

Cuchara Mountain Park Operating Agreement

This Operating Agreement regarding the operation of the Parker-Fitzgerald Cuchara Mountain Park (this **"Agreement"**) is made as of this 15th Day of April 2025 (the **"Effective Date"**) by and between the following entities:

- A. Huerfano County, a political subdivision of the State of Colorado (the **"County"**)
- B. Panadero Ski Corporation, a Colorado Non-Profit Corporation (**"PSC"**)

The above-listed parties may be referred to individually as **"Party"** and collectively as **"Parties."**

RECITALS

WHEREAS, the County is the owner of the property located at 1234 Panadero Ave., more particularly described on Exhibit "A" attached hereto and all improvements thereon being collectively referred to as **"Cuchara Mountain Park"** or the **"Park"**; and

WHEREAS, the County intends to continue to provide the Park for public use and enjoyment; and

WHEREAS, the County after a competitive procurement process, has deemed the Panadero Ski Corporation qualified to operate the Park; and

WHEREAS, the County and PSC intend this long-term agreement to be an advancement and continued support of the Cuchara Mountain Park Master Plan, developed by SE Group, and presented in 2018 and re-examined in 2023.

WHEREAS, all Parties to this agreement agree, support, and put forward the directive that the primary activity for the Park is to provide full-service, winter sport downhill skiing and other winter sports in addition to year-round activities to patrons of the Park and that all Park activities are in conjunction with and supportive of this prime directive.

WHEREAS, the County and PSC agree that all other activities carried out in the Park at any time of the year will be considered support activities to the primary directive of the Park to provide full-service, winter sport, snowcat and lift-assisted downhill skiing, whether such activities are winter sports activities or other four season activities carried on throughout the year.

WHEREAS, the Panadero Ski Corporation, having operated the Park on the County's behalf since October 2022, has indicated a willingness and a desire to maintain, renovate, repair and operate the Park, and to solicit funds to provide for the long-term operation and maintenance of the Park in cooperation with and support of the county; and

WHEREAS, the County and PSC are intending to set forth, in this agreement, policies relevant to how the Park may be used by the County in the event of an emergency or for activities which are consistent with the operation of a public park and the performance standards to which PSC will be held during their operation of the Park; and

WHEREAS, the County has determined that it is in the public interest and serves a public purpose to enter into this Agreement for the maintenance and operation of the Park under and pursuant to the terms and provisions hereinafter set forth.

AGREEMENT

In consideration for the promises herein, the recitals, and other good and valuable consideration, the Parties agree as follows:

Section 1. Recitals

The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. Term and Extension

- 2.1. The term of this Agreement is forty (40) years, commencing on May 1st, 2025 and terminating at 12:01 AM on August 1, 2065 unless this agreement is terminated earlier as provided herein.
- 2.2. This term will be automatically extended for additional one-year terms up to four (4) terms, until August 1, 2069, unless either party notifies the other of termination in writing at least thirty (30) days before the annual termination date.
- 2.3. Not less than ninety (90) days prior to the expiration of the term, PSC shall notify the County whether PSC wishes to extend the term and under what terms and conditions PSC would agree to extend the term. If the County and PSC mutually agree to extend the term, the extension and any corresponding terms and conditions shall be set forth in an amendment to this Agreement duly executed by the Parties. In no event shall the County be required to extend the term.
- 2.4. County agrees to make PSC the operator and primary concessionaire for the Park and no vendor, secondary concessionaire, or lessee of park land shall have a longer duration of contracted services than this agreement with PSC without the prior approval of PSC. The County and PSC mutually agree that the only exception to this provision will be for County Paid maintenance or service contracts that involve multiple County Facilities.

Section 3. Park Operations

- 3.1. PSC will operate the Park for and on behalf of the County as a public year-round recreation park including overseeing the maintenance, and grant-funded renovations, repairs, replacements, and operation of the Park together with activities customarily associated with operating a public park, community center, or year-round recreation park. All parties to this Agreement agree that PSC has the power and authority to approve all Park activities including but not limited to over-the-snow transportation and snow making processes to protect the snow for use in carrying out the prime directive of this Agreement, as stated in the Recitals section herein, for all skiing and winter sport activities.
- 3.2. PSC agrees that the Park shall be operated and maintained in such a manner as to be a credit to the County and shall be made available to all members of the public regardless of race, color,

gender, sexuality, creed, national origin, religious preference, or any other classification protected by state, local, or federal law.

