

CLERK'S OFFICE

APPROVED

Date: 8-23-05

Submitted by: Chairman of the Assembly at the
Request of the Mayor
Prepared by: Anchorage Parks & Recreation
Department
For Reading: August 23, 2005

Anchorage, Alaska
No. AR 2005- 216

A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE AUTHORIZING
DISBURSEMENT OF THE FINAL SIXTY THOUSAND DOLLARS (\$60,000) FROM A ONE
HUNDRED TWENTY THOUSAND DOLLAR PRIOR APPROPRIATION FROM
ANCHORAGE PARKS AND RECREATION SERVICE AREA FUND (161) BALANCE TO
ANCHORAGE PARKS AND RECREATION DEPARTMENT FOR PURPOSE OF
PROVIDING A LOAN TO YOUTH EXPLORING ADVENTURE, INC., FOR OPERATION
OF HILLTOP SKI AREA AND APPROVING AMENDMENT NO. 1 TO HILLTOP LEASE
AGREEMENT DATED JUNE 20, 2000.

WHEREAS, the Anchorage Assembly through AR 2005-143(S) approved a loan of
\$120,000 to Youth Exploring Adventure, Inc., (YEA) for operation of the Hilltop Ski Area; and

WHEREAS, the Anchorage Assembly specified that no more than fifty percent of the
\$120,000 loan could be disbursed without Assembly review and approval of Amendment
No. 1 to the Lease Agreement; and

WHEREAS, YEA's Board of Directors and Key Bank have approved and signed
Amendment No. 1 to Lease Agreement; now, therefore,

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1: The Amendment No. 1 to June 20, 2000 Hilltop Lease Agreement is
approved, and the Municipality may release the final sum of Sixty Thousand Dollars
(\$60,000) from a One Hundred Twenty Thousand Dollar (\$120,000) appropriation from the
Anchorage Parks and Recreation Service Area Fund (161) Balance to the Anchorage
Parks and Recreation Department for the purpose of providing a loan to Youth Exploring
Adventure.

Section 2. Loan terms and repayment schedule remain as defined in AR 2005-143(S).

Section 3. This resolution is effective immediately upon passage and approval by the
Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 23rd day of August,
2005.

ATTEST:

Anna L. Fairclough
Chair of the Assembly

Brian S. Gresh
Municipal Clerk



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 591-2005

Meeting Date: August 23, 2005

From: Mayor

Subject: A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE AUTHORIZING DISBURSEMENT OF THE FINAL SIXTY THOUSAND DOLLARS (\$60,000) FROM A ONE HUNDRED TWENTY THOUSAND DOLLAR (\$120,000) PRIOR APPROPRIATION FROM ANCHORAGE PARKS AND RECREATION SERVICE AREA FUND (161) BALANCE TO ANCHORAGE PARKS AND RECREATION DEPARTMENT FOR PURPOSE OF PROVIDING A LOAN TO YOUTH EXPLORING ADVENTURE, INC., FOR OPERATION OF HILLTOP SKI AREA AND APPROVING AMENDMENT NO.1 TO HILLTOP LEASE DATED JUNE 20, 2000.

On June 28, 2005, the Anchorage Assembly approved through AR 2005-143(S) the appropriation of One Hundred Twenty Thousand Dollars (\$120,000) from the Anchorage Parks and Recreation Service Area Fund (161) to the Anchorage Parks and Recreation Department for the purpose of providing a loan to Youth Exploring Adventure, Inc., (YEA) for operation of Hilltop Ski Area. However, the Assembly specified no more than fifty percent of the One Hundred Twenty Thousand Dollar (\$120,000) loan could be disbursed without Assembly review and approval of Amendment No. 1 to the June 20, 2000 Lease Agreement. The Assembly also required both YEA's Board of Directors and Key Bank approve and sign Amendment No. 1 to Lease Agreement before any loan proceeds were disbursed.

YEA's Board of Directors and Key Bank have both approved and signed Amendment No. 1 to Lease Agreement, and a copy is attached for Assembly's review. Anchorage Parks & Recreation Department is requesting the Assembly now authorize final disbursement of the remaining Sixty Thousand Dollars (\$60,000) of the One Hundred Twenty Thousand Dollar (\$120,000) loan.

