

1 RECREATIONAL USE AGREEMENT

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3 RECREATIONAL USE AGREEMENT ("Agreement") dated as of _____, 201__,
4 between the CITY OF HOMER, an Alaska municipal corporation ("City"), and SOUTH
5 PENINSULA LITTLE LEAGUE, INC., an Alaska nonprofit corporation ("Permittee").
6

7 RECITALS

8
9 WHEREAS, City owns certain property commonly known as Karen Hornaday Park, and
10 described as:

11
12 SW1/4 SE1/4 Section 18 Township 6S Range 13W, excluding South Peninsula
13 Hospital Subdivision 2008 Addition, Kenai Peninsula Borough Parcel No.
14 17504023; and
15

16 WHEREAS, a part of Karen Hornaday Park has been developed with ball fields and a
17 parking area; and
18

19 WHEREAS, the use of the ball fields in Karen Hornaday Park for Little League games
20 and practice provides an valuable recreation resource to the youth of the Homer community;
21 and
22

23 WHEREAS, City owns certain property commonly known as the HERC 2 or Public
24 Works Maintenance Building at Tract 2, Homer School Survey 1999 City Addn HM 2000022;
25 and
26

27 WHEREAS, The HERC 2 building is used to store Permittee Equipment and for
28 meetings; and
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30 WHEREAS, Permittee desires to continue to conduct Little League games and practice
31 at the ball fields in Karen Hornaday Park, and City agrees that Permittee should be permitted
32 to do so under the terms and conditions of this Agreement.
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34 NOW, THEREFORE, in consideration of the matters recited above, and the mutual
35 covenants herein, the parties agree as follows:
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37 ARTICLE 1. DEFINITIONS AND ATTACHMENTS

38
39 1.01 Definitions. As used herein, the term:
40

41 (a) "Complete" and "Completion" mean, with regard to an improvement, that
42 construction of the improvement is finished and the improvement is fully operational and

ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(b) "Council" means the City Council of the City of Homer, Alaska.

(c) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(d) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Permittee.

(e) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(f) "City" means the City of Homer, Alaska.

(g) "Property" is defined in Section 2.01.

(h) "Required Improvements" is defined in Section 5.02.

(i) "Permittee" means South Peninsula Little League, Inc.

(j) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit "A" Legal Description of Property

Exhibit "B" Site Plan

Exhibit "C" Certificates of Insurance

ARTICLE 2. THE PROPERTY

2.01 License for Use of Property. Subject to the terms and conditions of this Agreement, City grants to Permittee and Permittee accepts from City a revocable, non-exclusive license to use the following described property ("Property"):

That part of the SW1/4 SE1/4 Section 18 Township 6S Range 13W, excluding South Peninsula Hospital Subdivision 2008 Addition, Homer Recording District, Third Judicial District, State of Alaska, also known as Kenai Peninsula Borough Parcel No. 17504023, that has been developed with ball fields and a parking area as depicted on Exhibit A, containing 7 acres, more or less, plus the improvements thereon, including without limitation three ball fields, a snack shack, storage connex, and batting cage;

Additionally, HERC 2 or Public Works Maintenance Building on Tract 2, Homer School Survey 1999 City Addn HM 2000022, that has the smaller of the old school buildings, where the Permittee stores equipment and holds meetings;

This Agreement does not grant Permittee any real property interest in the Property. This Agreement is issued to allow Permittee to use the Property only for the purposes authorized in this Agreement or approved in writing by City. The City reserves the right to permit other uses of the Property.

2.02 Property Accepted "As Is." Permittee has inspected the Property, has made its own determination as to the suitability of the Property for Permittee's intended use, and accepts the Property "AS IS." City, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the fitness of the Property for any particular purpose, including those uses authorized by this Agreement, or subsurface and soil conditions, including the presence of any Hazardous Substance.

