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8/30/2012

[MR]

Sponsor: _____
Proposed No.: 2012-0244

1 AMENDMENT TO PROPOSED ORDINANCE 2012-0244, VERSION 1

2 Delete Attachment A, Use Agreement - Hollywood Hills Saddle Club - Woodinville Pit
3 Park Site, and insert Attachment A, Use Agreement - Hollywood Hills Saddle Club -
4 Woodinville Pit Park Site (revised August 30, 2012)

5

6 **EFFECT: Replaces Use Agreement with a revised version that 1) deletes the**
7 **provision tying differential fees to county taxpayer costs; and 2) inserts a provision**
8 **that requires approval by ordinance of any construction with market value**
9 **exceeding \$50,000, if there is a code requirement to do so.**

10 **Regarding differential fees, the Prosecuting Attorney’s office has recommended**
11 **striking this language (in Sect 1.4) that requires that any fee difference charged to**
12 **non-county residents compared to residents of King County be reasonably related to**
13 **the costs that King County residents bear in supporting the facility. The PAO notes**
14 **that the facility has been open and operating for decades, and that there is no**
15 **instance of differential fees having been charged, and no reason to anticipate that**
16 **there would be; the provision appears to have little utility, and the PAO has**
17 **recommended its removal.**

18 **Regarding the requirement for Council approval by ordinance of any construction**
19 **with market value over \$50,000 (Sect. 4.1), the Council recently approved 2012-**
20 **0258, requiring Council approval of construction in county parks that is valued over**
21 **\$50,000; the language in Section 4.1 addresses responsibility for improvements to**
22 **the facility, but is silent on this recently-enacted requirement. The Executive is**
23 **required to report in early 2013 regarding means to assure the Council that any**
24 **construction in Parks by community groups will not occur until Council approves—**
25 **at which time the Council would have the option of revising or eliminating the**
26 **requirement for Council approval of construction projects in county parks. As a**
27 **result, the language recommended by the PAO specifies that, if there is a**
28 **requirement in code to do so, construction valued at over \$50,000 at the Hollywood**
29 **Hills facility requires Council approval.**

**USE AGREEMENT BETWEEN
KING COUNTY AND HOLLYWOOD HILLS SADDLE CLUB**

for

THE EQUESTRIAN FACILITY

located at

WOODINVILLE PIT PARK SITE

Revised August 30 2012

This Use Agreement ("Agreement") is made and entered into by and between King County by and through its Department of Natural Resources and Parks, Parks and Recreation Division ("King County," or "the County"), and the Hollywood Hills Saddle Club, a Washington non-profit corporation ("HHSC") (collectively, the "Parties"), for the operation, maintenance, programming and use of the equestrian facility ("Facility") located at the Woodinville Pit Park Site in King County, Washington ("Site").

RECITALS

- A. King County, a home rule charter county and political subdivision of the State of Washington, is the owner of the Property, located at NE 15205 NE 172nd Street, Woodinville, WA 98072, and illustrated in Exhibit A to this Agreement.
- B. HHSC is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. HHSC is a community-based, open-membership club organized to provide public opportunities for equestrian recreation.
- C. King County has long identified equestrian facilities as a regional or rural recreation need in King County, and has determined that the Facility located at the Site has a significant and unique regional and/or rural public recreation value.
- D. King County Ordinance 14509 authorized the Department of Natural Resources and Parks to create new public recreation opportunities by empowering user groups, sports associations, and community organizations, like HHSC, to operate, maintain, and program mutually agreed-upon capital improvements for public recreation facilities on King County land, and thereby address regional and/or rural recreation needs without incurring new tax-funded operations and maintenance costs.
- E. Allowing HHSC to operate, maintain, program, and use the Facility will serve to implement the authority provided in Ordinance 14509.
- F. King County Code sections 4.56.150.E and F authorize the Department of Natural Resources and Parks to enter into use agreements with bona fide nonprofit organizations in order for the

nonprofit organization to make improvements to King County property; or for the nonprofit organization to provide services that will benefit the public.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises described below, the Parties agree as follows:

1. USE AGREEMENT

1.1 Grant.

- A. Property. Pursuant to K.C.C. 4.56.150.E, King County hereby authorizes HHSC to develop, operate, use, and maintain the Facility and the Site (together, the "Property") illustrated in Exhibit A as a recreational facility for the benefit and use of the public, subject to the terms and conditions set forth in this Agreement.
- B. Trail Easement. The Parks and Recreation Division of the Department of Natural Resources and Parks ("Division") and the King County Department of Transportation ("KCDOT") have agreed in principle to establish a recreational trail easement ("Easement") over KCDOT property adjoining the Site. The proposed Easement is illustrated in Exhibit A. If established, the Easement would be appurtenant to, and for the benefit of, the Property, and the land that makes up the King County parks and recreation system. The Division hereby authorizes HHSC to develop, operate, maintain and use the Easement for equestrian trail purposes, subject to the requirement that the Division and KCDOT must first establish the Easement as a matter of public record. The Division will notify HHSC if and when the Easement is recorded; and thereafter HHSC may exercise the authority granted to it in this **Subsection 1.1.B**, and the Easement will constitute a portion of the Site. If the Division decides not to establish the Easement, or if KCDOT declines to grant the Easement, then the Division will so notify HHSC and upon such notice this **Subsection 1.1.B** will have no further force or effect.
- C. Condition of Property; Duty to Maintain. HHSC has inspected and knows the condition of the Property, and agrees to accept the Property in AS IS condition without further payments or contributions from the County. KING COUNTY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE PROPERTY'S MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. HHSC agrees to assume full and complete responsibility for all operations, maintenance, and programming for the Property except as otherwise set forth herein. HHSC will be responsible for all costs associated with the operation, maintenance, programming and use of the Property during the Term as defined in **Section 1.2**. HHSC understands, acknowledges, and agrees that King County will be under no obligation, directly or indirectly, to pay for any labor, material, or improvement associated with the Property. HHSC will, upon request, inform any inquiring person or entity that King County has no further financial obligations associated with the Property.

