

Attachment #1

HOWELSEN HILL SKI AREA OPERATING AGREEMENT

This HOWELSEN HILL SKI AREA OPERATING AGREEMENT (“Agreement”) is made by and between the City of Steamboat Springs, a Colorado home rule municipal corporation (hereafter “City”) and the Steamboat Springs Winter Sports Club (hereafter “Club”).

A. WHEREAS, the City is the owner of real property located in Routt County, Colorado known as the Howelsen Hill Ski Area, which has been used for Nordic jumping and other winter sports uses since 1914, and which until October 1, 1977 was operated by the Club with financial support from the City; and

B. WHEREAS, on October 31, 1977 the City and the Club entered into an agreement titled Sale and Agreement Between the City of Steamboat Springs and the Steamboat Springs Winter Sports Club (“1977 Agreement”) pursuant to which the Club conveyed to the City buildings and personal property owned by the Club and used by the Club for the purpose of operating the Ski Complex, including the Howelsen Hill Lodge, poma lift, Thiokol snow cat, and other equipment, and the City agreed to pay the Club \$30,000 and to assume responsibility for operating and maintaining the Ski Complex; and

C. WHEREAS, since 1977 the City has operated the Howelsen Hill Ski Area and the parties acknowledge that the City is authorized to operate a ski area by Article XX, Section 6 of the Colorado Constitution and C.R.S. Sections 31-25-201, 29-7-101, and 33-41-102; and

D. WHEREAS, on November 25, 1987 the parties entered into a new Joint Use Agreement dated November 1, 1987, a copy of which is attached hereto as Exhibit “A” (hereafter “1987 JUA”), which amended and restated the terms of the 1977 Agreement; and

E. WHEREAS, the 1987 JUA is written in general terms and provides for the right for the Club to use the real and personal property referred to as the Ski Complex for Club operations, training, and events; provides for the division of revenues from Ski Complex operations; and obligates the City to operate and maintain the Ski Complex; and

F. WHEREAS, the parties acknowledge the historic and cultural significance of the Howelsen Hill Ski Area to the City of Steamboat Springs and the Club and its membership and wish to enter into this Agreement to set forth certain terms of the parties' use of the Howelsen Hill Ski Area in order to provide for the sustainable operation and evolution of the Howelsen Hill Ski Area in a manner that accommodates all of its user groups.

G. WHEREAS, the parties wish to define a) the scope and extent of the City's obligation to maintain and operate the Ski Complex for winter sports uses; b) the extent of the City's responsibility for the construction of improvements to mitigate soil instability and slides; c) the performance standards for the maintenance and operation of the Ski Complex for winter sports uses; d) scheduling procedures for Club and public use of the Howelsen Hill Ski Area; and

H. WHEREAS, the City wishes to continue and affirm its support of the Club and the training and competitive services and opportunities that it provides to its athletes and the Steamboat Springs and Routt County community.

COVENANTS

NOW, THEREFORE, in consideration of the following mutual covenants and promises, the parties agree as follows:

1. EFFECT OF AGREEMENT. The provisions of the 1987 JUA shall continue in full force and effect as of the date of the 1987 Joint Use Agreement; provided, however, that during the

term of this Agreement, neither Party shall interpret or seek to enforce the 1987 JUA in a manner that is inconsistent with this Agreement.

1.1 The term “Ski Complex” for purposes of the 1987 JUA consists of the real and personal property owned by the City and used in the winter sports operations of the Howelsen Hill Ski Area as of November 1, 1987. It shall also include buildings and equipment that later replaced elements of the Ski Complex existing on November 1, 1987. The Ski Complex consists of the following real and personal property:

- a) The real property located between Mile Run and Wren’s Run;
- b) The ski jumping complex, including the ski jumps, outruns, the unnamed judging tower adjacent to the 45 meter jump, and Fetcher tower;
- c) The Howelsen Hill Lodge, and Alpine start shack;
- d) The parking lot located to the east of the Howelsen Hill Lodge;
- e) The Poma lift, the Boardwalk surface lift, and associated structures (the “Lifts”);
- f) Snowmaking equipment and facilities necessary for operations described in Sections 3 and 4;
- g) The alpine grooming snow cat owned by the City;

