

TRADEMARK COEXISTENCE AGREEMENT

PARK CITY DRAFT 062916

This Agreement is entered into by Park City Municipal Corporation (“PCMC”) and VR CPC Holdings, Inc. (“VR”), effective this ____ day of June, 2016.

1. FACTUAL BACKGROUND

- 1.1. The following statements are not mere recitals, but instead form an integral part of the basis for this Agreement.
- 1.2. The municipality currently known as “Park City” and referred to in this Agreement as PCMC was formed in 1884, has used the name “Park City” to refer to itself continuously since that time, and has registered the “PARK CITY 1884” logo with the State of Utah.
- 1.3. PCMC has a long and rich history as a hard-scrabble mining town, host of the 2002 Winter Olympics and the Sundance Film Festival, and a great place to find world-class art, music, dining, shopping, skiing and outdoor recreation. Skiing in PCMC began as early as 1930, and continues today.
- 1.4. Businesses in PCMC and surrounding environs have used the term “PARK CITY,” alone and with other elements as a trademark, service mark and trade name in connection with a wide variety of goods and services for decades.
- 1.5. VR is the operator of the Park City Mountain Resort. The resort is located in and adjacent to PCMC.
- 1.6. VR has filed the Application for the PARK CITY WORD MARK and the Application has been published for opposition. VR has alleged in the Application that it has continuously used the PARK CITY WORD MARK since 1966, and owns a number of federally registered trademarks that include the words “Park City.”
- 1.7. VR does not wish to register or enforce the PARK CITY WORD MARK for any goods or services other than those in the Amended Description, or to prevent others from using or registering the PARK CITY WORD MARK for goods and services other than those in the Amended Description.
- 1.8. PCMC, and a number of individuals and businesses, including some Third Party Beneficiaries, have petitioned the U.S. Patent and Trademark Office (“USPTO”) for extensions of time to oppose the Application, and several oppositions have already

been filed. The current extensions expire on July 9, 2016, but are subject to further extension by the USPTO.

- 1.9. PCMC, Third Party Beneficiaries and other community members and business owners have raised concerns about the distinction between PCMC and VR and have requested that VR make efforts to avoid confusion that may arise by reason of VR's use of the PARK CITY WORD MARK.
- 1.10. The Parties have disputes relating to VR's entitlement to register the PARK CITY WORD MARK, VR's priority in the use of the PARK CITY WORD MARK, VR's ability to tack, issues related to likelihood of confusion, and the scope of VR's rights, if any, in the PARK CITY WORD MARK.
- 1.11. The Parties wish to resolve their disputes as set forth herein.

2. **DEFINITIONS**

- 2.1. "Affiliate" means any corporation or other entity or person that controls, is controlled by, or is under common control with, another corporation, entity or person. For purposes of this definition, "control" means the power, whether or not normally exercised, to direct the management and affairs of another corporation, person or entity, directly or indirectly, whether through ownership of voting shares, contract, or otherwise. In the case of a corporation, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting shares will be deemed to confer control. Fifty percent direct ownership will not be required to establish control.
- 2.2. "Amended Description" means an amended description of goods and services for the Application, which will read as follows: "Providing downhill ski and snowboarding runs, lifts and snow grooming services at a ski resort and conducting classes and instruction in downhill skiing and snowboarding at a ski resort."
- 2.3. "Change of Control" means (a) a merger, reorganization, arrangement, share exchange, consolidation, private purchase, business combination, recapitalization or other transaction, involving a party as a result of which the stockholders or owners of a party immediately preceding such transaction would hold 50% or less of the outstanding shares of, or 50% or less than the outstanding voting power of, the ultimate parent company resulting from such transaction immediately after consummation thereof; (b) the direct or indirect acquisition by any person or group of beneficial ownership, or the right to acquire beneficial ownership, of 50% or more of either the outstanding voting power or the outstanding shares of any part, division or asset of a party; or (c) the adoption of a plan relating to the liquidation or dissolution of a party.
- 2.4. "Effective Date" means June ____, 2016.

- 2.5. "Merger" means any merger in which a party participates, regardless of whether the party is the surviving or disappearing corporation.
- 2.6. "PARK CITY WORD MARK" means the word mark "PARK CITY," as set forth in the Application.
- 2.7. "PCMC" means Park City Municipal Corporation, a municipal corporation of the State of Utah, and its predecessors and successors-in-interest and Affiliates.
- 2.8. "Party" or "Parties" means PCMC, VR, Third Party Beneficiaries, or combinations of any of the foregoing, as the context suggests.
- 2.9. "Third Party Beneficiaries" means persons or entities now or in the future located within the boundaries of PCMC or its environs (including but not limited to persons whose postal address is "Park City," although they technically live in unincorporated Summit County, and not within the physical boundaries of PCMC), who currently or in the future use the phrase "PARK CITY" as or within a trademark, service mark or trade name on goods or services other than those described in the Amended Description.
- 2.10. "VR" means VR CPC Holdings, Inc., its predecessors and successors-in-interest and Affiliates.
- 2.11. "VR Application" means Application Serial No. 86331507, for the PARK CITY WORD MARK, filed by a predecessor of VR on July 8, 2014, and currently pending before the U.S. Patent and Trademark Office.

