

Maintenance and Recreation Management Agreement

This agreement is made this 30th day of December 2021, by and between Waterville Estates Village District, a municipal corporation, with a principal mailing address of 562 Winterbrook Road, Campton, NH 03223 (hereinafter the "District" or "WEVD"), and Waterville Estates Association, a New Hampshire corporation, with a principal mailing address of 562 Winterbrook Road Campton NH, 03223 (hereinafter the "Association" or "WEA").

AUTHORITY

This Agreement is entered into under the authority of RSA 35-B

PURPOSE

The purpose of this Agreement is to formalize the amount of recreational fees and charges paid by WEA to the District pursuant to RSA 35-B:1 and 35-B:2, II. This Agreement further memorializes the terms and scope of WEA's use of District property relative to the operation of Recreational Activities, Recreational Promotion, the construction of Recreational Capital Improvements, and the maintenance and care of parks and common areas in order to ensure that activities and services provided by the District and financing of those aforementioned items are consistent with RSA 35-B.

DEFINITIONS

The meaning of the following words or phrases used in this document are as described below, unless the context indicates otherwise:

Admission policy:	A formal statement outlining the eligibility requirements and application procedures for admission to common areas and recreational facilities of Waterville Estates
Business activities:	The revenue generated by WEA activities including but not limited to recreational activities.
District Property	All District Property owned by the District as municipal property, including recreational property and facilities, and subject to New Hampshire's municipal law requirements.
General Maintenance	Maintenance and management of District facilities as reasonably required by the District, including but not limited to, rubbish removal, cleaning and other minor nonstructural repairs that arise from WEA's use of premises.

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Maintenance of Facilities	Inclusive of but not limited to preventative, ongoing, or emergency actions taken designed to maintain, repair, or improve the condition of the facilities.
Owner Usage Policy	An enforceable formal code of conduct for all members, guests, and renters of "Waterville Estates"
Recreational Activities	Management and maintenance of Recreational Programs, the construction of Recreational Capital Improvements, and the maintenance and care of parks and common areas
Recreational Capital Improvements	Improvements, expansions, or updates made to existing facility amenities including but not limited to exercise and weight rooms, saunas, hot tubs, indoor/outdoor furniture, tanning booth, Teen Room, tennis courts, swimming pools, audio and video systems, snow making equipment, trail systems, and bars and restaurants.
Recreational Programs	Activities and entertainment that provides benefits to the WEA's members, WEVD residents, and eligible guests pursuant to the admission policy.
Recreation Promotion	The process involved in fostering interest in WEA Recreational Programs.
Waterville Estates	The community of residences and building lots, facilities, and community amenities contained in the Waterville Estates Village District

RECITALS

A. The District has been formed pursuant to RSA Chapter 52 as a municipal corporation funded through the property taxes for the purpose of funding community services such as the supply of water for domestic purposes (RSA 52:1, I(d)), the maintenance of roads (RSA 52:1, I(m)), the impoundment of water (RSA 52:1, I(d)), the maintenance of facilities and activities for "recreational promotion" (RSA 52:1, I(h)), and the maintenance and care of parks and commons (RSA 52:1, I(g) and (h)).

The District's rights and responsibilities include the following:

- a. Maintenance of District facilities and District property, other than general maintenance by the WEA as required by lease agreement(s), and management of District facilities and District property.
- b. Construction of any "recreational capital improvements" and maintenance of District parks and common areas.

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- c. Operating “recreational programs” in accordance with this agreement.
- d. Ensuring a safe and inviting environment of all common areas consistent with their intended uses, managing safe and responsible alcoholic beverage service, and maintaining liquor and food service standards commensurate with licensing for each.
- e. Exercising universal and unilateral authority to take actions to manage its responsibilities relative to safety and professionalism.
- f. Provide the necessary personnel and equipment to perform the services required by related to such activities as contractually agreed upon.
- g. Provide accounting, billing, and clerical services to the Association as contractually agreed upon.