THE ADMINISTRATION REQUESTS APPROVAL OF THE RESOLUTION AUTHORIZING DISBURSEMENT OF THE FINAL SIXTY THOUSAND DOLLARS (\$60,000) FROM A ONE HUNDRED TWENTY THOUSAND DOLLAR PRIOR APPROPRIATION FROM ANCHORAGE PARKS & RECREATION SERVICE AREA FUND (161) BALANCE TO ANCHORAGE PARKS & RECREATION DEPARTMENT FOR PURPOSE OF PROVIDING A LOAN TO YEA, INC., FOR OPERATION OF HILLTOP SKI AREA AND APPROVING AMENDMENT NO. 1 TO LEASE AGREEMENT.

Prepared by: Anchorage Parks and Recreation Department
Approved by: Jeff Dillon, Director, Parks & Recreation Department
Approved by: Mary Jane Michael, Executive Director, Economic & Community Development
Concur: Denis C. Leblanc, Municipal Manager
Respectfully submitted: Mark Begich, Mayor
Fund Certification: Jeffery E. Sinz, Chief Fiscal Officer
161-5602-3815-560200 BDGT PD 2005 \$60,000

Original

**AMENDMENT NO. 1
TO LEASE AGREEMENT BETWEEN
MUNICIPALITY OF ANCHORAGE
AND
YOUTH EXPLORING ADVENTURES, INC.**

This Amendment No. 1 is made and entered into by and between the Municipality of Anchorage (hereinafter referred to as "Landlord") and Youth Exploring Adventures, Inc. (hereinafter referred to as "Tenant") and is consented to by Key Bank National Association as Tenant's secured party and assignee (hereinafter referred to as "Key Bank").

Whereas, Landlord and Tenant entered into a Lease Agreement (the "Lease") for professional services in managing and operating the Property, dated June 20, 2000; and,

Whereas, the responsibilities of administration of this Lease have transferred from the MOA Department of Cultural and Recreational Services to the Anchorage Parks and Recreation Department; and

Whereas, the Landlord desires to ensure the continued successful operation of Hilltop Alpine Ski Area for the youth of Anchorage and desires to provide additional recreational opportunities to the residents of Anchorage; and

Whereas, the parties have the authority to amend the Lease pursuant to Section 29 of the Lease and desire to do so;

NOW, THEREFORE in consideration of the mutual covenants and agreements contained in the Lease, the parties do hereby agree that the Lease shall be amended as follows:

1. Introduction and index of the lease agreement, Page 1, paragraph 1 is amended in its entirety to read as follows:

THIS LEASE AGREEMENT ("Lease") is entered into this 20th day of June, 2000, by and between the Municipality of Anchorage (Landlord) and Youth Exploring Adventures, Inc., (Tenant). Landlord and Tenant agree as follows. This Lease consists of:

- A. 40 Sections.
- B. Appendix A, USKH Map of Property
- C. Appendix B, YEA, Inc. Corporate Resolution
- D. Appendix C, Anchorage Parks and Recreation Advisory Commission Conditions
- E. Appendix D, Management, Use, and Control of Property

2. Page 2, Section 1 – Definitions and Property Description. Paragraphs B and C are amended in their entirety to read as follows:

B. “Department” means the Anchorage Parks and Recreation Department of Landlord.

C. “Administrator” means the Director of the Anchorage Parks and Recreation Department, or designee.

3. Page 2, Section 1 – Definitions and Property Description. A new paragraph F and paragraph G is added to read as follows:

F. “Winter season” means October 16th through April 15th.

G. “Summer season” means April 16th through October 15th.

4. Page 3, Section 2 – Intent. This Section is amended in its entirety to read as follows:

A. The parties agree that Tenant may use, and will operate and manage the ski areas located on the Property in a manner consistent with accepted industry standards and practices.

B. Tenant is experienced in the business of operating and managing skiing and related ski hill operations similar to those present or contemplated for the Property.

C. Landlord agrees to permit and authorize Tenant to use the Property, and Tenant agrees to operate and manage skiing and related ski hill operations on the Property on the following terms and conditions.