1.2 The Howelsen Hill Ski Area consists of the Ski Complex and all other real and personal property owned by the City on Emerald Mountain and used for alpine and Nordic skiing, snowboarding, year-round ski jumping and other winter sports. The Howelsen Hill Ski Area generally consists of the real property between Mile Run and Long John and the Nordic trails located on the Howelsen Hill softball fields, rodeo grounds, and the real property described in the records of the Routt County Assessor by Property Identification Nos. 936172001 (“Baxter Property”), 228600002 (“Combs Property”), and 936174009 (“Combs Property”) and portions of

the real property described in the records of the Routt County Assessor by Property Identification Nos. 936173003 (“Murri-Gooding Property”) and 936172003 (“Howelsen Hill Property”).

2. CLUB USE OF THE HOWELSEN HILL SKI AREA.

2.1 The parties acknowledge that the City and the Club have individually and jointly funded acquisition of real property, trail improvements (including a cross country trail improvement project that also provided benefits to summer mountain biking trails), snowmaking and snow grooming equipment, trail lighting, and other improvements to enhance and expand the Howelsen Hill Ski Area for the benefit of Club members and the general public.

2.2 The Club shall have the right to use the entirety of the Howelsen Hill Ski Area for winter sports activities during the months of November through April on the same terms set forth in the 1987 JUA for Club use of the Ski Complex. The Club acknowledges the City’s use of those parts of the Howelsen Hill Ski Area that are not part of the Ski Complex for Nordic, snowshoeing, fatbiking, and other events and that the City may continue such uses. The City may also permit other groups to use those parts of the Howelsen Hill Ski Area that are not part of the Ski Complex for training and events.

2.3 Subject to the remainder of this Section 2.3, the Club shall have the right to use the entirety of the Howelsen Hill Ski Area for non-winter sports activities during the months of May through October consistent with past practice. For the avoidance of doubt, the parties expressly acknowledge and agree that, with respect to non-winter sport activities during the months of May through October, such use by the Club at Howelsen Hill Ski Area has not been exclusive except for (a) the Club’s use of the office space and downstairs locker room at Howelsen Hill Lodge; (b) the Club’s use of the ski jumping complex; (c) the Club’s use of the DeHaven Strength Center (including the outdoor, rubber training area in front of the DeHaven Strength Center,

provided that such use of the outdoor, rubber training area by the Club is subject to any future master plan referenced in Section 2.4 below and adopted, funded and implemented by the City with respect to Howelsen Hill Park); (d) subject to the terms of the Alpine Slide Agreement (as defined below), the Club's use and operation of the Alpine Slide (including the Yurt next to the Barrows Chairlift); and (e) the Club's use of any outbuildings constructed, installed or purchased by the Club at the base of Howelsen Hill. All other non-winter sport use and activity during the months of May through October may be conducted by the Club at Howelsen Hill Ski Area on a non-exclusive basis and consistent with past practice as defined in the following paragraph.

For purposes of non-winter sport use and activity referred to above, "consistent with past practice" shall mean the continued non-exclusive use by the Club of Howelsen Hill Ski Area (including the Howelsen Hill Lodge parking lot, rodeo parking lot, open space and ball fields, and surrounding bike trails) for mountain biking and winter sport dryland training programs, which shall be subordinate to activities scheduled by other parties through the City that conflict with such use by the Club.

Club uses of City facilities shall be subject to best management practices and shall be scheduled and permitted in accordance with the provisions of Section 5 of this Agreement, with the exception that the preferred date for completion of the scheduling process shall be February 15 of each year, including estimates of number of athletes or user days in Club programs participating in non-winter sport use and activity.

Club dryland training at Howelsen Hill Ski Area generally consists of various field sports and fitness training conducted at the Howelsen Hill Ski Area, including the ballfields. These activities may be regularly scheduled or scheduled on an ad hoc basis. The Club offers dryland

training to participants in other programs and generally does not offer an independent registration process for dryland training. Highest participation levels occur after Labor Day.

The Club and City acknowledge that the number of “user days” by participants in Club biking programs on City bike trails (as outlined in Exhibit A) was [] user days during the 2018 summer season. Club biking participant user days may be reduced in the Club’s discretion. Increases in Club biking participant user days shall be subject to City review and approval in the scheduling and permitting process and shall be approved if the City determines increases will not damage natural resources or negatively impact use of public facilities by the general public.

