

AMENDED AND RESTATED SKY TAVERN AGREEMENT

C.6  
6-23-10  
B-1384

By and between City of Reno  
and  
Sky Tavern Junior Ski Program, Inc.

This First Amended and Restated Sky Tavern Agreement ("Amended Agreement") is made and entered into this 23rd day of June, 2010, by and between the CITY OF RENO, a Nevada municipal corporation, hereinafter "City", and SKY TAVERN JUNIOR SKI PROGRAM, INC., a Nevada non-profit corporation, hereinafter "STJSP".

RECITALS:

WHEREAS, City is the owner of certain real property located in Washoe County, Nevada commonly referred to as Sky Tavern consisting of approximately 143 acres. Said property is improved with ski lifts, a ski lodge and related appurtenances. The property and improvements thereon are hereinafter collectively referred to as "Sky Tavern" or "Premises".

WHEREAS, STJSP is a non-profit Nevada corporation recognized as exempt under section 501(c)(3) of the Internal Revenue Code, and is organized for skiing instruction and recreation for Reno area youth.

WHEREAS, City recognizes the public educational and recreational benefit of STJSP's activities, particularly the "Jr. Ski Program", and finds it in the public interest to make Sky Tavern available to STJSP under certain conditions, and STJSP finds Sky Tavern a suitable facility for the operation of its Jr. Ski Program and related recreational activities.

WHEREAS, the parties entered into an Agreement on July 14, 1998 for STJSP to conduct the Junior Ski Program and related recreational uses. That Agreement was amended or extended several times by agreements dated January 12, 1999; May 25, 2005; May 28, 2008; and July 13, 2009. The parties desire to enter into this Amended Agreement, which amends the terms of the original Agreement and subsequent modifications thereto, as set forth herein effective upon approval of all parties; and

WHEREAS, it is not intended that this Amended Agreement release any past unknown claim associated with occupancy of the Premises, and STJSP must comply with all terms and conditions of the Amended Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the promises and commitments made herein, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Definitions.

a. "Designee" shall mean a representative of the City designated by the Director who shall have authority to make decisions on behalf of the City.

b. "Director" shall refer to the Director of the Reno Parks Recreation and Community Services Department.

c. "PRCS" shall refer to the City of Reno's Parks Recreation and Community Services Department.

d. "Snowsports" shall mean skiing, boarding, sledding, inner-tubing and similar winter activities and shall include providing instruction on such activities.

2. Term. This Amended Agreement shall run for a term of ten years and shall terminate on July 23, 2020, unless extended by mutual written agreement of the parties.

3. Use of Sky Tavern.

a. General. City hereby grants to STJSP use of Sky Tavern for the operation of its Jr. Ski Program, which shall remain focused on providing services for area youth, and related snowsport recreational and instructional activities from December 1 through April 30 of each year throughout the term. City shall be permitted use of Sky Tavern in accordance with paragraph 33 entitled "City's Use of Sky Tavern. STJSP accepts Sky Tavern "as is", except that the parties shall conduct a walk-through inspection following completion of repairs to the fire damaged portion of the lodge, following which STJSP shall notify City of any exceptions to the repairs. The parties shall then reasonably agree upon resolution of such exceptions, including possible action against repair contractors.

b. Lodge Improvements. STJSP understands that the City may enter into a future agreement for use of Sky Tavern, which could include remodeling or reconstruction of the lodge. The City shall be entitled to contract for such improvements, which shall be allowed under this Amended Agreement. The City will require of such third party that in the event of remodeling or reconstruction, such party shall provide reasonable temporary structures to accommodate STJSP's snowsport programs and storage. However, in the event such third party commences construction making the lodge unusable, and then fails to complete its obligations through no fault of the City, City shall have no obligation to complete the improvements or provide temporary facilities for STJSP. However, in such event, STJSP shall have the option of terminating this Amended Agreement or providing its own temporary structures to continue its snowsports programs, at its cost.

4. Utilities. City shall provide electricity, water, garbage, propane and one telephone line. STJSP shall reimburse City for its use of these utilities. STJSP shall not be responsible to pay utilities attributable to use of the Sky Tavern facilities by City or by other permittees of the City. Notwithstanding the forgoing, City shall be responsible for two-thirds of STJSP's electricity, water, garbage, propane and one telephone line expenses during the 2010-2011 five-month season and for one-third of the electricity, water, garbage, propane and one telephone line expenses of STJSP during the 2011-2012 five-month season. STJSP shall reimburse City for one hundred percent of these, and any other, utility expenses beginning with the five-month season which begins in 2012, and

thereafter. Payments shall be made by STJSP within 30 days following presentation of an invoice or other demand therefore. STJSP shall be responsible for its own motor fuels, oil, telephones and other expenses of maintenance and operation. STJSP shall maintain control of the lodge temperature, but shall maintain sufficient temperature to prevent pipes from freezing.

5. Concessions and Fees. STJSP shall have the right to charge participants for its services and to sell or rent goods related to snowsports, as well as food and beverages. Fees and prices for the ski program shall be set consistent with the goal of offering low cost skiing and ski instruction opportunities to area youth, but also consistent with STJSP's need to retain financial solvency. City shall have the right to inspect STJSP's books and records to ensure this goal is maintained. With prior approval of the Director or Designee, STJSP may conduct revenue generating activities at higher rates to supplement its ability to provide the contemplated recreational services. However, the primary use and purpose of Sky Tavern must be to provide recreation.

