

**AGREEMENT**  
**HARD'ACK, INC. AND CITY OF ST. ALBANS**



THIS AGREEMENT, made by and between the City of St. Albans, Vermont, a municipal corporation duly existing under the laws of the State of Vermont, having its principal place of business at 100 North Main Street, St. Albans, Vermont 05478 (hereinafter referred to as “City”) and Hard’Ack, Inc., a domestic non-profit corporation duly organized and existing under the laws of the State of Vermont, having its principal place of business at 154 North Main Street, St. Albans, Vermont 05478 (hereinafter referred to as the “Hard’Ack”). The City and Hard’Ack are sometimes referred to herein individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Hard’Ack is a Vermont non-profit 501(c)(3) corporation that owns approximately 95 acre ski and recreation area in St. Albans, Vermont (hereinafter referred to as the “Hard’Ack Property”); and

WHEREAS, Hard’Ack’s Bylaws mandate that it is to provide recreation opportunities to the community with an emphasis on children; and

WHEREAS, the City has a Recreation Department whose mission is to provide recreational opportunities for the community; and

WHEREAS, the majority of the participants in the programs of the City’s Recreation Department are children; and

WHEREAS, Hard’Ack is currently governed by a Board of Trustees (hereinafter referred to as the “Board”) who, as a body, is authorized to make and carry out all decisions relating to Hard’Ack; and

WHEREAS, the Board desires to convey the Hard’Ack Property to the City of St. Albans

and merge its operation and maintenance of the Ski Area and Recreation Area into the City Recreation Department; and

WHEREAS, the City is willing to accept ownership of the Hard'Ack Property and the merging of the operation and maintenance of Ski Area and Recreation Area into its Recreation Department; and

WHEREAS, the City and Hard'Ack Board believe that the merger of Hard'Ack and the City will facilitate and utilize the potential the Hard'Ack Recreation Area has to better serve more St. Albans and Franklin County Citizens with the emphasis on the youth of the community;

WHEREAS, The City and the Hard'Ack Board believe that the merger of Hard'Ack into the City of St. Albans Recreation Department will create a Municipal Recreation Department second to none in the State of Vermont; and

WHEREAS, the cornerstone of this Agreement for Hard'Ack are its principal goals, which are, in prioritized order, to perpetuate the Hard'Ack Ski Area, the Hard'Ack Recreational Area and the Hard'Ack ideals and traditions, including but not by way of limitation, of volunteerism and giving back to the community; and

WHEREAS, this Agreement is made and entered into freely and voluntarily by the parties, each being free of any duress or influence on the part of the other, and each fully understanding the terms, conditions and provision of this Agreement and believing its terms to be fair, just, adequate, and reasonable, and each having the benefit of legal counsel.

NOW THEREFORE, for and in consideration of the promises and mutual covenants, obligations and undertaking in this document, the parties mutually agree in the manner following.

1) Definitions.

a) The "Ski Area" is the area which encompasses the skiing, snowboarding, sliding

area and appurtenances, ski lodge presently existing and as re-built, and parking for any participants and the lands northerly to the natural bowl and including the bowl which could easily be used for snowboarding and skiing glades, and/or and snowboarding and skiing trails.

- b) The “Recreational Area” is the Ski Area and the remainder of all other land, facilities and appurtenances located on the approximately 95 acres owned by Hard’ Ack.
- 2) The City and Hard’ Ack commit to professing and pursuing the ideology of Hard’ Ack’s tradition of volunteers and giving back to the community and instilling these virtues in the users of the Recreation Area by instituting programs and in-kind remuneration plans which teach and instill these virtues in Hard’ Ack users.
- 3) The City and Hard’ Ack commit to the ideal of perpetuating the Ski Area’s existence and to uniformly administer and prioritize the Ski Area’s maintenance, day to day operation, funding, and the long term development.
- 4) That the Ski Area is to be maintained and/or developed in accordance with the intent of this document so that it remains a centerpiece or one of the centerpieces of the Hard’ Ack Recreation Area.
- 5) Hard’ Ack shall convey by Quit Claim Deed all of its right, title and interest in the Hard’ Ack Real Property which are subject to the terms of this Agreement, with all of its facilities and appurtenances, to the City of St. Albans. Hard’ Ack shall also convey by Bill of Sale to the City of St. Albans all of its corporeal personal property, excepting its financial accounts and investments, if any, it uses to run and support the Recreational Area.

