

No. R-198. Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to amend the Department's lease with the Okemo Limited Liability Company and to authorize a conveyance of Woodchuck Mountain in Newbury as an alternative to the conveyance authorized in 2002 Acts and Resolves No. 149, Sec. 83(a)(3).

(J.R.S.13)

By Committee on Institutions,

Whereas, the State of Vermont and Okemo Limited Liability Company (Okemo or Lessee) are parties to that certain lease dated November 15, 1974, as amended, which authorizes the use of State-owned land located in the Okemo State Forest as a ski resort (the Lease), and

Whereas, at the Request of the Department of Forests, Parks and Recreation, the parties to the Lease entered into a separate agreement to amend certain provisions of the Lease, pending authorization by the General Assembly, and

Whereas, during the 2001–2002 biennium, the General Assembly authorized the Department to convey a parcel consisting of 110 acres, more or less, in the town of Newbury, known as Woodchuck Mountain, to the Town of Newbury, subject to a grant of development rights and a conservation easement to be conveyed by the Department to the Upper Valley Land Trust, and

Whereas, to date, the Town of Newbury has declined to accept the conveyance of this parcel, and the Department wishes to establish a deadline of May 31, 2019 for the Town of Newbury to accept or decline conveyance of this parcel under the terms of 2002 Acts and Resolves No. 149, Sec. 83(a)(3), and

Whereas, the Department desires to conserve this parcel for forestry, conservation, and public recreation purposes, *now therefore be it*

Resolved by the Senate and House of Representatives:

First: That the Commissioner of Forests, Parks and Recreation is authorized to amend the Lease as follows:

(1) Article 6 of the Lease, in part, requires Okemo to pay a rental fee based upon a calculation as set forth in Article 6 using linear feet of lifts and gross lift ticket sales located on the leased premises and two and one-half percent on all gross receipts from restaurants, sport shops, and warming shelters constructed and operated by the Lessee. The State and Okemo now agree to apply, as an addition to the existing rental fee, a five percent rental fee to the Lessee's gross receipts for access fees for any additional activities occurring, in whole or in part, on the leased premises. Additional activities are the Lessee's existing mountain biking activities and any new commercial recreational activities occurring on the leased premises. To the extent additional activities include use of lifts, the gross receipts for access fees shall be multiplied by the following ratio prior to the application of the five percent rental fee: (linear feet of lifts on the leased premises used for the additional activity) / (total linear feet of all lifts used for the additional activity). The Lessee agrees that at no time shall the percent determined by (the linear feet of lifts on State land) / (the

total linear feet of all lifts owned by the Lessee) be less than twenty percent. To the extent additional activities do not include use of the lifts, the Lessee shall pay the five percent fee based upon the proportion of such additional activities occurring on the leased premises.

(2) Okemo shall indemnify and hold harmless the State and shall provide a general liability insurance policy as follows:

(a) Unless an event arises solely out of the State's gross negligence or willful misconduct, Okemo shall defend, indemnify, and save harmless the State, its agents, servants, and officials from any damages and any claims arising out of or related to the use, maintenance, or operation of lifts or the leased premises.

(b) Okemo shall carry general liability insurance in a policy or policies at all times with a minimum coverage of at least \$10,000,000 per occurrence and \$20,000,000 in aggregate, naming the State and additional parties, as noted in Article 9 of the Lease, as additional insureds under such coverage. Not more than once every five years, the State may review required insurance amounts set forth in this paragraph and may increase such insurance amounts to amounts that are reasonably representative of the then current market for insurance amounts for similar operations as reasonably determined by the State.

(3) Subject to the provisions of Section 14 of the Lease, Okemo shall provide access to the public to the leased premises, including for uphill travel on the ski trails located on the leased premises, subject to Okemo's right to impose restrictions on the public's access for uphill travel and other public access in accordance with Section 14 of the Lease. Okemo shall establish a written uphill travel policy consistent with these terms and shall provide a copy to the State and make the policy publicly available.

(4) Other than a Permitted Transfer, Okemo (or following a Permitted Transfer, any Permitted Transferees) shall not assign the Lease or engage in a transaction by way of merger, consolidation, or sale (singly or in combination), involving the transfer of equity securities constituting more than one-half of the total voting securities or interests of Okemo (or if applicable, its Permitted Transferees) without the prior written consent of the State. Notwithstanding the foregoing, an assignment of the Lease by Okemo to or any transaction involving the transfer of equity securities of Okemo to any direct or indirect wholly owned subsidiary of Vail Holdings, Inc. shall be a "Permitted Transfer," provided that the Guaranty remains in full force and effect following such Permitted Transfer.

(5) The fiscal year for Okemo ends on July 31 each calendar year. References in Section 6 of the Lease to fiscal year shall be amended to refer to July 31.

(6) Upon termination of the Lease, Okemo or its successors or assigns may remove all of Okemo's tangible personal property. If such tangible personal property is removed, Okemo or its successors or assigns shall remove such tangible personal property so as to minimize disturbance or damage to the leased premises, except for any reasonable use and wear, damage by casualty, or eminent domain or damage resulting from the actions of the State. Okemo or its successors or assigns shall restore the area where the tangible personal property is removed so as to leave those area(s) of the leasehold in a safe, stable, and acceptable condition to the State.

(7) Appendix B of the Lease shall be amended and replaced in its entirety with a new Appendix B that accurately reflects the total linear feet of existing lifts on State land and total linear feet of lifts owned by the Lessee.

Second: (1) That the Commissioner of Forests, Parks and Recreation is authorized to convey 110 acres, more or less, located in the Town of Newbury and known as the Woodchuck Mountain parcel that the Department acquired as a bequest from the Enrita Carlson estate, to the Upper Valley Land Trust, should the Town of Newbury decline to accept the parcel from the Department by May 31, 2019. The Commissioner is also authorized to convey a grant of development rights and a conservation easement to another qualified conservation organization or municipality or to include deed restrictions in the deed to the Upper Valley Land Trust, restricting development rights and requiring that the use of the Woodchuck Mountain parcel be limited to forestry, conservation, and public recreation purposes.

(2) The authorization set forth in 2002 Acts and Resolves No. 149, Sec. 83(a)(3) for the Department to convey the Woodchuck Mountain parcel to the Town of Newbury, subject to a grant of development rights and a conservation easement to be simultaneously conveyed to the Upper Valley Land Trust, shall remain in full force and effect should the Town of Newbury accept conveyance of the Woodchuck Mountain parcel by May 31, 2019, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Forests, Parks and Recreation.