B. The Association was formed as the successor to Waterville Estates developer, Locke Waterville Corporation, and represents all owners of property in “Waterville Estates”. In recognition of the fees and charges paid by the Association to the District pursuant to RSA 35-B:1 and 35-B:2, II and described herein, the Association shall maintain the following rights and responsibilities regarding District property as long as this agreement remains in effect.

The Association’s rights and responsibilities include the following:

- a. Establish and maintain an “admission policy” to all recreational facilities falling within the scope of this agreement.
- b. Protect and provide access to “Waterville Estates” common property owned by the District enjoyed by all eligible property owners and those non-property owners approved by the board members and which are in the best interest of the owners.
- c. Exercises final approval of all “recreational activities” which are to be funded by the Association.
- d. Accept and/or annex new property for use in common by eligible “Waterville Estates” property owners.

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In consideration of the mutual covenants stated within this document, the parties willingly enter into this Maintenance and Recreation Management Agreement concerning the management and maintenance of Recreational Activities, Recreational Programs, the construction of Recreational Capital Improvements, capital improvements, and the maintenance and care of parks and commons areas pursuant to the terms of this Agreement.

1. Duration and Termination

a. This agreement supersedes all prior agreements between the parties concerning “recreational activities”.

b. This Agreement shall be effective December 30, 2021, and shall run to April 15, 2025.

Annual review of the agreement’s terms and conditions will be conducted by representatives of the contracting parties prior to April 15 each year. Changes, if any, are to be in written form on the original agreement document or by addendum and to include the names and signatures of the approving representatives. Copies of the updated original agreement or addendum are to be provided to the WEVD and the WEA.

2. Insurance

The Association agrees to maintain insurance as well as insurance for Directors’ and Officers’. The specifics of required coverage include Liability ISO forms or their equivalent without limiting endorsements, \$1,000,000 CSL, WEVD named as additional insured, volunteers as additional insured and provided by an insurer rated “A” or better by AM Best. Directors and Officers is provided by a “A” or better rated carrier and provides a \$1,000,000 limit. A certificate of insurance evidencing this coverage is to be provided to WEVD on an annual basis and prior to the annual anniversary of this agreement.

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3. Servicing of Recreational Activities and Business Activities

- a. The District shall supply necessary qualified personnel and equipment in order to provide “recreational activities” agreed upon by the parties on an annual basis, within the limits of the funds made available by the Association.
- b. As a recreational fee and charge pursuant to RSA 35-B:1 and 35-B:2, II, WEA shall maintain at least a \$50,000 balance in the Revolving Rec Fund, including any & all surplus monies (RSA 35-B:1, 35-B:2, II). WEVD shall invoice WEA monthly. If the balance drops below \$50,000 for more than 14 business days, WEA will immediately authorize a transfer of adequate supplemental fees & charges to restore the \$50,000 balance.
- c. In the event of unforeseen circumstances, including but not limited to force majeure, fire, earthquake, governmental restrictions/orders regarding pandemic(s) , etc., which render District facilities unavailable for use for recreational activities for more than 30 consecutive days, WEVD shall release WEA from the revolving Rec Fund \$50,000 minimum fee and charge balance requirement and set the minimum fee and charge balance at \$5,000 for the remainder of the period in which the facilities are unavailable to operate recreation. The parties agree that any outstanding invoices for services already rendered, or payment obligations or promises already agreed to, which are not covered by the remaining \$5,000 Rec Fund balance, shall be paid by the Association upon presentation to the Board.
- d. The parties specifically agree that this Agreement does not obligate the District to pay or promise any money in any form, and it does not require the District to raise and appropriate money within the meaning of RSA Chapters 31 and 33.
- e. As outlined in section 3.b above, the funds contemplated in this Agreement provided from WEA to the District, are recreational fees and charges pursuant to RSA 35-B:1 and 35-B:2, II. Any funds provided from WEA to the District separate from this Agreement are subject

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to New Hampshire municipal laws regarding receiving and utilizing outside funds, including, but not limited to, approval by the District governing body.