5. Page 3, Section 4 – Termination of Lease. Paragraph B of this section is amended in its entirety to read as follows:

B. *Landlord's Right to Cure. Tenant's Breach.* In the event of Tenant's breach of any covenant of this Lease, Landlord may at any time, upon thirty (30) days notice to Tenant, cure such breach for the account and at the expense of Tenant. If Landlord at any time by reason of such breach is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, the sum or sums so paid by Landlord, together with interest thereon at the rate of seven and one-half percent (7.5%) per

annum, may, at the sole discretion of Landlord, be added to any fees or sums otherwise payable by Tenant to Landlord, and shall be due from Tenant immediately.

6. Page 4, Section 5 – Duties Upon Termination or Expiration, Paragraph A. Paragraph A is amended in its entirety to read as follows:

A. Upon termination or expiration of this Lease, Landlord may, in its sole discretion and upon written notice, direct Tenant to remove any equipment or personal property on the Property, remediate any contamination, and restore the Property if Landlord determines that: (1) the continuation of the equipment and/or personal property on the Property is not in the best interest of Landlord, or (2) the equipment and/or personal property presents a hazard to public health or safety. If so directed by Landlord, Tenant shall remove within sixty (60) days, or a mutually agreed upon length of time, any or all its equipment and personal property from the Property. Any equipment and/or personal property left on the Property sixty (60) days, or a mutually agreed upon length of time, after direction for removal shall be deemed abandoned and Landlord may either retain or have such property removed at Tenant's expense. Due to climate constraints in the winter, timely removal of said equipment and personal property might not be possible. In such case, the removal date shall be set within the May 15-September 15 period. Tenant shall leave the Property in a good, clean condition, normal wear and tear excepted.

7. Page 4, Section 6 – Rent. This section is amended in its entirety to read as follows:

A. *Percentage of Gross Revenues.* Rent for the Term of this Lease, including any optional or renewal term, shall be calculated initially at the rate of two percent (2%) of the total gross receipts generated by Tenant on the Property as defined herein, and paid quarterly to Landlord. The rental rate may be adjusted by Landlord every two years by no greater than $\frac{1}{4}$ of 1% (e.g., from 2% to 2 $\frac{1}{4}$ %, from 2 $\frac{1}{4}$ % to 2 $\frac{1}{2}$ %, etc.) each adjustment.

B. *Rent Credits.* Tenant will be given a credit against rent equal to the actual costs of permanent capital improvements made upon the Property by Tenant after commencement of the Lease term, provided that Landlord has pre-approved the capital improvement for a rent credit pursuant to section 8 paragraph B. Tenant may carry forward

such credits against future rent obligations, but will not, under any circumstances be entitled to any refund, rebate, reimbursement or other payment by Landlord based upon the value of improvements. The capital improvements made by Tenant as of the date of this Amendment No. 1 are hereby ratified by Landlord and approved as eligible for rent credit.

- C. *Sources of Gross Revenues.* For purposes of determining quarterly rent, gross receipts shall include the aggregate total amount of sales made and services performed by Tenant, Tenant's consignees, agents, subcontractors, and subtenants on the Property whether such activities are for cash or on credit. Sales on credit are to be included in gross receipts at the time such are discharged by payment. Sales and services include, but are not limited to, lift tickets, including competition entry fees; rentals; sales of apparel or equipment related to winter ski hill activities; retail sales of food or beverages in the ski chalet during the winter skiing season; and sales from vending or coin-operated equipment. Amounts received as grants or donations by Tenant, and business trade outs, shall not be included in Tenant's gross revenues. Any sales tax collected on items producing receipts shall not be included in the gross receipt calculation.
- D. *Payment of Rent.* Rent as provided herein shall be payable quarterly to Landlord for activity occurring during the previous quarter. Such payments shall be due and payable within forty-five days (45) days after the end of each calendar quarter.
- E. *Overpayment and Underpayment.* In the event that the review or audits permitted herein discover an overpayment of rent during the reporting period, the amount of overpayment shall be credited to the next quarterly rent payment. In the event an underpayment is discovered, the amount of the underpayment shall be paid within thirty (30) days of the discovery.
- F. As a Condition of Tenant's retention of the remaining gross revenues, Tenant shall have paid all municipal taxes currently due and owing by Tenant.
- G. *Loan to Tenant.* Landlord will loan Tenant one hundred twenty thousand dollars (\$120,000) at a six percent (6%) interest rate, for calendar year 2005 operating expenses. The Tenant shall repay the loan, according to the following schedule:

