

JOINT OPERATING AGREEMENT

This Joint Operating Agreement (“Agreement” or “JOA”) is made by and between the Monument Hill Service Club, a nonprofit corporation organized under the laws of the State of Colorado and qualified as a public charity under Section 501(c)(3) of the Internal Revenue Code (the “Club”) and the Monument Hill Foundation, a nonprofit corporation organized under the laws of the State of Colorado and qualified as a public charity under Section 501(c)(3) of the Internal Revenue Code (the “Foundation”) and will become effective on the date of signatures in Article VI. General Provisions (“the effective date”).

RECITALS

- A. The Foundation and the Club have been parties to a Joint Operating Agreement effective October 1, 2011 (the “original agreement”) and several revisions since that date.
- B. The original agreements set forth the terms of an arrangement whereby the Club donates to the Foundation certain funds arising out of its charitable activities and the Foundation acts as the charitable arm of the Club by accepting these funds along with funds from other sources including Foundation fundraising projects, maintaining and managing all such funds, to include making investments where prudent, and granting such funds for charitable purposes.
- C. The Foundation also may accept non-monetary donations—real property and other items of value—if these assets are free and clear when donated; and, when received, such assets are converted to monetary form as soon as possible and added to the total monetary assets of the Foundation.
- D. The Foundation and the Club both wish to improve the terms of their arrangement by replacing all prior JOAs with this Joint Operating Agreement as of the effective date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I. Relationship

Section 1.01 General. While chartered as individual 501(c)(3) organizations, the Foundation was established by the Club, for the Club, and the Club will maintain control over the Foundation. This control will be executed in two ways:

- a. **Governance.** The Club will approve all Foundation Bylaws.
- b. **Directors.** The Club will appoint all Foundation Directors.

Article II. Donation of the Club’s Net Proceeds

Section 2.01 General Provisions: The Club agrees to transfer to the Foundation all net proceeds from its charitable activities as defined in Club Policies and Procedures. Such transfers will be made by the Club to the Foundation from time to time or upon the

conclusion of Club activities. Proceeds donated will be gross revenue minus all direct expenses and reasonable reserves.

- a. **Operations Funds.** Proceeds transferred from Club operations funds will be per Club and Foundation Policies to meet Foundation operational expenses.
- b. **Sponsorship Funds.** For proceeds from public fundraising, Club sponsorship, the amount transferred will be gross revenue minus direct expenses and reasonable reserves.
- a. **Section 2.02 Dedicated Fundraising.** The Club engages in fundraising for the benefit of specifically named beneficiaries. These projects include, but are not limited to, Empty Bowls for Tri-Lakes Cares and the Red Kettle Campaign for The Salvation Army. The net proceeds from such dedicated fundraising activities will be transferred to the Foundation for the purpose of making grants to the designated beneficiaries under paragraph 3.03(a).

Section 2.03 Non-Dedicated Fundraising. The Club also engages in non-dedicated fundraising for the purpose of executing the Club mission of "*Making a Positive Difference for Youth and Our Community.*"

- a. **General Rule.** Except as provided in paragraph 2.03(b) below, the Club will transfer net proceeds from non-dedicated fundraising to the Foundation.
- b. **Exceptions.** The Club may retain sufficient net proceeds from its non-dedicated fundraising to:
 - (1) Make direct donations when, due to the limited nature of the fundraising activity (Example: impromptu "pass the hat" at a Club meeting), it would not be practicable to involve the Foundation in the process.
 - (2) Budget funds for activities of the Club's Service Leadership Program and contributions to Kiwanis Division 4, Kiwanis Rocky Mountain District or Kiwanis International projects,
 - (3) Meet the terms of a restricted grant to the Club, and
 - (4) Manage financial responsibilities according to a process and formula documented in Club Policies.

Article III. Granting

Section 3.01 Granting Program: The Foundation agrees to operate a granting program on a yearly cycle for the purpose of carrying out the Club mission and in accordance with the terms of this Agreement.

Section 3.02 Resource Allocation: Annual granting by the Foundation is financed by a combination of donations from the Club, direct donations from private individuals and public organizations, and distributions from the Foundation Corpus. Grants will be funded from income raised in prior periods as defined in Article IV.

Section 3.03 Granting Priorities.

