to Resort and substantially in the form attached hereto as Exhibit B. In the case of any minor participant, Adaptive Sports Program at Mountain Creek will require the minor's parent or legal guardian to sign the Release.

2. As consideration for performance of the services to be provided by Adaptive Sports Program at Mountain Creek as set forth on Exhibit A attached hereto, Resort agrees to donate all instructional time, participant lift tickets, volunteer lift tickets, use of Learn to Ride equipment and (1) season pass for the Executive Director.

SECTION 3: Resort’s Obligations

1. Resort’s obligations are set forth on Exhibit A attached hereto.

SECTION 4: Miscellaneous

1. Indemnification.

- a. Resort Indemnification. Resort hereby indemnifies, defends and holds Adaptive Sports Program at Mountain Creek (including any subsidiaries and affiliates), and its respective agents, employees, representatives, officers and directors harmless from and against any and all claims, liabilities, lawsuits, actions, losses, costs, expenses or damages, including reasonable attorney’s fees and expenses, arising from, by any reason of, or in connection with Resort’s breach of its obligations hereunder.

- b. Adaptive Sports Program at Mountain Creek Indemnification. Adaptive Sports Program at Mountain Creek hereby indemnifies, defends and holds Resort (including any subsidiaries and affiliates), and its respective agents, employees, representatives, officers and directors harmless from and against any and all claims, liabilities, lawsuits, actions, losses, costs, expenses or damages, including reasonable attorney’s fees and expenses, arising from, by any reason of, or in connection with the Adaptive Sports Program at Mountain Creek events, activities and participants and in connection with Adaptive Sports Program at Mountain Creek’s breach of its obligations hereunder, other than the ordinary day to day operation of the Resort.

- c. Notwithstanding anything in this Agreement to the contrary, neither party to this Agreement shall be obligated to indemnify the other, in whole or in part, for acts or omissions whether negligent, accidental or intentional arising solely from or related solely to the conduct of the other party’s own employee or agent.

- d. The indemnification obligations set forth herein shall survive the termination or expiration of this Agreement.

2. Insurance. On or before _____, 2015 the parties shall provide to each other evidence of the following insurance:

- a. A certificate of general liability insurance in the amount of no less than two million dollars (\$2,000,000.00), naming the other party as an additional insured, issued by an insurance company licensed to do business in the State of New Jersey with a general policy holder’s rating of no less than a A-. Such insurance must be primary to any insurance maintained by or available

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to the party seeking coverage, and require no contribution from that party or its carrier(s) as to any claims made.

b. Proof satisfactory to each party that the other party's employees who will be on Resort's property in their capacity as employees for purposes related to the Adaptive Sports Program at Mountain Creek are covered by Worker's Compensation Insurance.

3. Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the parties with respect to the this subject matter, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements or understandings, oral or written, between Resort and Adaptive Sports Program at Mountain Creek relating to the subject matter contained in this Agreement that are not fully expressed herein.
4. Arbitration. The parties shall, in good faith, mutually consult in an attempt to settle amicably any and all disputes arising out of or in connection with this Agreement or questions regarding the interpretation of the provisions hereof. In the event that the parties are unable to settle amicably any dispute or question within three (3) months from the date of the notification of either party to the other of such dispute or question, which notice shall specify the details of such dispute or question, then such dispute or question shall be finally settled by binding arbitration before a single arbitrator in Burlington, New Jersey, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The cost of arbitration shall be borne by the losing party, or, if there is no losing party, as the arbitrator shall determine. Where necessary to maintain the status quo, either party may apply to a court of competent jurisdiction in order to obtain equitable relief. The arbitration shall be deemed to be an honorable engagement, and the arbitrator shall be required to apply the Federal Rules of Evidence to all arbitration proceedings. Notwithstanding anything in this arbitration provision to the contrary, if a dispute arises by or between either party to this Agreement with respect to indemnification by one against the other arising out of or related to any claim or litigation by a third party, then either Adaptive Sports Program at Mountain Creek or Resort may elect to either immediately commence arbitration of the indemnification dispute, or postpone arbitration of the indemnification dispute until the underlying claim or litigation by the third party is concluded.

THE PARTIES TO THIS AGREEMENT HAVE EXPRESSLY REQUESTED THIS ARBITRATION PROVISION.

ACKNOWLEDGMENT OF ARBITRATION.

The parties to this Agreement understand that it contains an agreement to arbitrate. After signing this document, they understand that they will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, the

parties agree to submit any such dispute to an impartial arbitrator.

CONFIDENTIALITY

The parties further agree that any arbitration proceeding pursuant to this Agreement shall be deemed to be a confidential proceeding. As such, neither party shall disclose any result of arbitration, nor information obtained or exchanged between the parties, as a result of the proceeding absent either a court order compelling such disclosure or written permission of the other party.