- 3.3. PSC will have sole administrative and creative control over year-round events and operations originating through the initiatives and operations of PSC that are conducted within and on the premises of the Park, including when PSC rents the Park, or a portion thereof, to an outside group, vendor, or entity.
- 3.4. PSC will maintain the Park for public enjoyment and benefit. PSC may not charge for general access to the Park including the hiking and biking trails, pump track and disc golf course, except for tournaments, special events, fee for service activities, and private reservations.
- 3.5. The Park may not be used by PSC for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan, but PSC shall not be precluded from renting all or part of the premises to persons or entities for political activities.
- 3.6. PSC may maintain existing signage and may place suitable signs on the grounds and buildings at the Park for any purpose keeping with the nature of the business carried out by PSC at the Park; provided however, that such signs shall comply with all applicable laws, ordinances, and regulations.
- 3.7. PSC will be the year-round primary concessionaire, operator, and administrator for the Park including skiing, snowcat operations, snow makings, winter rentals and retail sales, year-round tubing, and year-round snow bike, mountain bike and electric bike rentals to carry out and financially support the prime directive of the Park as described above.

Section 4. Public and County Use

- 4.1. The County will have the right to use the Park, or any portion thereof, with reasonable notice and availability for governmental purposes.
- 4.2. At the direction of the County and approval by PSC, and with reasonable advance notice and subject to availability, PSC shall provide the use of the Park, or any portion thereof, to nonprofits, local civic groups, and other entities that the County believes will have a positive economic impact on the region at reduced rates.

Section 5. Compliance with Laws, Rules, Regulations and Policies.

- 5.1. PSC shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Agreement, including obtaining and maintaining all necessary permits and licenses. The County shall cooperate with PSC in applying for such permits, licenses, certifications, and approvals. Upon request of the County, PSC will provide the County with written evidence of such permits, licenses, certifications, and approvals.
- 5.2. PSC acknowledges and warrants that it is or will make itself knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the year-round operation of the Park.
- 5.3. The County agrees to waive all fees related to County permits and licenses issued by the County.

- 5.4. The County shall comply with all laws, rules, regulations, and orders applicable to the County's performance of this Agreement.

Section 6. Maintenance of the Park by PSC

- 6.1. PSC shall be responsible for general maintenance and cleaning of the grounds and indoor habitable spaces of the Park.
- 6.2. At PSC's own cost and expense, PSC shall maintain and operate the Park, including PSC owned property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. PSC shall remedy without delay any defective, dangerous, or unsanitary conditions.
- 6.3. The County has made no representation respecting the condition of the Park.
- 6.4. PSC will notify the County of any maintenance issues that exceed their capabilities or constitute an emergency or hazard, including any repair that could lead to an insurance claim. The County agrees to respond to these notifications by PSC within a reasonable time and in a reasonable manner and may assist either with staff or financially, subject to the approval of the appropriate authority, with any such issues.
- 6.5. The Parties will collaborate and plan to address non-emergency repairs that exceed \$3000 in cost. PSC will generate the list of these non-emergency repairs and notify the county accordingly and work with the County to adequately prioritize and fund these repairs.

Section 7. Lift Operations

- 7.1. PSC is authorized to operate Lift 4 once it has an approved license from the Colorado Passenger Tramway Safety Board and appropriate insurance. This includes operations, maintenance, upgrades, and improvements related to snowmaking equipment servicing Lift 4, specifically, or located on the Park.
- 7.2. Work on any other existing lift is prohibited, except with prior approval of the County and/or the USFS as appropriate.
- 7.3. PSC agrees to pay the entirety of any and all fines, fees, and penalties issued by the Tram Board related to Lift 4.