ARTICLE 3. TERM

3.01 Agreement Term; Termination. The term of this Agreement is _____ years, commencing on _____ 2019, and ending on _____, 2021 ("Term"). The Term is subject to termination by either party, with or without cause, at any time.

3.02 Permit Renewal. Permittee acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term. Not less than 3 months before the expiration of the Term, Permittee may apply to City for a renewal of this Permit in the manner that a person then would apply for a new permit to use the Property. In response to a timely application, the Council will determine whether to

renew this Agreement, and the term of any renewal, at its sole discretion. The Council is under no obligation to renew this Agreement, or to renew this Agreement for the term that Permittee requests. If the Council does not grant a timely renewal of this Agreement, Tenant shall prepare to surrender possession of the Property as required by Section 3.03, and dispose of improvements on the Property as required by Section 5.05.

3.03 Surrender of Possession. Upon the expiration or earlier termination of the Term, Permittee shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property of Permittee, and all other personal property that was not present on the Property at the commencement of the Term. If Permittee fails to surrender the Property in the required condition, City may (i) restore the Property to such condition and Permittee shall pay the cost thereof on demand; and (ii) at its option retain any personal property remaining on the Property, which shall become property of the City, or dispose of such personal property without obligation to Permittee.

3.04 Holding Over. Permittee's continuing in possession of the Property after the expiration or earlier termination of the Term will not renew or extend this Agreement and will not give Permittee any rights in or to the Property.

ARTICLE 4. PERMIT FEE, TAXES, ASSESSMENTS AND UTILITIES

4.01 Permit Fee. City will not charge Permittee any fee for Permittee's use of the Property under this Agreement.

4.02 Utility Charges. City shall pay all charges for utility and other services required for its use of the Property under this Agreement, including without limitation ball field mowing, electric, water, sewer, snow removal and refuse removal. City shall be solely responsible for the cost of utility connections.

ARTICLE 5. USE AND IMPROVEMENT OF PROPERTY

5.01 Use of Property. Permittee shall use and maintain the Property during the months of May, June, July, and August for Little League baseball games, practice, and events associated with league activities. Field use is anticipated to be greatest from May until early July, from 4 pm to 10:30 pm, Monday through Saturday. An extended season into August is possible due to clinics and playoff games. Permittee shall not use or improve the Property for any purpose or in any manner other than as described above without City's written consent, which consent City may withhold in its sole discretion. Permittee is not responsible for other park users not affiliated with Little League.

166 5.02 Required Improvements. Permittee shall, at Permittee's sole expense, construct,
167 and at all times during the Term keep and maintain on the Property the following
168 improvements ("Required Improvements"):

- 169
- 170
- 171 -Bases, base anchors, baselines, and infield.
- 172 -Dugouts
- 173 -Storage units
- 174

175

176 The Required Improvements also are depicted in the site plan in Exhibit B. Permittee shall
177 commence construction of the Required Improvements within one year after the date of
178 commencement of the Term, prosecute the construction of the Required Improvements with
179 diligence, and Complete construction within one additional year.

180 5.03 Construction Prerequisites. Permittee may not commence any construction on
181 the Property, including without limitation construction of the Required Improvements,
182 without first satisfying the following conditions:

183

184 (a) Not less than 30 days before commencing construction, Permittee shall submit to
185 City preliminary plans and specifications, and an application for a City of Homer zoning permit,
186 for the construction, showing the layout of proposed improvements, ingress and egress,
187 dimensions and locations of utilities, drainage plans, and any other information required for
188 the zoning permit or other required permits. The preliminary plans and specifications are
189 **subject to City's approval, which will not be unreasonably withheld.** City shall communicate
190 approval or disapproval in the manner provided for notices, accompanying any disapproval
191 with a statement of the grounds therefor. Permittee shall be responsible for complying with
192 all laws governing the construction, **notwithstanding City's approval of preliminary plans and**
193 **specifications under this paragraph.**

194

195 (b) Not less than five days before commencing construction, Permittee shall deliver to
196 City one complete set of final working plans and specifications as approved by the
197 governmental agencies whose approval is required for Permittee to commence construction.
198 The final working plans and specifications shall conform substantially to the preliminary plans
199 and specifications previously approved by City, subject to changes made to comply with
200 suggestions, requests or requirements of a governmental agency or official in connection with
201 the application for permit or approval.

