

CITY OF HOMER, ALASKA

ORDINANCE NO. 87-1 (S)

AN ORDINANCE OF THE CITY OF HOMER, ALASKA AUTHORIZING A LEASE OF MUNICIPAL PROPERTY FOR AN AMOUNT NOT TO EXCEED \$1,200,000 FOR A TERM NOT TO EXCEED THIRTY YEARS; AUTHORIZING A SUBLEASE OF SUCH PROPERTY BY THE MUNICIPALITY; FIXING THE TERMS AND CONDITIONS OF THE LEASE AND SUBLEASE, AMENDING TITLE 18 OF THE HOMER MUNICIPAL CODE RELATING TO FINANCING TRANSACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the provisions of State law and of the Homer Municipal Code, the City has determined that it is in the best interests of the City to acquire certain municipal property by purchase and lease and dispose of certain municipal property by lease. Such property to include a building and land, as described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Rainier Bank Alaska, N.A. has offered to lease the Property from the City for a lump sum of \$1,200,000 for a term not to exceed 30 years; and

WHEREAS, the City also has determined it to be in the best interests of the City to acquire the Property by sublease back from Rainier Bank Alaska, N.A. over a period of fifteen (15) years for the payment of periodic lease payments; and

WHEREAS, Rainier Bank Alaska, N.A. has offered to sublease the Property to the City.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Purpose. The purpose of this Ordinance is to authorize the acquisition by purchase and the subsequent disposal by lease of the Property for a lump sum amount of \$1,200,000 for a term not to exceed 30 years, and to authorize the acquisition by sublease of the Property to be used by the City for a City Hall for a term of fifteen (15) years upon payment of periodic rent payments specified herein.

Section 2. Definitions. As used in this Ordinance, unless a different meaning clearly appears from the context:

"City" means the City of Homer, a municipal corporation of the State of Alaska.

"Commencement Date" means the date on which Lease and Sublease are signed.

"Lease" means the lease of the Property from the City to Rainier Bank Alaska, N.A. pursuant to this Ordinance.

"Lump Sum Rental Payment" means the lump sum amount of \$1,200,000 payable by Rainier Bank Alaska, N.A. to the City at the Commencement Date in consideration of the right of Rainier Bank Alaska, N.A. to use the Property during the term of the Lease.

"Prepayment penalty amounts" means the following percentage amounts of the total outstanding unpaid principal balance during the following time periods:

<u>Years from Commencement Date</u>	<u>% of Principal Outstanding Principal to Be Charged</u>
1 - 2	5
3 - 4	4
5 - 6	3
7 - 8	2
9 - 15	1

"**Prepaid Rental Amount**" means the total outstanding unpaid principal balance over the remaining term of the Sublease plus accrued interest to the date of prepayment plus any applicable prepayment penalty amounts. No prepayment penalty amount shall apply if the prepaid rental amount is paid on the fifth or tenth anniversary of the Commencement Date.

"**Prime Rate**" means the interest rate established periodically by Rainier National Bank as an index rate and published by Rainier National Bank as its prime rate.

"**Property**" means the land and building, as described in Exhibit A to this Ordinance.

"**Rental Payments**" means the periodic rental payments payable by the City to Rainier Bank Alaska, N.A. in consideration of the right of the City to use the Property during the then current portion of the term of the Sublease.

"**Sublease**" means the sublease of the Property back to the City from Rainier Bank Alaska, N.A. pursuant to this Ordinance.

Section 3. Authorization for Acquisition of a Municipal Building. The Council of the City of Homer has heretofore authorized and now hereby confirms by Ordinance the purchase

of the building and land described in Exhibit A to this Ordinance.

Section 4. Authorization for the Disposition of Property by Lease. The Council of the City of Homer hereby authorizes the disposal of the Property by lease and accepts the offer to lease the property by Rainier Bank Alaska, N.A. according to the terms of its letter of January 13, 1987 and pursuant to the terms and conditions of this Ordinance.

The City shall lease the Property to Rainier Bank Alaska, N.A. for a Lump Sum Rental Payment of \$1,200,000 payable on the Commencement date.

The Lease shall be for a term not to exceed 30 years except that the term of the Lease shall terminate after the City has paid all periodic Rental Payments or has paid the Prepaid Rental Amount.

Section 5. Authorization for the Acquisition of Property by Sublease. The Council of the City of Homer hereby authorizes the acquisition of the Property by Sublease for use by the City as a City Hall and accepts the offer to sublease the Property by Rainier Bank Alaska, N.A. according to the terms of its letter of January 13, 1987 and to the terms and conditions of this Ordinance.

The City shall sublease the Property from Rainier Bank Alaska, N.A. upon payment of monthly Rental Payments for a term of fifteen (15) years. The City shall pay Rental Payments monthly in arrears and each payment for the previous calendar month

shall be due and payable no later than the 10th day of the immediately following month (or on the 5th day following receipt of the hereinafter described notice, if later), with the first such payment due on April 10, 1987. In the event that the City shall not have received the notice hereinafter described below by the 10th day of the month, the City shall have the duty to inquire from Rainier Bank Alaska, N.A. as to the amount of the payment; however, failure to timely submit the notice shall not be deemed to ultimately excuse such payment, but failure to make timely payment by reason of failure of notice of payment shall not be considered a default under the Lease. Such Rental Payment shall be paid solely from legally available funds of the City in lawful money of the United States to the Rainier Bank Alaska, N.A. or its assignee at such location as may be designated in writing to the City from time to time by Rainier Bank Alaska, N.A.