Section 8. Secondary Concessionaires

- 8.1. **Mutual Approval.** The County and PSC will mutually approve any secondary concessionaires. The procedure for mutual approval begins with a recommendation from PSC to the County. Before a proposal that has been recommended by PSC may be accepted or rejected by the County, a 30-day public comment period will be held. The County and PSC must both approve and sign any agreement with a secondary concessionaire. If an interested party approaches the County, the County will as soon as practical refer that party to PSC.
- 8.2. **Remuneration.** To help cover the long-term operating, maintenance, and insurance costs of Chair 4 and snow making at the Park and to ensure their long-term sustainability as an essential

component of the Park's year-round success, the County agrees to allow all future Park vendors, lease holders, or concessionaires to pay PSC an up-front user fee in addition to a percentage (to be determined) of their net revenues generated from their contracted Park activities and offerings. Any such fees will be included in an agreement subject to mutual approval of PSC and the County. Nothing in this section prevents the County from also receiving rent or other such fees as the parties shall agree or that the parties shall agree that the County may levy.

Section 9. County Oversight and Review of Operations

- 9.1. The County shall review and monitor the performance of PSC under this agreement from time to time in accordance with the performance standards established by the County in Exhibit "A" attached hereto, as the same may be reasonably modified or supplemented by the County from time to time.
- 9.2. PSC shall submit copies of all hired and/or internal reports made regarding the Park including any future engineering and maintenance reports that PSC owns. PSC has a right to be reimbursed for the cost that PSC incurs in the generation of those reports.
- 9.3. The County, through its designee, will review and monitor the operations and performance of PSC under this agreement, through periodic inspections of facilities, equipment, services, programs, financial records, management procedures, and maintenance agreements.
 - 9.3.1. The County will provide advance notice, of 48 hours, to PSC for routine or periodic inspections or tours, except for emergencies.
 - 9.3.2. The County reserves the right of ingress and egress without notice to inspect operations for the purpose of evaluating PSC's performance of the terms and conditions of this Agreement; to inspect, investigate, and/or survey the Park; and to do any work thereon of any nature necessary for preservation or maintenance of the Park.
 - 9.3.3. The County shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the County's entry in the Park as provided herein except for damage to Park infrastructure and/or PSC owned assets.
- 9.4. No later than July 31st of each year, PSC will prepare and submit to the County Administrator a report summarizing the following items:
 - 9.4.1. Revenues and expenditures for the preceding Fiscal Year;
 - 9.4.2. Accomplishments and plans relating to winter advertising, marketing, and PSC programming, including year-round tubing and year-round bicycle and electric bicycle programs;
 - 9.4.3. Compliance with the performance measures set forth in this agreement;
 - 9.4.4. Current Board Members and Officers of PSC; and
 - 9.4.5. Such other data as the County Administrator and County Commissioners may require.

- 9.5. If requested by the County Administrator or County Commissioners PSC, by and through its board members, shall attend a County Commissioner meeting to answer questions regarding the annual report or any other report submitted to the County.

Section 10. PSC's Duties and Obligations

- 10.1. **Marketing.** Market, advertise, and promote the Park's activities as well as events and activities and to utilize the resources that are available for this purpose.
- 10.2. **Goods and Services.** PSC will provide or contract for all goods and services necessary to manage, operate, maintain and market the Park's year-round activities and administer all related agreements for goods and services.
- 10.3. **Staffing.** PSC will hire and train all employees and volunteers so that the Park will be properly staffed with qualified personnel for its activities.
- 10.4. **Inspections, Operations, and Maintenance.** PSC will provide for effective inspections, operations, and maintenance, for the Park, including but not limited to preventative maintenance, inspections for dangerous conditions, repairs, risk management, emergency procedures, fire prevention, security, custodial services, energy conservation and landscape maintenance.
- 10.5. **Good Faith.** At all times during the Term, PSC shall act in good faith consistent with the goals and terms of this Agreement.
- 10.6. **Sound Business Practices.** PSC shall utilize sound business practices in the management, operation, maintenance, and marketing of the Park.
- 10.7. **Access.** PSC will grant access to County staff, agents, or representatives at any time as requested by the County. The County will generally provide 48-hour notice of said requests.
- 10.8. **Standard Operating Procedures.** PSC will prepare within 360 days of the effective date of this agreement and make available to the County Administrator, or a designee thereof, upon request:
 - 10.8.1. Standards of Maintenance and Replacement.
 - 10.8.2. Standard Operating Procedures Manuals.
 - 10.8.3. Accounting Procedures Manual.
- 10.9. **Record Keeping.** PSC will maintain all books, records, reports, and other documents related to the management, operation, maintenance, and marketing of the Park. This includes, but is not limited to, all contracts, subcontracts, accounting and financial records, marketing databases, and ticket sales databases. All such books, records, reports, and other documents shall be open to examination, audit, and copying by the County and its designees, including but not limited to the County's independent auditors, at all times.

