

Bromley Mountain Resort

Bromley Mountain Lease Summary

Lessee: Bromley, Inc.
Location: Peru, Bennington County
State Park/Forest: Hapgood State Forest
Parcel Size: ~~300~~¹⁰⁰ acres

Parcel Characteristics: _____

Lease Term: Initial lease executed 6/14/1942. Current lease execute on 2/22/1983 has a term of 10 Years renewable 4 times ending of 6/14/2032.

Summarized Lease Payment Calculation Method:

5% of gross receipts generated by lift ticket sales multiplied by the percentage of the total linear feet of lift line that is on state land.

Lease Payment Due Date: On a fiscal year basis running April 1 to March 31 due December 1 annually.

Purpose of Lease:

Development and operation of summer and winter sports and recreational facilities for the good of the public.

Chronology of Significant Events:

- 6/15/1942 – Original lease agreement with Ski Tows, Inc. executed
- 12/1/1954 – Lease is transferred to Big Bromley, Inc.
- 12/31/1958 – Lease is amended allowing lessee to construct facilities as needed and said properties become real estate of the state upon completion and the lessee shall pay the state \$100 a year for rights conveyed by the lease.
- 2/22/1983 – Current lease is executed.

Notes:

Bromley Mountain has 10 lifts, 43 trails, numerous summer attractions and many resort amenities and lodging options.

LEASE

003-01-25-83

INDENTURE OF LEASE, dated as of the 22nd day of February 1983, by and between the State of Vermont (acting through the Commissioner of Forests, Parks and Recreation), pursuant to 3 V.S.A. §2852 and 10 V.S.A. §2606(b) (the "Lessor") and Bromley, Inc., a corporation organized and existing under and by virtue of the laws of the State of Vermont, with principal offices at Peru, County of Bennington and State of Vermont (the "Lessee"):

WITNESSETH:

WHEREAS, the State of Vermont desires to promote winter and summer sports and recreational facilities within the State and to provide for the public good and benefit through the utilization of its lands and recreational areas; and

WHEREAS, it is the desire of the State of Vermont and Bromley, Inc., that the development of summer and winter sports and facilities be for the good of the public, the State of Vermont and Bromley, Inc.; and

WHEREAS, it has been determined by the Commissioner (the "Commissioner") of the Department of Forests, Parks and Recreation that the execution of this Lease by the State of Vermont as Lessor is in the highest orderly development and management of forests of the State of Vermont; and

WHEREAS, Bromley, Inc., is the original lessee or successor in interest as lessee in and to the following lease agreements:

- (a) Lease, dated June 15, 1942, between the State of Vermont and Ski Tows, Inc.; which Lease expired on June 15, 1982.

(b) Modification of Lease, dated December 31, 1958, between the State of Vermont and Big Bromley, Inc.

NOW, THEREFORE, the parties hereto agree as follows:

1. Leased Premises; Term of Lease. 1.1. Fixed Term.

Upon and subject to the conditions and limitations set forth below, the Lessor lets and leases to the Lessee, and the Lessee rents from the Lessor, the following real property in the Town of Peru, Vermont (the "Premises"):

Being lot #12 in the third range of lots in the said town of Peru, and commonly known as Bromley Mountain, together with such rights-of-way as the State has to such lot.

TO HAVE AND TO HOLD unto the Lessee, subject to all of the terms, conditions and provisions hereof, for a fixed term commencing as of June 15, 1982, and continuing thereafter to and including June 14, 1992 (the "Fixed Term"), and, at the option of the Lessee, for each extended term provided for in Section 1.2., unless this Lease shall sooner terminate as provided herein.

1.2. Extended Term. If at the time of exercise an Event of Default has not occurred, or if occurred has been remedied to the reasonable satisfaction of the Lessor, the Lessee shall have the option to extend the terms hereof for four additional terms of 10 years each (each such period being an "Extended Term"). The Lessee shall exercise its option or options by giving written notice of such exercise to the Lessor not less than 60 days prior to expiration of the Fixed Term or of the Extended Term then ending (but not more than 180 days) as the case may be.

2. Basic Rent, etc. 2.1. Basic Rent; Calculation. For the purposes of this Lease, "gross receipts" shall mean receipts from all sales of lift tickets and other charges for use of uphill and/or downhill conveyance, made by the Lessee whether evidenced by check, credit, charge account or cash. "Gross receipts" shall not include sales for which refunds have been made and shall not include Vermont sales tax. "Lift" shall mean lifts, tows, funiculars, gondolas and any other method of uphill conveyance of passengers. The Lessor may, at its expense, examine and audit the Lessee's books and records on account of such rental payments. The Lessor covenants and agrees it shall keep in confidence all information furnished to it, either in the form of the financial report delivered by the Lessee, or any information which it might gain or gather in connection therewith, except as required by law.

