

# Burke Mountain Resort

LEASE

Sup. Dec 1 1984  
12/1/94

This contract and indenture made and entered into in Montpelier in the County of Washington and State of Vermont, by and between the State of Vermont, acting through the Secretary of Environmental Conservation and the Commissioner of Forests and Parks and with the approval of the Governor and the State Board of Forests and Parks (hereinafter called State) and Burke Mountain Recreation, Inc., a Vermont corporation, with its principal place of business at East Burke, in the County of Caledonia and State of Vermont (hereinafter called Lessee),

W I T N E S S E T H : that

It is mutually agreed by and between the parties hereto as follows:

1. That the State does hereby let, demise and lease unto the Lessee and its assigns the following parcel of land:

A portion of Darling State Park in the Town of Burke as indicated on the map which is Appendix A hereto attached and made a part hereof. Said parcel may be further described as follows:

That portion of Darling State Park lying in the Town of Burke in Range 13, Lot 8; Range 14, Lots 7 and 8; Range 15, Lots 7 and 8; and that portion of Lot 6, Range 14, which lies south of a line running easterly from the northeast corner of land formerly used as a camping area by the Lessee herein to a point on the north boundary of the park opposite the old meadow near the foot of the steepest part of the toll road above the site of the old CCC camp, and those parts of lots 9 in Range 14 and 15 which will permit locating the upper terminal of the proposed new lift line and associated trails.

The leased premises shall be used by Lessee for the purpose of developing and operating a skiing area including ski trails, ski lifts, warming shelters and restaurants, and maintenance facilities necessary for adequate servicing of these facilities. Lifts and restaurant shelters may also be operated during the summer.

The Lessee shall have the right of ingress and egress to and from said premises over and across any highway or trail already constructed or to be constructed by the State within the general area in which said premises are located.

There shall be reserved from the leased premises the area now used by the State for a lookout tower, the Educational Television Tower and living and working facilities necessary thereto. New roads or changes in existing facilities or roads shall not be done by either party within the area leased except by mutual consideration and agreement.

The map of the leased premises attached hereto shows the general location of all lifts and trails erected and existing upon the demised premises on the date hereof and being used by Lessee.

2. It is agreed between the parties that no type of lodging for hire other than camp grounds, shall be within the contemplation of this lease.

3. That the Lessee will maintain and operate any and all lifts, buildings, roads, campgrounds and other improvements now located upon said demised premises, except where inconsistent with provisions of this lease, and may erect and operate buildings or structures, including trails or ski trails, or additional lifts of such design and form as it shall determine. The plans, specifications and location of such buildings or structures, including trails or ski trails, or additional lifts shall meet laws and minimum standards established by the State of Vermont and shall be filed with the Commissioner of Forests and Parks 60 (sixty) days prior to the commencement of the construction thereof, and such construction shall not be commenced thereafter in the event that the Commissioner of Forests and Parks shall notify Lessee of its objection to such construction during 60 (sixty) day period in writing addressed to Lessee by certified mail. If the Commissioner of Forests and Parks shall fail to notify Lessee of its objection within sixty (60) days of its receiving the plans,

specifications and location thereof, then, and in that event, Lessee may consider the plans, specifications and location satisfactory.

4. That State will not build or maintain or lease, nor permit to be built or maintained or leased, on any land now owned by the State or hereafter acquired by the State within a radius of ten (10) miles from the boundaries of the demised premises, any tow, lift, funicular, gondola, or other conveyance whatsoever type, design or kind for the uphill transportation of persons, without first obtaining the written consent of the Lessee.

5. That the Lessee shall have and hold the premises above described with all the appurtenances thereof and the right to enforce the covenants of the State herein contained for and during an original term of ten (10) years beginning December 1, 1974, and ending December 1, 1984. The Lessee is hereby given and granted an option to extend the terms and provisions hereof for a further term of ten (10) years for the same rental and under the terms and conditions as provided for herein, said extended term to begin at the expiration of this lease; provided, however, that notice in writing of the exercise of such option shall be given to the State Board of Forests and Parks by the Lessee before the expiration of the term of this lease. The Lessee shall have the option to extend the term of this lease for three (3) additional terms of ten (10) years each; said option to be exercised at the end of each term as set forth above and each additional term to be subject to the provision of this lease.

