

PARKS USE AGREEMENT

This **PARKS USE AGREEMENT** (the "**Agreement**") is entered into as of the date on the City's signature page below ("**Effective Date**") by and between the **CITY AND COUNTY OF DENVER** (the "**City**"), a Colorado municipal corporation, and **DENVER NORDIC SKI ASSOCIATION**, a Colorado nonprofit corporation ("**DNSA**"), whose address is 2136 South Franklin Street, Denver, Colorado 80210.

RECITALS

WHEREAS, DNSA desires to use, during the winter seasons of the Term of this Agreement, a portion of the Wellshire Golf Course owned by the City and operated by the City's Department of Parks and Recreation ("**DPR**"), at the locations designated under this Agreement ("**Ski Areas**"), for providing well-maintained and sustainable cross-country ski and snowshoe areas for use by the public; and

WHEREAS, DNSA desires to use, during the winter seasons of the Term of this Agreement, a portion of the Course maintenance area ("**Storage Area**") for storage of two (2) snowmobiles and grooming equipment, and the north parking lot of the Course (the "**Parking Area**") for use by DNSA, its Subcontractors, and members of the public using the Ski Areas; and

WHEREAS, the City has determined that in the exercise of its lawful functions it is desirable to issue a permit to DNSA by means of this Agreement to use the Ski Areas, Storage Area, and Parking Area for the uses described in this Agreement, and that such uses are compatible and appropriate with the uses allowed for City-owned golf courses; and

WHEREAS, the Parties believe that the Ski Areas will generate favorable exposure for both the City and DNSA and serve as a recreational and social occasion for the enjoyment of the entire community; and

WHEREAS, the Parties believe that DNSA's oversight of and activities within and with respect to the Ski Areas will promote responsible stewardship of and reduce damage to the Course by educating the public of appropriate areas to cross-country ski and snowshoe; and

WHEREAS, DNSA hereby agrees to utilize the Ski Areas, Storage Area, and Parking Area subject to the terms and provisions of this Agreement; and

NOW, THEREFORE, the City, for the Term specified below and in consideration of the recitals stated above and the terms and conditions stated in this Agreement, hereby grants to DNSA a permit for the right to use the Ski Areas, Storage Area, and Parking Area subject to the express terms and conditions as follows:

1. **DEFINITIONS.**

1.1 **Agreement.** "Agreement" shall mean this Parks Use Agreement, its exhibits, and all amendments and extensions thereto.

1.2 Applicable Law. “Applicable Law” shall mean any law, governmental rule, regulation or ordinance, or judicial order or decree, including without limitation the Denver Charter, Denver Revised Municipal Code, rules, regulations, and policies of the City departments and agencies, and executive orders of the City’s Mayor, as the same may be amended from time to time, and as further provided in Article 16 herein.

1.3 City. “City” shall mean the City and County of Denver and all of its departments and agencies.

1.4 City Liaison. “City Liaison” shall have the meaning set forth in Article 6 herein.

1.5 Claims. “Claims” shall have the meaning set forth in Section 11.1 herein.

1.6 Clean Up Plan. “Clean Up Plan” shall have the meaning set forth in Section 12.2 herein.

1.7 Communication Plan. “Communication Plan” shall have the meaning set forth in Section 12.4 herein.

1.8 Course. “Course” shall mean the Wellshire Golf Course located at 3333 South Colorado Blvd, Denver.

1.9 Damage Deposit. “Damage Deposit” shall have the meaning set forth in Section 4.2 herein.

1.10 Default by City. “Default by City” shall have the meaning set forth in Section 8.2 herein.

1.11 Default by DNSA. “Default by DNSA” shall have the meaning set forth in Section 8.1 herein.

1.12 DNSA. “DNSA” shall mean the Denver Nordic Ski Association, a Colorado nonprofit corporation.

1.13 DNSA Permit. “DNSA Permit” shall have the meaning set forth in Section 3.1 herein.

1.14 DNSA Services. “DNSA Services” shall have the meaning set forth in Section 5.1.

1.15 DPR. “DPR” shall mean the City’s Department of Parks and Recreation.

1.16 Effective Date. “Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

1.17 Grooming Equipment. “Grooming Equipment” shall mean the equipment to be used by DNSA for compacting and grooming snow to create trails within the Ski Areas, and shall include two (2) snowmobiles.

1.18 Manager. “Manager” shall mean the Manager of the City and County of Denver Parks and Recreation Department or the Deputy Manager for Parks and Recreation Department, or his or her designee.

1.19 Parking Area. “Parking Area” shall mean the north parking lot at the Wellshire Golf Course as depicted on Exhibit A.

1.20 Party/Parties. “Party” shall mean either the City or DNSA individually, depending on the context, and “Parties” shall mean the City and DNSA jointly.

1.21 Permitted Activities. “Permitted Activities” shall have the meaning set forth in Section 3.1 herein.

1.22 Personal Property. “Personal Property” shall have the meaning set forth in Section 3.7 herein.

1.23 Plans. “Plans” shall mean collectively the Signage Plan, Clean Up Plan, Transition Plan, and Communication Plan.

1.24 Signage Plan. “Signage Plan” shall have the meaning set forth in Section 12.1 herein.

1.25 Ski Areas. “Ski Areas” shall have the meaning set forth in Section 2.2 herein, and shall include such locations as agreed or modified by the Parties in accordance with this Agreement.

1.26 Ski Day/Ski Days. “Ski Day” and “Ski Days” shall have the meaning set forth in Section 2.3(a) herein.

1.27 Storage Area. “Storage Area” shall have the meaning set forth in Section 2.2 herein.

1.28 Subcontractor. “Subcontractor” shall mean any subcontractor, subconsultant, independent contractor, supplier, vendor, concessionaire, caterer, or other entity or agent that DNSA contracts with or engages to perform DNSA’s responsibilities or services hereunder.

1.29 Term. “Term” shall have the meaning set forth in Section 7.1 herein.

1.30 Transition Plan. “Transition Plan” shall have the meaning set forth in Section 12.3 herein.

2. **DNSA ACTIVITIES.**

2.1 DNSA Activities. DNSA shall operate and maintain for free public use cross-country ski and snowshoe trails within the Ski Areas during the winter months of the Term.