- 10.10. **Equal Employment Opportunity.** During the performance of this agreement, PSC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, military or veteran status, or any other characteristic protected by applicable state, local, or federal laws. PSC will ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PSC agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. PSC will incorporate this provision in all contracts and subcontracts issued or made pursuant to this agreement.

Section 11. Duties and Responsibilities of the County

- 11.1. **Cooperation.** The County agrees to cooperate with PSC and have the County Administrator identify the staff that will act as County liaisons for purposes of this Agreement.
- 11.2. **Communication/Responsibility.** The County agrees to communicate in a timely fashion and by reasonable means to PSC any request, information, or decision necessary to the management, operation, maintenance, or marketing of the Park or contemplated under this agreement.
- 11.3. **Access.** The County will provide PSC access to the Park to enable PSC to perform its obligations under this Agreement, subject to restrictions deemed necessary for safety reasons.
- 11.4. **Good Faith.** At all times during the Term, The County shall act in good faith consistent with the goals and terms of this Agreement.

Section 12. Other Capital Improvements

- 12.1. PSC may propose other capital improvements over the term of this Agreement. The County must review and may either approve or reject any such project.
- 12.2. For the purposes of this Agreement capital improvement is defined as any item or project that is permanently affixed to the Park or structures erected thereon with a value in excess of three thousand dollars (\$3000.00).
- 12.3. The County will notify PSC of any capital improvement or project that involves the Park and will work to schedule any such work with PSC to minimize impact on PSC's operations. The County will invite PSC to participate in all County-led planning projects that involve the Park, and to work with PSC to minimize, to the greatest extent possible, interference with winter recreation activities.

Section 13. Financial Considerations.

- 13.1. **Utilities.** PSC will pay the cost of all utilities at the Park, except that the County will pay for trash service at the Park and supply internet through the County network. Nothing in this agreement shall prevent PSC from choosing to pick a private internet service provider at their

expense. The County will also pay for the servicing of the vault toilets and the current garbage dumpster.

- 13.2. **Operating Reserve.** PSC will maintain an operating reserve of at least five thousand dollars (\$5,000.00).
- 13.3. **Financial Records.** PSC shall keep separate true and accurate books and records showing all of PSC's business transactions under this Agreement in a manner that conforms to industry standards and practices and in a manner acceptable to the County. PSC shall keep all records for a period of at least four (4) years.
- 13.4. **Right of Review.** The County shall have the right through its representative and at all reasonable times to conduct such audits as it deems necessary and to examine a copy of PSC's books and records. PSC hereby agrees to make all such records and books available to the County upon the County's request thereof. PSC further agrees to allow interviews of any employees who might reasonably have information related to such records.

Section 14. Insurance

- 14.1. The County will maintain the same standard property insurance for the Park as it does for all County facilities.
- 14.2. PSC must maintain general liability insurance for year-round operations and all insurance related to lift operations as well as any ski operations and name the County as also insured. PSC will maintain minimum insurance coverage of two million dollars (\$2,000,000.00) in aggregate and one million dollars (\$1,000,000.00) per occurrence.
- 14.3. PSC is responsible to repair any damage or destruction to the Park with insurance coverage provided by the County. If all or any part of the Park is damaged or destroyed by fire or other casualty insured, the proceeds will be used for repair or rebuilding as a result of such damage or destruction. In the event PSC fails or refuses to undertake the appropriate planning and permitting process, or otherwise begin to process reconstruction subsequent to damage or repair, within a reasonable period of time, in the sole discretion of the County, the County shall be free to enter into one or more contracts with an alternate party to accomplish such rebuilding and repair of the Park. In all events, the insurance proceeds will be retained by the County and used by the County for the Park.