- f. On or before November 1 of each year, WEA shall provide a formal program proposal of Recreational Activities together with the description of the events and activities. The format of the proposal should consist of an event calendar and community center operating hours. See attached addendum – anything similar to the exemplar is satisfactory. WEA to provide reasonable notice upon any change or addition to either the event calendar or operating hours.
- g. Monies deposited into the revolving Rec Fund pursuant to this agreement are fees & charges. As such, they are not subject to the Trustee of the Trust Fund process. Fees and Charges provided by WEA per this RMA go directly into the revolving Rec Fund in accordance with RSA 35-B:2, II. Fees & Charges provided by WEA into the Revolving Rec Fund are intended to be used for the following purposes:
 - i. General Maintenance and upkeep of District facilities which are used for recreation;
 - ii. Supplies, equipment, and the portion of utilities (attributable to recreation) used to deliver services required by the RMA; and
 - iii. Payroll for District employees engaged in the provision of recreational services
- h. On or before November 1 of each year, WEA may provide a separate formal proposal for Recreational Improvements and capital improvements that includes a corresponding commitment of CIF or WEA funds separate from fees and charges under RSA 35-B:2, II. Any additional funds must be administered pursuant to New Hampshire Municipal laws. It is

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the intent of the parties to work together in maintaining, improving, and/or expanding assets and facilities which support recreation.

- i. On or before November 1 of each year, WEVD will forecast expenses for the upcoming year's Recreational Services considering any expected cost increases in salary, benefits, materials, and any chargeable miscellaneous items to allow WEA to adequately plan costs related to the ensuing year's recreational programming.
- j. WEVD, at its sole discretion, may provide support for recreational services in accordance with NH municipal law.
- k. Thereafter, but not later than January 15, WEVD and WEA shall meet to discuss information from this section of the agreement, paragraphs (a) through (g). Both WEVD and WEA shall share information to the maximum extent possible and may establish joint working groups and committees.
- l. Any surplus funds created in the Recreation Fund in a given year shall remain in the Recreation Fund and will be utilized solely for providing recreation in the following year. Any such funds shall count toward the minimum balance that must be maintained.
- m. Nothing contained herein shall prevent the WEA from making additional funds separate from fees and charges under RSA 35-B:2, II available to WEVD for Recreational Programs during the fiscal year. Any additional funds must be administered pursuant to New Hampshire Municipal laws.

4. Payments

- a. The Association shall pay as a Management Fee pursuant to a separate agreement, the WEVD/WEA Administrative Services Agreement. Payment pursuant to the WEVD/WEA Administrative Services Agreement is not going into the Rec Fund as a fee and charge.

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- b. All additional payments made with respect to Recreation Capital Improvements separate from fees and charges under RSA 35-B:2, II shall be paid before project completion dates. Such payments must be administered pursuant to applicable New Hampshire Municipal laws.
- c. The parties agree that, if WEA seeks to hire an outside management company/employee(s) to supervise and run Recreational Programming using WEA's taxpayer ID and not through the Rec Fund, this will not be treated as a breach of this Agreement provided there is created a new agreement and/or a new lease agreement delineating the rights and responsibilities of both entities. Both parties pledge to work cooperatively in making modifications to/creating new agreements and leases. In the event WEA intends to hire a contract service or employee(s) to supervise and run Recreational Programming for the Association, the WEA Board must provide the District with a detailed proposal outlining which Recreational Operation duties are going to be assumed by the Association. In no event shall the WEA contract service provider or WEA employee supervise WEVD employees. Upon receipt of said proposal, the District will work diligently with WEA to determine which WEVD staffing changes will be necessary as well as the timing to implement said plan, including moving WEVD employees who are currently paid from the Revolving Rec Fund to the WEA payroll. Working cooperatively, the parties can agree to amend or terminate this Agreement and the Administrative Services Agreement if necessary.