6. That in addition to any benefits accruing to the State as expressly herein provided, the Lessee shall pay to the State as rental the following sum:

- (a) Lifts heretofore erected or to be erected on the land herein demised by State, five percent (5%) of gross receipts.
- (b) Five percent (5%) of receipts from fees collected from other

facilities administered by Lessee which include the so-called Toll Road, campground, picnic area or other similar facilities which may be approved.

- (c) From restaurants, sport shops and warming shelters, constructed by Lessee, on land herein demised by State, two and one-half percent ( $2\frac{1}{2}\%$ ) on all gross receipts.

Rentals shall be payable on a fiscal year basis and shall be paid not later than August 1 of each year for the fiscal year of Lessee ending April 30.

There shall be filed with the State with each of the above payments a certified public accountant's or registered public accountant's financial report covering the above for the fiscal period ending April 30 of each year.

7. That after the termination of the original ten (10) year term hereof, or any extended ten (10) year term hereof, the State shall have the option to purchase (but only in its entirety) the rights of the Lessee to this agreement and contract at the "investment value" as defined and set forth in Paragraph No. 8, plus an amount equal to ten percent (10%) of the gross receipts from the operations of the Lessee set forth in Paragraph No. 6(a) and (b) for the three (3) year period preceding the taking over of the property by the State.

This option to purchase shall not be available to the State, but shall be deemed to have been waived by the State, unless, at least six (6) months prior to the termination of the original term, or any extended term, the State shall notify the Lessee in writing that it elects to exercise its said option. That

if the option herein provided to the State is exercised as herein provided and ~~the purchase price paid, the Lessee shall not have the right to further extend~~

this lease as in Paragraph No. 5 provided. This option to purchase granted to the State shall apply in the same manner to each extended term hereof to be exercised at the end of each said term, provided that the six (6) months prior to the termination of the original term, or any extended term, the State shall notify the Lessee in writing that it elects to exercise its said option. That

if the option herein provided to the State is exercised as herein provided and the purchase price paid, the Lessee shall not have the right to further extend this lease as in Paragraph No. 5 provided. This option to purchase granted to the State shall apply in the same manner to each extended term hereof to be exercised at the end of each said term, provided that the six (6) months' previous written notice, as herein before provided, shall be given by the State to the Lessee.

8. State, if electing to exercise its option as provided in Paragraph No. 7, shall pay Lessee the "investment value" of all installations upon the demised premises less one percent (1%) for each full year period which shall have elapsed between the date on which capital expenditures shall have been made and the date on which the State shall notify Lessee of its election to exercise its option as aforesaid.

That the "investment value" of the items specified in Paragraphs No. 6, No. 7 and this paragraph of the properties of the Lessee are used shall include the cost of the following:

- (a) Cost of the lifts.
- (b) The cost of the installation of the lifts.
- (c) Any architectural planning or survey expense.
- (d) Corporate organization expenses.
- (e) Cost of erection of the lifts and other structures.
- (f) Any and all other expenditures relating to the installation and construction of the lifts and associated structures, roads, parking areas and buildings, together with the equipment therein.
- (g) Construction of ski trails and slopes.

9. The State may purchase the entire rights of the Lessee herein at any time, providing the State and the Lessee can mutually agree to such purchase and sale and the terms hereof.

10. Any campground or picnic facilities and the paved road to the summit of Burke Mountain owned by the State, will be maintained and administered by the Lessee in agreement with the State. Tolls or fees may be set and charged by the Lessee to all but State employees having State business on Burke Mt. The Lessee shall print and publish a list of charges for the use of all facilities administered by the Lessee and shall furnish such list to the State Board of Forests and Parks and the prices thereon listed shall be in force and effect until the Lessee shall cause a new list of charges and tariffs to be printed and a copy sent to such Board. provided that the Lessee shall not (except with the approval of the Commissioner of Forests and Parks) between October 31st of any year and October 31st of the following year, increase such charges. The approval of the State Board of Forests and Parks shall not be withheld unreasonably.

