

## RESERVOIR LEASE

This Reservoir Lease (“Lease”), effective as of \_\_\_\_\_ 2022, is by and between the City of Grand Junction, a Colorado home rule municipal corporation (“City”) and Snowcap Coal Company, Inc., a Delaware corporation (“Snowcap”).

### RECITALS

A. The City owns the real property where the former Vincent No. 2 Reservoir a.k.a. Vincent No. 2 Reservoir (“Reservoir”) and dam, the Vincent No. 2 Dam a.k.a. Vincent No. 2 Dam, Dam ID: 720319, (“Dam”), are located. The City’s real property holdings in the area of the Reservoir are extensive. The Reservoir and Dam are generally located on the South 1/2 Section 28 of Township 11 South, Range 97 West, Sixth Principal Meridian. The City also owns, among other lands, the following property all of Township 11 South, Range 97 West, Sixth Principal Meridian: SE1/4 SE1/4, W1/2 SE1/4 and SW1/4 Section 26; W1/2 SE1/4 Section 27; S1/2 Section 28; N1/2 NE1/4, SE1/4 SE1/4 and W1/2 Section 29; E1/2 NE1/4, W1/2 SE1/4 and W1/2 Section 32; N1/2, NE1/4 SW1/4 and SE1/4 Section 33; All Section 34; All Section 35 (collectively the “Vincent Reservoir Surrounding Property”).

B. Colorado law requires augmentation of out-of-priority stream depletions and Snowcap has determined that its Roadside Portals Mine causes limited out-of-priority stream depletions to Rapid Creek in the vicinity of the mine. Snowcap is required by Colorado law and the requirements that certain Compliance Order on Consent (“Consent Order”) issued by the State Engineer and the Division Engineer for Water Division 5 to implement temporary and permanent solutions to remedy any injurious out-of-priority stream depletions to Rapid Creek attributable to the Roadside Portals Mine (“Stream Depletions”).

C. Snowcap has identified the Reservoir as a source for the storage of augmentation water to remedy the Stream Depletions. Snowcap has investigated the Reservoir and Dam and has determined that rehabilitation of the Dam would benefit its efforts to comply with the Consent Order and its legal obligations under Colorado law.

D. The City recognizes that the rehabilitation of the Dam and Reservoir would provide long-term benefits to the Property and the City’s neighboring properties in the form of stock water, wildlife habitat, and a water source for wildfire suppression. The City also recognizes the Reservoir has the potential to positively impact the Rapid Creek Drainage.

E. Snowcap has obtained approval from the Dam Safety Branch of the Colorado Division of Water Resources to rehabilitate the Dam consistent with plans approved March 15, 2022.

**F.** Snowcap desires to enter into this Lease to rehabilitate the Dam and operate the Reservoir to satisfy the Consent Order and to use water stored in-priority in the Reservoir as a source of replacement supply in a decreed plan for augmentation and the City desires to lease those sites to Snowcap.

NOW, THEREFORE, in consideration of the recitals, terms, covenants, and conditions herein to be kept by the parties hereto, the City and Snowcap agree as follows:

## **SECTION I. DEMISE AND ACCESS**

City is the owner of the real property in the South 1/2 Section 28 of Township 11 South, Range 97 West, Sixth Principal Meridian commonly known as Vincent No. 2 Reservoir and illustrated in the figure attached as Exhibit A incorporated herein by reference (the "Property"). City offers and Snowcap desires to lease the Property under the terms and conditions of this Lease. The Property encompasses the maximum permitted size of the Reservoir, the Dam, and includes adequate space for operation and a safety buffer. For illustration purposes only, based on projections, the normal high-level mark of the Reservoir shall impact an area of approximately 41.3 acres and a maximum water level would impact an area of approximately 66.8 acres.

Snowcap shall have the right to access the Property, through the term of this Lease, for the construction, maintenance, operation, and repair, including incidental access to the forgoing, of the Reservoir and Dam. Snowcap shall access the Property in the least intrusive manner necessary to complete its work, repair or operation and shall have the right to access the Property over, across, and through the City's real property generally located at W1/2 SE1/4 Section 27, South 1/2 Section 28, N1/2, NE1/4 SW1/4 and SE1/4 Section 33, all Section 34 all of Township 11 South, Range 97 West, Sixth Principal Meridian.