Due May 1, 2006	\$46,000
Due May 1, 2007	\$44,800
Due May 1, 2008	\$42,400
TOTAL	\$133,200
Repaid principal	\$120,000
Total interest paid	\$ 13,200

Failure of Tenant to Make Loan Payment(s) When Due: Notwithstanding the provisions of Section 4 – Termination of Lease of the Lease Agreement, dated June 20, 2000, the failure of Tenant to make any loan payment required to be made by Tenant hereunder, as and when due, under this Lease Agreement, as amended, shall be considered a material breach of the Lease Agreement, as amended, and shall constitute grounds for termination of the Lease Agreement, as amended. Landlord shall give Tenant written notice of the default, pursuant to Section 17 of the Lease Agreement, as amended. Tenant shall have ten (10) days from the date of the written notice to cure the default. Should Tenant fail to cure the default within the ten (10) day notice period, Landlord may, at any time thereafter, without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

1. Terminate Tenant's right to possession of the Property by any lawful means, in which case this lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Property, including all buildings and improvements to Landlord;
2. Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Property together with attorney's fees and costs.

8. Page 5, Section 8 – Property Improvements and Conditions Thereto. Paragraph B of this section is amended in its entirety to read as follows:

- B. *Improvements.* After prior written approval of Landlord, which approval shall not be unreasonably withheld, and obtaining all approvals, licenses, and permits required by the Lease and by law for improvements, Tenant shall undertake completion of the

improvements specified in its operations plans. Failure to complete the improvements within five years after commencement of the improvements shall constitute a material breach of this Lease.

1. All capital improvements, trail construction and trail relocation shall be in accord with the concept and final conditions of development recommended by the Anchorage Parks and Recreation Advisory Commission (set forth in Appendix C. to this Lease) or the Commission's amendments to those conditions approved by the Mayor or his designee.
2. Physical development and capital improvements to the Property shall:
 - a. not be commenced until documentation confirming funding source and full funding is provided to the Landlord, and the project has been accepted and approved in writing by the Landlord;
 - b. conform to final Planning and Zoning Commission, Parks and Recreation Commission, and/or Urban Design Commission approved site plan conditions and requirements, including their conditions and restrictions on tree and natural vegetation clearing and removal and natural habitat; and
 - c. conform to applicable laws and regulations and have and conform to all permits, licenses and inspections required by law.
3. Tenant may receive a rent credit for the cost to construct a permanent capital improvement if Landlord's written approval for the capital improvement specifies that the improvement will be eligible for rent credit. With respect to capital improvements made by Tenant as of the date of this Amendment No. 1, said improvements, to the extent previously qualified under the Lease Agreement prior to this Amendment No. 1, are approved and remain eligible for rent credit.
4. Each funding and revenue source and each permanent capital improvement shall be identified as a line item in Tenant's annual operating budget and be accepted by the Landlord.

9. Page 5, Section 9 – Management of Property. This section is amended to read as follows:

- A. *Mandatory Uses.* Subject to all terms and conditions set forth in Appendix D, attached hereto and incorporated by reference, Tenant shall manage the Property for the operation of a public ski area for the benefit of the general public.
- B. *Permitted Uses.* Subject to the terms and conditions set forth in Appendix D, Tenant may make the Property available to conduct “winter” recreation activities compatible with park and recreational use and existing or permitted improvements, including but not limited to any or all of the following activities: alpine and/or cross-country skiing, snowboarding, ice skating, sale of food and beverages in ski chalet during winter recreation season, and clothing and winter equipment sales and rentals.
- C. *Operations and Mitigation of Effects.* Tenant’s operation of the property’s winter recreation facilities and trails and the mitigation of adverse effects on the surrounding area, including hours of operation, facility usage and rental, wildlife and snow-making, shall be in accord with operating procedures and policies approved by the Anchorage Parks and Recreation Department after review and recommendations by the Anchorage Parks and Recreation Advisory Commission.

10. Page 6, Section 10 – Non-Exclusive Use and Control of Property; Use by Others. Section 10 is hereby deleted in its entirety.

11. Page 7, Section 11 – Security of Property. This section is amended in its entirety to read as follows:

- A. Landlord and Tenant shall cooperate to maintain security of the property.
- B. Tenant shall review and update its business plan annually, concurrent with preparation of Tenant’s annual budget.
- C. Tenant shall take all reasonable precautions to prevent unauthorized entry onto the Property including the placing of signs, fences or other devices intended to deter or restrict such entry; however, the construction of a perimeter fence shall not be necessary.

