EXHIBIT 1

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of this ____ day of August 2019, by and among (i) the Township of Vernon ("Vernon"), (ii) the Vernon Township Municipal Utilities Authority ("VTMUA," and together with Vernon, the "Vernon Parties"), (iii) the Sussex County Board of Chosen Freeholders (the "County"), and (iv) Mountain Creek Resort, Inc. ("Mountain Creek") (each being a "Party" and all collectively referred to as the "Parties").

RECITALS

WHEREAS, Mountain Creek and its affiliates own a four-season resort that is commonly known as the Mountain Creek Resort ("Resort") located in Vernon, New Jersey, consisting of a ski area, waterpark, bike park, multiple restaurants, the Appalachian Hotel, and the Black Creek Sanctuary townhomes. The Resort's operations include skiing/snowboarding, snow tubing, the waterpark, the bike park, and a seasonal fall festival called Oktober Fest (the "Recreational Activities").[1] In addition, the Resort has other non-recreational sources of revenue including sales in connection with lodging, food, beverages, parking, apparel and other retail items, equipment, land, banquet-related services, and other similar goods or services (the "Non-Recreational Activities"); and

WHEREAS, Mountain Creek requested Vernon to acquire additional wastewater capacity from SCMUA and build infrastructure necessary for additional wastewater capacity so that

[1] For the avoidance of doubt, Recreational Activities, regarding which the Vernon Municipal Fee (defined below) will be charged, include any and all present and future Recreational Activities that are conducted (a) on the Land (defined below), and (b) on property which in the future may be owned, operated or leased by Mountain Creek or a Resort Operator, defined herein, in Vernon (the "Future Land"), including but not limited to any indoor waterpark, but shall not include any activities or sales with respect to which a sales tax or other similar type of purchase tax is applied as of the Effective Date (defined below) of this Agreement (the "Taxed Activities"). In the event that a sales or similar type of purchase tax is applied to any Recreational Activity after the Effective Date with respect to which there is no such sales or similar type of purchase tax as of the Effective Date of this Agreement, the obligation to charge, collect, and remit the Vernon Municipal Fee (defined below) shall continue to apply and shall be collected and held in Trust in accordance with this Agreement.

Mountain Creek could have additional wastewater capacity for future development ("Project") and Vernon agreed to the request; and

WHEREAS, the Project was funded by Vernon and the Sussex County Municipal Utilities Authority ("SCMUA") issuing bonds ("Sewer Bonds"); and

WHEREAS, Vernon and Mountain Creek entered into a sewer agreement dated October 24, 2005 ("2005 Sewer Agreement"),[2] in which Mountain Creek agreed, subject to the terms thereof, to pay the debt service on the Sewer Bonds, plus certain costs associated with the development, construction, operation, and maintenance of the Project, less the revenue obtained by Vernon for sewer charges on an annual basis; and

WHEREAS, on July 18, 2012, Vernon and Mountain Creek entered into an agreement ("Sewer Agreement"),[3] which modified and superseded the 2005 Sewer Agreement; and

WHEREAS, pursuant to the terms of the Sewer Agreement, Mountain Creek undertook certain obligations in connection with the costs of the Project as described below:

i. VTMUA Budget Deficit Obligation. Pursuant to section 5.03 of the Sewer Agreement, Mountain Creek agreed to pay 63% of the yearly budget deficit, if any, incurred by the VTMUA (the "VTMUA Budget Deficit") during the prior year. The VTMUA Budget Deficit is calculated as set forth in section 5.04 of the Sewer Agreement, and represents 63% of VTMUA's annual operating expenses less certain credits, including certain fees required to be collected by the Vernon Parties;

ii. Past Due Sewer Obligations. Under section 6.02 of the Sewer Agreement, Mountain Creek agreed to pay VTMUA "10% of [Mountain Creek's] accumulated debt . . . to Vernon Township plus Vernon's borrowing costs associated with carrying the debt over the 5 year period from 1/1/12 to 12/31/16 as determined by the rate paid on municipal bonds issued by Vernon during this time period";

iii. Vernon Bond Obligations. Under section 5.02 of the Sewer Agreement, Mountain Creek agreed to reimburse Vernon on a yearly basis for certain payments on the debt service attributable to the Vernon Bonds (as defined in article 5.02 of the Sewer Agreement); and

[2] Attached hereto as **Exhibit A** is the 2005 Sewer Agreement.

[3] Attached hereto as **Exhibit B** is the Sewer Agreement.

iv. Pump House Obligations. Under section 2.02 of the Sewer Agreement, Mountain Creek undertook certain obligations ("Pump House Obligations") to Vernon in connection with the design, permitting, and construction associated with the Sand Hill Road Sewage Pump Station (the "Pump House"). The Past Due Sewer Obligations and the Vernon Bond Obligations will hereinafter be referred to as the "Fixed Sewer Agreement Obligations." Together, the Fixed Sewer Agreement Obligations, the VTMUA Budget Deficit Obligation and the Pump House Obligations will be hereinafter referred to as the "Sewer Agreement Obligations."