Except for biking, such non-exclusive use shall be permitted without charge to the Club. Solely with respect to biking, the Club will continue to pay a base permit fee (currently \$150.00) for non-exclusive use of the bike trails and generally applicable user fees, which shall be reduced by 33% in any year the Club makes the capital contribution contemplated by Section 6.3 of this Agreement. Further, the Club may continue to satisfy any user fees charged by providing trail maintenance and clean up, valued at no less than [\$13.00] / hour, which will be tracked and reported by the Club to the City by no later than October 1st each year. The parties shall calculate a value for each trail maintenance and clean up project performed by the Club on the basis of prevailing costs for trail maintenance. The parties shall agree on this value for each project prior to performance. Credits to the Club for a project shall not exceed the calculated project value. The project value calculation shall be determined by agreement of the City Director of Parks, Open Space, Trails and Recreational Services and the Club _____.

With the exception of the items listed in Sections 2.3(a)(the lodge), (b)(the ski jumping complex) and (d)(the alpine slide), the City’s obligations with respect to the Club’s non-winter use of the Howelsen Hill Ski Area shall be limited to permitting such use in accordance with the

provisions of this Section 2.3. With the exception of the items listed in Section 2.3(a)(the lodge), (b)(the ski jumping complex) and (d)(the alpine slide), the City shall have no obligation to operate, maintain, construct, reconstruct, repair, replace, or improve the Howelsen Hill Ski Area or its facilities for the Club uses described in this Section.

2.4 The Club acknowledges that the City is engaged in master planning for Howelsen Hill park.

3. OPERATION OF HOWELSEN HILL SKI AREA

3.1 Snowmaking.

a. The City shall continue to operate the existing snowmaking system to the extent funds are authorized pursuant to Section 6 of this Agreement. The foregoing notwithstanding, the City may decline to make snow in locations, amounts, or at times that are identified in as contributing to slope instability by geotechnical experts hired by the City.

3.2 Grooming.

a. The City and the Club (and its donors and supporters) have, since November 1, 1987, expanded the geographic scope and capacity of the Howelsen Hill Ski Area, including the year-round ski jumps, snowmaking facilities, lighting, cross country skiing trails, construction of other structures located and operated by the Club, and the City has increased the size of the grooming fleet from one to three vehicles.

b. The City shall operate the current grooming fleet to the extent funds are authorized for such operations pursuant to Section 6 of this Agreement.

3.3 Lifts

a. The City shall at a minimum operate the Lifts during the periods established for Club use by the parties in accordance with the provisions of Section 5 of this Agreement.

b. The City shall operate other lifts as necessary to provide redundancy during competitive events scheduled by the Club in accordance with Section 5 of this Agreement and shall also operate other lifts during periods scheduled for Club ski instruction and training if one or more of the Lifts is not operational. The obligation under this Agreement to operate other lifts shall apply only to the extent those lifts are operational. The City shall have no obligation under this Agreement to maintain, repair, or replace lifts other than the Lifts and the City is exclusively responsible under this Agreement for the determination of whether any such lifts, including the Lifts, are operational.

c. The parties acknowledge that the Barrows lift may not be operational in the future due to the limited availability of replacement parts, the location of the loading terminal, and the location of lift towers in areas of potential slope instability. In the event the City determines that it is unable to operate the Barrows lift, and in addition to any obligations the City may have under the Alpine Slide Agreement (defined below), City shall provide the Club immediate written notice of that determination.

The parties agree to work together to review and identify options to address the condition of the Barrows lift including replacement and relocation of the Barrows lift. The parties also acknowledge that any capital campaign to raise funds (including for a replacement and relocation of the Barrows lift) may require donor recognition, including the granting of “naming rights” for donors for all and/or parts of any such replacement lift and that the City is willing to collaborate and cooperate with the Club regarding “naming rights” and other donor recognition in connection with any such capital campaign(s), subject to the City’s policies regarding “naming rights”. Except as may otherwise be required under that certain Howelsen Hill Alpine Slide and Lease Agreement dated October 16, 2002 between the City and Community Slide, Inc. (“Alpine

Slide Agreement”), replacement and relocation of the Barrows lift shall be subject to the discretionary appropriation of funds by the City Council pursuant to Section 6 of this Agreement. This Agreement shall not affect the rights or obligations of either party pursuant to the Alpine Slide Agreement or the validity or enforceability of those rights or obligations.