- D. At a minimum, Tenant shall construct or install barriers, gates or other similar devices across roads, driveways, paths, or trails that are intended to prevent or deter unauthorized vehicular traffic from entering the Property.
- E. Keys to locking gates, fences, and barriers shall be provided to Landlord by Tenant.

12. Page 7, Section 13 – Records Management. Paragraph E of this section is amended in its entirety to read as follows:

- E. *Public Information.* Landlord reserves the right, in accordance with Anchorage Municipal Code 3.90 as amended, to publish or otherwise make known to the public the results of any audit, or financial information acquired and in its possession in conjunction with the Lease. Tenant acknowledges that all records and information in possession of Landlord may be made available for public inspection and copying, and that unless Tenant conspicuously marks any submittals to Landlord as “Confidential” and the same are in fact to be held confidential as a matter of law, the same may be made available to the public.

13. Page 8, Section 14 – Budget, Plans and Reporting Requirements. This section is amended in its entirety to read as follows:

- A. Tenant shall provide an updated operations plan for the ski hill and related winter recreation activities and a proposed budget annually on or before September 30th for Landlord’s approval. The business plan of Tenant for the operation and development of the Hilltop Ski Area shall be subject to inspection and approval by the Anchorage Parks and Recreation Department after review and recommendations by the Anchorage Parks and Recreation Advisory Commission. Upon such approval, which shall not be unreasonably withheld, Tenant shall manage and operate the area pursuant to such plans. At any time that Tenant desires to amend such plan or significantly alter its operations, a revised operations plan shall be submitted to Landlord for approval prior to implementation.
- B. Tenant shall provide quarterly financial statements detailing not only revenues but also expenditures, assets, and liabilities. Quarterly reports shall be due 30 days after the close of the quarter.

- C. *Scheduling.* The parties agree that Tenant may pre-schedule events and offer reservations to select groups for winter recreational activities.
- D. *Fees and Charges.* Fees and charges for winter recreation related products and services shall be established by Tenant, a copy of which shall be provided to the Administrator.

14. Page 9, Section 17 – Notices. This section is amended in its entirety to read as follows:

All notices to be given hereunder shall be in writing and shall be deemed given when personally delivered, sent via facsimile (fax) or when deposited in the United States Postal Service mail, postage prepaid, certified, receipt requested or registered and addressed as follows:

LANDLORD
Municipality of Anchorage
Anchorage Parks &
Recreation Department
Attn: Director
Post Office Box 196650
Anchorage, AK 99519
FAX: 278-6595

TENANT
Youth Exploring Adventures, Inc.
d/b/a Hilltop Ski Area
7015 Abbott Road
Anchorage, AK 99516
FAX: 346-3391

AND

Municipality of Anchorage
Attn: Municipal Manager
Post Office Box 196650
Anchorage, AK 99519
FAX: 343-4110

15. Page 9, Section 18 – Assignment. This section is amended in its entirety to read as follows:

- A. *Assignment.* Tenant shall not assign this Lease or any interest herein, or permit any concession or third party to conduct any portion of Tenant's required operational obligations of the Property, without the prior written consent of the Landlord, which consent may be withheld in the sole and unfettered discretion of Landlord, for any cause or for no cause. Any assignment without Landlord's

prior written consent shall be voidable by Landlord and shall, at the option of Landlord, be deemed a breach of this Lease allowing for immediate termination of the Lease. No consent to any such assignment shall constitute a waiver or discharge of the provisions of this paragraph except as to the specific instance covered thereby.

