

WINONA SKATE PARK MANAGEMENT SERVICES AND OPERATION AGREEMENT

THIS AGREEMENT (the “Agreement” or “Agreement”) is made this ____ day of _____, 2021, by and between the City of Winona, a municipal corporation under the laws of the State of Minnesota (“City”) and Anthem Skateshop LLC, 1504 Homer Road, Winona, MN 55987, a limited liability company under the laws of the State of Minnesota, (“Operator”); (collectively the “Parties”).

WHEREAS, the City owns the West End Recreation Center located at 800 West Fifth Street, Winona, Minnesota, (the “Premises”) and desires to have Operator manage, operate and maintain the Premises, including an indoor and outdoor skate park (the “Facility”) on said Premises (the “Services”). A depiction of the area on the Premises to be used for the indoor and outdoor skate park is shown in Exhibit 1, which is attached hereto and incorporated herein by reference; and

WHEREAS, the City and the Operator desire to enter into this Agreement setting forth the terms and conditions under which the Operator will provide the Services to manage, operate and maintain the Premises, including the Facility for and on behalf of the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Operator Provision of Services and Responsibilities.
 - a. Provision of Services. The City hereby retains the Operator and the Operator hereby agrees to provide the Services for the Premises and Facility on behalf of the City pursuant to the terms of this Agreement. During the term and any renewal term of this Agreement, Operator shall be responsible for providing the Services set forth herein below.
 - b. Grant to Operator. The City grants to Operator the right to manage, market, promote, operate and maintain the Premises and Facility, subject however, to the City’s right to terminate this Agreement as provided herein. The Operator shall provide the Services in a timely manner, in accordance with industry standards and norms. The Operator is not authorized to incur debt on the Premises or Facility secured by any interest in the Premises or Facility or which the City would be otherwise required to assume in the event of termination of this Agreement.
 - c. Assumption of Duties and Responsibilities. By entering into this Agreement, the Operator agrees to assume the City’s duties, obligations and responsibilities for the Services to the Premises and Facility during the term of this Agreement and any extensions thereof.

- d. Operator Services Responsibilities. Beginning on the Commencement Date, and continuing through the term of this Agreement, the Operator shall assume the Services responsibilities as set forth below. The Operator shall manage the Facility in its reasonable discretion pursuant to the terms of this Agreement, but shall be obligated to inform the City of circumstances of which it has knowledge having or which may have a material effect on the Premises or Facility or the operation of the Premises or Facility. Such notice by Operator to the City shall be in writing and provided to the City within 30 days of Operator's determination that a material issue or circumstance exists that requires disclosure to the City. For purposes of this Agreement, an issue having a material effect on the Premises or Facility or the operation of the Premises or Facility includes matters which will have a cost impact of \$10,000 or more.
- e. Marketing and Promotion. Operator shall manage and direct all marketing and sales activities regarding the Facility, which shall be undertaken so as to maximize the use of the Facility. Major marketing and promotion materials shall be reviewed and approved by the Parks and Recreation Department, in its discretion, before they are publicly released. The Park and Recreation Department retains the right to require removal or modification of any marketing and promotional materials in its discretion.
- f. Event Rentals of the Facility. Operator shall be responsible for marketing the Facility for event rentals thereof and shall have the authority to enter into event rental agreements for use of the Facility acting as the City's agent. The template event rental agreement used by Operator shall be on a form provided by the City.
- g. Scheduling. The Operator shall develop and maintain all schedules for use of the Facility and develop programs for use thereof by various age groups to allow access to and use of the Facility by various segments of the public through age appropriate programs, all subject to review and approval by the Parks and Recreation Department in its discretion and judgment.
- h. Admission Charges, Hours and Regulations. The Operator shall consult with and obtain approval of the City's Park and Recreation Department to establish reasonable admission charges and fees, hours of operation, and general regulations for the clean, safe and sanitary use of the Premises and Facility. The Operator shall be subject to any rules of operation, program requirements or such other requirements as the Park and Recreation Department consider necessary or appropriate for the management, operation and maintenance of the Premises and Facility. The Premises and Facility shall be subject to those City policies and procedures applicable to similar City owned recreational facilities serving the public, including minors, as the same may be adopted by the City or Park and Recreation Department from time to time, and the Operator shall abide by the same.

