

**KENAI PENINSULA BOROUGH
REAL PROPERTY LEASE**

This LEASE (hereinafter called "LEASE"), for good and valuable consideration, and pursuant to Ordinance 2008-____, enacted _____, 2008, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and the KACHEMAK NORDIC SKI CLUB, INC., an Alaska non-profit corporation, whose address is P.O. Box 44, Homer, Alaska 99603 (hereinafter called "LESSEE").

I. DESCRIPTION OF REAL PROPERTY

This LEASE grants LESSEE use of the real property (hereinafter called "PROPERTY") described as follows:

T5S, R13W, Section 27, S.M., Alaska, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, lying south of Ohlson Mountain Road, containing approximately 9.70 acres. (Portion of Parcel No. 171-131-31)

T5S, R13W, Section 34, S.M., Alaska, NW $\frac{1}{4}$ NE $\frac{1}{4}$, containing approximately 40.00 acres. (Parcel No. 171-131-18)

T5S, R13W, Section 34, S.M., Alaska, SW $\frac{1}{4}$ NE $\frac{1}{4}$, containing approximately 40.00 acres. (Parcel No. 171-131-21)

II. PURPOSE OF LEASE

Pursuant to Ordinance 2008-____ the purpose of this lease is for the development, management, and maintenance (hereinafter called "ACTIVITIES") of the Lookout Mountain Trail System for the benefit of the KPB School District's use and events, club events, and public use and events, generally. First priority use of the trails shall be to Kenai Peninsula Borough School District sanctioned activities. The allowed uses and events shall include running, walking, hiking, orienteering, biking, winter cross-country skiing, biathlons, in conformance with the maintenance, development, and management of the LESSEE's Development Plan (attached), and other uses approved by the KPB.

Development Plan

The LESSEE's Development Plan is conceptual in nature. Notice to proceed with any

and all aspects of the Development Plan shall be approved in writing by the KPB Mayor.

- a. Modification of Development Plan. The Development Plan may be modified by mutual agreement as necessary. Modifications of LESSEE's development plan may be made through the written approval of the KPB Mayor. A modified development plan shall be submitted by LESSEE to KPB in writing at least 60 days prior to anticipated modification of activities. Approved modifications shall be attached to this lease and effective upon the Mayor's written approval.
- b. Special Requirements. The KPB may impose special requirements under this LEASE as it deems reasonable and necessary to advance the public's best interest.

In addition, LESSEE shall:

1. Coordinate and schedule events
2. Develop and distribute to requesting public/private event holders, special event permit applications.
3. Establish and collect application/user fees for non-KPB/KPBSD sanctioned events. Any application/user fees retained by the LESSEE should be reasonably calculated to cover direct expenses of such events.
4. Issue special events use permits to qualifying user groups.
5. Assess trail conditions prior to use and restrict use if conditions are unsafe or would potentially cause damage to any trail.

III. RECITALS AND RIGHTS RESERVED TO KPB

1. Pursuant to KPB Resolution 2008-___ the majority of the PROPERTY is [classified Recreational with 10 acres classified as Residential](#). The LESSEE realizes that the future long-term use of said 10 acres is for residential development. With 30 days prior notice the KPB reserves the right to delete portions of the PROPERTY from the lease for KPB or KPBSD purposes.
2. Nothing contained herein creates or implies any additional property interests, including easements or right-of-ways in the PROPERTY beyond the terms and conditions of this LEASE.
3. The KPB reserves the right to require trails to be removed by the LESSEE.
4. The LESSEE shall promulgate all trail use rules and conditions, subject to review and approval by the KPB.
5. LESSEE shall not develop beyond what is specified in the development plan, unless approved in writing by KPB.
6. The KPB reserves the right to review and approve any management actions that affect trail use or development of the PROPERTY.
7. KPB reserves the right to authorize other land uses on the PROPERTY.

IV. TERMS AND CONDITIONS

1. Lease Term. This lease is for term of ten (10) years commencing _____, 2008 and terminating _____, 2018.
2. Lease Rental. Pursuant to KPB Ordinance 2008-___ the lease rental is \$1.00/year and due in advance.
3. Defense and Indemnification.

The LESSEE shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from LESSEE 's performance or failure to perform in accord with the terms of this permit in any way whatsoever. The LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE 's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.
4. Liability Insurance. LESSEE shall purchase at its own expense and maintain in force at all times during the term of this lease the following insurance policies:

Commercial General Liability and Automobile Insurance. Policy to include bodily injury, personal injury, and property damage with respect to the property and the ACTIVITIES conducted by LESSEE in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by KPB. The policy purchased shall name KPB as an additional insured with respect to the ACTIVITIES conducted on the property.

Proof of Insurance: LESSEE shall deliver to KPB certificates of insurance. This insurance shall be primary and exclusive of any other insurance held by KPB. Failure to provide the certificate of insurance as required by this section, or a lapse in coverage, is a material breach of the lease terms entitling KPB to revoke the lease.
5. Special Event Insurance. LESSEE or any third party conducting events on the PROPERTY shall provide minimum of \$1,000,000.00 liability insurance for each event with the Kenai Peninsula Borough named as an additional insured on each such policy.