- 1.2 **Term.** The term of this Agreement is approximately thirty (30) years, effective as of the date that both Parties have executed this Agreement, and expiring at 11:59:59 PM on December 31, 2042, unless terminated earlier as provided under ***Section 7*** of this Agreement.
- 1.3 **Conditional Right of First Refusal.** For a period of five (5) years beginning upon expiration of the Term, and ending on December 31, 2047, HHSC shall have the right of first refusal to accept any subsequent use agreement that the County may consider in connection with the Property. PROVIDED, that if this Agreement is terminated for any reason prior to the expiration of the Term, then this ***Section 1.3*** shall be void and HHSC will have no right of first refusal regarding any subsequent use agreement or other instrument relating to the Property.
- 1.4 **Use Fees.** HHSC may not charge a use fee for unscheduled use of the Site or the Facility. HHSC may charge a use fee for special events or for reserved use of the Site or the Facility or any part of them. HHSC may not charge fees to other organizations or individuals for the use of the Site or the Facility that exceed the amount charged for the use of comparable publicly accessible facilities of like kind and quality. Any use fee increases shall be approved in advance by King County, which approval shall not be unreasonably withheld.
- 1.5 **Operating Rules and Hours.**
- A. **Operating Rules.** Operating rules for the Site shall be consistent with King County ordinances and published policies relating to health and safety. The King County Parks and Recreation rules (King County Use of Facilities – K.C.C. Ch. 7.12 as now codified or hereafter amended) shall apply; provided that in the event of a conflict between this Agreement and those rules, ordinances, or policies, the terms of this Agreement shall control. Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the County.
- B. **Operating Hours.** Facility operating hours will be set on an annual basis, documented in the Annual Report required under ***Section 5*** of this Agreement, and posted in plain view on the Site.
- 1.6 **Public Access.** HHSC understands, acknowledges, and agrees that substantial public access to and use of the Property was and is a material consideration for King County's execution of this Agreement. Therefore, HHSC shall make the Property available to the general public for use by any organization or individual for reserved use or scheduled activities, consistent with and pursuant to ***Section 2*** of this Agreement. HHSC shall further make the Property available to the general public without charge for use by individuals for informal, unscheduled use, consistent with and pursuant to ***Section 2*** of this Agreement; provided that such use by the public shall not include any use that is inconsistent with the use of the Property for equestrian purposes, or that could result in any damage to the Property other than ordinary wear and tear; and provided further that any such use complies with all applicable laws, ordinances and regulations.

- 1.7 **Open Membership.** HHSC's equestrian program shall be open to all persons within its service area on a nondiscriminatory basis consistent with Federal and State law. HHSC shall assure access to its equestrian program and to the Property for outdoor park and recreational activities through the use of needs-based rates and programs, which shall be on terms that are consistent with County standards, for all persons residing in HHSC's service area who desire to participate in the equestrian program.
- 1.8 **Tax Covenants.** At all times from and after the effective date of this Agreement, HHSC will:
- Maintain its purposes and engage only in activities which are in furtherance of its purposes and which are permitted by the Washington State Nonprofit Act, RCW 24.03, or as hereafter amended ("the Act");
 - Maintain its status as a nonprofit corporation under the Act and as an organization described in Section 501(c)(3) of the U.S. Internal Revenue Code ("the Code") whose income does not inure to the benefit of any private person;
 - Not encumber, pledge, hypothecate or grant a security interest in all or any part of the Facility, the Site, or both of them;
 - Not engage in any activities related to the Facility or the Site which would cause the transaction contemplated under this Agreement to constitute an unrelated trade or business under section 513(a) of the Code; and
 - Not take any action or omit to take any action which, if taken or omitted, would adversely affect HHSC's nonprofit status or otherwise cause a tax lien to attach to the Site, the Facility, or both of them.

2. **OPERATIONS**

- 2.1 **Authorized Uses and Priorities.** The Property shall be open for the following uses and in the indicated order of priority:

- First, equestrian activities and programs, with scheduling preference to HHSC programs;
- Second, other equestrian-compatible activities or programs;
- Third, any other recreational activity not constituting a "*prohibited use*" as defined herein;

"*Prohibited use*" means any use of the Property that (i) violates any provision of K.C.C. Chapter 7.12, Park Use Rules; or (ii) is inherently incompatible with the maintenance and care of an equestrian facility, such uses to be identified in the Maintenance Plan contemplated in ***Section 3.3***, as may be revised from time to time.

- 2.2 **Scheduling Considerations.** In scheduling use of the Facility, HHSC shall:

- 2.2.1 Allow year-round, unscheduled access to the Facility by the general public if such use:

- (i) does not otherwise interfere with any scheduled use; and (ii) does not impact any area closed to all use for maintenance, safety, or other valid reasons.
- 2.2.2 Seek to keep the Property open for public recreation (whether scheduled or unscheduled) to the maximum extent practicable, subject to and consistent with the specific criteria set forth in the Maintenance Plan, which criteria are intended to preserve the Property.
- 2.2.3 Schedule use of no more than fifty percent (50%) of Facility operating hours during any rolling ninety-day period of time.
- 2.2.4 As a first-priority user, schedule HHSC's own programs for not more than fifty percent (50%) of Facility operating hours.
- 2.2.5 Publicize the Facility scheduling process by posting information about that process in plain view at the Facility, and by enabling scheduling requests to be made via the Internet on HHSC's home page, the home page for the Facility, and the web pages for the King County Parks and Recreation Division.
- 2.2.6 At such intervals as the Parties may agree upon, give the County an updated Facility use schedule.
- 2.3 **Amplification.** HHSC shall ensure any amplification is employed in accordance with rules for amplification in King County parks.
- 2.4 **Lighting.** Permanent artificial lighting of the Property is prohibited, except as may be required for purposes of safety at walkways, building exteriors, or parking areas. HHSC may not use or allow others to use any artificial lighting to extend recreational use of the Property without prior written permission from the County.
- 2.5 **Concessions.** HHSC may contract for food, souvenir, and product concessions; and concession rights and revenue from concessions shall belong to HHSC, all subject to and consistent with *Section 1.6* of this Agreement.
- 2.6 **Security and Nuisance during Use.** HHSC shall take reasonable precautions to secure the Facility, and shall not use the Site or Facility for any unlawful purpose or use or occupy the Site in any manner that would constitute a public nuisance or otherwise violate federal, state or local laws. HHSC shall not permit overnight camping in or on the Site without prior written permission of the County.
- 2.7 **Advertising, Sponsorships, and Naming Rights.**
- A. **Advertising and Sponsorships.** The grant of authority to HHSC in *Section 1* of this Agreement includes the right of HHSC to advertise at and secure sponsorships for, the Property; PROVIDED that the revenue generated from any such advertising or sponsorships is applied to the cost of improving and maintaining the Property. HHSC understands that the advertising of tobacco products as defined in King

