

**KENAI PENINSULA BOROUGH  
REAL PROPERTY LEASE**

For good and valuable consideration, and pursuant to Ordinance 2010-36 (Mayor) Substitute, enacted \_\_\_\_\_, 2011, the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), grants to the Kenai Peninsula Racing Lions, whose address is P.O. Box 2155, Soldotna, Alaska 99669 (hereinafter called "LESSEE" or "KPRL"), use of the following described parcel of real property (hereinafter called "Property") described as follows:

INSERT LEGAL DESCRIPTION UPON RECORDATION OF SURVEY PLAT

See attachment A1, attached hereto and incorporated by reference.

**TERMS AND CONDITIONS**

1. Lease Term. This lease is for a term of 30 years commencing \_\_\_\_\_, 2011 and terminating \_\_\_\_\_, 2041.
2. Lease Rental. Pursuant to KPB Ordinance 2010-36 (Mayor) Substitute the annual Lease rental for the term of this lease is \$1.00, payment in advance, on or before \_\_\_\_ day of \_\_\_\_\_ of every year of the said term.
3. Indemnification and Liability Insurance.
  - a. 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 accordance with the terms of this lease 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 claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees. These covenants shall survive the term of this agreement.

- b. Liability Insurance. LESSEE shall purchase at its own expense and maintain in force at all times during the term of this Lease Commercial General Liability Insurance, which shall include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$1,000,000 per occurrence. The policy purchased shall name LESSEE as the insured and KPB as an additional insured, and shall also require the insurer to provide KPB with thirty (30) days or more advance written notice of any pending cancellation or change in coverage. Such insurance shall be primary and exclusive of any insurance of Lessor.
  - c. Right to Revise or Reject. KPB reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements. KPB additionally reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its financial condition, its industry rating or operating practices. KPB shall provide LESSEE notice of new insurance requirements no less than 90 days prior to their effective date. At a minimum, KPB shall review the insurance requirements in subsection b above on the 10<sup>th</sup> and 20<sup>th</sup> years of this lease.
  - d. Proof of Insurance. At the time of executing this agreement, and at the time of each renewal of insurance, LESSEE shall deliver to the KPB Planning Director certificates of insurance meeting the above criterion. **Failure to timely provide proof of insurance to KPB shall be grounds for immediate termination of this lease.**
4. Authorized Use and Development Plan. The purpose of this lease is to authorize LESSEE to conduct recreational motor sports related activities pursuant to the development plan attached hereto and incorporated by reference as Attachment B. The LESSEE is not authorized to use the Property for any other purpose unless authorized by the KPB in writing. Any revisions to the development plan or lease terms must be approved by the borough in writing as provided in Section 5 below. The property shall be used for the purposes within the scope of the application, the terms and conditions of the lease and in conformity with the LESSEE's development plan. Use or development for other than allowed purposes shall subject the lease to termination.
5. Modification of Development Plan. Modifications of LESSEE's development plan may be made through the written approval of the KPB Mayor of a modified development plan 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.

6. Environmental Protection Responsibilities. LESSEE shall be responsible for maintaining the property free from environmental contamination. LESSEE shall maintain a Spill Prevention and Response Plan along with the maintenance of adequate spill response capabilities for the type and volume of potential contaminants present during the course of LESSEE's activities and shall use proper containment or secondary containment of fluids. LESSEE shall ensure adequate sanitation facilities are available as necessary. LESSEE shall not use chemical dust suppressants unless otherwise authorized by LESSOR in writing. LESSEE shall take appropriate measures to prevent erosion and run-off. LESSEE shall protect all wetlands within the leasehold from disturbance. LESSEE shall maintain the property free from solid waste and shall prevent the burial of solid waste. LESSEE shall take all other reasonable precautions to protect the environment including the lands, surface waters and groundwater in the course of its activities. KPRL and LESSEE herein agree that said environmental protection responsibilities are a material term enforceable by LESSOR as cause for termination.
7. Use By General Public. LESSEE agrees to allow use of the facilities by the general public according to the same rules and regulations applicable to KPRL members, such public use restricted to those hours of operation and providing appropriate supervision by LESSEE to ensure conduct of all users is consistent with the requirements under this lease. Membership in KPRL, and participation in all KPRL scheduled activities on the leasehold shall be open to the general public.
8. Regulated Access. LESSEE agrees to gate and lock facilities at all times outside of hours of operation. LESSEE shall be responsible for maintenance of fencing, gates, access roads, and parking areas upon the leasehold and agrees to maintain same in a safe and sound condition for the duration of the lease. LESSEE agrees to monitor and ensure that access is sufficiently regulated to prevent activities not authorized under this lease.
9. Conduct. Any activity conducted on the leasehold which is deemed harming to the property or is deemed to be not reasonably safe shall subject the lease to termination. LESSEE agrees to adopt rules for safe and proper conduct and to designate areas of prohibited entry, to clearly post all rules and to enforce all rules to the extent possible.
10. No Bulk Storage. LESSEE shall not have bulk storage containers on the property, being containers greater than 55 gallons, except that water tanks holding water are allowed.
11. Waste. LESSEE shall not commit waste or injury upon the lands leased herein.