202

203 (c) Not less than five days before commencing construction, Permittee shall give City
204 written notice of its intent to commence construction, and furnish to City with proof that all
205 applicable federal, state and local permits required for the construction have been obtained.

207 5.04 Extensions of Time for Completion of Required Improvements. City shall grant
208 an extension of the time to Complete the Required Improvements for a period of time equal to
209 **the duration of an Excusable Delay, upon Permittee's written request describing the nature of**
210 the Excusable Delay, provided Permittee has commenced construction in a timely manner and
211 is proceeding diligently to Complete construction.

212
213 5.05 Disposition of Improvements at End of Term.
214

215 (a) At the expiration of the Term Permittee shall leave in place on the Property all
216 improvements designated in Exhibit B for transfer to City and retention on the Property at the
217 expiration of the Term. Permittee shall leave such improvements intact with all components
218 in good condition and ready for use or occupancy. Permittee shall execute, acknowledge and
219 deliver to City a proper instrument in writing, releasing and quitclaiming to City all of
220 **Permittee's interest in such improvements. Except for improvements that Permittee is**
221 required to leave on the Property, Permittee shall remove any improvements constructed by
222 Permittee or other occupants of the Property under this Agreement before the expiration of
223 the Term.

224
225 (b) Permittee shall notify City before commencing the removal of an improvement as
226 required by subsection (a) of this section, and coordinate the removal work with City. Once
227 Permittee commences the removal work, Permittee shall execute the removal with reasonable
228 diligence to Completion and shall repair all damages to the Property caused by such removal
229 no later than the expiration of the Term, in accordance with a site restoration plan approved
230 by the City. All salvage resulting from such work will belong to Permittee, who is responsible
231 for its removal and lawful disposal.

232
233 (c) If Permittee fails to remove any improvements from the Property that Permittee is
234 required to remove under subsection (a) of this section, Permittee shall pay City the costs that
235 it incurs in removing and disposing of the improvements and repairing damages to the
236 Property caused by such removal.

237
238
239 ARTICLE 6. CARE AND USE OF THE PROPERTY
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241 6.01 Maintenance of the Property.
242

243 (a) Permittee at its own cost and expense shall keep the ball fields and all Little
244 League storage buildings and batting cage and improvements that at any time may be situated
245 thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

246
247 (b) Without limiting the generality of subsection (a) of this section, Permittee shall
248 maintain the Property and ensure that the Property complies with all applicable health and

safety standards. Permittee's maintenance responsibilities shall include without limitation:

- (i) repairing infield/outfield divots or damages,
- (ii) watering the sporting fields,
- (iii.) performing minor fence repairs, and
- (iv) performing routine litter pick up and disposal on Park Property after all games and events.
- (v) Inspecting the batting cage for snagging hazards or other safety concerns
- (vi) Inspecting dugouts and other wooden structures for nails or other snagging or puncture hazards.

(c) City may close the Property on a daily basis if needed to control vandalism or inappropriate off-hours usage. The Property is not maintained in the winter by the City. The City shall provide Permittee with keys to the Property at the beginning of each season of its occupancy of the Property, but Permittee must return all sets of keys provided to Permittee at the end of the season. City shall provide waste receptacles for garbage during the summer months and shall empty these receptacles as needed **but Permittee shall enforce the "leave no trace behind" principle with participants and spectators at its activities on the Property.** The City shall provide public restrooms. Permittee may provide additional portable toilets, generators, water holding tanks and storage units as needed at its own expense.

(d) City shall provide mowing services on the fields.

(e) City shall provide major fence repairs such as chain link patching.