WHEREAS, subject to the terms thereof, the Sewer Agreement Obligations continue annually until the Sewer Bonds are paid in full; and

WHEREAS, on May 15, 2017 (the "Petition Date"), Mountain Creek and certain of its affiliates each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing their chapter 11 cases (collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of New Jersey under case number 17-19899 (SLM) (the "Court"); and

WHEREAS, prior to the Petition Date and pursuant to the terms of the Sewer Agreement, M&T Bank ("M&T"), at the request of Mountain Creek, issued a letter of credit in favor of Vernon in the approximate amount of $1.9 million (the "M&T Letter of Credit") to secure obligations owed to Vernon under the Sewer Agreement and the M&T Letter of Credit remains outstanding; and

WHEREAS, the Vernon Parties allege that Mountain Creek subsequently defaulted on its obligations under the Sewer Agreement; and

WHEREAS, on November 13, 2017, Vernon filed a proof of claim [Claim No. 140] asserting that the sum of $28,345,874.94 (the "Vernon Township Claim") is due under the Sewer Agreement and further alleging that such sums are secured by assets of Mountain Creek; and

WHEREAS, on November 13, 2017, the VTMUA filed a proof of claim [Claim No. 141] (the "VTMUA Claim," and together with the Vernon Township Claim, the "Vernon Claims")

asserting that the sum of $28,345,874.94 is due under the Sewer Agreement and further alleging that such sums are secured by assets of Mountain Creek; and

WHEREAS, Vernon has asserted that the amount of the Vernon Claims exceeds the amount of the secured claim (the "M&T Secured Claim") of M&T which claim is in the principal amount of approximately $23 million, which the Debtors and M&T contend is secured by a first priority lien on substantially all of the Debtors' assets, including the real estate upon which the Debtors operate their business; and

WHEREAS, on March 30, 2018, the Vernon Parties filed an adversary proceeding (the "Vernon Adversary Proceeding") in the Chapter 11 Cases captioned *In re Mountain Creek Resort, Inc., et al., (Township of Vernon et al. v. Mountain Creek Resort, Inc., et al.),* Adv. Pro. No. 18-01664 (SLM) (Bankr. D.N.J. Mar. 30, 2018),[4] seeking, among other things, a declaration that the Vernon Parties hold first priority liens on all of Mountain Creek's real property to secure in excess of $28 million allegedly due under the Sewer Agreement; Mountain Creek and all the other defendants in the Vernon Adversary Proceeding disputed that the Vernon Parties hold liens, or are entitled to assert any liens, on any of Mountain Creek's property including its real estate; and

WHEREAS, on June 5, 2018, following a May 31, 2018 status conference in the Vernon Adversary Proceeding, the Court entered an order pursuant to D.N.J. LBR 9019(a)(1) [Adv. Pro. Doc. No. 20] (the "Mediation Order") requiring that the parties to the Vernon Adversary Proceeding make a good faith attempt to settle the litigation through mediation, and appointing the Honorable Michael B. Kaplan as mediator; and

WHEREAS, on July 16, 2018, Mountain Creek filed the *Motion to Reject Executory Contract Between Mountain Creek Resort, Inc. and Township of Vernon* [Doc. No. 666] (the "Motion to Reject"); and

[4] References to pleadings and other documents filed in the Vernon Adversary Proceeding will be cited as [Adv. Pro. Doc. No. __].

WHEREAS, on July 31, 2018, the Bankruptcy Court adjourned the Motion to Reject in light of the Mediation Order; and

WHEREAS, after engaging in several mediation sessions with all of the parties to the Vernon Adversary Proceeding, and separate negotiations among the Vernon Parties and Mountain Creek, the Vernon Parties and Mountain Creek reached an agreement to resolve the Vernon Adversary Proceeding and the Vernon Claims and all claims arising from or relating to the Sewer Agreement and the transactions relating thereto which was memorialized in a settlement agreement (the "Original Settlement Agreement"); and

WHEREAS, on December 21, 2018, Mountain Creek filed a motion to approve the Original Settlement Agreement; and

WHEREAS, on January 31, 2019, the Sussex County Board of Chosen Freeholders filed an objection and, thereafter, a supplemental objection to the motion to approve the Original Settlement Agreement and, thereafter, the State of New Jersey, Division of Community Affairs, advised counsel for Mountain Creek that it had concerns regarding the Original Settlement Agreement; and

WHEREAS, following further mediation, the Parties reached an agreement to resolve the Vernon Adversary Proceeding and the Vernon Claims and all claims arising from or relating to the Sewer Agreement and the transactions relating thereto which agreement is evidenced, and embodied, in this Agreement which supersedes and replaces the Original Settlement Agreement in its entirety; and

WHEREAS, the mediation was reactivated for the Parties to address and resolve the issues and concerns raised by Sussex County and the State of New Jersey; and

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and in acknowledgment by each of the Parties hereto that such terms and conditions constitute good and valuable consideration, the Parties, and each of them, hereby agree as follows:

1) Sewer Agreement Obligations: A chart reflecting the estimated annual Sewer Agreement Obligations (the "Sewer Agreement Obligation Schedule") is set forth in **Exhibit C** annexed hereto. The annual payments listed in connection with the Fixed Sewer Agreement Obligations represent a payment schedule agreed upon by Mountain Creek and the Vernon Parties and are not subject to change. The annual VTMUA Budget Deficit Obligation figures reflected in **Exhibit C** are projections based on estimates prepared by the VTMUA, and thus, remain subject to change based upon the actual VTMUA Budget Deficit (if any) in any particular year, as calculated pursuant to article 5.04 of the Sewer Agreement. The Pump House Obligations[5] will be determined after the Vernon Parties, on notice to Mountain Creek, calculate all costs and expenses associated with the design, permitting, construction and financing associated with the Pump House.