Section 15. Ownership of Property

- 15.1. Ownership of the real property and improvements made thereto constituting the Park, and fixtures, furnishing and non-PSC owned equipment necessary to the operation of the Park placed thereon shall remain with the County. PSC will maintain ownership of their snowcats, snowmobiles, snow guns, vehicles, and equipment. PSC will prepare and deliver to County designee a complete inventory of such property (the "Park Inventory") and will update such inventory lists no less frequently than each calendar year, or as requested by the County Administrator.

- 15.2. Any and all intangible personal property, cash, objects or articles of art or other personal property, acquired by or donated to PSC shall be and become the sole property of PSC. Objects of art and other personal property may be placed in the Park by PSC, or PSC may display such property it receives on loan. Such property shall remain the property of PSC, or if on loan or under another agreement, shall remain the property of the parties providing the same to PSC, and shall not become the property of the County during the term of this Agreement or upon any termination thereof. PSC shall maintain a complete inventory of such property to be made available to the County upon request, generally for insurance purposes.
- 15.3. Within the first one hundred and eighty (180) days of this agreement the County and PSC will jointly conduct an inventory of the Park Property and all PSC-owned property present on the Park with the goals of establishing an initial inventory and clarifying any questions of ownership. Both entities will keep a copy of this initial inventory.

Section 16. Hold Harmless Agreement

- 16.1. PSC hereby waives all claims and recourse against the County, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Agreement, except claims arising from, and to the extent of, the sole gross negligence or willful misconduct of the County, its officers, agents or employees.
- 16.2. PSC shall protect, indemnify, hold harmless, and defend the County, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, attorney's fees, expert costs and fees, or liability costs arising out of the development, construction, operation, or maintenance of the Park described herein, except for liability arising out of, and to the extent of, the sole negligence or willful misconduct of the County, its officers, agents, or employees or other wrongful acts for which the County is found liable by a court of competent jurisdiction.

Section 17. Termination, and Assignability.

- 17.1. **Termination with Cause/Cure.** The County Administrator, subject to Board of County Commissioners approval, or PSC may terminate this Agreement for cause if the other party materially breaches any term or condition of this Agreement and not cure such breach within ninety (90) days following notice specifying the breach. Without generally limiting the foregoing, each of the following shall constitute a material breach of this Agreement:
- 17.1.1. If PSC fails to submit any submittal required pursuant to this Agreement which is in substance and form acceptable to the County Administrator or County Commissioners as applicable, on or before the time stated in this Agreement or otherwise approved by the County Commissioners; or
- 17.1.2. If PSC fails to meet any reporting or performance measures, as such performance measures may be adjusted pursuant to Section 8 of this agreement.
- 17.2. **Termination with Cause/No Cure.** The County Commissioners may terminate this Agreement for cause with no right of PSC to cure for material misrepresentation, theft, criminal misconduct amounting to a felony, gross negligence, willful or wanton misconduct, fraud, or breach of

fiduciary responsibility. Notwithstanding the foregoing the County Commissioners may grant PSC a period to cure a breach of the previously enumerated causes if the County Commissioners determine a cure period is reasonable under the circumstances, in which case PSC will cure the breach within the period established by the County Commissioners. If the County Commissioners establish a cure period as provided herein and PSC does not cure the breach within such period, the County Commissioners may terminate this agreement.

- 17.3. **Early Termination.** This Agreement may be terminated at any time upon the written agreement of both Parties.
- 17.4. **Surrender.** On expiration or within ninety (90) days after earlier termination of the Agreement, PSC shall surrender the Park to the County with all fixtures, improvements and alterations in good condition, except for fixtures, improvements and alterations that PSC is obligated to remove. PSC shall remove all of its personal property and shall perform all restoration required by the terms of this Agreement within the above stated time unless otherwise agreed to in writing. PSC shall provide a complete reconciliation of the Park Inventory and a status report on the condition of the Park.