- B. *Security Assignment.* Subject to the prior written consent of the Landlord, which consent shall not be unreasonably withheld, Tenant shall have the right to assign this Lease for security purposes to a lender or lender's trustee to finance required and optional improvements, thereby enabling the lender or assignee for security purposes to acquire or assume the Lease and enabling the lender to assign the Lease after so acquiring it, under the same terms and conditions as this Lease provides, subject to Landlord's prior written consent, which consent shall not be unreasonably withheld, and to applicable requirements of the Anchorage Municipal Code as amended, if any. Notice of any such assignment for security purposes shall be delivered in writing to Landlord, along with a copy of any notes, UCC filings or any other document pertaining to such assignment within five (5) days of the effective date of such assignment. In addition, any such assignment for security purposes shall require the assignee thereof to notify Landlord herein upon the occurrence of a breach of default by Tenant of the terms of the assignee's security instrument, and further require notice of default to be given to Landlord at the same time notice is given to Tenant and prior to the assignee taking management of the Property or offering the interest for sale based upon any such breach or default. To be valid, all assignment instruments, including the Consent to Assignment of Lease for Security Purposes, must be approved by Landlord and the assignment must give Landlord the right to cure on the same terms as given to Tenant. Tenant's March 3, 2005 assignment of this Lease for security purposes to Key Bank as security for a loan made by Key Bank to Tenant in the principal amount of \$430,000, with interest thereon (hereinafter the "Key Bank Loan"), is hereby acknowledged and approved by Landlord.
- C. *Survival of Tenant Liability.* Any assignment of this Lease or any interest under it shall not relieve the Tenant from its obligations under this Lease, and the Municipality may seek recovery or damages for any breach against the Tenant without seeking such recovery directly against the assignee or other parties who might also be liable.

16. Page 11, Section 23 – Liens on Buildings and Improvements. This section is amended in its entirety to read as follows:

All buildings and improvements (exclusive of trade fixtures), constructed or placed upon the Property by the Tenant, are the property of the Landlord and must be kept free and clear of all liens, claims, encumbrances or liability for labor or materials, subject to any consented to lien(s) for security purposes. Landlord hereby acknowledges the security interests granted by Tenant to Key Bank to secure the Key Bank Loan.

17. Page 11, Section 25 – Promotion and Signs. Paragraphs A and B are amended in their entirety to read as follows:

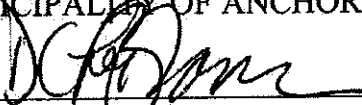
- A. *Promotion.* Tenant shall promote, advertise and otherwise offer to the public the privileges of the area's winter alpine skiing facilities. Any such promotion or advertising shall comply with applicable law and indicate that the area is a municipal facility open to the public. The Landlord shall promote and advertise the Property as the Southeast Anchorage Parks District Office and activities and events, other than winter alpine skiing, to maximize use of the property for the benefit of the public.
- B. *Permanent Signs.* Tenant will not erect any signs on the Property intended for viewing by persons outside the Property, except that Tenant shall be entitled to install, with the consent and approval of the Landlord, not more than two (2) signs at the entrance informing the public of the direction to the entrance. Tenant may also install signs on the Property intended to prevent trespassing and vandalism, and to guide or regulate activities on the Property. Any signs erected by Tenant shall comply at all times with any law in effect that regulates signs, advertisements, or their content, including the Anchorage Municipal Code, and shall be pre-approved by Landlord in writing.
- C. *Temporary Signs:* Signs promoting a special event shall be allowed, provided that such signs are not posted for more than seven days and comply with all municipal code provisions and regulations applicable to temporary signs.

18. Appendix D – Management, Use, and Control of Property. The parties hereby agree to incorporate into the lease agreement an Appendix D. The Appendix D is attached hereto and incorporated by reference.


19. The parties agree that all other portions of the original Lease Agreement, dated June 20, 2000, together with amendments, shall remain in full force and effect in accordance with its terms.

IN WITNESS THEREOF, the parties have executed this Amendment No. 1 on the date and at the place shown below.

LANDLORD
MUNICIPALITY OF ANCHORAGE

By: 
Denis C. LeBlanc
Municipal Manager
Dated: 7/22/05

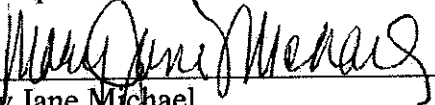
TENANT
YOUTH EXPLORING ADVENTURES, INC.


d/b/a Hilltop Ski Area
By: 
Steve Remme
Chief Executive Officer
Dated: 7-21-05

Recommendation for approval:

Approved by Tenant's Secured Party/
Assignee, Key Bank National Association:

