

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 24-066

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
APPROVING A RECREATIONAL USE AGREEMENT BETWEEN THE
CITY OF HOMER AND THE KACHEMAK NORDIC SKI CLUB
REGARDING THE MAINTENANCE AND OPERATION OF NORDIC SKI
TRAILS ON THREE CITY OWNED PROPERTIES IN THE BAYCREST
SKI AREA INCLUDING CONSTRUCTION OF AN EQUIPMENT SHED
AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND
EXECUTE THE APPROPRIATE DOCUMENTS.

WHEREAS, The Kachemak Nordic Ski Club (KNSC) is a non-profit corporation which has
been constructing, maintaining, and operating Nordic ski trails on public and private lands for
many years; and

WHEREAS, KNSC maintains a network of trails on public and private lands in the
Diamond Creek Watershed known as the Baycrest Ski Trails; and

WHEREAS, Some of the trails at the Baycrest complex traverse City owned parcels:

173-022-01, T 6S R 14W SEC 9 SEWARD MERIDIAN HM SE1/4 SE1/4 EXCLUDING
THE W1/2 SW1/4 SE1/4 SE1/4, 173-032-29, T 6S R 14W SEC 10 SEWARD MERIDIAN
HM SE1/4 & S1/2 SW1/4 the title to which the City accepted via Ordinance 07-03
and T06 S R 14 W SEC 15 Seward Meridian HM 2011022 Bishop Survey J.G. Evans
Addition Lot 1, also known as Kenai Peninsula Borough Tax Parcel Parcels
17316066 and 17316067; and

WHEREAS, The City and KNSC entered into their first Recreational Use Agreement (RUA)
regarding these trails in the winter of 2008 and has stayed current through 2024 with use
agreements; and

WHEREAS, The City and KNSC wish to enter into a revised RUA to include the City owned
land on Roger's Loop and also for the construction of a equipment shed on the property; and

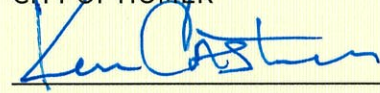
WHEREAS, The Parks, Art, Recreation and Culture Advisory Commission recommended
approval at their May 16, 2024 regular meeting; and

WHEREAS, An RUA between the City and KNSC is in the best interest of the public
because it promotes public-private partnerships, saves tax dollars, enhances recreational and
economic development opportunities, and provides access to public lands for the use and
enjoyment of all.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves a new Memorandum of Agreement between the City of Homer and the Kachemak Nordic Ski Club and authorizes the City Manager to negotiate and execute the appropriate documents.

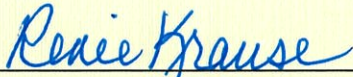
PASSED AND ADOPTED by the Homer City Council this 10th day of June, 2024.

CITY OF HOMER



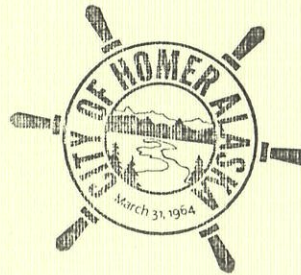
KEN CASTNER, MAYOR

ATTEST:



RENEE KRAUSE, MMC, ACTING CITY CLERK

Fiscal Note: N/A





MEMORANDUM

Resolution 24-066, Approving a Recreation Use Agreement Between the City of Homer and The Kachemak Nordic Ski Club Regarding the Maintenance and Operation of Nordic Ski Trails on Three City Owned Properties in the Baycrest Ski Area including Construction of an Equipment Shed and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager.

Item Type: Action
Prepared For: Mayor Castner and Homer City Council
Thru: Melissa Jacobsen, Interim City Manager
Date: June 4, 2024
From: Julie Engebretsen, Community Development Director

Background Information:

In 2008, the Kachemak Nordic Ski Club (KNSC) began having a formal agreement with the City regarding their use of the City property for the Baycrest Ski Trails. These agreements are typically for five years, with the most recent having been executed in 2022. KNSC would like to build an equipment shed on the City owned property on Rogers Loop. This requires amending their agreement with the City. The amended agreement before Council has two main changes; it allows KNSC to build a shed and includes an additional piece for City land in the Recreational Use Agreement.

Property

The City property on Roger's Loop has not been part of prior agreements with KNSC; those agreements only addressed the two lots with ski trails. This new agreement will include all three of the City properties that KNSC intends to use for trails and one equipment shed.

Shed

The exact dimensions of the shed are still in the design phase, and the project will undergo a life safety review as required by the State Fire Marshal. KNSC also intends to extend power to the building and is working the HEA on cost estimates. Running power may require additional fundraising so construction may happen in a phased manner over two construction seasons.