2) Vernon Municipal Fees.

   i. Collection of Vernon Municipal Fee. Commencing September 7, 2018, subject to the terms set forth herein, Mountain Creek and/or any operator licensed by or in contract with Mountain Creek (including any successor to Mountain Creek) to operate/manage any Recreational Activity (hereinafter, collectively, "Resort Operator(s)") shall cause to be charged and collected from every customer purchasing a ticket for admission----(whether such ticket is an individual ticket or included as part of a group sale or ticket/admission package, in which case the Vernon Municipal Fee will be charged to the Recreational Activity portion of such ticket/admission package) for any Recreational Activity a fee equal to 7% of the gross ticket price related to such Recreational Activities (the "Vernon Municipal Fee(s)"). In the event there is a shortfall in collections of the Vernon Municipal Fees (the "Shortfall") necessary to repay the annual Sewer Agreement Obligations due in any calendar year, in addition to all other remedies provided herein, Mountain Creek and/or a Resort Operator shall, from the first day of the calendar year immediately following the Shortfall, cause to be charged and collected from

[5] The Parties agree that the monthly obligation for the Pump House Obligations will be based on the total estimated cost and expenses to be incurred by the Vernon Parties, including costs associated with any bond offering or financing. The Vernon Parties currently estimate the monthly Pump House Obligations to be between $6,800.00-$9,500.00 based on the availability of financing or bonding and estimated costs to design and permit the Pump House. The Vernon Parties further agree that they will use good faith commercial best efforts to issue bonds or obtain financing on the best financial terms possible under the circumstances and will provide updates to Mountain Creek as reasonably requested by Mountain Creek throughout the process of (a) designing and constructing the upgrade to the Pump House, and (b) issuing the bonds or obtaining such other financing, with the goal of designing and constructing the upgrade to the Pump House on the most economical terms possible. The Parties expressly acknowledge that the Vernon Parties shall have the sole authority and control relating to the design and construction of the Pump House; provided, however, the Vernon Parties shall use their best efforts to design and construct a Pump House with capacity that is sufficient to handle Vernon's needs from the Town Center (as defined in the Sewer Agreement) and the Developer's Capacity Allocation (defined below). Vernon shall not be obligated, at its expense, to provide any additional capacity in the Pump House.

every customer purchasing a ticket for admission for any Recreational Activity a fee equal to 8% of the gross ticket price related to such Recreational Activities until such time as the Shortfall for the prior year(s) is fully paid. If the Shortfall, if any, is paid, Mountain Creek shall reduce the fee to 7% of the gross ticket price.

ii. Vernon Municipal Fee Account. Until such time as all of the Sewer Agreement Obligations are paid, all Vernon Municipal Fees that are collected shall constitute the property of the Vernon Parties and shall be segregated and held by Mountain Creek and/or a Resort Operator in an interest-bearing account (the "Vernon Municipal Fee Account") in express trust for the Vernon Parties for the specific purpose of paying the Sewer Agreement Obligations as required under this Agreement, provided, however, those portions of the excess Vernon Municipal Fees held in the Vernon Municipal Account that are authorized to be disbursed to Mountain Creek (including any successor thereto) pursuant to the terms hereof shall not constitute property of the Vernon Parties. Except as otherwise set forth herein, neither Mountain Creek nor a Resort Operator shall have any obligation to pay any of the Sewer Agreement Obligations other than from the collection of the Vernon Municipal Fees and the Security, as defined herein.

iii. Calculation of the Estimated Portion of the Sewer Agreement Obligations. Within thirty (30) days of the Effective Date and then by January 31st of each year commencing in 2020, Vernon shall provide Mountain Creek with an annual notice (the "Notice") which shall include the following: (a) the amount of the VTMUA Budget Deficit for the prior year; (b) the VTMUA Budget Deficit Obligation (i.e., 63% of the VTMUA Budget Deficit); (c) copies of the most recent VTMUA budget and any documentation utilized by the Vernon Parties to calculate the VTMUA Budget Deficit and such other information related to the calculation of the VTMUA Budget Deficit that is required pursuant to the Sewer Agreement; (d) the amount of the Fixed Sewer Agreement Obligations for such year; and (e) the amount of any Pump House Obligations that have been incurred or will be incurred in the next year (collectively, the "Annual Notice Obligation"). Within twenty (20) days from Mountain Creek's receipt of the Annual Notice Obligation, Mountain Creek may dispute the calculation of the VTMUA Budget Deficit and the VTMUA Budget Deficit Obligation or may request an audit of sums due to SCUMA by providing written notice (the "Dispute Notice") to the Vernon Parties and VTMUA. If the Parties are unable to reach a consensual resolution regarding any dispute within thirty (30) days after the Dispute Notice is issued, Mountain Creek shall be obligated to pay the Vernon Parties the undisputed amounts in accordance with the timeline set forth below (and subject in all respects to the availability of sufficient Vernon Municipal Fees) and the Parties shall resolve the dispute over any disputed portion of the Sewer Agreement Obligations pursuant to the arbitration procedures outlined in Article 5.06 of the Sewer Agreement.

iv. Payment of Sewer Agreement Obligations for 2018. On the Effective Date, Mountain Creek shall cause to be paid from any source, including the DIP financing, to the VTMUA, using the wire instructions set forth on **Exhibit F** hereto, the past due sum of $918,594.28 in complete satisfaction of all sums the

Vernon Parties claim to be due under the terms of the Sewer Agreement for the year 2018.

v. Payment of Sewer Agreement Obligations Subsequent to 2018.