5. Governing Law. This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of New Jersey.
6. Assignment. This Agreement is premised on the identity of the parties hereto and their particular needs and abilities and may not be assigned by either party without the prior written consent of the other.
7. Amendments, Counterparts. This Agreement may be amended only in writing signed by Adaptive Sports Program at Mountain Creek and Resort. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.
8. Nondiscrimination. During the term of this Agreement the parties hereto shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex or national origin by curtailing or refusing to furnish accommodations, facilities, services or use privileges offered to the public generally. During the term of this Agreement the parties hereto shall at all times act in full compliance with Title VII of the Civil Rights Act of 1964 and will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
9. No Joint Venture. This Agreement will not be deemed to create any joint venture, partnership or agency between the parties. It is understood that each party to this Agreement will be independent of the other and that neither party will have the right or authority to bind the other party. Nothing contained in this Agreement will be construed to be for the benefit of or enforceable by any third party, including but not limited to, any creditor of either party.
10. Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable, the remainder hereof will remain in full force and effect.
11. Force Majeure. Performance under this Agreement by either party will be excused when failure to perform is the result of acts of God, civil or military authority, acts of war, accidents, natural disasters, strikes or any other cause beyond the reasonable control of the parties.
12. Survival. Sections 4.1 – 4.12 will survive termination or expiration of this Agreement.

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THE ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK

By: _____

Dated: _____

Name:

Title:

MOUNTAIN CREEK SKI RESORT, INC.

By: _____

Dated: _____

Name:

Title:

EXHIBIT A

Resort's Obligations to the Adaptive Sports Program at Mountain Creek

The Resort's obligations to the Adaptive Sports Program at Mountain Creek shall be to provide the facility and general resources reasonably associated with the operation of a ski resort, and work in cooperation with the Adaptive Sports Program at Mountain Creek to provide a safe, dependable and reliable program for the program's participants.

EXHIBIT B

The Adaptive Sports Program at Mountain Creek Ski Resort

VOLUNTARY PARENTAL/GUARDIAN PERMISSION,
ASSUMPTION OF RISK, RELEASE OF LIABILITY,
COVENANT NOT TO SUE AND WAIVER OF CLAIM AGREEMENT

This Agreement is entered into by and among the undersigned Parent/Guardian, The Adaptive Sports Program at Mountain Creek Ski Resort (including its affiliates, "ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK"), Adaptive Sports Program at Mountain Creek Resort, Inc. ("Resort") and ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK's sponsors and their respective affiliates ("Sponsors").

Whereas, ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK, in conjunction with the Resort and the Sponsors, offers an extraordinary ski and snowboarding instruction program for handicapped and disabled individuals known as the Adaptive Sports Program at Mountain Creek; and

Whereas, Parent/Guardian has granted his/her permission to have the participant listed below ("Participant") participate in the Adaptive Sports Program at Mountain Creek; and

Whereas, Parent/Guardian and Participant are aware that despite supervision and instruction by Adaptive Sports Program at Mountain Creek volunteers and Resort instructors, the sports of skiing and snowboarding involves certain inherent risks, dangers and hazards that can result in personal injury and in extreme cases death. Further, Parent/Guardian and Participant are aware of the man-made, natural and environmental conditions and other risks which independently or in combination with any snowboarding activity may cause or result in personal injury and in extreme cases death; and

Whereas, Parent/Guardian has voluntarily enrolled Participant in the Adaptive Sports Program at Mountain Creek and would like Participant to participate in the Adaptive Sports Program at Mountain Creek despite all known and unknown risks of injury presented by participation in the Adaptive Sports Program at Mountain Creek; and

Whereas, Parent/Guardian understands that this Agreement is a general release, covenant not to sue and waiver of claim agreement barring Parent/Guardian and Participant from bringing any claim for any reason for personal injury and/or death which is in any way related to participation in any of the events and activities associated with the Adaptive Sports Program at Mountain Creek as well as skiing and snowboarding; and

Now, therefore, for the sole consideration of being permitted to participate in the Adaptive Sports Program at Mountain Creek, Parent/Guardian and Participant expressly and freely agree as follows:

1. To assume all inherent risks of the sport that are obvious and necessary and all other risks of property damage, personal injury, serious personal injury and/or death arising from snowboarding and practicing for and/or participating in the Adaptive Sports Program at Mountain Creek.