2.2 Ski Areas, Storage Area, and Parking Area. The specific locations of the Ski Areas (shown on Exhibit A as “Approved Ski Trails”), Storage Area, and Parking Area within

the Course shall be as depicted in the drawing contained in Exhibit A attached hereto and incorporated herein by reference, subject to modification through a revised drawing as mutually agreed in writing by the Manager and DNSA. Any modification of the Ski Areas, Storage Area, and/or Parking Area shall be subject to terms and conditions the Manager deems necessary for convenience, public safety, and to protect the Course from damage, and approval of any modification may be withheld until DNSA cures any uncured Default by DNSA (see Section 8.1) under this Agreement.

2.3 Dates of Activities.

(a) Cross-country skiing and snowshoeing within the Ski Areas may occur only on such days that there exists a sufficient snow base, as determined by the Manager in his or her sole discretion (each a “**Ski Day**” and collectively, the “**Ski Days**”), and the Manager makes no guarantee or representation as to how many (if any) Ski Days there will be each winter season. Unless otherwise approved by the Manager, there shall be no Ski Days after May 15th of each winter season of the Term. In addition, notwithstanding the foregoing, the Manager may require skiers and snowshoers to vacate the Ski Areas on a designated Ski Day if the Manager determines, in his or her sole discretion, that there no longer exists a sufficient snow base; in such instances, the Manager retains the right to close the Course to skiers and snowshoers and open the course to golfers. There shall be no reduction or reimbursement of fees paid by DNSA to the City pursuant to Section 4.1 in the event of a partial Ski Day.

(b) The hours for public admission to the Ski Areas for each Ski Day shall be restricted to dawn through dusk. DNSA is allowed to be on site outside of said hours as is reasonably necessary for performing the Permitted Activities.

(c) Upon written and advance approval of the Manager, DNSA may conduct within the Course activities that are necessary or desirable to prepare the Course for the upcoming winter season prior to the first Ski Day, such as, for example, the installation of signage pursuant to the Signage Plan.

3. AUTHORIZATION.

3.1 Permit & Permitted Activities. By this Agreement, the City grants a permit to DNSA for the right to operate and maintain cross-country ski and snowshoe trails within the Ski Areas and to engage in the related activities and uses specified in this Article 3 (“**Permitted Activities**”) subject to the submittal and approval of the plans specified in Article 12 (collectively, the “**DNSA Permit**”). No other permit otherwise issued by DPR shall be required. The DNSA Permit is granted on the condition that DNSA fully and faithfully performs all obligations specified in this Agreement. For the purposes of, and subject to, the DNSA Permit, DNSA may assume possession and control of the Ski Areas on the Ski Days subject to the City’s right, through its agents and/or employees, representatives, and contractors, to: (i) perform services under Sections 5.3 and Article 6; (ii) enter in, upon, under, and over all portions of the Ski Areas to inspect the same; (iii) observe the performance of DNSA under this Agreement; (iv) conduct inspections and/or audits as authorized by this Agreement; (iv) to handle other matters in, on, or about the Course: (v) or do any act or thing which the City may be obligated or has the right to do under this Agreement or otherwise.

3.2 Public Use. Access to and use of the Ski Areas shall be free to the public provided that User or its Subcontractor(s) may rent equipment to the public for a fee as provided in Section 3.5. DNSA also may occasionally, upon the prior approval of the Manager, stage tournaments, fundraisers and other special activities where public access and use may be limited.

3.3 Concession. The sale by DNSA of food and non-alcoholic and alcoholic beverages of any kind is strictly prohibited at the Course. All concessions within the Course shall be conducted solely by the current concessionaire for the Course.

3.4 Advertising, Sponsorship and Signage. The DNSA Permit does not include the right to permit and sell advertising to be situated anywhere within the Course (including the Parking Area). The DNSA Permit includes sponsorship recognition provided that all sponsorship recognition to be situated anywhere within the Course (including the Parking Area) shall be in a format and at such locations as are approved in advance and in writing by the Manager in accordance with Applicable Law. Any other signage shall be approved in advance and in writing by the Manager in accordance with Applicable Law. DNSA agrees and covenants that it shall not permit any sponsorship recognition, promotional products, and marketing materials within the Course (including the Parking Area) or associated with its operation and maintenance of the Ski Areas that promote any of the following: (i) firearms, (ii) fireworks, (iii) marijuana, (iv) pornography, (v) alcoholic beverages, and (vi) tobacco and tobacco products.

3.5 Equipment Rental. The DNSA Permit includes the right to engage in the rental of skis, ski boots, ski poles, snowshoes, and other equipment, materials or supplies appropriate for the public's use of the Ski Areas. Any such rentals may take place only out of a temporary tent installed by DNSA at a location approved in writing and in advance by the Manager. Any such tent shall be removed at the end of each Ski Day. Rental equipment, materials, and supplies shall not be stored at the Course unless otherwise approved by the Manager.

3.6 Grooming. The DNSA Permit includes the right to groom cross-country ski and snowshoe trails within the Ski Areas (at locations approved in writing and in advance by the Manager) by use of a snowmobile towing a specialized mat that compacts and grooms the snow.

3.7 Storage Area. The DNSA Permit includes the non-exclusive right to use the Storage Area for storage of the Grooming Equipment during the Term of this Agreement. All other goods, wares, supplies, merchandise, equipment, vehicles, furnishings, facilities, and other personal property, including without limitation equipment rentals, which are not owned by the City and which relate to DNSA's use and occupancy of the Ski Areas (not including the Grooming Equipment, "**Personal Property**") shall not be stored at the Course, including within the Storage Area; all such Personal Property shall be removed from the Course each day and stored by DNSA at an off-site location.

3.8 Parking Area. The DNSA Permit includes the non-exclusive right for DNSA, its Subcontractors, and members of the public using the Ski Areas to use the Parking Area only during Ski Days. DNSA shall provide signage at locations approved in writing and in advance by the Manager to notify users of the Ski Areas that they may only park in the north lot.