Within two (2) business days of the entry of a final non-appealable Order approving this Agreement, Mountain Creek and/or a Resort Operator shall disburse to the VTMUA, using the wire instructions set forth on **Exhibit F** hereto, the Vernon Municipal Fees held in the Vernon Municipal Fee Account (as of June 25, 2019, the balance of the Vernon Municipal Fee Account was $764,439.22), and the Vernon Parties shall apply such payment against the Annual Obligation due for 2019 (the "Initial Payment"). On or before January 1st, April 1st, July 1st and October 1st of each year (commencing October 1, 2019), Mountain Creek and/or a Resort Operator shall disburse, using the wire instructions set forth on **Exhibit F** hereto, the Vernon Municipal Fees held in the Vernon Municipal Fee Account as of December 1st, March 1st, June 1st and September 1st, respectively, towards payment of the Sewer Agreement Obligations owed for that calendar year (together with such reports as reasonably agreed to by Mountain Creek and the Vernon Parties supporting and evidencing the calculation of the Vernon Municipal Fees collected through December 1st, March 1st, June 1st and September 1st of the particular year). The Vernon Parties reserve the right to review the books and records of Mountain Creek and a Resort Operator (to the extent that such books and records relate to the charging, collection, and remittance of the Vernon Municipal Fee commencing on the Effective Date (defined below) of this Agreement), and to audit the Vernon Municipal Fee Account at any reasonable time by an auditor solely of the Vernon Parties choosing during reasonable business hours (the "Review and Audit Rights").[6]

The Vernon Parties must provide at least seven (7) business days advance written notice, and shall pay all expenses related to exercising their Review and Audit Rights. All information obtained and/or reviewed by the Vernon Parties pursuant to the Review and Audit rights shall be deemed confidential information, and shall not be disseminated to any third party (including, for the avoidance of doubt, any resident or other person or entity affiliated with Vernon that is not a member of the Mayor's Office, a member of the Township Council of Vernon, the VTMUA Board, or any other employee of Vernon whose employment by Vernon encompasses issues that arise in connection with this Agreement) other than the professionals employed by the Vernon Parties, and except as authorized (a) in writing by Mountain Creek or a Resort Operator, as applicable, (b) pursuant to the order of a court of competent jurisdiction, or (c) as required by applicable law. If the date on which Mountain Creek is required to disburse the Vernon Municipal Fees falls on a weekend or holiday, any payments under this paragraph shall be due on the next business day.

[6] For the avoidance of doubt, the Review and Audit Rights are limited to fees charged, collected, and remitted on or after the Effective Date (defined below) of this Agreement.

vi. Excess Vernon Municipal Fees. To the extent the Vernon Municipal Fees in the Vernon Municipal Fee Account are greater than the amount of the Sewer Agreement Obligations for any particular calendar year, such excess payments shall be held in the Vernon Municipal Fee Account, and paid and applied to Sewer Agreement Obligations due in the following year(s) in accordance with the timeline set forth in paragraph 2(v) above. Furthermore, in the event the amount held in the Vernon Municipal Fee Account exceeds an amount equal to twice the Sewer Agreement Obligations of the preceding year (the "Reserve Cap"), Mountain Creek (or any successor thereof) shall be entitled to utilize any such excess amount in its sole discretion and such excess for that year only shall not constitute trust funds held for the benefit of the Vernon Parties. For example, if at the end of 2020, (a) the amount of $2,064,611 (more than twice the projected Sewer Agreement Obligations for 2019) is in the Vernon Municipal Fee Account, and (b) Mountain Creek paid the full amount of the Sewer Agreement Obligations owed for 2020, then Mountain Creek (or any successor thereof) shall be entitled (x) to utilize the excess funds above the Reserve Cap (which for 2020 would be $2,064,611, assuming the VTMUA Budget Deficit is as reflected on **Exhibit C**) and (y) disburse the funds in the Vernon Municipal Fee Account in satisfaction of Sewer Agreement Obligations owed for calendar year 2021 in accordance with the timeline outlined in section 2(v) above.

vii. Minimum Annual Payment and Security. Notwithstanding anything to the contrary herein, Mountain Creek and a Resort Operator shall make a minimum payment to the Vernon Parties of $600,000 for years 2020, 2021, 2022 and 2023: and a minimum payment of $350,000 in years 2024 through the date on which the Sewer Agreement Obligations are paid in full (the "Minimum Payment"). The Minimum Payment shall be secured by the Vernon Letter of Credit (as defined below) and a lien on the Land as set forth in paragraphs 3(viii) and 3(ix) below in years 2020, 2021, 2022 and 2023, and by a lien on the Land as set forth in paragraph 3(ix) below for years 2024 through the date on which the Sewer Agreement Obligations are paid in full (the "Security").

viii. Vernon Letter of Credit. On the Effective Date, Mountain Creek and/or a Resort Operator shall post a letter of credit in a form reasonably acceptable to the Vernon Parties in the amount of $250,000 to secure payment of all or a portion of the Minimum Payment due in 2020, 2021, 2022, and 2023 (the "Vernon Letter of Credit"). To the extent the Vernon Municipal Fees in the Vernon Municipal Fee Account are not sufficient to pay the Minimum Payment for 2020, 2021, 2022 and 2023, creating a Minimum Payment deficiency (the "Deficiency"), the Vernon Parties may draw on the Vernon Letter of credit to pay the Deficiency following receipt of the October 1 payment in such years. The Vernon Letter of Credit shall be the first source of repayment for any Deficiency. Mountain Creek and/or a Resort Operator shall replenish the Vernon Letter of credit to $250,000 within 30 days of any such draw. M&T shall not be obligated to issue the Vernon Letter of Credit. For further clarification, the Vernon Letter of Credit is separate and distinct from the M&T Letter of Credit and are not related in any way.