- i. Services Plan. The Operator shall prepare an annual Services plan, which shall be submitted to the Parks and Recreation Department for review and approval each year on or before July 1 for the following budget year. The Service plan submitted by the Operator shall include intended user fees, hours of operation, ramp upgrades, requests for Facility improvements and building maintenance needs. The Operator will cooperate and will work with the Parks and Recreation Department to ensure that the Services plan meets the reasonable requirements and expectations of the Parks and Recreation Department for the operation, maintenance and management of the Premises and Facility.
- j. Premises and Facility Maintenance. The Operator will be responsible for the costs of Premises and Facility operation and maintenance work, except as otherwise provided herein. Performance of various work needed to operate and maintain the Premises and Facility shall be determined by the Parks and Recreation Department in its sole discretion and the Operator shall reimburse the City for all costs and expenses incurred by the City related thereto.
- k. Utilities. All utilities (including telecommunications services) serving the Premises and Facility shall be the responsibility of the City, at the City's sole cost and expense, during the term of this Agreement or any extension thereof, and shall remain in the name of the City.
- l. Custodial and Cleaning Services. The Operator shall provide all routine cleaning and janitorial services at the Premises and Facility at Operator's expense. Such services shall be at a frequency and level satisfactory to the Parks and Recreation Department.
- m. Pest Control. Pest Control serving the Premises and Facility shall be the responsibility of the City, at the City's sole cost and expense, during the term of this Agreement or any extension thereof, and shall remain in the name of the City.
- n. Snow Removal. The Operator shall be responsible for all snow and ice removal services on the pathways and sidewalks on the grounds of the Premises at Operator's expense. The City shall provide snow and ice removal on the parking lot adjacent to the Premises at City expense.
- o. Grounds. The City shall be responsible for all lawn mowing and maintenance of the exterior grounds surrounding the building on the Premises at the City's expense.
- p. Trash Removal. The City shall be responsible for removal of all trash from the Facility as collected and deposited from the Premises by Operator and placed in the designated external trash containers outside the Facility at City's expense. Operator agrees that it shall daily collect trash from internal trash receptacles in the Facility and deposit the same outside the Facility in the designated external trash containers. Operator shall not permit any employee or agent of the Operator

or Premises or Facility user to place refuse outside the Premises, except in designated trash containers. A recycling program shall also be implemented at the Premises. All trash removal services shall remain in the name of the City.

- q. Licenses and Permits. The Operator shall obtain and maintain all applicable licenses and permits, whether state, county or City, at Operator's expense, necessary for management, operation and maintenance of the Premises and Facility, including any applicable to the sales of food concessions or the sales of merchandise or goods through the Skate Shop or otherwise.
- r. Revenues and Payment of Operating Expenses. The Operator shall be responsible for the collection of all revenues and payment of all operating expenses for the Premises and Facility, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by the Operator directly or indirectly arising out of or connected with and on behalf of the Premises and Facility, less applicable sales taxes.
- s. Employees, Staffing. The Operator shall be responsible for supervision and direction of all Operator's personnel staffing at the Premises and Facility. All such Premises and Facility staff will be in the employment of the Operator. All expenses associated with the employment of staff will be considered operating expenses of the Operator.
- t. Employees, Background Checks. The Operator shall, at Operator's expense, obtain criminal background checks on all of its employees at the Premises using a procedure that has been reviewed and approved by the Parks and Recreation Department or a procedure for the same as directed by the Parks and Recreation Department.
- u. Use of City Equipment. The Operator is authorized to use equipment at the Premises and Facility in performance of its obligations hereunder. Prior to the Commencement Date, the City and the Operator will conduct an inventory of the Premises and Facility equipment to be used by the Operator during this Agreement. The City is not obligated to repair or replace any of the equipment used by the Operator at the Premises. The Operator is solely responsible for the use of such equipment and assumes all liability for claims related thereto, except for claims resulting from the negligence or intentional misconduct of the City.
- v. Services Standard of Care. All Services performed by the Operator shall be performed in accordance with City standards and policies and shall be performed to the satisfaction of the Parks and Recreation Department, in its sole judgement and discretion. The Operator shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by the Operator's breach of this standard of care. The Operator shall put forth reasonable efforts to complete its duties in a timely manner. The Operator shall not be responsible for delays caused by factors beyond its control or that

could not be reasonably foreseen at the time of execution of this Agreement. The Operator shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its Services duties.

w. Expenses Generally.