Each Rental Payment shall consist of principal and interest. The total principal amount, amortized on a monthly basis over fifteen (15) years shall be equal to the Lump Sum Rental Payment. Except as the interest rate may be adjusted under Section 6 of this Ordinance, interest shall accrue on the unpaid principal at an adjustable interest rate per annum (computed on the basis of a year of 365 days and actual days elapsed) equal to:

1. From the Commencement Date until the fifth anniversary of the Commencement Date -- six and seven-tenths percent (6.7%);

2. From the fifth anniversary of the Commencement Date until the tenth anniversary of the Commencement Date -- ninety-seven percent (97%) of the Prime Rate established under Section 6(b) of this Ordinance;
3. From and after the tenth anniversary of the Commencement Date -- ninety-seven percent (97%) of the Prime Rate established under Section 6(b) of this Ordinance.

The monthly Rental Payment shall be determined as soon as practicable following the first day of each month, and Rainier Bank Alaska, N.A. shall notify the City in writing of the amount of Rental Payment due. Such notice shall set forth the principal and interest portion of each Rental Payment.

The principal portion of each Rental Payment shall be equal to an amount which would be necessary to fully amortize the entire principal amount over the entire term of fifteen (15) years on the basis of the Interest Rate in effect on the Commencement Date. The interest portion of each Rental Payment shall be equal to the interest on unpaid principal at the applicable interest rate for such calendar month.

Section 6. Interest Rate Adjustment.

a) As a result of the Corporate Tax Rate Changes in the Tax Reform Act of 1986, the interest rate in Section 5 of this Ordinance shall be adjusted to seven and three-tenths percent (7.3%) on January 1, 1988.

b) Within 30 days of the fifth anniversary of the Commencement Date, Rainier Bank Alaska, N.A. shall notify the City in writing of the then current Prime Rate, and the interest rate applicable under Section 5 of this Ordinance, at 97% of such Prime Rate beginning on the fifth anniversary of the Commencement Date and continuing until the tenth anniversary of the Commencement Date. Within 30 days of the tenth anniversary of the Commencement Date, Rainier Bank Alaska, N.A. shall notify the City in writing of the then current Prime Rate, and the interest rate applicable under Section 5 of this Ordinance at 97% of such Prime Rate beginning on the tenth anniversary of the Commencement Date and continuing until the end of the term of the lease.

c) In addition to the adjustments specified in (a) and (b) of this section, the interest rate in Section 5 of this Ordinance shall be adjusted as follows:

(A) Taxability Interest Adjustment. In the event that the Internal Revenue Code of 1986 is amended to provide that interest payments constituting part of the Rental Payment are subject to general federal income taxation by application of Section 103(b) of such Code, then (i) the interest rate payable on this Agreement shall be increased, from and after the effective date of such an amendment, to 10.5, and (ii) the City shall pay to Rainier Bank Alaska, N.A., on demand, (1) the difference between the interest paid (at the tax exempt rate) and the interest rate which would have been payable at the taxable rate as provided in (i) hereof but which has not been so paid and (2) any

interest, penalties or other charges, if any, incurred by Rainier Bank Alaska, N.A. as a result of the interest payable being so subject to federal income taxation.

(B) Corporate Tax Rate Interest Adjustment. In the event there is a change in the maximum corporate tax rate pursuant to the Code but not including any change in the Corporate Tax Rate as a result of the enactment of the Tax Reform Act of 1986, the interest rate in effect hereon shall increase (or decrease) by one-tenth of one percentage point for each percentage point decrease (or increase) in the marginal corporate tax rate.

(C) Preference Disallowance Interest Adjustment. In the event of any increase or decrease in the Preference Disallowance (as hereinafter defined), the interest rate in effect hereon (other than any interest rate in effect following a determination of taxability) (as contemplated in Paragraph A) shall be increased (in the event of any increase in such Preference Disallowance) or decreased (in the event of any decrease in such Preference Disallowance) by .028 percent for each percentage point increase or decrease, as appropriate, in the Preference Disallowance. For purposes of this Section, "Preference Disallowance" shall mean the percentage disallowance, set forth in Section 291(a)(3) of the Code, of the deduction for that interest, described in Section 291(a)(1)(B) of the Code, on indebtedness incurred or continued to purchase or carry tax exempt obligations.

(D) Notice. The Lessor shall promptly notify the City in writing of any adjustment pursuant to Paragraphs (A), (B), (C) or (D) hereof. The notice shall set forth the effective date of such change in the Corporate Tax rate or the Code, as appropriate, and the Adjusted Tax-Exempt Rate (and the calculation with respect thereto), the Increased Tax-Exempt Rate, or the Decreased Tax-Exempt Rate, as appropriate. The notice, the adjusted interest rate and the calculations shall be made in good faith by the Lessor and shall be conclusive, and the City shall not have any right to examine the federal income tax returns or any other returns, documents or records of the Lessor with respect thereto.