6. Office Space. City shall provide year-round use of office space in Reno for STJSP's administrative functions related to its activities at Sky Tavern, and for no other purpose. The parties shall attempt to reach agreement on the size and location of the office space; however, City retains the right to make the final determination, or to change the location at a later date. STJSP shall be responsible for all costs associated with the office space, including but not limited to furnishings, equipment, supplies, and utilities. Utility costs shall be shared proportionately based upon square footage or other mutually agreed upon methodology. STJSP's use of the office space shall be subject to all applicable duties of this Amended Agreement, including but not limited to the duties of providing notice of damages, duty to repair, providing insurance (except the minimum limit may be one million limit rather than 5 million), holding harmless, signage, alterations and repairs, inspection, smoking, compliance with law, default and remedies. STJSP shall pay a negotiated monthly fee for use of the office space. Notwithstanding the forgoing, STJSP shall pay only one-third of this cost during the first year of this Amended Agreement, two-thirds during the second year, and the full amount thereafter.

7. Fundraisers.

a. Ski Swap. STJSP desires to conduct an annual "Ski Swap" fund raiser and shall apply each year for rental of a suitable City facility, in the same manner as other facilities are reserved and rented and shall be subject to special event permitting requirements, if applicable. Notwithstanding the forgoing, the City shall reduce the customary rental fee by two-thirds for the first year and by one-third for the second year.

b. Two Summer Fund Raisers. STJSP shall have the right to use Sky Tavern on two non-concurrent weekends (Friday 5:00 p.m. to Monday 8:00 a.m.) per year during the summer (May 1 to November 30) at no cost, for the purpose of conducting fund-raising events. The events shall be scheduled in reasonable cooperation between STJSP, the City, and any third party with potentially conflicting possessory rights to Sky Tavern during this time period. STJSP shall not disturb any equipment or facilities installed by

such a third party and shall ensure that the area is restored to its pre-use condition and left clean by 8:00 a.m. the following Monday. STJSP shall be responsible for utilities costs. All other applicable terms of this Amended Agreement shall remain in force, including the requirement to obtain insurance for the event, although the minimum limit may be lowered to \$2,000,000.

8. Use of City Equipment. STJSP may use any equipment owned by the City located at Sky Tavern, provided the equipment is used in its intended manner and is used to further STJSP's activities at Sky Tavern, and for no other reason. STJSP shall be solely responsible for proper maintenance of the equipment and shall replace or pay for any equipment damaged or destroyed through STJSP's negligence, but not for reasonable wear and tear. City reserves the right to use the equipment at any time it is not being used by STJSP, and at any time City requires the equipment to address an emergency situation, as determined by the City. STJSP takes the equipment "as is" and shall be solely responsible for ensuring that equipment users are properly trained in safe use of the equipment. City shall not be responsible for replacing equipment that is damaged or worn out.

9. STJSP Equipment and Storage.

a. Equipment. STJSP currently owns the equipment identified in Exhibit "A" hereto, which is currently located at Sky Tavern. STJSP shall not bring any new equipment to Sky Tavern without prior written notice to the Director or Designee. STJSP shall remove its personal property and equipment at the conclusion of this Amended Agreement and any property or equipment not removed shall become the property of City. Property incorporated into the lodge as a fixture shall become the property of City, unless otherwise agreed upon in writing.

b. Storage. STJSP shall have the sole right to store equipment year round under lock and key in the maintenance shop near the lower parking lot. STJSP may store equipment year round in additional locations with the advance written consent of the Director or Designee. The intent of the parties is to provide reasonable storage for STJSP's equipment while reasonably maximizing the functionality of Sky Tavern, and especially the lodge, for summer usage by the City or third parties.

City assumes no liability for equipment left or stored at Sky Tavern at any time.

10. Lodge Area Maintenance. STJSP shall maintain the Sky Tavern lodge, garage, parking lot, water system (monitoring and testing), utility services, and facilities and equipment appurtenant thereto in good and operable condition throughout its occupancy. STJSP shall at all times maintain sufficient levels of propane and shall ensure that the lodge is heated sufficiently to prevent damage to the lodge or its plumbing from freezing. STJSP shall keep the propane fill area clear from snow to facilitate refueling.

11. Janitorial Services. STJSP shall, at its sole expense, provide janitorial services for the lodge throughout its occupancy following each use of Sky Tavern by STJSP. Sky Tavern lodge shall be maintained in a clean and presentable condition at all times.

12. Chair Lift Maintenance. STJSP shall be solely responsible, at its expense, for the safe inspection, operation and maintenance of all current and future warming shacks, ski lifts (including chair, poma and rope tow lifts), and all equipment and appurtenances related thereto or otherwise related to the conduct of STJSP's activities at Sky Tavern.

13. Alterations, Improvements and Repairs. STJSP shall make no alterations, improvements or repairs to any portion of the Premises without prior written approval of the Director or Designee. Further, STJSP agrees not to commit waste on the Premises and to return and surrender same to the City upon expiration of each season and upon termination of this Amended Agreement in good condition, normal wear and tear excepted. STJSP shall promptly notify the Director or Designee of any necessary or emergency repairs to the Premises.