11. That the Lessee agrees to indemnify and save harmless the State, its agents, servants and officials from any and all damages suffered by any person or persons by reason of the use, maintenance or operation of the lift or lifts, or in connection with the use of said leased premises, and that the Lessee will carry public liability insurance in an amount of at least \$100,000/\$3,000,000 on the operation of all types of lifts, and such policy shall be extended to the State, and, if feasible, all State officials.

12. That all lifts, including towers, cables, chairs, railings, platforms and all buildings, shall be deemed to be real estate immediately upon construction and erection and that hereafter the same shall be deemed to be the property of the State subject only to the leasehold rights of the Lessee herein.

It is agreed that the Lessee may substitute and/or replace during the term of this lease any part or all of the lift or lifts, or any other of the above described property, notwithstanding it being designated real estate herein, for new facilities of substantially like or better kind and quality subject to the approval of the Commissioner of Forests and Parks.

13. That the State hereby agrees that the Lessee may cut all trees necessary in carrying out plans approved under Paragraph 3; that the trees, after being felled shall be disposed of as the Lessee may decide. The Lessee shall pay the State the prevailing stumpage value for trees cut.

14. The Lessee agrees that the design and erection and operation of any and all lifts shall meet the requirements and standards of the State of Vermont Safety Standards for Passenger Tramways as administered by the Vermont Department of Industrial Relations, and the Lessee further agrees to abide by the laws of the State of Vermont.

15. That all the covenants and agreements herein contained shall, unless otherwise provided, be construed to be for and during the term of this instrument and any extension thereof.

16. That the right-of-way granted in Paragraph 1 hereof shall be extended to and include all members of the public subject to fees and charges as described in this lease.

17. That this instrument is executed in duplicate, one copy for the State and one for the Lessee and each of said copies is deemed to be a duplicate original.

18. That the Lessee, its agents, employees or other authorized persons of the Lessee, shall have the right to go upon such lands of the State contiguous or near to the land herein deeded for all proper business purposes, all in relation to the operation of the business and this lease, and the Lessee, its agents, employees or other authorized persons of the Lessee shall have the right to build such temporary roads across such lands of the State as shall be necessary for the construction or replacement of any lift or lifts, buildings and other structures necessary thereto providing such roads or trails meet State standards to prevent erosion. The location of such roads, however, shall be subject to the written approval of the State.

19. That in the event it is held by a court of competent jurisdiction that the officials executing this instrument are without power to lease, this entire instrument shall be construed to grant to the Lessee an exclusive irrevocable license and concession to go upon the land herein purported to be buildings, platforms and railings, and such exclusive irrevocable license and concession shall, at the option of the Lessee, be extended through the periods described in Section No. 5. All the terms and conditions in this document shall apply to said irrevocable license.

20. That the Lessee will operate the lift or lifts at all reasonable times in the winter season, provided that proper skiing conditions exist, and may operate at least one chair lift during the summer months provided that for both winter and summer sufficient demand for such operation exists, but in no event shall the annual operation of the lift or lifts be less than forty (40) days, unless prevented by Acts of God, war, a forest fire or any other unusual circumstances or mechanical difficulties, or unless the Lessee and the State, acting through its Commissioner of Forests and Parks, otherwise agree in writing, and for breach of this covenant the State shall have the right to declare this lease terminated and shall be entitled to possession of the demised premises and the appurtenances thereof. Upon such termination, the State shall pay the Lessee the sums provided for in paragraphs Nos. 7 and 8 of this lease.

21. That the State shall have the right to enter upon the leased premises at all reasonable times for the purpose of inspection of the leased premises, or construction of additional parking space of State buildings or facilities, and shall have the further right to make selective cutting of timber or wood on said premises provided that said cutting shall not interfere with the operation of Lessee under this lease, and shall retain all other rights in the

premises not inconsistent with this lease.

22. That the Lessee is granted the exclusive right to conduct in or about the premises herein leased, a ski school under competent leadership for the purpose of teaching skiing.