- i. The Operator shall be responsible for all costs and expenses to provide the Services as provided herein, except major external repairs, maintenance and replacement of the building located on the Premises such as walls, roof, foundation, parking lot and sidewalks.
- ii. The Operator shall pay all other costs and expenses of any nature or kind whatsoever attributable to the Facility or Premises during the term of this Agreement. It is specifically contemplated and understood by the Parties that by the terms of this section, the City shall not incur any financial responsibility relative to the Facility or Premises during the Term of this Agreement or any renewal thereof other than as provided in this Agreement or other than as agreed to by the City in writing.

2. Term and Termination.

- a. Term. The term of this Agreement (“Term”) shall begin on September 1, 2021 (the “Commencement Date”) and shall continue until August 31, 2023, unless earlier terminated as provided in this Agreement. As used herein, the expression (term hereof) refers to such initial term and any renewal term as hereinafter provided.
- b. Renewal. The City hereby grants to Operator, subject to the conditions set forth below, the right and option to renew this Agreement for One (1) renewal term of One (1) year, under the same terms, covenants, and conditions as stated herein.
 - i. The option to renew must be exercised by the Operator first giving to the City at least 60 days prior written notice of the exercise thereof. In no event shall the Operator be entitled to renew the term hereof, even though such notice is timely given, unless the Operator shall have timely performed all of its obligations hereunder as of the date of the expiration of the initial term hereof.
 - ii. Unless otherwise expressly stated to the contrary, all provisions of this Agreement shall be applicable to any such renewal period.
- c. Termination. Notwithstanding any provision of this Agreement, the City may terminate this Agreement upon 60 days written notice to the Operator at any time during the Term hereof or any renewal term.

- d. Personal Property Upon Termination. If this Agreement is terminated or not renewed for any reason, the Operator shall remove its personal property from the Premises within the 60 day notice period. Failure of the Operator to remove its personal property within 60 days of written notification shall constitute a waiver of Operator's right and the items may then be disposed of or used at the discretion of the City. If the items are disposed of by the City, the costs of disposal shall be the responsibility of the Operator.
3. Improvements and Alterations. The Operator shall not be permitted to make any improvements or alterations to the Premises without the prior written consent of the City, except, however, the Operator shall, at its expense, make any repairs to the Premises and Facility, which are needed to operate and maintain the Premises and Facility in the same condition it was in at the inception of this Agreement or as improved, subject to ordinary wear and tear. All improvements to the Premises and Facility shall be the property of the City without reimbursement for the same by the City to the Operator. The City shall have no obligation to compensate the Operator for any monies expended or donated by the Operator for construction of structures or other improvements on the Premises or Facility, whether made before or during the Term hereof. The City Parks and Recreation Department, in its sole judgment and discretion, may choose not to allow or commence design, purchase or installation of any improvements to the Facility.
4. Premises and Facility Ownership. During the Term hereof, all incidents of ownership in the Premises and Facility, and all improvements thereto, shall remain with the City. The Operator shall have or gain no property interest in the Premises or Facility or the real property upon which the Premises or Facility is located by virtue of this Agreement.
5. Consideration. Neither the City nor the Operator shall make any direct payment to the other as consideration for the Services to be performed by the Operator for the City or the use by the Operator of the Premises and Facility under this Agreement, except as otherwise provided herein. As the sole consideration for the Services to be performed by the Operator hereunder, the Operator shall receive and retain all revenues of the Facility (e.g., admission charges, fees, concessions, and income of any kind) subject to payment of all expenses of the Premises and Facility as herein provided. The consideration as provided in this paragraph constitutes the exclusive compensation for the Operator for Services under this Agreement.
6. Reimbursement of Costs and Expenses. Notwithstanding Paragraph 5 above, the Parties acknowledge and agree that any reimbursement to the City from the Operator for costs and expenses incurred by the City and invoiced to the Operator by the City under paragraphs 1, 3 and 6, or which are otherwise deemed the obligation of the Operator by the City under this Agreement, shall not constitute consideration under paragraph 5 and shall be paid by the Operator within 30 days of the date of the City's invoice to the Operator. Failure by the Operator to timely make reimbursement or payment to the City for invoiced costs and expenses incurred by the City under this Agreement shall constitute an event of default.