4. **FEES AND DAMAGE DEPOSIT.**

4.1 Fees. DNSA shall pay to the City a fee per Ski Day equal to Three Hundred and No/100 Dollars (\$300.00) (in lieu of fees normally charged by DPR under section 39-121, DRMC). Such fee shall be offset and reduced by Two Hundred Fifty and No/100 Dollars (\$250.00) per day, which amount represents the fee chargeable to the City for the cost and expense incurred by DNSA for grooming and maintaining the Ski Trails and monitoring the skiing, snowshoeing, and related activities described in this Agreement. The net fee per Ski Day that DNSA shall pay to the City is Fifty and No/100 Dollars (\$50.00). DNSA shall, upon execution of this Agreement, pre-pay for ten (10) Ski Days. Prior to DNSA's use of the Course for the 10th pre-paid Ski Day, DNSA shall pre-pay for an additional ten (10) Ski Days. Thereafter and throughout the Term of this Agreement, each time DNSA's pre-paid account with the City reaches only one (1) remaining pre-paid Ski Day, DNSA shall pre-pay for an additional ten (10) Ski Days. In the event that DNSA does not use all 10 ski days in one winter season of the Term (as set forth in Para. 2.3(a) above), the remaining prepaid days shall be credited to the next winter season. DNSA shall remain subject to any other fees and charges imposed and collected by other City departments.

4.2 Damage Deposit. DNSA agrees to deposit with the City within one (1) week of the Effective Date a damage deposit in the amount of Five Hundred and No/100 Dollars (\$500.00) ("**Damage Deposit**"). There shall be no Ski Days unless and until the Damage Deposit is received or replenished to its full amount as provided herein. The Damage Deposit is intended to assure that the Ski Areas and surrounding property is properly and timely cleaned up of all waste, stains, litter and debris and that all damages within or near the Ski Areas resulting from or associated with the Permitted Activities are paid for, either by adequate and timely repairs or by timely replacement of damaged items with items (including, for example, vegetation and shrubs) of equal or better quality. DNSA agrees to perform, as necessary throughout the Term of this Agreement, all clean-up, repairs, and replacement without requiring the City to resort to claiming the Damage Deposit. Should DNSA fail to perform as specified herein within five (5) days of the City's written request for such clean-up, repair, or replacement, the City shall be entitled to retain such portions of the Damage Deposit as reasonably necessary to perform the same, and if the City's costs for such work exceed the amount of the Damage Deposit, the City shall not be limited by the Damage Deposit in its claim for actual damages. If the City draws on the Damage Deposit to pay for clean-up or repair or replacement of damaged items, DNSA shall promptly replenish the Damage Deposit to the amount required herein and pay to the City all costs and expenses incurred by the City in connection with such clean-up, repair, or replacement. If, at the end of the Term of this Agreement, the City has no claim against the Damage Deposit, the Damage Deposit shall be returned to DNSA within thirty (30) calendar days following the end of the Term, or if the entire amount of the Damage Deposit is not required for the City to perform clean-up, repairs, or replacement, the remaining portion of the Damage Deposit shall be returned to DNSA within sixty (60) calendar days following the last day of the Term.

4.3 Walk-Through Inspections and Records. DNSA shall appoint a representative authorized to act on behalf of DNSA with respect to the duties and actions under this Section 4.3. The DNSA representative and the City Liaison (see Article 6) or other representative of the City designated by the Manager shall arrange times for walk-throughs of the Ski Areas (i) prior to the first Ski Day of each winter season during the Term, (ii) periodically throughout each winter season of the Term on such days that are mutually agreed to by the Parties, and (iii) after the last

Ski Day of each winter season during the Term. A report of the condition of the Ski Areas and surrounding Course before the first Ski Day of each winter season, including contemporaneous pictures, shall be prepared and signed by both representatives. This report shall provide the basis for determining what clean-up, repairs and replacements are the responsibility of DNSA to perform and/or may be paid for by the City from the Damage Deposit. In the event there is a dispute as to what clean-up, repairs and replacements are appropriate, the City and DNSA may seek the opinion of an impartial but qualified third party to mediate the dispute. If that mediation should not resolve the dispute, the City and/or DNSA may seek judicial recourse as provided in this Agreement.

4.4 Payment Method. The fees required by Section 4.1 and the Damage Deposit shall be tendered by check made out to the Denver Manager of Finance and delivered to the Finance and Administration Division, Department of Parks and Recreation, 201 West Colfax, Department 602, Denver, Colorado 80202. The DNSA Permit shall not be deemed to be in effect until required fees and the Damage Deposit have been submitted as required herein.

5. **DNSA RESPONSIBILITIES.**

5.1 DNSA Services. Except as expressly provided in Section 5.3 or Article 6, any service or action which is to be performed or taken in connection with the Permitted Activities shall be the responsibility of DNSA. Without limiting and in furtherance of the foregoing, DNSA shall be responsible, either directly or through its Subcontractor(s), for providing the following services related to or associated with the Permitted Activities, in accordance with the approved Plans under Article 12 ("**DNSA Services**"):

- (a) Promotion to the public of the opportunity to cross-country ski and snowshoe at the Ski Areas, including the development and implementation of a Communication Plan (as defined in Section 12.4) through which DNSA will communicate to the public when the Ski Areas are open for skiing and snowshoeing;
- (b) Operation and maintenance of the Ski Areas (including raising necessary funds therefor), including grooming of the trails and repairing and/or replacing any damaged real or personal property owned or leased by the City within or in the vicinity of the Ski Areas, which damage was the result of or associated with the public's use of the Ski Areas and/or the Permitted Activities;
- (c) Pick-up of trash and cleaning of debris generated by or associated with the public's use of the Ski Areas and/or Permitted Activities, and proper removal and disposal of trash and debris;
- (d) Preparing and providing to the users of the Ski Areas information pamphlets that educate the users of the boundaries of the Ski Areas, hours of operation, safety rules, and other applicable rules and regulations;
- (e) Developing and implementing a structured admittance procedure whereby DNSA shall track and control the public's use of the Ski Areas;

(f) Post a warning placard regarding the user's assumption of risks related to skiing and snowshowing and setting forth general Ski Area rules at the entrance(s) to the Ski Areas prior to the first Ski Day of each winter season, the size and font of which shall be approved in writing by the Manager. The City has no objection to the language set forth in Exhibit B; however, the Parties agree that providing such signage shall in no way affect or reduce DNSA's obligations under this Agreement including, without limitation, its obligation to indemnify the City pursuant to Section 11 below; and

(g) Staffing the Course during Ski Days with one (1) person to monitor usage of the Ski Areas; without limiting the foregoing, such person shall be onsite at the opening of each Ski Day and shall be responsible for posting and removing signage that indicates when the Ski Areas are open and closed, respectively; and

(h) Retention and supervision of work crews and volunteers to perform the work contemplated herein; and

(i) Stocking and cleaning the Public Restrooms following each Ski Day.

