

**KENAI PENINSULA BOROUGH
REAL PROPERTY LEASE**

This LEASE (hereinafter called "LEASE"), for good and valuable consideration, and pursuant to Ordinance 2016-20, enacted _____, 2016, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and SAH Soccer, Inc. dba Soccer Association of Homer whose address is P.O. Box 698, Homer, Alaska 99603 (hereinafter called "SAH").

I. DESCRIPTION OF REAL PROPERTY

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

*{INSERT LEGAL DESCRIPTION UPON RECORDING OF FINAL PLAT ie Tract 1A
Homer School 2016 Replat}*

Ingress and egress to the above described property may utilize existing travelways located on the adjacent*{Tract 1-B Homer School 2016 Replat}*.... provided that first priority use of travel lanes and parking areas shall be to Kenai Peninsula Borough School District operations and sanctioned events. Such travelways and parking areas are illustrated in Attachment A, the Development Plan, attached and incorporated by reference, which is subject to change upon notice given under Section IV subsection 25. This section is intended to comply with joint use of off-street parking under HCC 21.55.070.

II. PURPOSE OF LEASE

A. Authority.

Pursuant to Ordinance 2016-20 the purpose of this lease is for the development, management, operation and maintenance by SAH of the South Peninsula Athletic and Recreation Center for the benefit of community use and events, club events and programs, and public use and events generally (hereinafter called "ACTIVITIES"). The allowed uses and events shall include a variety of athletic training, recreational and wellness programs in conformance with the maintenance, development, and management of the SAH's Development Plan (Attachment A), and other uses approved by KPB.

B. Development Plan.

SAH's Development Plan illustrates the type and location of improvements, basic design and construction standards, landscaping features, location of utilities, and the

nature of uses. The Development Plan approved under this lease describes the scope of ACTIVITIES authorized by the lease. The development plan is composed of the following documents:

- o Site Drawing April 29, 2016
- o SPARC White Paper February 1, 2016
- o Alaska Dreams structure (75' x 159' Plan Set)
- o SPARC Funding, Capital Expenses, & Operating Expenses May 5, 2016

1. Modification of Development Plan. The Development Plan may be modified by mutual agreement as necessary to advance the purposes of this lease. Modifications of SAH's development plan may be made through written approval by the KPB Mayor. A proposal for a modified development plan shall be submitted by SAH 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.

III. TERMS AND CONDITIONS

The Kenai Peninsula Borough is authorized to lease the Property to SAH subject to the following conditions:

A. Conditions specific to SPARC.

1. SAH assumes the obligation of safety, security, maintenance, and insurance for the South Peninsula Athletic and Recreation Center (hereinafter called "SPARC"). SAH shall be responsible to coordinate, schedule, and permit uses which shall be available to community groups and the general public.
2. As consideration for the conveyance of the parcel for \$1.00 per year the Kenai Peninsula Borough School District (hereinafter called "KPBSD") shall have use of the facility for seven (7) hours a week at no charge. Any usage over seven (7) hours per week shall have a cap on the rate of \$20 per hour.
3. SAH shall not discriminate against users or user groups in any of its activities or operations based on race, color, age, religion, creed, gender, gender expression, national origin, disability, sexual orientation, marital status, or military status.
4. No preference or discounts shall be given to users or user groups within the city of Homer that are not given to user groups or users from outside the city of Homer.
5. SAH may establish and collect user fees to support the cost of operations, maintenance, and expenses. The schedule of rates shall be made available to KPB.

6. SAH may apply for grant funding associated with the purpose of this lease with a reliance on this lease to demonstrate site control for such grants.
7. Nothing contained herein creates or implies any additional property interests, including easements or right-of-ways in the PROPERTY beyond the terms and conditions of this LEASE.
8. The KPB reserves the right to require improvements to be removed by SAH at the termination of the LEASE.
9. The SAH shall promulgate use rules and conditions which are not in conflict with adjacent school operations and associated legal restrictions.
10. SAH shall not develop beyond what is specified in the development plan, unless approved in writing by KPB.
11. KPB reserves the right to authorize other land uses on the PROPERTY by easement or permit which do not unreasonably interfere with SAH's use.
12. KPB reserves the right to integrate the leased land into school activities including cross country running/skiing courses, outdoor labs, nature walks, and other temporary uses which do not unreasonably interfere with SAH's use.