ix. Lien Rights. In the event that the Deficiency in any or all of 2020, 2021, 2022, or 2023 exceeds $250,000 ("Excess Deficiency"), the Vernon Parties shall, without having to undertake any further action other than providing Mountain Creek, the Resort Operator, and any holder of a mortgage on the Land with five (5) business days written notice to cure, hold a first priority lien up to $350,000 on the Land that shall secure payment of the Excess Deficiency. Said lien shall constitute a covenant running with the land. To the extent that the Vernon Municipal Fees in the Vernon Municipal Fee Account are not sufficient to pay the Minimum Payment in any calendar year from 2024 through the date on which the Sewer Agreement Obligations are paid in full, the Vernon Parties' shall, without having to undertake any further action other than providing Mountain Creek, the Resort Operator, and any holder of a mortgage on the Land with five (5) business days written notice to cure, hold a first, priority lien up to $350,000 on the Land, which lien shall secure payment of the deficiency in payment of the Minimum Payment in any such year. Said lien shall constitute a convenant running with the land. The $350,000 priority lien shall be cumulative for each year that the Minimum Payment is not made. The liens pursuant to this paragraph shall be first priority liens on the Land, and may be enforced in the same manner as a tax certificate sale is enforced under applicable New Jersey Law. Except for the cumulative $350,000.00 annual lien provided for herein, no other lien, tax, or assessment of any kind may be asserted to secure repayment of the Sewer Agreement Obligations in accordance with this Agreement. For the avoidance of doubt, however, nothing in this Agreement is intended to prohibit the Vernon Parties from seeking to assess or impose taxes or liens for current or future sewer charges applicable to all residents of Vernon (including Mountain Creek or its successors) in accordance with paragraph 8 hereof and applicable law or prohibit or prejudice the rights of Mountain Creek or a Resort Operator to contest the extent, validity or priority of any lien that may be asserted by the Vernon Parties except for the lien to secure the Minimum Payment.

x. No Acceleration. The Sewer Agreement Obligations due to Vernon and/or the VTMUA shall not be accelerated in the event that Vernon Municipal Fees collected in any calendar year are insufficient to cover the Sewer Agreement Obligations due in that calendar year.

xi. Vernon Municipal Fees Shortfall. To the extent the Vernon Municipal Fees in the Vernon Municipal Fee Account are not sufficient to pay in full the Sewer Agreement Obligations for a particular calendar year, the Vernon Municipal Fees collected in any subsequent year shall be applied first to satisfy the Shortfall. In the event of a Shortfall, Mountain Creek shall also increase the Vernon Municipal Fee as set forth in paragraph 3(i) hereof.

xii. Posting of Cash Collateral. On the Effective Date, Mountain Creek or a Resort Operator shall post $350,000 (the "M&T Cash Collateral") into a bank account held at M&T as cash collateral which may be used by M& T Bank solely to satisfy the obligations of Mountain Creek or a Resort Operator if they fail to pay the Minimum Payment in any year. The Purpose of this account is to provide M&T with sufficient funding to prevent a lien from attaching to the Land. The cash collateral account will be subject to documentation reasonably acceptable to M&T.

If any monies are disbursed from the cash collateral account to pay a Minimum Payment, Mountain Creek, a Resort Operator or their successors shall replenish the account so that it holds $350,000 within five (5) business days of receipt of written notice of such disbursement.

3) Issuance of Pump House Bonds. The Vernon Parties shall arrange for the issuance of bonds or financing that Mountain Creek will reimburse the Vernon Parties, as part of the Sewer Agreement Obligations, in accordance with the provisions of paragraph 3 above, in an annual amount not to exceed the monthly obligation to be incurred by the Vernon Parties to pay for the design, permitting, and construction associated with the upgrade of the Pump House. The sole source of the payments for the Pump House Obligations shall be the Vernon Municipal Fees and the Security. The Vernon Parties will take all measures possible to obtain a bond or financing through the I-Bank. If, however, an I-Bank loan is not possible, Vernon will utilize traditional bonding.

4) Continuing Obligations of Successors. The obligation to charge, collect, and remit the Vernon Municipal Fees shall be a continuing obligation imposed by the Vernon Parties on Mountain Creek and a Resort Operator until such time as the Sewer Agreement Obligations are paid in full. The obligation to collect and disburse the Vernon Municipal Fees pursuant to the terms hereof shall be a condition of operating, or conducting any Recreational Activities until such time as the Sewer Agreement Obligations are paid in full. The Vernon Parties shall enact an Ordinance, in the form attached hereto as **Exhibit D,** which is binding on Mountain Creek, successors and a Resort Operator. Such Ordinance shall apply to any person or entity that currently or in the future is a Resort Operator and operates Recreational Activities on the Land. The Land is defined as all the attached lots (including those which may be created by future development and subdivision of the Land) and blocks as listed in **Exhibit E** as well as the Future Land.

5) Satisfaction of Sewer Agreement Obligations. Upon payment in full of all Sewer Agreement Obligations, neither Mountain Creek nor a Resort Operator shall have any obligation to charge, collect, or remit to the Vernon Parties any Vernon Municipal Fee. To the extent any Vernon Municipal Fees remain (the "Excess Funds") in the Vernon Municipal Fee Account at the time all Sewer Agreement Obligations are paid in full, Mountain Creek, any successor thereto and/or a Resort Operator shall be entitled to retain the Excess Funds for its exclusive use and the Vernon Parties shall not have any entitlement to any portion of the Excess Funds.