County Ordinance No. 10615 and spirits as defined in King County Ordinance No. 14509 is strictly prohibited. HHSC further understands that pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising may be imposed by the Director of the King County Parks and Recreations Division ("Director"). If the Director imposes additional restrictions, HHSC will receive written notification thereof. Therefore, HHSC expressly covenants that neither it nor any of its sponsors or concessionaires will at any time display, promote or advertise on the Property any tobacco products, spirits or other subject matter expressly prohibited by the Director.

- B. Naming Rights. Naming rights to the Property belong to King County consistent with K.C.C. 7.08.080 and RCW 36.32.430. King County will consult with HHSC before signing any naming rights agreement or transmitting any legislation that would establish a new or different name for the Facility or the Site. HHSC may pursue naming rights agreements, or propose transactions related to naming rights, all for benefit of the Site or the Facility, or both; but HHSC may not enter into any such agreement or execute any such transaction.
- 2.8 Signage. HHSC shall not erect or install any sign, notice, or other lettering at the Facility or Site without the prior written approval of King County, which approval shall not be unreasonably withheld. All new Facility and/or Site signs shall follow the King County Sign System Guide and shall be manufactured and installed by King County, unless HHSC receives prior written approval of King County to do otherwise. Written approval shall be requested through King County's liaison. If HHSC violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the HHSC. All signs erected or installed pursuant to King County's prior written approval shall also comply with any applicable federal, state or local statutes, ordinances or regulations.
- 2.8.1 Signage at the Facility shall include information regarding scheduling processes and opportunities, a phone number for contacting HHSC, and information about where to file concerns regarding scheduling, operations or access to the Property. In addition, signage at the Facility should include information regarding HHSC's home page and home page for the Facility.
- 2.8.2 Signage on the Site shall include information regarding contact information for the King County Parks and Recreation Division, or its successor agency. Signage on the Site will identify HHSC as operating the Property on behalf of King County, and will identify the Property as being open to the public.
- 2.9 Incidental Uses. Subject to and consistent with **Section 1.8** of this Agreement, HHSC may use the Property to conduct tax-exempt fundraising activities to support the Site, the Facility, or HHSC's own beneficial or charitable mission as a non-profit Washington corporation; provided, that fundraising activities to support HHSC will occur during times actually reserved or scheduled by HHSC under **Section 2.2** above, and not during times that are reserved or scheduled by others, and not during times that are otherwise allocated to unscheduled use.

2.10 **King County's Role in Resolving Issues between HHSC and User Groups or the General Public.** HHSC acknowledges that, as the owner of the Property, King County is accountable to all of its citizens regarding the uses of and operations at the Property, including those uses and operations contemplated under this Agreement. To that end, HHSC agrees that it will attempt to resolve potential issues between itself and user groups or between itself and the general public as quickly as possible, in conformance with the general intent and specifics of **Section 2** of this Agreement. HHSC also agrees to utilize the Annual Meeting, under **Section 5.2** of this Agreement, as an opportunity to identify and resolve issues. However, if a significant dispute arises between HHSC and one or more user groups or between HHSC and the general public, King County, as the Property owner, retains the right to attempt to resolve such dispute in an expeditious manner. Nothing in this **Section 2.10** shall operate to limit the methods or options available to King County.

3. **MAINTENANCE**

3.1 **Scope of Responsibility.** During the Term, HHSC will be solely responsible for all ordinary maintenance and upkeep of the Property, including but not limited to rehabilitation or restoration necessitated by ordinary wear and tear, weather-related damage, or vandalism.

3.2 **Maintenance Guidelines.** As between King County and HHSC, all cost and expense to operate, maintain, program, and use the Property, including but not limited to utilities, utility infrastructure, and utility bills, shall be borne solely by HHSC. In maintaining the Property, HHSC shall:

- Schedule maintenance in a manner that maximizes both scheduled and unscheduled use of the Site to the greatest extent practicable;
- Maintain the Facility in a manner that is consistent with the high-quality experience envisioned for the Site;
- Keep the Property attractive and inviting to the public;
- Maintain sanitation and sanitary facilities in accordance with applicable State and local public health standards;
- Keep the Property reasonably safe for public use and, in particular, maintain fire prevention and similar activities at levels reasonable to prevent loss of the lives of users; and
- Keep buildings, roads, trails, and other structures and improvements in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration and not to discourage public use.

3.3 **Maintenance Plan.** HHSC shall prepare an annual Maintenance Plan (“the Plan”), for King County’s approval, which approval shall not be unreasonably withheld. The Plan shall:

- Describe HHSC’s maintenance standards and schedule for the Property, and any planned Facility or Site closures;
- Specify the criteria that HHSC will use to determine whether, on a day-to-day basis, it is necessary to close all or part of the Facility or the Site to any type of use;
- Outline the process that HHSC will use to notify King County if and when HHSC decides it is necessary to close all or part of the Property to any type of use, other than previously planned closures;
- Enumerate higher impact “uses” of the Facility or Site that could potentially result in unacceptably severe wear and tear on the Property, and set forth the criteria upon which such higher impact uses will be allowed;
- Enumerate any prohibited "uses" of the Facility or Site, other than those uses prohibited under any King County ordinance or regulation; and
- Ensure that King County does not incur any operations and maintenance costs requiring additional public funds to be invested in the Property during the Term.