14. Damage to Premises. STJSP shall promptly notify the Director or Designee of any damage to the Premises, regardless of who caused the damage. STJSP shall not cause damage or waste to the Premises, which duty includes, but is not limited to, the following:

a. STJSP agrees that it shall be liable for and bear the full cost of repair, or replacement for the acts of its agents, employees, clients, occupants, invitees and guests which result in the breakage, stoppage or damage to the Premises and appurtenant structures, facilities and equipment. All such repairs or replacements shall be conducted in a timely manner by STJSP. In those instances when replacement is necessary, the damaged item or improvement shall be replaced with a comparable item or improvement such that the Premises will be restored to the condition which complies with all applicable codes, ordinances and regulations.

b. The toilets and urinals shall not be used for any purpose other than those for which they were constructed, and no rubbish, newspapers or other substance of any kind which could cause harm to such fixtures shall be thrown into them.

c. Graffiti shall be removed within two days.

d. STJSP shall not cause structural damage to any portion of the lodge or any other structure on the Premises, which includes, but is not limited to, damage to walls, ceilings, partitions, floors, wood, stone, or iron work, attachment of cabinets or other work which might result in damage to the Premises. STJSP shall be permitted to hang pictures on the walls with the prior written permission of the Director or Designee, but it must be done in a workmanlike manner and in such a way as not to damage or deface such walls in an abnormal manner.

15. Trespassers and Criminal Activity. STJSP shall promptly report to the Director or Designee, and to local law enforcement, any criminal activity occurring on the Premises, including but not limited to vandalism, unauthorized motor vehicles on the Premises, and unpermitted campfires. STJSP shall use reasonable efforts consistent with safety concerns to notify trespassers that they are trespassing, and shall endeavor to provide

them with information provided by the Director or Designee regarding how permits may be sought.

16. Facility Security. STJSP shall secure the lodge and all other gates, sheds or enclosures, if applicable, by ensuring that all doors, windows, and gates are locked when not in use by STJSP or other permitted users, and that fire or security systems, if any, are properly engaged. STJSP shall provide City with copies of all keys, combinations or codes, and with information regarding their use, for any lock or security device or system used on the Premises, including cabinet or desk locks and fire or security alarms, but excluding personal desk drawers or safes belonging to STJSP. City shall provide STJSP with keys or combinations, as necessary for STJSP's permitted use.

17. Signage. Prior approval of City will be obtained relating to the content, placement, and location of any signage to be placed by STJSP at the Premises. STJSP shall be responsible for the costs and maintenance of STJSP's signage. STJSP may affix or post banners, posters or notices within the interior of the lodge in order to promote and publicize events and activities relating to allowed uses of the Premises and other matters which may benefit STJSP's operations or persons using the facility, provided that such items do not cause damage. STJSP shall not affix or post any manner of sign, banner, poster, or notice anywhere on the outside of the Premises or elsewhere on the exterior of the property unless such sign complies with applicable laws, codes and regulations and prior written consent is obtained from the Director or Designee. The City shall have the right to install or affix signage at its discretion.

18. Picnic Tables. STJSP shall maintain all picnic tables secured to the deck area.

19. Snow Removal. STJSP shall be responsible for snow removal for its operations. STJSP shall also remove snow upon request by the City to facilitate any event being held or permitted by the City at Sky Tavern during STJSP's possession term. City shall provide at least 24 hours advance notice of the need for snow removal. In the absence of agreement to the contrary, snow shall be removed from the upper parking lot and all walkways, driveways and entries surrounding the lodge. STJSP shall provide sufficient equipment to ensure its snow removal obligations are met.

20. Clean up.

a. Ongoing. All groups, including STJSP, the City, or other permitted users using any facility at Sky Tavern shall be required to conduct their own clean up at the conclusion of their event. Nevertheless, STJSP shall inspect the facility and premises after all scheduled events during their possession term to ensure that they have been left in a satisfactorily clean condition, and shall clean the premises if necessary. Should STJSP be required to clean a facility after a City event or City permitted event, STJSP shall deliver photographs and an invoice to the City detailing its clean up activities and a reasonable fee therefore. The City will fax copies of rental agreements for all scheduled, City permitted user groups.

b. Bone Yard. STJSP shall remove equipment from the Bone Yard” in accordance with the attached schedule (Exhibit “B”).

21. Garbage. During its possession term, STJSP shall ensure that garbage is placed in appropriate receptacles and that all outdoor garbage receptacles are bear-proof or are housed in a bear-proof facility. STJSP shall ensure that garbage is not left in containers in the lodge which may lead to a rodent problem. STJSP shall have garbage receptacles ready for pick up by Waste Management, Inc. (or successor) on the designated day and time.

22. Animals. No animal, except for service animals, shall be brought into the lodge by STJSP or the agents, employees, clients, guests or invitees of STJSP.

23. Walk Through. City and STJSP shall perform a walk through inspection of all Sky Tavern facilities to note maintenance and condition deficiencies, if any, before and after each ski season.

24. Inspections. In the event of an emergency or if City determines in its sole discretion there exists a health, safety, welfare issue, City shall be entitled to enter the Premises without notice. Otherwise, City, and its authorized agents or representatives, may enter the Premises at all reasonable times provided City first delivers at least twenty-four (24) hours advance written notice to STJSP (which may be accomplished by mail delivery of the notice to Tenant’s designated representative) for any or all of the following purposes:

- a. To examine the condition of the Premises;
- b. To show the Premises;
- c. To effectuate any necessary repairs, construction, improvements or perform maintenance;
- d. To ensure STJSP’s compliance with this Amended Agreement and with local, state and federal rules and regulations.
- e. For any other reasonable purpose.

The foregoing procedures relating to inspection and entry into the Premises do not restrict, or inhibit in any way, the authority, power and legal jurisdiction of the City as a municipal corporation to enact and enforce laws, regulations and code provisions, and all matters legally related thereto. In regards to City’s actions taken pursuant to this Amended Agreement, STJSP hereby waives any claim for damages or for any injury or inconvenience to or interference with STJSP 's activities, and any other loss occasioned thereby, except for any failure of the City to exercise due care for STJSP’s property.