3.4 Lodge

a. The Club shall operate its areas of the Lodge, which are described as follows: offices, locker rooms, and storage. Club areas do not include Olympian Hall, the Fireplace Room, Ski Patrol offices, and restrooms. Club use of other areas of the Lodge shall be in accordance with general City policies, including Club execution on an annual basis of standard use agreements and deposits. For the avoidance of doubt, and consistent with past practice, the Club shall have year-round access to Olympian Hall, the Fireplace Room and restrooms for all Club activities without cost of use other than costs associated with failure to adhere to standard use agreements or for damage or cleaning required that would be withheld from applicable deposits.

4. MAINTENANCE, REPAIR, CONSTRUCTION, RECONSTRUCTION, AND REPLACEMENT OF SKI COMPLEX.

4.1 Maintenance

Except as may otherwise be required under the Alpine Slide Agreement, the City’s maintenance obligations shall extend to maintenance and replacement of facilities that are part of the Ski Complex to the extent that the facilities continue to be used by the parties. Maintenance standards shall be as follows:

- a) Snowguns – Annual inspection and service per manufacturer’s recommendations;
- b) Snowmaking water lines – Annual flush and repair of leaks as necessary;
- c) Snow cats – Maintenance in accordance with City Fleet maintenance standards;

- d) Lifts – Compliance with Tramway Board regulations and manufacturer best management practices (BMPs);
- e) Ski runs – Pruning of woody vegetation as needed;
- f) Jump structures and outruns – Inspection of fastening systems, electrical systems, and irrigations systems, wood treatments, mowing;
- g) Signs – Inspection and replacement as needed;
- h) Lodge – Cleaning, pest control, inspection for safety hazards, with repairs as necessary, planned maintenance in accordance with City Facilities standards.
Janitorial services for Club areas to be performed by Club.
- i) Parking lot/sidewalks – Snow removal and asphalt maintenance; and
- j) Slope Maintenance and Repair. The City’s obligation to maintain, repair, etc. in the event of landslides shall, to the extent practical, be to repair affected areas or facilities to useable condition with due consideration given to the operational characteristics of the slope (is it an improved run, what degree of difficulty, skill level of expected users, maintenance of FIS certification of Face runs, etc.). The City may, but shall not be obligated to, restore landslides to pre-existing grades or conditions.

The City shall be responsible for maintaining the Ski Complex. The City’s responsibility to maintain, repair, construct, reconstruct and/or replace the Ski Complex shall not include the obligation to install soil nails, ground anchors, bridges, gabion boxes, retaining walls, vegetation or landscaping, drainage facilities, or other capital improvements to stabilize Ski Complex slopes. Such improvements may be installed by the City in its sole discretion.

4.2 Replacement schedule

a. Replacement F&E. The City's obligation to maintain the Ski Complex shall include the obligation to replace facilities and/or equipment that have reached the end of their service life ("Replacement F&E"). The parties shall work together to identify Replacement F&E that have reached or are nearing the end of their service life and plan for their replacement. The parties shall review the replacement schedule on an annual basis during preparation of the Annual Operation Agreement pursuant to Section 5 of this Agreement.

b. Maintenance of new facilities and/or improvements (other than Replacement F&E). In addition to Replacement F&E, the City may also install new facilities, improvements, and/or equipment, such as snow grooming machines, to the Ski Complex and Howelsen Hill Ski Area in its sole discretion. New facilities and improvements shall be maintained, repaired, constructed, reconstructed, and/or replaced in the City's sole discretion or as agreed to in a separate maintenance agreement.