6.02 Nuisances Prohibited. Permittee while present on site shall keep the Property in a clean, orderly and sanitary condition. Permittee shall not use the Property in any manner **that will constitute waste or a nuisance. City, at Permittee's expense and without any liability** to Permittee, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Permittee, or after four hours notice to Permittee in writing, by telephone, facsimile or in person if City finds that such removal or abatement is required to prevent imminent harm to public health, safety or welfare. Permittee shall pay City all the costs of such removal. This section does not limit or waive any other remedy available to the City of Homer to abate any nuisance or for the violation of the Homer City Code.

6.03 Supervision of Property Use.

(a) On or before each May 15 during the term of this Agreement, Permittee shall develop a schedule of games and events to occur on the Property during its next period of occupancy of the Property, including without limitation adult and youth baseball games and practices

and baseball tournaments and clinics. Permittee shall consult with the City before undertaking major maintenance or improvement of the Property or Permittee's facilities, including informing the City regarding its planned use of donated labor and materials.

(b) Permittee shall supervise use of the parking lots before during and after its activities on the Property to ensure that the Property and City parking procedures are used and the parking lots are properly maintained. Permittee shall notify all participants of the inherent risks of parking near the sports fields and inform these participants of the risk assumed by the participant when he or she utilizes the parking lots.

(c) Permittee may store equipment on the Property and provide other user groups with access to its equipment storage facilities.

(d) Permittee may also store equipment in one upstairs classroom, and hold board meetings in one downstairs classroom of the HERC 2 building located at 450 Sterling Highway.

(i) Permittee shall be issued keys and will be responsible for providing the names and contact information for each key holder to the City.

(ii) Children in facility must be under direct supervision by an adult.

(iii) Permittee shall ensure that the building is secure during and after occupation.

(iv) Permittee may not provide HERC 2 building access to any other user groups.

(vi) City reserves the right to require removal of all storage items with 30 days notice, and the return of all building keys.

6.04 Hours of Operation. Permittee may use the Property, and invite members of the public onto the Property, only during the hours that City has made the Property open to the public. Permittee shall take such measures to close the field access roads to vehicles by locking the chains when daily Little League activities have concluded.

6.05 Compliance with Laws. Permittee's improvement and use of the Property shall comply with all governmental statutes, ordinances, rules and regulations, including without limitation the City of Homer Zoning Code and all applicable building codes, now or hereafter in effect.

6.06 Liens. Permittee may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Permittee shall cause the same to be removed; provided that Permittee may in good faith and at Permittee's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Permittee has furnished the bond required in AS 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect

of such a lien claim). Permittee shall indemnify and save City harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by City in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

6.07 Access Rights of City. City's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Agreement, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

ARTICLE 7. ASSIGNMENT

7.01 Consent Required for Assignment. Permittee shall not assign its interest in this Agreement or in the Property without first obtaining the written consent of City, which City may grant or withhold in its sole discretion. No consent to any assignment waives Permittee's obligation to obtain City's consent to any subsequent assignment. An assignment of this Agreement shall require the assignee to assume Permittee's obligations hereunder, and shall not release Permittee from liability hereunder unless City specifically so provides in writing.

7.02. Costs of City's Consent to be Borne by Permittee. As a condition to City's consent to any assignment under section 7.01, Permittee shall pay City's reasonable costs, including without limitation attorney's fees and the expenses of due diligence inquiries, incurred in connection with any request by Permittee for City's consent to the assignment.

ARTICLE 8. LIABILITY, INDEMNITY AND INSURANCE

8.01 Limitation of City Liability. City, its officers and employees shall not be liable to Permittee for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of City, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

8.02 Indemnity Generally. Permittee shall indemnify, defend, and hold harmless City, its officers and employees from all claims arising from death or injury of any person or damage to any property occurring in or about the Property; however, this provision shall not apply to any claim to the extent the claim arises from the sole negligence or willful misconduct of City, its officers and employees.

