

**USE AGREEMENT BETWEEN CITY AND BOROUGH OF JUNEAU
AND JUNEAU COMMUNITY GARDEN ASSOCIATION
2013-2018**

THIS AGREEMENT is made by and between the City and Borough of Juneau, Alaska, a municipal corporation organized and existing under the laws of the State of Alaska, hereinafter referred to as "CBJ" or "City" and the Juneau Community Garden Association, an unincorporated association, P.O. Box 33395, Juneau, AK 99803, hereinafter referred to as "JCGA."

WITNESSETH

WHEREAS, City owns property on the Montana Creek Road which JCGA has used and would like to continue to use as a community garden, and

WHEREAS, City will allow JCGA to use the property for the purpose of operating and maintaining a community garden site;

WHEREAS, JCGA and City desire to improve recreation opportunities for residents of Juneau; and

NOW, THEREFORE, in consideration of the following terms, covenants, conditions, and agreements, the parties agree as follows:

Section 1. Juneau Community Garden Association. The Juneau Community Garden Association is an unincorporated association consisting of members including the Cooperative Extension Service of the University of Alaska, Fairbanks, and the Juneau Master Gardeners Association each as non-voting members of the Board of Trustees.

Section 2. Relationship with City. The JCGA is an independent association; it is not considered to be an agent or employee of City for any purpose, and the employees and members of JCGA are not entitled to any benefits that City provides for City's employees. City has no involvement in the internal affairs of the association nor any responsibility to third parties conducting transactions with the association.

Section 3. Purpose. The purpose of this use agreement is to provide to all members of the public the opportunity to participate in a community garden under the supervision of the JCGA according to the Operating Rules it has adopted, which are attached as Attachment A.

Section 4. Term. The effective date of this agreement is October 1, 2013 and shall remain in effect until September 30, 2018. If JCGA fails to use the community garden for a year, this agreement is automatically terminated. This agreement may be

renewed thereafter for one additional five-year term until September 30, 2018, by written request from JCGA to City and written approval from City.

Section 5. Location. The property is located at 5669 Montana Creek Road in Juneau, Alaska, and is more specifically described as:

A site located on a fraction of U. S. Survey 3920 in the Juneau Recording District, Alaska (CBJ Parcel Number 4-B29-0-115-003-0)

And as shown in Attachment B, attached and incorporated into this agreement.

Section 6. Operation

- (a) JCGA will secure at its own expense all personnel, equipment, and supplies required for the community garden. JCGA shall pay all expenses such as utilities and other services to the property.
- (b) JCGA may establish fees for public use of the property that do not exceed those considered usual and reasonable for like premises, establish reasonable rules and guidelines for the use of the property and penalties for violations, and acquire property for the operation, convenience and safety of the property, its users and the public.
- (c) JCGA is the only authorized user of the property, and it may not allow use by any other group or individual except as according to its guidelines and by-laws.
- (d) JCGA shall not assign, transfer, convey, subcontract, or otherwise dispose of or encumber the property subject to this agreement, or the rights thereunder, nor shall JCGA delegate any of its duties hereunder.
- (e) JCGA shall obtain prior written approval from City before significant improvements are made to the property, existing fixtures, or improvements. The cutting of trees, or mining of gravel on the property is prohibited unless prior written approval is received from City.
- (f) JCGA will provide a yearly work plan by March 15 of each year to the City. The work plan shall include plans for activities, programs, as well as maintenance and improvements proposed for the upcoming year.
- (g) JCGA may allow a caretaker for the garden to reside on the property with prior written approval from City, however this shall not be considered to create any relationship between City and any caretaker, nor shall a caretaker be considered a third party beneficiary to this contract. If the use of the property by JCGA is terminated for any

reason, JCGA shall insure that there is no holding over by its caretaker. Any such use shall be in accordance with city and state laws including zoning, and health and sanitation requirements.

- (h) JCGA will maintain and keep the property in good repair and immediately upon termination of the agreement, will deliver possession of the property, together with all improvements to City.
- (i) JCGA shall not discriminate or permit discrimination on the basis of race, color, religion, national origin, age, sex or ability.
- (j) City will not authorize the dumping of material at the garden without approval from JCGA.