5. Books and Records

WEVD shall oversee maintaining books, accounts, and records that reflect all expenditures incurred in connection with the provision of Recreational Activities by the WEVD. These books, accounts, and records shall be maintained at the WEVD's offices and shall be available for

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inspection by the Association during regular business hours. The WEVD will endeavor to provide the WEA with end of quarter close financial Recreational Fund data no more than 30 days beyond the quarter's close.

At all times, WEVD staff who are assisting WEA are performing their duties as municipal employees. WEVD Employees remain municipal employees while performing recreational services and any WEA administrative/bookkeeping functions. As municipal employees, all WEVD staff are subject to NH municipal law including, but not limited to, RSA Chapter 91-A (Right-to-Know law) and Chapter 31 of the RSA.

6. Remedies

- a. If WEVD breaches any term of this Agreement, WEA shall give written notice of the breach to WEVD. If WEVD fails to remedy the breach within 30 days of such notice, or if such breach shall have been of a nature that the same could not have been cured within 30 days, and if WEVD shall not have, in good faith, commenced the curing or remedying of such breach, within such 30-day period, WEA may, at its option, terminate this Agreement. Upon termination, WEVD shall return to the Association all unexpended fees and charges which are not encumbered by a contract with a third party or owed to WEVD for services already rendered.
- b. WEA shall make timely payments to maintain a \$50,000 balance of fees and charges in the Revolving Rec Fund for Recreational Services, as those services are rendered. If WEA lets the Revolving Rec Fund for Recreational Services fall below a \$50,000 balance for more than fourteen (14) business days, WEA shall be considered in material breach of this Agreement. If WEA fails to make timely payments maintain the \$50,000 balance as set forth in this Agreement, the WEVD may terminate the provision of services for Recreational Activities until WEA provides the necessary fees and charges and provides assurance that the

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fund balance will be maintained in the future. If WEA breaches any term of this Agreement, WEVD shall give written notice of the breach to WEA. If WEA fails to remedy the breach within 30 days of such notice, or if such breach shall have been of a nature that the same could not have been cured within 30 days, and if WEA shall not have, in good faith, commenced the curing or remedying of such breach, within such 30-day period, WEVD may, at its option, terminate this Agreement. Upon termination, WEA shall not have any of the rights and responsibilities contemplated by this Agreement.

- c. WEVD shall return to the Association all unexpended funds which are not encumbered by a contract with a third party or owed to WEVD for services already rendered.
- d. Notwithstanding anything to the contrary contained herein, WEVD will not be obligated, by this Agreement, to perform services beyond the amount funded by the WEA.

7. Successors Assigns and Non-Assignability

This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto, however, this Agreement may not be assigned by either party without prior written consent.

8. Validity

This Agreement is understood to comply fully with the laws of the State of New Hampshire relative to Village Districts, and in particular, relative to the authority and duties of the commissioners, and therefore, to the extent any provision of this Agreement in any way may conflict with or breach such laws, such provision shall be null and void.

9. Severability Clause

Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. If the invalidity of any part, provision,

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representation or warranty of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, the parties shall negotiate, in good faith, to develop a structure the economic effect of which is as close as possible to the economic effect of this Agreement without regard to such invalidity.

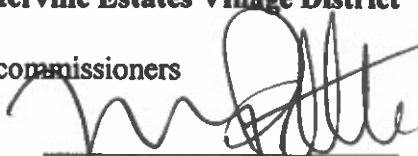
10. Notices

- a. Notice to the Association shall be in writing to the President of the WEA Board of Directors.
- b. Notice to WEVD shall be to the Commissioners of WEVD and the WEVD General Manager.

WHEREFORE, the parties have signed this eleven (11) page Agreement on the date written.