8.03 Insurance Requirements.

(a) Without limiting Permittee's obligations to indemnify under this Agreement, Permittee at its own expense shall maintain in force such policies of insurance with a carrier or carriers reasonably satisfactory to City and authorized to conduct business in the state of Alaska, as City may reasonably determine are required to protect City from liability arising from Permittee's activities under this Agreement. City's insurance requirements shall specify the minimum acceptable coverage and limits, and if Permittee's policy contains broader coverage or higher limits, City shall be entitled to such coverage to the extent of such higher limits.

(b) Permittee shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Permittee's obligations to indemnify under this Agreement.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of City.

(c) Permittee shall furnish City with certificates evidencing the required insurance not later than the date as of which this Agreement requires the insurance to be in effect. The certificates of insurance shall be attached hereto as Exhibit C. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to City. City shall be named as an additional insured under all policies of liability insurance required of Permittee. City's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Agreement.

ARTICLE 9. ENVIRONMENTAL MATTERS

9.01 Use of Hazardous Substances. Permittee shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Permittee's authorized uses of the Property stated in Section 5.01, and only in compliance with

all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

9.02 Prevention of Releases. Permittee shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Permittee or any of its agents, employees, volunteers, contractors, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

9.03 Compliance with Environmental Laws. Permittee at all times and in all respects shall comply, and will use its best efforts to cause all of its agents, employees, volunteers, contractors, invitees or other users or occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Permittee shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Permittee will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

9.04 Notice. Permittee shall promptly give City (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Permittee obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Permittee or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Permittee obtains regarding the release or discovery of Hazardous Substances on the Property.

9.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Permittee shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

459
460 9.06 Indemnification. Subject to Section 9.09, Permittee shall indemnify, defend, and
461 hold harmless City, its officers and employees from and against any and all claims,
462 disbursements, demands, damages (including but not limited to consequential, indirect or
463 punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings
464 **and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and**
465 including without limitation remedial, removal, response, abatement, cleanup, legal,
466 investigative and monitoring costs), imposed against City, arising directly or indirectly from or
467 out of, or in any way connected with (i) the failure of Permittee to comply with its obligations
468 under this Article; (ii) any activities on the Property during Permittee's past, present or future
469 possession or control of the Property which directly or indirectly resulted in the Property being
470 contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the
471 Property whose presence was caused during the possession or control of the Property by
472 Permittee; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or
473 harm of any type to any person or damage to any property arising out of or relating to
474 Hazardous Substances on the Property or from the Property on any other property. The
475 liabilities, losses, claims, damages, and expenses for which City is indemnified under this
476 section shall be reimbursable to City as and when the obligation of City to make payments with
477 respect thereto are incurred, without any requirement of waiting for the ultimate outcome of
478 any litigation, claim or other proceeding, and Permittee shall pay such liability, losses, claims,
479 damages and expenses to City as so incurred within 10 days after notice from City itemizing in
480 reasonable detail the amounts incurred (provided that no itemization of costs and expenses of
481 counsel to City is required where, in the determination of City, such itemization could be
482 deemed a waiver of attorney-client privilege).

483
484 9.07 Survival of Obligations. The obligations of Permittee in this Article, including
485 without limitation the indemnity provided for in Section 9.06, are separate and distinct
486 obligations from Permittee's obligations otherwise provided for herein and shall continue in
487 effect after the expiration of the Term and any Renewal Term.

488 9.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the
489 rights or claims of Permittee against any person other than City with respect to the presence
490 of Hazardous Substances as set forth above.

491 **9.09 Extent of Permittee's Obligations.** Permittee's obligations under this Article
492 apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or
493 during any time of Permittee's possession or occupancy of the Property prior to or after the
494 Term of this Agreement; or (ii) are proximately caused in whole or in part by the occupancy of,
495 use of, operations on, or actions on or arising out of the Property by Permittee or its employees,
496 agents, customers, invitees or contractors.