5. ANNUAL OPERATING AGREEMENT.

5.1 The parties shall on an annual basis execute an operating agreement governing scheduling of the parties' respective year-round uses of the Howelsen Hill Ski Area, pricing for season and other Howelsen Hill Ski Area passes, planning for snowmaking, grooming, and other operations, the costs of services to be charged by the City, allocating the funds anticipated to be available for use at the Howelsen Hill Ski Area, and other operations issues. The parties shall also discuss joint fundraising and potential capital projects / campaigns relating to potential improvements at Howelsen Hill Ski Area and shall work together where appropriate to secure grant funding for relevant projects. The City shall consult with the Club regarding pricing, cost of services, and allocation of funds, but the City shall retain final decision making authority regarding those issues. Discussions regarding the annual operating agreement shall commence

between the City Parks, Open Space, and Recreational Services Department and Club representatives no later than May 15 each year and be concluded by June 15 of each year.

During that time, the Club will present a proposed event schedule for the coming year. The City acknowledges that the Club may not have a final list of winter athletic events until September 1st and agrees to work with the Club in good faith to accommodate athletic events that have not been identified until after May 15. If the parties' representatives are unable to agree on a schedule, the matter shall be referred for final resolution to the City Council.

5.2 The Club shall identify its event schedule to the extent the schedule is known to the Club. The parties acknowledge that scheduling of year-round sports events is subject to weather conditions and other circumstances outside the control of the parties. The parties shall use their best efforts to accommodate adjustments to the event schedule.

5.3 Training and Events

a. The City and the Club shall on an annual basis schedule the time periods during which the Club shall be entitled to exclusive use of Howelsen Hill Ski Area for training purposes and events.

b. To the extent reasonably possible, the Club shall provide the City twenty-one (21) days' advance notice of training activities or events that require increased staffing or the performance of snowmaking or grooming or other activities to create or improve training or competition conditions or features. Unless otherwise agreed by the City, requests for staffing or services made after the notice period set forth above will be honored only with the Club's written agreement to compensate the City for the actual expenses incurred by the City in honoring the request.

c. To the extent reasonably possible, the Club shall provide the City with seven (7) days' advance notice in the event the Club wishes to cancel staffing or snowmaking/grooming requests. Unless due to weather, snow levels or circumstances outside of the Club's reasonable control, requests cancelled after the notice period set forth above will result in a charge to the Club for actual expenses incurred by the City.

5.4 Public use

a. Club members are encouraged to use Howelsen Hill Ski Area during periods that are not reserved for exclusive use by the Club. However, the Club shall not schedule competitive events, instruction, or training sessions during public use periods unless agreed to in advance by the City Manager.

b. The Club may schedule events or instruction that are open to the public.

6. DISCRETIONARY SUPPORT

6.1 The parties acknowledge that the Club membership has grown since the parties entered into the 1987 JUA, that the Club has expanded its services to provide training in new competitive disciplines on a year-round basis, and that the City's costs of operating the Ski Complex and the Howelsen Hill Ski Area have increased. The parties further acknowledge that increased costs to the City are partially offset by increased operating revenues from Club member pass purchases. The City may, in its discretion and subject to the annual appropriation of funds, provide services not required by the 1987 JUA and may acquire real property or install facilities and improvements at the Howelsen Hill Ski Area. The provision of such services and the acquisition or installation of such real property or facilities and improvements that do not constitute Replacement F&E shall not create or impose upon the City any obligation under the 1987 JUA.

6.2 The baseline cost of operating the Ski Complex at minimum service levels is approximately \$300,000 in 2017 dollars. The parties agree that the City administrative staff shall propose in the City's annual budget process to appropriate funds for the purpose of defraying the City's cost of maintaining and operating the Ski Complex and to provide additional services for the purpose of supporting Club activities and operations. The annual budget proposal shall be subject to approval of the City Council.

The total proposed budget, net of City Howelsen Hill Ski Area revenues, for providing services at the Howelsen Hill Ski Area shall be structured as follows:

- a. \$550,000 for general operational expenses (adjusted based on CPI increases), which shall be inclusive of all costs relating to operation of the Howelsen Hill Ski Area and as defined under Section 4.1 herein, including snowmaking, snow grooming, lift operations, utility expenses, repair to buildings or equipment, snow removal, replacement of snow cats and other equipment.
- b. At least \$50,000 for use for capital improvements to the Howelsen Hill Ski Area as outlined in the City's Howelsen Hill Preservation Plan, as the same may be amended from time to time).