- 6) The City shall take over the operation, administration and management of the Hard'Ack Recreation Area and Hard'Ack Ski Area.
- 7) The City shall devote its' energies and resources into administering, funding, maintaining, improving, nurturing, and growing the Ski Area and Recreation Area.
- 8) Operation, administration and management of the Hard'Ack Ski and Recreation Area by the City shall include, but not be limited to, managing, hiring and firing all personnel, overseeing the Ski and Recreational Areas, and providing administrative overview, maintenance of the Recreation Area, maintaining, snowplowing, sanding and salting the road and parking areas, insurance, water and wastewater services, financing to best of its abilities the day to day operation and long term goals of HardAck within the norms of a municipal Corporation, financial management, and capital planning. The provision of water and wastewater services shall not eliminate the obligation of Hard'Ack Recreation and the City Recreation Department to pay water and wastewater fees and sewer and water, capital costs as assessed to the public unless specifically exempted by the City Council.
- 9) Hard'Ack will maintain its status as a Vermont non-profit 501(c)(3) corporation and will continue to be governed by the Board.
- 10) Each member of the Hard'Ack Board shall be individually appointed to the Board by the St. Albans City Council in accordance with the Amended Bylaws of Hard'Ack, Inc. The Hard'Ack Board shall assist the St. Albans City Council in its duty to appoint Hard'Ack Board members by vetting applicants and submitting recommended nominations. While the St. Albans City Council must take into consideration the recommended nominations of the Board, the appointment of Board members is within the City Council's sole discretion

and the City Council is not required to appoint every individual nominated by the Board.

- 11) The original existing Board shall serve on the newly configured Board as delineated in the Amended Bylaws of Hard'Ack, Inc. to be signed by the respective parties prior to or simultaneously with the signing of this Agreement
- 12) It is preferred that the majority of the Hard'Ack Board shall be residents of Franklin County, however, residency shall not be a consideration when appointing nominees.
- 13) The City Council may remove a Hard'Ack Board Member for good cause after one warning directed to the Trustee and the Board if the perceived infraction is procedural or cumulative, however, if the infraction is seriously egregious or put life or limb at risk or potentially financially detrimental to the City without notice to Trustee.
- 14) The Hard'Ack Board shall have at least one (1) seat on the committee to vet future St. Albans City Recreational Directors.
- 15) The Hard'Ack Board's roles and responsibilities shall include, but not be limited by, the following:
  - a. Raise funds for the Ski and Recreation Area;
  - b. Provide programmatic guidance and advice;
  - c. Provide guidance and advice to the St. Albans City Council on the maintenance, operation, and future development of Hard'Ack Ski and Recreational Area;
  - d. Serve as a source for volunteers and community engagement in the facility;
  - e. Promote the ideals of Hard'Ack; and
  - f. Abide by the Hard'Ack, Inc. Bylaws and this Agreement.
- 16) In addition to the roles and responsibilities outlined in Paragraph 15, above, Hard'Ack shall provide guidance to the City and participate in the operation, maintenance and

development of the Ski Area and Recreation Area to the extent requested/approved by the City and in accordance with the existing permits and other projects agreed to between the City and Hard'Ack.

- 17) The Ski Area shall be perpetually named and known as the Hard'Ack Ski Area.
- 18) The Recreation Area with all land presently owned and subsequently acquired shall be perpetually named and known as the Hard'Ack Recreation Area unless the Hard'Ack Board by three quarters of the Board's approval and the City Council so agree to change the name of all or a portion of the Recreation Area.
- 19) The Gratton Fields, Cioffi Fields, and Marc's Bark Park shall be known as the same unless the change thereof is approved by the Hard'Ack Board and the City Council.
- 20) As long as the Ski Lodge which is being planned and will be constructed exists it shall be known as "The Greg Brown Lodge".
- 21) The Recreation Area shall be perpetually used for the benefit and recreation of the community, St. Albans City, St. Albans Town and Franklin County with an emphasis on the children unless both Hard'Ack and the City agree otherwise.
- 22) Hard'Ack shall have discretionary funds which may be raised by any legal means. Such discretionary funds are currently obtained from fund-raising, donations from the community, and the Morton Trust. With this Agreement, Hard'Ack shall be additionally entitled to Five Percent (5%) of the gross income from all activities and enterprises transpiring at the Hard'Ack Recreational Area. This Five Percent (5%) shall be a credit to the Hard'Ack Board on the City's books and shall be a discretionary fund as delineated in Paragraphs 24 and 25, below. The Five Percent (5%) shall not be termed a surcharge and shall not be listed in any invoice.

- 23) All of Hard'Ack's discretionary fund accounts and book entries shall be kept and maintained by the City's financial office. The Hard'Ack Board shall have access to these fund accounts at all times.
- 24) Hard'Ack's discretionary funds, as delineated in paragraph 22, above, shall be controlled by the Hard'Ack Board and shall be spent in the following priority: First, for the Ski Area; Second, the Recreation Area; and Third, projects off the Recreation Area if the Hard'Ack Board and City so approve. In its discretion, the Board may allocate the funds among the first two priorities based upon the best interest of Hard'Ack and the community. For the first five (5) years following the execution of this Agreement, however, said five percent (5%) discretionary funds shall be used and applied to the Hard'Ack operational budget.
- 25) The City shall allocate, at the least, the existing energies and funds as it presently does and shall spend all monies received for Hard'Ack and earned at Hard'Ack Recreational Area on the Hard'Ack Recreation Area or program(s) thereon unless an off-site expenditure is approved by the Hard'Ack Board and the City.
- 26) Hard'Ack and the City shall pursue growth and development in accordance with the existing Act 250 permits and municipal permits, any deviation therefrom shall require the approval of the Hard'Ack Board and the City which shall not be unreasonably withheld.
- 27) No portion of the real property comprising the Recreation Area shall be conveyed, gifted, sold or otherwise disposed of without the approval of the St. Albans City Council and three-quarters (3/4) of the Hard'Ack Board.
- 28) Notwithstanding the limitations outline in paragraph 27, above, the City, if and when requested by the Hard'Ack Board, shall convey, lease for as many years as the Board delineates, or hypothecate in any manner to the St. Albans Skating Association