2.2. Basic Rent. The Lessee will pay to the Lessor as a net basic annual rental (the "Basic Rent") the sum as determined by the following formula:

- (a) 5 percent of the gross receipts, multiplied by a fraction, the numerator of which is the linear footage of that portion of such Lifts crossing the Premises and the denominator of which is the total linear footage of such Lifts wherever located.

The Basic Rent shall be paid annually not later than July 30 for the preceding lease year.

2.3. Basic Rent; Manner of Payment. The Basic Rent and all other sums payable to the Lessor shall be paid to the Lessor at the Lessor's address set forth herein or to such agent or person or persons or at such other address as the Lessor properly may designate in writing from time to time. Together with payment, the Lessee will provide to the Lessor an audited financial

report and an opinion statement thereon of the gross receipts, rental rate and rental due for the period ending March 31, on an annual or fiscal year basis in accordance with the lease agreement. Such audit of the accounts will be conducted in accordance with generally-accepted auditing standards by an independent certified public accountant or registered public accountant.

The Commissioner or his duly authorized representative may, at any time, examine the accounts, books and records relating to the revenues generated and the calculated Lessee rentals due the State. An audit report of the overall financial statements of the Lessee by a certified public accountant or registered public accountant will not be considered to be acceptable by the State unless an opinion statement is provided as relates to the gross revenues generated, the rental rate in effect and the rental due by category in accordance with Exhibit A.

3. Lessee's Improvements. 3.1. Rights of Lessee. Subject to the provisions of Section 3.2., the Lessee may, at its sole expense, erect, make, build, construct and complete buildings, structures, roads and roadways, trails and ski trails, lifts, or other conveyances (individually or collectively, the "Improvements") on the Premises.

3.2. Requirements of Approval, Laws, etc. Any Improvement shall be designed, constructed, made and completed to satisfy or exceed the laws, regulations and minimum standards established by the State of Vermont including but not limited to, safety, environment, trail width, drainage and the like. The Lessee shall comply with and obtain all licenses, permits and consents

from all governmental entities having jurisdiction over any such Improvement. Where satisfactory to the Lessor, the Lessor shall join in any application of the Lessee for any such permit, license or consent. Further, no such Improvement shall be commenced without the prior written approval of the Commissioner, which approval shall not be unreasonably withheld; in connection therewith, the Lessee shall submit to the Commissioner, 60 days prior to anticipated commencement, its plans and specifications and locations therefor. Unless the Commissioner shall object within 60 days of receipt of such filing, the approval of the Lessor shall be deemed to have been granted.

3.3. Emergency Improvements. Notwithstanding the provisions of Section 3.2., the Lessee may request the Commissioner to immediately approve a proposed Improvement in reliance upon the most recent and available plans and specifications.

4. Use of Property. The Lessee may use the Premises for any lawful purpose consistent with the intent of this Lease. In addition,

- (a) No lodging for hire shall be permitted on the Premises.
- (b) The design, erection and operation of all Lifts shall satisfy the requirements and standards of the Vermont Department of Labor and Industry's safety standards for passenger tramways.
- (c) The open lands on the Premises shall be available to all members of the public, without payment of fees, subject to such reasonable rules and regulations as the Lessee may promulgate from time to time.
- (d) The Lessee shall take reasonable precautions to protect, in place, all public land survey monuments, private property corners, and state boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this Lease, depending on the type of monument destroyed, the Lessee shall see that they are

re-established or referenced in accordance with the specifications of the State. Further, the Lessee shall cause such official survey records as are affected to be amended as provided by law.

5. Maintenance and Repairs, etc. The Lessee at its expense will maintain the Premises, including Lifts, trails, slopes, ponds, water courses, buildings, facilities, structures, roadways and other appurtenances, in a good and business-like manner and condition, shall comply with all applicable legal requirements and will promptly make all necessary or appropriate repairs, replacements and renewals unless excused pursuant to Section 8. All repairs, replacements and renewals shall be equal in quality and class to the original work. In the event that the Lessor creates logging roads pursuant to Section 9.2.(b), the Lessee only if it chooses to use such roads, shall have the obligations with respect thereto set forth above.