B. KPB General Conditions.

1. Lease Term. This lease is for a term of twenty (20) years commencing _____, 20__ and with an option to renew by written mutual agreement, for a renewal term of ten (10) years.
2. Lease Rental. Pursuant to KPB Ordinance 2016-20 the lease rental is \$1.00/year.
3. Defense and Indemnification.
The SAH shall indemnify, defend, save and hold KPB and KPBSD, their 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 SAH's performance or failure to perform in accord with the terms of this permit in any way whatsoever. The SAH shall be responsible under this clause for any and all claims of any character resulting from SAH or SAH's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, SAH shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

4. Liability Insurance. SAH shall purchase at its own expense and maintain in force at all times during the term of this lease the following insurance policies:

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

Proof of Insurance: SAH shall deliver to KPB certificates of insurance. This insurance shall be primary and exclusive of any other insurance held by KPB. Failure to provide the certificate of insurance as required by this section, or a lapse in coverage, is a material breach of the lease terms entitling KPB to revoke the lease.

5. Waste. SAH shall not commit waste or injury upon the lands leased herein.
6. Fire Protection. SAH 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.
7. Safety. SAH shall be solely responsible for maintaining the premises in a safe and fit condition. SAH is responsible for the safety of all persons conducting activities on the property under this lease. SAH agrees to provide the public with information regarding rules and regulations and other information pertaining to the property and the lease.
8. Sanitation. SAH shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environment Conservation regulations.
9. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

SAH 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 SAH 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, SAH 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 SAH shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

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

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

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

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

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

prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary.

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

13. Inspections. SAH 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 SAH, 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.
14. Property Taxes. SAH shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should SAH become delinquent in the payment of any such obligations.
15. Assignment. SAH may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the terms and conditions of this lease and applicable laws and regulations.
16. 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 SAH 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.

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

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

17. Termination. Upon termination of this Lease, SAH 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 21 below. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this Lease. Subject to the following, in the event of SAH'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 SAH breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without notice to SAH prior to the effective date of the termination.

18. Violation. Violation of any of the terms of this lease may expose SAH to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
19. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
20. 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 SAH 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.

21. Removal or Reversion of Improvements Upon Termination of Lease.

Improvements on the property owned by SAH shall, within ninety (90) calendar days after the termination of the agreement, be removed by SAH; provided such removal will not cause injury or damage to the land; and further provided that the KPB Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. SAH may dispose of its improvements to a succeeding lessee with the consent of the KPB mayor.

If SAH fails to remove improvements or chattels upon the KPB's request the KPB may do so at the expense of SAH.

At the KPB's sole option it may choose to retain the improvements and chattels rather than having them removed. If the KPB elects to retain the improvements and chattels it shall give written notice of the election to SAH. Upon request, SAH shall convey said improvements and/or chattels by appropriate instrument to KPB.

22. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to SAH 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.

23. 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.

24. Notice. Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley
Soldotna, AK 99669-7520

LESSEE

SAH Soccer, Inc.
Soccer Association of Homer
P.O. Box 698
Homer, AK 99603

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

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

27. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by SAH, or of any default on the part of SAH 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.
28. Jurisdiction. Any lawsuits 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.
29. 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.

30. 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.
31. 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. SAH avers and warrants that no representations not contained within this agreement have been made with the intention of inducing execution of this agreement.
32. Warranty of Authority. SAH warrants that the person executing this agreement is authorized to do so on behalf of Soccer Association of Homer.

KENAI PENINSULA BOROUGH

SAH SOCCER, Inc.
dba Soccer Association of Homer

Mike Navarre, Mayor

Dated: _____

Lisa Zatz, President

Dated: _____

Michael Dye, Secretary

Dated: _____

ATTEST:

Johni Blankenship
Borough Clerk

(Borough Seal)

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Lisa Zatz, President of SAH Soccer, Inc. dba Soccer Association of Homer, an Alaska Nonprofit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by Michael Dye, Secretary of the SAH Soccer, Inc. dba Soccer Association of Homer, an Alaska Nonprofit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

DRAFT