- 6 Waste. LESSEE shall not commit waste or injury upon the lands leased herein.
- 7 Fire Protection. LESSEE shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- 8 Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition. LESSEE is responsible for the safety of all persons conducting activities on the property under this lease. LESSEE agrees to provide the public with information regarding rules and regulations and other information pertaining to the property and the lease.
- 9 Sanitation. LESSEE shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environment Conservation regulations.
- 10 Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

LESSEE shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, LESSEE shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

11. Compliance With Laws. The LESSEE agrees to comply with all applicable federal, state, borough, and local laws and regulations.
12. Storm Water Pollution Prevention Plan
LESSEE shall be responsible to comply with all the necessary requirements of the National Pollutant Discharge Elimination System (NPDES) for storm water pollution prevention per the Clean Water Act 33USC1251, including, the application for a permit, plan and drawing preparation, filing, reporting, site inspections, installation and maintenance of best management practices, sampling, monitoring, storm water management, costs, expenses, penalties, and fines.
13. Easements and Rights-of-Way. This Lease is subject to all easements, rights-of-way, covenants and restrictions of which LESSEE has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the property, it is agreed and understood that LESSEE shall receive no damages for such grant.

As established by AS 38.05, KPB lands sold or leased may be subject to a minimum fifty-foot public access easement landward from the ordinary high water mark or mean high water mark.

14. Inspections. LESSEE shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time,

with or without advance notice to LESSEE, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.

15. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
16. Assignments. LESSEE may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the terms and conditions of this lease and applicable laws and regulations.
17. Cancellation. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the LESSEE and either the KPB Mayor or Planning Director when applicable.

This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

KPB may cancel the lease by means of a thirty (30) day written notice if the lease activities interfere with other on-site activities such as the 10 acre parcel classified as Residential by Resolution 2008-___ or if the KPB must conduct work that requires the site to be vacated.

Lease lands shall be utilized for the purposes of the development, management, and maintenance of the Lookout Mountain Trail System within the scope of the terms and conditions of the lease and in conformity with the lessee's development plan, applicable classification, and any land use of comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease and will become subject to cancellation.

Failure on the part of the lessee to substantially complete the development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation.

18. Termination. Upon termination of this Lease, LESSEE covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of Paragraph 23 below. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this Lease. Subject to the following, in the event of LESSEE's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may cancel this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the contract is in default.

In the event LESSEE breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without notice to LESSEE prior to the effective date of the termination.

19. Violation. Violation of any of the terms of this lease may expose LESSEE to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
20. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
21. Entry or Re-entry. In the event that the Lease is terminated, canceled, or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the LESSEE during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.
22. Removal or Reversion of Improvements Upon Termination of Lease.

Improvements on the property owned by LESSEE shall, within thirty (30) calendar days after the termination of the agreement, be removed by LESSEE; provided such removal will not cause injury or damage to the land; and further provided that the Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. The

LESSEE may dispose of its improvements to a succeeding lessee with the consent of the KPB mayor.

If any improvements and/or chattels that are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the LESSEE shall convey said improvements and/or chattels by appropriate instrument to KPB.

23. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the LESSEE or placed on the land during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle KPB to charge a reasonable rent therefor.
24. Resale. In the event that this Lease agreement should be terminated, canceled, forfeited, or abandoned, KPB may offer said lands for sale, lease, or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations.
25. Notice. Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR
KENAI PENINSULA BOROUGH
Planning Director
144 N. Binkley
Soldotna, AK 99669-7520

LESSEE
Kachemak Nordic Ski Club, Inc.
P.O. Box 44
Homer, AK 99603

26. Responsibility of Location. It shall be the responsibility of the LESSEE to properly locate its self and its improvements on the leased lands.
27. Liens and Mortgages. LESSEE shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease. In the event that any prohibited lien is placed against the property, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys fees.

For the purpose of interim financing or refinancing of the improvements to be placed upon the leased premises, and for no other purpose, a lessee may, upon written approval of the KPB, encumber by mortgage, deed of trust, assignment or other appropriate instrument, the lessee's interest in the leased premises and in and to the lease, provided said encumbrance pertains only to the leasehold interest.

28. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by LESSEE, or of any default on the part of the LESSEE in observance or performance of any of the conditions or covenants of this agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.
29. Jurisdiction. Any suits filed in connection with the terms and conditions of this Lease, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law.
30. Savings Clause. Should any provision of this Lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Lease or constitute any cause of action in favor of either party as against the other.
31. Binding Effect. It is agreed that all covenants, terms, and conditions of this agreement shall be binding upon the successors, heirs and assigns of the original parties hereto.
32. Full and Final Agreement. This agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This agreement may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. LESSEE avers and warrants that no representations not contained within this agreement have been made with the intention of inducing execution of this agreement.

33. Warranty of Authority. LESSEE warrants that the person executing this agreement is authorized to do so on behalf of Kachemak Nordic Ski Club, Inc.

KENAI PENINSULA BOROUGH

John J. Williams, Mayor
Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Sherry Biggs
Borough Clerk

Holly B. Montague
Deputy Borough Attorney

KACHEMAK NORDIC SKI CLUB, INC.

Allan Phelps, President
Kachemak Nordic Ski Club, Inc.

_____,
Kachemak Nordic Ski Club, Inc

Dated: _____

Dated: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____day of _____, 2008, by John J. Williams, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2008, by Allan Phelps, President of the Kachemak Nordic Ski Club, Inc., an Alaska Nonprofit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2008, by _____, _____ of the Kachemak Nordic Ski Club, Inc., an Alaska Nonprofit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____