

UNION SAILING CLUB
REVOCABLE PERMIT AND AGREEMENT

This agreement is made and entered into by and between the City of Longmont, Colorado, a municipal corporation, (“City”) and the Union Sailing Club (“Permittee”), a Colorado nonprofit corporation, located at P.O. Box 2208, Longmont, CO 80502.

WITNESSETH:

WHEREAS the City is the lessee of certain park land known as Union Reservoir and is desirous of entering into this Revocable Permit and Agreement (“Agreement”) for sailing and rowing facilities at Union Reservoir in order to better serve the recreational needs of the public; and

WHEREAS Permittee is willing to enter into this Agreement to provide the specific services set forth herein.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions, it is agreed as follows:

1. Purpose of this Agreement. The purpose of the City in granting the privileges under this Agreement is to make sailing and rowing opportunities available to the Permittee and the public. The interest of the Permittee in the Premises under this Agreement shall not constitute a lease, tenancy or other real property right, but rather shall be a mere license personal to the Permittee and revocable at the discretion of the City at any time upon notice as set forth herein.
2. Use of Area. During the term of this Agreement, Permittee shall be permitted the exclusive use of a certain area adjacent to Union Reservoir, as more fully shown on the map attached as Exhibit A (the “Premises”). The Premises shall be used for operation of a sailing club, including races, trainings, storage of sailing and rowing vessels, visitor and member parking, the construction and use of an access ramp and for sailing classes given to the general public (collectively, the “Sailing Club”).
3. Equipment and Facilities.
 - a. Permittee shall be responsible for the purchase and installation of all storage facilities and equipment used at the Premises subject to the prior written approval of the City. All installations and modifications shall be consistent with City building and sign code requirements. Permittee shall be responsible at its sole cost and expense for the placement, removal and repair of any and all docks used by the sailing club. The docks must be located within the Premises, and may extend out into the Reservoir as approved by the City and the Union Reservoir Company. The docks will be used only for launching vessels or rowing skulls. The docks will not be used to moor any vessel or rowing skull overnight, other than the Sailing Club’s operational and rescue boats. The Permittee is responsible

for all liability associated with the use and placement of any and all docks. Permittee shall be responsible at its sole cost and expense for the placement of up to 6 mooring buoys for boat mooring purposes. For any additional mooring buoys beyond the 6, Permittee must receive the prior written approval by the City, which the City may grant or deny at its sole discretion. Only Sailing Club operational boats and club members that currently have a storage space may moor boats on the mooring buoys. The Permittee is responsible for all liability associated with the use and placement of mooring buoys. Permittee is responsible at its sole cost and expense for the placement of a 4 strand smooth wire fence on the marked property line. Access for a full sized ranger truck through the fence and Premises must be available for emergency access purposes. If the City determines that a ditch and culvert needs to be installed to catch irrigation tail water, Permittee shall be responsible at its sole cost and expense for the construction and maintenance of a ditch and culvert. The Permittee shall be responsible at its sole cost and expense for the placement of an additional hand launch boat ramp similar to the existing boat ramp on the Premises. Design and location must be approved by the City.

- b. Permittee shall at all times maintain equipment and facilities, including the parking area, in good condition to insure the health and safety of the public. The City shall have the right to inspect the equipment and facilities at reasonable times.
- c. Permittee shall be responsible for any and all damages to existing facilities resulting from the operation of the Sailing Club. These facilities include, but are not limited to, turf areas, utilities, pump house, fence and gate. The City shall approve repair procedures or equipment replacements by Permittee prior to ordering said repair or replacements.
- d. No alcoholic beverages shall be sold or allowed in the area subject to this Agreement.
- e. Permittee shall pay for all utilities used by the Permittee. Permittee's utilities shall be separately metered from the utilities of the City.
- f. Permittee members and guests may use only the Premises as set forth in this Agreement. Permittee members and guests shall park only on the existing parking area on the Premises and shall not park on or alongside Weld County Road 26. Parking may also be available at the Union Reservoir parking area upon payment of the then current Union Reservoir entrance fee.
- g. The Permittee is responsible at its sole cost and expense for the cleanliness, health and safety of the grounds and shall at all times maintain the Premises in a neat and orderly condition, including, but not limited to control of noxious weeds, mowing, and trash removal. Any trash or debris from Sailing Club operation that is blown or deposited onto adjacent properties must be removed immediately. Permittee

shall at its sole cost and expense provide enough portable restroom facilities and trash receptacles to accommodate peak usage.