25. Smoking/Alcohol/Illegal Substances. STJSP shall not permit smoking, alcohol, or any illegal substance at anytime anywhere within or upon the Premises. Smoking shall be permitted only in those outside areas as specifically designated and identified by City. STJSP’s agents, employees, clients, guests and invitees who smoke on the Premises are responsible for proper disposal of cigarette butts, ashes, and packaging. Possession and

consumption of alcoholic is prohibited. STJSP shall notify its agents, employees, clients, invitees and guests as necessary to enforce these prohibitions. Notwithstanding the foregoing, STJSP may seek written permission from the City, which must be received prior to the event, to utilize alcohol at the Premises during a special event or activity. Any such event must comply with all applicable laws and regulations.

26. Personnel and Relationship of Parties. STJSP is solely responsible for the training, remuneration, disciplinary actions, and any employer paid benefits for all employees, agents and volunteers of STJSP. STJSP shall maintain worker's compensation insurance in accordance with Nevada statutory provisions and in a form acceptable to the State of Nevada. STJSP agrees to provide equal opportunity to all its employees regardless of sex, race, religion or ethnicity. This Amended Agreement does not create a partnership, joint venture or other relationship other than that of independent contracting parties.

27. Insurance: STJSP shall, at its expense, obtain and keep in force during the term of occupation of the Premises a policy of comprehensive general liability insurance insuring both itself and the City against any liability arising out of the use, occupancy or maintenance of Sky Tavern and all areas appurtenant thereto and buildings and equipment thereon. Such insurance shall have a Combined Single Limit of at least \$5,000,000 including both liability and property damage, and insure against any liability for personal injury, death or property damage, as set forth above, and shall be written on a form acceptable to the Risk Manager for the City of Reno. STJSP shall deliver to City prior to occupancy of the Premises copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to the City's Risk Manager. No policy shall be cancelable or subject to reduction of coverage except after thirty (30) days prior written notice to the City. STJSP shall, at STJSP's expense, obtain and keep in force during the term of this Amended Agreement, a policy of fire, theft and other perils insurance covering STJSP's furniture, fixtures, equipment, vehicles, goods, supplies, computers, wares, merchandise and other personal property maintained on the Premises.

28. Limitation of Liability. STJSP hereby agrees that City shall not be liable for injury to STJSP's business or for damage to the goods, supplies, computers, wares, merchandise or other property of STJSP, STJSP's agents, employees, clients, invitees, guests or any other person in or about the Premises, nor shall City be liable for injury to the person of STJSP, STJSP's employees, agents, contractors, invitees, clients or customers, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain, ice or snow, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, or from any other cause, including without limitation, any failure in the supply of any of the items or services to the Premises, whether said damage or injury results from conditions arising upon the Premises or from any other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to STJSP. City shall not be liable for any damages arising from any act or negligence of any other permittee or licensee on any portion of the Property.

29. Hold Harmless. STJSP shall indemnify and hold harmless City against and from any and all claims arising from STJSP 's use of Sky Tavern for the conduct of its business or from any activity, work or other thing done, permitted or suffered by STJSP in or about the Premises, and shall further indemnify and hold harmless City against and from any and all claims arising from any breach or default in the performance of any obligation on STJSP's part to be performed under the terms of this Amended Agreement, or arising from any act or negligence of STJSP, or any officer, agent, employee, client, guest, or invitee of STJSP, and from all and against all costs, attorney's fees, expenses and liabilities incurred as a result of any such claim or any action or proceeding brought thereon, and, in any case, action or proceeding brought against City by reason of any such claim, STJSP upon notice from City shall defend the same at STJSP's expense by counsel reasonably satisfactory to City.

City or its agents shall not be liable for any damage to property entrusted to agents, employees, clients, guests or invitees of STJSP at Sky Tavern, nor for loss or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence of the City, its agents, servants or employees. City or its agents shall not be liable for interference with the loss of business or services by STJSP, nor shall City be liable for any latent defect in the Premises. STJSP shall give prompt notice to City in case of fire or accidents at Sky Tavern or of defects therein or in the fixtures or equipment thereon.

The insurance, limitation of liability and hold harmless provisions shall not waive or lessen City's common law or statutory protections, including the provisions of NRS Chapter 41, all of which are expressly retained by the City.

City shall indemnify, defend and hold harmless STJSP, its officers, agents, employees, clients, guests or invitees from and against any and all liability, loss, damage, expense and cost of every nature arising out of or in connection with, the actions of City, except such loss or damage caused by the condition of the Premises or caused by the sole negligence or willful misconduct of STJSP or its officers, agents, employees, clients, guests or invitees.

30. Ski Safety: On each and every day that STJSP operates its Junior Ski Program, it shall have in place all safety equipment including ski boundary signs, lift pole padding, fencing, lift line fencing and operable communication equipment between Sky Tavern ski lift facilities all in accordance with insurance inspector standards. STJSP further agrees to have in place an active trained and equipped ski patrol with sufficient personnel to safely provide for Junior Ski Program participants. STJSP agrees to operate within industry standards for snowsports areas.