23. That the State or Lessee, upon breach of any covenant therein contained, shall have the right to declare this lease terminated by thirty (30) days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on this 21<sup>st</sup> day of April A.D., 1975 and on behalf of the State of Vermont executed this indenture by the signature of the Secretary of the Agency of Environmental Conservation, the Commissioner of Forests and Parks, Director of Forests, approved by the Governor, and under the authority of Title 10, Section 1604, of the Vermont Statutes Annotated.

WITNESSES:

Margaret Soucebrin  
Ann Boutin  
Margaret Soucebrin  
Ann Boutin  
Shereen Sheehan  
Kathleen Wheeler

STATE OF VERMONT  
AGENCY OF ENVIRONMENTAL CONSERVATION

[Signature]  
Secretary

[Signature]  
Commissioner

[Signature]  
Director of Forests

BURKE MOUNTAIN RECREATION, INC.

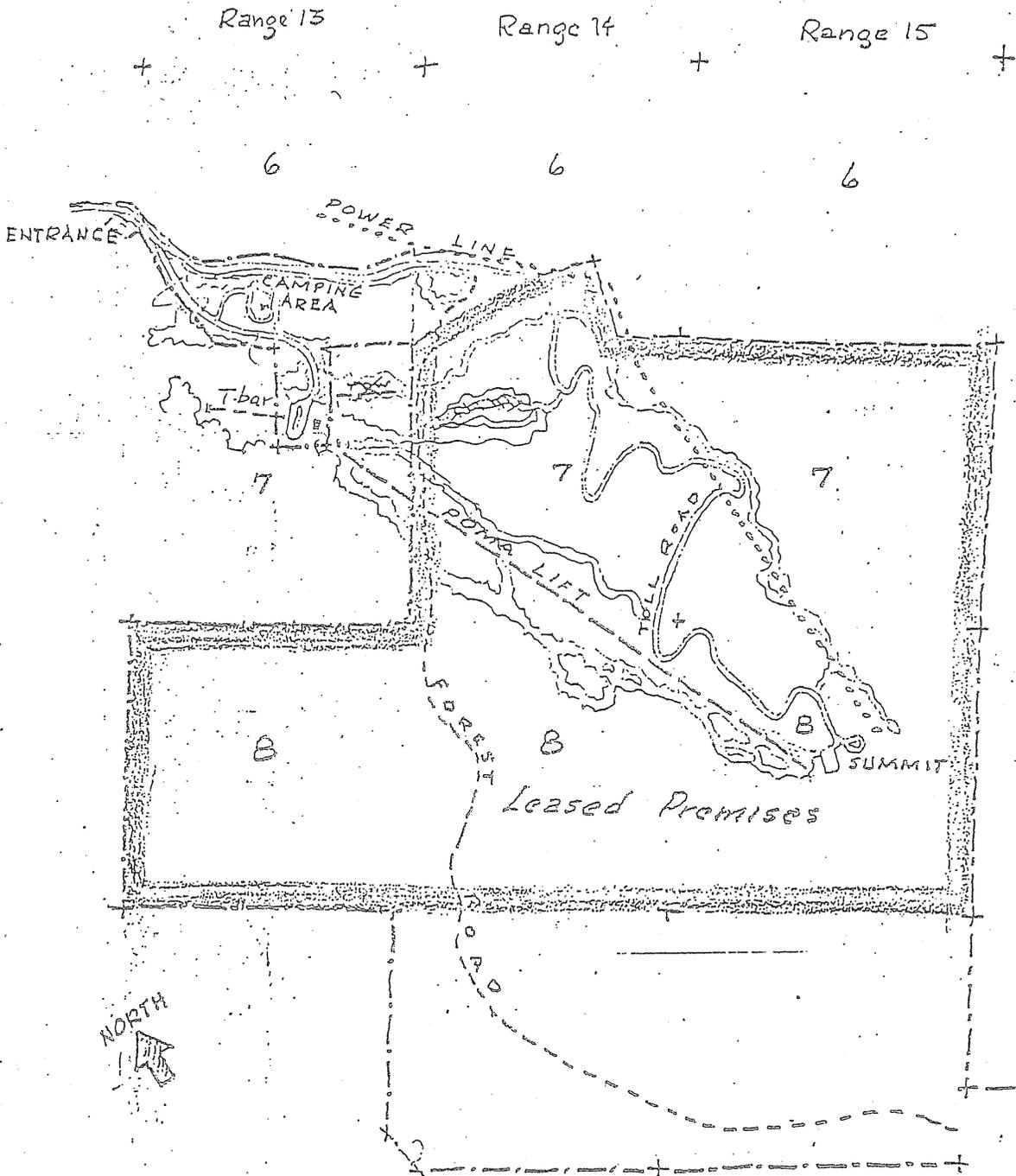
[Signature]  
President

APPROVED

[Signature]  
Governor

[Signature]  
s/ Thomas P. Salmon





Sketch of North portion

DARLING STATE PARK

Showing premises leased  
to Burke Mountain Recreation, Inc.

Not to Scale

Jan 1966-1965

**AMENDMENT TO LEASE**

**By and Between**

**Burke 2000, LLC**

**and**

**State of Vermont**

**Agency of Natural Resources**

**Department of Forests, Parks and Recreation**

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**WHEREAS**, the State of Vermont and Ski Burke Mt., Inc., a Vermont corporation, entered into that certain lease dated the 10<sup>th</sup> day of February, 1956 concerning a portion of land on the westerly slope of Burke Mountain, in the Town of Burke, to promote winter sports and otherwise advertise its recreational facilities and to arrange for the construction of uphill lifts in the Darling State Park; and

**WHEREAS**, the State of Vermont and Burke Mountain Recreation, Inc. entered into that certain lease dated the 2<sup>nd</sup> day of March, 1966 concerning a portion of Darling State Park in the Town of Burke to promote winter sports and summer and winter recreational facilities within its boundaries and to provide for the public good and benefit by the utilization of state-owned lands in recreational areas for the mutual good of the public; and

**WHEREAS**, a Contract and Indenture (“Lease”), was made and entered into by and between the State of Vermont, by its Commissioner of Forests, Parks and Recreation, hereinafter called the “State”, and Burke Mountain Recreation, Inc., on April 21, 1975 (“Original Date”) concerning a portion of Darling State Park in the Town of Burke for the purpose of developing and operating a skiing area; and

**WHEREAS**, the terms of said Lease provided for an original term of ten (10) years beginning December 1, 1974 and ending December 1, 1984, and further provided