(E) One Change. Any provision to the contrary in this Section 6 notwithstanding, the interest rate shall be adjusted once for each change in the Corporate Tax Rate or the Internal Revenue Code, as appropriate, provided, that any error by the Lessor in the calculation of the Adjusted Tax-Exempt Rate, the Increased Tax-Exempt Rate, or the Decreased Tax-Exempt Rate, may be corrected by notice given by the lessor pursuant to Paragraph (D) hereof.

Section 7. Prepayment of Rent. Except upon the fifth and tenth anniversary of the Commencement Date, the City shall have the option to prepay its remaining Rental Payments upon thirty (30) days written notice to Rainier Bank Alaska, N.A. by paying to Rainier Bank Alaska, N.A. the Prepaid Rental Amount. On the fifth and tenth anniversary of the Commencement Date, the

City shall have the right to prepay its remaining Rental Payments upon five days written notice and payment of the Prepaid Rental Amount.

Section 8. Rental Payments Subject to Appropriation and Constitute Current Expense of the City. The obligation of the City to make Rental Payments shall be subject to appropriation by the City Council and constitutes a current expense of the City. This obligation shall not in any way be construed to be a debt of the City in contravention of applicable constitutional, statutory limitation or requirements concerning the creation of indebtedness by the City nor shall this obligation constitute a pledge of the general tax revenues, funds or monies of the City.

Section 9. Non-Appropriation. In the event sufficient funds are not appropriated for payment of Rental Payments required to be paid during the term of the Sublease, and if the City has no funds legally available for Rental Payments from other sources, the Sublease shall terminate and the City shall not be obligated to make payment of the Rental Payments beyond the then current fiscal year for which funds have been appropriated. Upon such occurrence, Rainier Bank Alaska, N.A. shall have all rights and remedies to take possession of the Property.

Section 10. Books of Record and Assignments. The interest of Rainier Bank Alaska, N.A. under the Sublease shall be recorded on the books of the City. Rainier Bank Alaska, N.A. may assign its interest under the Sublease, however, such assignment shall not be effective until the City is notified of the name and

address of the assignee and such assignment is recorded on the books of the City.

Section 11. Covenant as to Arbitrage. No part of the proceeds of the Lump Sum Rental Payment or any other funds held under this Ordinance shall at any time be used directly or indirectly to acquire securities or obligations, the acquisition of which would cause the rental obligation of the City under this Ordinance which, at the time of issuance thereof, was not an "arbitrage bond" (as defined in Section 148 of the Internal Revenue Code of 1986 of the United States of America as then in effect) subject to treatment under said Section 148 as an obligation not described in said Section 148, to be such an "arbitrage bond", and to that end the City will comply with the applicable regulations promulgated under said Section 148 so long as the rental obligation of the City under this Ordinance is outstanding.

Section 12. Designation as Qualified Tax Exempt Obligation. Pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, the City hereby designates the Sublease as a qualified tax-exempt obligation.

Section 13. Authorization of Lease and Sublease. The Finance Director and City Clerk are authorized and directed to execute and deliver to Rainier Bank Alaska, N.A. the Lease and Sublease substantially in the form attached to this Ordinance as Exhibits B and C, with such changes or modifications as the

Finance Director, with the advice of bond counsel to the City, considers necessary or advisable.

Section 14. General Authorization. The Mayor, City Clerk, Finance Director, and each of the other appropriate officers of the City are each hereby authorized and directed to execute the Lease and Sublease, take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this Ordinance.

Section 15. Prior Acts. All acts taken pursuant to the authority of this Ordinance but prior to its effective date are hereby ratified and confirmed.

Section 16. Ordinance a Contract. This Ordinance is adopted under the authority of and in full compliance with the Constitution and laws of the State of Alaska. In consideration of the execution of the Lease and Sublease, the provisions of this Ordinance shall constitute a contract with the holders of the Lease and Sublease, and the City covenants that it will not amend or repeal this Ordinance during the term of the Lease or Sublease without the permission of the holders of the Lease and Sublease.

Section 17. Financing Transactions. There is hereby added to the Municipal Code of Homer §18.08.160 which is to read as follows:

18.08.160 FINANCING TRANSACTIONS. The procedures set forth in this chapter do not apply to sales, purchases or leases entered into by the City as a part of a financing transaction in which the City is acquiring or disposing of municipal property for municipal purposes through the use of lease/leaseback arrangements or the lease/purchase mechanisms. The formal procedure with respect to these financing leases and the related purchase and sale of land and interests in land shall be by an Ordinance of the City Council authorizing the financing transaction.

Section 18. Effective Date. This Ordinance shall become effective immediately.

ENACTED this 10th day of February, 1986.

Joseph P. Callahan
MAYOR

ATTEST

Patricia J. Whalen
CITY CLERK