

## USE AGREEMENT

This USE AGREEMENT ("Agreement") is hereby entered into by and between the CITY OF VALDEZ, ALASKA, an Alaska municipal corporation ("City"), and the Valdez Motor Sports Club.

### WITNESSETH:

WHEREAS, the City is owner of that certain parcel of real property this is located in the Valdez Recording District, Third Judicial District, State of Alaska ("Real Property"), more particularly described as follows:

10 acres of land within USS 439 as specified in attachment A

NOW, THEREFORE, IT IS MUTUALLY AGREED between the City and the Valdez Motor Sports Club as Follows:

1. Use of Real Property. The City grants the Valdez Motor Sports Club the right and privilege to come and be present upon and to make use of a portion of the Real Property for the following purpose only:

To develop, operate and maintain a Motor Sports facility for their own use.
2. Fees. The Motor Sports Club shall pay no fees to the city, in exchange for the right and privilege to use the Real Property as is permitted under this Agreement.
3. Term. This Agreement shall be for a Term of FIVE (5) years, commencing on the 15<sup>th</sup> day of July, 2000 and terminating five years after that date unless this Agreement is terminated at some earlier date under the terms and conditions set out hereinbelow.
4. Extended Term. The City may extend the Term of this Agreement for a period of FIVE (5) years if and insofar as the Valdez Motor Sports Club gives written notice to the City of an intention to exercise this option no later than sixty (60) day prior to the expiration of the Term and that, at such time, the Valdez Motor Sports Club is not in default in the performance of any of the terms and conditions of this Agreement or has failed to comply with any of the terms and conditions thereof, and the Valdez City Council finds it to be in the public interest. Fees for use of this property may be considered prior to extending the Term.
5. Specific Buildings Permitted. The type and kind of building that the Motor Sports is permitted to place, install, and operate and maintain upon the Real Property under this Agreement is limited to the following:
  - a. Connex
  - b. Control Tower
  - c. Portable Restroom

6. Consent Required. The Valdez Motor Sports Club shall not place or install any building, or make any alteration, addition, or improvement to any existing building previously placed or installed, or place or put any improvement on or to the Real Property, or commence any such undertaking without the prior written consent of the City. As a condition precedent to such consent, the Valdez Motor Sports Club shall deliver to the City written plans and specifications for all such work. Such consent will not be unreasonably withheld by the City. It is not the intent of this paragraph to restrict or prevent any maintenance required.
7. Compliance with Government Regulations. The Valdez Motor Sports Club shall comply and assumes sole responsibility for compliance with any and all economic, operational, safety and other requirements as are or may be imposed by federal, state, municipal, or other law or regulatory body, that apply or relate thereto pursuant to its involvement in the operations of the Motor Sports facility; the Valdez Motor Sports Club agrees to reimburse the City its entire costs, including but not limited to the amounts of fines or penalties and costs of counsel, arising from any assertion or finding of lack of compliance with any aforesaid laws and/or regulations arising out of or with respect to the Valdez Motor Sports Club's operations of the equipment associated with this Agreement.
8. Indemnification. The Valdez Motor Sports Club hereby assumes the entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property, growing out of or resulting from the existence, placement, installation, maintenance, use or operation of equipment or improvements upon the Real Property under this Agreement. The Valdez Motor Sports Club agrees to indemnify and save harmless the City, its agents, servants, and employees, from and against all loss, expenses, including attorney fees, damage or injury growing out of or resulting from or occurring in connection with the existence, placement, installation, maintenance, operation or use of equipment or improvements upon the Real Property under this Agreement.
9. Insurance Requirements. The Valdez Motor Sports Club shall maintain at its own expense insurance in such forms and amounts as is necessary to satisfy and meet its indemnification obligations set forth in this Agreement and shall give to the City yearly a certificate from all carriers showing the dates and expiration of any and all policies as well as the limits of liability thereunder.
10. Termination. This Agreement may be terminated by the City with or without cause or should the Valdez Motor Sports Club's use interfere with the City's use of the Real Property or upon the Valdez Motor Sports Club's failure to perform or comply with any of the conditions or obligations contained in this Agreement. In such event, the City shall give ten (10) days prior written notice of the termination and the Valdez Motor Sports Club shall have (30) days to remove any of its equipment from the Real Property. This Agreement may be terminated by the Valdez Motor Sports Club upon thirty (30) days prior written notice of the termination and the Valdez Motor Sports Club shall then have thirty (30) days to remove its building from the Real Property.