## **SECTION II. BASIC TERM**

The initial term of this Lease shall be twenty-five (25) years ("Term"), commencing on the effective date. The Parties intend for the Lease to be renewed for a successive Term(s) of twenty-five (25) years (each a "Renewal Term"); however, the statement of that intention does not bind successor City Councils. Notwithstanding, and in order to endeavor to perpetuate the current mutual agreement of the Parties, the City will a) notify Snowcap not less than one hundred five (120) days prior to the end of the then existing term if the City intends to not renew the Lease for a Renewal Term and b) in the event of a notice of non-renewal Snowcap may petition the City Council to renew the Lease. The decision to renew is within the sole discretion of the City. When the City intends to renew the Lease for a Renewal Term (i.e., does not notify Snowcap of an intention to not renew) it will advance the necessary or required

approval process to City Council. In the event City Council does not approve a Renewal Term(s) the Parties may negotiate a replacement lease on mutually acceptable terms or b) terminate this Lease.

### **SECTION III. RENTAL**

Snowcap agrees to pay City, as rental for the Property, improvements and appurtenances, the one-time sum of \$7,000.00 (Rent) for the initial term, payable as follows:

Snowcap agrees to timely pay any and all real estate taxes associated with improvement assessments which may properly be levied against the Property, and any taxes or assessments levied against the personal property of Snowcap, or any other leasehold interest acquired by Snowcap under this Lease. Snowcap further agrees to pay any and all utilities, charges, and other expenses incurred in connection with Snowcap's use and operation of the Property, Snowcap shall pay any such charges on or before the date the same become due. If Snowcap fails to timely pay any and all amounts required pursuant to this Section 3, the City may pay such amounts and, in such event, the amount(s) paid by the City, plus interest thereon at the rate of 15% per annum and shall be payable to the City by Snowcap.

### **SECTION IV. VANWINKLE LEASE**

Snowcap and the City acknowledge that the Property is currently leased to VanWinkle Ranch, LLC, a Colorado limited liability company ("VanWinkle"), under that certain Somerville Ranch and Anderson Ranch Lease dated May 1, 2020 (the "VanWinkle Lease"). The VanWinkle leasehold is for several larger parcels of land and the Property makes up a minor portion of the VanWinkle leasehold. Snowcap and VanWinkles, by separate agreement, have agreed to Snowcap's sublease of the Property and during the term of the VanWinkle Lease, Snowcap shall be a subtenant of VanWinkle, to which the City consents. A copy of Snowcap and VanWinkle's sublease is attached as Exhibit Band to the extent necessary or require this Lease shall modify the VanWinkle Lease. If and when there is a termination of the VanWinkle lease, this Lease shall be deemed the leasehold for the Property. Any subsequent lease(s) for City real property adjacent to the Property shall exclude the Property from the real property lease(s) and shall be subject to Snowcap's rights and tenancy of the Property and rights of access under this Lease.

### **SECTION V. REHABILITATION OF DAM**

Snowcap at its sole cost and expense shall rehabilitate the Dam in accordance with the March 15, 2022, Approval of Plans and Specifications from the Dam Safety Branch of Division of Water Resources, the Vincent #2 Reservoir Construction Specifications dated March, 2022 prepared by Applegate Group, Inc. (“Construction Specifications”), and the Snowcap Coal Co. Vincent No. 2 Reservoir Construction Plans Dam ID: 720319, Water Division 5, District 72 Mesa County, January, 2022 (“Construction Plans”). A copy of the Construction Specifications and Construction Plans are attached as Exhibit C. Such rehabilitation efforts shall commence as soon as site conditions allow at the Property. Once rehabilitation of the Dam has been completed and Snowcap has secured all necessary governmental approvals Snowcap shall fill and operate the Reservoir as soon as conditions allow.