6) Mountain Creek Sewer Capacity Allocation. Provided that Mountain Creek or any successor is not in material breach of the terms hereof and such breach is not cured within ten (10) business days of any notice of breach issued by Vernon, Mountain Creek and any of its successors shall retain the Developer's Capacity Allocation (as defined in article 3.01 the Sewer Agreement). The Vernon Parties represent that the Developer's Capacity Allocation remains and shall remain available throughout this Agreement and cannot and will not be transferred to any other person or entity so long as Mountain Creek and/or its successor is in compliance with this Agreement. In the event Mountain Creek and any of its successors is not in material breach under the terms hereof and fails to develop any of the Land within 5 years of the Final Order (as defined in section 29 hereof), Mountain Creek shall cause to be paid to Vernon the sum of $50,000 ("Option Fee") per year for the

subsequent five (5) years for the right to retain the Developer's Capacity Allocation until such time as Mountain Creek commences development. In the event Mountain Creek does not develop any Land within 10 years after the entry of the Final Order, the Option Fee shall increase to the sum of $100,000 per year until such time as Mountain Creek commences development. The Option Fee, to the extent paid, shall be applied against the Sewer Agreement Obligations. The Vernon Parties represent that the full amount of the Developer's Capacity Allocation remains available and that no portion of the Developer's Capacity Allocation may be assigned or allocated without the express written consent of Mountain Creek. Mountain Creek shall have no obligation to pay any Option Fee to retain the Developer's Capacity Allocation once all the Sewer Agreement Obligations are paid in full.

7) Mountain Creek Connection Fee Waiver. Provided that Mountain Creek is not in material breach of the terms hereof or if Mountain Creek cures such a breach within ten (10) business days of notice by the Vernon Parties, Mountain Creek shall not be required to pay a Connection Fee or Allocation Permit Fee (as those terms are defined in articles 1 and 8 of the Sewer Agreement) for the first five (5) years after the entry of the Final Order. Mountain Creek shall not be required to pay a Connection Fee or Allocation Permit Fees after the first five (5) years if Mountain Creek either pays the Option Fee or commences any development of the Land.

8) Regular Quarterly Sewer Usage Fees/Property Taxes. Nothing herein shall be construed as a waiver of any obligation of Mountain Creek, its successors or a Resort Operator to pay for regular quarterly sewer usage fee, property taxes or other municipal fees or assessments that Mountain Creek, any successor, a Resort Operator or any third-party homeowner is statutorily required to pay. For the avoidance of doubt, Mountain Creek, any successor, a Resort Operator and third-party homeowners remain obligated to pay the regular quarterly sewer usage fees and property taxes. To the extent that Mountain Creek, any successor, a Resort Operator and third-party homeowners fails to pay regular quarterly sewer usage fees, property taxes or any other future assessment, the Vernon Parties shall have all lien rights and taxing authority under applicable law to secure payment of such fees, taxes and assessments.

9) Cancellation of M&T Letter of Credit. On the Effective Date, as defined below, the M&T Letter of Credit shall be deemed automatically and indefeasibly cancelled. Except as provided in paragraph 3(ix) hereof, Mountain Creek shall have no further obligation to post or maintain any letter of credit to secure any obligations to the Vernon Parties under this Agreement. The Vernon Parties shall execute such documents as reasonably requested by Mountain Creek and M&T to further evidence such cancellation and release including the return of the original M&T Letter of Credit issued by M&T which original shall be returned to M&T on the Effective Date. The Vernon Parties represent that they are in possession of the original M&T Letter of Credit so it may be returned to M&T in the manner addressed in this section.

10) Chapter 11 Plan Support. The Vernon Parties shall each support and vote in favor of the Plan, and/or any chapter 11 plan proposed by Mountain Creek, so long as such plan incorporates the terms set forth in this Agreement.

11) Good Faith Efforts for Extension of Entitlements. Vernon agrees that it shall use good faith efforts to approve a five (5) year extension of Mountain Creek's entitlement to build on the Land.

12) No Further Obligations. Except as set forth in this Agreement, neither Mountain Creek nor any of its affiliates, officers, directors, agent, employees, professionals or other representatives shall have any further obligations to the Vernon Parties relating to or arising from the Sewer Agreement or any related documents.

13) Reports to M&T. So long as any obligations owed by Mountain Creek remain outstanding, Mountain Creek shall provide, within three business days of receipt, M&T with copies of all (i) notices required to be provided under this Agreement, and (ii) all financial information reports or audits that are provided for under this Agreement. Such notices, reports and audits shall be sent by regular mail or email to M&T and its counsel at the following addresses:

For M&T:

Jodee A. LaCelle, Vice President
M&T Bank, NY1-SY30
Special Assets Division
101 South Salina Street, 3rd Floor
Syracuse, NY 13202
315-424-4518
315-424-4487
jlacelle@mtb.com

Copy to:

Diane E. Vuocolo, Esq.
Greenberg Traurig, LLP
1717 Arch Street
Suite 400
Philadelphia, PA 19103
215-988-7803
vuocolod@gtlaw.com

14) Reports to Creditors Committee So long as the Official Committee of Unsecured Creditors ("Committee") remains in place during the Chapter 11 Cases, Mountain Creek shall provide, within three business days of receipt, all (i) notices required to be provided under this Agreement, and (ii) all financial information reports or audits that are provided under this Agreement. Such notices, reports and audits shall be sent by regular mail or email to the Drinker Biddle & Reath, LLP, 600 Campus Drive, Florham Park NJ 07932, Attn: Michael Pompeo, Esq. (Michael.Pompeo@dbr.com).