PARCAC Recommendation

At the May 16, 2024 Parks Art Recreation and Culture Advisory Commission meeting, the Commission made a recommendation to support the proposed Recreational Use Agreement to include the construction of an equipment shed and that staff will work with the attorney to draft a long term land use agreement by unanimous vote.

City Council

June 10, 2024

Staff has worked with the attorney to update the agreement to include the shed and additional lot, and made other minor changes in language. While the length of the agreement was discussed, it was more straightforward to keep the existing agreement language. Essentially Council can approve five-year term renewals through this existing agreement.

Recommendation: Approve the updated Kachemak Nordic Ski Club Recreational Use Agreement to include the construction of an equipment shed and inclusion of the Roger's Loop trailhead property into the agreement.

Attachments:

PARCAC Memo of Support

Memo PARC-24-037



MEMORANDUM

Resolution 24-066, Approving a Recreation Use Agreement Between the City of Homer and The Kachemak Nordic Ski Club Regarding the Maintenance and Operation of Nordic Ski Trails on Three City Owned Properties in the Baycrest Ski Area including Construction of an Equipment Shed and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager.

Item Type: Action
Prepared For: Mayor Castner and Homer City Council
Thru: Melissa Jacobsen, Interim City Manager
Date: May 17, 2024
From: Parks, Art, Recreation & Culture Advisory Commission

Background Information:

In 2008, the Kachemak Nordic Ski Club (KNSC) began having a formal agreement with the City regarding their use of the City property for the Baycrest Ski Trails. These agreements are typically for five years, with the most recent having been executed in 2022.

KNSC would like to build an equipment shed. With the track record of a successful partnership and the Club's investment in this shed, a longer agreement, such as 15 years or more seems appropriate. The Club hopes to begin construction this summer.

At the May 16, 2024 PARCAC meeting, the commissioners approved the recommendation to support the proposed Recreational Use Agreement to include the construction of an equipment shed and that staff will work with the attorney to draft a long term land use agreement by unanimous vote.

Recommendation: Approve the updated Kachemak Nordic Ski Club Recreational Use Agreement to include the construction of an equipment shed.



City of Homer

www.cityofhomer-ak.gov

Planning
491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us
(p) 907-235-3106
(f) 907-235-3118

Memorandum PARC-24-037

TO: PARKS, ART, RECREATION AND ART ADVISORY COMMISSION
FROM: JULIE ENGBRETSSEN, COMMUNITY DEVELOPMENT DIRECTOR
DATE: MAY 16, 2024
SUBJECT: Kachemak Nordic Ski Club Recreational Use Agreement

Requested Action:

- Review the concept plan from the Ski Club for construction of the proposed equipment shed
- Make a recommendation to the City Council

Ski Club members will be making a presentation about the project and be available for Q&A during Visitors on the agenda.

Background

In 2008, the Kachemak Nordic Ski Club (KNSC) began having a formal agreement with the City regarding their use of the City property for the Baycrest Ski Trails. These agreements are typically for five years, with the most recent having been executed in 2022.