#### **SECTION VI. PURPOSE**

The purpose of this Lease is for Snowcap, or its agent(s), to repair, operate, fill, and maintain the Reservoir and Dam for water augmentation purposes pursuant Colorado law, the Consent Order, and all subsequent orders of the State Engineer, the Division Engineer for Water Division 5, and orders and decrees of the District Court in and for Water Division 5. Additionally, Snowcap shall have the right to use and operate the Reservoir and Property for other incidental purposes, including, but not limited to, providing stock water to VanWinkle and subsequent neighboring leaseholds, wildlife habitat, and a water source for wildfire suppression. Additionally, the City recognizes the incidental purposes of improving the Rapid Creek Drainage and that Snowcap will work with other interested parties to reasonably improve Rapid Creek Drainage.

#### **SECTION VII. FRUSTRATION OF PURPOSE**

The City recognizes that Snowcap’s primary purpose of entering into this Lease is to comply with Colorado law requiring augmentation of the Roadside Portal Mine’s out-of-priority depletions to Rapid Creek and the Consent Order which require the storage and subsequent release of augmentation water. Snowcap is diligently prosecuting the approval of its plan to utilize the Reservoir to satisfy the Consent Order and its obligations under Colorado law regarding augmentation of any depletions to Rapid Creek attributable to the Roadside Portals Mine, including obtaining water rights for augmentation water to be stored in the Reservoir and approval for its plan to release of the same as a source of replacement. If despite Snowcap’s diligent efforts, it is unable to obtain necessary governmental or judicial approvals necessary to utilize the Reservoir to satisfy its obligations and purposes of this Lease, including, but not limited to, failing to obtain a decree from the Water Court in and for Water Division 5 for approval of its planned augmentation plan, Snowcap shall have the right to terminate this Lease on 60-days’ notice. Likewise, if any governmental approval that is

necessary for Snowcap to carry out its purposes of entering this Lease is revoked or otherwise canceled, despite Snowcap's best efforts to prevent the cancelation or revocation, Snowcap shall have the right to terminate this Lease on 60-days' notice. In the event of termination pursuant to this paragraph the City shall be entitled to keep and retain the Rent.

### **SECTION VIII. TENANT COVENANTS**

At Snowcap's sole cost and expense, Snowcap shall maintain and keep the Property and all improvements upon the Property in working order. If improvements have been made at Snowcap's expense, at the expiration of this Lease, Snowcap shall surrender the Property and improvements thereon to City in working order, reasonable use and wear excepted.

Snowcap agrees that all uses shall be lawful uses only. Snowcap shall diligently seek a decree for water storage right that may benefit the Property and the Vincent Reservoir Surrounding Property with a water supply for wildfire suppression, stock water, and wildlife habitat.

Besides improvements relevant to the rehabilitation and operation of the Dam and Reservoir, Snowcap shall install no structural or land improvements without the prior written consent of the City, which consent shall not be unreasonably withheld. The City acknowledges access roads to and from the Reservoir and Dam may need to be improved or constructed. Changing site conditions which reasonably require minor rerouting or modification of the existing or authorized access road(s) shall not be deemed to be structural or land improvements and shall not require prior written consent of the City.

Snowcap agrees to waive and forego any claim, cause of action or demand Snowcap may have against the City, its officers, agents and employees for injury to or destruction of any property of Snowcap or any third person that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Snowcap or any third person; and to indemnify the City, its officers, employees and agents and to hold the City, its officers employees and agents harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of, or resulting from Snowcap's use of the Property, not arising from the willful misconduct of the City.

Snowcap agrees, at Snowcap's sole expense and during the term of this Lease, to purchase and maintain in effect commercial general liability insurance to provide coverage for liability in the event of bodily injury or property damage for which Snowcap is legally liable. Such insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00), per occurrence for bodily injury, personal injury, and property damage, and \$1,000,000.00 in the aggregate. Business Automobile Liability insurance shall also be maintained with minimum combined single limits for bodily injury of not ONE MILLION DOLLARS (\$1,000,000.00) each accident. The City of Grand Junction shall be included as

an additional insured for its' liability due to the negligence of Snowcap. Evidence of the forgoing may be found at: <https://www.aep.com/b2b/moi>.

Snowcap shall comply with all Workers' Compensation laws and proof of Workers' Compensation insurance may be found at: <https://www.aep.com/b2b/moi>.