- a. **Grants to Designated Beneficiaries:** Club designated grants to the Foundation, i.e., grants that the Club specifically identifies for payment to designated beneficiaries, will be funded in the Club fiscal year in which they are designated. These will be treated by the Foundation as restricted gifts. The full amount of the grant with no deductions will be paid to the designated beneficiary.
- b. **Discretionary Grant Limits:** The Foundation will prepare a Discretionary Granting Plan (Granting Plan) annually, NLT July 31, according to Foundation Policy.
 - (1) The maximum amount of the Granting Plan will be determined according to the provisions of Article IV. To establish a reputation in the community as a dependable source of support, growth in the Granting Plan must be controlled to present a positive trend over the long term. Therefore, the Granting Plan may be increased a maximum of 10% over the mean of the previous three years' Plan levels.
 - (2) Multi-Year Grants. Grants which are planned for more than a single year may be included in the Granting Plan when proposed by the Foundation Board and approved by the Club membership in compliance with Article 8 of the Club Bylaws and Article 7 of the Foundation Bylaws.
- c. **Remaining Assets:** Any amount remaining after complying with paragraph 3.03(a) and (b) above, may be used to replenish the Club Management Reserve (Section 3.04) or invested in the Corpus.
- d. **Implementation.** The Foundation will implement the Granting Plan. At least once each quarter, the Foundation will report to the Club Board on all grants paid under the Granting Plan.

Section 3.04 Club Management Reserve (CMR).

- a. **Allocation.** The Foundation shall establish a reserve in the amount of \$10,000. This reserve shall be for the purpose of allowing the Club Board to fund grant requests not otherwise suitable for inclusion in the annual Foundation Granting Plan.
- b. **Maintenance.** At the end of the Foundation fiscal year the Foundation will establish/replenish the CMR, not to exceed \$10,000, for use in the subsequent fiscal year. The CMR will be funded in priority after the Granting Plan, Section 3.03. If funds are not available after funding priorities in Section 3.03, the CMR will remain at its unreplenished value into the subsequent Foundation fiscal year.
- c. **Use.** The Club Board will be the sole approving authority for grants from the CMR, which may not exceed the amount available in the CMR. Grants approved by the Club from the CMR will be disbursed by the Foundation.

Article IV. Foundation Reserve

Section 4.01 Definition. The Foundation maintains a reserve of funds as a buffer against fluctuating economic performance, as a resource for increased granting, and as a potential resource for larger projects. This reserve is referred to as the "Corpus." The overarching purpose of the Corpus is to ensure the viability of the Foundation as a reliable community partner that provides grants to worthy organizations whose activities are consistent with the Club mission. It is viewed as a legacy for good that will exist forever in our community.

Section 4.02 Corpus Growth and Use. The Club and the Foundation desire that the Corpus exist in perpetuity and continue to grow. The Club will make every effort to generate money through fundraising and donations to reduce the need for the Foundation to use distributions from the Corpus. However, the Club's fundraising may be impacted by factors such as loss of membership, economic conditions, or fluctuations in investments. Thus, to sustain responsible growth of the granting program, use of the Corpus may be required from time to time as prescribed in Section 4.03. Other uses of the Corpus will be proposed for Club approval as prescribed in Section 6.03.

Section 4.03 Corpus Distributions. Distributions from the Corpus may be allowed under the conditions defined below. Distributions may be allowed annually to supplement the Granting Plan for the next fiscal year. When such supplement is desired, the amount will be calculated from the Corpus value on March 31 of the current fiscal year; e.g. funds available for Foundation fiscal year 2023.

- a. The Foundation is not obliged to take any distribution from the Corpus.
- b. The maximum distribution from the Corpus in any one Foundation fiscal year will be calculated as follows. If the Corpus value is:
 - (1) Less than \$500,000, the maximum distribution is 2%.
 - (2) \$500,000 or greater, but less than \$750,000, the maximum distribution is 3%.
 - (3) \$750,000 or greater, but less than \$1,000,000, the maximum distribution is 4%.
 - (4) Greater than \$1,000,000, the maximum distribution is 5%.

Article V. Joint Marketing

Section 5.01 General: The Foundation and the Club will develop joint marketing efforts that, while respecting their separate corporate identities, portray the two organization as working closely together to accomplish the mission of *Making a Positive Difference for Youth and Our Community*.

Section 5.02 Granting Events: The Foundation will, whenever possible, arrange ceremonial presentations of all grants to representatives of grant recipients at Club meetings.

Article VI. General Provisions

Section 6.01 Relationship of the Parties: Each party hereto is acting as an independent contracting party hereunder. Each party expressly disclaims liability for the acts of the other.

Section 6.02 MHF Operations Funding: The Club will fund the minimal operational expenses of the Foundation, to include Directors & Officers (D&O) insurance.

Section 6.03 Exceptions: If at any time the Foundation believes there is rationale for deviating from the provisions of this Agreement to make distributions or to fund projects, programs, or grants other than those prescribed above, the Foundation Board will propose such an exception to the Club Board for approval.

Section 6.04 Review: This Agreement will be reviewed annually by the Financial Review Committee, appointed by the Club Board, augmented as a minimum, by the Executive Director of the Foundation.

Section 6.05 Termination: This Agreement will remain in effect unless replaced or terminated by the Club.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signatures below.

signature *date*

Scott Ross
President, MHKC

signature *date*

Richard Strom
Executive Director, MHF