Action Requested

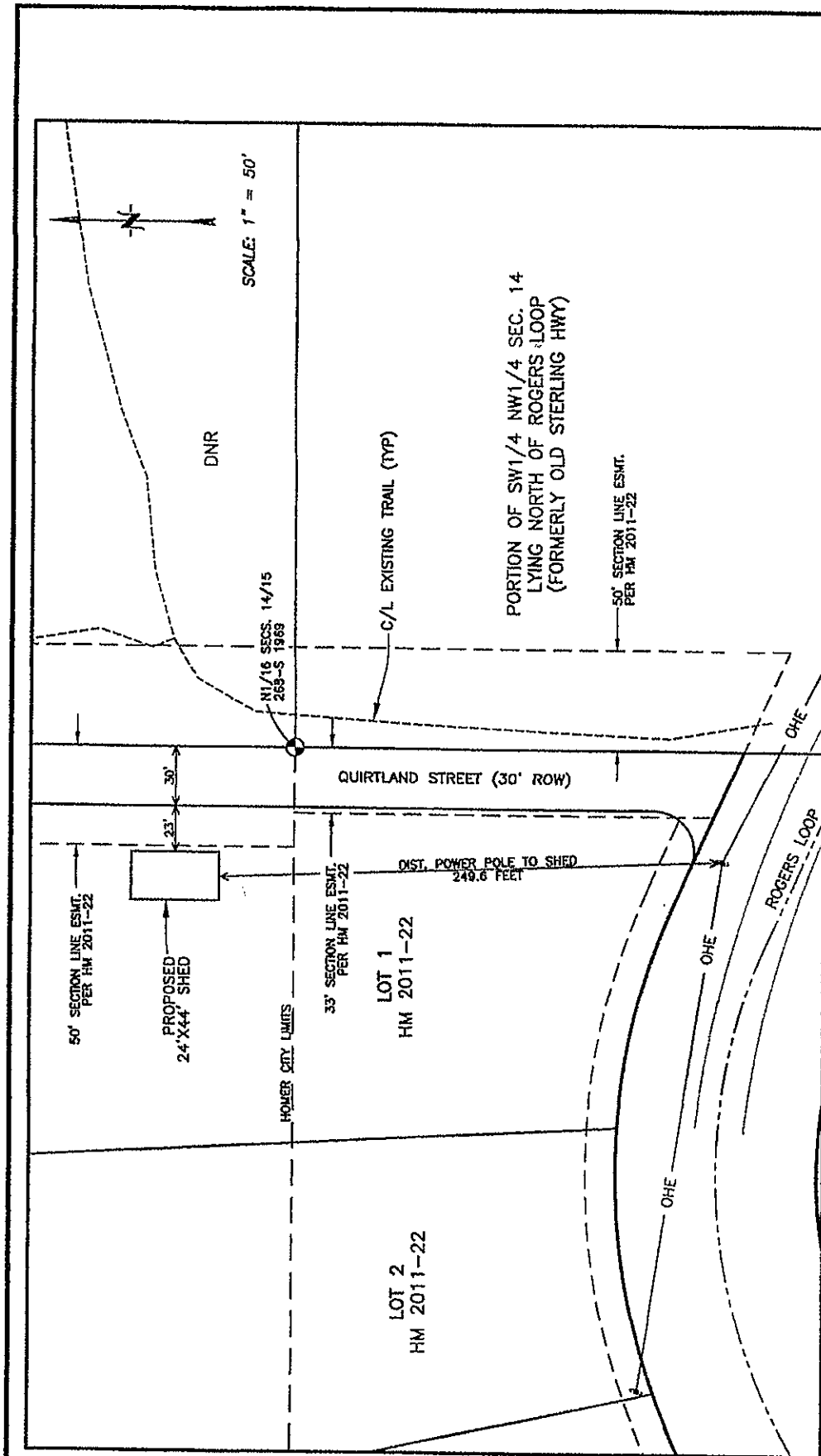
KNSC would like to build an equipment shed. With a recommendation of approval from PARCAC, staff will work with the attorney to draft a long term land use agreement. With the track record of a successful partnership and the Club's investment in this shed, a longer agreement, such as 15 years or more seems appropriate. The Club hopes to begin construction this summer.

Requested Action:

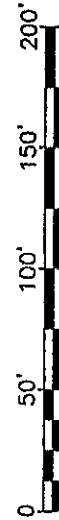
- Review the concept plan from the Ski Club for construction of the proposed equipment shed
- Make a recommendation to the City Council

Attachments

Rogers Loop Trailhead Site Plan
Capital Improvement Plan Page
Resolution 22-034
Memorandum 22-072



MAY 2023



SHEET NO.
1 OF 1

ROGERS LOOP TRAILHEAD
PROPOSED STORAGE SHED
SITE DRAWING
CITY OF HOMER, ALASKA

HOMER TRAILS ALLIANCE
PO BOX 2215
HOMER, ALASKA 99603
www.homertrailsalliance.org