7. Taxes. Except as specifically provided herein, the Operator shall pay and discharge as they become due all governmental charges on or against the Premises or Facility, or any portion thereof, or on or against the City, by reason of Operator's use of the Premises or Facility. The Parties contemplate and intend that the Premises shall be and remain during the Term of this Agreement exempt from general real estate taxes. If such taxes become payable upon the Premises, or any portion thereof, during the Term hereof, the Operator shall pay or reimburse the City for the amount thereof, less that part of such taxes payable to or levied by the City of Winona or any instrumentality of the City.
8. Use of Premises. Subject to other terms and conditions contained herein, the Operator shall cause the Premises to be used for the following purposes and subject to the following restrictions: A skate park facility and any use incidental thereto or any other use agreed upon in writing between the Parties hereto or as otherwise directed by the Parks and Recreation Department. During the Term of this Agreement or any renewal thereof, the Operator shall comply with all applicable laws affecting the Premises and Facility, whether federal, state, or local. The Operator shall not commit or allow to be committed any waste on, destruction or damage to, or nuisance on the Premises or Facility. Should the Operator commit or allow to be committed any waste on or damage or destruction, or nuisance to the Premises or Facility, the Operator shall immediately restore the Premises and Facility to the original condition of the Premises and Facility at the inception of this Agreement or as the Premises and Facility have been improved by either the City or Operator, subject to ordinary wear and tear.
9. Concession and Skate Shop.
 - a. As an independent contractor, the Operator may operate a concession and skate shop within the Premises and Facility and thereby sell concessions. The Operator shall obtain all necessary licenses and/or permits from the State or County, as applicable, in the event that the Operator intends to prepare and/or sell food and/or beverages within the Premises. The Operator may also sell and rent skateboard related items for use of the public of the Facility, including such items as: skateboard helmets, gloves, knee pads, elbow pads and footwear; and skateboards and skateboard accessories (e.g., trucks, bearings, wheels, hardware, and completes). It shall be the responsibility of the Operator to inspect all skateboard related items offered for rent on a daily basis in order to ensure that the equipment can be safely used.
 - b. The City reserves the right to restrict or prohibit the sales of any goods or merchandise on the Premises, which it deems inconsistent with City or Park and Recreation Department purposes, in the sole judgment and discretion of the City. The Operator shall immediately cease and desist sales of such identified goods or merchandise upon verbal or written notice from the City Park and Recreation Director or the City Manager.
 - c. The Operator shall establish the hours of operation of the concessions and skate shop.

