

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM554803

SUBMISSION TYPE:	RESUBMISSION
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL
RESUBMIT DOCUMENT ID:	900509950

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
CBH20, LP		07/25/2019	Limited Partnership: PENNSYLVANIA

RECEIVING PARTY DATA

Name:	CMBK Resort Holdings, LLC
Street Address:	100 St. Paul St., Suite 800
Internal Address:	c/o KSL Capital Partners, LLC
City:	Denver
State/Country:	COLORADO
Postal Code:	80206
Entity Type:	Limited Liability Company: DELAWARE

PROPERTY NUMBERS Total: 14

Property Type	Number	Word Mark
Registration Number:	4726775	THE MOUNTAIN MOVES YOU
Registration Number:	4683612	LEARN HERE LEARN RIGHT
Registration Number:	3917227	
Registration Number:	2287755	CAMELBEACH
Registration Number:	2290829	CAMELBACK
Registration Number:	2292006	CAMELBACK
Registration Number:	5678522	COUNTLESS ADVENTURES. ONE RESORT
Serial Number:	88205618	H2OBX
Serial Number:	88205585	H20BX WATERPARK
Serial Number:	88205555	KARTRITE VAN DER BERRIS
Serial Number:	87934832	CAMELBACK LODGE
Serial Number:	87934705	CAMELBACK RESORT
Serial Number:	88308450	H20BX
Serial Number:	88308413	CBK

CORRESPONDENCE DATA

Fax Number: 3038931379

TRADEMARK

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 3038927353
Email: pantea.garroussi@dgslaw.com
Correspondent Name: Pantea Garroussi
Address Line 1: 1550 17th Street, Suite 500
Address Line 4: Denver, COLORADO 80202

ATTORNEY DOCKET NUMBER:	110790-0013
NAME OF SUBMITTER:	Pantea Garroussi
SIGNATURE:	/Pantea Garroussi/
DATE SIGNED:	12/24/2019

Total Attachments: 8
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AGREEMENT OF PURCHASE AND SALE

by and among

CBH20, LP and CBK Lodge, LP, collectively, as SELLERS,

and

CMBK RESORT HOLDINGS, LLC, as BUYER

Dated as of April 10, 2019

AGREEMENT OF PURCHASE AND SALE

AGREEMENT OF PURCHASE AND SALE, dated as of April 10, 2019 (the "Effective Date"), by and among CBH20, LP, a Pennsylvania limited partnership ("Resort Seller"), CBK Lodge LP, a Pennsylvania limited partnership ("Lodge Seller"; together with Resort Seller, "Sellers" and each, individually, a "Seller"), and CMBK Resort Holdings, LLC, a Delaware limited liability company ("Buyer").

BACKGROUND

A. Sellers are, jointly, the lessee of that certain real property known as the Camelback Mountain Resort as more particularly described on Schedule A, with the right to occupy and operate the Lodge (as defined below) and the Aquatopia Indoor Waterpark located thereon, and the lessee of the other buildings and improvements located thereon, and the owners of certain personal property used in connection with the use and operation thereof, which are identified by the street addresses 193 Resort Drive and 301 Resort Drive, Tannersville, Pennsylvania 18372 (collectively, the "Leased Property").

B. Resort Seller is the owner of Building 142 Ridge (as defined below) and Building 145 Ridge (as defined below) (together with the Leased Property, collectively, the "Property").

C. Sellers are engaged in the business of operating, at the Property, (i) a ski resort and tubing hill on Camelback Mountain, (ii) the Lodge, (iii) the Aquatopia Indoor Waterpark, and (iv) the Camelbeach outdoor waterpark (together with such other activities conducted by or for Sellers at the Property, collectively, the "Business").

D. Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, all of Sellers' right, title and interest in and to the Property and all other properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held, used or useful in the Business in which any Seller has any right, title or interest as of the date of this Agreement or in which any Seller acquires any right, title or interest on or before the Closing Date (as defined below), except as otherwise provided herein, on the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Defined Terms. The capitalized terms used herein will have the following meanings.

"2019 Property Taxes" shall mean the real property taxes imposed on the Leased Property for the 2019 tax year, comprised of (i) the county, municipal and library tax bill for the period of

“Ground Lessor” shall mean EPT Ski Properties, Inc., a Delaware corporation.

“Guest Ledger” shall mean any and all charges accrued to the open accounts of any guests or customers at the Property as of the Cut-Off Time for the use and occupancy of any guest, conference, meeting or banquet rooms or other facilities at the Property, any restaurant, bar or banquet services, or any other goods or services provided to such guests or customers by or on behalf of Sellers (or the Property Managers on behalf of Sellers).

“Hazardous Materials” shall mean any hazardous or toxic substances, materials, pollutants, constituents or waste, whether solid, liquid or gaseous, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum or petroleum by-products, radioactive materials, radon gas and any other material or substance which is defined as or included in the definition of a “hazardous substance,” “hazardous waste,” “toxic waste,” “hazardous material,” “toxic pollutant,” “contaminant,” “pollutant” or “toxic substance” or words of similar import, under any Environmental Law.