Snowcap agrees to use the Property for reservoir and water augmentation operations, and other related uses only, and conduct said operations in a proper and workmanlike manner and in a manner that will not cause deterioration of or destruction to the Property other than those things necessary to build, operate and maintain the Reservoir as prescribed by the Colorado State Engineer, the Division Engineer for Water Division No. 5, and the Water Court in and for Water Division No. 5.

Snowcap agrees to keep the Property and the demised premises free and clear from any and all liens for labor performed and for materials furnished to the Property or demised premises.

Snowcap shall notify the City by no later than the end of the next business day after an accident or incident that involved emergency medical services or law enforcement responding to the Property.

#### **SECTION IX. INSPECTION**

Snowcap warrants that it has thoroughly and carefully inspected the Property and demised premises and accepts the same in its present condition. Snowcap agrees that the condition of the Property is sufficient for the purposes of Snowcap. The City makes no warranties or promises that the Property is sufficient for the purposes of Snowcap.

#### **SECTION X. CITY'S RIGHT OF ENTRY**

The City, its officers, agents, and employees retain the right to be on the Property during emergencies and may inspect the Property at any time without notice.

#### **SECTION XI. MINERAL RIGHTS**

The City retains and reserves for its sole use, lease, sale, or other disposition all oil, gas, coal and other minerals and mineral rights underlying or appurtenant to the Property, together with the rights of ingress and egress to and from the Property for the purpose of exploring, developing, mining, producing, and removing any such minerals, oil, gas, and coal. The City's exercise of rights related to the exploration, development, mining, producing, or removal of any such minerals, oil, gas, or coal shall not frustrate the purpose of this Lease. Frustration of purpose would include, without limitation, development or extraction activities that result in a modification of the watershed surrounding the Property.

## **SECTION XII. SURRENDER - HOLDING OVER**

Should Snowcap fail, for whatever reason, to vacate the premises at the end or when this Lease is terminated, Snowcap agrees to pay to the City the sum of \$100.00 per day for each and every day thereafter. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$100.00 is an appropriate and agreed, liquidated damages amount.

Snowcap agrees that all fences, gates, fixtures, and other improvements of a permanent nature constructed or installed on the Property during the term of this Lease, whether by City or Snowcap, shall be and remain the sole property of the City upon termination or expiration of this Lease.

## **SECTION XIII. DEFAULT**

Except as otherwise provided for herein, if Snowcap is in default in the performance of any term or condition of this Lease, the City shall provide Snowcap with a ninety (90) day notice to cure default. If Snowcap fails to timely remedy any default specified in the City's notice, the City shall have the right to terminate this Lease on ninety (90) days' notice.

Unless agreed in writing signed by the City, the City's failure at any time to require performance by Snowcap of any provision of this Lease shall not waive the City's right to subsequently enforce the same or any other provision or any other preceding or succeeding breach of any term or provision of this Lease. No extension of time for the performance of any obligation or act shall be deemed to be an extension of time for the performance of any other obligation or act under this Lease.

If this Lease is terminated by the City, Snowcap shall have reasonable access to the Property for a reasonable time, not to exceed thirty (30) days, to remove Snowcap's personal property. In the event site conditions prevent access to the Property during the thirty (30) days provided for above, Snowcap shall have thirty days to remove its personal property starting

from the first day that site conditions allow access to the Property and the personal property located thereon.

Upon termination of this Lease, Snowcap shall remove all personal property from the Property and demised premises within thirty (30) days from the date of termination. If Snowcap fails to remove Snowcap's personal property within the time prescribed, the City shall not be responsible for the care and safekeeping thereof and may remove the same and store the same in a reasonable manner, the cost, expense, and risk of which shall be Snowcap's. Snowcap hereby agrees that items not timely removed may be sold by the City to cover expenses with net proceeds after expenses paid to Snowcap. The City may also set off amounts owed under this Lease against proceeds of said sale.