- d. The Operator shall purchase its own account inventory for the concession and skate shop, shall exclusively determine the types and quantities of merchandise available for sale and the pricing thereof, and shall be exclusively responsible for profits, losses, damage or shrinkage relating to the inventory.
 - e. The Operator shall pay for all costs to construct any concession or skate shop within the Premises. The design of which, materials, contract/build price and contractor shall require prior written approval of the Parks and Recreation Department. The costs associated with the concession and skate shop shall be paid by the Operator and will not be reimbursed to the Operator. The Operator shall provide security to the City in the form of a letter of credit or cash escrow for the estimated costs of construction of the concession and skate shop.
 - f. The City shall have no responsibility for any costs or expenses related to the concession and skate shop, and the Operator hereby expressly assumes all responsibility for such costs and expense as well as assuming all risk associated therewith. The Operator hereby expressly waives and releases the City from any and all liability for claims related thereto.
 - g. Revenues received by the Operator shall be retained by the Operator as Operator income, except as necessary for the Operator to pay for monthly Premises and Facility operation and maintenance expenses or to reimburse the City for the same as provided herein. The Operator shall be responsible for all tax obligations of whatever kind attributable to the concession and skate shop.
 - h. The Operator shall hold harmless, indemnify and defend the City against any and all claims damages, losses or judgments against the City arising out of goods or merchandise sold or services provided by Operator through the concession and skate shop.
 - i. The concession and skate shop shall be limited to a total area no larger than 600 square feet within the Facility. A depiction of the area on the Premises within the Facility, which may be used by the Operator for a concession and skate shop, is shown in Exhibit 2, which is attached hereto and incorporated herein by reference. In addition, the Operator shall have the right to use the lower level of the Premises for storage in such area as designated by the Parks and Recreation Department.
10. Financial and Other Reporting. The Operator agrees to submit to the City a yearly financial report on or before March 1, regarding the activities, and all revenues and expenditures of the Premises and Facility and the concession and skate shop, for the preceding year. The Operator shall also appear before the City Council prior to May 1 of each year and make a report to the City Council of their activities for the prior year and anticipated activities for the current year.
11. Audit. The City may audit the financial statements delivered by the Operator to the City pursuant to this Agreement. As determined by the City in its reasonable discretion, and

upon written notice to the operator of such determination, the Operator will retain a reputable auditing firm, acceptable to the City to conduct an audit of the Operator's financial statements at the Operator's expense. The Operator shall make and file an audit report with the City within 90 days of the date of the City's notice. The audit report shall include the following information:

- a. The financial condition of the Operator and the Premises and Facility;
- b. The status of all projects related to the Premises and Facility; and
- c. Such other matters relating to the Premises' and Facility's revenues and operating expenses, which may affect the interests of the City, and such other information as City may require.

12. City's Right to Enter and Right to Use of Premises. Notwithstanding any provision of this Agreement to the contrary, and without compensation to the Operator therefore, the City reserves the following rights with respect to the Premises and Facility:

- a. The City, its employees and its agents shall have the right to enter the Premises and Facility at all times for all reasonable purposes, including without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting and improving the Premises and Facility.
- b. The City will re-key locks on exterior doors for the Premises at the City's expense. The City shall retain copies of any keys provided to the Operator.
- c. The City reserves the right to use the Premises and Facility as a polling place on primary and general election days. In the event that the Premises and Facility are not suitable for such use because of the usage as a skate park, the Operator shall be responsible for reimbursing the City for the costs incurred by the City associated with moving the polling place to a new location.
- d. The City reserves the right to use the Premises and Facility as a safe haven in the event of threatening weather at the City's Aquatic Center.
- e. The City shall have sole access and use of the furthest south room in the basement of the building located on the Premises for City storage purposes and the Operator shall not access such storage room unless authorized to do so in writing by the City.

13. Signage. All interior and exterior signage and banners on the Premises or City-owned property shall be subject to the following:

- a. All signs and banners must comply with City ordinances;
- b. Sign and banner preparation, purchase, installation or removal shall be conducted

by the City at the Operator's expense;

- c. The Operator is responsible for the repair and maintenance of all interior signs;
 - d. All signs and banners or modifications thereto shall be approved by the City prior to use;
 - e. The Premises and facility are the property of the City. All signs and banners shall state the same, For example, an exterior sign on the building may say: "City of Winona Indoor Skate Park"; and
 - f. The parties agree that any signs and banners on the Premises does not create a forum for public speech protected by the United States or Minnesota constitutions. The City hereby reserves the right to reject and/or remove in its sole judgment and discretion any banner, sign, or other media on the Premises or City-owned property.
14. Assignment and Subletting. The Operator shall not assign this Agreement or let the Premises or any part thereof, whether by voluntary act, operation of law, or otherwise, without the prior written consent of the City in each instance, except that the Operator may permit use of the Facility, for rental, admission or other charges, in the normal course of business, without such consent. Consent by the City to any assignment of this Agreement or to any letting of the Premises or part thereof shall not be a waiver of the City's rights under this Agreement as to any subsequent assignment or letting. The City's right to assign this Agreement is and shall remain unqualified and no assignment by the City shall release the Operator of any of its obligations under this Agreement. If the Operator is a corporation or like business entity or organization, any transfer of this Agreement through merger, consolidation, corporate reorganization, or liquidation or any transfer, or hypothecation, shall constitute an assignment of this Agreement requiring the prior written consent of the City.
15. Mechanic's Lien. The Operator shall not permit any mechanic's lien, judgment or other lien of any type to encumber the Premises.
16. Indemnification. The Operator shall indemnify, defend, and hold harmless the City and its agents and its employees from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from or be caused by the Operator or its agents, employees, contractors, subcontractors, patrons, customers or invitees with respect to the Operator's performance of its obligations under this Agreement or use of the Premises and Facility. The Operator shall defend the City against the foregoing, or litigation in connection with the foregoing, at Operator's expense, with counsel reasonably acceptable to the City. The City, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this section shall not apply to damages or other losses proximately caused by