Section 18. General Provisions.

- 18.1. **Amendments.** Any amendment or addition to this Agreement must be in writing, approved and signed by both Parties to this Agreement.
- 18.2. **Waiver of Contract Terms.** Unless otherwise provided by this Agreement, no waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the County to re-enter the Park or to exercise any right, power, privilege, or option arising from any breach, shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein.
- 18.3. **Further Assurances.** Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.
- 18.4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- 18.5. **Venue.** Venue to any action arising from this Agreement shall lie in the state courts in Huerfano County, Colorado. Each Party submits to the jurisdiction and venue of this court and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue.
- 18.6. **Assignability.** If and when the County closes on an agreement to sell, or otherwise convey, the Park to another entity, the County's rights, obligations, and commitments under this agreement shall be assigned to the entity that the property is conveyed to unless that entity and PSC enter into an alternative of entering into an agreement to sell or convey the Park.

- 18.7. **No Right to Pledge, Encumber or Cause the County to Assume Liability.** PSC shall have no right or authority to pledge or encumber the credit of the County. PSC shall have no right or authority to cause the County to assume liability for any contract, lease, purchase or other agreement without County Commissioner's Approval.
- 18.8. **No Liens.** No lien, mortgage or security interest shall be filed against any County property by reason of any work, labor, services or materials performed at or furnished to County property in connection with this Agreement, to PSC, or to anyone using County property through or under PSC. Nothing contained in this Agreement shall be construed as consent on the part of the County to subject County property or any part thereof to any lien, mortgage or security interest under any Laws.
- 18.9. **Warranties.** The County and PSC shall be entitled to benefit from all warranties of manufacturers or contractors relating to any replacement items.
- 18.10. **Installations, Alterations, and Removal.** Alterations or permanent additions to the Park shall be consistent with the uses authorized herein, and shall be undertaken only upon receiving the prior consent of the County to such alterations or permanent additions and obtaining all appropriate permits. Any such contracts for alterations and permanent additions to the Park shall be obtained in conformity with the County's procurement procedures for similar contracts, and in the case of alterations and permanent additions with a value of more than five thousand dollars (\$5,000.00), PSC shall require the contractor to provide a payment and performance bond, naming the County as additional insured. Any alterations or permanent additions shall be completed free and clear of all mechanics' and other similar liens and claims. PSC shall not have the right to expose the County's ownership interest to any mechanic or construction liens, and to the extent requested by the County, will join in a document to be recorded in the public records reflecting such limitations. PSC may also make such alterations and permanent additions to the Park and the exterior of the Park as may be required by PSC and PSC may install such equipment, fixtures and property as it may require for its business purposes. However, all improvements and equipment shall comply with all applicable laws, ordinances and regulations, and shall require County approval in its capacity as owner of the Park prior to undertaking such installations, alterations and removals. Title to all alterations, additions and improvements to the Park shall rest in and remain with the County, subject to PSC's use pursuant to this Agreement.
- 18.11. **Independent Contractors.** The Parties are independent contractors in all matters concerning this Agreement. Nothing in this Agreement creates a joint venture, partnership, or employment relationship between the Parties. No Party will be liable for the debts, liabilities, or obligations of the other Parties. No Party is acting as the agent or partner of the other Parties or any of them and no Party will hold itself out as such. No Party has the authority to bind the other Parties or any of them.
- 18.12. **No Landlord-Tenant Relationship.** No provision of this agreement is intended by the parties to constitute or be construed as creating a landlord-tenant relationship between the County and

PSC. PSC shall not receive any property interest in the Park under and pursuant to this Agreement, but rather PSC is solely receiving the contractual right to operate the Park on behalf of the County subject to the provisions of this Agreement and to undertake and oversee the maintenance, operation, and repair of the Park as contemplated by this Agreement.