3. **CONSIDERATION**

- 3.1. The Parties acknowledge that the covenants and promises set forth in this Agreement constitute good and valuable consideration for the execution of this Agreement and that such consideration further supports the extension of the benefits of this Agreement to Third Party Beneficiaries.

4. **CO-EXISTENCE AGREEMENT**

- 4.1. No Filing of Opposition to Application. PCMC will not oppose the Application, will and will attempt to inform Third Party Beneficiaries who have obtained an extension of time to file an opposition of their potential status as Third Party Beneficiaries of this Agreement.
- 4.2. Amendment of Description of Goods and Services in Application. VR will amend the Application to include the Amended Description. The Parties agree this amended

Application is a narrowing of the description to avoid an opposition and as such does not require a new application.

- 4.3. No Filing of Additional Applications for the PARK CITY WORD MARK. VR will not file any additional applications to register the PARK CITY WORD MARK that add, delete, or otherwise change the Amended Description. This provision will not be construed to prevent VR from filing additional applications for marks that include the phrase “Park City” with other words or graphics, but is limited to a prohibition on filing additional applications for the PARK CITY WORD MARK with different goods or services than those listed in the Amended Description.
- 4.4. No Opposition by VR of PCMC or Third Party Beneficiary Applications. VR will not oppose applications by PCMC or any Third Party Beneficiaries for trademarks or service marks that include the PARK CITY WORD MARK or the phrase “Park City,” so long as the goods and services for which such registration is sought do not overlap the goods and services in the Amended Description and so long as the mark for which registration is sought does not suggest an affiliation with or endorsement by VR. The fact that an application includes the words “Park City” will not be construed to suggest an affiliation with or endorsement by VR.
- 4.5. No Cancellation of PCMC or Third Party Beneficiary Registrations. VR will not seek to cancel any state or federal registrations held by PCMC or Third Party Beneficiaries for trademarks or service marks that include the PARK CITY WORD MARK or the phrase “Park City,” including, but not limited to, PCMC’s registration of its municipal logo, so long as the goods and services on which the trade name, trademark or service mark is used do not overlap the goods and services in the Amended Description and so long as the trade name, trademark or service mark used does not suggest an affiliation with or endorsement by VR. The fact that a registration includes the words “Park City” will not be construed to suggest an affiliation with or endorsement by VR.
- 4.6. No Litigation Against PCMC or Third Party Beneficiaries. VR will not threaten or initiate litigation against PCMC or any Third Party Beneficiary under federal, state or common law for use of a trade name, trade mark or service mark including the phrase “Park City,” so long as the goods and services on which the trade name, trademark or service mark is used do not overlap the goods and services in the Amended Description and so long as the trade name, trademark or service mark used does not suggest an affiliation with or endorsement by VR. The fact that an application uses the words “Park City” will not be construed to suggest an affiliation with or endorsement by VR. VR expressly agrees that it will not initiate or threaten any litigation against PCMC for use by PCMC of the phrase “Park City” in connection with municipal services or concessions, *e.g.*, the Park City cross country ski concession, special events/festivals and golf course.

5. **THIRD PARTY BENEFICIARY AGREEMENT**

- 5.1. VR acknowledges that this Agreement is entered into by and for itself and PCMC, and that it is the express intent of VR and PCMC to extend the benefit of the Agreement to Third Party Beneficiaries, and that Third Party Beneficiaries will have the ability to rely upon and enforce the provisions of this Agreement.

6. **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF VR**

- 6.1. The execution, delivery and performance by VR of its obligations under this Agreement are within its power, have been duly authorized by all necessary corporate or business action, do not contravene any law or any contractual provision binding on it, and do not require any consent or approval of any person or governmental authority except such consents and approvals as have been obtained and are in full force and effect.
- 6.2. This Agreement constitutes the legal, valid and binding obligation of VR and is enforceable in accordance with its terms.
- 6.3. VR will not form any entities to avoid compliance with any of the provisions of this Agreement, nor will it assist any third parties in engaging in any activities designed to avoid the provisions of this Agreement.