WARNINGS RELATED TO SKI RESORT OPERATION. Parent/Guardian and Participant acknowledge that operating a ski resort in New Jersey requires the use of snowmobiles, grooming machines, and snowmaking equipment. Parent/Guardian and Participant acknowledge that **CONTACT WITH SNOWMOBILES, SNOWMAKING EQUIPMENT OR GROOMING MACHINES MAY RESULT IN SERIOUS INJURY OR DEATH.** Snowmaking equipment can be located off-trail, on the edges and sides of trails, and sometimes even in designated places on trail. Parent/Guardian and Participant further acknowledge that skiing on the edge of trails or skiing off-trail may cause Participant to come into contact with **snowmaking equipment, lighting or grooming machines.** **PARTICIPANT AGREES TO MAINTAIN A SAFE DISTANCE AT ALL TIMES AWAY FROM THE EDGE OF TRAILS, OFF-TRAIL AREAS, SNOWMAKING EQUIPMENT, LIGHTING OR GROOMING MACHINES.**

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Parent/Guardian and Participant acknowledge that snowmobiles and grooming machines are necessary for the operation of the mountain and that they can be encountered at any time on any trail. Participant agrees to look and listen for the headlights, warning lights, visible flags, back-up sirens and/or motor sounds associated with snowmobiles or grooming machines. Parent/Guardian and Participant understand that fencing and padding is primarily used throughout the mountain as visual warnings and that **PARENT/GUARDIAN AND PARTICIPANT**

RECOGNIZE THAT SERIOUS INJURY OR DEATH CAN RESULT FROM BOTH LOW AND HIGH ENERGY IMPACTS OR CONTACT WITH FENCES OR PADDED SNOWMAKING EQUIPMENT OR GROOMING MACHINES. I agree to maintain control of my speed, course and direction at all times.

2. To release from liability, covenant not to sue, defend and hold harmless ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK, the Resort and its Sponsors and their respective officers, agents, employees, directors, shareholders, affiliated entities, subsidiaries, sponsors, and insurers, as well as all ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK, Adaptive Sports Program at Mountain Creek and Resort representatives and any and all Adaptive Sports Program at Mountain Creek volunteers (all the aforementioned parties collectively referred to as "Released Party"), for any and all loss, damage, injury, death or expense the Parent/Guardian and/or Participant may suffer or incur, or that Participant's next of kin may suffer or incur, as a result of Participant's practicing for or participation in the Adaptive Sports Program at Mountain Creek, and to waive any and all claims against the Released Party due to any cause whatsoever, including but not limited to, negligence due to any cause whatsoever, breach of contract or breach of duty of any kind on the part of the Released Party and any entity or person performing any function with respect to the Adaptive Sports Program at Mountain Creek.

3. To be responsible for the return, in good condition, of all equipment loaned to Participant.

4. This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of New Jersey without regard to New Jersey's conflicts of laws principles.

5. The parties hereby consent to the personal jurisdiction of the federal and state courts located within the State of New Jersey, U.S.A. and agree that the exclusive venue for all disputes shall be resolved in Sussex County, New Jersey.

6. That for the sole consideration of participating in the Adaptive Sports Program at Mountain Creek, Participant and Parent/Guardian authorize ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK to record and use materials incorporating Participant's name, audio and audio-visual recordings or Participant's name and likeness, photographs, statements or testimonials of Participant (collectively "Images") in connection with marketing both the Adaptive Sports Program at Mountain Creek and certain products manufactured and/or distributed by ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK, including without limitation, the ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK Story Album which highlights certain participants' life stories and experiences in the Adaptive Sports Program at Mountain Creek. Participant and Parent/Guardian acknowledge and agree that each Image is and will be deemed to be a work made for hire as defined in the U. S. Copyright Act of 1976, as amended, 17 U. S. C. §101, and will be exclusively owned by ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK. If for any reason an Image is not deemed to be a work made for hire, Participant and Parent/Guardian hereby irrevocably assigns all right, title and interest in perpetuity worldwide in and to the Image, including the copyright and all other rights relating to the Image to ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK. It is agreed and acknowledged that this Agreement confers on ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK the exclusive right to display, exhibit, distribute, reproduce or authorize reproduction of the Images for all purposes, and to make derivative works, in any medium now known or later created. Participant and Parent/Guardian further waive all privacy, publicity, defamation, and proprietary rights related to the Images. ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK may transfer or license its rights hereunder without the consent of either Participant or Parent/Guardian.

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I HAVE READ AND UNDERSTAND THIS AGREEMENT AND I AM AWARE THAT BY SIGNING THIS AGREEMENT I AM WAIVING CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE ADAPTIVE SPORTS PROGRAM AT MOUNTAIN CREEK, THE RESORT, AND/OR THE SPONSORS.

Date

Signature of Parent/Guardian

_____/_____/_____
Participant's Name and Date of Birth

Print Name of Parent/Guardian

Emergency Phone Number