REVISION NO.	DATE	REVISION DESCRIPTION



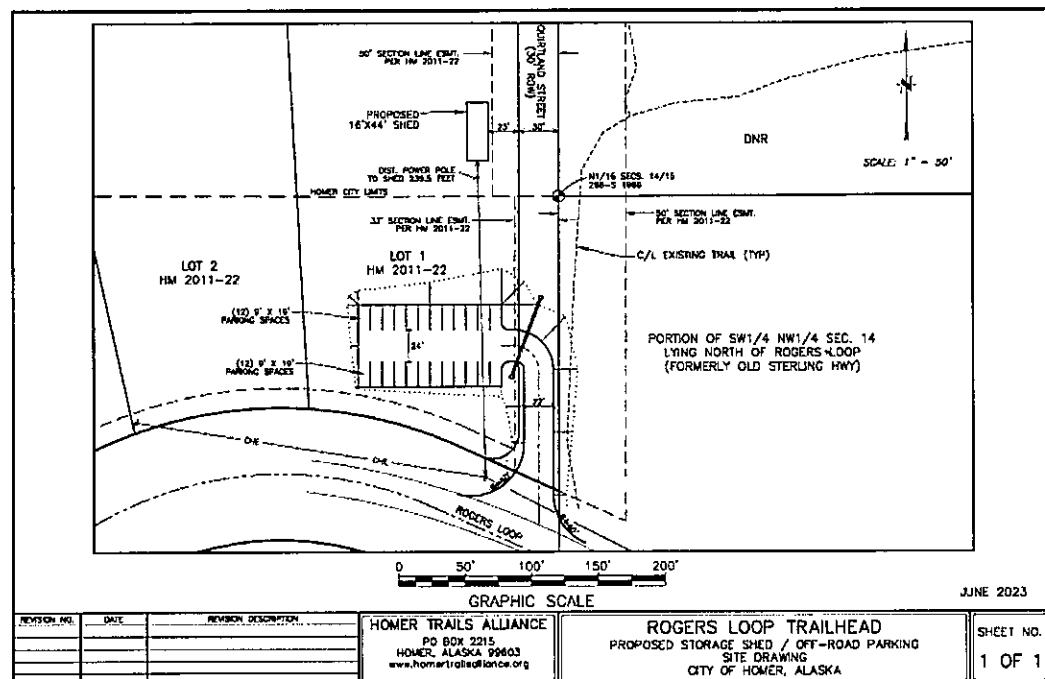
Roger's Loop Trailhead Storage Shed

Project Description and Benefit: This project builds 16 foot by 44 foot shed on a City of Homer owned parcel at the Rogers Loop Trailhead to accommodate Kachemak Nordic Ski Club grooming equipment for lower Baycrest ski trails. Currently the equipment is kept outdoors. General maintenance and machine repairs must occur outside, or the equipment is trailered to a suitable indoor location. This shortens the working lifespan of the equipment, as storage outside does not allow the snow and ice buildup within the machine to melt in-between uses. Sometimes, trails cannot be groomed because of maintenance needs or frozen equipment issues. The proposed building will alleviate these concerns by providing a heated, indoor space that is accessed from public property. This will allow for quicker repairs, longer lifespan of the equipment, and a secure place to house tools and machine parts.

The community of Homer will benefit by having a better skiing experience on trails that are consistently maintained. It is a cost savings to the community in that KNSC will not have to raise membership fees to cover the cost of the additional maintenance and shortened lifespan of this equipment that is kept outdoors. It is also a volunteer cost benefit in that it makes it easier to be a KNSC volunteer when they have working equipment. Well maintained equipment means better grooming which means a better ski experience for all users.

Plans & Progress: A site plan, shed design, HEA requirements for power hookup and securing the services of a contractor are all complete. Zoning code & other legalities are currently being reviewed.

Total Project Cost: \$72,000



Proposed location of the storage shed shown in green.

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 22-034

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
APPROVING A RECREATIONAL USE AGREEMENT BETWEEN THE
CITY OF HOMER AND THE KACHEMAK NORDIC SKI CLUB
REGARDING THE MAINTENANCE AND OPERATION OF NORDIC SKI
TRAILS ON CITY OWNED LAND IN THE BAYCREST SKI AREA AND
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE
THE APPROPRIATE DOCUMENTS.

WHEREAS, The Kachemak Nordic Ski Club (KNSC) is a non-profit corporation which has
been constructing, maintaining, and operating nordic ski trails on public and private lands for
many years; and

WHEREAS, KNSC maintains a network of trails on public and private lands in the
Diamond Creek Watershed known as the Baycrest Ski Trails; and

WHEREAS, Some of the trails at the Baycrest complex traverse City owned parcels:

173-022-01, T 6S R 14W SEC 9 SEWARD MERIDIAN HM SE1/4 SE1/4 EXCLUDING THE W1/2
SW1/4 SE1/4 SE1/4 and 173-032-29, T 6S R 14W SEC 10 SEWARD MERIDIAN HM SE1/4 &
S1/2 SW1/4 the title to which the City accepted via Ordinance 07-03; and

WHEREAS, The City and KNSC entered into their first MOA regarding these trails in the
winter of 2008 and that agreement has expired; and

WHEREAS, The City and KNSC entered into their second MOA regarding these trails in
the winter of 2013 and that agreement has expired; and

WHEREAS, The City and KNSC entered into their third MOA regarding these trails in the
winter of 2017 and that agreement has expired; and

WHEREAS, The City and KNSC wish to enter into a new MOA and a draft document was
submitted to the City Council for its review at its regular meeting on April 25, 2022; and

WHEREAS, An MOA between the City and KNSC is in the best interest of the public
because it promotes public-private partnerships, saves tax dollars, enhances recreational and
economic development opportunities, and provides access to public lands for the use and
enjoyment of all.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves a new Memorandum of Agreement between the City of Homer and the Kachemak Nordic Ski Club and authorizes the City Manager to negotiate and execute the appropriate documents.