Section 7. Insurance. JCGA shall, during the entire term of this lease, keep in full force and effect insurance policies of the type and amount set forth below:

(a) Commercial General Liability Insurance – JCGA shall obtain and maintain in effect commercial general liability coverage with coverage form CG0001 or equivalent, on an occurrence basis, with respect to JCGA’s use of and operations on the property. Coverage will include bodily injury and property damage liability, premises and operations, contractual liability, completed operations, personal injury liability and “broad form” property damage, in an amount of not less than \$1,000,000 per occurrence / \$2,000,000 aggregate. The policy shall include fire legal liability coverage in the amount of \$300,000 per occurrence. The insurance policy shall name the CBJ an “Additional Insured” and shall contain a clause that the insurer will not cancel or change the insurance without the first giving the CBJ prior written notice consistent with the terms of the policy.. Lessee will provide evidence of this insurance to City in a form acceptable to the City’s Risk Management Officer.

(b) Property Insurance – JCGA acknowledges that although the CBJ carries property insurance on the Lease Premises, it is JCGA’s obligation to obtain adequate insurance for protection of JCGA’s fixtures or other improvements or personal property located on the Lease Premises.

(e) General Conditions:

1. Insurance must be placed with commercial insurance companies licensed to do business in the State of Alaska, and which possess minimum financial standards, of AM Best Company, of A-VI or better.
2. Evidence of insurance shall be filed with the City’s Risk Manager naming the City and Borough of Juneau as an Additional Insured, using Additional Insured Endorsement Form CG2010 (Form B) or

equivalent. The filing of such evidence of insurance is required; however, acceptance of such evidence or oversight in obtaining such evidence by the CBJ shall not be considered a waiver of any of these insurance requirements.

3. All insurance policies shall provide (1) that the policies shall not be canceled or the amount thereof reduced, without prior written notice consistent with the terms of the policy to the CBJ, and (2) that thirty (30) days prior written notice shall also be given if the policy is not to be renewed at the scheduled expiration date.
4. All notices concerning insurance must be addressed to “Attention – Risk Manager” at the CBJ’s address.
5. Any deductibles or self-insured retentions must be declared to and approved by the CBJ. The CBJ reserves the right to periodically secure audited financial statements for review.
6. It is the Lessee’s obligation to obtain adequate insurance for protection of Lessee’s fixtures or other improvements or personal property located on the Lease premises.

JCGA’s certificates of insurance consistent with the above are attached as Attachment C to this contract.

Section 8. Hold Harmless and Indemnify. JCGA agrees to defend, indemnify, and hold harmless CBJ, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of or related to the Contractor’s performance of this contract without limitation as to the amount of fees, and without limitation as to any damages, cost or expense resulting from settlement, judgment, or verdict, and includes the award of any attorneys’ fees even if in excess of Alaska Civil Rule 82. This indemnification agreement applies to the fullest extent permitted by law and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against CBJ relating to this contract. The obligations of JCGA arise immediately upon actual or constructive notice of any action, claim, or lawsuit. CBJ shall notify JCGA in a timely manner of the need for indemnification, but such notice is not a condition precedent to Contractor’s obligations and may be waived where the Contractor has actual notice.

Section 9. Termination of Agreement. Either party, at their sole discretion, may terminate this agreement at any time upon the giving of six months written notice to the other party. At the termination of this agreement, JCGA shall peacefully surrender the premises and shall leave the buildings, improvements, and property in a clean and safe condition.

Section 10. Notice. Any notice required to be given under this Agreement shall be given to the other party in writing to the person and at the address, as follows:

CBJ:
Brent Fischer, Director
Parks & Recreation
City and Borough of Juneau, Alaska
155 South Seward Street
Juneau, AK 99801
Phone: 586-5226
Fax: 586-4589

JCGA:
John Thedinga, President
Juneau Community Garden Assn.
P.O Box 3395
Juneau, AK 99803

JCGA shall not be liable for City's reliance on directions received from any other person. Any notice required to be given under this contract shall be given to the other party in writing to the person and at the address above stated. Any change in the designation of representative or address shall be made to the other party in writing.

Section 11. Inspection. The Director of the City Parks and Recreation Department or the Director's designee shall be permitted to enter upon and inspect the property at all reasonable times.

Section 12. Warranties. JCGA acknowledges that City has not made any representations or warranties concerning its fitness for any purpose concerning the property, or any rights or obligations relative to the property created except as are stated or referred to in this writing.

Section 13. Compliance with Laws and Regulations. JCGA shall conduct all activities in compliance with all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force, which may be applicable to such activities.

