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CITY OF BURLINGTON
DEPARTMENT OF PARKS AND RECREATION
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MEMO

To: Board of Finance/City Council

From: Mari Steinbach, CPRP

Date: April 20, 2011

RE: McKenzie Park Property – Lease with Intervale Center

The Department of Parks and Recreation is seeking approval for the leasing of McKenzie Park to the Intervale Center. The Intervale Center's intended use of the land is to manage 35 acres of tillable land for grain and/or hay production.

Attached you will find a copy of the lease that has been reviewed by the Intervale Center and the City Attorney's office.

The Department respectfully requests approval of the contract so that summer Intervale and agriculture operations may commence.

AGREEMENT
THE INTERVALE CENTER

THIS AGREEMENT, made and entered into as of this day of , 2011, by and between the City of Burlington, a municipal corporation existing under the laws of the State of Vermont, acting by and through its Board of Parks and Recreation Commissioners (hereinafter referred to as the "City") and The Intervale Center, Incorporated, 180 Intervale Road, Burlington, Vermont, 05401 (hereinafter referred to as "Lessee").

WITNESSETH

WHEREAS, the City owns McKenzie Park, conveyed to the City of Burlington by Warranty Deed of John McKenzie Packing Company Inc. dated November 24, 1980 and recorded in Volume 272 at page 491 of the Land Records of the City of Burlington, and the Lessee desires to manage 35 acres of tillable land for grain and/or hay production.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained the parties hereto agree as follows:

1. PREMISES

The Lessee is hereby granted use of certain space in McKenzie Park; such space to be used for grain and/or hay production. Other agricultural uses are subject to approval by the City. The area to be occupied by Lessee for such use shall consist of 35 acres of tillable land currently maintained as field grass and located in the southern sections of McKenzie Park, Intervale Road, Burlington, VT.

2. GENERAL DESCRIPTION OF CONCESSION GRANTED

Subject to terms and conditions hereinafter set forth, Lessee may do the following:

a. Manage the tillable acreage consistent with acceptable agricultural practices in accordance with Land and Water Conservation Fund approvals where required.

3. INVESTMENT BY CITY

The premises will be furnished to Lessee as is, without improvements

4. OBLIGATION OF LESEE

- a. Lessee shall maintain the area in a businesslike manner consistent with acceptable agricultural practices, and shall keep the premises in a safe, clean, orderly and inviting condition at all times.
- b. Lessee, his/her employees, agents or members, shall at all times comply with the laws and regulations of the United States of America and the State of Vermont, and all applicable local ordinances, codes and regulations and the general rules and regulations of the Burlington Board of Parks and Recreation Commissioners. Violations thereof by Lessee, his/her agents, members or employees, or revocation of permits or licenses required in performance of this Agreement, shall be cause for termination of this Agreement at the option of the City if not corrected within a reasonable period, after notice thereof.
- c. Lessee shall pay all taxes or assessments that may be lawfully levied against it by reason of his/her operations on the premises of said City.
- d. Lessee shall provide the complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse caused as a result of the operation. The Lessee shall comply with all applicable recycling regulations. The Lessee shall **not** be responsible for any trash, garbage, or other refuse existing prior to the execution of this Agreement, or not associated with the Lessee's operation.
- e. Lessee shall repair and/or replace all trails, roadways, trees and improvements within The interior of the premises, damaged as a result of his/her activity.
- f. Lessee agrees that he/she shall not engage in other business or activities within the confines of McKenzie Park other than those expressly authorized by the City.
- g. Lessee shall mow open fields to manage weeds a minimum of twice per season.
- h. Lessee understands that lessor will need to monitor the "shoreline restoration area" on the eastern boundary of the property. Mowing shall not occur in this area. Lessee understands that lessor may engage in active shoreline maintenance including plantings and shall permit same during the term of the lease.
- i. Lessee shall allow lessor to promote and conduct the annual removal of invasive species from the wetland forest, in particular the Japanese Knotweed Eradication Effort started in 2003.

5. INDEMNIFICATION AND INSURANCE

- a. Lessee agrees to indemnify and save harmless the City, its Parks and Recreation Commission members, agents, officers and employees, their successors and assigns, individually and collectively, from and against all liability for injuries to persons or damage to property occasioned by the Lessee, his/her officers, agents or employees, or by reason of these violations,

disregard or breach of any law, ordinance, order or regulation by the Lessee, his/her officers, agents or employees. Lessee further agrees to pay all expenses in defending against any claims made against the City, provided, however, that the Lessee shall not be liable for any damage, injury or loss occasioned by negligence on the part of the City, its agents or servants.