HHSC may amend the Plan from time to time during the course of the calendar year, subject to King County's written approval, which approval shall not be unreasonably withheld.

4. **IMPROVEMENTS**

4.1 **Scope of Responsibility.** During the Term, HHSC shall have primary responsibility and control over making any and all improvements to the Property, including, but not limited to, securing requisite funding, hiring professional consultants, completing designs, obtaining requisite permits and approvals, contracting and overseeing the work, and complying with environmental and other development restrictions. If required by the King County Code, any improvement with a fair market value in excess of fifty thousand dollars will require approval by ordinance by the King County Council. All Property improvements shall be designed to comply with the spirit and intent of the federal Americans with Disabilities Act and all applicable regulations and guidelines enacted pursuant thereto.

4.2 **Project Plan; Division Review.**

A. **Project Plan.** HHSC shall present a “Project Plan” to King County before making any material alteration to the Property, including any substantial change to the landscaping. Each Project Plan shall describe the planning process with a time line

and milestones; describe the principal features of the proposed improvement; provide conceptual design drawings, if applicable; describe in reasonable detail and rationale the goals and objectives of the improvement; identify the party primarily responsible for supervising the project; and provide a schedule showing the sources and timing of funding for the project.

B. Division Review. HHSC may not begin work or authorize others to begin work on any particular project without first obtaining the Division's written approval of the relevant Project Plan, which approval shall not be unreasonably withheld. The Division's right of review and approval is in addition to and separate from any permits or other process that may be required by law. HHSC acknowledges that the Division's review and approval of HHSC's plans does not relieve HHSC of any responsibility for such plans; and HHSC further acknowledges that the Division's review and approval of HHSC drawings or plans does not constitute a building permit or other land-use authorization to conduct any work or make any improvements or alterations. The Division's review of HHSC plans shall not constitute endorsement or approval of plans by any other King County agency. As between the parties, HHSC is solely responsible to ensure that its plans, drawings, design documents, and construction comply with all applicable laws, regulations, codes, ordinances, guidelines, and industry standards.

4.3 No Financial Responsibility. HHSC understands, acknowledges, and agrees that King County will be under no obligation, directly or indirectly, to pay for any labor, material, or improvement associated with the Property. HHSC will, upon request, inform any inquiring person or entity that King County has no further financial obligations associated with the programming, operation, maintenance, repair, or rehabilitation of the Property.

4.4 No Liens. HHSC acknowledges and agrees that it has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of King County in the fee interest in the Property, or to charge fees for any claim in favor of any person or entity dealing with HHSC, including those who may furnish materials or perform labor for any construction, operation, repairs, or maintenance. If any such liens are filed, King County may, without waiving its rights and remedies for breach, and without releasing HHSC from its obligations under this Agreement, require HHSC to post security in a form and amount reasonably satisfactory to King County or to cause such liens to be released by any means King County deems proper, including payment upon satisfaction of the claim giving rise to the lien. HHSC will pay to King County, upon demand, any sum paid by King County to remove the liens.

4.5 Contractor Indemnification and Hold Harmless. HHSC will require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and costs, arising out of or in connection with the design, development, or construction of any improvements that HHSC may make to the Property, except for injuries and damages caused by the

negligence of King County. The indemnification and hold harmless language will be at least as broad as that set forth in **Section 6.7** of this Agreement.

- 4.6 **Contractor Insurance.** HHSC will require its construction contractors and subcontractors to carry insurance meeting all requirements set forth in **Section 6** of this Agreement.

In addition, HHSC will require its construction contractors and subcontractors to provide, for the duration of any construction on the Property, Builders Risk insurance covering interests of the County, HHSC, and the construction contractor(s) in the work, in the amount of the completed value of the improvements with no coinsurance provisions. Such Builders Risk insurance will be on an "all-risk" policy form including flood and earthquake, theft, vandalism, malicious mischief, collapse. Coverage for temporary buildings and debris removal shall be included. This Builders Risk insurance covering the work will have a deductible no larger than \$5,000 for each occurrence, which will be the responsibility of the HHSC. Higher deductibles for flood and earthquake perils may be accepted by the County upon written request by HHSC and written acceptance by the County. Any increased deductibles accepted by the County will remain the responsibility of HHSC. The Builders Risk insurance will be maintained until final acceptance of the work by HHSC. HHSC will require its construction contractors and subcontractors to provide copies of insurance certificates and additional insured endorsements or insurance policies to the County upon request.

- 4.7 **Professional Liability Errors and Omissions.** If HHSC directly or indirectly requires professional services in connection with the exercise of HHSC's rights, privileges, duties, or obligations under this Agreement, then HHSC will require its professional service providers to carry insurance meeting all requirements set forth in **Section 6** of this Agreement. In addition, HHSC will require its professional service providers to carry Professional Liability Errors and Omissions insurance in an amount not less than \$1,000,000 per claim/aggregate. HHSC will require its professional service providers to give the County copies of all insurance certificates or insurance policies upon request.

- 4.8 **Payment and Performance Bonds.** HHSC will require its construction contractors to provide payment and performance bonds, each for one hundred percent of the contract price, on a form of bond acceptable to the County with an approved surety company and in compliance with Chapter RCW 39.08 RCW. HHSC or its contractor shall notify the surety of any changes in the work. HHSC or its contractor shall promptly furnish additional bond security to protect the County and persons supplying labor or materials required by the project if:

- A. The County has a reasonable objection to any surety;
- B. Any surety fails to furnish reports on its financial condition pursuant to the County's request; or
- C. The contract price increases beyond the bond amount.