31. Capital Repairs to Premises. “Capital Repairs” shall mean a repair needed for the Premises that is not caused by STJSP or included as a responsibility of STJSP under the terms and conditions of this Amended Agreement. Capital Repairs shall not include costs attributable to repairs or replacement to the extent covered by insurance or warranties, or which are otherwise paid for by a third party (i.e., a party other than STJSP). Possible examples of Capital Repairs include, but are not limited to, roof and flashing repairs, sidewalk repairs, door replacement, and electrical, mechanical, or plumbing upgrades and repairs, and HVAC repairs. All Capital Repairs shall be performed in a workmanship manner and shall comply with applicable codes and regulations.

While STJSP is in possession under this Amended Agreement, City shall be granted access to the Premises in accordance with the Inspection section herein in order to determine if any Capital Repairs are needed. If City identifies a necessary Capital Repair for which it desires the assistance of STJSP, City shall advise STJSP and specifically identify the nature of the Capital Repair. City and STJSP shall cooperate in formulating a plan for addressing and completing Capital Repairs within a reasonable time period. City and STJSP will meet and confer to determine if STJSP is willing to assist with the Capital Repair. If STJSP is willing to assist with the Capital Repair, it shall be responsible to assure all work is performed in a timely manner and complies with the provisions of this Amended Agreement and applicable laws, codes, ordinances, and regulations.

City shall be responsible for Capital Repairs on which STJSP and City do not reach a separate agreement and STJSP has no direct obligation to perform, complete and pay for such Capital Repairs. However, it is recognized and acknowledged that City is a public entity which must comply with public purchasing and bidding laws and the timing, completion or non-completion of Capital Repairs may be contingent on available budgetary funding.

32. Reporting. On or before August 31 of each year this agreement is in effect, STJSP shall submit a full financial statement to City detailing income and expenses for the preceding fiscal year of STJSP. In addition, STJSP shall provide a summary of the ski season noting such statistics as are reasonably requested by the Director or Designee, including but not limited to numbers of participants, their place of residence, recommendations for change, and plans for capital improvements.

33. City’s Use of Sky Tavern. City reserves the right twice per month during STJSP’s five month possession each year to use all or any portion of Sky Tavern on weekdays for a one or two day meeting or event by the City; provided City gives at least 30 days advance notice to STJSP. If STJSP has an activity planned for the noticed date or dates, the parties shall attempt in good faith to reschedule; however, in the event of an impasse, the City’s noticed dates shall control. Additionally, if STJSP is not using Sky Tavern, City may use all or any unused portion of Sky Tavern on 7 days advance notice; provided such use will not materially interfere with STJSP’s use, such use will not degrade any groomed slopes or courses, and will not be used by a direct competitor of

STJSP for any activity of the type that STJSP is engaged in at Sky Tavern. City or its permittee shall be responsible for their own clean-up following their use.

34. Lack of Funding. STJSP recognizes and acknowledges that City is a public entity which must comply with public purchasing and bidding laws and limitations on obligating unbudgeted funds, and the timing, completion or non-completion of any financial obligation of the City under this Agreement may be contingent on available budgetary funding.

35. Records. STJSP acknowledges that the Public Records Request Act, NRS Chapter 39, may require production of the City's and/or STJSP's records related to this agreement.

36. Cancellation for Cause. In addition to any right to which it may be entitled by law or under this Amended Agreement, either party may cancel this Amended Agreement upon and after default by the other party in the performance of any of the terms and conditions herein required to be kept and performed by such party, and its failure to remedy such breach for a period of thirty (30) days after receipt of written notice of the existence of such default.

37. Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Amended Agreement by STJSP:

- a. The vacating or abandonment of the Premises by STJSP;
- b. The failure by STJSP to make any payment required to be made hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof by City to STJSP;
- c. STJSP's loss of its non-profit status.
- d. The failure by STJSP to observe or perform any of the covenants, conditions or provisions of this Amended Agreement to be observed or performed by STJSP, where such failure shall continue for a period of thirty (30) days after written notice thereof by City to STJSP; provided, however, that if the nature of STJSP's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if STJSP commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion. This provision shall not apply if a different period of time is specifically provided in this Amended Agreement to comply with the applicable term and condition; in that event, the other applicable period of time shall control.

38. Remedies in Default. In the event of any default or breach by STJSP, City may at any time thereafter, with or without notice or demand and without limiting City in the exercise of a right or remedy that City may have by reason of such default or breach:

a. Terminate STJSP 's right to possession of the Premises by any lawful means, in which case this Amended Agreement shall terminate and STJSP shall immediately surrender possession of the Premises to City. In such event City shall be entitled to recover from STJSP all damages incurred by City by reason of STJSP 's default including, but not limited to, the cost of recovering possession of the Premises; including expenses necessary for renovation, alteration or repair of the Premises, and reasonable attorney's fees;

b. Maintain STJSP 's right to possession, in which case this Amended Agreement shall continue in effect whether or not STJSP shall have abandoned the Premises. In such event City shall be entitled to enforce all of City's rights and remedies under this Amended Agreement;

c. Terminate this Amended Agreement; or

d. Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of Nevada.

39. Compliance With Law. STJSP shall comply with all applicable local, state and federal laws and regulations, including but not limited to the American's with Disabilities Act and anti-discrimination laws in its hiring and in the conduct of its activities at Sky Tavern. STJSP shall timely obtain, and maintain in good standing, all permits or licenses which may be required to conduct its activities at Sky Tavern, including but not limited to applicable health permits relating to the preparation and sale of food and beverages. STJSP shall pay all costs associated with achieving such compliance, provided, however, that STJSP shall not be responsible for costs of upgrading or improving the Premises or improvements if the condition of the Premises or improvements does not comply with applicable laws, ordinances, and regulations, and such non-compliance has not resulted from STJSP's use of the Leased Premises. Tenant shall not be in default on any other contract with Landlord.