- h. The Permittee may use the Premises for the storage of boats, vessels and associated equipment. The Permittee currently maintains two storage sheds on the Premises and one portable restroom facility and currently maintains, and shall continue to maintain, 64 storage spaces for rent to Sailing Club members. Each of the member storage spaces shall be permitted to have 1 primary boat or vessel and up to 2 additional vessels that may include rowing shells, kayaks, canoes, windsurfing boards or small sailboats. Storage of all boats, vessels and associated equipment shall be done in a neat and orderly fashion and not be unsightly or unsafe. Stacking of boat and vessel hulls shall not be in excess of 6 feet. Only families may share a storage space. Families are those who reside in a single domicile and are related under the laws of the state of Colorado. In addition to the storage spaces, the Permittee may maintain 4 storage containers that are approximately 45 feet long, 8.5 feet wide and 9 feet tall. The containers shall be used for the storage of sculling or rowing shells and related equipment. The containers must be placed in a neat and orderly fashion on a site approved by the City and painted to match the color of the storage sheds currently on the Premises. Permittee shall be allowed to maintain 3 storage racks and may erect an additional 3 storage racks. Storage racks occupy two storage spaces each and provide spaces for 6 or 9 small boats each with a hull weight under 150 pounds.
- i. Permittee members and guests using the Premises for the storage of boats or vessels must purchase a seasonal vehicle and a seasonal boat pass for Union Reservoir from the City. Both the vehicle and the boat season pass must be purchased on or before June 1st of each year of the term. The Permittee shall be responsible for the payment of the required seasonal vehicle and boat pass, at the non-resident rate, for any member who has not purchased the passes by June 1st of each year of the term. Each member must purchase a seasonal boat pass for the primary boat regardless of the type of boat. Rowing shells stored in the rowing containers shall not require a seasonal boat pass. Additional seasonal boat passes are required for any CL registered boats in the club member's storage space. Additional boats or vessels other than the primary boat or vessel that are not required to be registered by the State of Colorado will not be required to have a seasonal boat pass. Those guests of the Sailing Club who do not have a seasonal vehicle and seasonal boat pass must purchase a daily vehicle pass and a daily boat pass for Union Reservoir from the City.
- j. The Permittee is solely responsible for securing the gate to the Premises and shall provide the City with a key or combination to the lock. The Permittee is responsible for controlling access to the Premises by its members and guests. Access to the Premises is limited to current Union Reservoir hours of operation.
- k. The Permittee shall not alter, remove, destroy or cut down any existing trees, shrubs or vegetation (other than mowing of grass or noxious weeds), without prior written approval by the City. The Permittee shall not alter or remove any existing

rip rap or erosion control or alter the adjacent shoreline without prior written approval by the City.

4. Additional Facilities and Equipment. Permittee shall not install any additional fixtures or any other equipment in connection with the business covered by this Agreement without the prior written consent of the City's Natural Resources Manager or designee.

5. Operating Hours, Service and Compliance with Laws and Regulations.

a. The hours of operation shall be the same as those of Union Reservoir. The City reserves the right, in its sole discretion, to close Union Reservoir and, in such event, Permittee's activities on the Premises shall cease for the term of the closure.

b. Permittee agrees not to discriminate against any individual in the availability of services offered to the public on the basis of race, religion, creed, national origin, sex, age, ancestry, disability or otherwise, as may be applicable to the City under state and federal civil rights legislation.

c. Permittee shall comply with all applicable federal, state and municipal laws and ordinances, including but not limited to, the Americans with Disabilities Act, in the operation of the Sailing Club.

6. Permit Fees.

a. Permittee shall pay an annual license fee for the Premises to the City of \$100.00 payable on March 1 of each year of the term. Permittee shall also pay an amount equal to 20% of the storage fees Permittee charges its members, and 20% of the storage fees Permittee charges for the sculling shell storage containers. The storage fee per storage space shall be no less than that charged per storage space by the City at Union Reservoir. Storage fees for small boat storage rack spaces shall be priced so that, when fully occupied, the storage racks generate at least as much revenue as the two storage spaces they occupy. The 20% storage fees shall be payable on June 1st of each year of the term.

b. The Permittee shall also provide the City a statement of revenues on or before December 1st of each year of the term.

c. Books and records of the Permittee shall be open to inspection by the City at all reasonable times during the term of this Agreement. Following termination of this Agreement for any reason, Permittee shall provide the City with copies of its books and records upon request of the City. This duty to provide copies of books and records shall survive this Agreement.

d. In addition to the fees, Permittee shall provide, without cost to the City, at least 2 safety training sessions annually to Union Reservoir staff upon a minimum 30 days' notice from the City and shall provide assistance with special events at the

Reservoir, including rescue boats and crews at triathlon races upon a minimum thirty days' notice from the City.