for four (4) additional ten year renewal terms, the final renewal term to end on December 1, 2024; and

**WHEREAS**, LEASE was most recently assigned to Burke 2000 LLC, a limited liability corporation with a place of business in East Burke, Vermont and hereinafter called the “Lessee” from B & I Lending, LLC by Assignment and Assumption of Lease dated October 31, 2000; and

**WHEREAS**, the State and Lessee wish to amend the lease in order to provide for three additional ten-year extension periods and to make certain technical changes as described within this Amendment to Lease because the development and operation of winter and

summer recreational facilities is for the mutual benefit of the public and the State and such facilities provide recreational opportunities to the public subject only to reasonable fees for such use; and

**WHEREAS**, this Amendment to Lease was authorized by Joint Resolution J.R.H. 37 of the 2007 session of the Vermont General Assembly, contingent on the completion of an economic study of the existing ski lease which demonstrates that the State's ski lease formula is in the best interest of the state and compares favorably to other publicly administered ski leases in peer jurisdictions; and

**WHEREAS**, the Commissioner of Forests, Parks and Recreation commissioned the above-referenced economic study of the State's existing ski leases which concluded that "The structure of fees charged under the Vermont program is directly comparable to those employed in similar circumstances and in many instances produces higher revenues for the use of public lands.";

**NOW THEREFORE**, in consideration of the mutual covenants and agreements which shall relate back to the Original Date of the Lease hereinafter set forth, the parties agree to the following amendments to the Lease:

1. Page 1, paragraph 1: Insert the following language into paragraph 2 as follows:

*"The leased premises shall be used by Lessee for the purpose of operating and developing a skiing area, including but expressly not limited to ski trails, ski lifts, hiking and mountain biking trails, warming shelters and restaurants and maintenance facilities necessary for adequate servicing of these facilities, and for the promotion and development of summer and winter recreation for the mutual benefit of the public and the State. Such facilities shall be open and available for use by the public subject only to reasonable fees established by Lessee, provided, however, that the warming huts, restaurants, building facilities and ski lifts shall only be open to the general public during Lessee's normal hours of operation. Lifts and restaurant shelters may also be operated during the Lessee's summer hours of operation as the Lessee in its sole discretion shall determine."*