Office of Economic & Community Development Key Bank

By: 
Mary Jane Michael
Executive Director
Dated: 7-21-05

By: 
Name: Charles Eddy
Title: Vice President
Dated: 7-21-05

APPENDIX D
Management, Use, and Control of Property

1. *Non-exclusive Use/Control.* This Lease creates in Tenant a non-exclusive interest in the Property. Tenant agrees that Landlord may, at its sole discretion, choose to allow other organizations access to the park for purposes benefiting Landlord. Tenant acknowledges that the Property is a part of the Far North Bicentennial Park, and as such is intended by Landlord to provide various recreational opportunities to the public. Such activities may include, but are not limited to, equestrian, hiking, biking, and cross-country skiing. Tenant recognizes that adjacent recreational activities may at times result in some intrusion upon the Property, but the parties agree that the public shall have the right to use the Property for purposes and time periods as permitted by the Landlord's unfettered discretion.
2. *Public Access.* The Property shall remain open to the public and Tenant's use of the Property shall be non-exclusive, it being the intent of the parties that others (including, but not limited to, vendors or concessionaires authorized by Landlord) be permitted to access and use the Property in a manner permitted by Landlord and not inconsistent with Tenant's use under this Lease. Trails, lodge/chalet, parking, and recreational facilities of the Hilltop Ski Area shall be open to the public in accordance with the parks and recreation facility policies of the Anchorage Parks and Recreation Department, after review and recommendations by the Anchorage Parks and Recreation Advisory Commission.
3. *Reservation of Access.* Landlord retains the right to full and complete access to the Property, as well as full and complete use of the Property for operation of a Southeast Anchorage Parks District Office, for recreational activities and special events, and for the construction, repair, or maintenance of the utilities or facilities. Landlord retains the right to designate or grant rights-of-way or utility easements across the Property without compensation, provided that Tenant shall be compensated for the taking or destruction of any improvements installed by Tenant at its expense during the term of this Lease, and provided further that Tenant at its option may terminate the Lease.
 - A. Landlord, its authorized representatives, agents and employees shall have the right to be present upon the Property at all times for:
 - (1) Operation of a Southeast Anchorage Parks District Office;
 - (2) Recreational activities, programs, and special events;
 - (3) Inspection of the Property, facilities, and equipment;
 - (4) Observation of Tenant's operations;
 - (5) Cleaning, repair, maintenance, alteration, construction or

- improvement of the Property as Landlord may deem necessary;
- (6) Showing the Property to prospective contractors, or lenders;
- (7) Abating any nuisance, health or hazardous condition on the Property; and
- (8) Preserving and protecting the Property.

B. The right of access reserved herein does not impose, nor does Landlord assume by reason

thereof, any responsibility for the care, maintenance or supervision of Tenant's property and equipment associated with the operation of an alpine ski area and related winter recreation activities. Tenant shall not be entitled to any abatement or reduction in rent by reason of Landlord's access or presence on the Property.

4. *Services and Responsibilities of the Tenant:*

A. Tenant shall be responsible for operating an alpine ski area and for related winter recreation activities.

B. Tenant shall be responsible for operating and maintaining:

- (1) all facilities erected by Tenant;
- (2) the alpine ski area;
- (3) all Tenant-installed equipment; and
- (4) the road and parking lot.

C. Tenant shall allow Landlord to jointly use all public spaces in the ski chalet building as the Landlord's Southeast Anchorage Parks District Office. Tenant shall provide Landlord with at least 48 square feet of lockable office space in the in the prime office area within the ski chalet building and with another 529 square feet of heated storage space located on the property during the winter season (October 16th through April 15th) and with 7,322 square feet during the summer season (April 16th through October 15th). Tenant will operate the chalet and counter during the winter season and Landlord will operate the chalet and counter during the summer season.

5. *Services and Responsibilities of the Landlord*

A. All revenues for events, programs, activities and chalet rentals that are scheduled by Landlord shall be retained by the Landlord. Tenant's revenues shall be limited to revenues accruing from Tenant's winter

recreation activities as defined in gross revenues under Section 6 (C) of the Lease Agreement.

- B. Landlord shall reimburse Tenant for the rental of the chalet at the rate of \$2.00 per square foot based on the following areas:

Winter Season Chalet	48s.f	\$ 96.00	\$ 576.00
Winter Season Storage	529s.f.	\$1,058.00	\$ 6,348.00
Summer Season Chalet	7,322s.f	\$14,644.00	<u>\$87,864.00</u>
Total Annual Rent			\$94,788.00

Landlord will reimburse Tenant for rent up to a maximum of \$94,788.00 per year, beginning January 1, 2006. Landlord will reimburse Tenant on a quarterly basis with one quarter of the annual rent due each January 1, April 1, July 1 and October 1 of each calendar year.