“Hotel Management Agreement” shall mean that certain Hotel Management Agreement dated June 26, 2017 between Lodge Seller and Hotel Manager.

“Hotel Manager” shall mean Highgate Hotels, L.P.

“Indemnitee” shall have the meaning assigned thereto in Section 11.4.

“Indemnitor” shall have the meaning assigned thereto in Section 11.4.

“Indemnity Escrow Account” shall have the meaning assigned thereto in Section 2.2(c).

“Indemnity Escrow Amount” shall have the meaning assigned thereto in Section 2.2(c).

“Indemnity Escrow Deposit” shall mean the funds held by the Escrow Agent in the Indemnity Escrow Account under the Escrow Agreement, together with all earnings thereon.

“Independent Consideration” shall have the meaning assigned thereto in Section 2.2(g).

“Intangibles” shall have the meaning assigned thereto in Section 2.1(b)(vi).

“Intellectual Property” shall mean all rights in (a) trademarks, service marks, trade dress, names, brands, logos, trade names, and assumed names, whether in common law, state, or federal registrations, pending applications to register any of the foregoing, together with all goodwill associated with the foregoing, (a) patents, pending patent applications, and inventions, whether or not patentable, (b) copyrights, copyright registrations, and pending applications to register copyrights, (c) confidential information and trade secrets, and (d) registered domain names.

“Intellectual Property Assets” shall mean all (i) Intellectual Property owned by, registered to, or claimed in a pending registration application to be owned by Sellers, or used by Sellers in the operation of the Business, including but not limited to the Names, (ii) Plans, (iii) Data, and (iv) Social Media Accounts.

“Underground Storage Tanks” shall mean the two 10,000-gallon closed heating oil underground storage tanks on the Property located to the southwest of the maintenance building, as further referenced in Section 8.1 of the Phase 1 Environmental Site Assessment prepared by Blackstone.

“Uninsured Losses” means, collectively, all Losses resulting from or arising out of claims subject to indemnification under Section 11.2(a), but that are subject to the exclusions set forth on Schedule 1.1(b).

“Uninsured Losses Cap” shall mean an amount equal to Eight Million Five Hundred Thousand and No/100 Dollars (\$8,500,000.00).

“Violations” shall mean all violations of Applicable Law relating to the Property, the Assets or the Business now or hereafter issued or noted, including any open or expired building permits and any fines or penalties associated with the foregoing.

“Waffle Cabin Franchise Agreement” shall mean that certain Franchise Agreement, dated September 16, 2013, by and between Atomium, Inc. and Resort Sellers (d/b/a Camelback Mountain Resort), as amended by that certain Addendum to Franchise Agreement dated February 23, 2019.

“WARN Act” shall have the meaning assigned thereto in Section 14.2.

“Water Contracts” shall have the meaning assigned thereto in Section 3.2(ee).

“Water Service Agreement” shall mean that certain Water Service Agreement among Lodge Seller, Resort Seller, and Ground Lessor (as successor to Spirit Pocono Corporation, f/k/a Camelback Ski Corporation), dated December 5, 2012 and effective as of December 31, 2012.

“Waterpark Manager” shall mean Lodge Seller.

ARTICLE II SALE, CONTRIBUTION, PURCHASE PRICE AND CLOSING

Section 2.1 Sale and Contribution of Assets.

(a) On the Closing Date and pursuant to the terms and subject to the conditions set forth in this Agreement, Sellers shall convey to Buyer, and Buyer shall acquire from Sellers, free and clear of all Liens (excluding Permitted Exceptions), all of Sellers’ rights, title and interests in the Assets, as follows:

(i) Lodge Seller shall sell to Buyer, and Buyer shall purchase from Lodge Seller, free and clear of all Liens (excluding Permitted Exceptions), a 92.86% undivided interest in the Lodge Assets (the “Purchased Lodge Assets”) for the Lodge Cash Purchase Price;

(ii) Lodge Seller shall contribute to Buyer, and Buyer shall accept and acquire from Lodge Seller, free and clear of all Liens (excluding Permitted Exceptions), a

7.14% undivided interest in the Lodge Assets (the “Contributed Lodge Assets”) for the CBK Preferred Interest and the right to the CBK Preferred Additional Interest (to the extent earned in accordance with the terms of the Buyer Operating Agreement), in a non-taxable transaction for U.S. federal income tax purposes under Section 721(a) of the Code;

(iii) Resort Seller shall contribute to Buyer, and Buyer shall accept and acquire from Resort Seller, free and clear of all Liens (excluding Permitted Exceptions), a 44.44% undivided interest in the Resort Assets (the “Contributed Resort Assets”) for the CBH20 Preferred Interest and the right to the CBH20 Preferred Additional Interest (to the extent earned in accordance with the terms of the Buyer Operating Agreement), in a non-taxable transaction for U.S. federal income tax purposes under Section 721(a) of the Code; and

(iv) Resort Seller shall sell to Buyer, and Buyer shall purchase from Resort Seller, free and clear of all Liens (excluding Permitted Exceptions), a 55.56% undivided interest in the Resort Assets (the “Purchased Resort Assets”) for the Resort Cash Purchase Price.