or resulting from the negligence or willful misconduct of the City. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

17. Insurance. The Operator shall not commence operation of the Facility until the Operator has obtained all insurance required herein and such insurance has been approved by the City. All of this insurance coverage shall be maintained throughout the life of this Agreement.

- a. The Operator agrees to procure and maintain, at Operator's expense, statutory worker's compensation coverage. Except as provided below, Operator must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts the Operator from Workers' Compensation insurance or if the Operator has no employees in the City, the Operator must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the Operator from the Minnesota Workers' Compensation requirements. If during the course of this Agreement the Operator becomes eligible for Workers' Compensation, the Operator must comply with the Workers' Compensation insurance requirements herein and provide the City with a certificate of insurance.
- b. The Operator agrees to procure and maintain, at the Operator's expense, general commercial liability ("CGL") insurance coverage insuring the Operator against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by the Operator or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Completed Operations Liability. The policy(ies) shall name the City as an additional insured for the services provided under this Agreement and shall provide that the Operator's coverage shall be primary and noncontributory in the event of a loss.
- c. The Operator agrees to procure and maintain, at Operator's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater: True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to City by Operator and are attached hereto as Exhibit 3.

Worker's Compensation

Statutory Limits

Employer's Liability

\$500,000 each accident
\$500,000 disease policy limit
\$500,000 disease each employee

Commercial General
Liability

\$1,000,000 property damage and
bodily injury per occurrence
\$2,000,000 annual aggregate
\$2,000,000 annual aggregate
Products – Completed Operations

- d. The Operator's insurance policies and certificate(s) shall not be cancelled or the conditions thereof altered in any manner without Ten (10) days prior written notice to the City.
 - e. The Operator's policies shall be primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of the Operator's performance under this Agreement.
 - f. The Operator is responsible for payment of insurance premiums and deductibles.
 - g. The Operator's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance, if applicable.
 - h. All policies listed above shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
 - i. The Operator shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota
 - j. Notwithstanding the foregoing, the City reserves the right to immediately terminate this Agreement if the Operator is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against the Operator.
 - k. The City shall provide insurance for the Premises, Facility and Services over the limits set forth above up to the statutory maximum liability limits as provided in Minn. Stat. Sec. 466.04.
18. Default. In the event of any default of this Agreement by either Party, which remains unremedied after ten (10) days written notice specifying the default, the aggrieved party may, in addition to any other rights or remedies it may have, by written notice declare this Agreement to be terminated, in which case all rights and liabilities hereunder shall cease, and the Operator shall forthwith surrender the Premises to the City.
19. Amendments, Modification, and Waiver. No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the Party or Parties to be bound or it's duly authorized

representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

20. Notices. Any notice, demand, or other communication required or permitted to be given hereunder shall be deemed delivered and effectively given when delivered personally to the representatives of the City and Operator identified below or one (1) business day after being mailed by registered or certified mail, return receipt requested, addressed as follows:

To City: City of Winona
Attention: City Manager
207 Lafayette Street
Winona, MN 55987

To Operator: Anthem Skateshop LLC
Attention: Zachary Krage
1504 Homer Road
Winona, MN 55987

Either Party may change its address or the identity of its designated representative named above by written notice to the other Party in the manner stated in this paragraph.