The Lessee shall give to the City prompt and timely notice of any claims made or service of process in any suit concerning such injury or damage.

b. Lessee shall maintain insurance in companies licensed to do business in the State of Vermont for the protection of the City and naming it as additional insured against all claims, losses, costs or expense arising out of injuries or death to persons whether or not employed by Lessee, damage to property whether resulting from the acts or omissions, negligence or otherwise of Lessee or any of its agents, employees, members, patrons or other persons, and growing out of the use of the said McKenzie Park by Lessee, such policies to provide for a liability insurance, the minimum amount of one million dollars (\$1,000,000.00) limit on account of each accident resulting in bodily injury or death to more than one person of not less than five hundred thousand and 00/100 (\$500,000.00) dollars and liability insurance of not less than twenty-five thousand and 00/100 (\$25,000.00) for each accident for property damage. Lessee shall furnish evidence to the City of the continuance in force of said policies by depositing a copy of the policy with the City. Said policies shall be so worded to insure ten-(10) day's notice and cancellation to the City.

c. Lessee shall furnish to the City satisfactory evidence that it carries Workman's Compensation Insurance in accordance with the laws of the State of Vermont covering all employees of Lessee who must by law be so covered.

6. TERM OF AGREEMENT

Subject to earlier termination as provided herein, the term hereof shall be for one year, commencing on May 16, 2011 and ending on December 31, 2016.

7. RIGHTS OF INGRESS AND EGRESS

Subject to regulations governing the use of McKenzie Park, Lessee shall have for itself, for its employees, members, agents, contractors, suppliers, guests, patrons and invitees, the right of access to and egress from the premises covered by this Agreement

8. TERMINATION OF LESEE

This Agreement shall be subject to cancellation by Lessee should any one or more of the following events occur:

a. The permanent abandonment of McKenzie Park by the City.

b. The issuance of any court of competent jurisdiction of an injunction in any way preventing or restraining the use of McKenzie Park and such injunction remains in force for at least thirty (30) days.

c. The breach by the City of any of the terms, covenants or conditions of this Agreement to be kept, performed and observed by the City and the failure of the City to remedy such breach for a period of sixty (60) days after written notice from Lessee of the existence of such breach.

d. The assumption by the United States Government, or any authorized agency of same, of the operation, control or use of McKenzie Park and its facilities in such a manner as to substantially restrict the Lessee from operating said concession, if such restriction be continued for a period of three (3) months or more.

9. TERMINATION BY CITY

This Agreement shall be subject to cancellation by the City should any one or more of the following events occur:

a. If the Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against him/her and he/she is thereafter adjudicated a bankrupt pursuant to such proceedings; or if a court shall take jurisdiction of Lessee and his/her assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or if a Receiver for Lessee's assets is appointed; or if Lessee shall be divested of his/her rights, powers and privileges under his/her contract by other operation of law.

b. If Lessee shall default on or fail to make any payments at the times and in the amounts as required of him/her under this contract.

c. If Lessee shall abandon and discontinue the conduct and operation of said concession, for more than one growing season.

d. If Lessee shall fail to perform, keep and observe any of the covenants and conditions contained in this contract to be performed, kept and observed by him/her.

e. If the Lessee shall fail to maintain insurance as required by 5 (b).

f. If Lessee shall fail to abide by all applicable laws, local ordinances and general rules and regulations of the United States, State of Vermont and Burlington Board of Parks and Recreation Commissioners. Provided that upon the happening of any of the contingencies recited above in subsections (b), (c), (d) and (e) above, Commission shall give written notice to Lessee to correct or cure such default, failure to perform or break and if, within ten (10) days from the date of such notice under subsection (b) or (c) above, or within thirty (30) days from the date of such notice under subsection (d) above, the default, failure to perform or breach complained of shall not have been corrected in a manner satisfactory to the City, then and in such event, the City shall have the right at once and without further notice to Lessee, to declare this contract terminated and to enter upon and take full possession of the concession area and, provided further that upon the happening of any one of the contingencies enumerated in subsection (a) hereof, this contract shall be deemed to be breached by Lessee there upon ipso facto and without entry or any other action by the City the contract shall terminate, subject being reinstated only if such involuntary bankruptcy or insolvency proceedings, petition for reorganization, trusteeship, receivership or other legal act divesting Lessee of its rights under this contract shall be denied, set aside, vacated or terminated in Lessee's favor within thirty (30) days from the happening of said latter events, this contract shall be reinstated as if there had been no breach occasioned by the happening of