(b) “Assets” shall mean (i) all of Sellers’ right, title and interest in the Property (including any improvements thereon) and the Ground Lease and (ii) all other properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held, used or useful in the Business in which any Seller has any right, title or interest as of the date of this Agreement or in which any Seller acquires any right, title or interest on or before the Closing Date, including but not limited to the following (the “Property-Related Assets”), but excluding the Excluded Assets:

(i) subject to the terms of the Ground Lease and State Lease, Sellers’ interest if any, in all easements, covenants, development rights, mineral rights and other rights appurtenant to the Property and, subject to the terms of the Ground Lease, all right, title and interest of Sellers, if any, in and to any land lying in the bed of any street, road, avenue or alley, open or closed, in front of or adjoining the Property and to the center line thereof;

(ii) all right, title and interest of Sellers, as tenant in, to and under the Ground Lease;

(iii) subject to the terms of the Ground Lease and the State Lease, Sellers’ interest, if any, in fixtures and equipment, and all furniture and other personal property of any type or nature, including but not limited to, all furnishings, fittings, appliances, apparatus, draperies, art work, carpeting, keys, computer hardware and equipment, IT hardware systems, reservations terminals, building materials, telephones and other communication equipment, copiers, facsimile machines, postal machines, televisions, signs, vacuum cleaners, video equipment and other similar articles of personal property which are now, or may hereafter prior to the Closing Date be, placed in or attached to the Property or are used solely in connection with the operation, use or maintenance of the Property (but not including items owned or leased by Tenants or the Hotel Manager, or which are leased by Sellers), and all vehicles, trailers, and other equipment used in

connection with the operation, use or maintenance of the Property or the Business (the “Personal Property”), the material items of which are described on Schedule 2.1(b)(iii);

(iv) to the extent they may be transferred under Applicable Law, (a) all Licenses and Permits presently issued and (b) such additional Licenses and Permits as may be issued prior to the Closing Date (the “Assigned Licenses and Permits”);

(v) to the extent assignable, (A) all warranties and guaranties, if any, issued to Sellers or any Affiliate of Sellers or the Property Manager from any manufacturer, contractor, engineer or architect in connection with construction of any improvements or installation of equipment or any component of the improvements included as part of the Property and (B) all warranties assigned to Sellers when it acquired the Assets;

(vi) (i) all Intellectual Property Assets, (ii) all goodwill, and other intangible personal property used in the ownership or operation of the Property or the Business, (iii) all telephone exchange numbers specifically dedicated and identified with the Property or the Business, (iv) all software, and (v) websites (including website photography) used in connection with the Property or the Business, including all Intellectual Property embodied in the websites, the email addresses used in connection with the Property or the Business, in each case, other than such intangibles owned or held by Tenants or Hotel Manager unrelated to the Business, and together with the Plans collectively the “Intangibles”;

(vii) the plans and specifications, engineering drawings and prints with respect to the improvements, all operating manuals, and all books, data and records regarding the physical components systems of the improvements at the Property, each to the extent in Sellers’ possession or reasonably obtainable by Sellers (all of the foregoing embodied or stored in any medium collectively the “Plans”);

(viii) all Space Leases and all security and escrow deposits and letters of credit held by Sellers in connection with any such Space Lease (including accrued interest thereon) whether in the form of cash, letter of credit or otherwise (the “Security Deposits”);

(ix) all books and records, tenant files, tenant lists, tenant information, guest files, guest lists, guest preferences, guest information and marketing information of any type or nature relating to the Property and all credit records, promotional literature, packaging materials, sales brochures, video tapes, sales manuals, sales files and the information contained in any automated sales system maintained by any Seller or Hotel Manager with respect to the ownership and operation of the Property (the “Books and Records”);

(x) all food and beverages (including Liquor Inventory, to the extent transferable under Applicable Law, and non-alcoholic beverages); china, glassware, linens, silverware, and uniforms, engineering, maintenance, and housekeeping supplies, including soap, cleaning materials and matches; stationery and printing; and other supplies of all kinds, in each case whether partially used, unused, or held in reserve storage for future use in connection with the maintenance and operation of the Property, which are on hand as of

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

RESORT SELLER:

CBH20, LP,

a Pennsylvania limited partnership

By: CBH20 General Partner, LLC, its general partner

By: 

Name: Arthur B. Berry, III

Title: Managing Member

LODGE SELLER:

CBK Lodge, LP,

a Pennsylvania limited partnership

By: CBK Lodge General Partner, LLC, its general partner

By: 

Name: Kenneth L. Ellis

Title: Managing Member

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

BUYER:

CMBK Resort Holdings, LLC,
a Delaware limited liability company

By: 

Name: Kevin Rohnstock

Title: Authorized Representative

[Signature Page to Agreement of Purchase And Sale]