21. Miscellaneous Provisions:

- a. Voluntary and Knowing Action. The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
- d. Interest by City Officials. No elected official, officer, or employee of City shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- e. Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of

utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the Party affected by force majeure shall give written notice with explanation to the other party immediately.

- f. Compliance with Laws. The Parties shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement.
- g. Governing Law. This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- h. Data Practices. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- i. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- j. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- k. No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- l. Independent Contractor. The Operator, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the City for any purpose. No statement contained in this Agreement shall be construed so as to find the Operator to be an employee of the City, and the Operator shall not be entitled to any of the rights, privileges, or benefits of employees of the City, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. The Operator acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from any payments due

the operator, and that it is Operator's sole obligation to comply with the applicable provisions of all Federal and State tax laws. The Operator shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide Services identified herein. The Operator is responsible for hiring sufficient workers to perform the services/duties required by this Agreement, withholding their taxes and paying all other employment tax obligations on their behalf.

- m. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Operator agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Operator and involve transactions relating to this Agreement.
- n. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- o. Recitals. The recitals hereto are made a part hereof.

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have executed and entered into this Agreement effective as of the date first above written.

ANTHEM SKATESHOP LLC

By: _____
_____, Its _____

Date: _____

CITY OF WINONA

By: _____
Scott D. Sherman, Its Mayor

Date: _____

By: _____
Monica Hennessy Mohan, Its City Clerk

Date: _____

EXHIBIT 1

Depiction of the Area on the Premises to be Used for the Indoor and Outdoor Skate Park