5.2 Costs and Expenses. Any cost or expense incurred by DNSA in connection with the Permitted Activities and DNSA Services shall be the responsibility of and paid for by DNSA. Such cost or expense shall be paid in a timely manner with documented evidence of such payment being provided to the City Liaison upon written request.

5.3 Reimbursement Obligations. From time to time, the Parties may mutually agree that the City will perform on behalf of DNSA certain of DNSA's services or provide other services requested by DNSA which the Parties mutually agree that the City provide. DNSA shall pay and/or reimburse the City, as mutually agreed upon, for performing such services.

5.4 Duty of Care. While exercising the rights granted herein, DNSA shall use and occupy the Ski Areas and other areas of the Course in a safe and careful manner, follow all plans approved under Article 12, and shall comply with all Applicable Law. DNSA shall not do any act or willfully suffer any act to be done during the Term of this Agreement that will in any way permanently damage any part of the Course or other City-owned property or cause personal injury to, or damage the property of, members of the public utilizing the Ski Areas, surrounding areas, or other City-owned property, or City employees.

5.5 Compliance with Parks Laws. Except as expressly modified herein or as otherwise modified by written directive of the Manager, the prohibitions and restrictions for uses and activities in a City-owned park set forth in Article I of Chapter 39 of the Denver Revised Municipal Ordinance shall be applicable and must be complied with.

6. **CITY SERVICES.** The City will, at its own expense, appoint a person or persons ("**City Liaison**") representing DPR who will assist DNSA in its interactions with the City, including but not limited to: (i) attending key meetings with City personnel and departments; (ii) assisting DNSA in obtaining permits and licenses; (iii) troubleshooting prior to, during, and after each winter season of the Term and, as necessary, each Ski Day; (iv) supporting DNSA in the implementation and enforcement of the approved Plans under Article 12; and (v) attending walk-throughs and working on property condition reports with DNSA (see Section 4.3).

7. TERM, TERMINATION AND CANCELLATION

7.1 Term. The term of this Agreement will commence on the Effective Date and expire on October 31, 2015 (the "**Term**"), unless sooner terminated in accordance with the terms of this Agreement, including without limitation those provisions set forth in Article 8 herein.

7.2 Termination for Convenience; Mutual Termination.

(a) In the event that DNSA should fail to secure sufficient funds for the 2014-2015 winter season to conduct the Permitted Activities, as determined by DNSA in its reasonable discretion, DNSA may terminate this Agreement for convenience upon written notice to the Manager on or before September 1, 2014.

(b) This Agreement may be terminated at any time upon the written mutual agreement of DNSA and the Manager.

7.3 Termination Due to Default. The City may, at its election, terminate this Agreement if DNSA fails to cure a material breach or default as provided under Section 8.1 ("**Default by DNSA**"). DNSA may, at its election, terminate this Agreement if the City fails to cure a material breach or default by the City as provided under Section 8.2 ("**Default by City**"). Notice of termination under this Section 7.3 shall be sent to the defaulting or breaching Party as provided in Section 17.8.

8. DEFAULT AND REMEDIES

8.1 Default by DNSA. The following shall constitute a "**Default by DNSA**" under this Agreement:

(a) A failure to timely deliver the fees due under Section 4.1 or the Damage Deposit due under Section 4.2, and such failure is not cured within five (5) business days after written notice thereof;

(b) A failure to secure or maintain insurance as required under Article 10, if not cured within ten (10) business days of written notice but no later than the first Ski Day of the winter season;

(c) Any material violation of a requirement or specification contained in a Plan approved under Article 12, if not cured within ten (10) business days of written notice but no later than two (2) calendar days if the City deems the material violation to be a threat to the public health, safety and welfare in the City's written notice to DNSA;

(d) Any assignment of DNSA's rights and obligations under this Agreement in violation of Section 17.5 (this default is not curable);

(e) A material breach or default (other than those described in items (a) through (d) of this Section 8.1) by DNSA under this Agreement or the occurrence of the events listed in items (f) through (i) of this Section 8.1 and, if curable, such breach or default is not cured by DNSA within ten (10) business days after written notice thereof; provided, however,

that if a curable breach cannot be reasonably cured during such ten (10) day period but DNSA commences in good faith to make a timely effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual agreement, no longer than twenty (20) calendar days after the original written notice of default;

(f) If DNSA makes a general assignment for the benefit of creditors, or files for bankruptcy, reorganization or similar proceedings;

(g) A bankruptcy, reorganization or similar proceeding is filed by or against DNSA and, if filed against DNSA, is not vacated or discharged within forty-five (45) days after such filing;

(h) A receiver or trustee is appointed for all or any part of DNSA's assets; or

(i) DNSA or any of its officers are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with DNSA's business.

8.2 Default By City. At no time shall the City be deemed to be in material breach or default under this Agreement unless and until DNSA shall have given to the City notice in writing, specifying such material breach or default and the City has failed to cure the material breach or default within ten (10) business days following said written notice or, if the breach or default cannot be reasonably cured during such ten (10) day period but the City commences in good faith to make a timely effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual agreement, no longer than twenty (20) calendar days after the original written notice of Default.

8.3 Damages. Both Parties expressly acknowledge that any damages sought for a material breach or default of this Agreement are limited to actual damages arising under this Agreement. Both Parties expressly waive and agree not to seek any consequential, incidental and punitive damages arising from breach or default under this Agreement.

8.4 Cumulative Rights and Remedies. Unless otherwise provided, the rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive the right to use any other remedy.

8.5 Non-Waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

9. TAXES, PERMITS, LICENSES AND LIENS

9.1 Taxes, Permits and Licenses. DNSA agrees to pay promptly all taxes, excise, or license fees of whatever nature applicable to its activities, uses, and sales associated with the

Permitted Activities and to take out all municipal, state, or federal permits and licenses required under Applicable Law, and further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to and showing that all required permits and licenses are in effect. Appropriate records shall be maintained and made available in accordance with Applicable Law. DNSA shall be responsible for seeing that any Subcontractor engaged by DNSA to provide service(s) during the Term shall likewise promptly pay all taxes, excise or licenses fees of whatever nature applicable to its activities, uses, and sales associated with the Permitted Activities and shall obtain all municipal, state, or federal permits and licenses required under Applicable Law.