40. Environmental Compliance.

40.1 "Hazardous substances" shall mean any hazardous or toxic substances, materials, or wastes, the removal of which is required, the maintenance of which is prohibited or penalized, or for which a permit is required under applicable Environmental Laws, including, but not limited to, any substance, material or waste which is (i) petroleum, (ii) gas (including natural, synthetic or liquefied), (iii) asbestos containing material, (iv) flammable, radioactive, corrosive or carcinogenic, (v) polychlorinated biphenyls, (vi) designated as a hazardous substance pursuant to Section 311 of the Clean Water Act, 33 USC §1251, *et seq.* (33 USC §1321), or listed pursuant to §307 of the Clean Water Act (33 USC §1317), (vii) defined as a "hazardous waste" in the Resource Conservation and Recovery Act, 42 USC §6901, *et seq.* (42 USC §6903), (viii) defined as a "hazardous substance" or "toxic substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §9601, *et seq.* (42 USC §9601), or the Hazardous Material Transportation Act, (49 USC §1801, *et seq.*, (ix)

listed in the United States Department of Transportation Hazardous Material Tables (49 CFR 172.101), (x) designated by the Environmental Protection Agency as hazardous substances (40 CFR Part 302), as amended, or (xi) is regulated pursuant to Chapters 444, 445, 445A, 445B, 459, 477, 590 or 618 of the Nevada Revised Statutes or the International Fire Code, as amended and as adopted by the City of Reno.

40.2 In regards to STJSP's use of the Premises, STJSP shall, at STJSP's own expense, comply with all local, state, and federal regulations and any successor legislation and regulations including, but not limited to, the laws associated with the definition of hazardous substances above ("Environmental Requirements").

40.3 STJSP represents and warrants to City that it will not use, or allow its agents to use, any hazardous substance on the Premises, with the exception of those substances reasonably necessary to the usual and customary operation of its business. This representation and warranty shall continue in full force and effect throughout the term of this agreement, and should any fact or circumstance change during the term so that such representation and warranty is no longer correct, STJSP shall immediately notify City of such change in fact or circumstance.

40.4 STJSP shall hold City harmless from, and defend and indemnify City against, any and all claims or liability for any injury or damage to any person or property caused by the presence of hazardous substances in, on, under, or about the Premises which are placed in, on, under or about the Premises by STJSP, and for any costs or liability incurred by City in connection with the release, removal, or storage of any hazardous substance placed in, on, under or about the Premises by STJSP. The provisions of this indemnity shall remain in full force and effect and shall not be affected or impaired by any termination of this Amended Agreement and shall survive any such termination. STJSP shall not be responsible or liable for, and shall have no duty to defend or indemnify City for any claims or liability or for any injury or damage to any person or property caused by the presence of hazardous substances in, on, under or about the Premises which existed in, on, or about the Leased Premises prior to the date STJSP originally took possession of said Premises.

40.5 STJSP shall at all times maintain current permits required for all of its operations on the Premises, including those required for the use, storage, or disposal of hazardous substances, in, on, under or about the Premises; provided, however, that nothing in this paragraph shall imply City's consent to STJSP's storage, use, or disposal of any hazardous substance in, on, under or about the Premises, with the exception of those substances reasonably necessary to the usual and customary operation of its business.

40.6 In the event of the release or spill of any hazardous substance on or from the Premises, STJSP shall immediately give City notice thereof if such release or spill is in a quantity or of quality requiring notice to any public authority or agency.

40.7 STJSP shall promptly supply City with copies of all notices, reports, correspondence, and submissions made by STJSP to the Environmental Protection Agency, the United States Occupational Safety and Health Administration, or any other local, state, or federal authority which required submission of any information concerning environmental matters or hazardous wastes or substances pursuant to laws, including, but not limited to, the Environmental Requirements set forth in this Amended Lease.

40.8 Upon the expiration or termination of this Amended Agreement for whatever reason, STJSP shall promptly:

a. Remove any and all hazardous substances that STJSP has placed, or allowed to be placed, in, on, under or about the Premises, and

b. Remove and replace any fixture, mechanical, storage, distribution, or other system or improvement in and to the Premises that was involved in STJSP's use, storage, or disposal of hazardous substances and which cannot otherwise be returned to a completely uncontaminated condition, unless otherwise agreed between City and STJSP.

40.9 STJSP shall not create with respect to the Premises, or permit any of its agents to create any lien, security interest, or other charge or encumbrance of any kind, including, without limitation, any lien imposed pursuant to §107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §9607(1)).

40.10 STJSP shall permit City and City's agents, servants and employees, including, but not limited to, legal counsel and environmental consultants and engineers, reasonable access to the Premises for the purpose of environmental inspections and sampling during regular business hours, provided that City first provides STJSP twenty-four (24) hours notice, and further provided that such inspections and sampling do not interfere in any manner with STJSP's ability to conduct its usual business on the Premises.

41. Assignment, Sublease. STJSP shall not permit use of any portion of the Premises by anyone not a party to this Amended Agreement, assign this Amended Agreement, or sublet any portion of the Premises without first obtaining the City's prior written consent. If City agrees to permit such use, assignment or a sublet of any portion of the Premises, STJSP acknowledges that City may be required to comply with the Nevada Revised Statutes to process such arrangement and also that City shall be entitled to all rents associated therewith, unless otherwise agreed in writing. This provision shall not be applicable to STJSP's normal programs and short term fund-raising events.