6. Indemnification by Lessee. The Lessee will protect, indemnify and save harmless the Lessor, its agents, servants and officials acting within their official capacities, from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against the Lessor by reason of the Lessee's use, maintenance or operation of Lifts, or in connection with the Lessee's use of the Premises or any appurtenance thereto, except if occasioned wholly or in part by an act or omission of the Lessor or any servant, official, contractor, agent or employee of the Lessor. In case any action, suit or proceeding is brought against the Lessor by reason of any such occurrence, the Lessee, upon request, will at its expense, resist and defend such action

or suit or cause the same to be resisted and defended by counsel designated by the Lessee.

7. Insurance.

(a) The Lessee shall, with respect to the Premises and all Improvements, at its expense, procure and maintain insurance against loss or damage by fire and the perils commonly covered under the extended coverage endorsements to the extent of the full insurable value thereof and shall name the Lessor (and all State officials and employees) and the Lessee as insured parties as their interests may appear.

(b) The Lessee shall, at its expense, with respect to the operation of Lifts and trails, procure and maintain public insurance against liability in an amount not less than \$10 million (combined single limit), and shall name the Lessor (and all State officials and employees) and the Lessee as insured parties as their interests may appear.

(c) The Lessee shall deliver to the Lessor promptly upon request certified copies of all insurance policies (or, in the case of blanket policies, certificates thereto) with respect to the Premises which the Lessee is required to maintain pursuant to this Section 7, together with evidence as to the payment of all premiums then due thereon.

8. Damage to or Destruction of Improvements. In the event any Lift, trail, slope, pond, water course, building, facility, structure or other appurtenance on the Premises is destroyed or substantially damaged by any reason other than war or Act of God, then the Lessee shall reconstruct or repair the property so destroyed or damaged; otherwise, the Lessor shall have no duty to

reconstruct or repair. Any reconstruction or repair shall conform to the provisions of Section 3.

9. Public Obligations. 9.1. Notice of Fees. The Lessee shall print and publish annually or more frequently a list of its fees for the use of all Lifts on the Premises, and the Lessee shall deliver a copy thereof to the Commissioner; the published list shall remain effective until replaced by another list which is printed and published and a copy thereof is delivered to the Commissioner.

9.2. Forestry.

(a) The Lessee may cut any trees necessary in connection with the construction, maintenance or repair of any building, Lift, or trail, upon the written consent of the Commissioner, after request, which consent shall not be unreasonably withheld. After felling, the Lessee may remove any tree by any method except burning. The Lessee shall pay the Lessor, as additional rent, the prevailing stumpage value for trees cut.

(b) The Lessor may, at all reasonable times, make selective cuttings of timber or wood on the Premises, provided that such cutting shall not interfere with the Lessee's operations.

9.3. Ski School. The Lessee shall have the exclusive right to conduct, on the Premises, a ski school, under competent leadership, for the purpose of ski instruction.

9.4. Lift Operations. The Lessee shall operate Lifts on the Premises at all reasonable times, during the winter season, provided that in the judgement of the Lessee (reasonably determined) proper skiing conditions exist. The annual operation of one or more Lifts shall not be less than forty (40) days unless

prevented by Act of God, war, forest fire, labor dispute, other unusual circumstances including mechanical difficulties, or by agreement of the parties. Breach by the Lessee of this covenant shall be an Event of Default justifying termination of the Lease pursuant to Section 10.

10. Events of Default; Termination.

(a) Upon the breach by the Lessee of any material covenant (each being an "Event of Default") and such breach shall not be corrected within 30 days after the Lessee receives written notice of such failure from the Lessor, the Lessor may at any time thereafter, during the continuance of any such default, give a written termination notice to the Lessee specifying a date (not less than 30 days from the date of giving such notice) on which this Lease shall terminate, and on such date the term of this Lease shall expire and terminate by limitation and all rights of the Lessee under this Lease shall cease, unless before such date all Events of Default at the time existing under this Lease shall have been fully remedied or the Lessee has commenced to cure and is diligently pursuing the same, all to the reasonable satisfaction of the Lessor.

(b) Upon the breach by the Lessor of any material covenant (each being an "Event of Default") and such breach shall not be corrected within 30 days after the Lessor receives written notice of such failure from the Lessee, then the Lessee may at any time thereafter, during the continuance of any such default, (x) give a written termination notice to the Lessor (specifying a date on which this Lease shall terminate) or (y) perform for the account of the Lessor and reduce its next Basic Rent payment accordingly.