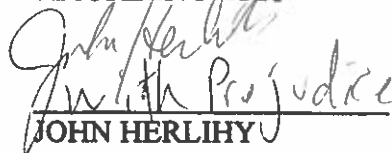
Waterville Estates Village District

By commissioners



MAUREEN PATTI

12/27/21
Date


in with prejudice

JOHN HERLIHY

12/27/21
Date



GERRY PANUCZAK

12/27/2021
Date

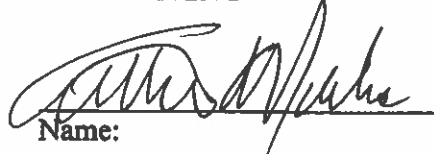
Waterville Estates Association

By the President of the Board of Directors and a second Board member



MIKE HERING

12/30/21
Date


Name:

12/30/21
Date

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RMA ADDENDUM



Waterville Estates Association

Annual Operating Schedule by Facility

Community Center:

Inside Facilities:

- Open Daily
- Monday - Thursday: 10:00am - 8:00pm
- Friday & Saturday: 10:00am - 10:00pm
- Sunday: 10:00am - 8:00pm
- closed Thanksgiving, Christmas
- Includes all amenities
- Mountain View Pub
- no food service except for special events

Outside Facilities: • Pools & Hot Tub

- Open Daily - Memorial Day weekend through Columbus Day
- *same hours as above*
- Basketball, Racket Courts, Volleyball Court, Pond Beach
- Open Daily 7:00am - 10:00pm

Food & Beverage Operations (Summit Lounge & Poolside):

- Memorial Day weekend (*limited menu*)
- Fourth week of June through Labor Day weekend
- Friday, Saturday, Sunday (*same hours as above*)

Special Events

- Various special activities coordinated with staff (ie fireworks, outback BBQ, band at pavilion, etc) between Memorial Day and Labor Day

Campton Mountain:

Ski Operations & Lodge (*snow & weather dependent*):

- Mid-December through March:

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- Friday night 5:00pm - 10:00pm
- Saturday Day 11:00am - 4:00pm (*ski lodge stays open 4:00pm-5:00pm*)
- Saturday Night 5:00pm - 10:00pm
- Sunday Day 11:00am - 4:00pm
- Holiday & Vacation Periods:
- Christmas Vacation week: Monday through Friday day and night
- MLK Weekend: regular schedule plus Sunday night and Monday day
- Mass Vacation week: Monday through Friday day and night
- NH Vacation week: Wednesday, Thursday & Friday day and night

Ski Lodge Additional Openings

- PreSeason - Thanksgiving to mid-December
- Friday & Saturday evenings 5:00pm to 10:00pm
- If ski lifts are not running during ski season due to weather or lack of snow, the lodge will be open evenings only 5:00pm to 10:00pm.

Special Events

- New Years Eve
- Ski Lodge & Community Center
- Mass Vacation Week
- Activities, ski lodge band
- Ski Race - Campton Mtn
- Cardboard Box Derby - Campton Mtn
- Memorial Day Weekend
- Activities, poolside bands
- 4th of July
- Activities, poolside band, gazebo band & fireworks
- Comedy Night
- Labor Day Weekend
- Activities, poolside band
- Christmas Vacation Week
- Activities, ski lodge bands

All dates and times subject to change due to weather and unpredictable situations, at the discretion of the WEA Board of Directors.

ATTACHMENTS
MAINTENANCE AND RECREATION
MANAGEMENT AGREEMENT

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 35-B

PUBLIC RECREATION AND PARKS

Section 35-B:1

35-B:1 Establishment and Management. – Any town, city, county, village district or school district acting through its governing body, may either independently or in conjunction with the United States, the state of New Hampshire, or any other political subdivision acquire land within or without its jurisdiction by gift, purchase or lease, for a public recreation and park area and may prepare, equip, and maintain said land for said purpose. Said town, city, county or district may establish a system of reasonable fees and charges thereon; may conduct and promote leisure-time activities thereon. In connection therewith, any such town, city, county, or district may construct, reconstruct, equip, operate, and maintain any recreation building or recreation support facility; and may employ an administrative officer and such other persons as it deems necessary to carry out the provisions of this chapter. Any town, city, county or district shall have the power to jointly enter into any contract with any organization or organizations for the purpose of conducting leisure-time programs, acquiring recreational lands or facilities, or exercising any other power granted by this chapter.