15) No-Admission of Liability. The Parties agree that, by entering into this Agreement, they do not admit to any facts, liabilities, or responsibilities of any kind or character including, but not limited to, any facts, claims, or causes of action asserted in, or associated with, the claims, counterclaims, third-party claims, fourth-party claims, defenses, disputes, or causes

of action that were or could have been asserted in connection with the Vernon Adversary Proceeding.

This Agreement and all negotiations, agreements, and proceedings in connection herewith are not and shall not in any event be construed as or be deemed to evidence any admission or concession on the part of any of the Parties hereto as to any liability or wrongdoing arising out of or in connection with the disputes that are the subject of the Vernon Adversary Proceeding.

Except as may be required to obtain approval of this Agreement by the Court and to enforce the terms of this Agreement, this Agreement and its terms shall not be offered or received in evidence, nor shall they be admissible in any form in any other action, arbitration, or other proceeding before any court or tribunal, and shall not be used, published, or disclosed in any manner as an admission, concession, or evidence of any liability or wrongdoing of any nature, or the absence thereof by any of the Parties hereto, or as an admission, concession, or evidence of the merits, or the absence thereof of any claim or cause of action relating to or arising from the Vernon Adversary Proceeding or Vernon Claims.

16) Dismissal of the Action. Upon the Effective Date of this Agreement, the Vernon Adversary Proceeding and the Vernon Claims will be deemed dismissed with prejudice and without costs and the Vernon Parties shall, within three (3) business days from the Effective Date file a notice of dismissal with prejudice in the Vernon Adversary Proceeding and withdraw the Vernon Claims, provided, however, such actions shall not be necessary to effectuate the dismissal of the Vernon Adversary Proceeding or the expungement of the Vernon Claims.

17) Rejection of Sewer Agreement. As of the Effective Date, the Sewer Agreement shall be deemed rejected pursuant to section 365 of the Bankruptcy Code and shall have no force or effect and neither Mountain Creek nor shall the Vernon Parties have any obligations under the terms thereof. The Vernon Parties shall not be entitled to assert a claim under section 502(g) of the Bankruptcy Code or otherwise against the Debtors' estate as a result of the rejection of the Sewer Agreement.

18) Recording of This Agreement. Mountain Creek or a Resort Operator shall record this Agreement together with the Order approving same with the Clerk's Office for Real Estate Records in Sussex County, New Jersey within ten (10) business days of the Effective Date. All recording costs shall be borne by Mountain Creek or a Resort Operator.

19) Notices. Except as otherwise provided herein, all notices or other writings required by this Agreement shall be given via electronic mail and overnight mail service to the following notice-addresses:

For the Debtors:

Mountain Creek Resort, Inc.
Attn: Jeffrey Koffman
200 Route 94
Vernon, New Jersey 07462
E-mail:JKoffman@mountaincreek.com

For Vernon:

Township of Vernon
Attn: Mayor
21 Church Street
Vernon, New Jersey 07462

Copy to:

Jeffrey D. Prol, Esq., and
Nicole Fulfree, Esq.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068
Phone: 973-597-2500
E-mail: jprol@lowenstein.com
nfulfree@lowenstein.com

For the VTMUA:

The Vernon Township Municipal Utilities Authority
Attn: Executive Director
21 Church Street
Vernon, New Jersey 07462

For Sussex Cty. Bd. Of Freeholders

Sussex County Board of Freeholders
1 Spring Street
Newton, New Jersey 07860

Copy to:

Robert E. Nies, Esq.
Chiesa Shaninian & Giantomasi PC
One Boland Drive
West Orange, New Jersey 07052
E-mail: rnies@csglaw.com

Any Party may change the address to which notices and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth above.

20) Governing Law. This Agreement, and any dispute between or among any of the Parties hereto arising out of or related to this Agreement, shall be governed by, construed under, and enforced in accordance with New Jersey law, without giving effect to any choice-of-law principles.

21) Jurisdiction, Service and Venue.
Each Party (a) irrevocably and unconditionally consents to submit to the jurisdiction of the Court for resolution of any actions, suits, or other proceedings relating to this Agreement and the transactions contemplated hereby; (b) agrees that service of any process, summons, notice, or document via United States mail, overnight courier service, or hand delivery upon any Party to the Agreement at its address set forth in section 20 above shall be effective service of process for any action, suit, or other proceeding brought against such party relating to this Agreement and the transactions contemplated hereby, provided that, service upon any party will also be effective if the same is made upon the attorney or attorneys for such party who have appeared in these Chapter 11 Cases on such party's behalf; (c) irrevocably and unconditionally waives any objection to laying of venue of any action, suit, or other proceeding relating to this Agreement and the transactions contemplated hereby in the Court; (d) irrevocably and unconditionally waives and agrees not to plead or claim that any suit, action, or other proceeding relating to this Agreement and the transactions contemplated hereby brought in the Court has been brought in an inconvenient forum; **(e) waives a right to trial by jury of any dispute relating to or arising from this Agreement**; and (f) consents to the subject matter jurisdiction of the Court to adjudicate any issues relating to or arising from this Agreement.