6.3 During the term of this Agreement, and subject to the City's continuing commitment to operating the Howelsen Hill Ski Area in a manner that supports the then-current year-round activities of the Club, the Club agrees to use reasonable commercial efforts to restrict funds on its balance sheet, or provide \$100,000 annually (beginning November 2018) for capital improvements (and not Replacement F&E or maintenance) to Howelsen Hill Ski Area. Additionally, in the event the Club raises and makes available funds in any one year under this Agreement that exceed such \$100,000, such funds will be applied to offset future year

obligations with a maximum cap of 5 years, which shall be contributed by the Club to the City for capital improvements to the Howelsen Hill Ski Area, subject to the availability of funds.

“Capital improvements” as used in this paragraph means real and personal property with an expected useful life of five years or more.

6.4 The City has commissioned a comprehensive geotechnical study of the Ski Complex and the Howelsen Hill Ski Area. The parties anticipate the study may recommend the construction of improvements to stabilize Ski Complex slopes. The parties further acknowledge that future studies, cost estimates, or other information may similarly recommend the construction of improvements to stabilize Ski Complex slopes.

During the term of this Agreement, the parties agree that neither will seek to interpret or enforce the 1987 JUA in a manner that obligates the City to install capital improvements to stabilize Ski Complex slopes or to restore landslides. The City agrees that the City’s administrative staff shall include a request for the appropriation of funds in the City’s annual budget process to create a capital fund to be used for slope or structure stabilization purposes. If appropriated, these funds shall be used for capital improvements as defined above, and not for maintenance, such as cleaning drains, managing vegetation, etc. The request shall be subject to approval in the discretion of the City Council.

7. TERM. The term of this Agreement shall commence on November 1, 2017 and shall run for a period of ten years until October 31, 2027. This Agreement shall thereafter terminate and be of no further force or effect. The parties agree to commence good faith negotiations to extend the term of this Agreement or to replace this Agreement no later than May 1, 2026. Termination of this Agreement does not affect the existence or terms of the 1987 JUA.

8. MISCELLANEOUS PROVISIONS.

Section 8.1. Instruments of Further Assurance. To the extent allowed by law, the City and Club will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations under this Agreement.

Section 8.2. Recorded Copy. At any time, the City or the Club may record at the Routt County Clerk and Recorder's office a copy of this Agreement.

Section 8.3. Public Record. This Agreement is a public record of the City and may be disclosed for inspection and copying as provided in the Colorado Open Records Act and applicable City ordinances, rules, and regulations.

Section 8.4. Remedies on Occurrence of a Default. Upon the occurrence of a default, after 30 business days advance written notice of default given by the non-defaulting party and the defaulting party's opportunity to cure within such 30 business days or to commence cure within the 30 business day period and diligently proceed with the cure if such cure cannot be completed within 30 business days, if the cure is not completed, then the non-defaulting party shall have the right to protect and enforce its rights under this Agreement and any provision of law by such suit, action, or special proceedings as the non-defaulting party shall deem appropriate, including, without limitation, any proceedings for the specific performance of any covenant or agreement contained in this Agreement or the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages caused by breach of this Agreement, including reasonable attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

Section 8.5. Delay or Omission No Waiver. No delay or omission of a party to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence in the default.

Section 8.6. No Waiver of One Default to Affect Another; All Remedies Cumulative; Notice and Opportunity to Cure. No waiver of any default under this Agreement by a party shall extend to or affect any subsequent or any other then-existing default or shall impair any rights or remedies available for such other default. All rights and remedies of the parties whether or not provided in this Agreement, may be exercised following notice and an opportunity to cure such default within the time provided by Section 8.4 hereof, shall be cumulative, may be exercised separately, concurrently, or repeatedly (but in each case, without duplicate recovery for any damage or loss), and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

Section 8.7. No Effect on Rights. No recovery of any judgment by a party shall in any manner or to any extent affect any rights, powers, or remedies of the parties under this Agreement, but such rights, powers, and remedies of the City or the Club shall continue unimpaired as before.

Section 8.8. Discontinuance of Proceedings on Default; Position of Parties Restored. In case a party shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to a party, then and in every such case the parties shall be restored to their former positions and rights hereunder, and, except as may be barred by res judicata, all rights, remedies, and powers of the parties shall continue as if no such proceedings had been taken.

