To the Massanutten community:

We thought it might be useful for the community to understand some of the key agreements and frameworks under which Massanutten Resort's Developer, Great Eastern Resort Corp. ["Great Eastern"] and MPOA have historically agreed to operate to mutual benefit.

Before I get into that, I'd like to reiterate that Massanutten Resort and its developers continue to recognize several key points: 1) that MPOA owns roads used by Resort guests, personnel and vendors, 2) that Great Eastern has an obligation to contribute to maintenance accordingly.

The issue before us has never been about our willingness to contribute. It's based primarily on HOW those contributions are provided and used. As previously noted elsewhere, monies have been held in escrow in hopes of reaching a mutually acceptable agreement without the necessity of arbitration. Now that MPOA has filed for arbitration, we'll continue to hold those monies in escrow.

Some background:
In the hopes it builds understanding of the current dispute, here's some background on agreements and covenants between Great Eastern and MPOA. In future posts, we'll outline why these agreements clearly show that although the three timeshare operations that Great Eastern developed in The Kettle have contributed to MPOA <u>voluntarily</u>, but are under no legal obligation to do so.

There have been multiple agreements by and between MPOA and the Developer (originally, Massanutten Development Company ["MDC"], then Massanutten Village, Inc., then First Federal Corporation, Inc.["First Federal"] and now Great Eastern) since the creation of MPOA in 1973.

Initial Agreement:
MPOA and MDC entered into an initial agreement in April, 1977. This agreement provided that in the future, MPOA would maintain the roads and MDC would pay a fee for their use, to the lesser of the assessment on 30 lots or 75% of actual road maintenance and snow removal expense for Massanutten Drive.

Of note: under the "Voting Rights" section found in that Agreement, it was specifically provided that, "…MDC, its successors and assigns, will not be obligated to pay any assessments for any of its lots, whether platted or unplatted, recorded or not recorded."

This Agreement anticipated a 1978 Master Deed, under which MDC conveyed to MPOA certain common areas and the Massnutten street system, while reserving perpetual utilities easements and an easement for itself and its successor and assigns to use the roads. The deed also required MPOA to maintain the roads.

1982 Agreements:
The next agreement between MPOA and the Developer was dated May 13, 1982 between MPOA and First Federal, which was the successor developer to MDC.

The primary purpose of this agreement was to transfer enforcement of covenants and restrictions affecting enumerated single-family subdivision phases in Massanutten to MPOA. But it's

important to understand that the agreement only granted such rights in single-family subdivision areas. Furthermore, the Developer retained the right to cross lots with utilities, and MPOA agreed that it would not "unreasonably withhold" approvals to the Developer or others "whenever such withholding would cause an adverse effect on normal activities of Developer or prevent Developer from expanding the project."

In June of 1982, MPOA and First Federal signed a "Contract Fixing Rights at Massanutten Village Between Developer and the Property Owners' Association." It covered only the project then under development, and excluded the undeveloped lands of the developer and others.

This Agreement is the source of the "fair share" portion of the current dispute between MPOA and Great Eastern. In Section 2.03 of that document, the Developer agreed to pay a "fair share" – meaning a proportional share – of the cost of snow removal and road maintenance on the streets.

The amount paid was to be negotiated annually and, if it couldn't be agreed upon, the prior year's amount would be used and arbitration was available to the parties. MPOA also agreed to provide security and could charge the Developer for services it provided to the Developer's facilities, calculated on a similar basis to snow removal and road maintenance. The Developer could also perform such security services if MPOA didn't, and charge MPOA accordingly.

This Agreement also included a clause stating that "Time sharing owners are members of MPOA. MPOA agrees to enter into good faith negotiations with the Time Sharing Owners Association whenever requested if necessary to work out or negotiate understandings between the two groups." Of particular importance: at the time, the only timeshare association in the Kettle was Mountainside Villas. It's also important to understand that this agreement could be modified, or rights arbitrated, and that it imposed no obligation on undeveloped areas or future timeshare associations.

1989 Agreement:
In 1989, a dispute arose between MPOA and Great Eastern concerning the amount Great Eastern would pay for road maintenance and security ("RMS"). As a resolution to that dispute, the parties entered into an agreement dated August 1, 1989. Again, nothing in that agreement required the timeshares to become MPOA members, nor did the Owners' Associations of those timeshares sign any agreement with MPOA. As such, there are no arbitration provisions which bind them. The August 1989 Agreement did, however, create a mutually agreeable framework wherein the Developer would contribute towards RMS Expenses.

1994 Agreement:
In May of 1994, MPOA and Great Eastern executed an Addendum to the May 1982 Agreement, clarifying that MPOA's "obligation to maintain pavement or other surface treatment on streets conveyed to it by Great Eastern shall extend only to those areas designed and used for vehicular traffic." Again, nothing in this Agreement required either the four-year-old Eagle Trace at Massanutten Owners Association ["ETOA"] or the Shenandoah Villas Owners' Association ["SVOA"] to become MPOA members.

2013 Agreement:

MPOA and Great Eastern executed another agreement in March, 2013, concerning Great Eastern's obligation for payments related to the maintenance of MPOA roadways and security. Again, nothing in the agreement required SVOA, ETOA, or Summit at Massanutten Owners Association ["SMOA"] (formed in September 1994) to MPOA members. In fact, a 2012 letter to Great Eastern's counsel from MPOA's counsel, Jay Litten, acknowledged that "Great Eastern has always taken the position that its timeshare units in the Kettle can be withdrawn from MPOA." While that remains true, the 2013 Agreement again provided a mutually agreeable framework under which the Developer would contribute towards a portion of RMS Expenses.

Looking ahead:
In future posts, we'll describe our concerns about how our snow removal and road maintenance fees are used, and why we think there's a better alternative for the entire community than the Massanutten Police Department. As noted above, we'll also describe why, under Virginia law, we are convinced that our three timeshare developments in the Kettle are exempt from any requirement of MPOA membership.

Please bear in mind: Massanutten Resort and its developer understand and accept the need to share road maintenance and certain other expenses, in a fair and equitable way, with MPOA. We have reached mutually acceptable agreements regarding funding in the past, and we wish to do so again. What's really in dispute here is for what, by whom, and how those monies are provided and spent.

Cordially,

Garrett Smith, General Counsel, The Resort Companies