9.2 Survival. The provisions of this Article 9 shall survive the expiration or termination of this Agreement.

10. **INSURANCE**

10.1 General Conditions. DNSA agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. DNSA shall keep the required insurance coverage in force at all times during the term of this Agreement, or any extension thereof, during any warranty period. Each policy shall be an “occurrence based” policy which shall be reflected on the certificate of insurance. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, DNSA shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by DNSA. DNSA shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of DNSA. DNSA shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

10.2 Proof of Insurance. DNSA shall provide a copy of this Agreement to its insurance agent or broker. DNSA may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. DNSA certifies that the certificate of insurance attached as Exhibit C, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of DNSA’s breach of this Agreement or of any of the City’s

rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

10.3 Additional Insureds. For Commercial General Liability, DNSA and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

10.4 Waiver of Subrogation. For all coverages required under this Agreement, DNSA's insurer shall waive subrogation rights against the City.

10.5 Subcontractors and Subconsultants. All Subcontractors (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of DNSA; provided, however, that unless exempt pursuant to applicable Colorado law, Subcontractors shall maintain workers' compensation coverage for each work location and shall maintain employer's liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. DNSA shall include all such Subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors maintain the required coverages. DNSA agrees to provide proof of insurance for all such Subcontractors upon request by the City.

10.6 No Workers' Compensation/Employer's Liability Insurance.- The parties recognize and agree that DNSA is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). It is understood and agreed by the parties that the City does not (1) require DNSA to work exclusively for the City, provided that DNSA may have elected to work exclusively for the City for the period of time specified in the Term of this Agreement; (2) establish a quality standard for DNSA, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by DNSA, the City will not oversee the actual work of DNSA or instruct DNSA as to how the work will be performed; (3) pay a salary or hourly wage to DNSA instead of the fixed contract rate stated herein; (4) terminate the work of DNSA for cause during the Term of this Agreement unless DNSA violates the terms of the Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (5) provide any training for DNSA other than minimal orientation to the site or other parameters of DNSA activity; (6) provide tools or benefits to DNSA; (7) dictate the time of performance, except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (8) pay DNSA personally instead of making City warrants payable to the professional name of DNSA, except that in this Agreement DNSA is an individual and sole proprietor; and (9) combine the regular operation of the City in any way with the professional or business operations of DNSA instead of maintaining office operations separately and distinctly.

These provisions are separately stated in Exhibit D, "Separate Declaration Regarding Independent Status", constituting the writing mandated by C.R.S. 8-40-202(2)(b), which must be signed and notarized by DNSA and the Manager. The Mayor hereby delegates to the Manager

the authority to execute on behalf of the City Exhibit D, “Separate Declaration Regarding Independent Status.”

10.7 Commercial General Liability. DNSA shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

10.8 Personal Automobile Insurance: DNSA shall ensure personal automobile insurance is in force with limits of \$100,000 bodily injury per person; \$300,000 bodily injury per accident; \$50,000 property damage for all vehicles used in performing services under this Agreement. The policy will include a business use endorsement. DNSA represents, as material representations upon which the City is relying, that DNSA does not own any motor vehicles and that in performing services and work under this Agreement, DNSA’s owners, officers, directors, and employees use their personal vehicles. DNSA shall ensure that any person operating a motor vehicle in performing Services under the Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

10.9 Additional Provisions.

(a) For Commercial General Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) DNSA shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, DNSA will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10.10 Survival. The provisions of this Article 10 shall survive the expiration or termination of this Agreement.

11. INDEMNIFICATION AND DEFENSE

11.1 Indemnification. DNSA shall defend, release, indemnify, and save and hold harmless the City, its appointed and elected officials, agents and employees against any and all damage to property or injury to or death of any person or persons, including property and employees or agents of City, and shall defend, release, indemnify and save and hold harmless

City, its appointed and elected officials, agents and employees from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims and claims related to copyright or trademark rights (collectively, "**Claims**"), of or by anyone whomsoever, in any way resulting from or arising out of DNSA's operation, use or occupancy of the Ski Areas and Storage Area, its activities or its performance in connection with this Agreement, including acts or omissions of DNSA or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, Subcontractors, and agents. This indemnity shall be interpreted in the broadest possible manner to indemnify the City from Claims arising from or related to any acts or omissions of DNSA or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, Subcontractors, and agents, either passive or active, irrespective of fault, including the City's concurrent negligence, whether active or passive, except for Claims determined by the trier of fact to be due to the sole negligence or willful misconduct of the City and its appointed and elected officials, agents and employees. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of DNSA under the terms of this indemnification obligation.

11.2 **Defense.** DNSA's duty to defend and indemnify the City shall arise at the time written notice of the Claims is first provided to the City regardless of whether an action has been filed in court on the Claims. DNSA's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages. DNSA will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred by the City in defending and investigating such Claims or seeking to enforce this indemnity obligation if DNSA should fail to defend as required herein. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.

11.3 **Copyright Indemnification.** DNSA warrants that all copyrighted material used or displayed in association with the Permitted Activities has been duly licensed and authorized by the copyright owners or their representatives and agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses incurred with regard thereto.

11.4 **Survival.** The provisions of this Article 11 shall survive the expiration or termination of this Agreement.

12. **PLANS**

12.1 **Signage Plan and Standards.** After consultation with the City Liaison and the appropriate officials of DPR, DNSA shall prepare, or arrange for the professional preparation of, a signage plan and standards (the "**Signage Plan**"). The Signage Plan shall be submitted by DNSA to the Manager, for the Manager's review and approval. The Signage Plan shall identify, in detail, the text DNSA proposes to include on the signs and all measures DNSA shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for the standards and process for the installation and removal of all temporary signs and compliance with the terms and conditions of Section 3.4.

12.2 Trash, Recycling, and Site Clean Up Plan. After consultation with the City Liaison and the appropriate officials of the DPR, DNSA shall prepare, or arrange for the professional preparation of, a trash, recycling, and site clean up plan (the "**Clean Up Plan**"). The Clean Up Plan shall be submitted by DNSA to the Manager, for the Manager's review and approval. The Clean Up Plan shall identify, in detail, all measures DNSA shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for litter pick-up, site cleaning, and trash removal from the first Ski Day through the last Ski Day of each winter season of the Term and for promoting waste materials recycling whenever possible.