Section 8.9. Effective Date. Upon the execution by both Parties of this Agreement, this Agreement shall be in full force and effect and be legally binding upon each Party.

Section 8.10. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any Person other than the City and the Club, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions hereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the City and the Club shall be for the sole and exclusive benefit of the City and the Club. The covenants, terms, conditions, and provisions contained herein and all amendments of this Agreement shall inure to and be binding upon the heirs, personal representatives, successors and assigns of the Parties hereto.

Section 8.11. Assignment. Neither party shall assign their respective rights or obligations (in whole or in part) under this Agreement without the prior written consent of the other party. Any other assignment of this Agreement without written consent shall be void.

Section 8.12. Notices. Except as otherwise provided herein, any notice or other communication required to be given hereunder will be in writing and delivered personally, sent by United States certified mail, return receipt requested, by reputable overnight courier, or by facsimile, in each case addressed to the Party to receive such notice at the following addresses:

If to City: _____

With a copy to:

If to Club:

Steamboat Springs Winter Sports Club
P.O. Box 774487
Steamboat Springs, CO 80477
Attn: Executive Director

Facsimile No. (970) 879-7993

With a copy to:

Norman F. (Rick) Kron
Spencer Fane LLP
1700 Lincoln Street
Suite 2000
Denver, CO 80203
Facsimile No. (303) 839-3838; and

Ronald L. Fano
Spencer Fane LLP
1700 Lincoln Street
Suite 2000
Denver, CO 80203
Facsimile No. (303) 839-3838

Any notice delivered personally will be deemed given on receipt; any notice delivered by mail will be deemed given three business days after the deposit thereof in the United States mail with adequate postage prepaid; any notice delivered by overnight courier will be deemed given one business day after the same has been deposited with the courier, with delivery charges prepaid; and any notice given by facsimile will be deemed given on receipt by the recipient's facsimile facilities.

Section 8.13. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained in this Agreement, the intention being that such provisions are severable.

Section 8.14. Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for Routt County, Colorado.

Section 8.15. Amendment. This Agreement may be amended from time to time by agreement between the City and Club; provided, however that no amendment, modification, or alteration of

the terms or provisions of this Agreement shall be binding upon the City or Club unless the same is in writing and duly executed by the City and Club.

Section 8.16. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

Section 8.17. Attorneys' Fees. Should any action be brought in connection with this Agreement, including, without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees. The provisions of this Section shall survive the termination of this Agreement.

Section 8.18. Automatic Termination. This Agreement shall terminate, without further action of the Parties, on October 31, 2027. In the event of such termination, both Parties shall be relieved of all rights, duties, and obligations arising from this Agreement.

Section 8.19. 1987 JUA. The execution of this Agreement and the expiration of the ten year term of this Agreement shall have no effect on the validity of the 1987 JUA, which remains in effect. The parties also agree that nothing in this Agreement shall be construed to expand or limit the rights of either party to use Howelsen Hill Ski Area that exist under the 1987 JUA immediately prior to the date this Agreement is executed or upon termination of this Agreement. Further, the parties agree that nothing in this Agreement shall be construed as an admission by either party that a particular use of Howelsen Hill Ski Area was permissible or not permissible under the 1987 JUA, Section 8.20 Approval Procedure. The City will approve this Agreement by ordinance regardless of whether an ordinance is required for such purpose.

Section 8.21 Colo. Const. Art. X, Sec. 20. If a court of competent jurisdiction determines that any term of this Agreement violates Colo. Const. Art. X, Sec. 20 (“TABOR”), any other Constitutional provision, the City Charter, or other applicable law, then the Parties shall substitute an alternative term to avoid the violation and that will, to the extent possible, accomplish the purposes of this Agreement.

Section 8.22 Headings. The headings and section titles herein are provided for convenience of reference only and are not intended to limit or define the scope of any term hereof.

CLUB:

STEAMBOAT SPRINGS WINTER SPORTS CLUB

a Colorado non-profit corporation

By:

Name: James J. Boyne

Title: Executive Director

CITY:

CITY OF STEAMBOAT SPRINGS,

a Colorado home rule municipal corporation

By:

City Council President

ATTEST:

By:

City Clerk