- 4.9 **Licensed Contractors and Professional Service Providers.** HHSC will use only contractors and professional service providers that are licensed and authorized to do business in Washington State, consistent with RCW 39.06.
- 4.10 **Prevailing Wage.** HHSC understands, acknowledges, and agrees that construction on the Property constitutes "public work" for purposes of the prevailing wage statute, RCW Ch. 39.12, such that prevailing wages will be paid as may be required under that statute.

5. **REPORTING**

5.1 **Annual Report.** HHSC shall furnish the following information to King County not later than January 31st of each calendar year during the Term of this Agreement:

- 5.1.1 A general summary of the usage of the Property during the calendar year preceding the date of the report.
- 5.1.2 A general description of the maintenance work performed on the Property during the calendar year preceding the date of the report.
- 5.1.3 A detailed summary and evidence of HHSC's expenditures made on capital improvements to the Property during the calendar year preceding the date of the report.
- 5.1.4 A copy of HHSC's most recent Form 990 as filed with the Internal Revenue Service.
- 5.1.5 The Maintenance Plan for the twelve (12) months following the date of the report.
- 5.1.6 An initial schedule for the twelve (12) months following the date of the report, allocating Property use among reserved uses, scheduled use, and drop-in use, all consistent with and pursuant to ***Section 2*** of this Agreement.
- 5.1.7 A summary of issues, proposed resolutions to issues and minutes from any meeting(s) that occurred between HHSC, affected residential and user group communities and other interested parties during the past calendar year.

5.2 **Annual Meeting.** HHSC and King County, by and through their designated representatives, shall meet at least once per calendar year during the Term of this Agreement to discuss the prior and upcoming years' operations, maintenance, and capital improvements. The annual meeting shall occur during the first quarter of the calendar year, or as soon thereafter as reasonably possible, in connection with HHSC's submittal of its annual report to King County. PROVIDED, that each calendar year during the Term, the County may determine, in its sole discretion, that an annual meeting is not required for that year. If the Division so determines then it will so notify HHSC.

5.3 **Records and Audits.** HHSC shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. During the Term of this Agreement, HHSC's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by King County at King County's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.

5.4 **Site Inspection.** King County may inspect the Property at any time, with or without notice. King County will take reasonable steps to exercise its right of inspection so as to avoid or minimize disturbance of any activities taking place on the Property. HHSC will provide King County with a key to any dual-locked structures, gates or storage containers. The Parties agree, for reasons of protection and safety, to promptly secure and lock any doors, gates, or storage containers unlocked for activities, use or access. King County has the right to use any and all means that King County deems proper to open doors and gates in an emergency in order to obtain entry to the Property. The Parties agree that nothing in this *Section 5.4* shall limit the governmental or police powers of the County.

6. **INSURANCE AND INDEMNIFICATION; ENVIRONMENTAL HAZARDS.**

6.1 **Minimum Scope of Insurance.** At a minimum, HHSC shall maintain insurance that covers HHSC's activities and usage of the Property as follows:

6.1.1 Commercial General Liability insurance (Insurance Services Office form number (CGOO 001)), covering Commercial General Liability with a limit of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate.

6.1.2 Automobile Liability (Insurance Services Office form number (CA 00 01 Ed. 12 90), covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9 for a limit of not less than \$1,000,000 combined single limit per occurrence.

6.1.3 Workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limits.

6.1.4 Stop Gap/Employers Liability insurance in the amount of \$ 1,000,000.

6.1.5 King County, its officers, officials, employees and agents shall be covered as additional insureds as respects liability arising out of activities and usage under this Contract.

6.1.6 HHSC's commercial general liability insurance coverage shall be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents will not contribute with HHSC's and or HHSC's contractors/subcontractors insurance or benefit HHSC or their contractors/subcontractors in any way.

- 6.1.7 HHSC's insurance will apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's policy.
- 6.1.8 Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to HHSC and King County.

If at any time any of the foregoing policies fail to meet the above minimum standards, then HHSC will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to King County with certificates and endorsements, for approvals.

6.2 **Acceptability of Insurers.** Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.

6.3 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by King County. The deductible and/or self-insured retention of the policies will not limit or apply to King County and will be the sole responsibility of HHSC.

6.4 **Other Insurance Matters.**

6.4.1 At all times from and after the effective date of this Agreement, HHSC agrees to procure and maintain insurance as specified herein, in full force and effect for the duration of the Term of this Agreement, against claims for injuries to persons or property damage which may arise from or in connection with this Agreement.

6.4.2 Each insurance policy will be written on an "occurrence" form.

6.4.3 By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. HHSC will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.

6.4.4 Nothing contained in these insurance requirements will be deemed to limit the scope, application, and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy or policies. Nothing contained within this provision will affect or alter the application of any other provision contained within this Agreement.

6.4.5 Each insurance policy required to be carried by HHSC hereunder will comply with the provision of **Section 6.6** of this Agreement.

6.4.6 HHSC will annually furnish King County with updated, valid certificates of insurance and endorsements as required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The initial set of certificates and endorsements for HHSC's insurance are to be on forms approved by King County and are to be received and approved by King County prior to the effective date of this Agreement. King County reserves the right to require complete certified copies of all required policies at any time.

6.4.7 Additional insurance requirements applicable to HHSC's contractors, subcontractors, and professional service providers are set forth in *Section 4* of this Agreement.

6.4.8 King County reserves the right to update or revise the insurance requirements set forth in this *Section 6.4* upon sixty (60) days' written notice to HHSC.

6.5 **King County Insurance.** HHSC acknowledges, agrees, and understands that the County is self-insured for all of its liability exposures, as well as all of its workers' compensation liability exposure. The County agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement, or, in the County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk-sharing pool. The County agrees to provide HHSC with at least thirty (30) days prior written notice of any change in the County's self-insured status and will, upon request, provide HHSC with a letter of self-insurance as adequate proof of insurance.