7. Term of the License. The term of this license shall be from the date of final signature of this Agreement to December 31, 2016.
8. Termination. The City may, at its sole discretion, terminate this Agreement upon conditions set forth for cause or without cause.
 - a. For Cause, Without Illegality. The City may terminate this Agreement and may repossess the Premises in the event that any payment or amount is not furnished to the City as required by this Agreement, when due. City shall give seven days written notice to the Permittee of the City's intention to terminate and unless full and proper payment is made to the City of all monies due on or before the expiration of the seven day period indicated in the notice, this Agreement shall be terminated. In like manner, upon thirty days written notice, the City may terminate this Agreement in the event any of the other terms of this Agreement, other than involving violation of any law or providing of insurance or proof of insurance, have been violated, unless Permittee has fully rectified any such failure to conform to the conditions of the Agreement within such period.
 - b. For Cause, Illegality. The City may, at its sole discretion, terminate this Agreement, effective immediately, upon the giving of written notice of termination, in the event that Permittee engages in, or permits, the violation, of any federal, State or City law or ordinance in the operation of said facility.
 - c. For Cause, Insurance. The City may, at its sole discretion, terminate this Agreement, effective immediately, upon the giving of written notice of termination, in the event that Permittee fails to maintain or renew any insurance policy required by this Agreement or fails to provide proof of such insurance coverage as required by this Agreement.
 - d. Without Cause. Either party, without cause, may terminate this Agreement by providing the other party with ninety days written notice of intent to terminate.
9. Delivery after Termination. The Permittee will deliver the Premises and any permanent improvements, to the City at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear.
10. Removal on Termination. Upon termination of this Agreement for any reason, Permittee shall have the right to remove from the Premises all personal property, fixtures, and equipment not a part of the real estate, installed by Permittee and to which it retains title, subject, however, to any valid lien or claim which the City may have for unpaid fees. Permittee shall repair any damages to the Premises caused by the removal in a proper and satisfactory manner at its own expense. Any such property not removed

within ninety days of termination shall be deemed abandoned by Permittee and, in the City's discretion, shall become the property of the City.

11. Signs. Permittee may post directional, identifying, safety-related, fees, policy and operational schedule signs only; no other signs shall be posted. All signs shall comply with City ordinances and regulations and, with the exception of directional signs, shall be within the confines of the Premises.
12. Taxes, Licenses, Liens.
 - a. Permittee shall promptly pay all taxes and excise license fees of whatever nature, applicable to this operation. Permittee shall take out and keep current all licenses, municipal, state, and federal, required for the conduct of the business. Permittee shall not permit any said taxes, excise or license fees to become delinquent. However, Permittee shall not be responsible for the payment of any real property taxes which may be levied or assessed against the Premises.
 - b. Permittee also shall not permit any mechanic's or materialman's or any other lien to be imposed upon the Premises, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman to said facility or upon or regarding the Premises.
13. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and deemed duly given upon delivery, if delivered personally, or upon depositing in the U.S. Mail, postage prepaid and certified, return receipt requested, and addressed to the proper party as follows:

City of Longmont:
Park and Open Space Division
7 So. Sunset Street
Longmont, CO 80501
Attn: Open Space and
Trails Superintendent

Permittee:
Union Sailing Club
P.O. Box 2208
Longmont, CO 80502
Attn: Commodore

14. Indemnity.
 - a. Due to low water conditions, Permittee acknowledges that the City is unable to launch the patrol boat into the Reservoir and will not be able to provide rescue services. The proper authorities will need to be contacted using 911.
 - b. The Permittee releases and agrees to indemnify, defend and save harmless the City and its agents, employees and officers from and against all claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by or on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this Agreement and

their employees, and arising out of or connected with, in any manner, directly or indirectly, the Permittee's operation or use of the Premises. Nothing in this Agreement shall be construed as a waiver by the City of any rights, immunities, privileges, monetary limitations to judgments, and defenses available to the City under common law or the Colorado Governmental Immunity Act, Sec. 24-10-101 et seq., C.R.S.