Source. 1979, 185:1, eff. Aug. 5, 1979.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 35-B

PUBLIC RECREATION AND PARKS

Section 35-B:2

35-B:2 Tax and Appropriations. –

Any town, city, county, village district or school district may raise annually revenues and appropriate funds for the purpose described in RSA 35-B:1 and also may raise such sums when the land upon which such activities are conducted belongs to or is leased by the state. The money necessary to pay for lands or other recreation purposes described in RSA 35-B:1 may be raised and appropriated by the board or body having control over the finances of a political subdivision by the following methods:

- I. General taxation, as other taxes are raised and levied or by the issuance of temporary loan bonds or by the issuance of permanent bonds to the extent, and with the authority authorized by existing law.
- II. By fees and charges for recreation park services and facilities. All revenue from such fees and charges may be deposited into a special fund established for such purposes pursuant to RSA 31:95-c, or into a recreation revolving fund established by vote of the legislative body. If such a recreation revolving fund is created, the money in the fund shall be allowed to accumulate from year to year, and shall not be considered part of the political subdivision's general surplus. The treasurer of the political subdivision shall have custody of all moneys in such fund, and shall pay out the same only upon order of the recreation or park commission, or other board or body designated by the local legislative body at the time the fund is created. Such funds may be expended only for the purposes of this chapter, and no expenditure shall be made in such a way as to require the expenditure of, or create a liability upon, other town funds which have not been appropriated to that purpose. If such recreation revolving fund is rescinded by vote of the legislative body, any remaining amounts in the fund shall become part of the general fund accumulated surplus.

Source. 1979, 185:1. 1993, 161:1, eff. July 23, 1993. 2012, 181:3, eff. Aug. 10, 2012.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 52

VILLAGE DISTRICTS

Section 52:1

52:1 Establishment. –

I. Upon the petition of 10 or more voters, persons domiciled in any village situated in one or more towns, the selectmen of the town or towns shall fix, by suitable boundaries, a district including such parts of the town or towns as may seem convenient, for any of the following purposes:

- (a) The extinguishment of fires;
- (b) The lighting or sprinkling of streets;
- (c) The planting and care for shade and ornamental trees;
- (d) The supply of water for domestic and fire purposes, which may include the protection of sources of supply;
- (e) The construction and maintenance of sidewalks and main drains or common sewers;
- (f) The construction, operation, and maintenance of sewage and waste treatment plants;
- (g) The construction, maintenance, and care of parks or commons;
- (h) The maintenance of activities for recreational promotion;
- (i) The construction or purchase and maintenance of a municipal lighting plant;
- (j) The control of pollen, insects, and pests;
- (k) The impoundment of water;
- (l) The appointing and employment of watchmen and police officers;
- (m) The layout, acceptance, construction, and maintenance of roads; and
- (n) The maintenance of ambulance services.

II. The voters who are domiciled in any village shall cause a record of the petition, pursuant to paragraph I, and their proceedings thereon to be recorded in the records of the towns in which the district is situate.

Source. 1849, 852:1. CS 116:1. GS 97:1. GL 107:1. 1889, 82:1. PS 53:1. 1909, 27:1. 1911, 5:1. PL 57:1. 1939, 108:1. RL 70:1. RSA 52:1. 1957, 179:1. 1961, 120:3. 1975, 13:1; 455:1. 1977, 154:1. 1981, 375:1. 2003, 289:14, eff. Sept. 1, 2003.