11. Remedies, etc., Cumulative. Each right, power and

remedy of the parties provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by any party of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all such other rights, powers or remedies.

12. End of Lease Term. Upon the expiration or other termination of this Lease, the Lessee, at its expense, shall quit and surrender the Premises.

13. Inspection. The Lessor reserves the right to enter upon the Premises at reasonable times and inspect the Premises during the term of this Lease.

14. Right of First Refusal. In the event that the Lessee shall receive a bona fide offer from any person at any time during the Fixed Term or any Extended Term of this Lease to sell all, or substantially all, of the assets of the Lessee in Peru, Vermont, and in the event that the Lessee shall desire to sell the same for the amount specified in the offer, the Lessee shall give the Lessor prompt written notice of such offer and the Lessor shall have the option to purchase said assets for a period of 90 days after receipt of notice from the Lessee for the amount and on the terms specified in the offer made by such other person. In the event that the Lessor fails to exercise

the option set forth herein, then the Lessor's option shall terminate and be of no further force or effect.

15. Miscellaneous. This Lease embodies the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, leases and understandings of the parties relating hereto. If any term of this lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby. This Lease may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against whom enforcement of such change, waiver, discharge or termination is sought. This Lease shall be construed and enforced in accordance with and governed by the Laws of the State of Vermont. The headings in this Lease are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

16. Assignment. During the term of this Lease, the interest of the Lessee in this Lease shall not be assigned by the Lessee without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. The Lessor shall not be required to consent to any such assignment if the business affairs of the proposed tenant shall be ultrahazardous or illegal.

17. Corporation Status Notification. The Lessee will furnish the Department a list of officers and directors of the corporation and their addresses and promptly notify the Department of any changes. A certified list of the stockholders and amount of stock owned by each will be furnished the Department at its request.

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The Lessee shall notify the Department within fifteen (15) days of names of stockholders who acquire stock shares causing their ownership to exceed fifty (50) percent of shares issued or who otherwise acquire controlling interest in the corporation. If such a change of ownership will cause a substantial change in the use of the premises or in the financial integrity of the Lessee, the Lessor shall have the right to terminate this Lease upon thirty (30) days notice of intent to terminate which notice shall be given in writing within twenty (20) days of notification of proposed change of ownership.

18. Notice. All notices and other communications shall be in writing and shall be deemed to have been given when mailed by first class registered or certified mail, postage prepaid, addressed, if to the Lessor, to the Commissioner, and if to the Lessee, to the attention of John S. Cueman, Vice-President, or as to each to such other address as the parties may designate from time to time.

19. Status of Lease. 19.1. Authority of Commissioner. The parties acknowledge that the General Assembly has approved this Lease by Resolutions, 1982 Session, No. R-107, thereby empowering the Commissioner to execute this Lease pursuant to 10 V.S.A. §2606(b).

19.2. Authority of State. In the event that a court of competent jurisdiction shall determine that the Lessor is without the authority to lease as provided herein, or that the Commissioner lacks such authority, then this instrument shall be construed not as a lease but as an irrevocable, exclusive

license and concession, subject to the terms and conditions set forth herein, including the rights to extend the Term pursuant to Section 1.2.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the 22nd day of February 1983.

IN PRESENCE OF:

THE LESSOR

James E. Greene

State of Vermont
Commissioner of Forests, Parks
and Recreation

Malcolm H. Tramy

BY: *Leo C. Laferriere*

John A. Brennan

THE LESSEE

Bromley, Inc.

Deane M. Lawson

BY: *Stig Allertson*

STATE OF VERMONT
COUNTY OF *Washington*

At *Montpelier* this *22nd* day of *February*, 1983, personally appeared Leo C. Laferriere, Commissioner of Forests, Parks and Recreation, and he acknowledged this instrument by him sealed and subscribed to be his free act and deed and the free act and deed of the State of Vermont.

Before me

James E. Greene
Notary Public

STATE OF VERMONT
COUNTY OF *Windham*

At *Stratton* this *14th* day of *March*, 19
personally appeared *Stig Albertsson* duly authorized
agent of Bromley, Inc., and he acknowledged this instrument by
him sealed and subscribed to be his free act and deed and the
free act and deed of Bromley, Inc.

Before me *Diana M. Lawson*
Notary Public

Approved as to form:

John W. Chase
Office of the Attorney General