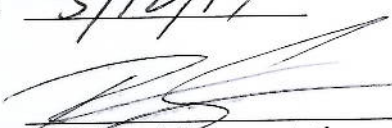
In witness thereof the parties have signed and dated this agreement below:

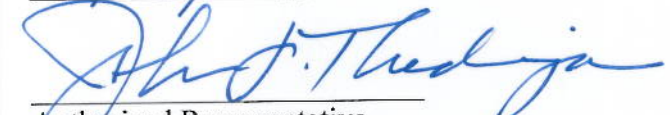
City and Borough of Juneau:

Juneau Community Garden
Association

Date: 3/12/14

Date: 1/28/14

By: 
Authorized Representative
Kimberly A. Kiefer
City and Borough Manager

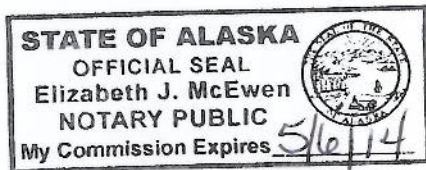
By: 
Authorized Representative
John Thedinga
President, Juneau Community
Garden Association

ACKNOWLEDGMENT

STATE OF ALASKA)
: ss.
First Judicial District)

This is to certify that on the 12th day of March, 2014 before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, appeared ~~Kimberly A. Kiefer~~ ^{Rob Steadler} ~~to me known to be the City Manager of the City and Borough of Juneau, Alaska, a municipal corporation, which executed the above and foregoing instrument; who on oath stated that she was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that she signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.~~ ^{Deputy/Acting}

WITNESS my hand and official seal on the day and year in this certificate first above written.



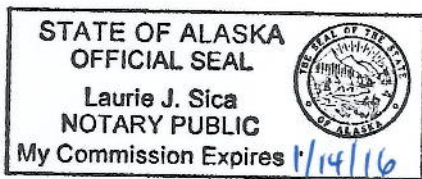
Elizabeth J. McEwen
Notary Public in and for the State of Alaska
My Commission Expires: 5/6/14

ACKNOWLEDGMENT

STATE OF ALASKA)
: ss.
First Judicial District)

This is to certify that on the 28th day of January, 2014 before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, appeared John Thedinga, to me known to be the President of the Juneau Community Garden Association which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said unincorporated association for the uses and purposes therein mentioned.

WITNESS my hand and official seal on the day and year in this certificate first above written.



Laurie J. Sica
Notary Public in and for the State of Alaska
My Commission Expires: 1/14/16

Content Approved by: *[Signature]* Parks & Recreation
Form Approved by: *[Signature]* 2/5/14, Law Department
Risk Management Review: *[Signature]* 2/6/14, Risk Manager

JUNEAU COMMUNITY GARDEN ASSOCIATION
OPERATING RULES

1. Membership

Gardeners may join JCGA as plots become available, and may retain their plot(s) from year to year providing rental fees are paid by February 1 of the New Year and they are in compliance with all existing operating rules.
New members must attend spring orientation, and may rent no more than 2 plots and 1 climbing bed per household.
Veteran gardeners may rent as many as four plots and two climbing beds per household, unless demand for plots exceeds supply. The Board of Trustees (the Board) will assess plot supply/demand by September 15, to take effect the following year.
No refunds will be made after May 15 of each year.

2. Plot Size

Garden Plot – 10' x 20' (200 square feet).....\$35.00
Plot size is measured from road edge and centered between pathways. All planting must occur within the boundaries of the plot.
Perimeter borders of rocks or untreated timber in good condition are pre-approved.

Climbing Bed Plot – 2' x 8' (16 square feet)\$5.00
Boxes are provided (constructed of 2' x 10' lumber).

3. Service hours

Five (5) hours of community garden service will be required per plot, and 1 hour per climbing bed, for all members.
Members who fail to fulfill their service requirement will be fined \$20 per hour owed.
Community Service hours can be served in activities such as:

- Grounds Maintenance (weed eating, mowing, etc.)
- Care of communal herb and flower plots
- Gate security (open and close the garden gate/tool shed/dumpster)
- Equipment/building maintenance
- Planting and/or Care of Charity Food Plots
- Educational Presentation at a meeting
- Trimming vegetation along the electric fence
- Garden, Soil, Vegetable variety Research and Report Writing
- Helping at Harvest Fair and other JCGA events
- Hauling trash to dump
- Serving on the JCGA Board of Directors
- Attending membership meeting (1/2 hour)

4. Community Garden Equipment

Gardeners are responsible for returning JCGA tools & equipment to their proper storage in clean & tidy condition. Precautions to prevent spread of soil pathogens are encouraged. JCGA EQUIPMENT SHOULD NEVER LEAVE THE GARDEN.