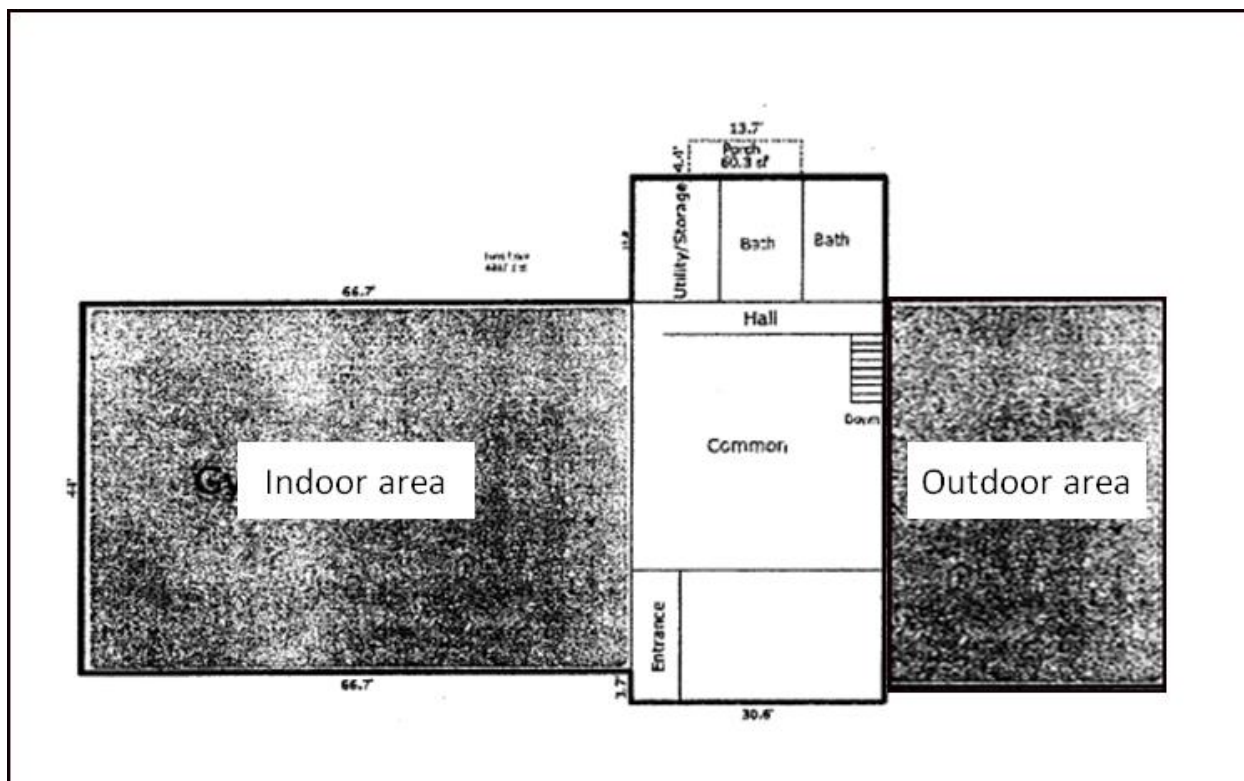


EXHIBIT 2

Depiction of Authorized Area for Location of Concession and Skate Shop

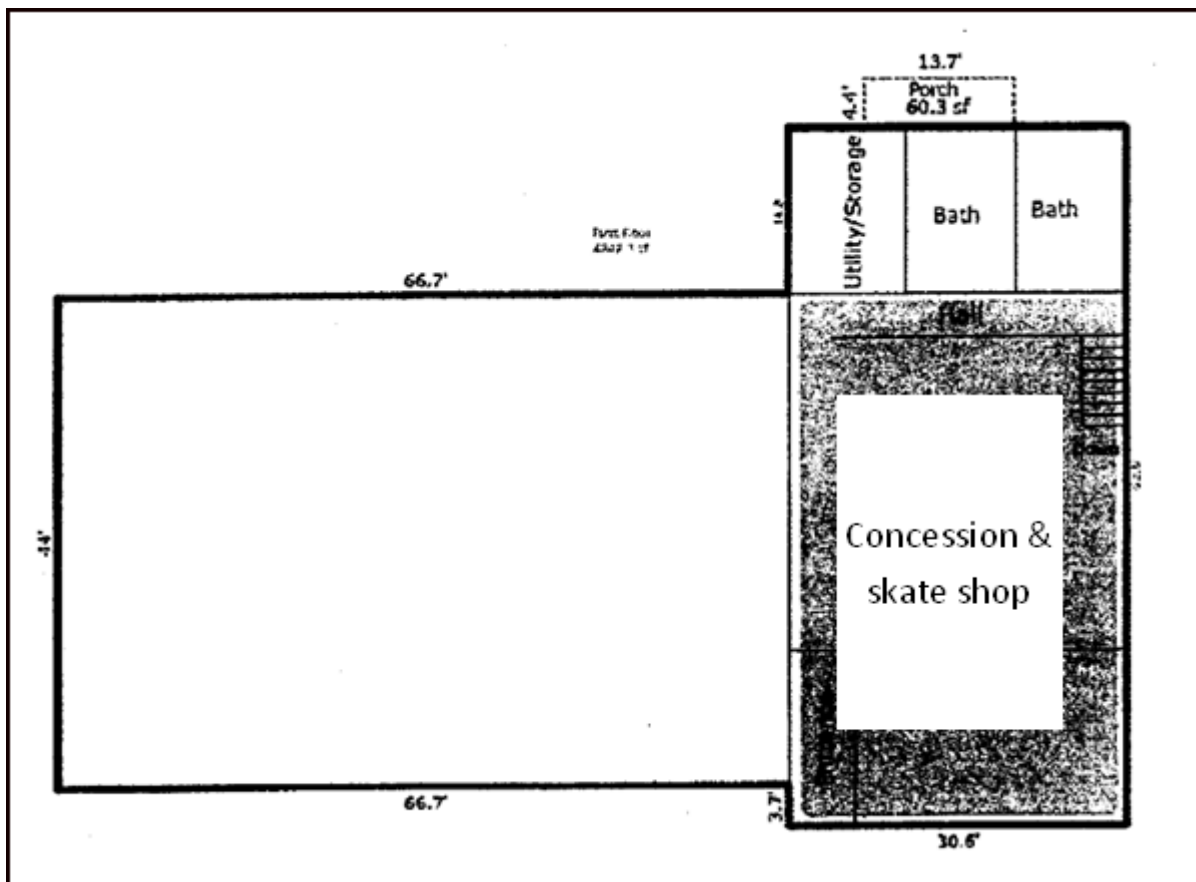


EXHIBIT 3

Insurance Certificate