2. Page 3, condition 5 - Delete the last sentence of this section in its entirety and replace it with the following sentence:

*The Lessee shall have the option to extend the terms of this Lease for six (6) additional terms of ten (10) years each; each said option to be exercised at the end of each term as set forth above and each additional term to be subject to the provisions of this lease, as amended. This Lease, if so extended, shall terminate on December 1, 2054.*

3. Page 6, condition 12 – Delete this section in its entirety and replace with the following language:

(a) Title to all property of whatsoever nature which the Lessee has heretofore or may hereafter place on the leased premises shall remain in the Lessee and the Lessee shall have the right to mortgage or pledge the same, provided that Lessee's mortgage or pledge of any assets which the Lessee is not entitled to remove upon termination of this Lease shall not, with respect to such assets, extend beyond the expiration of this lease including all options to renew said lease.

(b) The Lessee shall have the right to assign or pledge the within lease as collateral security for any mortgages and liens on its property.

(c) Except as aforesaid, the lease shall not be assigned nor sublet without the written permission of the State.

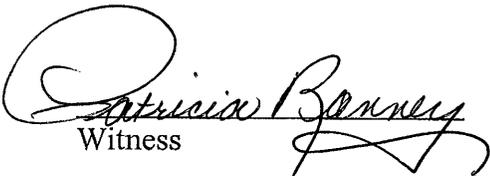
(d) It is agreed that the Lessee may substitute and/or replace during the terms of this lease any part or all of the lift or lifts, or any other of the above described property, notwithstanding it being designated real estate herein, for new facilities of substantially like or better kind and quality subject to the approval of the Commissioner of Forests, Parks and Recreation, which approval shall not be unreasonably withheld. Upon termination of this lease including any extension thereof, the Lessee, its successors or assigns, may remove such property from the leased premises, except permanent buildings. The removal of the property hereunder shall be effected so as to disturb or damage the leased premises as little as possible, and after such removal the Lessee shall restore said land to its original condition to the greatest extent reasonably possible, subject to the approval of the Commissioner of Forests, Parks and Recreation.

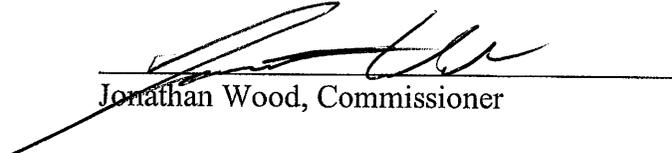
Except as expressly modified hereby, all of the other terms and conditions of the Lease shall remain unchanged and continue in full force and effect.

**IN WITNESS WHEREOF**, BURKE 2000, LLC and the STATE OF VERMONT have hereunto caused to be set their hands and seals this 26<sup>th</sup> day of June, A.D., 2008.

IN PRESENCE OF:

STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF FORESTS, PARKS  
AND RECREATION

  
Witness

  
Jonathan Wood, Commissioner

STATE OF VERMONT )  
COUNTY OF WASHINGTON )ss

At Waterbury, in said county, this 26<sup>th</sup> day of June, 2008, personally appeared Jonathan Wood, Commissioner of the Department of Forests, Parks and Recreation, and acknowledged the foregoing instrument by him subscribed to be his free act and deed and the free act and deed of the State of Vermont.

Before me, Patricia Ranney  
Notary Public

IN PRESENCE OF:

Grisella Aldrich  
Witness

BURKE 2000, LLC  
Tim McGuire  
Tim McGuire  
Duly Authorized Agent

STATE OF VERMONT )  
COUNTY OF CALEDONIA )ss

At East Burke, in said county, this 20<sup>th</sup> day of June, 2008, personally appeared Tim McGuire, duly authorized agent of Burke 2000 LLC and acknowledged the foregoing instrument by him subscribed to be his free act and deed and the free act and deed of the State of Vermont.

Before me, Grisella Aldrich  
Notary Public

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