5. Pathways

Two feet around each plot must be kept clear of obstructions, weeds, and overhanging vegetation.

6. Structures

Structures shall be no more than four (4) feet higher than road level.

7. Chemicals

Pesticides and herbicides must be approved in advance by the JCGA Board. They must not affect any other plots.

8. Plot Maintenance

Gardeners provide their own seeds/starts and plot clean-up. Weeds must be removed, mature crops must be harvested, and trash must not be allowed to accumulate in or around garden plots. Garden waste disposal options are:

- a) Diseased plants, invasive species (such as Orange Hawkweed), and tomato/potato vines should either be
 - i. BAGGED and placed in the dumpster, or
 - ii. taken home for disposal.
- b) Other plant waste may be
 - i. dumped in designated weed piles, or
 - ii. bagged and placed in the dumpster, or
 - iii. composted. Approved bins may be placed within a plot, or adjacent along the road, midway, or open area.
- c) Treated wood, plastic, and trash should go in the dumpster.
- d) Untreated wood may be stacked in the designated burn area.

Gardeners who cannot tend their plots should notify the Board early, to allow for salvage and donation of the produce. Plots unattended by June 15 (overgrown weeds, pest infestations, unpicked crops etc.) may be reassigned. Plot fees will not be refunded.

9. Water

Conserve and share; minimize watering during busy gardening hours.
After use, coil and hang hoses on the 4"x 4" standards. Turn off water at the spigot on the post, as well as the nozzle.

10. Children

JCGA encourages children's involvement in gardening. JCGA's child-sized tools should be cleaned and returned to the children's shed after use. Swinging on gates, and play in or around storage areas and garden plots, is prohibited. Parents are responsible and liable for the actions of their children.

11. Pets

Pets are the responsibility and liability of their caretaker. Those who present a hazard or an annoyance are unwelcome. As prescribed in CBU ordinance, leash control and poop scoop use are required. Pets shall not attend scheduled garden events.

12. Commercial Enterprises

No portion of the Community Garden may be used for commercial purposes. No produce or vegetation grown in the garden may be sold except as part of a JCGA sponsored fund raiser.

13. Charitable/Non-Profit/Research Plots

Ten percent (10%) of all developed plots will be made available for charitable purposes, or use by non-profit groups without charge. Plots will be assigned in order of application; no non-profit group will have more than two (2) plots. Rules regarding plot maintenance & gardening conduct apply.

Plots and climbing beds may be made available by the Board to the Master Gardeners for free each year for research, if requested.