Subsequent to the closing of the Chapter 11 Cases, subparagraphs (a),(b),(c),(d), and (f) of this section 21 will no longer be applicable, and jurisdiction, service and venue shall be governed by New Jersey law.

22) Voluntary Agreement. The Parties, and each of them, acknowledge that they have read this Agreement and understand its contents, terms, and obligations.

The Parties, and each of them, further acknowledge and agree that they are signing this Agreement voluntarily, after good-faith, arms-length negotiations between the Parties and their respective counsel, after having had a full and fair opportunity to consult with counsel or other professional advisors of their choice, and with the intent to be bound by all terms contained in this Agreement. In the event that any provision of this Agreement is determined to be ambiguous, it shall not be construed against any of the Parties or their attorneys that participated in its drafting.

23) Authority. Each Party executing this Agreement, including any individual executing this Agreement on behalf of any Party, expressly warrants and represents that it has all necessary power and authority to do so, provided, however, it is acknowledged by each Party that Mountain Creek's authority to enter into and carry out the terms of this Agreement is subject to approval of the Court.

Each Party executing this Agreement, including any individual executing this Agreement on behalf of any Party, expressly warrants and represents that such Party has not previously transferred or assigned or transferred to any third party any right, claim, demand, or cause of action covered by this Agreement and that said Party is the sole and absolute legal and equitable owner of any and all such rights, claims, demands, and causes of action.

Each Party executing this Agreement, including any individual executing this Agreement on behalf of any Party, expressly warrants, represents, and agrees that such Party will defend, indemnify, and hold harmless any Party for whose benefit this Agreement was executed against all costs, expenses, damages and/or liabilities of any kind, including (but not limited to) reasonable legal expenses, if any, if the representations or warranties set forth in this section 24 are not accurate.

24) Binding Effect/Integration/Due Diligence/Non-Reliance. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective agents, successors, assigns, heirs, and representatives.

This Agreement represents, contains and constitutes the entire understanding and agreement between and among the Parties hereto with respect to the subject matter hereof, and supersedes all previous discussions, negotiations, representations, agreements, or commitments, whether written or oral, in connection herewith.

The Parties, and each of them, expressly warrant, represent, and acknowledge that they and their representatives have had a full and fair opportunity to engage in any necessary investigation and have received all documents and information they deem necessary prior to making their decision to enter into this Agreement.

The Parties, and each of them, expressly warrant, represent, and acknowledge, that no other Party, representative for any Party, or attorney for any Party has made any promise, projection, representation, commitment, prospect, or warranty whatsoever, either express or implied, not contained in this Agreement concerning the subject matter hereof to induce any Party to execute this Agreement, and expressly warrant, represent, and acknowledge that they are not executing this Agreement in reliance on any promise, projection, representation, commitment, prospect, or warranty not contained in this Agreement.

25) Modifications, Waivers, and Assignment. This Agreement may not be modified, supplemented, or amended in any way except in a writing specifically referring to this Agreement and executed by all Parties affected by such modification, supplementation or amendment, or a duly authorized representative of the Parties. No right of any Party hereunder may be waived except through a writing signed by the Party waiving such right. Neither this Agreement nor any right, remedy, obligation, or liability arising hereunder or by reason hereof shall be assignable by any Party without the prior written consent of the other Parties. Mountain Creek acknowledges that any agreement to modify, supplement, waive, amend, or assign this Agreement by Vernon requires the requisite approval by the Vernon Town Council and/or the VTMUA, as the case may be.

26) Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered each counterpart to the other Parties, each counterpart shall be taken together and considered one and the same instrument that shall be binding, effective, and enforceable as to all Parties and such counterparts delivered by fax or electronically.

27) Headings. Headings herein are inserted for convenience only and do not constitute a part of this Agreement. No heading shall be admissible for the purpose of proving the intent of the Parties.

28) Further Assurances. Each Party, at the request of another Party, shall sign such documents, take such other actions and provide any such further assurances reasonably necessary to carry out and effectuate the terms of this Agreement.

29) Effective Date. Except with respect to the payments pursuant to paragraph 2(v) above, which shall be made as provided in such paragraph, this Agreement shall be effective as to all of the Parties at the time the following conditions are satisfied (the "Effective Date"): (a) the Agreement is fully executed by all Parties and delivered to Parties or their counsel; (b) an order is entered by the Court approving this Agreement and such order becomes final and non-appealable ("Final Order"); and (c) the payment of the 2018 Payment, the payment of the M&T Cash Collateral, the posting of the Vernon Letter of Credit, and the return of the original M&T Letter of Credit to M&T, all of which all shall occur on the earlier of October 31, 2019, or the effective date of a confirmed plan of reorganization, provided, however, the Parties to this Agreement may waive the Final Order requirement by a writing executed by each of the Parties. Final Order shall mean an order of the Court having jurisdiction over the Chapter 11 Cases that is entered and not subject to any appeal or motion for reconsideration and the time to appeal or move for reconsideration has expired.

[SIGNATURES TO FOLLOW ON ATTACHED SIGNATURE PAGE]

MOUNTAIN CREEK RESORT, INC.
a New Jersey Corporation

By: _____

Name: _____

Title: _____

THE TOWNSHIP OF VERNON

By: _____

Name: _____

Title: _____

THE VERNON MUNICIPAL UTILITIES AUTHORITY

By: _____

Name: _____

Title: _____

SUSSEX COUNTY BOARD OF CHOSEN FREEHOLDERS

By: _____

Name: _____

Title: _____