42. Liens. STJSP shall not encumber this Amended Agreement, its interest in the Premises, or any improvements thereon, nor shall STJSP permit any liens to be filed against the Premises on account of any labor, material or supplies for which the lien laws of Nevada authorize the filing of a lien, but agrees to promptly pay for such labor, materials or supplies before liens are filed.

43. Waiver. It is agreed that a failure on the part of City to declare this Amended Agreement canceled for default by STJSP in any one or more of the terms, covenants or conditions will not be considered or construed as a waiver of such rights on any further or future default on the part of STJSP. It is further mutually agreed that any failure on the part of City to take action against STJSP for any breach of term, covenant or condition herein shall not be construed to constitute a waiver of any other or subsequent breach nor shall the subsequent acceptance of rent hereunder by City be construed as a waiver of any precedent breach of any term, covenant or condition by STJSP.

44. Force Majeure. City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Amended Agreement on City's part to be performed, if City fails to timely perform same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by STJSP (or STJSP 's agents, employees, clients, guests or invitees) or any other cause beyond the reasonable control of City.

45. Section and Paragraph Headings. The section and paragraph headings contained herein are for convenience in reference and are not intended to define, govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Amended Agreement.

46. Time. Time is of the essence of this Amended Agreement and of the performance of each and every provision hereof.

47. Governing Law. This Amended Agreement will be governed by and construed in accordance with the laws of the State of Nevada. Venue for initiation of any legal action shall be a court of competent jurisdiction located in Washoe County, Nevada.

48. Representative Authority. Each individual executing this Amended Agreement on behalf of STJSP and City represents and warrants that he/she is duly authorized to execute and deliver this Amended Agreement, and that this Amended Agreement is binding upon said parties in accordance with its terms. STJSP shall, within thirty (30) days after execution of this Amended Agreement, deliver to City a certified copy of a resolution of the Board of Directors of its non-profit organization authorizing or ratifying the execution of this Amended Agreement.

49. Entire Agreement/Amendments. This Amended Agreement together with all exhibits expressly referenced herein and attached hereto shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Amended Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

50. Attorney's Fees. Should either party bring an action in a court of law to enforce this Amended Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, reasonable and necessary experts fees, and costs of suit.

51. Interpretation. Both parties have been represented by counsel in the preparation of this Amended Agreement and there shall be no presumption against either party by reason of their preparing the agreement in interpreting the provisions herein.

52. Notices. All notices to be given in accordance with this agreement shall be in writing and shall be deemed given when deposited in the United States mail addresses as below, or sent by facsimile machine to the offices below:

City: Director, City of Reno  
Parks, Recreation and Community Services  
P.O. Box 1900  
Reno, NV 89505  
775-334-2449 fax

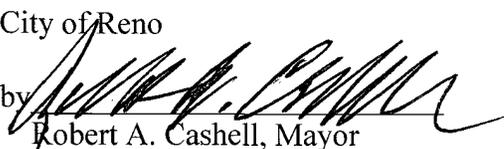
STJSP: Sky Tavern Junior Ski Program, Inc.  
P.O. Box 1709  
Reno, NV 89505-1709  
775-323-4864 fax

The parties may change the means of providing Notice by signed written agreement and may change the above listed addresses or numbers by giving notice as provided herein.

IN WITNESS WHEREOF City and Ski have executed this agreement effective as of the date first written above.

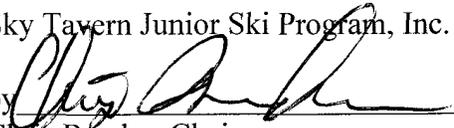
City of Reno

by

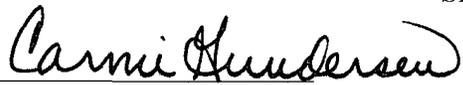
  
Robert A. Cashell, Mayor

Sky Tavern Junior Ski Program, Inc.

by

  
Chris Bender, Chairman  
Ski Tavern Junior Ski, Inc.

ATTEST:

  
for

City Clerk

APPROVED AS TO FORM

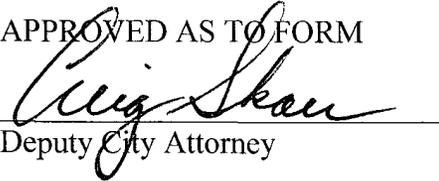
  
Deputy City Attorney



Exhibit "A"  
to Amended and Restated Agreement between City and STJSP

**SKY TAVERN JUNIOR SKI, Inc. EQUIPMENT**



**Front Desk and Office**

---

3	Computer systems
1	copier
1	music/PA system
1	radio system including repeater
7	cases logowear
6	cases office supplies
1	folding awning
11	display tables
misc	marketing displays
8	cases give-a-ways
16	plastic garbage cans
10	boxes program files
2	printers
1	fax machine
1	badge machine
2	money counters
1	safe
5	filing cabinets
3	office desks
misc	cabinets

**Under Deck Storage**

---

100 (approx.)	helmets
50 (approx.)	snowboards
100 (approx.)	pairs skis
100 (approx.)	ski poles
100 (approx.)	ski boots
100 (approx.)	snow board boots
500 ft	snow fence
20 bundles	bamboo
7 cases	race team gear
5 bundles	race gates
4 cases	decorations
misc	signs
5000 ft	rope