14. Notification and Forfeiture

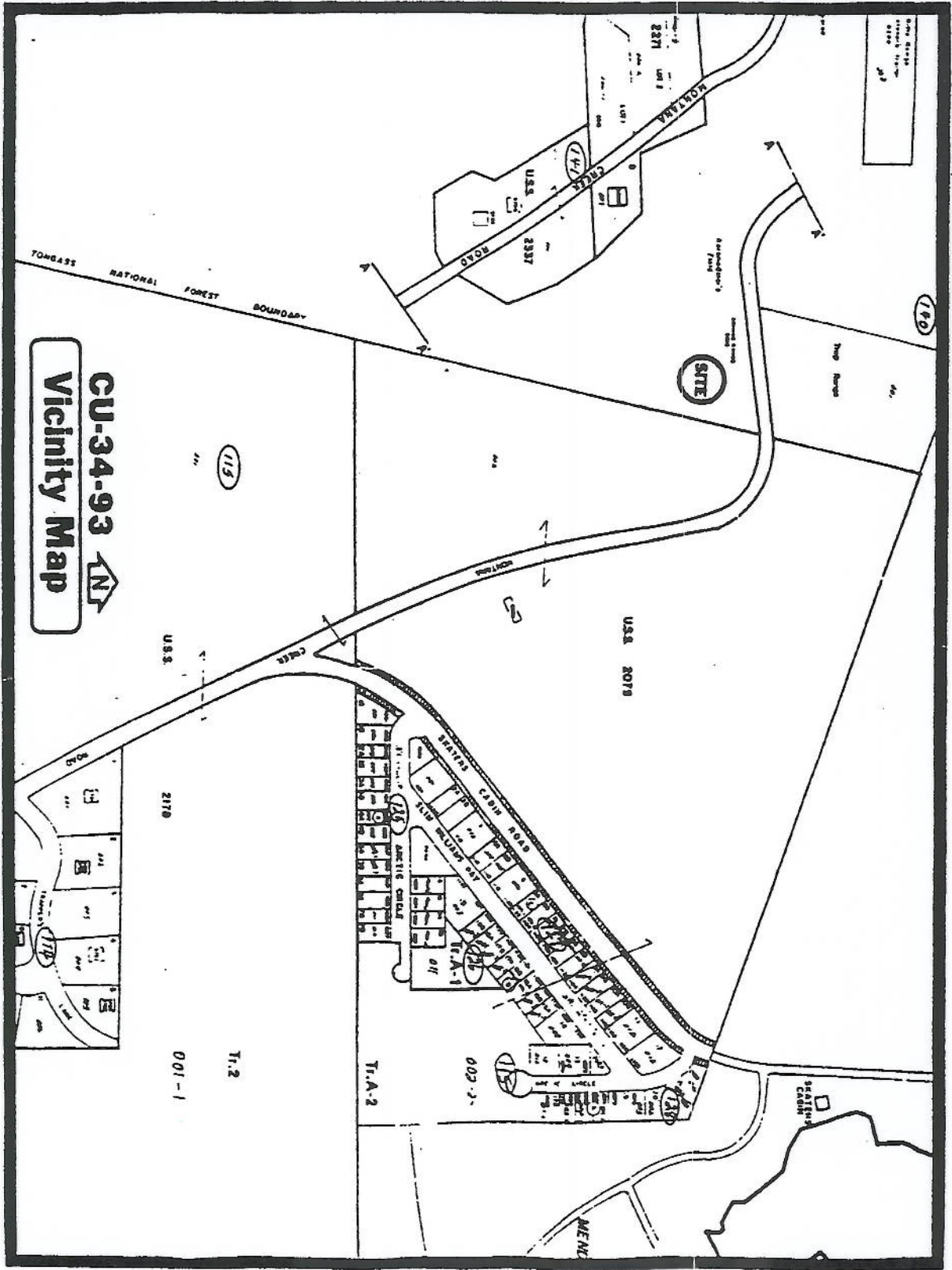
A gardener who fails to maintain his plot or comply with the Operating Rules may forfeit his gardening privileges. JCGA membership may be terminated after two weeks' notice. No fees will be refunded.