15. Insurance.

- a. Permittee shall obtain at its sole cost and expense a commercial general liability insurance policy, including public liability, premises liability, and property damage, covering bodily injury and property damage, premises, and operations described hereunder and products therein, in the amount of \$1,000,000 per occurrence.
- b. The City shall be listed as additionally insured in any required liability insurance policy. Such policies shall state that this coverage is to function as the "primary" insurance coverage for the Permittee.
- c. Permittee shall at all times maintain at its sole cost and expense adequate Worker's Compensation Insurance with an authorized insurance company insuring the payment of compensation to all employees engaged in the operation of the facility as required by Colorado statute.
- d. A certificate evidencing the existence of the required policies shall be delivered to the City's Open Space and Trails Superintendent before the execution of this Agreement for review and approval by the City's Risk Manager.
- e. A renewal certificate shall be delivered to the City upon a policy's expiration date except for any policy expiring on or after the expiration date of this Agreement.
- f. Failure to maintain or provide proof of insurance shall constitute an immediate breach of this Agreement warranting immediate termination.

16. Inspection and Maintenance.

- a. The City, by its officers, employees, representatives, contractors, permittees, and their employees, shall have the right for the benefit of the City or Permittee or for the benefit of others to maintain existing and future service facilities, including, but not restricted to, water, gas, electricity, sewage, drainage, and communications systems and other such service systems and their tubes, pipes, lines, mains, wires, conduits, and equipment on or about the Premises and to enter upon the Premises at all reasonable times to make such repairs, replacement and alterations as may, in the opinion of the City, be deemed necessary or advisable and from time to time, to construct or install over, on, in or under the Premises new tubes, pipes, lines, mains, wires, conduits and equipment, provided, however,

that the same shall be done so as to interfere as little as reasonably possible with Permittee's operation

b The City, by its officers and employees, may at all reasonable times have access to the Premises for the purpose of inspection to insure compliance by Permittee with the terms of this Agreement

17 Assigning or Subletting Prohibited Permittee shall not assign, sell, transfer or in any way convey any interest in this Agreement without the prior written consent of the City, which may be granted or denied in its sole discretion

18 No Implied Representations No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement

19 No Third Party Beneficiaries This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides City or the Permittee receiving services or benefits under this Agreement is only an incidental beneficiary

20 Integrated Agreement and Amendments This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto

21 Waiver No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default

22 Severability Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement

23 Governing Law Any tribunal enforcing this Agreement shall apply and construe it according to the laws of the State of Colorado. Venue for any dispute arising under this Agreement shall be in Boulder County, Colorado

24 Status of Permittee The Permittee shall perform all services under this Agreement as an independent contractor, and not as an agent or employee of the City. No City official or employee shall supervise the Permittee. The Permittee will exercise no supervision over any employee or official of the City. The Permittee shall not represent that Permittee is an employee or agent of the City in any capacity. **The Permittee has no right to Worker's Compensation benefits from the City or its insurance carriers or funds. Permittee shall pay any federal and state income tax on money earned under this Contract.**

IN WITNESS WHEREOF, the parties have hereunto placed their hand and seals this 13th day of March, 2013