- 18.13. **Charitable Support.** The County is aware that PSC raises substantial funds through charitable donations to support operations and capital campaigns which would include, without limitation, campaigns to raise funding for maintenance, repair, or expansion. Such fund-raising is most important to the success of PSC, and incident thereto PSC offers recognition to donors at various levels. The County hereby authorizes PSC, incident to such fund-raising activities, to afford naming opportunities to donors involving the identification of donors or contributors by placing signage or signs, plaques, or other visual and permanent identification of donors or contributors to PSC, its operations, facilities, programs, endowment or other support. The County agrees to maintain any such signage or visual identification for no less than 10 years after the expiration or termination of this agreement.
- 18.14. **County Commissioners.** Nothing contained in this Agreement shall be deemed in any manner to amend, modify or otherwise change any of the provisions of the regulations, resolutions, or ordinances of the County or any other governmental agency or allow a performance standard less than is otherwise required under the terms of those regulations, resolutions, and ordinances. Nothing contained in this Agreement shall be deemed to limit in any manner whatsoever, the right of County Commissioners, now or in the future, to amend development regulations, building codes, zoning codes, the Comprehensive Plan or land use plans. Nothing in this Agreement shall in any way preclude County Commissioners from enacting ordinances or resolutions for the protection of the public health, safety, and welfare in a manner that it could otherwise do if this Agreement was not in existence.
- 18.15. **Force Majeure.** No Party will be considered in default under this Agreement to the extent that such performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disaster, pandemic or other state or county declared health emergency, riot, war, terrorism, labor disputes, or civil strife.
- 18.16. **Entire Agreement.** This Agreement states the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements.
- 18.17. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not invalidate the remaining provisions of this Agreement.
- 18.18. **Counterparts.** This Agreement may be executed and delivered in counterparts (including by means of electronic signature), all of which taken together will constitute one and the same agreement.

The Parties are executing this Agreement to signify their acceptance of all the terms and conditions stated above, to be effective as of the Effective Date, regardless of the date of actual signature.

Huerfano County, Acting by and through its Board of County Commissioners

By: _____

Date Signed: _____

Name: Karl S. Sporleder

Title: Chair, Board of County Commissioners

By: _____

Date Signed: _____

Attest:

By: _____

Date Signed: _____

County Clerk and Recorder

.....

Panadero Ski Corporation

By: _____

Date Signed: _____

Name: Jon Hotaling

Title: President

By: _____

Date Signed: _____

Name: Mike Williams

Title: Mountain Manager / Board member

Exhibit "A"

Performance Standards

The following Performance Standards shall be instituted to ensure the continued compliance of PSC with the requirements set forth in the Cuchara Mountain Park Operating Agreement. These standards exist with the understanding and agreement that PSC is to conduct themselves and operate the Park so as to be a credit to and for the benefit of Huerfano County and the residents thereof.

1. Performance Requirements.

- a. PSC shall be responsible for the operation of the park as a public recreation park and ensure the Park is open to the public at least 300 days per year.
 - b. PSC will endeavor to encourage and promote youth involvement at the park through partnerships with Huerfano RE-1 Schools or La Veta RE-2 Schools and youth groups in Huerfano County.
 - c. PSC shall encourage use of the park for public events including, but not limited to, sporting events, neighborhood meetings, educational workshops, as well as music, arts, and cultural programming.
2. **Safety Standards.** PSC agrees to conduct its operations and maintenance of the park in a manner that prioritizes the safety of the public and PSC's employees and volunteers. PSC agrees to follow applicable standards and best practices to ensure the same.
3. **Resource Standards.** PSC will provide sufficient staffing and budgetary resources to fulfill the minimum performance and safety standards stated above.
4. **Maintenance Standards.** PSC agrees to maintain the Park in a clean and orderly condition and in compliance with all applicable legal requirements.
5. **Marketing Standards.** PSC agrees to develop and implement marketing and promotional plans consistent with a state park, regional park, or community center, or recreation park. Should PSC choose to operate Lift 4, said promotional plans should also be consistent with ski areas of similar size and/or operating structures.