said contingencies, provided that Lessee shall within ten(10) days after the final denial, vacating or setting aside of such petition pay any and all sums of money which may have become due under this contract in the interim and shall then remain unpaid and shall likewise fully perform and discharge all other obligations which may have accrued and become payable in the interim. The acceptance of fees by the City for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Lessee shall not be deemed a waiver of any rights on the part of the City to cancel this contract for failure by Lessee to so perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed. No waiver by the City of any terms of this Agreement to be kept, performed and observed by the Lessee shall be construed to be or act as a waiver by the Commission of any subsequent default on the part of the Lessee.

g. If the City is notified by the State of Vermont or United States Government that the use of McKenzie Park by the Lessee is in violation of a rule, regulation, or requirement of the United States and/or State of Vermont.

10. DISCRETIONARY TERMINATION

The City acknowledges that the Lessee will be investing resources to improve the condition of the soil and the vegetation cover of the 35 acres of tillable land. The City retains the right to cancel this agreement, at its discretion, upon written notification. Termination of the agreement will become effective 6 months from the date of written notification, or earlier upon mutual agreement.

11. DAMAGE OR DESTRUCTION OF PREMISES

It is understood and agreed that if the premises used shall be damaged or destroyed in whole or in part during the term hereof, the City will repair and restore them to a good tenantable condition with reasonable dispatch, and that the fee herein provided for shall abate entirely in case the entire premises are untenable, and prorata for the portion rendered untenable, in case a part only is untenable, until the premises shall be restored to a untenable condition; provided, however, that:

a. There shall be no abatement of fee if the cause damaging or destroying the premises used shall result from the negligence or willful act of the Lessee, its agents or employees, but such fee shall abate to the extent the City recovers such loss from insurance.

b. In case the premises shall be destroyed to the extent of more than fifty (50) percent of the value thereof, the City or the Lessee may at its option terminate this Agreement forthwith by a written notice to that effect.

12. RIGHT OF INSPECTION

The Director of Parks and Recreation and his/her duly authorized representatives shall have at any and all reasonable times the full and unrestricted right to enter the premises for the purpose of inspecting or protecting such premises and of doing any and all things with reference thereto which the City is obligated to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of McKenzie Park in the exercise of the City's police power.

13. ASSIGNMENT AND SUBLETTING

The privileges contained herein are personal and the Lessee agrees that he/she will not assign, sublet or underlet the same or any part thereof without the express written consent of the City which shall not be unreasonably withheld, and any purported assignment in violation hereof shall be void.

14. RULES AND REGULATIONS

The City shall have the right to and shall adopt and enforce reasonable rules and regulations with respect to the use of McKenzie Park, which the Lessee agrees to observe and obey, provided said rules and regulations do not specifically negate any of the agreements herein made.

15. GENERAL PROVISIONS

a. Notices to the City provided for in the contract shall be sufficient if sent by registered mail, postage prepaid, addressed Director of Parks and Recreation Department, 216 Leddy Park Road, Burlington, VT 05401, and notices to the Lessee if sent by registered mail, postage prepaid, addressed to Kit Perkins, The Intervale, Inc., 128 Intervale Road, Burlington, VT 05401, or to such other respective addresses as the parties may designate to each other from time to time in writing.

b. The Lessee represents that he/she has carefully reviewed the terms and conditions of this Agreement, and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to his/her activities as authorized and required by this instrument.

c. The term the "City" as used in this Agreement means the City of Burlington, Vermont acting by and through its Board of Parks and Recreation Commissioners, and where Agreement speaks of approval and consent by the City, such approval is understood to be manifested by act of the Parks and Recreation Commission, through its Parks Director, except as otherwise expressly stated in this Agreement.

16. SUCCESSOR AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Agreement shall extend to and bind the successors and assigns of the respective parties hereto.

17. INVALID PROVISIONS

In the event that any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained; provided that the validity of any such covenant, condition or provision does not materially prejudice either the City or the Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

18. COVENANT AGAINST DISCRIMINATION

The parties hereto covenant not to discriminate against any employee or member applicant for employment, or membership to be employed in the performance of this Agreement with respect to his/her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his/her race, religion, national origin or sex.

IN AGREEMENT:

CITY OF BURLINGTON

BY _____ DATE: _____
Mari Steinbach, Director
Burlington Parks and Recreation

BY _____ DATE _____
Travis Marcotte, Executive Director
The Intervale Center, Inc.