497 498 ARTICLE 12. GENERAL PROVISIONS 499

500 12.01 Authority. Permittee represents and warrants that it has complete and
501 unconditional authority to enter into this Agreement; this Agreement has been duly authorized
502 by Permittee's governing body; this Agreement is a binding and enforceable agreement of and
503 against Permittee; and the person executing the Agreement on Permittee's behalf is duly and
504 properly authorized to do so.

505
506 12.02 Notices.

507
508 (a) All notices, demands or requests from one party to another shall be delivered in
509 person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight
510 air courier service, or (iii) electronic mail (accompanied by reasonable evidence of receipt of
511 the transmission and with a confirmation copy mailed by first class mail no later than the day
512 after transmission).

513
514 (b) From and after the signing of this Agreement, Permittee at all times shall maintain
515 on file with City the names, mailing addresses, telephone numbers and email addresses of two
516 individuals with authority to receive notices on behalf of Permittee under this Agreement.

517
518 (c) All notices to City under this Agreement shall be addressed to the following:

519
520 City Manager
521 City of Homer
522 491 East Pioneer Avenue
523 Homer, Alaska 99603
524 Facsimile: (907) 235-3148
525 Email: _____

526
527 12.03 Time. Time is of the essence of each provision of this Agreement. The time in
528 which any act provided by this Agreement is to be done is computed by excluding the first day
529 and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also
530 excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

531
532 12.04 Interpretation. Each party hereto has been afforded the opportunity to consult
533 with counsel of its choice before entering into this Agreement. The language in this Agreement
534 shall in all cases be simply construed according to its fair meaning and not for or against either
535 party as the drafter thereof.

536
537 12.05 Captions. The captions or headings in this Agreement are for convenience only
538 and in no way define, limit or describe the scope or intent of any provision of this Agreement.

539
540 12.06 Independent Contractor Status. City and Permittee are independent
541 contractors under this Agreement, and nothing herein shall be construed to create a

partnership, joint venture, or agency relationship between City and Permittee. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

12.07 Parties Interested Herein. Nothing in this Agreement, express or implied, is intended or shall be construed to give to any person other than City and Permittee any right, remedy or claim, legal or equitable, under or by reason of this Agreement. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of City and Permittee, and their permitted successors and assigns.

12.08 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of City and Permittee, and shall inure to the benefit of the permitted successors and assigns of City and Permittee.

12.09 Waiver. No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Agreement. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

12.10 Attorney's Fees. In the event of litigation between City and Permittee concerning enforcement of any right or obligation under this Agreement, the non-prevailing party shall reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

12.11 Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

12.12 Entire Agreement, Amendment. This Agreement constitutes the entire and integrated agreement between City and Permittee concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of City shall bind City or be enforceable by Permittee unless specifically set forth in this Agreement. This Agreement may be amended only by written instrument executed and acknowledged by both City and Permittee.

584 12.13 Governing Law and Venue. This Agreement will be governed by, construed and
585 enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between
586 the parties in relation to or in connection with this Agreement, or for the breach thereof, shall
587 be brought in the trial courts of the State of Alaska for the Third Judicial District at Homer.

588
589 12.14 Execution in Counterparts. This Agreement may be executed in two or more
590 counterparts, each of which shall be an original and all of which together shall constitute one
591 and the same document.

592
593 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set
594 forth above.

595
596 CITY OF HOMER

597
598
599 By: _____
600 Mary K. Koester, City Manager

By: _____
(name/title)

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EXHIBIT A
LOCATION OF PROPERTY
(Section 2.01)



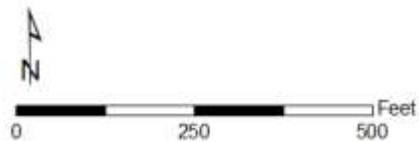
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EXHIBIT B
SITE PLAN
(Section 6.02)



DRAFT Exhibit B



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EXHIBIT C
CERTIFICATES OF INSURANCE
(Section 9.04(d))