#### **SECTION XIV. ASSIGNMENT AND SUBLEASE**

Snowcap is expressly authorized to assign this agreement to an affiliated entity either owned or operated by American Electric Power Corporation, a Delaware corporation, or its successors and assigns. Except as otherwise permitted by the preceding sentence, Snowcap shall not sublet, assign, or transfer any of Snowcap's interests in this Lease, or enter into any contract or agreement affecting Snowcap's interest in this Lease, without obtaining prior written approval of the City, which shall not be unreasonably withheld.

#### **SECTION XV. DESTRUCTION**

If the premises are damaged due to fire or other casualty, the City shall have no obligation to repair the improvements or to otherwise make the premises usable or occupiable; damages shall be at Snowcap's sole and exclusive risk. If the City determines not to perform repairs or to otherwise make the premises usable or occupiable, Snowcap may terminate this Lease by giving Snowcap's notice to the City that the Lease is terminated. The City may, however, at its election, apply the proceeds of any insurance obtained by Snowcap for this purpose, to repair the damaged improvements. If insurance proceeds are not sufficient to fully restore improvements, then the City may, instead of repairing, retain the proceeds.

#### **SECTION XVI. HAZARDOUS SUBSTANCES**

Snowcap shall not use, store, generate, treat, transport, or dispose of any hazardous substances on the Property except for the use and storage of chemicals and materials such as petroleum-based products used in normal reservoir operations. The terms "hazardous substances" shall mean any substance defined, regulated, or banned by federal, state, or local laws or regulations which might result in liabilities or responsibilities under CERCLA, RCRA,



the Clean Water Act, the Federal Water Pollution Control Act, or any other federal or state environmental protection statutes, laws, or regulations. Snowcap's use and storage of chemicals and materials such as petroleum-based products or any other product used in reservoir operations shall be in conformance with all manufacturer's instructions and all applicable federal state and local laws and regulations. Snowcap shall not dispose of such materials on the Property.

**SECTION XVII.  
NO PARTNERSHIP**

It is expressly agreed that this Lease is a lease and not the formation or creation of a partnership or joint venture and the City shall not be or become responsible for any debts contracted or imposed by Snowcap.

**SECTION XVIII.  
NOTICES**

All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or Express mail, postage prepaid, personally by hand or courier service, as follows:

To the City:  
City of Grand Junction  
Utilities Director  
333 West Avenue  
Building E  
Grand Junction, Colorado 81501

With Copy to:  
City of Grand Junction  
City Attorney  
250 N. 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

To Snowcap:  
J.E. Stover & Associates, Inc  
Post Office Box 1430  
Palisade, Colorado 81526

With Copy to:  
Hoskin Farina & Kampf, P.C.  
John Justus  
Post Office Box 40  
Grand Junction, Colorado 81502

All notices shall be deemed given: (a) if sent by certified mail, return receipt requested, when the receiving party signs for receipt of the certified mail; (b) if delivered by hand or courier service, when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

**SECTION XIX.  
PARAGRAPH HEADINGS**

The titles to the paragraphs of this Lease are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Lease.

**SECTION TWENTY-ONE  
GOVERNING LAW**

This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue for any action arising out of or under this Lease or the non-performance thereof shall be in the District Court, Mesa County, Colorado. If either party takes steps to enforce this Lease, the party in whose favor this Lease is enforced shall recover costs and attorneys' fees from the other party, whether or not litigation is commenced.

**SECTION XX.  
INUREMENT**

The provisions of this Lease shall not inure to the benefit of the heirs, successors and assigns of the parties hereto. The obligation of the City to proceed with the terms and conditions of this Lease is expressly subject to the Council of the City approving and ratifying this Lease within thirty (30) days of execution of this Lease by the City Manager. If such approval is not obtained within said 30-day period, then this Lease shall be of no force and effect.

**SECTION XXI.  
ADDITIONAL PROVISIONS**

The invalidity of any portion of this Lease shall not affect the validity of any other provision contained herein. In the event any provision of this Lease is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

IN WITNESS WHEREOF, each party to this Lease has caused it to be executed on the date indicated below.

ATTEST:

City of Grand Junction



**Exhibit A**  
**Property Description**

DRAFT

**Exhibit B**  
**Snowcap and VanWinkle Sublease**

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**Exhibit C**  
**Construction Specifications and Construction Plans**

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