25 plastic ski racks

**Ski Patrol**

---

2	job box
7	shelving
1	TV
5	evacuation gear
2	tuning machine
1	washer
1	dryer
4 cases	blankets
6	hospital beds
10	rescue sleds
30	lockers
1	O2 system
12 cases	medical supplies
1	radio system
2	AED
2	wheelchairs
5 boxes	uniforms
8 boxes	lost and found items
misc	signage

**Operations**

---

45	tower pads
170	seat pads
1	computer
1	fax
1	radio system
10	ski racks
20	lockers
15	battery chargers
25	shovels
1	laminating system
5	benches

**Adaptive**

---

10	mono and bi skis
15 sets	outriggers
10	uniforms
misc	counters
misc	specialized braces
misc	tuning tools
misc	files and manuals
misc	equipment
3	benches

**Kitchen**

---

1	cabinet, condiment
2	napkin dispenser
6	cash register
1	upright drink refrigerator
1	grill
1	deep fryer
3	cookie ovens
1	cadco oven
1	warmer cabinet
1	three door refrigerator
1	ice machine
1	upright freezer
1	1 prep table
2	cocoa machine
4	microwaves
2	cheese machine
1	nacho machine
1	hotdog warmer
2	coffee maker
2	toaster
1	toaster oven
5	shelves
5	warming bins
4	chafing dishes
1	creamer dispenser
1	food processor and attachments
misc	pots, pans and trays
misc	utensils

**Snack Shack**

---

Built by STJSP 2003

misc	cooking equipment
1	generator
1	communication dish
misc	furniture
5	picnic tables
1	BBQ
2	fire extinguisher
1	counter
1	shelving unit
1	smoker
misc	video equipment

**Race Timing Building**

---

Built by STJSP 2009

misc race team equipment and supplies

## Lower Lot and Shop

All contents of the shop building on both levels are property of STJSP. What follows is a partial list.

20	metal ski racks
1	53ft storage container
1	20ft storage container
misc	signs
2	equipment sleds
20 sets	kids lockers
20	picnic tables
1	snow fence
18	terrain park features
misc	specialized lift maintenance tools
1	cement mixer
1	pressure washer
1	chipper
1	log splitter
1	vending machine
1	snowboard tuning bench
1	fuel tank station
4	SLR harness
misc	rigging
1	welder/generator
1	wire welder
2	snow blower
5	snowmobiles
1	BR 275 Snowcat
1	ME+ Snowcat
1	Cat 950F loader
1	Cat snow plow blade
1	compressor
1	arctic cat 4 wheeler
1	ford f-150
1	fire suppression system
1	hydraulic lift
1	torch
3	generators
misc	power and hand tools
8 drums	fluids
misc	metal racks
misc	tubing equipment
1	mobile terrain park trailer and fittings
1	wheeled trailer
1	30X70ft Sprung Structure unassembled

## **Boneyard**

---

2	compactor rollers
4	gearboxes
3	drives
1	kitchen hood an fan
5	lift towers (Bear Paw)
5	tower spans
misc	sheave assemblies
2	cable spools
misc	guideage
2	bull wheels
1	compactor bar
misc	wire rope
misc	tube
1	return terminal
1 set	service chair
misc	construction material

## **Lifts**

---

<b>Sky Ridge</b>	Built by STJSP in 1992 Triple fixed grip chair with bottom drive 195 hp 2000 foot length with 15 towers 102 chairs
<b>America</b>	Built by STJSP in 2001 Triple fixed grip chair bottom drive 350 hp 1100 foot length with 9 towers 54 chairs
<b>Rocco left and right</b>	Built 1967 by City of Reno Two platter tows side by side 650 foot length 35 hp each Upgraded in 2006 by STJSP
<b>Pony Express</b>	Built by STJSP in 2005 Fixed grip handle tow 220 feet 15hp
<b>Bear Paw</b>	Planned installation date 2011 Fixed grip double chair bottom drive 100hp 700 foot 7 towers 36 chairs Donated by Northstar-at-Tahoe 2009

***This is not intended to be a complete or audited inventory of all items owned by STJSP at Sky Tavern Area. Many more items will be found at the area under STJSP's ownership.***

EXHIBIT "B"

<b>Sky Tavern Bone Yard Inventory</b>				
<i>Many pieces of equipment will be removed by October to other areas at the Sky Tavern facility or to the dump. All other equipment identified short/long term will be organized in the bone yard</i>				
<b>Equipment</b>	<b>Remove - to dump (06/11)</b>	<b>Remove - to facility location (06/11)</b>	<b>Stored - Short Term (&lt;5 year)</b>	<b>Stored - Long Term (&gt;5 year)</b>
(2) Roller Compactors				X
(1) Rope Tow Shack	X			
(4) Gear Boxes				X
(3) Poma Drive		X		
Kitchen Hood/Fan Blower				X
Riblet Towers			X	
(5) Yan Tower Tops				X
(5) Barriers for Rope Tow			X	
Yan Shieve Assembly				X
(2) Cable Spools				X
Poma Guidage - misc.			X	
(2) Poma Bowl Wheels			X	
Rope tow Shacks misc. metal		X		

LMC Compactor Bar			X	
Trailer Axle	X			
3/4" Cable (500' +)				X
7/16" Cable (300'+)				X
Ladder -cut down		X		
(13) Tower Tube (11" wide, 10'-14' length)				X
Chain Link Fence w- wood slats		X		
(4) Towers - (1' / 15'- 40' range)				X
(7) Towers - (2' / 10'- 35' range)				X
Rainbow Box			X - one year	
Service Chair				X
Loader Chains	X			
Return Terminal			X	