12.3 Transition Plan. After consultation with the City Liaison and the appropriate officials of DPR, DNSA shall prepare and submit for the Manager's approval a transition plan (the "**Transition Plan**"). The Transition Plan shall be submitted by DNSA to the Manager, for the Manager's review and approval. The Transition Plan shall identify, in detail, all measures DNSA shall take to comply with the direction and requirements of the Manager and Applicable Law, including provisions for protecting and restoring the Ski Areas and the surrounding areas periodically as necessary throughout each winter season of the Term and following the end of each winter season of the Term with respect to repairing or replacing any damaged or destroyed irrigation system, replacing any sod or other damaged vegetation, repairing or replacing damaged greens, tees, and fairway grass, replacing damaged trees and shrubs, and restoring to its original or better condition as part of the Course.

12.4 Communication Plan. After consultation with the City Liaison and the appropriate officials of DPR, DNSA shall prepare and submit for the Manager's approval a communication plan (the "**Communication Plan**"). The Communication Plan shall be submitted by DNSA to the Manager, for the Manager's review and approval. The Communication Plan shall identify, in detail, all measures DNSA shall take to comply with the direction and requirements of the Manager and Applicable Law, including provisions identifying DNSA's strategy for timely communicating to the public when the Ski Areas are and are not open to the public. In developing this plan, DNSA should consider, without limitation, use of social media, electronic mail, and text alerts, alerts on its website, and a telephone hotline. The cross-country ski and snowshoe program contemplated in this Agreement shall be promoted as a DNSA program and shall not be promoted as a City program or as a partnership of DNSA and the City. The DNSA Permit does not include any right for DNSA to use the names and logos of the City or DPR, including the City golf logo and the Wellshire Golf Course logo, in connection with DNSA's operation and maintenance of the Ski Areas for use by the public for cross-country skiing and snowshoeing.

12.5 Review and Approval Process. For each of the Plans identified in Sections 12.1 through 12.4, a complete plan shall be submitted by DNSA to the Manager, with respect to the 2013-2014 winter season, as soon as practicable after the Effective Date and, with respect to the 2014-2015 winter season no later than September 1, 2014. A copy of all Plans shall be simultaneously provided to the City Liaison. The Manager shall review and provide to DNSA in writing no later than five (5) business days after DNSA's submittal of each plan either: (i) an approval of such plan, or (ii) if not approved, a list of all requested modifications to the plan. If the Manager fails to provide such written approval or list of required modifications of the plan to DNSA by the above referenced date, such plan shall be deemed approved as submitted. Upon

receiving a modified plan fully responsive to the changes previously identified by the Manager, the Manager will review and respond in writing to the modified plan within five (5) business days of DNSA's submission of such modified plan, or the modified plan as submitted by DNSA shall be deemed approved. Notwithstanding the foregoing, in no event shall the Ski Areas be made available for use by the public until all of the Plans have been approved or deemed approved as set forth in this Section 12.5.

13. **EXAMINATION OF RECORDS**

DNSA agrees that any duly authorized representative of the City, including the City Auditor or his representative, during the Term of this Agreement and for three (3) years after the expiration or termination of this Agreement, shall, during reasonable business hours, have access to and the right to examine any directly pertinent books, documents, papers and records of DNSA related to DNSA's obligations to the City under this Agreement. Any Party shall be entitled to review and audit the performance of this Agreement at that Party's sole expense.

14. **PERSONAL PROPERTY**

14.1 Use and Removal. The Grooming Equipment may be stored in the Storage Area for the duration of the Term of this Agreement. All other Personal Property shall be removed from the Course each day and stored offsite. The City shall not be liable for any damage to or loss of the Grooming Equipment or Personal Property sustained during the Term. If use or removal of Grooming Equipment or Personal Property causes any damage to the Course, DNSA shall be responsible for the prompt repair or replacement of the same in good and workmanlike manner. If DNSA fails to remove the Grooming Equipment at the end of the Term or any Personal Property at the end of each Ski Day, the City may, at its option, keep and retain said Grooming Equipment and/or Personal Property or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from DNSA any costs of the City in removing the same and in restoring the Course in excess of the actual proceeds, if any, received by the City from the disposition thereof.

14.2 City Not Liable for DNSA Property. The City assumes no responsibility whatsoever for the Grooming Equipment and any Personal Property placed in the Course (including the Parking Area, Ski Areas, and Storage Area), and the City is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the occupancy or use of any portion of the Course under this Agreement. All watchmen or other protective service for securing such Personal Property and Grooming Equipment shall be the sole responsibility of DNSA or its Subcontractor(s). In the receipt, handling, care or custody of Grooming Equipment and Personal Property shipped or otherwise delivered to the Course, the City shall act solely for the accommodation of DNSA, and not as a bailment, and the City and its elected and appointed officials, agents, or employees shall not be liable for any loss, damage, or injury to such Grooming Equipment or Personal Property, except that said officials, agents, or employees (but not the City itself) may be personally liable for any deliberate and malicious acts of damage or injury to Grooming Equipment or Personal Property.

14.3 Abandoned Property. The City shall have the sole right to collect and have custody of all items and articles left by members of the public using the Ski Areas.

15. **PHOTOGRAPHIC RIGHTS**

The City and DNSA acknowledge and agree that each Party shall have a right to make its own photographs, audio and video recordings in the Ski Areas during the Ski Days for that Party's sole use for customary advertising and publicity and other non-commercial uses; provided, however, that the Parties shall not engage in photographing or recording in violation of copyright laws.

16. **APPLICABLE LAW; COMPLIANCE WITH LAWS**

16.1 General Compliance with Laws. DNSA shall comply with all Applicable Law in connection with this Agreement. DNSA shall use reasonable efforts to ensure that the members of the public using the Ski Areas and DNSA's Subcontractor(s) comply with all Applicable Law in and around the Ski Areas. The City shall not be required to take any action which is inconsistent with Applicable Law.

16.2 No Discrimination in Employment. In connection with the performance of work under this Agreement, DNSA agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and DNSA further agrees to insert the foregoing provision in all subcontracts hereunder.

16.3 Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. and other law. All notice requirements provided by such laws shall be strictly complied with.