- C. Landlord may construct or make any improvements to the Property, provided that the changes do not reasonably impede Tenant's operation of the alpine ski area.

- D. The rental rate of the Chalet shall include facility maintenance and upkeep by the Tenant as well as the following utilities (electric, gas, septic, trash disposal, and water. Phone service shall not be included in the rental rates.

- F. The rental rates shall be reviewed bi-annually and may be adjusted by no greater than $\frac{1}{4}$ of 1% for each adjustment.

- G. Failure of user group renting the chalet to leave the premises in a satisfactory clean condition shall result in forfeiture of the cleaning deposit which shall be paid to Hilltop as compensation for the additional cleaning services required. Clean up shall be based on written cleaning list provided to the rental groups.

6. *Joint Responsibilities*

Landlord and Tenant shall:

- A. Conduct joint promotion and marketing activities for the area, promoting the area as a four-season recreational area;

- B. Cooperate to promote the development of programs and services to benefit all Anchorage residents and to maximize public use of the area;
- C. Coordinate use of the chalet. Landlord shall be responsible for scheduling events and programs at the chalet during the summer season. Tenant shall be responsible for scheduling events and programs at the chalet during the winter season. Landlord shall be entitled to reasonable use of the chalet during the winter season, at no additional cost to Landlord, so long as said use does not interfere with the normal ski operations of Tenant. Tenant shall be entitled to reasonable use of the chalet during the summer season for fundraising events, Tenant board meetings, and other Tenant sponsored events as long as Landlord does not have other rental(s) and/or events scheduled that conflict. Landlord agrees to waive chalet rental fees for Tenant's fundraising event(s), board meetings and other Tenant sponsored events so long as Tenant provides its own staffing requirements for such use. Tenant shall direct all requests for use of the chalet during the summer season to Landlord's Southeast Anchorage parks district manager.
- D. Designate primary contact persons. Landlord and tenant shall each designate a primary contact person who will be responsible for coordination and communication under this agreement.
- E. Work to resolve conflicts. In the event of a dispute between Landlord and Tenant, Landlord and Tenant's designated contact persons shall first endeavor to resolve the dispute. If the contact persons are unable to resolve the dispute, then Landlord and Tenant's designated contact persons shall present the dispute to Anchorage Parks and Recreation Department's Recreation Superintendent for the area. If the Recreation Superintendent is unable to resolve the dispute, then the Superintendent shall ask the Director of the Anchorage Parks and Recreation Department to resolve the dispute.

Content Information**Content ID :** 003145**Type:** AR_FundsApprop - Funds Approp Resolution**Title:** Hilltop Loan, Request for disbursement of the final \$60,000 loan to YEA**Author:** stanley-harrisel**Initiating Dept:** ParksRec**Select Routing:** Standard**Review Depts:** ParksRec**Description:** AM, AR, Requesting final disbursement of funds, and Amendment No. 1 to the Lease Agreement between the Municipality of Anchorage Parks and Recreation Department and Youth Exploring Adventures, Inc.'s**Keywords:** Hilltop Loan, YEA, Parks and Recreation,**Date Prepared:** 8/3/05 7:39 AM**Director Name:** Jeff Dillon**Assembly****Meeting Date** 8/23/05**MM/DD/YY:**

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Workflow History

<u>Workflow Name</u>	<u>Action Date</u>	<u>Action</u>	<u>User</u>	<u>Security Group</u>	<u>Content ID</u>
FundsAppropWorkflow	8/3/05 7:49 AM	Checkin	stanley-harrisel	Public	003145
ParksRec_SubWorkflow	8/3/05 8:56 AM	Approve	dillonrj	Public	003145
ECD_SubWorkflow	8/3/05 9:13 AM	Approve	villareallm	Public	003145
OMB_SubWorkflow	8/3/05 1:25 PM	Approve	mitsonjl	Public	003145
Finance_SubWorkflow	8/11/05 1:32 PM	Approve	sinzje	Public	003145
MuniManager_SubWorkflow	8/12/05 12:50 PM	Approve	abbottmk	Public	003145
MuniMgrCoord_SubWorkflow	8/12/05 1:06 PM	Approve	curtiscr2	Public	003145