THE CITY OF LONGMONT,
A municipal corporation

Dennis L Coombs
MAYOR



APPROVED AS TO FORM

[Signature]
ASSISTANT CITY ATTORNEY

M. McQueen
PROOFREAD

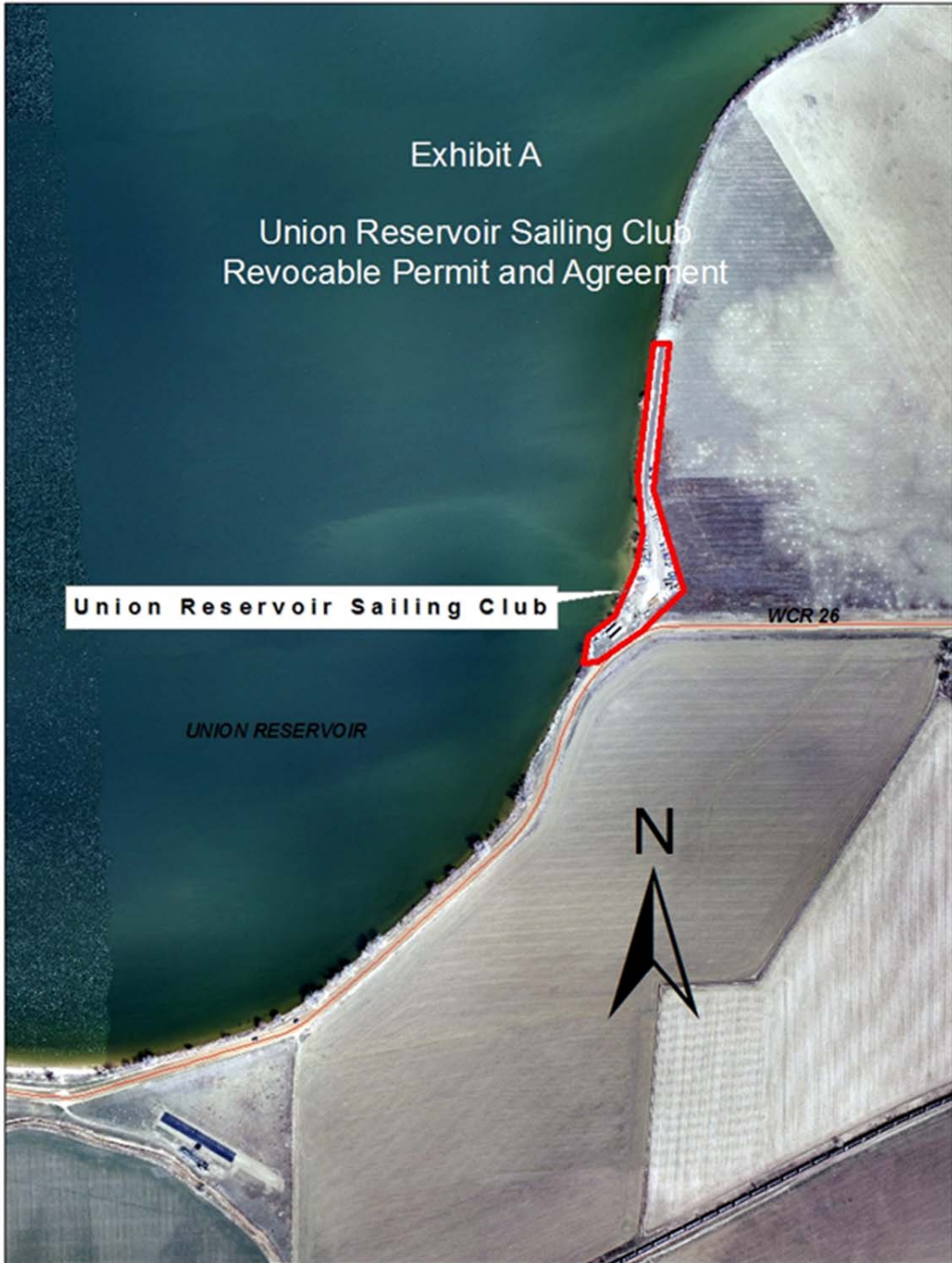
APPROVED AS TO FORM AND SUBSTANCE

[Signature]
ORIGINATING DEPARTMENT

APPROVED AS TO INSURANCE

[Signature]
RISK MANAGER

EXHIBIT A



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

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

PRODUCER Gowrie Group 70 Essex Road Westbrook, CT 06498 860 399-5945	CONTACT NAME PHONE (A/C, No, Ext) 860 399-5945 FAX (A/C, No) 8603993615	
	E-MAIL ADDRESS	
INSURED Union Sailing Club, c/o Ivan Andrade Box 2208 Longmont, CO 80502	INSURER(S) AFFORDING COVERAGE	
	INSURER A Federal Insurance Company	NAIC # 20281
	INSURER B	
	INSURER C	
	INSURER D	
	INSURER E	

COVERAGES CERTIFICATE NUMBER REVISION NUMBER

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			35849850	04/26/2012	04/26/2013	EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$10,000
							PERSONAL & ADV INJURY \$1,000,000
							GENERAL AGGREGATE \$2,000,000
							PRODUCTS COMP/OP AGG \$Included
							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY						WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E L EACH ACCIDENT \$
							E L DISEASE EA EMPLOYEE \$
							E L DISEASE POLICY LIMIT \$
A	Marine GL			07321566	04/26/2012	04/26/2013	1,000,000
A	P&I-Regatta			07321567	04/26/2012	04/26/2013	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101 Additional Remarks Schedule if more space is required)
 City of Longmont and Park and Open Space Division are listed as Additional Insureds for General Liability only with respects to the operations of the Named Insured

CERTIFICATE HOLDER City of Longmont Park & Open Space Division Attn Open Space & Trails Superintendent 7 So Sunset Street Longmont, CO 80501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS
	AUTHORIZED REPRESENTATIVE 