16.4 Ethics. The Parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. DNSA further agrees not to hire, or contract for services with, any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.

17. **MISCELLANEOUS**

17.1 Legal Authority.

(a) DNSA assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person or persons signing and executing this Agreement on behalf of DNSA do hereby warrant and guarantee that they have been fully authorized by DNSA to

execute this Agreement on behalf of DNSA and to validly and legally bind DNSA to all the terms, conditions, obligations, and requirements herein set forth.

(c) The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either DNSA or the person signing the Agreement to enter into this Agreement.

17.2 City Financial Obligations. It is understood and agreed that any payment or performance obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council in each year in which the Agreement is in effect, encumbered, paid into the Treasury of the City, and available for the purposes of this Agreement. DNSA acknowledges that the (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect financial obligation of the City.

17.3 No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DNSA, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person, including but not limited to Subcontractors and users of the Ski Areas. It is the express intention of the City and DNSA that any person or entity other than the City or DNSA receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

17.4 No Agency or Partnership Relationship.

(a) Nothing in this Agreement is intended nor shall be deemed to create an agency, partnership or joint venture between DNSA and the City.

(b) Nothing in this Agreement is intended nor shall be deemed to grant to DNSA any power, right or authority to bind or otherwise contractually obligate the City.

(c) Nothing in this Agreement is intended nor shall be deemed to grant to the City any power, right or authority to bind or otherwise contractually obligate DNSA.

(d) No employee of DNSA shall be deemed an employee of the City.

(e) No employee of the City shall be deemed an employee of DNSA.

17.5 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than DNSA. DNSA understands and agrees that it shall not assign any of its material rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Manager; provided, however, DNSA shall have the right to subcontract services and work as provided in this Agreement. Failure to obtain the prior written consent and approval of the Manager for any assignment, other than as provided herein, shall be grounds for termination of the Agreement at the discretion of the Manager. In the event any assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or Subcontractor, and DNSA shall remain fully responsible to the City according to the terms of this Agreement.

17.6 Further Assurances. Each Party shall execute and deliver such other reasonable documents, instruments and agreements, and take such actions as are reasonably necessary or desirable to effectuate the terms and conditions of this Agreement or as required by Applicable Law.

17.7 Disputes, Venue and Governing Law.

(a) It is mutually agreed by and between the Parties hereto that, should any dispute arise regarding this Agreement and a judicial action or suit is deemed necessary by either Party, venue for such action shall lie solely in the District Court in and for the City and County of Denver, Colorado, and notices and summons and complaints may be served upon DNSA by delivery of notices and service of process for summons and complaints to the address of DNSA shown in this Agreement.

(b) This Agreement shall be construed and enforced pursuant to the laws of the State of Colorado and any applicable federal law, without regard to any statute or rule of law specifying a different choice of law, and pursuant to the City Charter, Denver Revised Municipal Code, the applicable rules, regulations, and policies of the City's departments and agencies, and executive orders of the City's Mayor.

17.8 Notices. All notices, demands or other communications required or permitted to be given under this Agreement shall be in writing and any and all such items shall be deemed to have been duly delivered upon (i) personal delivery; or (ii) as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or (iii) as of 12:00 Noon, MST, on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

If to City, to: Mayor
City and County of Denver
City and County Building
1437 Bannock Street, Room 350
Denver, CO 80202

With a copy to: Manager of Parks and Recreation
City and County of Denver
201 W. Colfax Ave., Dept. 601
Denver, CO 80202

City Attorney
City and County of Denver
City and County Building
1437 Bannock Street, Room 353
Denver, CO 80202

If to DNSA, to: Denver Nordic Ski Association

Attn: Russ Rizzo, President
2136 South Franklin Street
Denver, CO 80210

17.9 Construction of this Agreement.

(a) Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

(b) Time. The Parties agree that in the performance of the terms, conditions and requirements of this Agreement, time is of the essence.

(c) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of DNSA as are permitted to succeed to DNSA's rights under this Agreement.

(d) Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

(e) Reasonableness of Consent or Approval. Unless otherwise specifically provided to the contrary, all decisions, approvals or consents shall be made in the reasonable discretion of the Party making the same. Further, unless a specific time frame is provided herein, any approval or consent shall not be unreasonably withheld or delayed. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either Party hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

(f) Severability. It is understood and agreed by the Parties that if any part, term, or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid; provided, however, if the invalidated term was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with any Applicable Law and the judgment of the court.

17.10 Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the Parties pertaining to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or any other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

17.11 Final Approval. This Agreement is expressly subject to and shall not be or become effective or binding on the City until approval by the City Council and fully executed by all signatures of the City and County of Denver.

17.12 Counterparts. This Agreement shall be executed in two (2) or more counterparts, each of which shall be deemed to be an original but all of which shall together constitute one and the same instrument.

17.13 Electronic Signatures and Electronic Records. DNSA consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.

SIGNATURE PAGE FOLLOWS.]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

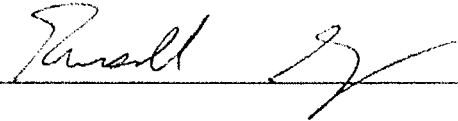
By _____

By _____



Contract Control Number: PARKS-201207845-00

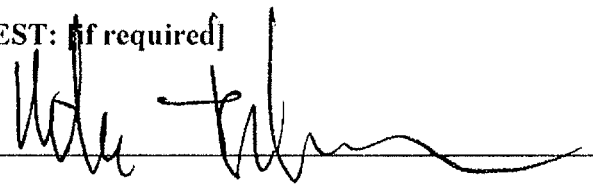
Contractor Name: Denver Nordic Ski Association (Ski Denver)

By: 

Name: Russell Rizzo
(please print)

Title: President / Executive Director
(please print)

ATTEST: [if required]

By: 

Name: MILES GRAHAM
(please print)

Title: DIRECTOR OF COMMUNICATIONS
(please print) 3 OPERATIONS



EXHIBIT A


SKI AREAS, STORAGE AREA, AND PARKING AREA

(ATTACHED)

WELLSHIRE GOLF COURSE

Cross-Country Ski Trails



 GOLF GREEN OR TEE
PLEASE STAY OFF

 APPROVED SKI
TRAIL

 MAINTENANCE ACCESS
ROAD

 EDGE OF WATER BODY
PLEASE STAY FROM EDGE

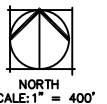


Exhibit B – Warning Placard Rule and Regulations

A skier or snowshoer using this Course assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and snowshoeing and may not recover from DNSA or the City for any injury resulting from any of the inherent dangers and risks of these activities, including: Changing weather conditions; existing and changing snow conditions; bare spots; rocks; stumps; trees; collision with natural objects, man-made objects, or other skiers or snowshoers; variations in terrain; and the failure of users to ski or snowshoe within their own abilities.