(hereinafter SASA), or its successors, the portion of the Hard'Ack Recreational Area that is presently permitted for the construction of an indoor skating rink, parking area and contemplated and added skating rink appurtenances. If the City builds the rink which has to be approved by the Board, this article is null and void with the Board relinquishing its right to convey, lease or hypothecate the aforementioned property interest. If a third party, which has to be approved by the Hard'Ack Board and the City Council, has the ability to construct a rink, prior to a commitment to SASA, said areas and rights thereto may be conveyed, leased or hypothecated to that entity. Further, the City Council and the Hard'Ack Board, by majority vote of each, may move the location of the skating rink, parking lot and/or appurtenances. With the aforementioned said, it is agreed that the City owning the hockey rink with SASA being the main tenant and using it as it's home and being the preferred tenant would be the optimum model.

29) The City will have performed all title work prior to the execution of this document and the City and the Hard'Ack Board will have Amended Hard'Ack Bylaws which will be signed prior to this Agreement being executed by the parties. The Hard'Ack Board shall have thirty (30) days thereafter to quit claim all property interest contemplated in this Agreement to the City.

30) The parties agree that the land being dedicated to recreation for the community with an emphasis on the children is not a marketable record title defect and the Aldis Hill Trust has to approve the conveyance of the approximate 10 acre parcel of land which is a portion of the Ski Area.

31) Within ten (10) business days of this document being signed, this Agreement and amendments thereto and the Bylaws and amendments thereto shall permanently be posted

on the City of St. Albans' website listed in documents under city ordinances, with other relevant information listed in similar form as other Boards in "Boards and Meeting" dates portion of the website. If the website or its equivalent is substantially amended, the above shall be included in the appropriate section.

32) This Agreement may be modified only by a written amendment signed by the Parties with the Hard' Ack Board having to approve an amendment by three-quarters (3/4) of the Board Members. If any provision of this Agreement shall be found to be invalid, inoperative or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed and enforced to effect the purposes of this Agreement to the fullest extent permitted by law.

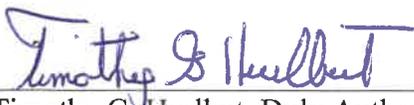
33) This Agreement shall be governed by and construed under the law of the State of Vermont, without application of principles of conflicts of laws, and constitutes the entire agreement of the Parties with respect to the subject matter hereof, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts, and the like between the Parties in such respect.

34) In the event either Party is required to bring a legal action for the failure of the other Party to abide by the terms of this Agreement, the prevailing Party shall be entitled to an award of its reasonable attorneys' fees, costs and expenses.

Dated at St. Albans, this 28<sup>th</sup> day of September, 2017.

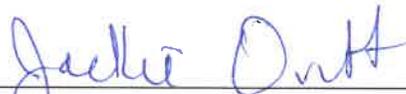
**HARD'ACK, INC**

  
\_\_\_\_\_  
Witness

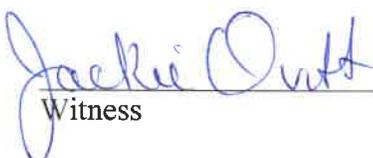
By:   
\_\_\_\_\_  
Timothy G. Hurlbut, Duly Authorized  
Agent for Hard'Ack, Inc. and Chairman  
of the Hard' Ack Merger Committee

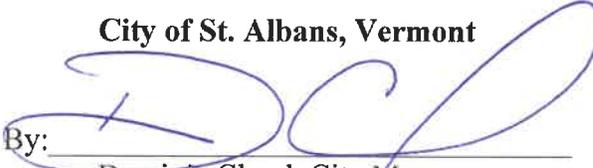
STATE OF VERMONT  
FRANKLIN COUNTY, SS.

At St. Albans, this 28<sup>th</sup> day of September, 2017, Timothy G. Hurlbut, Trustee and Chairman and Duly Authorized Agent of Hard'Ack, Inc. Merger Committee personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and Deed of Hard'Ack, Inc.

  
\_\_\_\_\_  
Notary Public

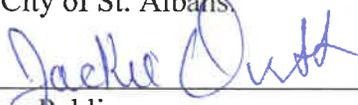
Dated at St. Albans, this 28<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
Witness

**City of St. Albans, Vermont**  
  
By: \_\_\_\_\_  
Dominic Cloud, City Manager

STATE OF VERMONT  
FRANKLIN COUNTY, SS.

At St. Albans, this 28<sup>th</sup> day of September, 2017, Dominic Cloud, City Manager, personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and Deed of the City of St. Albans.

  
\_\_\_\_\_  
Notary Public