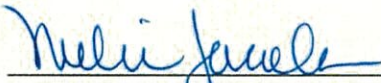
PASSED AND ADOPTED by the Homer City Council this 25th day of April, 2022.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal Note: N/A





City of Homer

www.cityofhomer-ak.gov

Community Recreation

HHS/600 East Fairview Avenue

Homer, Alaska 99603

communityrecreation@cityofhomer-ak.gov

(p) 907-235-6090

(f) 907-235-8933

Memorandum 22-072

TO: Mayor Castner and Homer City Council
THROUGH: Rob Dumouchel, City Manager
FROM: Mike Illg, Recreation Manager
DATE: April 12, 2022
SUBJECT: Recreational Use Agreement with Kachemak Nordic Ski Club

The City of Homer and Kachemak Nordic Ski Club (KNSC) have enjoyed a long, successful partnership, supporting the organizational capacity and usage of land to winter time Nordic skiing and snowshoeing to the community.

The City and KNSC has established a formalized partnership through a Recreational Use Agreement (RUA) since 2008 and this will be the fourth consecutive agreement with is organization. Having an RUA with an organization that regularly provides activities on City lands is a standard practice in most communities. The RUA clarifies which entity is responsible for which facilities and requirements for insurance.

The agreement includes updated information addressing designated points of contact, reference to the new food truck policy and reference to the special events policy.

Alaska Municipal League/Joint Insurance Association has reviewed the agency insurance requirement. Staff has communicated with KNSC for input and review regarding suggested updates and changes. This RUA would be valid for five years, and then can be renewed or amended.

Requested Action: Adopt a resolution approving a recreational use agreement between the Kachemak Nordic Ski Club and the City of Homer.

RECREATIONAL USE AGREEMENT

RECREATIONAL USE AGREEMENT ("Agreement") dated as of April 5, 2022, between the CITY OF HOMER, an Alaska municipal corporation ("City"), and the Kachemak Nordic Ski Club (KNSC) an Alaska nonprofit corporation ("User").

RECITALS

WHEREAS, City owns certain property commonly known as The City owned parcels are described as KPB Parcels 173-022-01, T 6S R 14W SEC 9 SEWARD MERIDIAN HM SE1/4 SE1/4 EXCLUDING THE W1/2 SW1/4 SE1/4 SE1/4 and 173-032-29, T 6S R 14W SEC 10 SEWARD MERIDIAN HM SE1/4 & S1/2 SW1/4 and KPB parcel 17316066 and 17316067 (one legal lot) T06 S R 14 W SEC 15 Seward Meridian HM 2011022 Bishop Survey J.G. Evans Addition Lot 1

WHEREAS,

1. The City accepted title to the parcels KPB 17302201 and 17303209 referenced above via Ordinance 07-03. The land was conveyed by the University of Alaska through the Department of Natural Resources and the Kachemak Heritage Land Trust.
2. The Kachemak Heritage Land Trust raised the money for purchase of the land through years of hard work and fund raising. A primary source of funding was the Forest Legacy Program.
3. The City Council dedicated the two parcels as park and public lands in perpetuity (Ordinance 07-03) for the benefit of current and future generations.
4. The funding from the Forest Legacy Program contained stipulations and conditions that the property only be used for forestry programs, recreation, and conservation. The Council accepted title to the property with this understanding and all future uses must be consistent with these purposes.
5. KPB Parcels 17316066 and 17316067, which was purchased via ordinance 14-51(A) with HART funds to be used as a future trailhead to the City owned Forest Legacy Program properties.
6. The Kachemak Nordic Ski Club currently maintains over 30 kilometers of groomed Nordic ski trails in the Baycrest / Diamond Creek area (which includes these parcels) and wishes to continue to do so under the agreement with the City.
7. The City wishes to authorize KNSC use and maintenance of existing ski trails which includes a storage shed as described in Exhibit B attached and incorporated herein
8. This RUA is intended to establish the relationship between the City and KNSC.
9. This RUA constitutes a land use agreement which specifically authorizes the activities described herein.
10. Nothing in this agreement obligates the City to provide funding or operational, maintenance, or program assistance of any kind.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Complete" and "Completion" mean, with regard to an improvement, that 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 User.

(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) "User" means Kachemak Nordic Ski Club.