SKI AREA RULES AND REGULATIONS

1. The ski area is open daily from sunrise to sunset only when a sign is posted by DNSA indicating that the Ski Area is open. It is unlawful for any person, other than authorized personnel, to enter or remain in this facility beyond the posted hours.
2. **WARNING:** Know your abilities and use this facility at your own risk.
3. The use of appropriate safety equipment, including helmets, is strongly recommended at all times.
4. Be courteous to others. Users must be under control at all times. Uncontrolled skiing and other activities that endanger others will not be tolerated and will result in ejection from the ski area.
5. The City and County of Denver has the right to close the facility without notice.
6. Modifications to trails or other features of the ski area are prohibited.
7. No motorized equipment is permitted.
8. Use of drugs, alcohol, or tobacco products is prohibited.
9. No loud music, use of profanity, deliberately offensive conduct, or any other disturbance of peace is allowed.
10. No glass is allowed in the ski area.
11. Destroying or defacing public property, including the application of stickers, or graffiti, is prohibited. Littering on public property is prohibited. Take pride in YOUR ski area.
12. Pets are prohibited on the Course, including the ski area.
13. Other rules and regulations applicable to the public's use of Denver Parks will be enforced in the ski area.

IN CASE OF EMERGENCY, CALL 9-1-1

For ski area information,
or to report maintenance problems call the Denver Nordic Ski Association at: 720-432-2754

EXHIBIT C

CERTIFICATE OF INSURANCE

(ATTACHED)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/8/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Taggart & Associates, Inc. 1600 Canyon Boulevard P. O. Box 147 Boulder CO 80306	CONTACT NAME: Regina Casey PHONE (A/C No. Ext): (303)442-1484 FAX (A/C, No): (303)442-8822 E-MAIL ADDRESS: rcasey@taggartinsurance.com	
	INSURER(S) AFFORDING COVERAGE INSURER A: Penn-Star Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
INSURED Denver Nordic Ski Association 2136 S Franklin St Denver CO 80210		NAIC # 10673

COVERAGES **CERTIFICATE NUMBER:** 13/14 Master **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			PAV0006760	9/23/2013	9/23/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ Included
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>				PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/>	<input type="checkbox"/>				AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The City and County of Denver, its elected and appointed officials, employees and volunteers are included as additional insured in regards to General Liability. General Liability coverage is on a primary and non-contributory basis, as required by written contract. A waiver of subrogation applies in favor for the certificate holder as respects General Liability. For General Liability, defense costs are outside the limits of liability.

CERTIFICATE HOLDER

CANCELLATION

City and County of Denver City and County Building 1437 Bannock St Room 350 Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Regina Casey/LMS

EXHIBIT D

Separate Declaration Regarding Independent Status

It is understood and agreed by and between **DENVER NORDIC SKI ASSOCIATION**, a Colorado nonprofit corporation ("DNSA"), and the **CITY** that the status of DNSA shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1(E)(x) of the Charter of the City and it is not intended, nor shall it be construed, that DNSA or any of its employees or subcontractors is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

Without limiting the foregoing, the parties hereby specifically acknowledge that DNSA is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by DNSA or some other entity besides the City, that DNSA is not entitled to workers' compensation benefits from the City, and that DNSA is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement.

The parties recognize and agree that DNSA is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). It is understood and agreed by the parties that the City does not (a) require DNSA to work exclusively for the City, provided that DNSA may have elected to work for exclusively for the City for the period of time specified in the term of this Agreement; (b) establish a quality standard for DNSA, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by DNSA, the City will not oversee the actual work of DNSA or instruct DNSA as to how the work will be performed; (c) pay a salary or hourly wage to DNSA instead of the fixed contract rate stated herein; (d) terminate the work of DNSA for cause during the term of this Agreement unless DNSA violates the terms of this Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (e) provide any training for DNSA other than minimal orientation to the site or other parameters of DNSA activity; (f) provide tools or benefits to DNSA; (g) dictate the time of performance, except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (h) pay DNSA personally instead of making City warrants payable to the professional name of DNSA, except that in this Agreement DNSA is an individual and sole proprietor; and (i) combine the regular operations of the City in any way with the professional or business operations of DNSA instead of maintaining office operations separately and distinctly.

[Signature Pages Follow]

PARKS AND RECREATION:

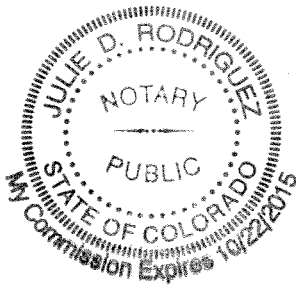
By: [Signature]
Name: Lauri Dannemiller
Its: Manager

STATE OF COLORADO)
CITY AND) ss
COUNTY OF DENVER)

Subscribed and sworn to before me this _____ day of _____, 2013, by Lauri Dannemiller, as Manager of the City and County of Denver Department of Parks and Recreation.

Witness my hand and official seal.

My commission expires: 10/22/2015



[Signature]
Notary Public
201 W. Colfax Ave. CO 80202
Address

DENVER NORDIC SKI ASSOCIATION:

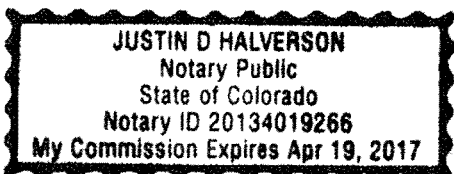
By: [Signature]
Name: Russell Rizzo
Its: Executive Director / President

STATE OF Colorado)
CITY AND) ss
COUNTY OF Denver)

Subscribed and sworn to before me this 18 day of June, 2013 by Russell Rizzo, as executive director of DENVER NORDIC SKI ASSOCIATION, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: April 19 2017



[Signature]
Notary Public
621 17th St. Ste 103 Denver, CO 80293
Address