6.6 **Waiver of Subrogation.** HHSC and its insurance carriers will release and waive all rights of subrogation against King County to the extent a loss is covered by property insurance in force. HHSC hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under their respective fire insurance policies, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of HHSC or King County.

6.7 **Indemnification and Hold Harmless.**

6.7.1 HHSC shall protect, indemnify, and hold harmless King County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (i) HHSC's failure to pay any compensation, wages, benefits, or taxes, and/or (ii) work, services, materials, or supplies to HHSC employees or other HHSC suppliers in connection with or in support of the performance of this Agreement.

6.7.2 HHSC expressly agrees to protect, defend, indemnify and hold harmless King County, its elected and appointed officials, officers, employees, and agents from and against liability for any claims (including all demands, suits, and judgments) for damages arising out of injury to persons or damage to property

where such injury or damage is caused by, arises out of, or is incident to HHSC's exercise of its rights, privileges, duties, or obligation under this Agreement. HHSC's obligations under this *Section 6.7* shall include, but not be limited to:

- The duty to promptly accept tender of defense and provide defense to King County at HHSC's expense for claims that fall within this section;
- Indemnification of claims, including those made by HHSC's own employees and/or agents for this purpose, for claims that fall within this section;
- In the event King County incurs any judgment, award and/or cost arising from claims that fall within this section, including attorney fees to successfully enforce this *Section 6.7*, all such fees, expenses, and costs shall be recoverable from HHSC;
- HHSC shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the performance or non-performance of the obligations under this Agreement by HHSC's subcontractors, its officers, employees, and/or agents in connection with or in support of this Agreement;
- HHSC expressly and specifically agrees that its obligations under this *Section 6.7* extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, HHSC, hereby expressly and specifically waives, with respect to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County; and
- In all contracts entered into by HHSC in conjunction with its duties under this Agreement, HHSC will include a hold harmless provision similar to this *Section 6.7.3* to protect the County.

6.8 Environmental Hazards.

- 6.8.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 6.8.2 HHSC shall not, without first obtaining King County's written approval, apply, store, deposit, transport, release or dispose of any hazardous substances, petroleum products, sewage, medicinal, bacteriological, or toxic materials, or pollutants, on the Property. All approved application, storage, deposit, transportation, release and disposal shall be done safely and in compliance with applicable laws.

- 6.8.3 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that HHSC might have against King County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by King County. HHSC may not, however, assert such a claim to the extent that HHSC creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of HHSC using the Property, allowing others to use the Property, changing the configuration of the Property, or changing the use of the Property.
- 6.8.4 If HHSC discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against King County then HHSC shall immediately notify King County in writing. Such notice shall in no event be provided more than ten (10) days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 6.8.5 In no event shall King County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

7. **TERMINATION**

7.1 **HHSC Default.** The occurrence of any one or more of the following events shall constitute a default by HHSC under this Agreement:

- 7.1.1 HHSC loses or changes its status: (i) as an active Washington non-profit corporation; or (ii) as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; provided that King County will not terminate this Agreement under this *Section 7* if HHSC cures any and all such loss or change of status within a reasonable time; or
- 7.1.2 HHSC is in default of the performance of any covenants, conditions, or provisions of this Agreement, where such failure continues for a period of sixty (60) days after written notice is given by King County; provided that if the nature of HHSC's breach is such that more than sixty (60) days are reasonably required for cure, then HHSC will not be in default if HHSC commences to cure within sixty (60) days of King County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or
- 7.1.3 HHSC is adjudged bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for HHSC's estate and such appointment is not vacated within sixty (60) days; or

7.1.4 This Agreement is assigned or the Property is used by HHSC for activities other than in accordance with the terms of this Agreement, and such default is not cured within thirty (30) days after written notice from King County to HHSC; or

7.1.5 The Property is not open and in operation and available to the public for outdoor park and recreational purposes for a period of sixty (60) consecutive days or more; provided that reasonable periods of closure required for necessary maintenance, rehabilitation, capital improvement or to remedy threats to health or safety shall not be counted as periods when the Property is not open and in operation.

7.2 **King County Default.** King County will not be in default unless King County fails to perform an obligation within sixty (60) days after notice by HHSC, which notice must specify the alleged breach; provided that if the nature of King County's breach is such that more than sixty (60) days are reasonably required for cure, then King County will not be in default if King County commences to cure within sixty (60) days of HHSC's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

7.3 **Termination for Cause.** This Agreement may be terminated by either party by reason of the default of the other (as set forth in *Sections 7.1* and *7.2*, respectively) by giving notice of termination to the other, which notice shall take effect only upon completion of the dispute resolution procedures set forth in *Section 7.8* below.

7.4 **Termination for Convenience.**

7.4.1. **By HHSC.** HHSC may terminate this Agreement for convenience upon twelve (12) months' notice, in writing, to King County. In this event, HHSC shall not be entitled to any compensation from King County for capital improvements made by HHSC.

7.4.2. **By King County.** King County may terminate this Agreement for convenience upon twelve (12) months' notice, in writing, to HHSC. If King County terminates this Agreement for convenience, then HHSC shall be entitled to reasonable compensation from King County for capital improvements made by HHSC to the Site with due regard for the funds invested by HHSC, the fair market value of the Facility at the time of termination, and the length of time HHSC has had use of the Facility.

7.5 **Duties upon Termination.** Upon termination of this Agreement, and unless otherwise arranged, HHSC will remove from the Property all of its personal property, goods, and effects. If HHSC fails to perform this duty at termination, King County may cause such removal to be made and HHSC's personal property, goods and effects to be stored, the cost and expense to be paid by HHSC. It is understood and agreed that the real property constituting the Property is the real property of King County and that all improvements to that real property will continue to belong to King County upon termination of this Agreement.