11. Assignability. The Valdez Motor Sports Club shall not assign (by Operation of law or otherwise) or transfer this Agreement or any interest therein without the prior written consent of the City.
12. Non-exclusive Use. The use of the Real Property by the Valdez Motor Sports Club will not be an exclusive use and therefore others who request to use it for similar purposes may also be allowed by the City. The Valdez Motor Sports Club shall work cooperatively with other users of the facility. Failure to do so may be cause for termination of the Agreement.
13. Snow Removal. The Valdez Motor Sports Club will be responsible for all snow removal necessary for its use under this Agreement.
14. Utility Installation/Usage. The Valdez Motor Sports Club will be responsible for the cost of installation and the utilization of sewer, water and electricity needed for its use.
15. Environmental Laws.
  - a. The Valdez Motor Sports Club represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws, and will keep Property free of Hazardous Substances, except for fuel for heating generators. The City represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous substance as of the date of this Agreement.
  - b. The Valdez Motor Sports Club agrees to defend, indemnify and hold the City harmless from and against any and all claims, causes of action, demands and liability including, but not limited, to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that the City may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment arising solely from the Valdez Motor Sports Club's activities on the Property.
  - c. The indemnifications in this section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any government authority.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this 7th day of August, 2000.

**CONTRACTOR**

**VALDEZ MOTOR SPORTS CLUB**

By: Laura L. Saxe

Title: Sec/Tres

Date: 8-7-00

Box 610  
Mailing Address

Valdez AK 99686  
City, State, Zip Code

92-0136841  
Federal I.D. or S.S.#

**CORPORATE SECRETARY**

Attest: Laura L. Saxe  
Corporate Secretary

**CITY OF VALDEZ, ALASKA  
AUTHORIZED:**

By: David C Cobb  
David C. Cobb, Mayor

Date: 8/10/00

Attest:

By: Sheri L. Pierce  
Sheri L. Pierce, CMC City Clerk

**RECOMMENDED:**

By: Nancy M Robb  
Nancy M Robb Dave Dengel, City Manager - Action

Date: 8/8/00

By: Nancy M Robb  
Nancy M. Robb, Parks & Recreation Director

Date: 8/8/00

**APPROVED AS TO FORM:**

Walker, Walker, Wendlandt, & Osowski LLC

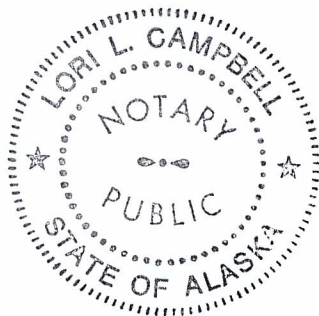
By: William M. Walker  
William M. Walker,  
Attorney for the City of Valdez



STATE OF ALASKA                                 )  
  ) ss.  
THIRD JUDICIAL DISTRICT                     )

THIS IS TO CERTIFY that on this 14th day of August, 2000, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared LAURA L. SAXE, known to me and to me known to be the CORPORATE SECRETARY of Valdez Motor Sports Club, and the individual named in and who executed the foregoing instrument, and he acknowledged to me that he did sign and seal the same as his voluntary act and deed and was authorized to do so by Port Valdez Company, Inc. for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first hereinabove written.



Lori L. Campbell  
Notary Public in and for Alaska  
My Commission Expires: 4/2/01



Attachment A