(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 User and User accepts from City a revocable, non-exclusive license to use the following described property ("Property"):

T 6S R 14W SEC 9 SEWARD MERIDIAN HM SE1/4 SE1/4 EXCLUDING THE W1/2 SW1/4 SE1/4 SE1/4, Homer Recording District, State of Alaska, as depicted on **Exhibit A**, containing 33 acres, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 17302201; and

T 6S R 14W SEC 10 SEWARD MERIDIAN HM SE1/4 & S1/2 SW1/4, Homer Recording District, State of Alaska, as depicted on **Exhibit A**, containing 240 acres, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 17303229; and

T06 S R 14 W SEC 15 Seward Meridian HM 2011022 Bishop Survey J.G. Evans Addition Lot 1 as depicted on **Exhibit A**, containing 2 acres, more or less, also known as Kenai Peninsula Borough Tax Parcel No. KPB Parcels 17316066 and 17316067.

This Agreement does not grant User any real property interest in the Property. This Agreement is issued to allow User 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." User has inspected the Property, has made its own determination as to the suitability of the Property for User'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 5 years, commencing on May 1, 2022 and ending on April 30, 2027 ("Term"). The Term is subject to termination by either party, with or without cause, at any time.

3.02 Agreement Renewal. User 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 12 months before the expiration of the Term, User may apply to City for a renewal of this Agreement in the manner that a person then would apply for a new Agreement 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, in its sole discretion. The Council is under no obligation to renew this Agreement, or to renew this Agreement for the term that User requests. If the Council does not grant a timely application to renew 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, User 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 User, and all other personal property that was not present on the Property at the commencement of the Term. If User fails to surrender the Property in the required condition, City may (i) restore the Property to such condition and User 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 User.

3.04 Holding Over. User'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 User any rights in or to the Property.

ARTICLE 4. PERMIT FEE, TAXES, ASSESSMENTS AND UTILITIES

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

4.02 Taxes, Assessments and Other Governmental Charges. User shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to its use of the Property and personal property that is situated on the Property.

4.03 Utility Charges. User shall pay all charges for utility and other services required for its use of the Property under this Agreement, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal and refuse removal. User shall be solely responsible for the cost of utility connections.

ARTICLE 5. USE AND IMPROVEMENT OF PROPERTY

5.01 Use of Property. User shall improve and use the Property in the following manner:

Special Nordic Ski Events, maintenance of existing ski trails (winter and summer), operations and public use of ski trails, installation of trail signage.

User 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.

5.02 User - Improvements. User may, at User's sole expense, construct, and at all times during the Term keep and maintain on the Property the following improvements ("User Improvements"):

Equipment Shed as subject to all state and local permitting.

The User Improvements also are depicted in the site plan in **Exhibit B**. User may choose to commence construction of the Improvements at the date of their choice within one year after the date of commencement of the Term, prosecute the construction of the Improvements with diligence, and Complete construction within one additional year.

5.03 Construction Prerequisites. User may not commence any construction on the Property, including without limitation construction of the User Improvements, without first satisfying the following conditions:

(a) Not less than 30 days before commencing construction, User shall submit to City preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to City's approval, which will not be unreasonably withheld. City shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. User shall be

responsible for complying with all laws governing the construction, or that are otherwise applicable to user's improvement or operations notwithstanding City's approval of preliminary plans and specifications under this paragraph.

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

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

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

5.05 Disposition of Improvements at End of Term.

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

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

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

ARTICLE 6. CARE AND USE OF THE PROPERTY

6.01 Maintenance of the Property. User at its own cost and expense shall keep the Property and all buildings and improvements that at any time may be situated thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

6.02 Nuisances Prohibited. User at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. User shall not use the Property in any manner that will constitute waste or a nuisance. City, at User's expense and without any liability to User, 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 User, or after four hours' notice to User 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. User 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 Hours of Operation. User 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. If the City prescribes hours of closure, User will inform their membership accordingly.

6.04 Compliance with Laws. User'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.

6.05 Liens. User 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, User shall cause the same to be removed; provided that User may in good faith and at User'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 User 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). User 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.

6.06 Signs. User may erect signs on the Property that comply with state and local sign laws and ordinances, subject to the prior written approval of the City.

6.07 Garbage Disposal. User shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week.

6.08 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.

6.09 Special Events. User is not required to submit a Special Events permit unless there is an additional event beyond the typical and historical use of organization operations.

6.10 Food and Concessions. User are allowed up to two (2) food trucks for their activities. These food trucks must fulfil the City's required food truck permitting process.