- 7.6 **Eminent Domain (Condemnation)**. The following rules will govern the rights and duties of the Parties in the event of interference with HHSC's use of the property as a result of the exercise of eminent domain or private purchase in lieu thereof:
- 7.6.1 **Right of Termination**. If the whole of the Site is taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site or the Facility is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then HHSC and King County will each have the right to terminate this Agreement on thirty (30) days notice to the other, given within ninety (90) days after the date of such taking
- 7.6.2 **Non-Termination**. If any part of the Site or the Facility is so taken and this Agreement is not terminated, then HHSC may, at its own cost and expense, restore the remaining portion of the Property to the extent necessary to render it reasonably suitable for the purposes contemplated under this Agreement. Alternatively, HHSC may notify King County that HHSC is terminating this Agreement for convenience under *Section 7.4*.
- 7.6.3 **Compensation**. The compensation awarded or paid upon a total or partial taking of the Site or the Facility, or this Agreement, or any of them, will belong to King County. HHSC will have no interest in King County's condemnation proceeds, if any. Provided, however, that if King County is exercising its right of eminent domain, a fair value will be placed on this Agreement and any permanent improvements made to the Site by HHSC, with the compensation thereof awarded solely to HHSC.
- 7.7 **Surrender**. Within thirty (30) days of the time this Agreement expires or is terminated, HHSC shall remove any and all of its portable improvements at the Facility. If improvements include non-portable fixtures, such improvements shall belong to King County and shall remain at the Property.
- 7.8 **Dispute Resolution**. The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement. In the event that a dispute arises between HHSC and King County, the Parties shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Agreement are not frustrated, and so that public use of the Facility on the Site is not delayed or interrupted. If the Parties are unable to resolve the dispute between themselves within ninety (90) calendar days from the date the aggrieved party first notified the other party, then the Parties agree that they shall attempt to mediate the dispute with the first available mediator from Washington Arbitration and Mediation Service (WAMS) or Judicial Arbitration and Mediation Service (JAMS) or their successors. The Parties shall each pay one half (HHSC-50%; King County-50%) of the cost of such mediation. If such mediation shall fail, then nothing in this *Section 7.8* shall otherwise limit the Parties' legal, equitable, or other rights or remedies.

- 7.9 **Jurisdiction and Venue.** The exclusive jurisdiction and venue for any disputes arising under this Agreement and not otherwise resolved by the dispute resolution required in **Section 7.8**, including matters of construction, validity, and performance, shall be in the Superior Court for King County in Seattle, Washington.
- 7.10 **Right to Participate in Litigation.** HHSC shall have the right to participate in any litigation, arbitration, or dispute directly affecting the Site, the Facility, or HHSC's interest therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. King County, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify HHSC of the same.
- 7.11 **Recording.** This Agreement, and any memorandum thereof requested by either party, shall be made capable of being recorded with the King County Recorder's Office.
- 7.12 **Liaisons and Notices.** HHSC and King County shall each identify to the other a particular person who shall serve as its designated liaison for purposes of communicating about day-to-day matters involving the Property. Beyond this, any written notice that is required or permitted regarding this Agreement shall be given by U.S. first class mail or by personal delivery to the party which is the intended recipient of the notice at its address as follows:

On behalf of HHSC:

**Tom Short, Vice President and Co-Chairperson for
Facilities
Hollywood Hills Saddle Club (HHSC)
15342 160th Ave NE
Woodinville, WA 98072
Phone: 425-483-8406 or 206-714-1163 (Cell)
Email: trails2u@juno.com**

On behalf of King County:

**Sujata Goel, Special Projects Coordinator
King County Parks and Recreation Division
201 South Jackson Street, Suite 700
Seattle, Washington 98104-3855
Email: Sujata.Goel@kingcounty.gov
Telephone 206-263-6204**

A change in address or designated liaison of a party for purposes of receiving notices may be changed by that party by giving notice of such change as provided herein.

- 7.13 **Headings.** The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
- 7.14 **Neutral Authorship.** Each party has been represented by legal counsel or has had the opportunity to consult with legal counsel in connection with the negotiation, execution

and delivery of this Agreement and its Attachments. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement or its Attachments.

- 7.15 **Governing Law.** The interpretation and enforcement of this Agreement shall be governed by the law of the State of Washington without reference to its conflicts of law provisions or choice of law rules.
- 7.16 **Attorney Fees.** In the event of litigation between the Parties to enforce their rights under this Agreement, the prevailing party shall be awarded its reasonable attorney fees and costs, including any reasonable fees and costs that may be incurred on appeal.
- 7.17 **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the Parties. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 7.18 **Non-Waiver.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.
- 7.19 **Amendments.** The Parties may, by mutual agreement, modify or amend any provision of this Agreement at any time during the Term. Such amendments shall be made in writing and signed by both parties.
- 7.20 **Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the Parties.

EFFECTIVE as of the date last signed below.

KING COUNTY:

HOLLYWOOD HILLS SADDLE CLUB:

(Signature)

(Signature)

Kevin Brown

(Printed Name)

(Printed Name)

Division Director

(Title)

President

(Title)

DATE

DATE

ACKNOWLEDGEMENTS AND NOTARY BLOCKS FOLLOW ON NEXT PAGE

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the
State of Washington, residing at