12. 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.
13. Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the land developed or used for pedestrian traffic.
14. 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.
15. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB 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. Part 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.

16. Compliance With Laws. The LESSEE agrees to comply with all applicable federal, state, borough and local laws and regulations.
17. 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. All trails or roads existing at the time this Lease is executed shall be considered an easement for public use.

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.

18. 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.
19. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB 17.10.120(F) this agreement will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
20. 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 provisions of this agreement and laws and regulations applicable thereto.
21. Subleasing. No LESSEE may sublease lands or any part thereof without written permission of the mayor. A sublease shall be in writing and subject to the terms and conditions of the original lease.

22. 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.
23. 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 26 below. 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 further notice to LESSEE.

24. Violation. Violation of any of the terms of this lease may expose LESSEE to appropriate legal action including forfeiture of lease/purchase interest, termination, or cancellation of its interest in accordance with state law. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this Lease
25. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
26. 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.

27. Removal or Reversion of Improvements Upon of Lease.

- a. The KPB may require LESSEE to remove all improvements including surface structures and track in which case improvements on the property owned by LESSEE shall, within thirty 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.
- b. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the LESSEE under the terminated or canceled contract, be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Code, Title 5. The proceeds of the sale shall inure to the LESSEE who placed such improvements and/or chattels on the lands, or its successors in interest, after paying to KPB all monies due and owing plus all costs, fees and expenses incurred in storing the goods and making such a sale. In case there are no other bidders at any such sale, the KPB mayor is authorized to bid, in the name of KPB, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale or leasing of such improvements and/or chattels. KPB shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.
- c. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the KPB mayor, 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.

28. 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.

29. Site Closure. Notwithstanding KPB 17.10.240, prior to termination of lease the KPB reserves the right, at KPB's sole option, to require LESSEE to restore the site to a

natural condition, free of contamination, to leave the site in a condition suitable for use by another, or any combination thereof.

- A. Pre-closure Inspection. KPB and LESSEE will jointly inspect the site for the purpose of KPB determining the condition that site will be left in prior to termination of lease. KPB and LESSEE shall agree in writing the condition that site will be left in prior to termination of lease. KPB, at its sole discretion, may require LESSEE to take any or all of the actions listed in paragraphs B through F of this section.
  - B. Removal of Improvements. The KPB may require LESSEE to remove all improvements including surface structures and track.
  - C. Testing. At LESSEE'S sole expense, site shall be sampled and analyzed in accordance with Alaska Department of Environmental Conservation (ADEC) regulations at the time of removal.
  - D. Remediation. At LESSEE'S sole expense, cleanup and remediation of environmental contamination shall be accomplished to ADEC standards prior to termination of lease.
  - E. Reclamation. Site shall be reclaimed by adding organic material to bring site to the same topographic level as adjacent land and then planted with local plant species.
  - F. Post-closure Inspection. KPB and LESSEE will jointly inspect site to confirm site is left in a condition acceptable to KPB.
30. 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. If said land is not immediately disposed of, then said land shall return to the Land Bank.
31. 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 in this paragraph. 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 99669-7599

LESSEE

Kenai Peninsula Racing Lions  
P.O. Box 2755  
Soldotna, AK 99669

32. Responsibility of Location. It shall be the responsibility of the LESSEE to properly locate itself and its improvements on the leased lands.
33. 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, except in connection with financing transactions as discussed below. 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 or permanent financing of improvements to be placed upon the leased property, and for no other purpose, LESSEE, after giving written notice thereof to KPB, may encumber by mortgage, deed of trust, assignment or other appropriate instrument, LESSEE's interest in the leased premises and in and to this Lease, provided such encumbrance pertains only to such leasehold interest and does not pertain to or create any interest in KPB's title to or interest in the leased property. Any such encumbrance shall be entirely subordinate to KPB's rights and interest in the leased property.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the LESSEE with respect to the curing of any default hereunder by LESSEE.

In the event of cancellation or forfeiture of this Lease for cause, the holder of a properly recorded mortgage, deed of trust, or assignment will have the option to acquire the Lease for the unexpired term thereof, subject to the same terms and conditions as in the original instrument.

34. 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.

35. 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.
36. 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.
37. 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.
38. 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.
39. LESSEE warrants that the person executing this agreement is authorized to do so on behalf of Kenai Peninsula Racing Lions.

KENAI PENINSULA RACING LIONS

KENAI PENINSULA BOROUGH

\_\_\_\_\_  
Jackie McGahan, President

\_\_\_\_\_  
David R. Carey, Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Willa Tallman, Secretary

Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship  
Borough Clerk

\_\_\_\_\_  
Holly B. Montague  
Assistant Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by David R. Carey, Mayor of the Kenai Peninsula Borough, an Alaska municipal 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

\_\_\_\_\_ 2011, by Jackie McGahan, President of the Kenai Peninsula Racing Lions, an Alaska non-profit 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 \_\_\_\_\_ 2011, by Willa Tallman, Secretary of the Kenai Peninsula Racing Lions, an Alaska non-profit corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska

My commission expires: \_\_\_\_\_