ARTICLE 7. ASSIGNMENT

7.01 Consent Required for Assignment. User 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 User's obligation to obtain City's consent to any subsequent assignment. An assignment of this Agreement shall require the assignee to assume User's obligations hereunder, and shall not release User from liability hereunder unless City specifically so provides in writing.

7.02. Costs of City's Consent to be Borne by User. As a condition to City's consent to any assignment under section 7.01, User 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 User 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 User 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. User 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 User's obligations to indemnify under this Agreement, User 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 User's activities under this Agreement. City's insurance requirements shall specify the minimum acceptable coverage and limits, and if User's policy contains broader coverage or higher limits, City shall be entitled to such coverage to the extent of such higher limits.

(b) User 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 User'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) User 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 User. 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. User 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 User'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. User shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of User 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. User 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) User 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 User 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. User 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 User obtains regarding Hazardous Substances or losses incurred or expected to be incurred by User 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 User 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, User 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.

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

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

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

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

ARTICLE 12. GENERAL PROVISIONS

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

12.02 Notices.

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

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

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

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email: citymanager@cityofhomer-ak.gov

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

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

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

12.06 Independent Contractor Status. City and User are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between City and User. 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 User 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 User, and their permitted successors and assigns.

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

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 User 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 User 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 User unless specifically set forth in this Agreement. This Agreement may be amended only by written instrument executed and acknowledged by both City and User.

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

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

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

CITY OF HOMER

By: _____
Melissa Jacobsen

Interim City Manager

ATTEST:

Signature

Printed Name

Position

KACHEMAK NORDIC SKI CLUB

By: _____
(Signature)

(Print Name)

(Print Title)

ATTEST:

Signature

Printed Name

Position

EXHIBIT A
LOCATION OF PROPERTY
(Section 2.01)

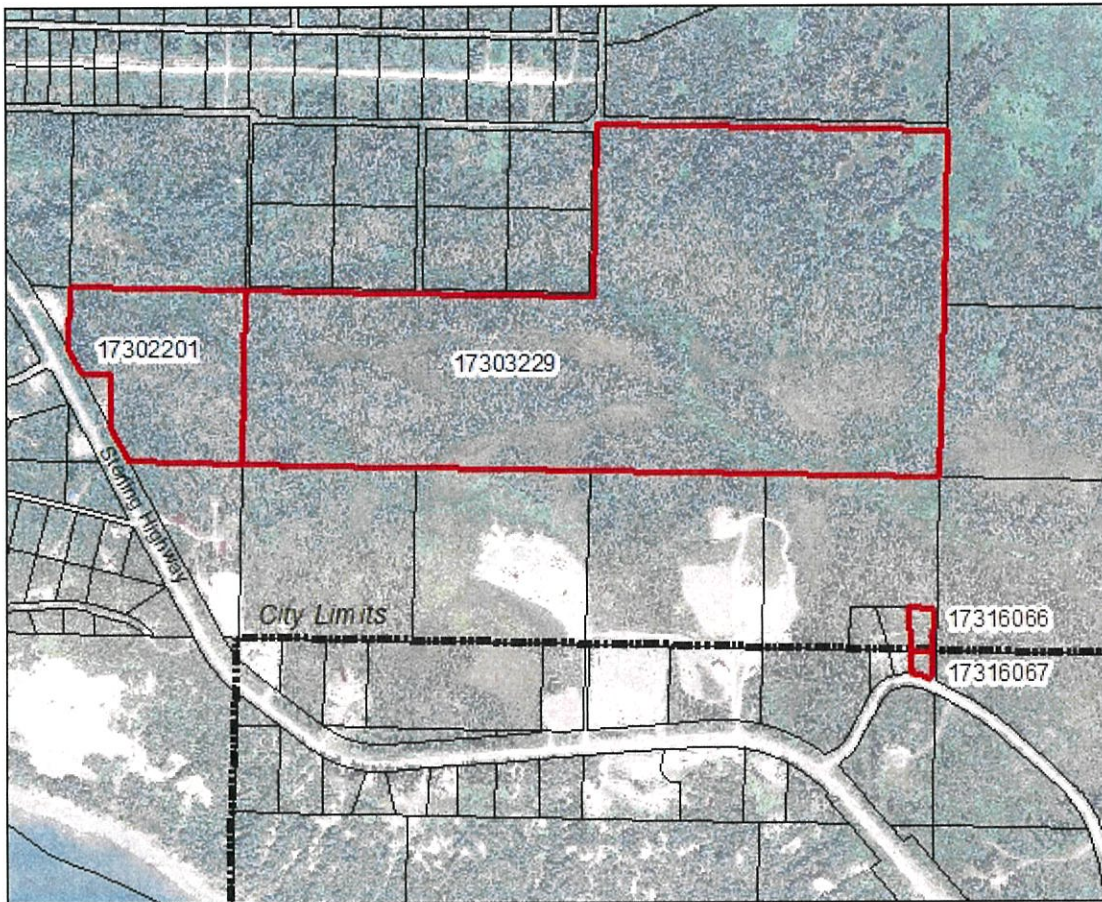


EXHIBIT B

SITE PLAN

(Section 6.02)