City and State
My appointment expires _____

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

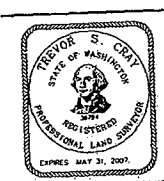
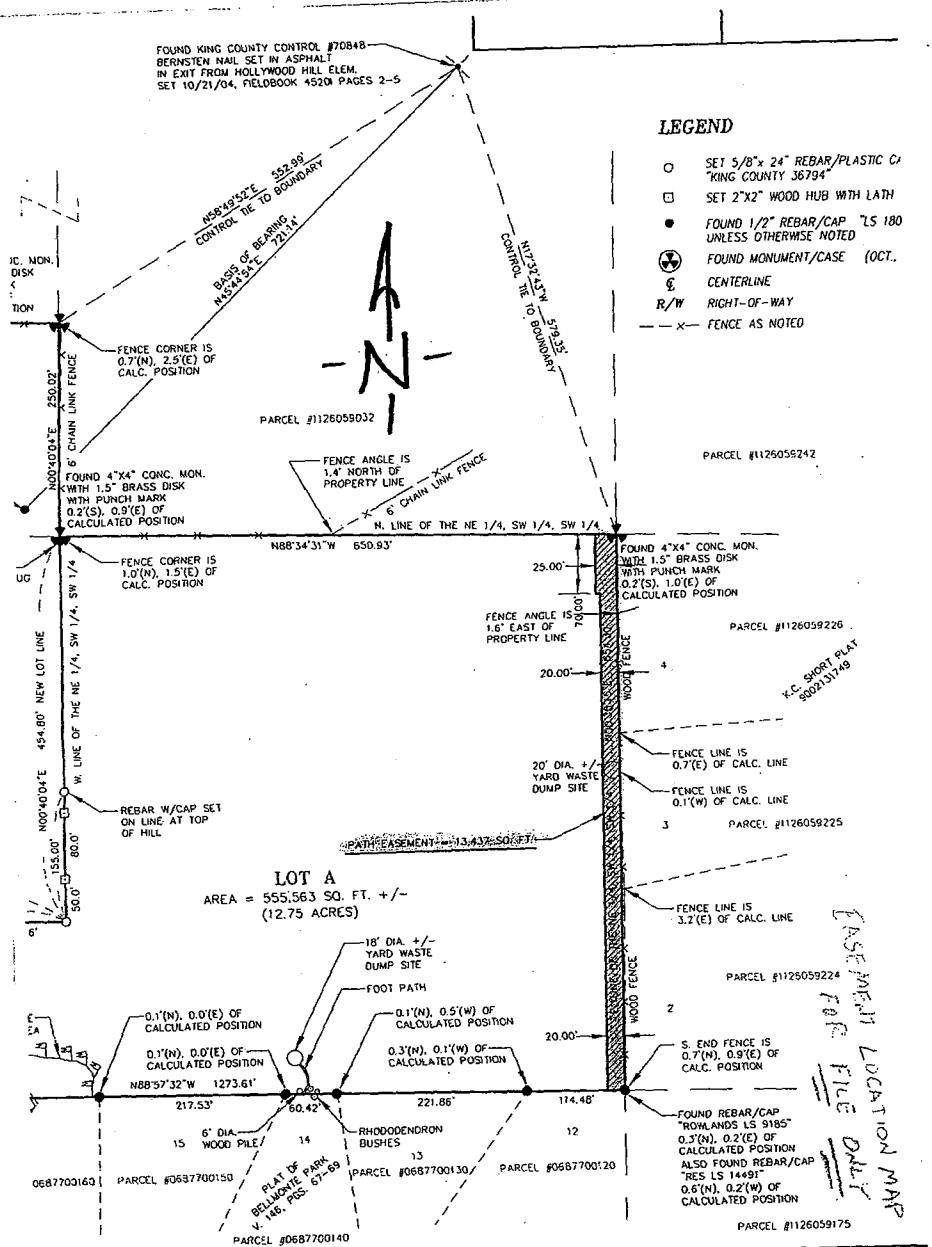
WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the
State of Washington, residing at

City and State
My appointment expires _____

EXHIBIT A

ILLUSTRATION OF THE PROPERTY



KING COUNTY SURVEY UNIT
DEPT. OF TRANSPORTATION
ROADS DIVISION
 (206)
296-6508
 *** 155 MONROE AVE NE * RENTON * WA * 98056 ***

WOODINVILLE PIT B.1

DWN. BY JKE	DATE 7/14/06	JOB NO. 06029
CHKD. BY TSC	SCALE 1" = 100'	SHEET 2 of 2

THAT PORTION OF THE SOUTHWEST QUARTER, OF SECTION 11, TOWNSHIP
26 NORTH, RANGE 5 EAST, W.M., DESCRIBED AS FOLLOWS:
THE EAST 20.00 FEET OF LOT A, PER BOUNDARY LINE ADJUSTMENT
NUMBER L06L0074, FILED UNDER RECORDING NUMBER 20061025900009,
RECORDS OF KING COUNTY WASHINGTON.
TOGETHER WITH THE WEST 5.00 FEET OF THE EAST 25.00 FEET OF THE
NORTH 70.00 FEET OF LOT A, PER SAID BOUNDARY LINE ADJUSTMENT
NUMBER L06L0074.
CONTAINING APPROXIMATELY 13,437 SQUARE FEET.



EXHIBIT B

**HOLLYWOOD HILLS SADDLE CLUB
ANNUAL MAINTENANCE PLAN**

All costs of supplemental maintenance and operations designated to the Hollywood Hills Saddle Club (HHSC) shall be the responsibility of the HHSC. Maintenance, operations, and supplies for the new or enhanced Facility to be provided by HHSC, in coordination with King County maintenance staff, shall include the following on an on-going basis:

- A. All building cleaning, maintain, and painting
- B. Erosion control and storm damage (trees on Site)
- C. Dragging arena, warm-up arena, and round pen
- D. Dragging and mowing of parking lots and trail course
- E. Mowing lawn area
- F. Picking up and disposal of garbage
- G. Trimming vegetation along and maintaining trails
- H. Removal of noxious weeds
- I. Dust management

Every year HHSC will do an annual spring clean and the following activities may be included: in late March or early April of each year, the HHSC will check the condition of all structures, drag the arenas and round pen, mow parking lots and lawns, remove winter storm damage (if any) from grounds and trails, and develop a 'to do' list for the warmer weather that will follow later in the summer, such as exterior painting, landscaping, or structure improvements.

The grounds are open to the public on a daily basis from dawn to dusk, but the on-site parking lot will be open from April thru September from 9AM – 7PM, weather permitting.

Any tasks larger than general or annual maintenance will be reviewed and approved by King County Park staff.