7. **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF PCMC**

- 7.1. The execution, delivery and performance by PCMC of its obligations under this Agreement are within its power, have been duly authorized by all necessary corporate or business action, do not contravene any law or any contractual provision binding on it, and do not require any consent or approval of any person or governmental authority except such consents and approvals as have been obtained and are in full force and effect.
- 7.2. This Agreement constitutes the legal, valid and binding obligation of PCMC and is enforceable in accordance with its terms.
- 7.3. PCMC will not form any entities to avoid compliance with any of the provisions of this Agreement, nor will it assist any third parties in engaging in any activities designed to avoid the provisions of this Agreement

8. **VR OBLIGATIONS TO DISTINGUISH BETWEEN PCMC AND VR**

- 8.1. VR will limit its use of the PARK CITY WORD MARK in any signage, promotional materials in print or electronic media, direct mail, e-communication or other promotional materials used or distributed in Summit or Salt Lake Counties, to use and distribution within the physical boundaries of the VR resort as described in the attached legal description as Exhibit __. All uses by VR of the phrase "Park City" that occur outside the physical boundaries of the VR resort and in Salt Lake or Summit Counties will include the words "Mountain," "Ski Area," or "Resort" to distinguish itself from PCMC. Non-exhaustive examples of prohibited uses of "Park City" without additional descriptors include: vehicle placards, off-site road, street, trail or highway signage, local NPR, radio or other radio / TV advertisements, and direct email solicitation to local Epic pass

holders. Outside the State of Utah, VR will not use service or other listings that identify itself as "Park City" in connection with listings for restaurants, lodging / hotels, equipment rentals or repairs, or similar services, as such advertisement could confuse consumers with respect to whether such services originate from VR or Third Party Beneficiaries. VR will make changes to effect compliance with this section within two (2) calendar weeks of receipt of written notice from PCMC of non-compliant promotional materials, unless a longer period is mutually agreed to by the Parties.

- 8.2. PCMC will not oppose the use of "Park City" as a VR brand outside the State of Utah, providing such uses otherwise comply with the terms of this Agreement.
- 8.3. VR does or may advertise and promote its services through various websites, social media platforms and other electronic media. VR will implement procedures in connection with all of its promotional websites, social media and electronic media to distinguish between Utah-based and non-Utah based visitors and inquiries related to electronic VR promotional materials. At a minimum, VR will require visitors to its home page to indicate whether they are Utah or non-Utah residents. VR will not send or make available electronic promotional materials that use the PARK CITY WORD MARK to Utah recipients. For Utah residents, VR will send or make available only promotional materials consistent with the provisions of Section 8.1 herein.

9. **PROHIBITION AGAINST ASSIGNMENT**

- 9.1. This coexistence agreement is personal to the parties and may not be assigned, except by the prior written consent of both parties.

10. **MISCELLANEOUS PROVISIONS**

- 10.1. No Admission of Fault or Liability Neither Party admits liability to the other, nor does entering into this Agreement constitute an admission of fault by any Party.
- 10.2. Understanding of Agreement Each of the parties understands this Agreement, and the terms and conditions contained herein, and has relied upon its own judgment, belief, knowledge, understanding and expertise after careful consultation with its own legal counsel concerning the legal effect of this Agreement and all of the terms and conditions of this Agreement.
- 10.3. Final Integrated Agreement This Agreement, and any documents referred to herein, constitute the entire, final and binding understanding between the parties with respect to the subject matter hereof. No other statement or representation, written or oral, express or implied, has been relied upon in executing this Agreement, and all prior discussions, statements, and negotiations made or that have occurred prior to the date

of the Agreement are deemed merged into this Agreement, and will not be used for any purpose whatsoever.

- 10.4. Binding Effect This Agreement will bind and inure to the benefit of PCMC, VR, and their respective successors, Affiliates and permitted assigns in interest.
- 10.5. Severability If any provision of the Agreement is held void or for any reason unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 10.6. Amendment This Agreement may not be amended, altered, modified or otherwise changed in any respect except by a writing duly executed by the parties, or their authorized representatives.
- 10.7. Counterparts This Agreement may be executed in counterparts, each of which may be deemed an original and all of which together will constitute a single instrument.
- 10.8. Choice of Law, Venue and Jurisdiction. Utah law will govern the construction and enforcement of this Agreement, without regard to conflicts of laws principles that might otherwise point to the law of another jurisdiction. Exclusive venue and jurisdiction for disputes arising out of this Agreement will be in the Third Judicial District Court of Summit County, Utah. The Parties irrevocably consent to the exercise of jurisdiction and venue in such Court.

11. NOTICE

- 11.1. All notices and statements with respect to this Agreement must be in writing and addressed as follows:

PCMC

Mark Harrington

City Attorney

Park City Municipal Corporation

445 Marsac Avenue

Park City, UT 84060

VR

Bill Rock

COO

VR CPC Holdings, Inc.

1345 Lowell Avenue

Park City, UT 84060

Brent P. Lorimer

David B. Dellenbach

Workman Nydegger

60 East South Temple Suite 1000

Salt Lake City, UT 84111

- 11.2. Any correspondence or notice required to be given under this Agreement will be deemed given when delivered, if delivered, or given when postage is prepaid, to the address shown in the preceding paragraph, or to such other address as to which the addressee will have given written notice.

Park City Municipal Corporation

Date: _____

By: _____

Attest: _____

Typed Name: _____

Title: _____

VR CPC Holdings, Inc.

Date: _____

By: _____

Attest: _____

Typed Name: _____

Title: _____