Concept Plan

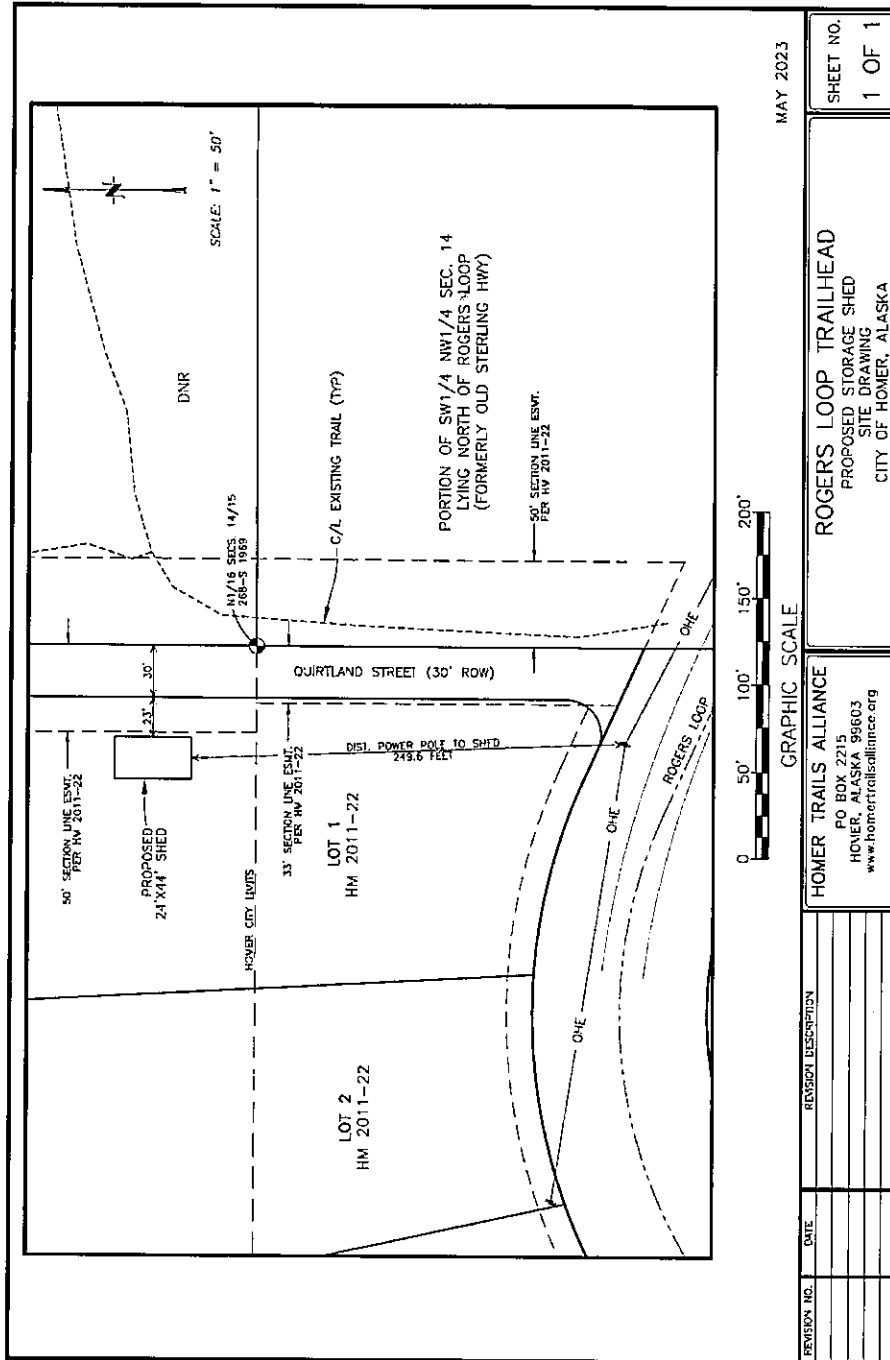


EXHIBIT C
CERTIFICATES OF INSURANCE
(Section 9.04(d))