15. City and Borough of Juneau

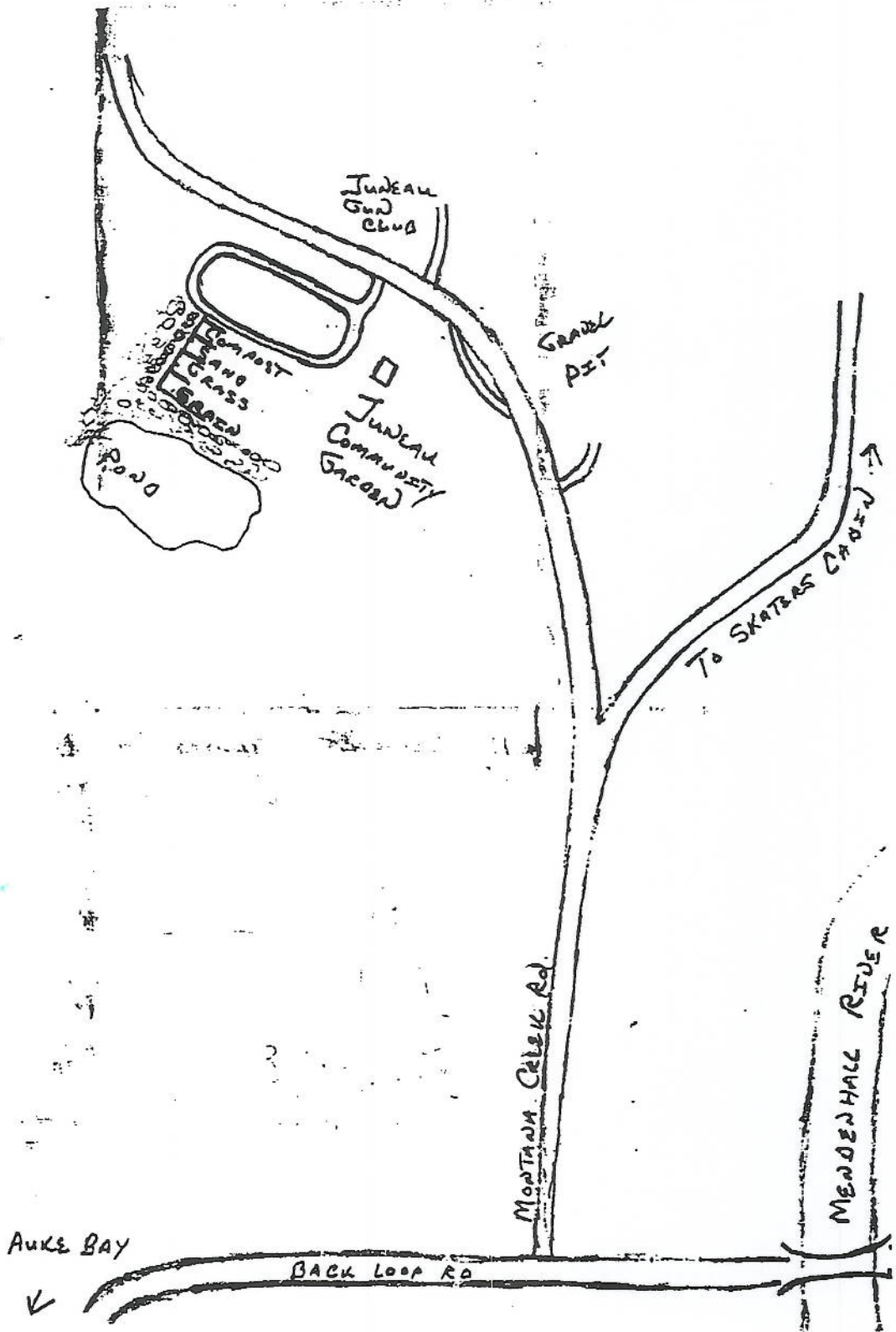
The JCGA operates under the auspices of the City and Borough of Juneau, Parks and Recreation Department and is subject to all the rules pertaining to:

- a. Equal opportunity use,
- b. Americans with Disabilities Act, and
- c. Maximization of recreational activities to the general public.

XXXXXXXXXX



CU-34-93 
Vicinity Map





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/12/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Shattuck and Grummett Insurance 301 Seward St. Juneau AK 99801	CONTACT NAME: Allen Isabell
	PHONE (A/C, No, Ext): (907) 586-2414 FAX (A/C, No): (907) 586-3770
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Penn America
	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

INSURED: Juneau Community Garden Association
PO Box 33395
Juneau AK 99803

COVERAGES: CERTIFICATE NUMBER: CL13121214610 REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			PAC6533149-07	3/15/2013	3/15/2014	EACH OCCURRENCE \$ 1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		<input checked="" type="checkbox"/>					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000	
	GENL AGGREGATE LIMIT APPLIES PER:							PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000	
	AUTOMOBILE LIABILITY						PRODUCTS - COMP/OP AGG \$ Included	
	<input type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$	
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per person) \$	
	<input type="checkbox"/> HIRED AUTOS						BODILY INJURY (Per accident) \$	
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$	
	<input type="checkbox"/> NON-OWNED AUTOS						\$	
	UMBRELLA LIAB						EACH OCCURRENCE \$	
	<input type="checkbox"/> OCCUR						AGGREGATE \$	
	EXCESS LIAB						\$	
	<input type="checkbox"/> CLAIMS-MADE							
	DED						WC STATU-TORY LIMITS	
	RETENTION \$						OTH-ER	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						E.L. EACH ACCIDENT \$	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE \$	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
This Certificate is a representation of the named insured's coverage as of the date shown. Shattuck & Grummett Insurance makes no representation that these coverage's comply with or fully satisfy any insurance or indemnity requirements in any contract, written, oral, or implied.

CERTIFICATE HOLDER City and Borough of Juneau Lindsey Brown 155 S. Seward St. Juneau, AK 99801	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Kenneth Grummett/IZZY <i>Kenneth F. Grummett</i>
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